

Old Bridge ~~Area~~ Circa 1985
U. L. v. Carteret
Proposed Settlement Agreement

Pgs. 25

CA000088P

SETTLEMENT AGREEMENT

I. Parties to the Settlement

This is an agreement which has been reviewed and accepted by this Court and may be enforced by a motion brought pursuant to Rule 1:10-5 for enforcement of litigant's rights. This agreement is among the following parties:

1. O&Y Old Bridge Development Corporation, a Delaware Corporation, qualified to do business in the State of New Jersey. As used in this Stipulation, O&Y Old Bridge Development Corporation (hereinafter "O&Y") also refers to any successors or assigns of O&Y Old Bridge Development Corp.

2. Woodhaven Village, Inc., a corporation organized to do business in the State of New Jersey. As used in this Stipulation, Woodhaven Village, Inc. (hereinafter "Woodhaven") also refers to any successors or assigns of Woodhaven Village, Inc.

3. The Urban League of Greater New Brunswick (a/k/a The Civic League of Greater New Brunswick), (hereinafter "Urban League"), a nonprofit corporation organized under the laws of the State of New Jersey. As used in this Stipulation, Urban League also refers to any successors or assigns of Urban League.

4. The Township of Old Bridge in the County of Middlesex, State of New Jersey which includes, but is not limited to, the following entities and officials:

- (a) The governing body of the Township of Old Bridge;
- (b) The Planning Board of the Township of Old Bridge;
- (c) The Mayor; all elected officials and professional employees of the Township of Old Bridge, including but not limited to, the construction code official, the Township Engineer, the Township Planning Consultant, the Township Attorney and any other individuals providing consultative services to the

Township with reference to the land development process. Hereinafter, all entities or individuals associated with the Township of Old Bridge shall be referred to as "Township".

5. The Township of Old Bridge Municipal Utilities Authority, (hereinafter "O.B.M.U.A."), a body corporate and politic organized under the laws of the State of New Jersey, and any successor agency which may be created within the Township of Old Bridge to purvey water within the corporate boundaries of the Township. Hereinafter, O.B.M.U.A. shall mean and refer to any officer, employee or member of the Board of the O.B.M.U.A. as well as the Authority itself.

II. Recitations

WHEREAS, O&Y owns approximately 2,640 contiguous acres of land within the Municipality of the Township of Old Bridge; and

WHEREAS, Woodhaven owns approximately 1,455 acres of land within the Municipality of the Township of Old Bridge; and

WHEREAS, Woodhaven and/or O&Y intend to construct residential housing, commercial buildings, office buildings and industrial buildings within the Township of Old Bridge in conformity with an overall plan of development; and

WHEREAS, on August 9, 1979, O & Y formally requested the Old Bridge Planning Board to amend the application procedures of the Land Development Ordinance to permit O & Y to develop its lands in conformity with an overall development plan; and

WHEREAS, O & Y filed suit on February 18, 1981, Docket No. L-32516-80 P.W. seeking relief from the Old Bridge Land Development Ordinance then prevailing; and

WHEREAS, by formal resolution of Council, enacted May 3, 1982, the governing body of the Township of Old Bridge directed:

- (a) that O & Y be allowed to develop its lands in accordance with an overall development plan;
- (b) that O & Y be permitted to use its lands for residential, industrial, commercial and office development;
- (c) that O & Y be accorded an overall residential density of four (4) dwelling units per acre applicable to the 2,565 acres it then owned, for a total of 10,260 units; and
- (d) that the Land Development Ordinance be amended accordingly.

WHEREAS, on April 5, 1983, The Old Bridge Township Council adopted a new Land Development Ordinance; and

WHEREAS, on May 22, 1983, O & Y filed an application for approval of a plan to develop its lands; and

✓ WHEREAS, on December 14, 1983, 206 days after filing, ^{the} Planning Board voted to deny O & Y's development application without prejudice; and

WHEREAS, on January 8, 1984, O & Y reinstated its inactive 1981 lawsuit; and

✓ WHEREAS, on February 14, 1984, O & Y withdrew its 1981 complaint and substituted therefor an action against the Township of Old Bridge and the other defendants, Docket No. L-009837-84 P.W. alleging, inter alia, that the Old Bridge Township Land Development Ordinance was not in conformance with the constitutional requirements set forth in Southern Burlington County NAACP v. Township of Mt. Laurel 92 N.J. 158 (1983), hereinafter Mount Laurel II, and that the Old Bridge Township Land Development Ordinance was procedurally and substantively defective, which defects impaired the ability of the Township to provide realistic housing opportunities for lower income households; and

