

**AGENDA**  
**SPECIAL COUNCIL MEETING**  
**430 WESTFIELD AVE., CLARK, NJ 07066**  
**March 6, 2023**  
**7:30 pm**

**ROLL CALL:**

Councilwoman Albanese _____	Councilman O'Connor _____
Councilman Hund _____	Councilman Toal _____
Councilman Mazzarella _____	Council President Smith _____
Councilman Minniti _____	

**PLEDGE OF ALLEGIANCE TO THE FLAG: MOMENT OF SILENCE**

This meeting is in compliance with the Open Public Meetings Act as adequate notice of this meeting has been provided by sending written advanced notice of at least 48 hours to the Star Ledger, Union County Hawk, Union County Local Source, and TAP into Clark, by posting such Meeting Agenda on the Bulletin Board in Town Hall reserved for such announcements as well as the Official Website of the Township, and the proper filing of said Notice. Formal action may be taken at this meeting.

**ORDINANCES, APPROPRIATIONS AND CLAIMS:**

**PUBLIC HEARING ON PROPOSED ORDINANCES:**

(No objections have been received in connection with the proposed Ordinances)

1. 23-12 AN ORDINANCE AMENDING SECTION 279-2C OF THE ORDINANCES OF THE TOWNSHIP OF CLARK
2. 23-13 AN ORDINANCE TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN AND AMONG THE TOWNSHIP OF CLARK AND THE GIRLS SOFTBALL AUXILIARY OF CLARK TOWNSHIP, INC. AND GIRLS SOFTBALL LEAGUE OF CLARK TOWNSHIP, INC.

**INTRODUCTION OF PROPOSED ORDINANCES:**

3. 23-11 AN ORDINANCE OF THE TOWNSHIP OF CLARK, COUNTY OF UNION, APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR A TAX EXEMPTION PURSUANT TO THE LONG-TERM TAX EXEMPTION LAW FOR RARITAN ROAD HOLDINGS URBAN RENEWAL LLC FOR THE CONSTRUCTION AND OPERATION OF A CUBESMART BRANDED SELF-STORAGE FACILITY LOCATED AT 1088 RARITAN ROAD
4. 23-14 AN ORDINANCE BY THE TOWNSHIP COUNCIL AMENDING THE TOWNSHIP OF CLARK CODE OF ORDINANCES TO REPEAL CHAPTER 166 – FLOOD DAMAGE CONTROL, IN ITS ENTIRETY, AND TO ADOPT A NEW ORDINANCE ENTITLED “CHAPTER 166 – FLOODPLAIN MANAGEMENT REGULATIONS”; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

**RESOLUTIONS:**

5. Requesting permission of the Director of the Division of Local Government Services for the Dedication by Rider for Donations – Acceptance of Bequests and Gifts (N.J.S.A. 40A:5-29) pertaining to the TV 36 Studio Broadcasting Center
6. Approving and Accepting the Award of the New Jersey Association of County and City Health Officials (NJACCHO) Grant in the amount of \$55,032.00 and Authorizing the Execution and Delivery of the Letter of Agreement.
7. Authorizing the Mayor or Business Administrator to execute an Agreement with Ocarina Incident LLC for use of the Recreation Center to film a motion picture during April and May with a fee paid to the Township in the amount of \$25,000.00
8. Refunding pool permit #23-107 for 35 Walnut Avenue in the amount of \$13,518.00 due to overpayment

**PUBLIC COMMENTS:**

Each person addressing the Council shall give their name and address to the Clerk. All remarks shall be addressed to the Council as a body and shall not exceed 5 minutes in duration.

**MAYOR, COUNCIL AND PROFESSIONAL COMMENTS:**

**ADJOURNMENT:**

PH 1

**TOWNSHIP OF CLARK**

**Ordinance No. 23-12**

**Adopted \_\_\_\_\_**

Introduced: February 21, 2023 Public Hearing: March 6, 2023

**AN ORDINANCE AMENDING SECTION 279-2C OF THE  
ORDINANCES OF THE TOWNSHIP OF CLARK**

**WHEREAS**, Section 279-2C of the Ordinances of the Township of Clark requires the construction of a new sanitary sewer lateral whenever a property owner within the Township substantially renovates an existing dwelling; and

**WHEREAS**, N.J.A.C. 5:23-6.2(g) precludes municipalities from establishing any requirement for any matter covered by such regulation; and

**WHEREAS**, N.J.A.C.14:9-11.1, *et seq.*, covers the replacement or rehabilitation of sewer laterals; and

**WHEREAS**, the Township Council of Township desires to adopt an ordinance which comports with the provisions of N.J.A.C. 5:23-6.2(g).

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Clark, Union County, New Jersey, as follows:

**Section 1.** Section 279-2C of the Ordinances of the Township of Clark be and hereby is amended and restated to provide as follows:

Whenever a property owner within the Township of Clark constructs a new dwelling or structure that requires sanitary sewer discharges, the property owner shall be required, when undertaking such a construction, to construct a new sanitary sewer lateral in a manner acceptable to the Department of Engineering of the Township of Clark and in a good workmanlike manner, in accordance with standard engineering practices and such construction standards as may be approved by the Township of Clark.

**Section 2. Inconsistency.** All ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

**Section 3. Severability.** If any clause, sentence, section or other portion of this ordinance, or the application thereof to any person or circumstance, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or repeal the remainder of this ordinance.

**Section 4. Effective Date.** This ordinance shall take effect twenty (20) days following passage and publication as required by law.

Effective Date: March 29, 2023

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**EDITH L. MERKEL, RMC**  
 Township Clerk

\_\_\_\_\_  
**WILLIAM F. SMITH**  
 Council President

\_\_\_\_\_  
**SALVATORE BONACCORSO**  
 Mayor

Ord23/02-21 23-12Ch279Sec2CSewerLaterals

	Motion to Introduce	Second	Motion to Adopt	Second	Aye	Nay	Abstain	Absent
Albanese								
Hund								
Mazzarella	✓							
Minniti		✓						
O'Connor								
Toal								
Smith								
Entire Council								
<b>TOTAL</b>								

**TOWNSHIP OF CLARK**  
**Ordinance No. 23 - 13**  
**Adopted \_\_\_\_\_**

PH 2

Introduced: February 21, 2023 Public Hearing: March 6, 2023

**AN ORDINANCE TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN AND AMONG THE TOWNSHIP OF CLARK AND THE GIRLS SOFTBALL AUXILIARY OF CLARK TOWNSHIP, INC. AND GIRLS SOFTBALL LEAGUE OF CLARK TOWNSHIP, INC.**

**WHEREAS**, the Township of Clark, a municipal corporation of the State of New Jersey, and the owner of certain real property not needed for public use known as 430 Westfield Avenue, Clark, New Jersey, formerly the Charles H. Brewer School, is desirous of leasing certain softball fields existing thereon to the Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc., both of which are tax-exempt nonprofit corporations performing public purposes by providing recreation opportunities for children of the Township of Clark at a nominal cost which promotes the health, safety, morals and general welfare of the community; and

**WHEREAS**, N.J.S.A. 40A:12-14, subsection (c), and N.J.S.A. 40A:12-15, subsection (i), authorize leasing, for nominal or other consideration, real property not needed for public use to a tax-exempt nonprofit corporation or association performing a public purpose which promotes the health, safety, morals and general welfare of the community for nominal consideration upon the adoption of an appropriate ordinance authorizing same; and

**WHEREAS**, by Ordinance No. 03-17, adopted on May 19, 2003, the Township leased the same real property to the same lessees for the same purposes for a ten (10)-year term which expires on or about June 10, 2023; and

**WHEREAS**, the Governing Body of the Township of Clark determines it appropriate to adopt such an ordinance authorizing and empowering it to conduct enter into, execute and deliver such a lease to the Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc.

**NOW, THEREFORE, BE IT ORDAINED** as follows:

**SECTION 1.** **Authorization.** The Governing Body of the Township of Clark hereby authorizes the Township to enter into, and the Mayor or Business Administrator to execute and deliver, a lease of certain softball athletic fields located on Township property known as 430 Westfield Avenue, Clark, New Jersey to the Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc., both corporations being tax-exempt nonprofit corporations engaged in providing public purposes including the organization and conduct of recreational activities for children of the Township of Clark which promote the health, safety, morals and general welfare of the community.

**SECTION 2.** **Term.** Said lease shall be for a term of ten (10) years to be renewed at the conclusion of each term for an additional ten (10) year-period or such other term as may be agreed to by and between the parties at the time of renewal and either party shall have the right at such time to decline renewal.

**SECTION 3.** **Lessee.** The lessees of the leasehold premises shall be the Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc. both tax-exempt nonprofit corporations of the State of New Jersey whose principal place of business is in care of Clark Recreation, 430 Westfield Avenue, Clark, New Jersey 07066.

**SECTION 4.** **Public Purpose.** The public purpose to be served pursuant to this ordinance and the lease to be entered into shall be the promotion of the health, safety, morals and general welfare of the community through facilitating a girls' softball program, which will foster the health and welfare of the children of Clark residents by providing an organized competitive sport and recreational activity, teaching sportsmanship, good fellowship and good will and otherwise establishing an organized athletic softball program to be conducted for the benefit of the Township of Clark within the Township of Clark. Children will be eligible to participate therein and benefit from the purposes hereinabove set forth whether residing within or without of the Township of Clark.

**SECTION 5.** **Consideration.** The nominal or other consideration for the lease is one dollar (\$1.00).

**SECTION 6.** **Enforcement.** The terms and conditions of the lease shall be enforced by the Business Administrator of the Township of Clark and by the President of the Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc.

**SECTION 7.** **Number of Persons Benefiting From the Public Purpose Served by the Lessee.** Last year, 300 girls participated in playing softball in the league operated by lessees. It is anticipated that this coming season, 325 girls will participate and thereby will benefit from the public purpose served by the lessees.

**SECTION 8.** **Reporting.** The Girls Softball Auxiliary of Clark Township, Inc. and Girls Softball League of Clark Township, Inc. shall pursuant to the provisions of N.J.S.A. 40A:12-14(c) submit an annual report to the Township Business Administrator setting forth the use to which the leasehold premises was put during each year; the activities which the lessees undertook in furtherance of the public purpose; the approximately value or cost of such purpose and an affirmation of its continued tax-exempt status as a nonprofit corporation under both state and federal law.

**SECTION 9.** **Termination.** Notwithstanding anything contained herein, should the Township of Clark determine it necessary or desirable for it to use the leasehold premises for Township purposes, it shall have the right without further action under the terms of this Ordinance to terminate the lease to be



INTRO  
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**TOWNSHIP OF CLARK**

**Ordinance No. 23-11**

**Adopted \_\_\_\_\_**

Introduced: March 6, 2023 Public Hearing: March 20, 2023

**AN ORDINANCE OF THE TOWNSHIP OF CLARK, COUNTY OF UNION,  
APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR A TAX  
EXEMPTION PURSUANT TO THE LONG-TERM TAX EXEMPTION LAW FOR  
RARITAN ROAD HOLDINGS URBAN RENEWAL LLC FOR THE CONSTRUCTION  
AND OPERATION OF A CUBESMART BRANDED SELF-STORAGE FACILITY  
LOCATED AT 1088 RARITAN ROAD**

**WHEREAS**, the Township, a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the “Redevelopment Law”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

**WHEREAS**, the municipal council of the Township (the “Township Council”) authorized the Planning Board of the Township (the “Planning Board”) to investigate whether those properties commonly known as Block 60, Lots 60.01, 61, 62 and 63 on the tax map of the Township consisting of approximately 1.92 acres should be designated as an area in need of redevelopment pursuant to the Redevelopment Law (the “Redevelopment Area”); and

**WHEREAS**, the Planning Board held a hearing and recommended to the Township Council that the Property be designated as an area in need of redevelopment pursuant to the Redevelopment Law; and

**WHEREAS**, the Mayor and the Township Council adopted a resolution designating the Redevelopment Area as an area in need of redevelopment pursuant to the Redevelopment Law; and

**WHEREAS**, Shamrock Enterprises, Ltd. prepared a redevelopment plan entitled “Raritan Road Redevelopment Plan” (the “Redevelopment Plan”), providing the development standards for the Redevelopment Area; and

**WHEREAS**, the Township Council adopted a resolution referring to the Planning Board for review and comment the Redevelopment Plan pursuant to the Redevelopment Law; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-7f, the Planning Board held a hearing to review and discuss the Redevelopment Plan, and made recommendations concerning same; and

