

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF HAWTHORNE,
COUNTY OF PASSAIC,

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY - LAW DIVISION

DOCKET NO. PAS-L-2412-15

Plaintiff/Petitioner

SETTLEMENT AGREEMENT

Plaintiff THE BOROUGH OF HAWTHORNE; Interested Party THE PLANNING BOARD OF THE BOROUGH OF HAWTHORNE, and Defendant-Intervenor 3 RONSON, LLC being desirous of partially settling the lawsuit entitled IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF HAWTHORNE, COUNTY OF PASSAIC, DOCKET NO. PAS-L-2412-15, without the risk, cost, or burden of further litigation, agree in exchange for their mutual promises, terms and conditions and other sufficient consideration as follows:

1. PURPOSE

The purpose of this agreement is (a) to create a realistic opportunity for a total of 17 affordable family units (rental affordable units on the Ronson Site); (b) to control the development of the Ronson Site as set forth herein; and (c) to resolve all issues amongst the parties.

2. DEFINITIONS

Unless the context plainly requires a different meaning, the following terms have the following meanings for purposes of this Agreement.

- a. "Agreement" means this agreement.
- b. "Developer" means 3 Ronson, LLC or its successors or assigns.
- c. "Ronson Site" means Block 89, Lot 6 and Block 90, Lots 2.01. 2.02 and 1 on the Borough's official tax map, consisting of approximately 6.023 acres located at 542 Goffle Road in Hawthorne.

- d. "Nonappealable" means that the period for appeal has expired without any appeal having been filed by any party or that an appeal has been filed and all trial and appellate proceedings have concluded affirming the municipal actions that were the subject of the appeal.
- e. "Party" and "Parties" means one or more of the Borough of Hawthorne, the Planning Board of the Borough of Hawthorne, and the Developer, as the context may require.
- f. "Municipal Parties" means the Borough of Hawthorne and the Planning Board of the Borough of Hawthorne collectively.
- g. "Ordinance" means a duly adopted ordinance of the Borough of Hawthorne to rezone the Ronson Site so as to permit the development contemplated by this Agreement substantially in the form attached as Exhibit "A".

3. COURT APPROVAL AND MOUNT LAUREL FAIRNESS HEARING

- a. An essential and non-severable provision of this Agreement is the approval of this Agreement by the Court. The PARTIES will cooperate, and make a joint request, that the Court deem its order a final order subject to immediate appeal. In the event the Court does not deem its order a final order, the terms of this Agreement will be deemed effective upon entry of the Court's order approving this Agreement.
- b. Within seven (7) days after execution of this Agreement, and subject to the availability of the Court, Honorable Thomas F. Brogan, P.J.S.C., Passaic County or such other judge of the Superior Court designated by the Assignment Judge to hear this matter, the PARTIES shall make application (to approve this Settlement and to determine solely the fairness of this Agreement) to the Court for the

scheduling, as soon as possible and, in no event, later than forty five (45) days from the provision of notice of a Fairness Hearing on solely the fairness of this Agreement to take place for Court approval of this Agreement and the fairness thereof.

- c. Following the scheduling of a Fairness Hearing date on solely the Fairness of this Agreement, the BOROUGH shall promptly comply with and be responsible for all notice requirements as may be directed by the Court. DEVELOPER shall have the right to approve the form of notice. Said notice shall be published within seven (7) days of the Court scheduling the Hearing.
- d. Upon the Court approval of this Agreement, the PARTIES shall request the Court retain jurisdiction to address any issues or problems, whether real or perceived, in connection with review of development plans or development approval proceedings, if said issues or problems cannot be first resolved by the Court-appointed Special Master.
- e. The PARTIES hereto agree to cooperate and participate in the defense of any challenge to, or appeal of, the contemplated Court approval of this Agreement or any related implementing action.
- f. Each PARTY shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement, including any litigation costs except that DEVELOPER shall be responsible for 50% of the expenses generated by the Special Master for evaluating the within settlement (but not any other portion of the Declaratory Judgement action), making recommendations to the Court concerning this settlement, and handling any issues

that arise in conjunction with implementation of the settlement and the Borough shall be responsible for the remaining amount. This provision shall not be construed to preclude joint representation of BOROUGH and PLANNING BOARD in any litigation or other proceeding.

- g. The DEVELOPER will pay FSHC, on behalf of the BOROUGH, \$6,000.00. The \$6,000.00 represents a portion of the costs incurred by FSHC in this matter. The payment to FSHC will be made by the DEVELOPER within ten (10) days after the adoption of the ORDINANCE required by this AGREEMENT and the expiration of the appeal period, without an appeal being filed.
- h. An essential and non-severable condition of this Agreement is a nonappealable determination by the Court that the RDP attributable to the Ronson Site is 23 and that as long as the affordable units are administered in accordance with UHAC standards the units shall be eligible for credit against the BOROUGH'S affordable housing obligations and shall be eligible, to the extent the units are rental, for rental bonuses up to the rental bonus cap of 25 percent of the RDP.
- i. The PARTIES shall jointly support entry of an order approving this Agreement in partial settlement of the pending litigation. If the Court declines to approve this Agreement, the PARTIES shall attempt, with the assistance of the court-appointed Special Master to modify this Agreement. If they are unable to do so within 20 days, either the DEVELOPER or the BOROUGH may, by written notice to all other PARTIES terminate this Agreement.