WHEREAS, in the suit, O & Y sought relief from the Court to assist O & Y in realizing its development in return for offering the public interest benefit of providing substantial housing affordable to lower income households; and

WHEREAS, Woodhaven filed suit against the Township of Old Bridge and related defendants on May 31, 1984, also alleging violations of the standards of Mount Laurel II and similarly seeking relief; and

WHEREAS, on June 18, 1984, O & Y amended its Complaint to include the Old Bridge Municipal Utilities Authority (O.B.M.U.A.) and the Old Bridge Township Sewerage Authority, as co-defendants; inasmuch as these parties control utilities essential to the resolution of the litigation; and

WHEREAS, O & Y and Woodhaven have reached an agreement with the Old Bridge Township Sewerage Authority for the provision of sewerage systems to serve their developments and the Old Bridge Township Sewerage Authority has now been dismissed as a defendant in this litigation; and

WHEREAS, on July 2, 1984, the Township entered a stipulation acknowledging its obligation to provide 2,414 lower income housing units by 1990; which number has been modified by the acceptance on the part of all parties hereto of credits for prior housing efforts, so that the number of housing units agreed by all parties and the Court to be Old Bridge Township's fair share obligation by 1990 is 2,131 affordable housing units; and

WHEREAS, on July 13, 1984, this Court found Old Bridge Township's 1983 Land Development Ordinance not to be in compliance with the constitutional requirements of Mount Laurel II and Old Bridge Township was afforded reasonable time to redraft and adopt a compliant Ordinance; and

WHEREAS, the Township of Old Bridge did not enact a compliant Ordinance and on November 13, 1984 this Court appointed Carla Lerman, P.P. as Special Master to review the Township's Land Development Ordinances and to assist the parties to negotiate a settlement of all issues in this case; and

WHEREAS, Ms. Lerman's assistance has been instrumental in inducing the parties to resolve the issues of this case; and

WHEREAS, the Township is willing to meet its constitutional obligation by modifying its existing Land Development Ordinance; and

WHEREAS, both O & Y and Woodhaven have committed themselves to incorporate substantial opportunities for housing for lower income families in their developments; and

✓ WHEREAS, the Urban League (^{accepts} concurs in) the methodology proposed to provide such lower income housing; and

WHEREAS, the Board of Commissioners of the O.B.M.U.A. on May 22, 1985 unanimously passed a Resolution:

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- a) recognizing that there is a pressing need to obtain additional water supplies to serve ^{its} ~~their~~ franchise area;
 - b) recognizing that the New Jersey Department of Environmental Protection (N.J.D.E.P.) has curtailed additional groundwater diversion rights;
 - c) recognizing that the N.J.D.E.P. will substantially reduce present groundwater diversion rights effective January 1, 1987;
 - d) recognizing that the O.B.M.U.A. has conducted an extensive investigation of all possible water sources;

- e) recognizing that the most dependable long term source of water in the quantity required is from the Middlesex Water Company (hereinafter, "M.W.C.") in Edison;
- f) recognizing that O & Y and Woodhaven have offered to finance a plan to construct a transmission pipeline to connect the O.B.M.U.A. facilities to those of the M.W.C.; and
- g) directing the O.B.M.U.A. attorney and engineer to negotiate with O & Y, Woodhaven, the M.W.C. and the Borough of Sayreville regarding an agreement to finance and construct a water transmission main connecting the M.W.C. facilities to the O.B.M.U.A. facilities; and

WHEREAS, O & Y and Woodhaven's proposal to finance construction of the water transmission facilities is conditional upon satisfactory resolution of all other matters under the jurisdiction of the Township that are necessary to proceed with their developments; and

WHEREAS, comprehensive settlement of all issues currently in litigation between the Township, O & Y, Woodhaven, and the Urban League would provide additional potable water supplies to the entire Township, thus providing enhanced opportunities for the construction of lower income housing, additional market housing and increased non-residential development potential for the Township of Old Bridge in general; and

WHEREAS, the parties agree to the terms and conditions of the stipulation as set forth below and the Master has reviewed and recommended to this Court the acceptance of this Stipulation of Settlement which the Master has found to be in compliance with the constitutional requirements set forth in Mt. Laurel II; and

WHEREAS, the settlement of all issues in this case would be in the public interest, and such settlements are encouraged by this Court.

