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June 14, 2021

VIA Federal Express Overnight Mail

Carla K. Coulson
Deputy Assistant Secretary of the Army
(Installations, Housing and Partnerships)
110 Army Pentagon
Room 3E475
Washington, DC 20310-0110

**Re: Request for Acknowledgement on Nike Project at the former Livingston,
Defense Area Family Housing site,
Lot 50, Block 96, East Hanover, New Jersey**

Dear Ms. Coulson:

Please be advised that I am Town Attorney for the Township of East Hanover (the "Township").

By this letter, the Township seeks your acknowledgement below that the planned development of the above site, commonly referred to as the "Nike Site" or the "Nike Project", if implemented in accordance with a Court approved Housing Element and Fair Share Plan (HEFSP), would be consistent with provisions of the quit claim deed executed September 24th, 2003 between your office and the Township of East Hanover for the purpose of developing said parcel for affordable housing and recreational use in accordance with section 2839 of Public Law 106-65, October 5, 1999. As part of this request, this correspondence will serve as a summary of the Nike

affordable housing project located at the corner of River Road and Nike Drive, which is of vital importance to the Township relative to meeting its constitutional affordable housing obligations. By way of background, municipalities in New Jersey are required to provide a realistic opportunity for the construction of a certain allocation of regional affordable housing need – referred to as “fair share” or in other words, access to housing within the means of a low or moderate income household as defined by federal or state law.

There are a menu of compliance techniques available for municipalities to hit that number, which include traditional “inclusionary zoning” whereby market-rate units internally subsidize the affordable units and various municipally-sponsored programs, which simply means that the project lacks sufficient internal market-rate subsidy to generate the requisite affordable housing yield and that, as a result, the municipality must adopt a “resolution of intent to fund shortfall” for funding gaps associated with the project. A specific type of program or use that qualifies for affordable housing under New Jersey law (N.J.A.C. 5:93-5.16) are a percentage of qualifying bedrooms associated with assisted living facilities – typically 10% of the total number of bedrooms.

The Township of East Hanover (“Township”) has an approved Housing Element and Fair Share Plan (HEFSP), which articulates the way in which it will comply with its affordable housing obligations. Central to that plan, is the hybrid “Municipally-Sponsored” affordable housing project for the production of 55 affordable units at the Nike Site. The technique would work as a hybrid because it would combine two compliance techniques in order to maximize affordable housing yield – the technique would work as follow:

- The Nike Site, currently owned by the Township and subject to a Federal deed restriction for the purpose of affordable housing and recreational use, would be subdivided into two lots.
- One lot would be deeded (at little to no cost) to a non-profit 100% affordable housing developer for the production of purely affordable units. Roughly 40 affordable units will be required, with no market rate units (the “100% Parcel”).
- The other half would be sold for profit for an assisted living facility, which would not only produce its own affordable housing in the form of 10% of total bedrooms (roughly 15 units), but which under the HEFSP would produce land-sale income that would be utilized to subsidize the production of affordable housing on the “100% Parcel”.

- Thus, the Township would provide the land to the 100% affordable housing developer, plus over \$2 million in its Affordable Housing Trust Fund dollars while the for-profit assisted living facility would produce its own internal affordable housing plus subsidize a large portion of the 100% Parcel. These requirements will be imposed as part of the conveyance to the 100% affordable housing developer and the for-profit assisted living facility developer with controls and deed restrictions requiring a specific number of affordable units for 30 years.

In short, the Nike project as implemented in accordance with the HEFSP would efficiently and effectively yield significant affordable housing and would be used exclusively for techniques that have been approved as credit-worthy affordable housing mechanisms in the state of New Jersey.

If you should have any additional questions or concerns, please feel free to contact me via email at mdurkin@durkinlawfirm.com or phone at 973-244-9969. If the pertinent terms of the HEFSP summarized above substantially change prior to implementation, the Township will request further acknowledgment from you.

Very truly yours,
DURKIN & DURKIN, LLC

By: 
M. Murphy Durkin

MMD: mma

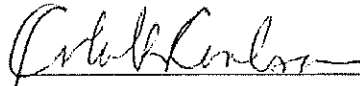
Cc: Mayor, Township of East Hanover
Business Administrator, Township of East Hanover

[ACKNOWLEDGMENT ON FOLLOWING PAGE]

Acknowledged:

**United States of America,
Acting by and through the
Deputy Assistant Secretary of the Army
(Installations, Housing and Partnerships)**

By:



Carla K. Coulson,
Deputy Assistant Secretary of the Army
(Installations, Housing and Partnerships)