4. OBLIGATIONS OF BOROUGH AND PLANNING BOARD

- a. As an essential term of this settlement, within 90 days of Court approval of this Settlement Agreement, evidenced by a written Order encompassing Court

approval of the Borough's Resolution of the Borough's DJ Action after a Fairness Hearing before the Court, the Borough shall take all steps necessary to rezone the Ronson Site to permit the construction of 116 units (with one additional unit set aside for an on-site building manager or superintendant) consistent with the Ordinance, Concept Plan, and Elevation Plan attached hereto as Exhibits A, B and C, respectively.

- b. The BOROUGH and PLANNING BOARD have reviewed the Ordinance, Concept Plan, and Elevation Plan and acknowledge that same are consistent with the purpose and intent of this Agreement. Nothing in this paragraph shall prohibit the PARTIES from mutually agreeing, in writing, to modifications of the Ordinance before introduction and/or final enactment of the Ordinance.
- c. All parties acknowledge that DEVELOPER, the BOROUGH and/or the PLANNING BOARD may propose modifications to the plan submitted for approval if necessitated solely by the engineering of the Development. The PARTIES agree to reasonably consider any such request for modification necessitated solely by the engineering of the Development subject to the following limitations:
 - i. 15% of the units in the aggregate must be affordable family units and constructed as part of an inclusionary development as set forth below and subject to the phasing provisions set forth in this Agreement.
 - ii. The Ronson Site will contain a total of no more than 116 units (any reduction to be at the DEVELOPER'S sole discretion) consisting of 99 market rate units and 17 affordable family rental units. In addition to the

above, the Ronson Site will be permitted to have 1 additional unit to be occupied by an on-site building manager or superintendent.

- iii. Site lay-out shall substantially follow the Concept Plan annexed as Exhibit "B". The location of buildings on the site, given surrounding land uses, is an integral part of this Agreement.
- iv. The front elevation shall to the extent feasible resemble the Elevation Plan attached hereto as Exhibit "C" with respect to color and general appearance. The Developer shall have the right to modify window locations and roof lines to accommodate the final floor layout.
- d. This Agreement contemplates the Ronson Site to be designated as “an area in need of redevelopment” as defined under the Local Redevelopment Housing Law (“LRHL”) N.J.S.A. 40A:12A-1 et seq. The Borough Council will adopt a resolution authorizing the PLANNING BOARD to conduct an investigation into whether the Ronson Site qualifies as an “area in need of redevelopment” as defined under the LRHL. Once the Borough Council receives the PLANNING BOARD’S recommendation whether to designate the property as “an area in need of redevelopment”, the Borough Council will determine whether it will designate the Properties as “an area in need of redevelopment”. Following the designation, the terms of the rezoning ordinance referred to in Paragraphs 4 a-c, hereof will be incorporated in a redevelopment plan to be adopted for the Ronson Site.
- e. The Parties shall thereafter negotiate in good faith an agreement providing for a 20 year Payment in Lieu of Taxes (“PILOT”) at a rate of 10% Gross Rental

Income. The Parties recognize that these terms are an essential element of this Agreement.

- f. The proposed development of the Ronson Site pursuant to this Agreement shall require site plan approval in accordance with current BOROUGH land use and zoning regulations as amended by the Ordinance, procedural requirements of the Municipal Land Use Law, and the provisions of this Agreement, as well as other agency approvals including but not limited to Passaic County Planning Board approval, DEP approval and Hudson/Essex/Passaic Soil Conservation District approval.
- g. PLANNING BOARD agrees to expeditiously process any requests for reasonable waivers and/or variances in connection with DEVELOPER'S development application to advance the purpose of this Agreement, the Ordinance and the Concept Plan and any changes permitted herein. Such variances and waivers shall be considered by the PLANNING BOARD consistent with the MLUL.
- h. PLANNING BOARD shall expedite the processing of applications for development of the Ronson Site. At the request of the DEVELOPER, the PLANNING BOARD shall schedule special meetings to facilitate expedited processing of such applications provided that DEVELOPER pays the costs, required by the Borough Code, incurred in conjunction with such meetings.
- i. Requests by the PLANNING BOARD for reports shall be governed by the standards and procedures set forth in N.J.A.C. 5:93-10.3. The PLANNING BOARD may require submission of a stormwater management plan or flood hazard area plan, but, if the DEVELOPER seeks permits that require approval of

the stormwater management plan or flood hazard area plan by the New Jersey Department of Environmental Protection (NJDEP), the PLANNING BOARD shall not make an independent assessment of the stormwater management plan, but shall simply condition any development approvals upon approval of the stormwater management plan or flood hazard plan area by the NJDEP and a review of the maintenance plan and manual.