III. MATTERS RESOLVED BY AGREEMENT

III-A. Mount Laurel II Compliance

III-A.1 Establishment of an Agency:

✓ Old Bridge Township shall establish or contract with an agency ("Township Agency") to screen and place all applicants for low and moderate (hereinafter, generally referred to collectively as "lower income") housing. The Township Agency shall also be responsible for maintenance of income restrictions, resale ^{and re-rental} controls, and other mechanisms which may be necessary in order to assure that these units will continue to be affordable to lower income households over time. This Agency shall either be part of the Municipal Government of the Township of Old Bridge or directly controlled by the Township of Old Bridge; or, if a contract is entered into with another entity to carry out the responsibilities of the Township Agency, the Township of Old Bridge shall be exclusively responsible for the execution and implementation of this contract.

III-A.2 Ten (10%) percent Set-aside:

All applicants for development approval for residential units for resale within the Township of Old Bridge O&Y and Woodhaven shall set aside ten (10) percent of the total number of the dwelling units within their developments as housing affordable to low and moderate income families, regardless of whether said units are built pursuant to any zoning ordinance or any variance approval. Developers may make a contribution to the Township Agency in lieu of constructing the housing in accordance with the procedures established by the agency.

Low and moderate income housing for rental or for sale shall be priced so that, on the average, it will be affordable to households earning ninety (90) percent of the limits established for each of the income groupings, such that the housing provided for low income households shall, on the average, be affordable to families earning forty-five (45) percent of the adjusted median income for the Middlesex, Somerset, Hunterdon Primary Metropolitan Statistical Area and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72) percent of the adjusted P.M.S.A. median income for the region, provided that in no event shall the "affordability" criteria of units for low income families exceed fifty (50) percent of the adjusted P.M.S.A. median income for the region or in the case of moderate income families, eighty (80) percent of the adjusted P.M.S.A. median income for the region. "Adjusted" P.M.S.A. median income refers to the process of multiplying the current year PMSA income by 94% so as to yield a lower figure, which approximates the income figure for the eleven county Northern New Jersey region, for which data is no longer conveniently available.

✓ The Township's Land Development Ordinance shall be amended, to provide the mechanisms to meet the Township's affordable housing goals, as enunciated in Appendix A, by including a requirement for a ten percent (10%) setaside for housing affordable to lower income households. This provision shall apply to all builders of housing for ~~resale~~ ^{or rent,} regardless of size or classification and regardless of whether said units are built pursuant to any land development ordinance or as a result of an approval gained through appeal to the Zoning Board of Adjustment.

9 Any party to this agreement, upon good cause shown, may apply to the Court for modification of this Agreement based on a modification of law by a Court of competent jurisdiction, a state statute, an administrative ~~ruling~~ regulation of a state agency acting under statutory authority, or based on no reasonable possibility of performance.

III-A.3 Provisions for Lower Income Housing

- (i) Housing units shall be provided which shall be housing affordable to families of low income equal to five (5) percent of the total number of housing units sold or rented within the development; and
- (ii) Housing units shall be provided which shall be housing affordable to families of moderate income equal to five (5) percent of the total number of housing units sold or rented within the development.

III-A.4 Compliance Status Report

All developers with a lower income housing obligation shall provide the Township Agency with a Compliance Status Report as more fully set forth in Appendix A, attached hereto. The Township Agency shall provide the Mayor and Council, the Urban League, and the Court-appointed Master with copies of all Compliance Status Reports no later than fifteen (15) days after the developers supply such reports to the Agency.

III-A.5 Housing Plan

Developers with a lower income housing obligation shall supply, as part of their initial application for development within any Planned Development to the Old Bridge Planning Board, a "Housing Plan". This obligation to supply a housing plan is deferred, as to Olympia and York and Woodhaven Village, until such time as each of these developers apply for ~~their second separate application~~ for any Preliminary Major Subdivision or Site Plan approval which includes lower income housing. See the phasing schedule and anticipated application schedule set forth in Appendix A, Section 8.8 and 8.8.1. This Housing Plan shall set forth the mechanisms whereby the developer will construct lower income housing. Such a Housing Plan shall indicate the approximate sizes, numbers, types, locations, price ranges, price controls, deed restrictions and marketing strategies for the lower income housing, with a phasing schedule for the actual delivery of such units as part of the overall development in

tandem with the market units. In particular, the Housing Plan shall provide a mechanism to insure that the units remain affordable to lower income households for a period of thirty (30) years from the date of issuance of the initial Certificate of Occupancy for each such lower income housing unit.