**WHEREAS**, in accordance with the provisions of N.J.S.A. 40A:12A-7, the Township Council duly adopted the “Redevelopment Plan” (as amended, the “Redevelopment Plan”) for the Redevelopment Area; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-4, the Township has determined to act as the “Redevelopment Entity” (as such term is defined at N.J.S.A. 40A:12A-3) for the Redevelopment Area to exercise the powers contained in the Redevelopment Law; and

**WHEREAS**, Raritan Road Holdings Urban Renewal LLC, the Redeveloper (the “Redeveloper”), is the owner of the real property constituting the Redevelopment Area; and

**WHEREAS**, the Redeveloper submitted to the Township a proposal to redevelop the Redevelopment Area by constructing a CubeSmart branded self-storage facility totaling approximately 95,839 square feet of gross building area in the Redevelopment Area (collectively, the “Project”); and

**WHEREAS**, the Township Council conditionally designated the Redeveloper as the “redeveloper” of the Redevelopment Area, subject to the conditions that Redeveloper establish a professional escrow to reimburse the Township for all professional fees incurred in connection with the redevelopment of the Redevelopment Area, and that the Township and the Redeveloper enter into a Redevelopment Agreement to provide for the redevelopment of the Redevelopment Area; and

**WHEREAS**, the Redeveloper has filed an application, which is incorporated herein by reference and is made a part hereof, for the Redevelopment Area (the “Application”), with the Mayor of the Township for approval of a long-term tax exemption (the “Tax Exemption”) for the improvements to be constructed thereon to the extent permitted by the Long-Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1, *et seq.* (the “Exemption Law”); and

**WHEREAS**, the Mayor submitted the Application to the Council with his recommendation for approval; and

**WHEREAS**, the Redeveloper also submitted to the Mayor (as part of the Application) a form of financial agreement (the “Financial Agreement”), to be executed and delivered by the Council and the Redeveloper, establishing the rights, responsibilities and obligations of Redeveloper in accordance with the Exemption Law; and

**WHEREAS**, the Council makes the following findings in accordance with N.J.S.A. 40A:20-11a and N.J.S.A. 40:20-11b regarding the relative benefits and costs of granting the tax abatement for the Project, and the importance of the tax abatement in realizing the development of the Project:

The Township finds that the Long-Term Tax Exemption granted pursuant to the Financial Agreement will benefit the Township and the community by assuring the success of the redevelopment of the Property, which has exhibited the statutorily recognized redevelopment criteria for years. The benefits of granting the Long-Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long-Term Tax Exemption. The Long-Term Tax Exemption is important to the Township and the Redeveloper because without the incentive of the Long-Term Tax Exemption, it is unlikely that the Project would be undertaken. The high costs associated with the development and construction of the Project and the real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the redevelopment of the Redevelopment Area, and would therefore frustrate the goals and objectives of the Redevelopment Plan and would make the Redevelopment Area materially less competitive in the marketplace.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Clark, in the County of Union, State of New Jersey, as follows:

1. The Mayor and Township Clerk are hereby authorized to execute and deliver to Raritan Road Holdings Urban Renewal LLC, the Redeveloper, the Financial Agreement, in form and substance as is set forth in the annexed Exhibit "A," made a part hereof (the Financial Agreement"), subject to minor modification or revision, as deemed necessary and appropriate after consultation with the Township Attorney.

2. The Township is entitled to assess and collect from the Redeveloper, and the Redeveloper shall pay to the Township within thirty (30) days after the date of the Township's invoice therefor, an administrative fee of two percent (2%) of the Annual Service Charge (as such term is defined in the Financial Agreement) for the processing of the Application.

3. A fully executed copy of the Financial Agreement shall be certified by and be filed with the Office of the Township Clerk.

4. Within ten (10) calendar days following the later of (i) the effective date of this Ordinance following its final adoption by the Township Council approving the tax exemption or (ii) the execution of the Financial Agreement by Raritan Road Holdings Urban Renewal LLC, the Township Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Township and the Chief Financial Officer of Union County and to Union County Counsel, in accordance with N.J.S.A. 40A:20-12.

5. The Mayor and Township Clerk are hereby authorized to take such action and to execute such other documents on behalf of the Township as is necessary to effectuate the terms of the Financial Agreement, as deemed advisable by the Township Attorney.

6. This Ordinance shall take effect upon adoption and publication according to law.

Effective Date: April 12, 2023

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**EDITH L. MERKEL, RMC,**  
Township Clerk

\_\_\_\_\_  
**WILLIAM F. SMITH,**  
Council President

\_\_\_\_\_  
**SALVATORE BONACCORSO,**  
Mayor

Ord23/3-6 23-11AuthRaritanRdHoldingsUrbanRenewalFinancialAgreement

	Motion to	Second	Motion to	Second				
	Introduce		Adopt		Aye	Nay	Abstain	Absent
Albanese								
Hund								
Mazzarella								
Minniti								
O'Connor								
Toal								
Smith								
Entire Council								
<b>TOTAL</b>								

**EXHIBIT "A"**

**Financial Agreement**

[See Attached]

**Financial Agreement**

**By and Between**

**The Township of Clark**

**and**

**RARITAN ROAD HOLDINGS URBAN RENEWAL LLC**

**Dated as of: March \_\_\_\_, 2023**

**THIS FINANCIAL AGREEMENT** (hereinafter “**Agreement**” or “**Financial Agreement**”), made this \_\_\_ day of March, 2023, by and between **RARITAN ROAD HOLDINGS URBAN RENEWAL LLC**, a New Jersey limited liability company qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992 (formerly known as Raritan Road Holdings LLC), as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (the “**Exemption Law**”), with offices care of Storage Deluxe, 26 West 17<sup>th</sup> Street, Suite 801, New York, NY 10011, along with its permitted successors and/or assigns (the “**Entity**” or “**Redeveloper**”), and the **TOWNSHIP OF CLARK**, a municipal corporation in the County of Union and the State of New Jersey with office at Municipal Building, 430 Westfield Avenue, Clark, New Jersey 07066 (the “**Township**”; together with the Entity, the “**Parties**,” with each a “**Party**”).

**WITNESSETH:**

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended from time to time (the “**Redevelopment Law**”) authorizes municipalities to determine whether certain parcels of land in the municipality constitute “areas in need of redevelopment,” as defined in the Redevelopment Law; and

**WHEREAS**, pursuant to the resolution adopted on December 20, 2021, the municipal council of the Township (the “**Township Council**”) authorized the Planning Board of the Township (the “**Planning Board**”) to investigate whether those properties commonly known as Block 60, Lots 60.01, 61, 62 and 63 on the tax map of the Township should be designated as an area in need of redevelopment pursuant to the Redevelopment Law (the “**Property**”); and

**WHEREAS**, on March 15, 2022, the Planning Board held a hearing and recommended to the Township Council that the Property be designated as an area in need of redevelopment pursuant to the Redevelopment Law; and

**WHEREA**, on March 21, 2022, the Township Council adopted a resolution designating the Property as an area in need of redevelopment (the “**Redevelopment Area**”); and

**WHEREAS**, Shamrock Enterprises, Ltd. prepared a redevelopment plan entitled “Raritan Road Redevelopment Plan” (the “**Redevelopment Plan**”), providing the development standards for the Property; and

**WHEREAS**, the Township Council adopted a resolution referring to the Planning board for review and comment the Redevelopment Plan pursuant to the Redevelopment Law; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-7f, the Planning Board held a hearing to review and discuss the Redevelopment Plan, and made recommendations concerning same; and

**WHEREAS**, on June 13, 2022, the Township Council adopted Ordinance number 22-06, which adopted the Redevelopment Plan for the Redevelopment Area; and

**WHEREAS**, the Redeveloper submitted to the Township a proposal to undertake the construction of a self-storage facility totaling approximately 95,839 square feet of gross building area (the “**Project**”); and

**WHEREAS**, on August 15, 2022, the Township adopted Resolution \_22-131, designating the Redeveloper as “Conditional Redeveloper” (as such term is defined in the Redevelopment Law) of the Property and on \_\_\_\_\_, the Township adopted Resolution \_\_\_\_\_, authorizing the execution of a redevelopment agreement; and

**WHEREAS**, the Township and the Redeveloper executed a redevelopment agreement on even date (the “**Redevelopment Agreement**”), that set forth the terms and conditions upon which the Property is to be redeveloped; and

**WHEREAS**, in order to enhance the economic viability of and opportunity for a successful project, the Township now enters into this Financial Agreement with the Entity, which Agreement shall govern payments made to the Township in lieu of real estate taxes on the Project pursuant to the Exemption Law; and

**WHEREAS**, the Entity has filed an application (the “**Application**,” as further defined herein), with the Mayor of the Township for approval of a long-term tax exemption (the “**Tax Exemption**”) for the Improvements (as defined herein) to the extent permitted by the Exemption Law; and

**WHEREAS**, the Township has made the following findings with respect to the Project:

A. Relative benefits of the Project:

- i. The Project will provide self-storage space in the Township, along with the renewal and revitalization of the Redevelopment Area.
- ii. The Township will benefit from the creation of approximately 120 temporary construction jobs and approximately 3 permanent jobs.
- iii. Without the Tax Exemption granted herein, it is highly unlikely that the Entity would have proceeded with the Project.

B. Assessment of the importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

The Tax Exemption allows for competitive rents for potential occupants. In a highly competitive market for self-storage space, the price per square foot of construction and land taxes can be the deciding factor for market absorption. To attract and retain occupants, developers need the ability to be competitive and local tax exemptions play a critical role in the locational decisions of developers.

**WHEREAS**, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to N.J.S.A. 40A:20-8, the Township Council, on [\_\_\_\_], adopted Ordinance No. [\_\_\_\_] (the "**Ordinance**") authorizing the execution of this Agreement and granting the Tax Exemption in accordance with the terms hereof; and

**WHEREAS**, to satisfy requirements of the Exemption Law and to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the Annual Service Charge (as such term is defined herein), the Parties have determined to execute and deliver this Financial Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

**ARTICLE I**  
**GENERAL PROVISIONS**

**Section 1.01 Governing Law** – THIS FINANCIAL AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE EXEMPTION LAW, THE REDEVELOPMENT LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT EACH AND EVERY PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING WITHOUT LIMITATION, ANY UNIT, AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS FINANCIAL AGREEMENT.

**Section 1.02 General Definitions**. The following terms shall have the meaning assigned to such term in the preambles and recitals hereof:

<b>Agreement</b>	<b>Planning Board</b>
<b>Application</b>	<b>Project</b>
<b>Township</b>	<b>Property</b>
<b>Township Council</b>	<b>Redeveloper</b>
<b>Entity</b>	<b>Redevelopment Agreement</b>
<b>Exemption Law</b>	<b>Redevelopment Area</b>
<b>Financial Agreement</b>	<b>Redevelopment Law</b>
<b>Ordinance</b>	<b>Redevelopment Plan</b>
<b>Parties/Party</b>	<b>Tax Exemption</b>

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

**Administrative Fee**: As defined in Section 4.10.

**Allowable Net Profit**: The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3(b) and (c).

Allowable Profit Rate: The greater of twelve percent (12%) per annum or the percentage per annum arrived at by adding one and one quarter percent (1.25%) to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of twelve percent (12%) per annum or the percentage per annum arrived at by adding one and one quarter percent (1.25%) per annum to the interest rate per annum that the Township reasonably determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue: The Annual Gross Revenue shall be calculated as set forth within N.J.S.A. 40A:20-3(a). Annual gross ordinary income received by the Entity which is derived from or generated by the Project, specifically excluding, without limitation, extraordinary items, condemnation awards, insurance proceeds, reimbursement of tenant improvement costs, gains from sales, transfers, or assumption of the Project or any part thereof, proceeds of any financing or refinancing, proceeds from any disposition of any interest in the Entity or any successor entity. Annual Gross Revenue shall not include any tenant reimbursement of the Annual Service Charge or land taxes to the Entity.

Annual Service Charge: The amount the Entity has agreed to pay the Township pursuant to Article IV herein with respect to the Improvements (but not the Property upon which the Improvements are located), which: (a) Entity has agreed to pay in part for municipal services supplied to the Project, (b) is in lieu of any taxes on the Improvements pursuant to N.J.S.A. 40A:20-12, (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be prorated in the year in which this Agreement begins and the year in which this Agreement terminates.

Annual Service Charge Payment Dates: February 1, May 1, August 1 and November 1 of each year, commencing after the Certificate of Completion is issued for the Project and ending on the Termination Date.

Annual Service Charge Start Date: The first day of the month following the Completion Date.

Applicable Law: All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable to the Project including, but not limited to, the Redevelopment Law, the Exemption Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including without limitation, all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages

Auditor's Report: As defined in Section 6.02.