- j. Except as expressly provided in the Ordinance adopted pursuant to this Agreement or by this Agreement, neither the BOROUGH nor the PLANNING BOARD shall require the DEVELOPER, his successors or assigns, to construct, or pay for, any off-site improvements other than those provided for by N.J.S.A. 40:55D-42.
- k. Nothing in this Agreement shall be deemed to relieve the DEVELOPER of any lawful obligation to pay generally applicable fees established by statute or ordinance, such as non-residential development fees, in connection with applications for development approvals, building permits, and certificates of occupancy for the Project Site nor shall it be deemed to relieve the DEVELOPER of any obligation to reimburse the BOROUGH or PLANNING BOARD for the reasonable fees of professionals for services rendered to the BOROUGH or the PLANNING BOARD provided for by N.J.S.A. 40:55D-53.2.
- l. Cost-Increasing Requirements. Neither the BOROUGH nor the PLANNING BOARD may impose any procedural or substantive requirement that substantially adds to the burden or cost of development of the Ronson Site which is not strictly necessary to protect public health or safety. Compliance with the Ordinance or to

develop the site substantially consistent with the Concept Plan shall not be deemed to impose a prohibited cost-increasing requirement.

- m. Amendment of Ordinances. Neither the ordinances adopted or amended pursuant to this Agreement nor the current ordinances governing development or use of the Ronson Site may be materially added to, amended, modified, or repealed without the written consent of the DEVELOPER, while this Agreement remains in force, except that generally-applicable changes may be made to the BOROUGH'S Ordinances in a manner that will not affect DEVELOPER'S rights hereunder.

5. OBLIGATIONS OF DEVELOPER

- a. DEVELOPER shall file development applications substantially consistent with the Ordinance attached hereto as Exhibit "A".
- b. DEVELOPER shall be responsible for maintaining the required number of affordable units as required by this Agreement as affordable family units. DEVELOPER shall have an obligation to deed-restrict such units as very low, low and moderate income affordable units. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws. In addition, at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low-income households as defined by and reflected in the Fair Housing Act. To illustrate the intent of this provision, if 100 units are approved and constructed, the breakdown will be 8 moderate; 6 low and 3 very low.
- c. As to the affordable units, DEVELOPER shall comply with all COAH and UHAC standards. The location and distribution of the affordable housing units

shall be at the DEVELOPER'S discretion but shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, and shall to the extent feasible, be interspersed throughout the development.

- d. In addition, any affordable unit, initially constructed by the DEVELOPER as a rental unit, shall remain affordable rental units restricted in accordance with UHAC regulations for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") so that the BOROUGH may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to DEVELOPER'S obligation to comply with (1) bedroom distribution requirements; (2) income split requirements; (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, (7) deed restriction requirements, and (8) phasing of the affordable units with the market-rate units.
- e. The construction of low and moderate income units shall be governed by the schedules set forth in regulations of the Council on Affordable Housing.
- f. DEVELOPER shall be responsible for all fees contemplated by the BOROUGH'S ordinances and all fees imposed by statute.
- g. DEVELOPER shall be responsible for all costs associated with the rental of the affordable units, and for the continuing administration of the rental affordable units and the preservation of the creditworthiness of the units. In satisfaction of this obligation, DEVELOPER shall retain Community Grants, Planning & Housing ("CGP&H") as the Administrative Agent, which the BOROUGH hereby

pre-approves, 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 CGP&H is not available or unwilling to serve, then DEVELOPER and the BOROUGH shall cooperate toward retaining a mutually agreeable Administrative Agent.

- h. The administrative tasks include the affordable housing Administrative Agent performing its responsibilities pursuant to Uniform Housing Affordability Control ("UHAC") regulations, COAH regulations, the regulations 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 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, and (viii) enforcing any and all other UHAC requirements and requirements of the COAH or a successor agency as to the affordability of the

units. For purposes of this subparagraph, the Parties assume current UHAC regulations and COAH round two regulations shall control. However, if COAH promulgates new applicable 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.

- i. 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.
- j. DEVELOPER shall post escrows to cover the costs of the 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 MLUL.
- k. 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 condition.

- l. 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.
- m. 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.
- n. DEVELOPER shall take no direct or indirect action to interfere with implementation of BOROUGH'S Housing Element and Fair Share Plan or any subsequent amendment thereto, provided that any amendment does not deprive DEVELOPER of any express rights created hereunder or any other inclusionary project by the DEVELOPER in the BOROUGH.
- o. Subject to Section 3.g., DEVELOPER will cooperate with and support the BOROUGH'S subsequent request for entry of a judgment of compliance based upon such an amended Housing Element and Fair Share Plan and will support the settled upon fair share, vacant land analysis and will not otherwise challenge the validity of the BOROUGH'S HEFSP.
- p. DEVELOPER shall have the obligation to cooperate with BOROUGH to advance the intent and purposes of this Agreement unless all taxes are not current.