III-A.6 Waiver of Township Fees

Old Bridge Township agrees to waive all applicable application and permit fees related to lower income housing. It is expressly understood this waiver applies only to those housing units specifically designated as "lower income housing" as that term is defined in this Order.

III-B.1 Rent Controls

All developments providing a ten percent (10%) lower income housing setaside shall be exempt from all Municipal rent control regulations except such controls as provided herein that are specifically applicable to lower income housing.

III-B.2 Suspension of Lower Income Housing Obligation

The Township's lower income housing obligation to the year 1990 is 2,131. *Upon a showing to the Court that at least* ~~After building permits have been issued for~~ 2,131 lower income housing units, *have been* ~~constructed in the Township prior to the end of the year 1990,~~ *provided pursuant to this agreement or other agreements to which both the Township & Urban League are parties,* the Township will have *be constructed as per the devel me* the right to suspend the ~~construction of~~ further lower income housing units. *right requirement that* In this event, any party shall have the right to petition the Court for clarification as to those conditions under which they may continue to build market housing.

IV. LAND DEVELOPMENT STANDARDS

IV-A Ordinance Revisions

The Township of Old Bridge agrees to amend its Land Development Ordinance to meet its constitutional obligations as directed by this Court on July 13, 1984, which amendments will be enacted by the Governing Body of the Township in accordance with a time schedule acceptable to this Court.

It is clearly understood, however, that the provisions of this Settlement Agreement and all attachments hereto provide a mechanism under which O &Y and Woodhaven shall seek development approvals and by which development undertaken by O&Y and Woodhaven shall be controlled. No further Ordinance amendments are necessary to permit O&Y and Woodhaven to submit development applications for approval; and the standards set forth in this Agreement and the attachments hereto shall govern the relationships between the Township and O&Y and Woodhaven.

IV-A.1 Objectives

The Ordinance Amendments to be adopted by the Township shall have the following objectives:

- a. Ensuring the construction of affordable housing, maintained as affordable over time, using procedures substantially in accord with the concepts contained in Appendix A, attached hereto;
- b. Ensuring the rapid processing of development applications, using a simplified two-stage subdivision/site plan review process, with procedures substantially in accord with the concepts contained in Appendix B, attached hereto;
- c. Providing for more cost-effective development of residential land by employing regulatory standards substantially in accord with those contained in Appendix C, attached hereto;
- d. Eliminating vague or ^{unnecessary} cost-generative engineering or design standards, by using more detailed measures focusing on public health and safety, substantially in accord with the comprehensive engineering standards contained in Appendices D and E, attached hereto.

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However, it is specifically understood that the provision for Mid-rise apartments applicable to O&Y shall not be available to other developers, and will not be part of any ordinance revisions.

V. **PROVISIONS SPECIFIC TO O & Y AND WOODHAVEN**

V-A **Vesting**

Under the terms of this settlement, O & Y and Woodhaven shall have all the rights and privileges, specific unit counts, specific development rights and specific land development standards set forth herein, vested for a period of twenty (20) years from the date of entry of this Order.

V-A.1 **O & Y Unit Count**

O & Y shall be permitted to build four (4) units per gross acre (10,560 units based on ^{its} ~~their~~ present holdings of 2,640 acres), ten percent (10%) of which, or (1,056 units), shall be reserved as housing affordable to lower income households, and the remainder of which shall be housing without price controls or rent control restrictions.

rent control exemption only if rental units to NTL households provided?

V-A.2 **Woodhaven Unit Count**

Woodhaven shall be permitted to build four (4) units per gross acre (5,820 units based on ^{its} ~~their~~ present holdings of 1,455 acres), ten percent (10%) of which, (582 units), shall be reserved as housing affordable to lower income households, and the remainder of which shall be housing without price controls or rent control restrictions.

V-B **Development Rights Specific to O & Y and Woodhaven**

V-B.1a **O&Y Landholdings Map**

Attached hereto is Map 1 A which shows O & Y's land holdings in the Township of Old Bridge that are subject of this Settlement Agreement.

V-B.1.b. **Woodhaven Settlement Plan**

Attached hereto is Map 2 B which shows the land holdings of Woodhaven in the Township of Old Bridge which are the subject of this Settlement Agreement.

Settlement Plans?