Certificate of Completion: A certificate or certificates, issued by the Township in accordance with the provisions of the Redevelopment Agreement, certifying that the Entity has performed its duties and obligations under the Redevelopment Agreement and the Redevelopment Plan with respect to the Project in its entirety.

Township Clerk: The Clerk of the Township.

Chief Financial Officer: The Township's Chief Financial Officer.

Completion Date: shall mean the date that the Improvements are substantially complete for their intended purpose as evidenced by the issuance of a Certificate of Completion.

Default: A breach or the failure to perform any obligation imposed by the terms of this Agreement, or under Applicable Law, after notice and an opportunity to cure.

Effective Date: The date of this Agreement.

Improvements: All improvements associated with the construction and operation of the Project, including without limitation, all ancillary improvements required for the Project.

In Rem Tax Foreclosure: A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the Tax Sale Law.

Land: The land comprising the Property (Block 60, Lots 60.01, 61, 62 and 63), excluding any improvements on the Property.

Land Taxes: The amount of taxes assessed on the value of the Land upon which the Project is located.

Land Tax Payments: Payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector in accordance with Applicable Law.

Minimum Annual Service Charge: The amount of taxes levied against the Land upon which the Project is located in the last full tax year in which the Land was subject to taxation.

Net Profit: The Annual Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Without limiting the foregoing, included in expenses shall be an amount sufficient to amortize the Total Project Cost in accordance with generally accepted accounting principles as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c). As provided in N.J.S.A. 40A:20-3(a), any gain realized by the Entity on the sale of any unit in fee simple, whether or not taxable under federal or state law, shall not be included in computing Annual Gross Revenue.

Notice: As defined in Section 15.01.

Secured Party/Secured Parties: As defined in Section 8.02(a)

Security Arrangements: As defined in Section 8.02(a).

State: The State of New Jersey.

Tax Assessor: The Township Tax Assessor.

Tax Collector: The Township Tax Collector.

Taxes Otherwise Due: The real property taxes that would be due on the Project if not for the Tax Exemption, which Taxes Otherwise Due are calculating based on the assessment on the Land plus the exempt assessment on the Improvements multiplied by the then applicable general tax rate of the Township.

Tax Sale Law: The Tax Sale Law, N.J.S.A. 54:5-1 et seq., as the same may be amended or supplemented from time to time.

Termination Date: The earlier to occur of (i) the thirty-fifth (35<sup>th</sup>) anniversary of the Effective Date; (ii) the thirtieth (30<sup>th</sup>) anniversary date of the Annual Service Charge Start Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.

Total Project Cost: The cost of developing the Project as determined in accordance with N.J.S.A. 40A:20-3(h), including without limitation, those costs set forth on Exhibit E attached hereto, as certified by a qualified architect or engineer and as permitted pursuant to N.J.S.A. 40A:20-3(h) for the Project.

**Section 1.03 Interpretation and Construction**. In this Financial Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Financial Agreement, refer to this Financial Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Financial Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof, shall

be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All Notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(g) This Financial Agreement shall become effective upon its execution and delivery by the Parties.

(h) All exhibits referred to in this Financial Agreement and attached hereto are incorporated herein and made part hereof.

## **ARTICLE II** **APPROVAL**

**Section 2.01 Approval of Tax Exemption.** The Township hereby grants its approval for a tax exemption for the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed on the Land.

**Section 2.02 Approval of Entity.** The Entity represents that its Certificate of Formation and Certificate of Authority as provided in the Application contain all the requisite provisions of law, have been reviewed and approved by the Commissioner of the Department of Community Affairs, and have been filed with, as appropriate, the Secretary of Treasury, all in accordance with N.J.S.A. 40A:20-5.

**Section 2.03 Improvements to be Constructed.** The Entity represents that it will construct, or cause to be constructed, the Project substantially in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application.

**Section 2.04 Ownership, Management and Control.** The Entity represents that it is the owner of the Property upon which the Improvements are to be constructed and which is the subject of this Agreement.

**Section 2.05 Financial Plan.** The Entity represents that the Improvements shall be financed substantially in accordance with the financial plans provided in the Application. The financial plans set forth the Entity's good faith estimate of estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing,

the source and amount of paid-in capital, and the terms of any mortgage amortization for the Project.

**Section 2.06 Statement of Projected Revenues.** The Entity represents that its good faith estimate of projected Annual Gross Revenue is set forth in **Exhibit H** attached hereto.

**Section 2.07 Representations and Covenants Regarding Use, Management and Operations of the Project by the Entity.** The Entity expressly covenants, warrants and represents that upon completion, the Project, including all Land and Improvements, shall be used, managed and operated for the purposes set forth in the Application, substantially in accordance with the Redevelopment Agreement, Redevelopment Plan, and all Applicable Laws.

### **ARTICLE III DURATION OF AGREEMENT**

**Section 3.01 Term.** It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect until the Termination Date. The tax exemption shall only be effective while the Project is owned by a corporation, association or other entity formed and operating under the Exemption Law. Upon the Termination Date, the tax exemption for the Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other taxable property in the Township.

**Section 3.02 Voluntary Termination by Entity.** At any time after one (1) year after the Annual Service Charge Start Date for each phase of the Project if applicable, the Entity may, on not less than thirty (30) days written notice to the Township, voluntarily terminate this Agreement in accordance with N.J.S.A. 40A:20-13. As of the date provided in such notice, this Agreement shall terminate and the tax exemption, Annual Service Charge, and limitation on profits and dividends shall terminate.

**Section 3.03 Date of Termination.** The Termination Date shall be deemed to be at, on or as of the fiscal year end of the Entity.

### **ARTICLE IV ANNUAL SERVICE CHARGE**

**Section 4.01 Payment of Conventional Taxes Prior to Commencement of Annual Service Charge.** During the period between execution of this Agreement and the substantial completion of the Project, the Entity shall make payment of conventional real estate taxes with respect to the Land and any improvements currently existing thereon, at the time and to the extent due in accordance with Applicable Law.

**Section 4.02 Commencement of Annual Service Charge.** The Entity shall make payment of an Annual Service Charge commencing on the Annual Service Charge Start Date.

**Section 4.03 Payment of Annual Service Charge.**

(a) The Annual Service Charge shall be due and payable to the Township on the Annual Service Charge Payment Dates, commencing to accrue as of the Annual Service Charge Start Date. In the event that the Entity fails to timely pay any installment of the Annual Service Charge, the amount past due shall, until paid, bear the highest rate of interest permitted under applicable State law then being assessed against other delinquent taxpayers in the case of unpaid taxes or tax liens.

(b) Each installment payment of the Annual Service Charge is to be made to the Township and shall be clearly identified as “Annual Service Charge Payment for the “Raritan Road Holdings Urban Renewal LLC Project.”

**Section 4.04 Annual Service Charge.** In consideration of the exemption from taxation for the Improvements, the Entity shall pay the Annual Service Charge to the Township on the Annual Service Charge Payment Dates in the amounts set forth below.

- (a) The Annual Service Charge shall be equal to an amount calculated as follows:
- (i) For years One (1) through Five (5) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Ten Percent (10.0%) of the Annual Gross Revenue or (B) the Minimum Annual Service Charge, to the extent applicable; and
  - (ii) For years Six (6) through Ten (10) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Ten and One-Half Percent (10.5%) of the Annual Gross Revenue or (B) the Minimum Annual Service Charge, to the extent applicable; and
  - (iii) For years Eleven (11) through Fifteen (15) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Eleven Percent (11.0%) of the Annual Gross Revenue or (B) the Minimum Annual Service Charge, to the extent applicable; and
  - (iv) For the year Sixteen (16) through Twenty (20) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Eleven and One-Half Percent (11.5%) of the Annual Gross Revenue, or (B) Twenty Percent (20%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable; and
  - (v) For the year Twenty-One (21) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Twelve Percent (12.0%) of the Annual Gross Revenue, or (B) Twenty Percent (20%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable; and

- (vi) For the years Twenty-Two (22) through Twenty-Five (25) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Twelve Percent (12.0%) of the Annual Gross Revenue, or (B) Forty Percent (40%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable; and
- (vii) For years Twenty-Six (26) through Twenty-Seven (27) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Twelve and One-Half Percent (12.5%) of the Annual Gross Revenue, or (B) Forty Percent (40%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable; and
- (viii) For years Twenty-Eight (28) through Twenty-Nine (29) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Twelve and One-Half Percent (12.5%) of the Annual Gross Revenue, or (B) Sixty Percent (60%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable; and
- (ix) For the year Thirty (30) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) Twelve and One-Half Percent (12.5%) Percent of the Annual Gross Revenue, or (B) Eighty Percent (80%) of the Taxes Otherwise Due, or (C) the Minimum Annual Service Charge, to the extent applicable.

(b) In accordance with the Exemption Law, including without limitation, N.J.S.A. 40A:20-12, the Entity shall be entitled to a credit against the Annual Service Charge equal to the amount, without interest, of the Land Taxes paid by it in the last four preceding quarterly installments.

**Section 4.05 Material Conditions.** It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

**Section 4.06 No Reduction in Payment of the Minimum Annual Service Charge.** In the event the assessed value of the property is increased by reason of a municipal revaluation, reassessment or is increased substantially above the level of the 2022 assessment, the Entity shall have the right to file a tax appeal against the assessed value of the Property. Notwithstanding the foregoing, the amount of the Annual Service Charge, as provided in Section 4.04 hereof shall not be reduced below the Minimum Annual Service Charge.

**Section 4.07 Service Charges as Municipal Lien.** In accordance with the provisions of the Exemption Law, any amount due and owing hereunder, including the Annual Service Charge shall be and constitute a continuous municipal lien on the Project.

**Section 4.08 Security for Payment of Annual Service Charges.** In order to secure the full and timely payment of the Annual Service Charges, the Township reserves the right to prosecute a Foreclosure action against the Property, as more fully set forth in this Agreement.

**Section 4.09 Land Taxes.** Land Taxes shall be assessed only on the land portion of the Property without regard to any Improvements or increase in value to the land because of the Improvements. The Township agrees it shall not impose an added assessment, omitted added assessment or similar assessment on the value of the Improvements prior to the Annual Service Charge Start Date.

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity shall be entitled to a credit for the amount, without interest, of the Land Taxes paid on the Property in the last four preceding quarterly installments against the Annual Service Charge.

The Entity is obligated to make timely Land Tax Payments to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In any year that the Entity fails to make any Land Tax Payments, beyond any notice and cure period, such delinquency shall render the Entity ineligible for any Land Tax credits against the Annual Service Charge for that year, such failure shall constitute a Default under this Agreement, and the amount unpaid shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens in the Township until paid. In addition to any and all other rights and remedies available at law, in equity or under this Agreement, the Township shall have the right to proceed against the Property pursuant to the Tax Sale Law and/or may terminate this Agreement in a manner consistent with the Default provisions set forth in Article XIII hereof.

**Section 4.10 Administrative Fee.** In addition to the Annual Service Charge, the Entity shall pay to the Township an annual fee of two percent (2%) of the projected Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the Termination Date (the "**Administrative Fee**") within thirty (30) days of the receipt of the invoice from the Township for the Administrative Fee.

In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens in the Township until paid. In addition to any and all other rights and remedies available at law, in equity or under this Agreement, the Township shall have the right to proceed against the Property pursuant to the Tax Sale Law and/or may terminate this Agreement in a manner consistent with the Default provisions set forth in Article XIII hereof.

## ARTICLE V

## CERTIFICATE OF OCCUPANCY

**Section 5.01 Certificate of Occupancy.** It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner after the Entity has satisfied all requirements to secure such Certificate of Occupancy.

**Section 5.02 Filing of Certificate of Occupancy.** It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy. Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the Township, including, if appropriate, retroactive billing with interest to collect any charges hereunder to be due.

## **ARTICLE VI** **ACCOUNTING, REPORTS AND CALCULATIONS**

**Section 6.01 Accounting System.** The Entity agrees to calculate its "Net Profit" pursuant to N.J.S.A. 40A:20-3(c). As stated in N.J.S.A. 40A:20-3(c), this calculation shall be made in accordance with generally accepted accounting principles or as otherwise prescribed in the Exemption Law during the term of this Agreement.

### **Section 6.02 Periodic Reports.**

(a) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(d), the Entity shall submit, on an annual basis and within ninety (90) days after the close of the Entity's fiscal year, its Auditor's Report certified by an independent certified public accountant for the preceding fiscal year to the Mayor, the Township Council and the Township Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs. The provision of a consolidated schedule for the Entity, authorized by a person holding the title of Vice President and Controller, or equivalent position, attached to an audited Form 10-K produced for its parent entity or other alternative audited statement relating to the Entity generated by or on behalf of its parent shall constitute compliance with this Section.