- q. The DEVELOPER has no obligation to construct, cause to be constructed, or subsidize the construction of, low or moderate income housing, except for the 17 units specified in this Agreement.
- r. The BOROUGH has reviewed the Concept Plan, a copy of which is attached as Exhibit "B". While recognizing that this plan has not yet been fully engineered and is subject to the changes detailed within this Settlement Agreement and other revisions, the MUNICIPAL PARTIES stipulate that this plan represents an acceptable concept plan for the development of the Ronson Site, however, the location, configuration and size of the buildings shown on the Concept Plan are integral to this Agreement, under the terms of the Ordinance attached as Exhibit "A".
- s. DEVELOPER agrees to extend the 8 inch sewer line to be constructed on the Ronson Site to the rear property line of the houses situated on Brockhuizen Lane at its sole cost (so that the owners of property identified as Lots 8, 9, 10 and 11 in Block 89 may tie in to the future sewer line at their sole cost). The exact location to be determined once the sewer system is designed.
- t. The DEVELOPER recognizes that the Borough of Hawthorne, by Ordinance, requires payment of \$3,000 by way of water service connection fee and \$3,000 by way of sanitary sewer connection fee for each new housing unit constructed. Said fee shall only be required for the Market Rate units. The affordable housing units are exempt from payment of both fees. Fifty (50) percent of the water and sewer fees per building are due for each when a building permit is issued for a specific building and the balance for a specific building is due when a Certificate of

Occupancy is issued for that building. For example, when the building permit is issued for the first building containing 36 units, fifty (50%) percent of the total fee for the market rate units only is due with the balance due when the Certificate of Occupancy for that building is issued.

- u. Developer shall retain the right to phase the project.

6. PROVISIONS APPLICABLE TO ALL PARTIES

- a. **Dispute Resolution.** At the request of the DEVELOPER or the Municipal Parties, the court-appointed special master shall decide on an expedited basis any dispute that arises as to whether any procedural or substantive requirement imposed by the BOROUGH or the PLANNING BOARD impedes, or adds to the cost of, development of the Ronson Site or is necessary to protect public health or safety provided that the requirement does not arise from a limitation in the ordinance or to develop substantially consistent with the Concept Plan. Any decision by the court-appointed special master may be appealed to the Honorable Thomas F. Brogan, P.J.S.C. or such other Superior Court Judge assigned by the Passaic County Assignment Judge by any party.
- b. **Legal Challenges by Third Parties.** If any third party files a legal challenge to, or appeal from, this Agreement, or the ordinance and master plan amendments adopted pursuant to this Agreement, the parties agree to jointly defend against any third party legal challenge to, or appeal from, this Agreement, or the Ordinance and Master Plan Amendments adopted pursuant to this Agreement and any action taken by the BOROUGH or PLANNING BOARD in implementation of this Agreement. All parties will be responsible for their own legal costs in any such defense.

- c. **Captions and Titles.** Captions and titles to this Agreement and the several sections are inserted for convenience of reference only and are in no way to be construed as defining, limiting or modifying the scope and intent of the various provisions of this Settlement Agreement.
- d. **Invalidity.** If any provision of this Agreement is held by the Court to be invalid, void or unenforceable, the parties shall, after the exhaustion of all appeals, attempt with the assistance of the court-appointed special master to modify this Agreement. If they are unable to do so within 20 days, either the BOROUGH or the DEVELOPER may by written notice to all other parties terminate this Agreement and reinstate the litigation. Alternatively, the parties may jointly request that the Court reform the Agreement.
- e. **Violation.** If any party fails to perform any obligation required to be performed by this Agreement, such failure shall constitute a violation of this Agreement. Upon violation of the Agreement, any party for whose benefit such obligation is intended may enforce the Agreement by motion in aid of litigants' rights or any other remedy available at law or equity.
- f. **Waiver.** Any waiver of any provision of this Agreement will be effective only if made in writing. Failure to enforce any of the provisions of this Agreement by any of the parties shall not constitute a waiver of these provisions.
- g. **Entire Agreement.** This Agreement and the Exhibits attached hereto contain the entire agreement between the parties. No representative, agent or employee of any party has been authorized to make any representations or promises with reference to this Agreement or to vary, alter or modify the terms hereof except as stated

herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the parties hereto.