*Subsidiary w/ A.1
Can they sell more land w/o new agreement?
go to 10% apply to new laws*

V-B.2 Additional Lands

O & Y or Woodhaven may acquire additional lands from time to time provided such lands are within the limits of the acquisition line as shown on the landholdings maps and provided further such lands are presently zoned PD. Such lands shall be treated as if they are part of the original land holdings of O & Y and/or Woodhaven and incorporated into ~~their~~ ^{this} Settlement ~~Plan~~ ^{Agreement}. Specifically, such additional lands may be developed at four (4) dwelling units per acre and the number of dwelling units attributable to the outparcels shall be added to the total number of residential dwelling units permitted within their respective developments, provided, however, that

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- (a) the number of lower income housing units required to be built within the development shall also be increased by ten percent (10%) of the number of additional dwelling units attributable to the acquired lands; and
- ? | (b) such lands are suitable for development at four (4) dwelling units per acre.

V-B.3 Approval Procedures

V-B.3.a: Settlement Plan

O & Y and Woodhaven shall each have the right to develop their lands in accordance with the Settlement Plan applicable to their lands upon entry of this Order provided:

- a) As provided in the Court Order of which this is an attachment, the Planning Board shall have the right to hold public hearings on the O&Y and Woodhaven plans (Plates A and B) commencing in January, 1986, and, if necessary, continuing into February and March, 1986, provided that the Planning Board abides by the procedures set forth in this Settlement Agreement and the attachments hereto;
- b) The Planning Board shall issue its decisions on Plates A and B simultaneously and no later than March 14, 1986 (provided, however, that the Board

Is there a Settlement Plan as well as a S. Agreement?

may petition the Court for additional time), which decisions shall be reported to the court.

c) In the event that the Planning Board approves a Plate (with any modifications acceptable to the affected developer) the Court shall enter an Order incorporating the approved Plate in the previously approved Settlement Agreement, nunc pro tunc.

d) In the event that the Planning Board does not approve a Plate (or approves a Plate with modifications unacceptable to the affected developer) the Court shall refer the matter to the Master for recommendations, and shall thereafter schedule a hearing to determine what modifications, if any, would be necessary in order to make the Plate acceptable to the Court.

The Master shall provide the Court with recommendations, and the Court shall base its decision on the record before the Planning Board, materials supplied to the Master, and the Master's recommendations. No testimony, other than the Master's reports, shall be taken before the Court.

Thereafter, the Court shall enter an Order incorporating the Plate, as approved by the Court, into the previously accepted Settlement Agreement, nunc pro tunc. The decision of the Court shall be final and binding on all the parties.

V-B.3.b Hearing and notice:

Following issuance of a Court Order incorporating the Plates into the previously approved Settlement Plan, the developer or developers whose Plates are approved by the Court may immediately thereafter submit development applications in accordance with the procedures set forth in the attached appendices to the Township Planning Board for its review and approval each time any of the lands within the Settlement Plan are proposed for development; and in accordance with the Municipal Land Use Law, no notice shall be required for Minor Subdivision, Final Subdivision and Final Site Plan Approval.

✓✓

w/o leave to appeal?

V-B.3.c Accelerated Review Schedule:

✓ The Township Planning Board is obligated to review and make decisions with respect to applications for Preliminary Major Subdivision and for ^{Prelim and Final} Site Plans within ninety-five (95) days of application; and to review and decide applications for Final Major Subdivisions and Minor Subdivisions within forty-five (45) days of application.

In order to accommodate this schedule, the Township Planning Board agrees to hold special meetings not to exceed two (2) meetings per month for applications which are part of an inclusionary development, and to allocate staff, either Township employees or special consultants, to review such applications on a timely basis.

✓ Developers seeking Township approval of applications under these procedures shall provide the Township with such funds as are reasonably necessary to assure competent professional ~~planning and engineering~~ review throughout the application process. Such funds will be placed in a Township-managed escrow account, and invoices for professional services rendered ^{of} on by or on behalf of the Township for such reviews will be required by the administrator of the account prior to release of such funds. Fees charged by consultants to the Township shall not exceed the normal and customary fees charged by such consultants, and the developers shall have an opportunity to review such charges. In the event that a developer regards the review fees as excessive, the developer may appeal such charges to the Court-appointed Master, *whose decision shall be final!*

? V-B.3.d Master's Review

Olympia and York and Woodhaven Village shall have available to them a procedure to appeal to the Court-Appointed Master which appeal procedure is more fully set forth in Appendix A, attached hereto.