(b) **Disclosure Statement:** Within thirty (30) days after each anniversary date of the execution of this Agreement, the Entity shall submit to the Township Council, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each.

**Section 6.03 Inspection.** The Entity shall, upon request, permit the inspection of its property, equipment, buildings and other facilities of the Project (subject to the rights of tenants) and also permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Township, and State Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon seven (7) business days' written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the

extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

## **ARTICLE VII** **LIMITATION ON PROFITS AND RESERVES**

**Section 7.01** Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. In no event shall any portion of the excess Net Profits be retained or contributed to such reserve if the amount of the reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding year's Annual Gross Revenues. The reserve is to be noncumulative.

**Section 7.02** Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity shall exceed the Allowable Net Profits for the period, taken as one accounting period, commencing on the Annual Service Charge Start Date and terminating at the end of the last full fiscal year, then the Entity, within one hundred and twenty (120) days after the end of that fiscal year, shall pay such excess Net Profits to the Township as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.01. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(b) and (c) and 40A:20-15.

Pursuant thereto, the calculation of Net Profit shall be cumulative for the period commencing on the date on which the construction of the project is completed, and terminating at the close of the fiscal year of the entity for the year of each annual audit, with any negative amounts of profit from prior years being carried forward and included in the accumulated excess profit calculation consistent with Township of Newark vs. First Newark Gateway Urban Renewal Association, Docket No. ESX-L-1160-91 (NJ Super. Law Div. August 8, 1994).

**Section 7.03** Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale. The Termination Date of this Agreement, or the date of sale or transfer of the Improvements, shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Township the amount of the reserve, if any, maintained by it pursuant to Section 7.01 and the excess Net Profits, if any.

## **ARTICLE VIII** **ASSIGNMENT AND/OR ASSUMPTION**

**Section 8.01** Restrictions on Transfer.

(a) Prior to the issuance of a Certificate of Completion, the Entity shall be permitted to transfer the Project, its ownership interest in the Land or any ownership interest in the Entity in accordance with the Redevelopment Agreement. After the issuance of a Certificate of Occupancy, except as set forth in the following subsections, the Entity may not, and shall not have the power to, voluntarily transfer more than ten percent (10%) of the ownership of the Project or any portion thereof until it has first removed both itself and the Project from all restrictions imposed by the Exemption Law, in the manner provided by the Exemption Law. Nothing herein shall prohibit any transfer of the ownership interest in the Entity itself provided that the transfer, if greater than ten percent (10%) of the direct ownership interests, is disclosed to the Township Council in the annual disclosure statement required pursuant to Section 6.02(b) of this Agreement or in correspondence sent to the Township Clerk in advance of the annual disclosure in accordance with N.J.S.A. 40A:20-5e.

(b) As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that the Township, on written application by the Entity, will consent to a sale of the Project and the transfer of this Agreement provided that: (1) the transferee entity is formed and eligible to operate under the Exemption Law; (2) the transferee entity does not own any other project subject to long term tax exemption at the time of transfer; (3) the Entity is not then in Default of this Agreement or Applicable Law; (4) the Entity's obligations under this Agreement are fully assumed by the transferee entity via a Assignment and Assumption Agreement in a form that is reasonably acceptable to the Township; and (5) the transferee pays to the Township an application fee equal to two percent (2%) of the most recent Annual Service Charge as an application fee for the processing of any such transfer request for the continuation of a tax exemption.

**Section 8.02 Collateral Assignment.** Notwithstanding the foregoing, it is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing.

(a) In the absence of a Default by the Entity, the Township agrees that the Entity and or its affiliates may assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefor (each, a "**Secured Party**" and collectively, the "**Secured Parties**") as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the "**Security Arrangements**"). The Entity shall give the Township prior written notice of the granting of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such notice waives any requirement of the Township hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(b) Without limiting the generality of Article XIII hereof, if the Entity shall Default in any of its obligations hereunder, the Township shall give notice of such Default to the Secured Parties and the Township agrees that, in the event such Default is not waived by the Township or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Township will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than fifteen (15)

days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge or Land Taxes and sixty (60) days from the date the Entity was required to cure any other Default.

(c) In the absence of a Default by the Entity, the Township agrees to consent to any Security Arrangements and corresponding collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by Secured Parties to acknowledge such consent. This provision shall not be construed to limit the Township's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Agreement, the provisions of N.J.S.A. 55:17-1 to -11 shall apply to this Agreement to protect the interest of any Secured Party.

#### **ARTICLE IX** **WAIVER**

**Section 9.01. Waiver.** Either Party's election of any remedy shall not be construed as a waiver of any other remedies available to that Party.

#### **ARTICLE X** **COMPLIANCE**

**Section 10.01 Statutes and Ordinances.** The Entity hereby agrees at all times prior to the Termination Date to remain bound by the provisions of the Application and Applicable Law, including, but not limited to, the Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement and the Township shall, in addition to any and all other rights and remedies available at law, in equity or under this Agreement, have the right to terminate this Agreement, subject to the Default procedure provisions of Article XIII herein.

#### **ARTICLE XI** **CONSTRUCTION**

**Section 11.01 Construction.** This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Township have combined in their review and approval of same.

#### **ARTICLE XII** **INDEMNIFICATION**

**Section 12.01 Indemnification.** It is understood and agreed that in the event the Township shall be named as party defendant in any action brought against the Township or Entity by allegation of any breach, Default or a violation by the Entity of any of the provisions of this Agreement and/or the provisions of the Exemption Law, Entity shall indemnify and hold the Township harmless from and against all causes of action, lawsuits, arbitrations, liability, actual losses, damages, demands, charges, actual third party out of pocket costs, claims, actions and or actual third party expenses (including reasonable attorneys' fees, cost and expenses) of every kind, character and nature to the extent occasioned by, connected with, arising out of or resulting from any breach, Default or a violation by the Entity of any of the provisions of this Agreement and/or the provisions of the Long Term Exemption Law, N.J.S.A. 40A:20-1 et seq., except for that which results from any negligence or misconduct by the Township or any of its officers, officials, employees or agents, and Entity shall defend the suit at its own expense (through counsel selected by the Township). Notwithstanding the foregoing, in the event of an action respecting this Agreement alleging a violation by the Entity of any of the provisions of the Long Term Exemption Law, N.J.S.A. 40A:20-1 et seq., in which the Township is not a party, the Township maintains the right to intervene in such action as a party thereto, to which intervention Entity hereby consents, and the expense thereof shall be borne by Entity. To the extent practical and ethically permissible, only if the Township consents in writing, which consent may be withheld in the Township's sole reasonable discretion, the Entity's attorneys shall jointly defend and represent the interest of the Township and the Entity as to all claims indemnified in connection with this Agreement.

### **ARTICLE XIII** **DEFAULT AND REMEDIES**

**Section 13.01 Cure Upon Default.** Should the Entity be in Default, the Township shall notify the Entity and any Secured Party in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as provided in Section 8.02(b) hereof or otherwise limited by law, the Entity shall have sixty (60) days after it receives written Notice setting forth the default to cure any Default (other than a Default in payment of any installment of the Annual Service Charge, which Default must be cured within fifteen (15) days after the date such Annual Service Charge installment was due). Curing the Default shall be the sole and exclusive remedy available to the Entity or the Secured Party, as applicable; provided, however, that if, in the reasonable opinion of the Township, the Default cannot be cured within the applicable cure period using reasonable diligence, the time to cure may be extended upon written notice for up to an additional one hundred eighty (180) day period of time in the Township's sole reasonable discretion.

Upon the expiration of the cure period, or any approved extension thereof, and providing that the Default is not cured, in addition to any and all other rights and remedies available at law, in equity or under this Agreement, but subject to the limitation of Section 13.02(e), the Township shall have the right to terminate this Agreement in accordance with Section 13.02 of this Agreement.

**Section 13.02 Remedies Upon Default.**

(a) In the event the Entity or a Secured Party fails to cure or remedy the Default within the time period provided in Sections 13.01 or 8.02(b), respectively, in addition to any and all other rights and remedies available at law, in equity or under this Agreement, but subject to the limitation of Section 13.02(e), the Township may terminate this Agreement upon thirty (30) days written notice to the Entity and the Secured Party.

(b) Upon any Default in payment of any installment of the Annual Service Charge not cured within fifteen (15) days, the Township in its sole discretion shall have the right to immediately exercise the following remedies: (1) terminate this Agreement, at which time: the Improvements on the Land shall be subject to conventional taxation; or (2) exercise any other right or remedy available to the Township in law, at equity or under this Agreement, subject to the limitation of Section 13.02(e). The Township as a courtesy will give Entity and any Secured Party notice of the intention to exercise its rights and remedies, but the failure to do so shall not affect such rights or remedies.

(c) No Default hereunder by the Entity shall terminate the tax exemption (except as described herein and after Notice and cure as provided for herein) and its obligation to make Annual Service Charges, which shall continue in effect for the duration of the term hereof and subject to Section 13.03 hereinafter.

(d) All of the remedies provided in this Agreement to the Township shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of its rights or remedies or actions against the Entity as set forth in Section 13.02(b) because of Entity's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments.

(e) In no event shall either Party be liable for consequential damages.

**Section 13.03 Final Accounting.** Within ninety (90) days after the Termination Date, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting, the Termination Date of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

**Section 13.04 Conventional Taxes.** Upon the Termination Date, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

## **ARTICLE XIV** **DISPUTE RESOLUTION**

**Section 14.01 Arbitration.** In the event of a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties may submit the dispute to arbitration in the State to be determined in such a fashion to accomplish the purpose of the Exemption Law.

Either party, however, may elect to waive arbitration and proceed with the dispute in a New Jersey Court of competent jurisdiction with each Party bearing their own Costs.

**ARTICLE XV**  
**NOTICE**

**Section 15.01 Notice.** Formal notices, demands and communications between the Township and Entity shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available (“**Notice**”). In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

**If to the Township:**

Township of Clark  
Clark Twp. Municipal Building  
430 Westfield Avenue  
Clark, New Jersey 07066  
Attention: Township Clerk

**with copies to:**

Township of Clark  
Clark Twp. Municipal Building  
430 Westfield Avenue  
Clark, New Jersey 07066  
Attn: Mayor

and

Mark P. Dugan, Esq.  
Triarsi, Betancourt, Wukovits & Dugan, LLC  
Centennial Plaza  
186 North Avenue, East  
Cranford, New Jersey, 07016  
Telephone: (908) 709-1700  
Facsimile: (908) 272-4477  
Email: [mpd@tbwdlaw.com](mailto:mpd@tbwdlaw.com)

**If to Entity:**

Michael Berry  
Storage Deluxe

26 West 17<sup>th</sup> Street, Suite 801  
New York, NY 10011  
Email: [mberry@storagedeluxe.com](mailto:mberry@storagedeluxe.com)

**with copies to:**

Michael J. Caccavelli, Esq.  
Pearlman & Miranda, LLC  
110 Edison Place, Suite 301  
Newark, New Jersey 07102-4908  
Email: [mcaccavelli@pearlmanmiranda.com](mailto:mcaccavelli@pearlmanmiranda.com)

**ARTICLE XVI**  
**MISCELLANEOUS**

**Section 16.01 Conflict.** The Parties agree that in the event of a conflict between the Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

**Section 16.02 Oral Representations.** There have been no oral representations made by either of the Parties which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance of the Township authorizing this Agreement, the Application, and the Redevelopment Agreement while that agreement remains in effect, and its exhibits, schedules and other attachment, all of which are incorporated herein by reference and are made a part hereof, constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties and delivered to each of them.

**Section 16.03 Entire Document.** All conditions in the Ordinance of the Township Council approving this Agreement are incorporated in this Agreement and made a part hereof. This Agreement, with all attachments and exhibits, the Ordinance, the Application, and the Redevelopment Agreement so long as it remains in effect, and its exhibits, schedules and other attachment, all of which are incorporated herein by reference and are made a part hereof, shall constitute the entire agreement between the Parties, shall be incorporated herein by reference thereto and there shall be no modifications thereto other than by a written instrument approved and executed by and delivered to each Party. All prior agreements and understandings, if any, are superseded.