- h. **Covenants Run with Land.** It is the intention of the parties that this Agreement constitutes a set of covenants that run with the land. This Agreement shall inure to the benefits of and be binding upon the parties and their successors in interest and assigns. Wherever reference in this Agreement is made to the DEVELOPER, that reference shall also mean the successors in interest and assigns of the DEVELOPER.
- i. **Assignment.** The benefits and obligations of this Agreement may be assigned by the DEVELOPER in whole or in part.
- j. **Notice.** The parties agree to provide each other with immediate notice of any lawsuits, action or governmental declaration threatened or pending of which they are actually aware which may affect the provisions of this Agreement or implementation thereof.
- k. **Construction of Agreement.** The parties acknowledge that this Agreement was prepared jointly and, therefore, this Agreement shall be construed on a parity between the parties.
- l. **Governing Law.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey.
- m. **Written Notices.** All written notices required under this Settlement Agreement shall be given by Certified Mail, Return Receipt Requested as follows:

Shlomi Adoni/Peter Mercatili
3 Ronson, LLC
94 Green Street
Woodbridge, NJ 07095

And

Donna M. Jennings, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive
Woodbridge, NJ 07095

Borough of Hawthorne:

Lori Fernandez, RMC, CMC
Borough Clerk
445 Lafayette Avenue
Hawthorne, NJ 07506-2251

Michael J. Pasquale, Esq.
Law Offices of Michael J. Pasquale
146 Rea Avenue
Hawthorne, NJ 07506-2149

Planning Board of the Borough of Hawthorne:

Janice Patmos
Planning Board Secretary
Municipal Building
445 Lafayette Avenue
Hawthorne, NJ 07506

And

Darryl Siss, Esq.
Teschon, Riccobene & Siss, P.A.
327 Godwin Avenue
Midland Park, NJ 07432

- n. **Authority.** Each of the parties represents that it has authority to execute this Settlement Agreement. Each party shall provide legally sufficient documentation of its authority to execute this Agreement upon request by any other party, the court-appointed master, or the Court.
- o. **Change of Law.** The validity and terms of this Agreement shall not be affected by any change in law subsequent to its effective date. In particular, the parties are

aware that lawsuits are pending in the trial courts and the appellate courts following the decision of the Supreme Court in In re Adoption of N.J.S.A. 596, 221 N.J. 1 (2015), and that decisions might be rendered in these lawsuits. The parties are also aware that the Council on Affordable Housing might resume its former functions. Finally, the parties are aware that statutes might be adopted by the Legislature concerning the provision of low and moderate income housing. The validity and terms of this Agreement shall not be affected by any of these events.

- p. **Attorney and Expert Fees.** Each party shall bear its own attorney fees and costs of litigation.
- q. **Effective Date.** This Agreement shall become effective upon execution.
- r. **Period of Agreement.** Unless terminated sooner either by written agreement of the parties, this Settlement Agreement shall remain in force until the occurrence of the last of the following events:
 - i. Eight years from the date of the entry of a judgment of compliance;
 - ii. Expiration of the extended vesting period for any development approvals granted for either Project Site;
 - iii. Expiration of the period of repose established by the judgment of compliance, including any extensions of the period of repose granted by the Court or any state agency authorized to grant such extensions.
- s. **Effect of Termination or Expiration of Agreement.** Termination or expiration of this Agreement shall not affect the validity or vesting of any approvals or permits received by the DEVELOPER and shall not automatically repeal or

amend any ordinances or master plan amendments adopted pursuant to this Agreement. Upon termination of this Agreement, the litigation shall be reinstated and all parties shall be in the same position as they were on the date the Agreement was executed.

t. This Agreement may be executed in counterparts.

Mayor of the Borough of Hawthorne
For the Borough of Hawthorne

Dated:

Chairperson of the Planning Board of the
Borough of Hawthorne For the Planning Board
of the Borough of Hawthorne

Dated:

Shlomi Adoni
For 3 Ronson, LLC

Dated:

Peter Mercatili
For 3 Ronson, LLC

Dated:

EXHIBIT A

DRAFT ORDINANCE FOR REVIEW ONLY

BOROUGH OF HAWTHORNE
ORDINANCE No. _____

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 540, ZONING ORDINANCE OF THE BOROUGH OF HAWTHORNE, PASSAIC COUNTY, NEW JERSEY

BE IT ORDAINED by the Governing Body of the Borough of Hawthorne, New Jersey that it does hereby amend and supplement the Zoning Ordinance of the Borough of Hawthorne as follows:

SECTION 1. Article I §540-4 **Establishment of zones** is hereby amended and supplemented to add the following new zoning district:

R-11 Multifamily Affordable Housing

SECTION 2. The official Zoning Map of the Borough of Hawthorne is hereby amended to zone tax lots 1, 2.01, 2.02 within Block 90 and tax lot 6 within Block 89 as R-11, Multifamily Affordable Housing subject to the regulations of Article **TBD** created herein.