V-B.4 Development Standards:

V.B.4.1 General Standards

The Township, O&Y and Woodhaven agree to abide by the procedures, principles and standards set forth in Appendices A, B, C, D and E attached hereto and made part hereof. The provisions in the attached appendices shall be applicable exclusively to O&Y and Woodhaven immediately upon entry of this Order and such Land Development Ordinance amendments purporting to affect Planned Developments as may be subsequently adopted by the Township shall not apply to O&Y and Woodhaven except insofar as such amendments affect the general public health and safety.

V.B.4.2. Standards and Reports

The applicant shall comply with the standards set forth the Appendices, and in particular, Appendix B, when seeking development approvals. The applicant shall respond to issues raised in the Township's Natural Resource Inventory.

Further, the applicants shall abide by the State requirement that the rate of post-development runoff shall not exceed the pre-development rate, and will provide such natural recharge through non-structural means whenever practical and feasible.

Reports, other than those set forth in Appendix B, shall not be required.

V-B.5 Housing Plan

O & Y and Woodhaven shall each file a Housing Plan with the Planning Board, but their Housing Plans shall not be required until O & Y or Woodhaven receive Planning Board approval for the second preliminary major subdivision applied for by these developers. However, this obligation to supply a Housing Plan shall be (deferred until such time as the Township Agency is fully operational.) O&Y and Woodhaven shall not be required to file a housing plan until after the Township Agency has been established and published rules and regulations. They shall,

Does App B include Mt L reports to anyone?

III A.5 duplicates

however, be obligated to commence construction of the required lower income housing component in accordance with the Phasing Schedule set out in Appendix A.

V-B.6 Distribution of Lower income Housing

It is specifically stipulated that lower income housing opportunities are is to be located so as to afford similar opportunities for access to transportation, community shopping, recreation, and other amenities as provided to other residents of developments constructed as a result of this Settlement Agreement. ~~undertaken in Old Bridge Township.~~ There shall not be aggregations devoted exclusively to lower income housing units which exceed ~~one hundred (100)~~ units in number; and the landscaping buffers provided for lower income housing areas shall not be substantially different from those generally used in other portions of the development, nor different from those buffers generally used to separate sections of the development with different types of housing.

Nothing herein shall require any specific subdivision to have any specific number or percentage of lower income units within it, nor is it required that any subdivision, building, cluster or complex, of one hundred sixty (160) units or less to have any lower income housing within its site, structure or section; provided, however, it is specifically understood by the parties that the developments contemplated to be undertaken as a result of this agreement are ~~intended~~ to be inclusionary, as a whole, and that the developers shall provide 10% of the total development as housing for lower income households.

V-C Site Specific Provisions

V-C.1 Industrial/Commercial Development

O & Y shall be permitted to construct office/retail, commercial/industrial space on their PD/SD zoned lands which are included in the Settlement Plan which lands are contained in two separate parcels as follows:

a) approximately 237 acres on the northerly side of Texas Road in the vicinity of State Highways 9 & 18;

Total Permitted Gross Floor Area of up to 5,162,000 square feet, provided that the Regulatory Standards set forth in the Appendices (and specifically, Appendix C) shall govern;

b) approximately 42 acres on the southerly side of Texas Road in the vicinity of State Highways 9 & 18;

Total Permitted Gross Floor Area of up to 915,000 square feet provided that the Regulatory Standards set forth in the Appendices (and specifically, Appendix C) shall govern (with no lower additional income housing obligation attendant upon this right inasmuch as O&Y's development as a whole will be providing substantial lower income housing opportunities.)

Does this apply to a & b or b only

V-C.2 Shopping Center Site

✓ O & Y shall also be permitted to construct a regional shopping center of up to 1,350,000 square feet on approximately ninety-three (93) acres of ^{its} ~~their~~ lands designated for this purpose, located on the southerly side of the proposed Trans Old Bridge Connector Road in the vicinity of its juncture with State Highway 18, with no additional lower income housing obligation attendant to this right, inasmuch as O&Y's development as a whole will be providing substantial lower income housing opportunities. This right is conditioned on O&Y meeting the Regulatory Standards set forth in the Appendices (and specifically, Appendix C).

V-C.3 Optional Shopping Center Site

O & Y shall have the option of constructing the shopping center referred to in paragraph V-C.2 on the PD/SD lands referred to in subparagraph V-C.1 subject to the applicable regulatory standards of Appendix C. In the event of the exercise of this option those lands reserved for a shopping center referenced in paragraph V-C.2

may be used for the construction of housing (at the option of the developer) or for commercial/industrial uses that are permitted on Regional Commercial land in accordance with section C-1000 of Appendix C. As provided in the development of the Shopping Center (see above), there would be no additional lower income housing obligation attendant to the exercise of this right to construct the shopping center in an optional location, inasmuch as O&Y's development as a whole will be providing substantial lower income housing opportunities. This right is conditioned on O&Y meeting the Regulatory Standards set forth in the Appendices (and specifically, Appendix C).