**Section 16.04 Good Faith.** In their dealings with each other, the Parties agree that they shall act in good faith.

**Section 16.05 Municipal Services.** The Entity and/or its successors (including without limitation any owner's or similar association) will be responsible to provide and/or pay for the following services:

(a) Water & Sewer – The Entity shall make payments for water and sewer charges and any services that create a lien on the Property with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law.

(b) Waste and Refuse Disposal – Collection and disposition of all solid waste, refuse and recyclables emanating from the Project, shall be the responsibility of the Entity to have picked up and disposed of by a licensed collector, hauler, at the Entity’s cost and expense. The Township may establish regulations for the collection and for the storage and recycling of solid waste, discarded or old newspaper and/or other recyclables; compliance therewith shall be by and at the sole expense of the Entity.

**Section 16.06 Counterparts.** This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 16.07 Financing Matters.** The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application.

**Section 16.08 Amendments.** This Agreement may not be amended, changed, modified, altered, or terminated, nor may any provision herein be waived, without the written consent of the Parties, or applicable Party hereto.

**Section 16.09 Certification.** The Township Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Property, has been entered into and is in effect as required by N.J.S.A. 40A:20-1 et seq. Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Township Council approving the tax exemption described herein and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance adopted by the Township Council approving the tax exemption described herein and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Township Clerk to the Chief Financial Officer of Union County and to the Union County Counsel, for informational purposes.

**Section 16.10 Conditions Precedent.**

This Agreement is expressly subject to the satisfaction by the Entity or the Township of the following conditions precedent:

(a) Receipt by the Entity of all federal, State, county and municipal approvals required for the construction of the Project.

(b) Enactment by the Township of all ordinances and other official action necessary under N.J.S.A. 40A:20-1 et seq. to enter into and effectuate the terms of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**EXHIBITS**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

- A. Metes and Bounds description of the Property
- B. Project Description
- C. Application with Exhibits
- D. Ordinance
- E. Project Costs
- F. Certificate of Formation for the Entity
- G. Financial Plan for the Project
- H. Projected Revenues

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties have caused this Financial Agreement to be executed as of the day and year first above written.

**TOWNSHIP OF CLARK**

By: \_\_\_\_\_  
**Salvatore Bonaccorso, Mayor**  
**Township of Clark**

Witnessed by:

\_\_\_\_\_  
EDITH L. MERKEL, R.M.C.  
TOWNSHIP CLERK

STATE OF NEW JERSEY :  
:   
COUNTY OF UNION :

The foregoing instrument was acknowledged before me this \_\_\_ day of 2023 by Salvatore Bonaccorso, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Mayor of the Township of Elizabeth, the Township named in the within document;
- (b) he is authorized to execute the attached document on behalf of the Township;
- (c) he executed the attached document on behalf of and as the act of the Township; and
- (d) the attached document was signed and made by the Township as its duly authorized and voluntary act.

\_\_\_\_\_  
EDITH L. MERKEL TOWNSHIP CLERK



**EXHIBIT A**

**METES AND BOUNDS DESCRIPTION OF THE PROPERTY**

## **EXHIBIT B**

### **PROJECT DESCRIPTION**

The Project shall consist of the construction of a self-storage facility and associated site improvements that will result in total gross building area of approximately 95,839 square feet in size upon completion.

**EXHIBIT C**  
**APPLICATION WITH EXHIBITS**

**EXHIBIT D**  
**ORDINANCE**

**EXHIBIT E**  
**ESTIMATED PROJECT COSTS**

**EXHIBIT F**

**CERTIFICATE OF FORMATION  
AND CERTIFICATE OF AUTHORITY  
OF THE ENTITY**

## **EXHIBIT G**

### **FINANCIAL PLAN FOR THE PROJECT**

Source of funds: The cost of the Project is anticipated to be funded through a combination of 60% traditional bank financing and 40% redeveloper equity.

**THE INFORMATION ON THIS EXHIBIT IS PRELIMINARY AND SUBJECT TO CHANGE**

**EXHIBIT H**  
**PROJECTED REVENUES**

ORDINANCE FOR ADOPTION OF THE FLOODPLAIN MANAGEMENT REGULATIONS  
OF THE TOWNSHIP OF CLARK, UNION COUNTY, NEW JERSEY

ORDINANCE NO. 23-14

INTRO 4

Adopted \_\_\_\_\_

Introduced: March 6, 2023 Public Hearing: March 20, 2023

**AN ORDINANCE BY THE TOWNSHIP COUNCIL AMENDING THE TOWNSHIP OF CLARK CODE OF ORDINANCES TO REPEAL CHAPTER 166 – FLOOD DAMAGE CONTROL, IN ITS ENTIRETY, AND TO ADOPT A NEW ORDINANCE ENTITLED “CHAPTER 166 – FLOODPLAIN MANAGEMENT REGULATIONS”; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of New Jersey has, in N.J.S.A. 40:48 et seq and N.J.S.A. 40:55D et seq., conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Township of Clark and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

**WHEREAS**, the Township of Clark was accepted for participation in the National Flood Insurance Program on December 23, 1971 and the Township Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59, 60, 65 and 70 necessary for such participation; and

**WHEREAS**, the Township of Clark is required, pursuant to N.J.A.C. 5:23 et seq., to administer and enforce the State building codes, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

**WHEREAS**, the Township of Clark is required, pursuant to N.J.S.A. 40:49-5, to enforce zoning codes that secure safety from floods and contain certain provisions that apply to the development of lands; and

**WHEREAS**, the Township of Clark is required, pursuant to N.J.S.A.58:16A-57, within 12 months after the delineation of any flood hazard area, to adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the New Jersey Department of Environmental Protection (NJDEP).

**NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Clark that the following floodplain management regulations are hereby adopted.**

Chapter 166  
**Flood Damage Prevention**

**ARTICLE I  
STATUTORY AUTHORIZATION AND FINDINGS OF FACT**

**§ 166-1 Statutory Authorization.**

The Legislature of the State of New Jersey has, in N.J.S.A. 40:48 et seq and N.J.S.A. 40:55D et seq., conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Township of Clark and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

**§ 166-2 Findings of Fact**

The Township of Clark was accepted for participation in the National Flood Insurance Program on December 23, 1971 and the Township Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59, 60, 65 and 70 necessary for such participation.

The Township of Clark is required, pursuant to N.J.A.C. 5:23 et seq., to administer and enforce the State building codes, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas.

The Township of Clark is required, pursuant to N.J.S.A. 40:49-5, to enforce zoning codes that secure safety from floods and contain certain provisions that apply to the development of lands.

The Township of Clark is required, pursuant to N.J.S.A.58:16A-57, within 12 months after the delineation of any flood hazard area, to adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the New Jersey Department of Environmental Protection (NJDEP).

**ARTICLE II  
SCOPE AND ADMINISTRATION**

**§ 166-3 Ordinances and Parts Thereof Repealed**

These regulations specifically repeal the following ordinance(s) and regulation(s):

- (1) Chapter 166 – Flood Damage Control (in its entirety)
- (2) Chapter 195 – Land Use and Development (those portions that address flood plain management)
- (3) Chapter 185 – Hazardous Materials Clean-up (those portions that address flood plain management)

And replace them with Chapter 166 “Floodplain Management regulations”.

**§ 166-4 Title.** These regulations, in combination with the flood provisions of the Uniform Construction Code (UCC) N.J.A.C. 5:23 (hereinafter "Uniform Construction Code," consisting of the Building Code, Residential Code, Rehabilitation Subcode, and related codes, and the New Jersey Flood Hazard Area Control Act (hereinafter "FHACA"), N.J.A.C. 7:13, shall be known as the *Floodplain Management Regulations of Township of Clark* (hereinafter "these regulations").

**§ 166-5 Scope.** These regulations, in combination with the flood provisions of the Uniform Construction Code and FHACA shall apply to all proposed development in flood hazard areas established in **ARTICLE III** of these regulations.

**§ 166-6 Purposes and objectives.** The purposes and objectives of these regulations are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- (1) Protect human life and health.
- (2) Prevent unnecessary disruption of commerce, access, and public service during times of flooding.
- (3) Manage the alteration of natural floodplains, stream channels and shorelines;
- (4) Manage filling, grading, dredging and other development which may increase flood damage or erosion potential.
- (5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- (6) Contribute to improved construction techniques in the floodplain.
- (7) Minimize damage to public and private facilities and utilities.
- (8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- (9) Minimize the need for rescue and relief efforts associated with flooding.
- (10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- (11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- (12) Meet the requirements of the National Flood Insurance Program for community participation set forth in Title 44 Code of Federal Regulations, Section 59.22.

**§ 166-7 Coordination with Building Codes.** Pursuant to the requirement established in N.J.A.C. 5:23, the Uniform Construction Code, that the **Township of Clark** administer and enforce the State building codes, the **Township Council of the Township of Clark** does hereby acknowledge that the Uniform Construction Code contains certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the Uniform Construction Code.

**§ 166-8 Ordinary Building Maintenance and Minor Work.** Improvements defined as ordinary building maintenance and minor work projects by the Uniform Construction Code including non-structural replacement-in-kind of windows, doors, cabinets, plumbing fixtures, decks, walls, partitions, new flooring materials, roofing, etc. shall be evaluated by the Floodplain Administrator through the floodplain development permit to ensure compliance with the Substantial Damage and Substantial Improvement **§ 166-32** of this ordinance.

**§ 166-9 Warning.** The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

**§ 166-10 Other laws.** The provisions of these regulations shall not be deemed to nullify Chapter 166 – Flood Damage Prevention Ordinance

any provisions of local, State, or Federal law.

**§ 166-11 Violations and Penalties for Noncompliance.** No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation under N.J.S.A. 40:49-5. Any person who violates this ordinance or fails to comply with any of its requirements shall be subject to one (1) or more of the following: a fine of not more than \$1250, imprisonment for a term not exceeding ninety(90) days or a period of community service not exceeding 90 days.

Each day in which a violation of an ordinance exists shall be considered to be a separate and distinct violation subject to the imposition of a separate penalty for each day of the violation as the Court may determine except that the owner will be afforded the opportunity to cure or abate the condition during a 30 day period and shall be afforded the opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30 day period, a fine greater than \$1250 may be imposed if the court has not determined otherwise, or if upon reinspection of the property, it is determined that the abatement has not been substantially completed.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

**§ 166-12 Solid Waste Disposal in a Flood Hazard Area.** Any person who has unlawfully disposed of solid waste in a floodway or floodplain who fails to comply with this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2500 or up to a maximum penalty by a fine not exceeding \$10,000 under N.J.S.A. 40:49-5.

**§ 166-13 Abrogation and greater restrictions.** These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal or abrogate any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes. In the event of a conflict between these regulations and any other ordinance, code, or regulation, the more restrictive shall govern.

### **ARTICLE III APPLICABILITY**

**§ 166-14 General.** These regulations, in conjunction with the Uniform Construction Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land and other developments; site improvements and installation of utilities; placement and replacement of manufactured homes; placement of recreational vehicles; new construction and alterations, repair, reconstruction, rehabilitation or additions of existing buildings and structures; substantial improvement of existing buildings and structures, including repair of substantial damage; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; and certain building work exempt from permit under the Uniform Construction Code; and other buildings and development activities.

**§ 166-15 Establishment of Flood Hazard Areas.** The Township of Clark was accepted for participation in the National Flood Insurance Program on December 23, 1971.

The National Flood Insurance Program (NFIP) floodplain management regulations encourage that all Federal, State, and Local regulations that are more stringent than the minimum NFIP standards take precedence in permitting decisions. The FHACA requires that the effective Flood Insurance Rate Map, most recent preliminary FEMA mapping and flood studies, and Department delineations be compared to determine the most restrictive mapping. The FHACA also regulates unstudied flood hazard areas in watersheds measuring 50 acres or greater in size and most riparian zones in New Jersey. Because of these higher standards, the regulated flood hazard area in New Jersey may be more expansive and more restrictive than the FEMA Special Flood Hazard Area. Maps and studies that establish flood hazard areas are on file at the office of the **Floodplain Administrator (Construction Official), 430 Westfield Avenue, Clark, NJ 07066.**

The following sources identify flood hazard areas in this jurisdiction and must be considered when determining the Best Available Flood Hazard Data Area.

- 1) **Effective Flood Insurance Study.** Special Flood Hazard Areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report entitled Flood Insurance Study, Union County, New Jersey (All Jurisdictions) dated September 20, 2006 and the accompanying Flood Insurance Rate Maps (FIRM) identified in **Table No. 1** whose effective date is 9/20/2006 as shown are hereby adopted by reference.