SECTION 3. New Article TBD, Multifamily Affordable Housing, R-11 Zone is hereby added as follows:

§ 540-TBD Purpose

Purpose. The purpose of this district is to encourage the production of low and moderate-income multifamily housing in conformance with the latest procedural and substantive rules for affordable housing as determined by the Courts or other applicable authority, by permitting inclusionary multi-family development subject to the R-11 regulations enumerated herein. This ordinance is created in fulfillment of a Settlement Agreement by and between the Borough of Hawthorne, New Jersey, 3 Ronson, LLC and the Fair Share Housing Center in connection with the Borough of Hawthorne's declaratory judgment action captioned "In the Matter of the Application of the Borough of Hawthorne" bearing docket number PAS-L-2412-15 pursuant to *In re the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015)*.

§ 540-TBD Principal permitted uses.

Permitted principal uses shall be limited to residential multifamily development as regulated by this Article.

§ 540-TBD Permitted accessory uses

- (1) Any use which is ordinarily subordinate and customarily incidental to the principal permitted uses R-11 zone.
- (2) Surface parking.
- (3) Signs as permitted by ordinance.
- (4) Retaining walls as regulated by **§ 540-TBD**
- (5) Fences as permitted by ordinance.

§ 540-TBD Development Requirements

The total number of residential units permitted in the R-11 Zone shall not exceed 116 units plus 1 caretaker unit and the total number of required affordable housing units shall not be less than 17.

§ 540-TBD Area and Bulk Requirements

A. Lot area, external yard and bulk requirements.

- (1) Minimum lot area (acres): 6.0
- (2) Minimum distance between buildings (feet): 60
- (3) Minimum setbacks from external lot lines (feet):
 - (a) Front yard (feet): 85
 - (b) Side yard (feet):
 - i. Buildings with direct frontage on Goffle Road. 30
 - ii. Buildings setback within 350 feet to Goffle Road 75

iii. Buildings setback within 480 feet to Goffle Road	60
(4) Rear yard (feet):	60
(5) Maximum number stories and building height (stories/feet):	4 /45*
(6) Maximum impervious lot coverage (percent):	50 percent
(7) Maximum building length (feet):	260

*height shall be measured from the finished floor of the first residential level above parking but in no event shall any portion of a building exceed the height of 55 feet as measured from the average finished grade of the building as determined by measurements taken at the midpoint of the length of each building wall at the foundation to the ridge line of the building.

§ 540-TBD Parking and Circulation requirements

Residential Site Improvement Standards (RSIS) shall apply.

§ 540-TBD Fire Access Lanes

- A. A secondary emergency access road serving any development within the R-11 Zone shall be provided subject to the review and approval of the Planning Board.
- B. A dedicated and unobstructed 15-foot wide fire lane shall be provided for any building with direct frontage on Goffle Road.

§ 540-TBD Retaining Walls

Retaining walls may be located within a perimeter buffer or elsewhere on-site as needed subject to the following:

- A. Retaining walls shall be tiered wherever possible.
- B. Retaining walls shall have a landscaped shrub base when wall height exceeds 5'.
- C. Retaining walls adjacent to existing residential properties where the exposed face of wall faces such properties (i.e. the proposed improvements are above the adjacent residential property) shall be setback from the property line minimally the same height of the proposed retaining wall but in no event shall an outward facing retaining wall exceed a maximum height of 8 feet.

- D. Retaining walls adjacent to existing residential properties AND greater than 200' setback from Goffle Rd. where the exposed face of wall faces away from such properties (i.e. the proposed improvements are below the adjacent residential property) shall not exceed 25' feet in height. Such walls serve to lessen visual height impact on adjacent single-family homes.
- E. Walls setback less than 100' from Goffle Rd. shall not exceed 10' in height.
- F. Retaining wall color shall be of earth-tone and complimentary to proposed structure finishes.
- G. Retaining walls shall have a protective, black vinyl coated chain link fence on top for safety when wall height is more than 3'.
- H. Retaining walls are permitted within all required setbacks and buffers.

§ 540-TBD Required Buffers

A planted landscaped perimeter buffer shall be provided subject to the following standards in addition to **§ 540-TBD. B.** as follows:

- A. No less than a 50-foot planted buffer shall be maintained along the front yard.
- B. No less than a 15-foot planted buffer shall be maintained along the northerly side and rear yards.
- C. No less than a 30-foot planted buffer shall be maintained along the southerly side yard for a distance of no less than 300 feet as measured from the intersection of the rear lot line with the southerly lot line extending east.
- D. No accessory structures, parking, or storage of materials shall be permitted within the required buffer. Circulation drives, pedestrian walkways and stormwater swales are permitted within all required buffers except that not more than 10% of the required buffer shall be affected. All underground utilities are permitted within required buffer areas except for above ground elements.
- E. Buffer Areas. Buffers shall comply with the following standards:
 - (1) Buffer planting shall provide year-round visual screen in order to minimize adverse impacts from a site on an adjacent property or from adjacent areas. It may consist of evergreen and deciduous trees and shrubs, berms, boulders, mounds, or combinations thereof to achieve the stated objectives as approved by the

appropriate land use board. While fencing may be installed to delineate the property line, the use of fencing or walls shall not be relied upon as the primary source of screening.