V-C.4 Midrise Apartments

O & Y shall be permitted to construct midrise apartments not exceeding eight (8) stories in height on its lands which apartments may be for rent or for condominium ownership subject to the following limiting conditions:

- a) No midrise structure shall contain more than 160 units;
- b) midrise apartments will be limited to those areas designated on the Settlement Plan and will not be permitted in any other location without a specific approval from Planning Board.
- c) the total number of apartment units within all midrise apartments shall not exceed ten percent (10%) of the total number of dwelling units permitted within the development;
- d) no building permit will be issued to construct a midrise apartment until at least twenty-five percent (25%) of the residential units within the development have been built.

It is specifically understood that the inclusion of midrise apartments in this settlement agreement is a function of the litigation and there is no precedent in this settlement for any other midrise structures elsewhere in the Township.

V-C.5 Woodhaven Commercial Development

Woodhaven shall be permitted to construct office, retail, commercial and/or industrial space on the 73 acres designated Commercial on its Settlement Plan with no additional lower income housing obligation attendant to the exercise of this right. This right is conditioned upon Woodhaven meeting the regulatory standards set forth in the Appendices (and specifically Appendix C.).

V-D Off-Tract Improvements

Off-tract improvements shall be addressed in a separate report.

V-E.1 Sanitary Sewerage System

per The parties signatory hereto acknowledge that an agreement has been reached with the Old il O & Y or Woodhaven receive Planning board approval for the second preliminary major subdivision applied for by these developers. However, this obligation to supply a Housing Plan shall be deferred until such time as the Township Agency is fully operational. O&Y and Woodhaven shall not be required to file a housing plan until after the TownshiBridge Township Sewerage Authority with respect to the provision of sewage service adequate to serve the complete projected requirements of both O & Y and Woodhaven. This agreement has previously been filed with the Court and is referenced herein as Addendum I.

V-E.2 Water

The parties signatory hereto acknowledge that an agreement to provide potable water supplies, not only to developments to be undertaken by O & Y and Woodhaven but also to serve other portions of Old Bridge Township, is being negotiated between O & Y, Woodhaven and the O.B.M.U.A. To resolve their mutually shared concern regarding the shortage of dependable long term potable water supplies, an informal Consortium has been formed consisting of the Brough of Sayreville, the O.B.M.U.A. and the two developers, O & Y and Woodhaven. The current proposal is to have the ^{two} developers, in conjunction with Middlesex Water

✓ Company (M.W.C.), construct an eight mile water transmission pipeline from M.W.C. facilities in Edison, across the Raritan River, through the ^Borough of Sayreville, into the Township of Old Bridge and terminate at the O.B.M.U.A. treatment plant on Highway 18. The municipalities, or their Authorities, would enter into financial arrangements for capacity in the line.

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The line will be capable of delivering 30 Million Gallons per Day (M.G.D.) at the point of crossing of the Raritan River. This capacity will be allocated: 10 M.G.D. to Sayreville, 10 M.G.D. to the ^{two} developers with the remaining 10 M.G.D. covering the existing and future needs of the Township exclusive of the southwest quadrant where O & Y and Woodhaven have their developments.

✓ While the O.B.M.U.A. recognize it is essential that it participate~~s~~ in this project and has passed a formal resolution acknowledging this fact, there are constraints making it difficult for the O.B.M.U.A. to commit to the project without a reasonably firm cost estimate and a public hearing.

To address unresolved issues concerning funding, O & Y and Woodhaven have proposed a financial plan. Under this plan, the developers will pay one-half of the O.B.M.U.A.'s cost of constructing the pipeline provided future water connection fees from their developments are allowed to offset against this cost plus interest. The developers have also proposed to carry the O. .M.U. .'s share of the construction cost of the pipeline until the O.B.M.U.A. can obtain the required funds from a bond issue. Although the O.B.M.U.A. is not in a position to grant formal approval at this time, the developers' proposal was very favorably received by the Board of Commissioners. Settlement of all housing, planning and development issues is a necessary precondition to reaching an agreement on the water issue. This Order constitutes such settlement. However, a firm agreement as to provision of adequate supplies of potable water must be reached by March 15, 1986.