**Table No. 1**

Map Panel #	Effective Date
34039C0031F	September 20,2006
34039C0032F	September 20,2006
34039C0033F	September 20,2006
34039C0041F	September 20,2006
34039C0042F	September 20,2006
34039C0043F	September 20,2006

- 2) **Federal Best Available Information.** The **Township of Clark** shall utilize Federal flood information as listed in the table below that provides more detailed hazard information, higher flood elevations, larger flood hazard areas, and results in more restrictive regulations. This information may include but is not limited to preliminary flood elevation guidance from FEMA (such as Advisory Flood Hazard Area Maps, Work Maps or Preliminary FIS and FIRM). Additional Federal Best Available studies issued after the date of this ordinance must also be considered. These studies are listed on FEMA’s Map Service Center. This information shall be used for floodplain regulation purposes only.

**Table No. 2**

DESCRIPTION	PRODUCT ID	EFFECTIVE DATE
<b>FIS REPORTS</b>		
	34039CV001A	9/20/2006
	34039CV002A	9/20/2006
<b>LOMA</b>		
	07-02-0433A-345290	3/15/2007
	09-02-0813A-345290	6/18/2009
	11-02-1560A-345290	6/2/2011
	13-02-0211A-345290	12/11/2012
	13-02-1914A-345290	10/8/2013
	14-02-1644A-345290	7/8/2014

	14-02-1856A-345290	8/14/2014
	14-02-2473A-345290	11/12/2014
	15-02-1107A-345290	5/26/2015
	15-02-1851A-345290	9/22/2015
	16-02-0733A-345290	2/24/2016
	17-02-1127A-345290	3/30/2017
	17-02-1436A-345290	6/6/2017
	17-02-1703A-345290	7/24/2017
	17-02-2110A-345290	9/27/2017
	18-02-0238A-345290	11/19/2017
	18-02-0533A-345290	1/25/2018
	18-02-0546A-345290	1/10/2018
<b>DESCRIPTION</b>	<b>PRODUCT ID</b>	<b>EFFECTIVE DATE</b>
<b>LOMA</b>	18-02-2101A-345290	10/19/2018
	19-02-1064A-345290	7/31/2019
	19-02-1093A-345290	6/26/2019
	19-02-1182A-345290	7/22/2019
	19-02-1500A-345290	9/20/2019
	20-02-1219A-345290	8/19/2020
	21-02-0953A-345290	7/9/2021
	22-02-0649A-345290	6/21/2022
	22-02-0744A-345290	8/4/2022
<b>NFHL DATA-STATE</b>		
	NFHL_34_20220818	8/18/2022
<b>NFHL DATA COUNTY</b>		
	NFHL_34039C	9/25/2020
<b>PRELIMINARY FIRM PANELS</b>		
	34039C0031G	4/18/2016
	34039C0032G	4/18/2016
	34039C0041G	4/18/2016
	34039C0042G	4/18/2016
	34039C0043G	2/3/2015
<b>PRELIMINARY FIS REPORTS</b>		
	34039CV001B	4/18/2016
	34039CV002B	4/18/2016
	34039CV003B	4/18/2016
<b>PRELIMINARY FIRM DATABASE</b>		
	34039C_PRELIMDB	2/3/2015
	34039C_A_PRELIMDB	4/18/2016

- 3) **Other Best Available Data.** The Township of Clark shall utilize high water elevations from flood events, groundwater flooding areas, studies by federal or state agencies, or other information deemed appropriate by the Township of Clark. Other “best available information” may not be used which results in less restrictive flood elevations, design standards, or smaller flood hazard areas than

the sources described in § 166-15(1) and § 166-15(2), above. This information shall be used for floodplain regulation purposes only.

- 4) **State Regulated Flood Hazard Areas.** For State regulated waters, the NJ Department of Environmental Protection (NJDEP) identifies the flood hazard area as the land, and the space above that land, which lies below the “Flood Hazard Area Control Act Design Flood Elevation”, as defined in **ARTICLE X**, and as described in the New Jersey Flood Hazard Area Control Act at N.J.A.C. 7:13. A FHACA flood hazard area exists along every regulated water that has a drainage area of 50 acres or greater. Such area may extend beyond the boundaries of the Special Flood Hazard Areas (SFHAs) as identified by FEMA. The following is a list of New Jersey State studied waters in this community under the FHACA, and their respective map identification numbers.

**Table No. 3** List of State Studied Waters

Name of Studied Water	File Name	Map Number
Robinsons Branch 15-1	C0000007	3
Robinsons Branch 15	C0000009	1
Rahway Rv	GGEW0018	1
Milton Lake, Middlesex Reservoir, Robinsons Branch of Rahway Rv	GGEW0021	5
Rahway Rv	GGEW0023	3
Pumpkin Patch Branch	GGEW0028	8
Robinsons Branch	GGEW0029	7
Robinsons Branch	GGEW0030	6
Robinsons Branch, Pumpkin Patch Branch	GGEW0031	5
Robinsons Branch	GGEW0032	4
Milton Lake, Middlesex Reservoir, Robinsons Branch of Rahway Rv	GGEW0033	3
Rahway Rv	GGEW0034	2
Rahway Rv	GGEW0035	1
Pumpkin Patch Branch	GGEW0050	12
Ash Bk Swamp	SUPPX001	ASH-1
Branch 22	SUPPX006	BR22-1
Robinsons Branch	SUPPX017	RB-1
Robinsons Branch	SUPPX018	RB-2
Robinsons Branch	SUPPX019	RB-3
Winding Bk	SUPPX023	W-1
Rahway Rv	GGEW0014p	5
Robinsons Branch	GGEW0026p	10
Pumpkin Patch Branch	GGEW0027p	9
Rahway Rv	GGEW0027p	9
Pumpkin Patch Branch	GGEW0047p	15

## **§ 166-16 Establishing the Local Design Flood Elevation (LDFE).**

The Local Design Flood Elevation (LDFE) is established in the flood hazard areas determined in **§ 166-15**, above, using the best available flood hazard data sources, and the Flood Hazard Area Control Act minimum Statewide elevation requirements for lowest floors in A, Coastal A, and V zones, ASCE 24 requirements for critical facilities as specified by the building code, plus additional freeboard as specified by this ordinance.

At a minimum, the Local Design Flood Elevation shall be as follows:

- 1) For a delineated watercourse, the elevation associated with the Best Available Flood Hazard Data Area determined in **§ 166-15**, above plus one foot or, as described by N.J.A.C. 7:13, of freeboard; or
- 2) For any undelineated watercourse (where mapping or studies described in **§ 166-15 (1)** and **§ 166-15 (2)** above are not available) that has a contributory drainage area of 50 acres or more, the applicants must provide one of the following to determine the Local Design Flood Elevation:
  - a. A copy of an unexpired NJDEP Flood Hazard Area Verification plus one foot of freeboard and any additional freeboard as required by ASCE 24; or
  - b. A determination of the Flood Hazard Area Design Flood Elevation using Method 5 or Method 6 (as described in N.J.A.C. 7:13) plus one foot of freeboard and any additional freeboard as required by ASCE 24. Any determination using these methods must be signed and sealed by a Professional Engineer Licensed in the State of New Jersey and submitted according to **§ 166-41** and **§ 166-42**.
- 3) AO Zones – For Zone AO areas on the municipality’s FIRM (or on preliminary flood elevation guidance from FEMA), the Local Design Flood Elevation is determined from the FIRM panel as the highest adjacent grade plus the depth number specified plus one foot of freeboard. If no depth number is specified, the Local Design Flood Elevation is three (3) feet above the highest adjacent grade.
- 4) Class IV Critical Facilities - For any proposed development of new and substantially improved Flood Design Class IV Critical Facilities, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year) flood elevation or the Flood Hazard Area Design Flood Elevation with an additional 2 feet of freeboard in accordance with ASCE 24.
- 5) Class III Critical Facilities - For proposed development of new and substantially improved Flood Design Class III Critical Facilities in coastal high hazard areas, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year) flood elevation or the Flood Hazard Area Design Flood Elevation with an additional 1 foot of freeboard in accordance with ASCE 24.

## **ARTICLE IV DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR**

**§ 166-17 Floodplain Administrator Designation.** The **Construction Code Official** is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

**§ 166-18 General.** The Floodplain Administrator is authorized and directed to administer the provisions of these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to **ARTICLE VIII** of these regulations.

**§ 166-19 Coordination.** The Floodplain Administrator shall coordinate with the Construction Official to administer and enforce the flood provisions of the Uniform Construction Code and this ordinance.

**§ 166-20 Duties.** The duties of the Floodplain Administrator shall include but are not limited to:

- (1) Review all permit applications to determine whether proposed development is located in flood hazard areas established in **ARTICLE III** of these regulations.
- (2) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (3) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- (4) Determine whether additional flood hazard data shall be obtained or developed.
- (5) Review required certifications and documentation specified by these regulations and the building code to determine that such certifications and documentations are complete.
- (6) Establish, in coordination with the Construction Official, written procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to **§ 166-32** of these regulations.
- (7) Coordinate with Emergency Management, the Construction Official, the Building Department, Engineering Department and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- (8) Review requests submitted to the Construction Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the Uniform Construction code to determine whether such requests require

consideration as a variance pursuant to **ARTICLE VIII** of these regulations.

- (9) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
- (10) Require applicants who propose alteration of a watercourse to notify adjacent jurisdictions and the NJDEP Bureau of Flood Engineering, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- (11) Inspect development in accordance with **ARTICLE VII** of these regulations and inspect flood hazard areas to determine if development is undertaken without issuance of permits.
- (12) Prepare comments and recommendations for consideration when applicants seek variances in accordance with **ARTICLE VIII** of these regulations.
- (13) Cite violations in accordance with **ARTICLE IX** of these regulations.
- (14) Notify the Federal Emergency Management Agency when the corporate boundaries of the **Township of Clark** have been modified.
- (15) Permit Ordinary Maintenance and Minor Work in the regulated areas discussed in **§ 166-15**.

**§ 166-21 Use of changed technical data.** The Floodplain Administrator and the applicant shall not use changed flood hazard area boundaries or base flood elevations for proposed buildings or developments unless the Floodplain Administrator or applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency. A revision of the effective FIRM does not remove the related feature(s) on a flood hazard area delineation that has been promulgated by the NJDEP. A separate application must be made to the State pursuant to N.J.A.C. 7:13 for revision of a flood hazard design flood elevation, flood hazard area limit, floodway limit, and/or other related feature.

**§ 166-22 Other permits.** It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by Federal or State agencies having jurisdiction over such development, including section 404 of the Clean Water Act. In the event of conflicting permit requirements, the Floodplain Administrator must ensure that the most restrictive floodplain management standards are reflected in permit approvals.

**§ 166-23 Determination of Local Design Flood Elevations.** If design flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:

- (1) Obtain, review, and reasonably utilize data available from a Federal, State, or other source, or
- (2) Determine the design flood elevation in accordance with accepted hydrologic and

hydraulic engineering techniques. Such analyses shall be performed and sealed by a licensed professional engineer. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

It shall be the responsibility of the Floodplain Administrator to verify that the applicant's proposed Best Available Flood Hazard Data Area and the Local Design Flood Elevation in any development permit accurately applies the best available flood hazard data and methodologies for determining flood hazard areas and design elevations described in § 166-15 and § 166-16 respectively. This information shall be provided to the **Construction Official** and documented according to § 166-33.

**§ 166-24 Requirement to submit new technical data.** Base Flood Elevations may increase or decrease resulting from natural changes (e.g. erosion, accretion, channel migration, subsidence, uplift) or man-made physical changes (e.g. dredging, filling, excavation) affecting flooding conditions. As soon as practicable, but not later than six months after the date of a man-made change or when information about a natural change becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

**§ 166-25 Activities in riverine flood hazard areas.** In riverine flood hazard areas where design flood elevations are specified but floodways have not been designated, the Floodplain Administrator shall not permit any new construction, substantial improvement or other development, including the placement of fill, unless the applicant submits an engineering analysis prepared by a licensed professional engineer that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachment, will not increase the design flood elevation more than 0.2 feet at any point within the community.

**§ 166-26 Floodway encroachment.** Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing-activity, the Floodplain Administrator shall require submission of a certification prepared by a licensed professional engineer, along with supporting technical data, that demonstrates that such development will not cause any increase in the base flood level.

**§ 166-27 Floodway revisions.** A floodway encroachment that increases the level of the base flood is authorized if the applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) and has received the approval of FEMA.

**§ 166-28 Watercourse alteration.** Prior to issuing a permit for any alteration or relocation of any watercourse, the Floodplain Administrator shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as the NJDEP Bureau of Flood Engineering and the Division of Land Resource Protection. A copy of the notification shall be maintained in the permit records and submitted to FEMA.