- (2) Where required, buffers shall be measured from property lines and street rights-of-way. Compliance shall be determined by the Planning Board, and any approvals required pursuant to this Section shall be obtained at the time of site plan and subdivision review. Buffer areas may overlap required setbacks.
- (3) The landscaping shall be designed to provide a visual screen along the majority of the buffer area. Planting shall be installed at a variety of sizes which conform to the following minimum sizes:

Shade Trees	2 ½-3-inch caliper
Evergreen Trees	7-8 feet
Shrubs	18-24 inches

- (4) Existing vegetation within the required transition buffer shall be preserved to the extent feasible and as determined appropriate by the Planning Board. It shall be supplemented with shade tolerant naturalistic massed plantings where necessary to provide screening of adjoining land uses.

§ 540-TBD Limitation on Site Disturbance

Any development within the R-11 Zone shall comply with § 540-160 of the Borough code regulating limitation on site disturbance unless otherwise specified herein. [See § 540-TBD, **Steep Slope Regulations**].

§ 540-TBD Soil Movement

Any development within the R-11 Zone shall comply with **§ 540-420** of the Borough code regulating the movement of soil.

§ 540-TBA Steep Slope Regulations

The Borough's steep slope regulations (Ch. 540, Art. XXI) and steep slope disturbance provisions in Sec. 540-160 Limitation on Site Disturbance are not applicable to the R-11 Zone.

§ 540-TBD Design Standards

Development within the R-11 Zone shall be subject to the following design standards. Relief from any required site design standard under § 540-TBD, shall be considered a design standard exception pursuant to N.J.S.A. 40:55D-51 (b) and not a variance.

A. Architectural Design Standards

- (1) Rooflines. Rooflines are not to be flat but pitched. Roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- (2) Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.
- (3) All buildings should relate harmoniously to the site's natural features and existing buildings, as well as other structures in the vicinity that have a visual relationship and orientation to the proposed buildings. Such features should be incorporated into the design of building form and mass, and assist in the determination of building orientation in order to preserve visual access to natural and man-made community focal points.
- (4) Buildings with expansive blank walls are prohibited. Appropriate facade treatments should be imposed to ensure that such buildings and facades are integrated with the rest of the development and the entirety of the building.
- (5) Refuse and recycling shall be located interior to a building or alternatively, be placed such that they are conveniently located for residents. If located outside, the refuse area shall be appropriately screened by fencing not to exceed 6 feet.

B. Landscaping

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. The impact of any proposed landscaping plan at various time intervals shall be considered. Plants and other landscaping materials shall be selected in terms of aesthetic and functional considerations. The landscape design shall create visual diversity and contrast through variation in size,

shape, texture and color. The selection of plants in terms of susceptibility to disease and insect damage, wind and ice damage, habitat (wet-site, drought, sun and shade tolerance), soil conditions, growth rate, longevity; root pattern, maintenance requirements, etc., shall be considered. Consideration shall be given to accenting site entrances and unique areas with special landscaping treatment. Flowerbed displays are encouraged.

- (2) Parking rows longer than 20 parking spaces should provide for a landscape island to break the pavement where practical and feasible.
- (3) Landscaped islands should be at least six feet in width to accommodate plantings.
- (4) Landscaping within sight triangles shall not exceed a mature height of 30 inches.
- (5) Shade trees shall be pruned up to an 8-foot branching height above grade.
- (6) All areas that are not improved with buildings, structures and other man-made improvements shall be landscaped with trees, shrubs, and ground cover.
- (7) Shade trees should be a 2.5 to 3-inch caliper with a canopy height of at least the minimum American Nursery and Landscape Association Standards for this caliper.
- (8) Ornamental Trees shall be installed at a minimum size of 6 feet in height.
- (9) Shrubs shall be planted at a minimum size of 18 to 24 inches.
- (10) All plant material shall meet the minimum latest American Nursery and Landscape Association Standards.
- (11) Irrigation shall be provided for all buffer plantings and sodded lawn areas in a manner appropriate for the specific plant species. A growth guarantee of two growing seasons shall be provided and all dead or dying plants shall be replaced by the applicant, as required, to maintain the integrity of the site plan.
- (12) Landscape Plantings. A minimum of 30 percent of the plantings proposed shall be indigenous to the region.

(13) Landscape Plan Content. A landscape plan shall be submitted with each major site plan or major subdivision application. In addition to the major site plan or subdivision submission requirements, the landscape plan shall include and identify the following information:

(a) Existing and proposed underground and above ground utilities such as site lighting, transformers, hydrants, manholes, valve boxes, etc. existing wooded areas, rock outcroppings and existing and proposed water bodies.