V-F Additional Considerations

V-F.1 Potential Conflict

It is further provided that if there is conflict between any Ordinance now in existence or passed subsequent to this Order, this Order and the attached Appendices, as affecting the rights of O&Y, Woodhaven or the Township, shall control.

In the event of any conflict between the parties signatory hereto, the parties agree to submit their disputes to the court-appointed Master before seeking redress in the Court.

V-F-2. Implementation

Upon entry of the Court Order to which this is an attachment, the Township of Old Bridge agrees to begin the process of immediate implementation of this agreement and the appendices attached hereto.

Specifically, the Township Planning Board will schedule a public hearing on the Settlement Plan or Plans, provide the Court with its recommendations in a timely fashion, and thereafter, begin the process of review of all applications submitted by O&Y and Woodhaven.

V-F.3. All parties signatory hereto agree that the within Settlement together with all attachments hereto shall be implemented without the necessity of any revisions to the Township's Land Development Ordinances. The parties agree that the procedures and standards set forth in the Appendices attached hereto shall be the procedures and standards used for the development of the O&Y and Woodhaven developments. Any comprehensive zoning or land use ordinance revisions subsequently made by the Township shall have a specific provision in it stating that the O&Y Old Bridge development and the Woodhaven development shall be governed solely by this

Settlement Agreement, the Order pursuant to which same is approved, and the Appendices attached hereto.

V.F.4. Because this Order and Settlement Agreement is intended to govern the rights of the parties for a considerable period of time, the parties recognize that it is appropriate to provide for changes that would not be appropriate over a shorter period. Specifically, this section provides for possible modification of the Order and Settlement Agreement as a result of changes in the law generally applicable to Mount Laurel issues.

V.F.4.a. Motion to reopen. Any party may move the Court to reopen this Order and Settlement Agreement because of a new statute or a new rule of a state agency, of general applicability and dealing with Mount Laurel issues, which but for the existence of this Order and Settlement Agreement would govern the relationship of the parties concerning the subjects of this Order and Settlement Agreement. It is expressly intended that such a motion could result in either an increase or a decrease in the rights and obligations of the parties to this Order and Settlement Agreement.

V.F.4.b. Consensual modification. Upon such a motion, the parties shall first have thirty days to consult and to attempt to reach agreement on a modification of this Order and Settlement Agreement satisfactory to all parties. Upon application by any party and in its discretion, the Court may request the Master to assist the parties in these negotiations.

V.F.4.c. Court-ordered modification. The parties hereby agree that this Order and Settlement Agreement may be modified by the Court as follows:

a) Upon submission of a proposed modification as specified in paragraph 2 above, the Master shall review the proposal and thereafter the Court shall consider the proposal and the Master's report and determine whether to permit the modification.

b) In the absence of a proposed consent modification, the Court shall

amend the Order and Settlement Agreement if it appears appropriate and just to do so. In reaching its determination, it is the intention of the parties that the Court should consider, inter alia, the following factors:

i) Whether applicable principles of law normally permit or prohibit retroactive application of the type of new law or rule sought to be applied.

ii) The impact of the proposed modification on the "realistic opportunity" to construct lower income housing. Without limiting other forms of impact, the Court should consider the degree to which developments subject to this Order and Settlement Agreement have been economically and socially successful up to the date of the proposed modification and whether failure to modify may place these developments at a significant competitive disadvantage over the entire twenty-year period of this Order and Settlement Agreement.

iii) The degree to which the party or parties seeking modification have adhered in good faith to the existing provisions of this Order and Settlement Agreement.

iv) The degree to which any party or other affected person may be irreparably injured by modification because of legitimate reliance on the Order and Settlement Agreement as it presently exists.

V.F.4.d. Procedure. Before permitting any modification of this Order and Settlement Agreement, the Court shall permit all parties to be heard and to present such legal arguments and factual proofs as shall be appropriate. During the pendency of any motion to modify, the existing Order and Settlement Agreement shall remain in full force and effect unless the Court determines that to do so would cause irreparable injury to a party or other affected person, in which case the Order and Settlement Agreement shall be modified on an interim basis pending the outcome of the motion.

V.F.4.e. No other modifications. Except pursuant to motions based on this

provision, the parties hereby agree that there shall be no modification of this Order and Settlement Agreement.

For: The Township of Old Bridge

For: The Old Bridge Township Planning Board

For: The Old Bridge Township Municipal
Utilities Authority

For: O&Y Old Bridge Development Corp.

For: Woodhaven Village, Inc.