**§ 166-29 Engineering analysis.** The Floodplain Administrator shall require submission of an engineering analysis prepared by a licensed professional engineer, demonstrating that the

flood-carrying capacity of the altered or relocated portion of the watercourse will be maintained, neither increased nor decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

**§ 166-30 Alterations in coastal areas.** The excavation or alteration of sand dunes is governed by the New Jersey Coastal Zone Management (CZM) rules, N.J.A.C. 7:7. Prior to issuing a flood damage prevention permit for any alteration of sand dunes in coastal high hazard areas and Coastal A Zones, the Floodplain Administrator shall require that a New Jersey CZM permit be obtained and included in the flood damage prevention permit application. The applicant shall also provide documentation of any engineering analysis, prepared by a licensed professional engineer, that demonstrates that the proposed alteration will not increase the potential for flood damage.

**§ 166-31 Development in riparian zones** All development in Riparian Zones as described in N.J.A.C. 7:13 is prohibited by this ordinance unless the applicant has received an individual or general permit or has complied with the requirements of a permit by rule or permit by certification from NJDEP Division of Land Resource Protection prior to application for a floodplain development permit and the project is compliant with all other Floodplain Development provisions of this ordinance. The width of the riparian zone can range between 50 and 300 feet and is determined by the attributes of the waterbody and designated in the New Jersey Surface Water Quality Standards N.J.A.C. 7:9B. The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank. Applicants can request a verification of the riparian zone limits or a permit applicability determination to determine State permit requirements under N.J.A.C. 7:13 from the NJDEP Division of Land Resource Protection.

**§ 166-32 Substantial improvement and substantial damage determinations.** When buildings and structures are damaged due to any cause including but not limited to man-made, structural, electrical, mechanical, or natural hazard events, or are determined to be unsafe as described in N.J.A.C. 5:23; and for applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, ordinary maintenance and minor work, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the **Construction Official**, shall:

- (1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Determine and include the costs of all ordinary maintenance and minor work, as discussed in **§ 166-8**, performed in the floodplain regulated by this ordinance in addition to the costs of those improvements regulated by the Construction Official in substantial damage and substantial improvement calculations.
- (3) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- (4) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

- (5) Notify the applicant in writing when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage. The Floodplain Administrator shall also provide all letters documenting substantial damage and compliance with flood resistant construction requirements of the building code to the NJDEP Bureau of Flood Engineering.

**§ 166-33 Department records.** In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the Uniform Construction Code, including Flood Insurance Studies, Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; NJDEP delineations, records of issuance of permits and denial of permits; records of ordinary maintenance and minor work, determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the Uniform Construction Code and these regulations including as-built Elevation Certificates; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the Uniform Construction Code. The Floodplain Administrator shall also record the required elevation, determination method, and base flood elevation source used to determine the Local Design Flood Elevation in the floodplain development permit.

**§ 166-34 Liability.** The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

## **ARTICLE V PERMITS**

**§ 166-35 Permits Required.** Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

**§ 166-36 Application for permit.** The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. Such application shall:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in **ARTICLE VI** of these regulations, grading and filling plans and other information deemed appropriate by the Floodplain Administrator.
- (5) State the valuation of the proposed work, including the valuation of ordinary maintenance and minor work.
- (6) Be signed by the applicant or the applicant's authorized agent.

**§ 166-37 Validity of permit.** The issuance of a permit under these regulations or the Uniform Construction Code shall not be construed to be a permit for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations or other ordinances of this jurisdiction.

**§ 166-38 Expiration.** A permit shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.

**§ 166-39 Suspension or revocation.** The Floodplain Administrator is authorized to suspend or revoke a permit issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

## **ARTICLE VI SITE PLANS AND CONSTRUCTION DOCUMENTS**

**§ 166-40 Information for development in flood hazard areas.** The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations when necessary for review of the proposed development. For buildings that are located in more than one flood hazard area, the elevation and provisions associated with the most restrictive flood hazard area shall apply.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with **§ 166-41**.

- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with **§ 166-41(3)** of these regulations.
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A zones, new buildings shall be located landward of the reach of mean high tide.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose. The applicant shall provide an engineering certification confirming that the proposal meets the flood storage displacement limitations of N.J.A.C. 7:13.
- (7) Extent of any proposed alteration of sand dunes.
- (8) Existing and proposed alignment of any proposed alteration of a watercourse.
- (9) Floodproofing certifications, V Zone and Breakaway Wall Certifications, Operations and Maintenance Plans, Warning and Evacuation Plans and other documentation required pursuant to FEMA publications.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a registered design professional when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance.

**§ 166-41 Information in flood hazard areas without base flood elevations (approximate Zone A).** Where flood hazard areas are delineated on the effective or preliminary FIRM and base flood elevation data have not been provided, the applicant shall consult with the Floodplain Administrator to determine whether to:

- (1) Use the Approximation Method (Method 5) described in N.J.A.C. 7:13 in conjunction with Appendix 1 of the FHACA to determine the required flood elevation.
- (2) Obtain, review, and reasonably utilize data available from a Federal, State or other source when those data are deemed acceptable to the Floodplain Administrator to reasonably reflect flooding conditions.
- (3) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques according to Method 6 as described in N.J.A.C. 7:13. Such analyses shall be performed and sealed by a licensed professional engineer.

Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator prior to floodplain development permit issuance. The accuracy of data submitted for such determination shall be the responsibility of the applicant. Where the data are to be used to support a Letter of Map Change (LOMC) from FEMA, the applicant shall be responsible for satisfying the submittal requirements and paying the processing

fees.

**§ 166-42 Analyses and certifications by a Licensed Professional Engineer.** As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a licensed professional engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in **§ 166-43** of these regulations and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the FIS or FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments will not increase the base flood elevation more than 0.2 feet at any point within the jurisdiction. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained, neither increasing nor decreasing the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in **§ 166-43** of these regulations. The applicant shall notify the chief executive officer of all affected adjacent jurisdictions, the NJDEP's Bureau of Flood Engineering and the Division of Land Resource Protection; and shall provide documentation of such notifications.
- (4) For activities that propose to alter sand dunes in coastal high hazard areas (Zone V) and Coastal A Zones, an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage and documentation of the issuance of a New Jersey Coastal Zone Management permit under N.J.A.C. 7:7.
- (5) For analyses performed using Methods 5 and 6 (as described in N.J.A.C. 7:13) in flood hazard zones without base flood elevations (approximate A zones).

**§ 166-43 Submission of additional data.** When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change (LOMC) from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

## ARTICLE VII

## INSPECTIONS

**§ 166-44 General.** Development for which a permit is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

**§ 166-45 Inspections of development.** The Floodplain Administrator shall inspect all development in flood hazard areas authorized by issuance of permits under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine if development is undertaken without issuance of a permit.

**§ 166-46 Buildings and structures.** The Construction Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

- (1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in **§ 166-81** shall be submitted to the Construction Official on an Elevation Certificate.
- (2) **Lowest horizontal structural member.** In V zones and Coastal A zones, upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in **§ 166-81** shall be submitted to the Construction Official on an Elevation Certificate.
- (3) **Installation of attendant utilities** (electrical, heating, ventilating, air-conditioning, and other service equipment) and sanitary facilities elevated as discussed in **§ 166-81**.
- (4) **Final inspection.** Prior to the final inspection, certification of the elevation required in **§ 166-81** shall be submitted to the Construction Official on an Elevation Certificate.

**§ 166-47 Manufactured homes.** The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted on an Elevation Certificate to the Floodplain Administrator prior to the final inspection.

## ARTICLE VIII VARIANCES

**§ 166-48 General.** The **Zoning Board of Adjustment** shall hear and decide requests for variances. The **Zoning Board of Adjustment** shall base its determination on technical justifications submitted by applicants, the considerations for issuance in **§ 166-52**, the conditions of issuance set forth in **§ 166-53**, and the comments and recommendations of the Floodplain Administrator and, as applicable, the Construction Official. The **Zoning Board of Adjustment** has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations.

**§ 166-49 Historic structures.** A variance to the substantial improvement requirements of

this ordinance is authorized provided that the repair or rehabilitation of a historic structure is completed according to N.J.A.C. 5:23-6.33, Section 1612 of the International Building Code and R322 of the International Residential Code, the repair or rehabilitation will not preclude the structure's continued designation as a historic structure, the structure meets the definition of the historic structure as described by this ordinance, and the variance is the minimum necessary to preserve the historic character and design of the structure.

**§ 166-50 Functionally dependent uses.** A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

**§ 166-51 Restrictions in floodways.** A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analysis and certification required in **§ 166-42(1)** of these regulations.

**§ 166-52 Considerations.** In reviewing requests for variances, all technical evaluations, all relevant factors, all other portions of these regulations, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, where applicable, expected at the site.
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

**§ 166-53 Conditions for issuance.** Variances shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Notification to the applicant in writing over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the base flood level increases risks to life and property.

## **ARTICLE IX VIOLATIONS**

**§ 166-54 Violations.** Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of elevation of the lowest floor, the lowest horizontal structural member if in a V or Coastal A Zone, other required design certifications, or other evidence of compliance required by the building code is presumed to be a violation until such time as that documentation is provided.

**§ 166-55 Authority.** The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the Uniform Construction Code, but is regulated by these regulations and that is determined to be a violation.

**§ 166-56 Unlawful continuance.** Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by N.J.S.A. 40:49-5 as appropriate.

**§ 166-57 Review Period to Correct Violations.** A 30-day period shall be given to the property owner as an opportunity to cure or abate the condition. The property owner shall also be afforded an opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250.00 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

## **ARTICLE X DEFINITIONS**

**§ 166-58 General.** The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Other terms are defined in the Uniform Construction Code N.J.A.C. 5:23 and terms are defined where used in the International Residential Code and International Building Code (rather than in the definitions section). Where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies.

### **§ 166-59 Definitions**

**30 DAY PERIOD** – The period of time prescribed by N.J.S.A. 40:49-5 in which a property owner is afforded the opportunity to correct zoning and solid waste disposal after a notice of violation pertaining to this ordinance has been issued.

**100 YEAR FLOOD ELEVATION** – Elevation of flooding having a 1% annual chance of being equaled or exceeded in a given year which is also referred to as the Base Flood Elevation.

**500 YEAR FLOOD ELEVATION** – Elevation of flooding having a 0.2% annual chance of being equaled or exceeded in a given year.

**A ZONES** – Areas of 'Special Flood Hazard in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the Base Flood Elevation (BFE) in any given year shown on the Flood Insurance Rate Map (FIRM) zones A, AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, and AR/AO. When used in reference to the development of a structure in this ordinance, A Zones are not inclusive of Coastal A Zones because of the higher building code requirements for Coastal A Zones.

**AH ZONES**– Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

**AO ZONES** – Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

**ACCESSORY STRUCTURE** – Accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings.

**AGRICULTURAL STRUCTURE** - A structure used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Communities must require that new construction or substantial improvements of agricultural structures be elevated or floodproofed to or above the Base Flood Elevation (BFE) as any other nonresidential building. Under some circumstances it may be appropriate to wet-floodproof certain types of agricultural structures when located in wide, expansive floodplains through issuance of a variance. This should only be done

for structures used for temporary storage of equipment or crops or temporary shelter for livestock and only in circumstances where it can be demonstrated that agricultural structures can be designed in such a manner that results in minimal damage to the structure and its contents and will create no additional threats to public safety. New construction or substantial improvement of livestock confinement buildings, poultry houses, dairy operations, similar livestock operations and any structure that represents more than a minimal investment must meet the elevation or dry-floodproofing requirements of 44 CFR 60.3(c)(3).

**AREA OF SHALLOW FLOODING** – A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. **AREA OF SPECIAL FLOOD HAZARD** – see SPECIAL FLOOD HAZARD AREA

**ALTERATION OF A WATERCOURSE** – A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

**ASCE 7** – The standard for the Minimum Design Loads for Buildings and Other Structures, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. which includes but is not limited to methodology and equations necessary for determining structural and flood-related design requirements and determining the design requirements for structures that may experience a combination of loads including those from natural hazards. Flood related equations include those for determining erosion, scour, lateral, vertical, hydrostatic, hydrodynamic, buoyancy, breaking wave, and debris impact.

**ASCE 24** – The standard for Flood Resistant Design and Construction, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. References to ASCE 24 shall mean ASCE 24-14 or the most recent version of ASCE 24 adopted in the UCC Code [N.J.A.C. 5:23].