(b) Location of individual existing trees noted for preservation within the area of development and 30 feet beyond the limit of the disturbance. Trees 4 inches in diameter (measured 4 1/2 feet above the existing ground level) shall be located and identified by name and diameter unless the wooded area is shown with a specific limit line. In this case, specimen trees shall be located within thirty feet of the line. Indicate all existing vegetation to be saved or removed.

(c) Existing and proposed topography and location of all landscaped berms.

(d) Location, species and sizes of all proposed shade trees, ornamental trees, evergreen trees and shrubs and areas for lawns or any other ground cover. Different graphic symbols shall be used to show the location and spacing of shade trees, ornamental trees, evergreen trees, shrubs and ground cover. The size of the symbol must be representative of the size of the plant shown to scale.

(e) A plant schedule indicating botanical name, common name, size at time of planting (caliper, height and spread), quantity, root condition and any special remarks (spacing, substitutions, etc.) for all plant material proposed. Plants within the plant schedule shall be keyed to the landscape plan utilizing the first letter of the botanical plant name.

(f) Planting and construction details and specifications.

C. Lighting

(1) All lighting fixtures and foot-candle standards for parking areas and recreation facilities should be consistent with the standards outlined by the Illuminating Engineering Society of North America (IESNA) and regulations of the Borough of Hawthorne.

- (2) The intensity, shielding, direction and reflecting of lighting shall be subject to site plan approval by the approving authority.
- (3) All parking areas, walkways, building entrances, and driveways required for uses in this zone shall be adequately illuminated during the hours of operation that occur after sunset. Any adjacent residential zone or use shall be shielded from the glare of illumination from site lighting and automobile headlights.
- (4) The use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. The use of traditional style lanterns and similar fixtures shall also be encouraged. Exterior neon lights and lighting generating glare and unnecessary night-glow impacts shall be prohibited.
- (5) Whenever possible, light poles should be integrated into landscaped islands.

D. Green infrastructure

- (1) All development shall be in accordance with the regulations set forth in the Borough's Stormwater Management Ordinance (Chapter 437). Site design is encouraged to incorporate green design elements to achieve the following goals: reduce stormwater volume, minimize impervious coverage, decrease and delay peak discharge, reduce pollution and recharge groundwater.
- (2) Various design elements may be incorporated into site design with the following specifically low impact development techniques encouraged: rain gardens, bioinfiltration planters, infiltration basins, vegetated swales and pervious paving.

§ 540-TBD Application Requirements.

A. Application Requirements

- (1) An applicant for development in the R-11 Zone shall submit a site plan indicating the manner in which the site is to be developed. Said plan shall include all the data required by ordinance for site plan review unless otherwise waived by the Board.

- (2) The application shall contain, in addition to the site plan application checklist provisions, a report detailing the total number of dwelling units by bedroom count. The total number of units shall be indicated and intensity of use of the entire tract shall be noted.

B. Application Process.

Notwithstanding the provisions of § 540-TBD A. above, it is the intent of this ordinance for the Planning Board to expedite its review of any application submitted for this zone within the time frames established under N.J.S.A. 40:55D-1 et. seq. It is further the intent of this ordinance to not require off-site or off-tract improvements for development, unless the need for such improvements arise from the development within the zone nor shall the approving authority require items deemed as "cost-generating" as defined by N.J.A.C 5:93-10.1 et. seq.

§ 540-TBD Low and Moderate-Income (Mount Laurel) Housing Requirements

The following requirements as to the density and distribution of low-and moderate-income dwelling units shall apply.

A. Low- and moderate-income (Mount Laurel) housing requirements:

- (1) Market-rate and minimum low- and moderate-income housing set aside: The total number of housing units shall not exceed 116 units and the total number of affordable housing units shall not be less than 17.
- (2) All low- and moderate-income housing units shall be in conformance with the latest applicable rules for affordable housing as determined by the Council on Affordable Housing, the Courts or other applicable authority, as determined appropriate, including such issues as phasing of building low- and moderate-income units in concert with market rate units.
- (3) Bedroom distribution of low- and moderate-income housing units. Subject to the most current applicable COAH or other rules, the bedroom distribution of low- and moderate-income units for affordable units constructed in the MUA Zone shall be as follows:

- (a) No more than 20 percent of the low- and moderate-income units shall be one bedroom units.
 - (b) At least 20 percent of the low- and moderate-income units shall be three bedroom units.
 - (c) At least 30 percent of the low- and moderate-income units shall be two bedroom units.
- (4) Low- and moderate- income unit split. The distribution of inclusionary affordable units to be provided as part of this development shall be in accordance with those requirements as set forth by COAH rules or otherwise deemed appropriate by the Court.
- B. Procedures regarding affirmative marketing of low- and moderate-income units and other requirements of inclusionary development units are subject to and determined by COAH rules or other rules determined appropriate by the Court.

EXHIBIT B

EXHIBIT C