**BASE FLOOD ELEVATION (BFE)** – The water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year, as shown on a published Flood Insurance Study (FIS), or preliminary flood elevation guidance from FEMA. May also be referred to as the “100-year flood elevation”.

**BASEMENT** – Any area of the building having its floor subgrade (below ground level) on all sides.

**BEST AVAILABLE FLOOD HAZARD DATA** - The most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BEST AVAILABLE FLOOD HAZARD DATA AREA-** The areal mapped extent associated with the most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BEST AVAILABLE FLOOD HAZARD DATA ELEVATION** - The most recent available preliminary flood elevation guidance FEMA has provided. The Best Available Flood Hazard Data

may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BREAKAWAY WALLS** – Any type of wall subject to flooding that is not required to provide structural support to a building or other structure and that is designed and constructed such that, below the Local Design Flood Elevation, it will collapse under specific lateral loads such that (1) it allows the free passage of floodwaters, and (2) it does not damage the structure or supporting foundation system. Certification in the V Zone Certificate of the design, plans, and specifications by a licensed design professional that these walls are in accordance with accepted standards of practice is required as part of the permit application for new and substantially improved V Zone and Coastal A Zone structures. A completed certification must be submitted at permit application.

**BUILDING** – Per the FHACA, “Building” means a structure enclosed with exterior walls or fire walls, erected and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

**CONDITIONAL LETTER OF MAP REVISION** - A Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

**CONDITIONAL LETTER OF MAP REVISION - FILL** -- A Conditional Letter of Map Revision - Fill (CLOMR-F) is FEMA's comment on a proposed project involving the placement of fill outside of the regulatory floodway that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

**CRITICAL BUILDING** – Per the FHACA, “Critical Building” means that:

- a. It is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or
- b. It serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day care center, assisted living facility, or nursing home.

**DEVELOPMENT** – Any manmade change to improved or unimproved real estate, including but

not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations and other land-disturbing activities.

**DRY FLOODPROOFING** – A combination of measures that results in a non-residential structure, including the attendant utilities and equipment as described in the latest version of ASCE 24, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

**ELEVATED BUILDING** – A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundations walls are not an acceptable means of elevating buildings in V and VE Zones.

**ELEVATION CERTIFICATE** – An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support an application for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

**ENCROACHMENT** – The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

**FEMA PUBLICATIONS** – Any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the National Flood Insurance Program. Publications shall include but are not limited to technical bulletins, desk references, and American Society of Civil Engineers Standards documents including ASCE 24.

## **FLOOD OR FLOODING**

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
  3. Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in (a) (2) of this definition and are akin to a river or liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

**FLOOD HAZARD AREA DESIGN FLOOD ELEVATION** – Per the FHACA, the peak water surface elevation that will occur in a water during the flood hazard area design flood. This elevation is determined via available flood mapping adopted by the State, flood mapping

published by FEMA (including effective flood mapping dated on or after January 31, 1980, or any more recent advisory, preliminary, or pending flood mapping; whichever results in higher flood elevations, wider floodway limits, greater flow rates, or indicates a change from an A zone to a V zone or coastal A zone), approximation, or calculation pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3.1 – 3.6 and is typically higher than FEMA's base flood elevation. A water that has a drainage area measuring less than 50 acres does not possess, and is not assigned, a flood hazard area design flood elevation.

**FLOOD INSURANCE RATE MAP (FIRM)** – The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** – The official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

**FLOODPLAIN OR FLOOD PRONE AREA** – Any land area susceptible to being inundated by water from any source. See "Flood or flooding."

**FLOODPLAIN MANAGEMENT REGULATIONS** – Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOODPROOFING** – Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

**FLOODPROOFING CERTIFICATE** – Certification by a licensed design professional that the design and methods of construction for floodproofing a non-residential structure are in accordance with accepted standards of practice to a proposed height above the structure's lowest adjacent grade that meets or exceeds the Local Design Flood Elevation. A completed floodproofing certificate is required at permit application.

**FLOODWAY** – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

**FREEBOARD** – A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** – A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

**HABITABLE BUILDING**– Pursuant to the FHACA Rules (N.J.A.C. 7:13), means a building that

is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

**HARDSHIP** – As related to **ARTICLE VIII** of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The **Zoning Board of Adjustment** requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

**HISTORIC STRUCTURE** – Any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved State program as determined by the Secretary of the Interior; or
  2. Directly by the Secretary of the Interior in States without approved programs.

**LAWFULLY EXISTING** – Per the FHACA, means an existing fill, structure and/or use, which meets all Federal, State, and local laws, and which is not in violation of the FHACA because it was established:

- a. Prior to January 31, 1980; or
- b. On or after January 31, 1980, in accordance with the requirements of the FHACA as it existed at the time the fill, structure and/or use was established.

**Note: Substantially damaged properties and substantially improved properties that have not been elevated are not considered "lawfully existing" for the purposes of the NFIP. This definition is included in this ordinance to clarify the applicability of any more stringent statewide floodplain management standards required under the FHACA.**

**LETTER OF MAP AMENDMENT** - A Letter of Map Amendment (LOMA) is an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map that is requested through the Letter of Map Change (LOMC) process. A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. Because a LOMA officially amends the effective NFIP map, it is a public record that the community must maintain. Any LOMA should be noted on the community's master flood map and filed by panel number in an accessible location.

**LETTER OF MAP CHANGE** – The Letter of Map Change (LOMC) process is a service provided by FEMA for a fee that allows the public to request a change in flood zone designation in an Area of Special Flood Hazard on an Flood Insurance Rate Map (FIRM). Conditional Letters of Map Revision, Conditional Letters of Map Revision – Fill, Letters of Map Revision, Letters of Map Revision-Fill, and Letters of Map Amendment are requested through the Letter of Map Change (LOMC) process.

**LETTER OF MAP REVISION** - A Letter of Map Revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM). Letter of Map Revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM or FIS report. Because a LOMR officially revises the effective NFIP map, it is a public record that the community must maintain. Any LOMR should be noted on the community's master flood map and filed by panel number in an accessible location.

**LETTER OF MAP REVISION – FILL** -- A Letter of Map Revision Based on Fill (LOMR-F) is FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway may be initiated through the Letter of Map Change (LOMC) Process. Because a LOMR-F officially revises the effective Flood Insurance Rate Map (FIRM) map, it is a public record that the community must maintain. Any LOMR-F should be noted on the community's master flood map and filed by panel number in an accessible location.

**LICENSED DESIGN PROFESSIONAL** – Licensed design professional shall refer to either a New Jersey Licensed Professional Engineer, licensed by the New Jersey State Board of Professional Engineers and Land Surveyors or a New Jersey Licensed Architect, licensed by the New Jersey State Board of Architects.

**LICENSED PROFESSIONAL ENGINEER** - A licensed professional engineer shall refer to individuals licensed by the New Jersey State Board of Professional Engineers and Land Surveyors.

**LOCAL DESIGN FLOOD ELEVATION (LDFE)** – The elevation reflective of the most recent available preliminary flood elevation guidance FEMA has provided as depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM which is also inclusive of freeboard specified by the New Jersey Flood Hazard Area Control Act and Uniform Construction Codes and any additional freeboard specified in a community's ordinance. In no circumstances shall a project's LDFE be lower than a permit-specified Flood Hazard Area Design

Flood Elevation or a valid NJDEP Flood Hazard Area Verification Letter plus the freeboard as required in ASCE 24 and the effective FEMA Base Flood Elevation.

**LOWEST ADJACENT GRADE** – The lowest point of ground, patio, or sidewalk slab immediately next a structure, except in AO Zones where it is the natural grade elevation.

**LOWEST FLOOR** – In A Zones, the lowest floor is the top surface of the lowest floor of the lowest enclosed area (including basement). In V Zones and coastal A Zones, the bottom of the lowest horizontal structural member of a building is the lowest floor. An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable non-elevation design requirements of these regulations.

**MANUFACTURED HOME** – A structure that is transportable in one or more sections, eight (8) feet or more in width and greater than four hundred (400) square feet, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Manufactured Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

**MANUFACTURED HOME PARK OR SUBDIVISION** – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE** – The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value shall be determined by one of the following methods (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) established by a qualified independent appraiser.

**NEW CONSTRUCTION** – Structures for which the start of construction commenced on or after the effective date of the first floodplain regulation adopted by a community; includes any subsequent improvements to such structures. New construction includes work determined to be a substantial improvement.

**NON-RESIDENTIAL** – Pursuant to ASCE 24, any building or structure or portion thereof that is not classified as residential.

**ORDINARY MAINTENANCE AND MINOR WORK** – This term refers to types of work excluded from construction permitting under N.J.A.C. 5:23 in the March 5, 2018 New Jersey Register. Some of these types of work must be considered in determinations of substantial improvement and substantial damage in regulated floodplains under 44 CFR 59.1. These types of work include but are not limited to replacements of roofing, siding, interior finishes, kitchen cabinets, plumbing fixtures and piping, HVAC and air conditioning equipment, exhaust fans, built in appliances, electrical wiring, etc. Improvements necessary to correct existing violations of State or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions and improvements of historic structures as discussed in 44 CFR 59.1 shall not

be included in the determination of ordinary maintenance and minor work.

**RECREATIONAL VEHICLE** – A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

**RESIDENTIAL** – Pursuant to the ASCE 24:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Structures including but not limited to one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation time-share properties; and
- c. institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.

**SOLID WASTE DISPOSAL** – "Solid Waste Disposal" shall mean the storage, treatment, utilization, processing or final disposition of solid waste as described in N.J.A.C. 7:26-1.6 or the storage of unsecured materials as described in N.J.A.C. 7:13-2.3 for a period of greater than 6 months as specified in N.J.A.C. 7:26 which have been discharged, deposited, injected, dumped, spilled, leaked, or placed into any land or water such that such solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**SPECIAL FLOOD HAZARD AREA** – The greater of the following: (1) Land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, shown on the FIRM as Zone V, VE, V1-3-, A, AO, A1-30, AE, A99, or AH; (2) Land and the space above that land, which lies below the peak water surface elevation of the flood hazard area design flood for a particular water, as determined using the methods set forth in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13; (3) Riparian Buffers as determined in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13. Also referred to as the AREA OF SPECIAL FLOOD HAZARD.

**START OF CONSTRUCTION** – The **Start of Construction** is as follows:

- a. **For other than new construction or substantial improvements, under the Coastal Barrier Resources Act (CBRA),** this is the date the building permit was issued, provided that the actual start of construction, repair, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation. For a substantial improvement, actual start of construction means the first

alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- b. For the purposes of determining whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change, the Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. Such development must also be permitted and must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

For determining if new construction and substantial improvements within the Coastal Barrier Resources System (CBRS) can obtain flood insurance, a different definition applies.

**STRUCTURE** – A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** – Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**UTILITY AND MISCELLANEOUS GROUP U BUILDINGS AND STRUCTURES** – Buildings and structures of an accessory character and miscellaneous structures not classified in any special occupancy, as described in ASCE 24.

**VARIANCE** – A grant of relief from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

**VIOLATION** – A development that is not fully compliant with these regulations or the flood provisions of the building code. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** – the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

**WATERCOURSE.** A river, creek, stream, channel, or other topographic feature in, on, through, or over which water flows at least periodically.

**WET FLOODPROOFING** – Floodproofing method that relies on the use of flood damage resistant materials and construction techniques in areas of a structure that are below the Local Design Flood Elevation by intentionally allowing them to flood. The application of wet floodproofing as a flood protection technique under the National Flood Insurance Program (NFIP) is limited to enclosures below elevated residential and non-residential structures and to accessory and agricultural structures that have been issued variances by the community.

## **ARTICLE XI SUBDIVISIONS AND OTHER DEVELOPMENTS**

**§ 166-60 General.** Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electric and water systems are located and constructed to minimize or eliminate flood damage.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from structures.

**§ 166-61 Subdivision requirements.** Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, and base flood elevations, as appropriate, shall be delineated on tentative subdivision plats.
- (2) Residential building lots shall be provided with adequate buildable area outside the

floodway.

- (3) The design criteria for utilities and facilities set forth in these regulations and appropriate codes shall be met.

## **ARTICLE XII SITE IMPROVEMENT**

**§ 166-62 Encroachment in floodways.** Development, land disturbing activity, and encroachments in floodways shall not be authorized unless it has been demonstrated through hydrologic and hydraulic analyses required in accordance with **§ 166-42(1)** of these regulations, that the proposed encroachment will not result in any increase in the base flood level during occurrence of the base flood discharge. If **§ 166-42(1)** is satisfied, proposed elevation, addition, or reconstruction of a lawfully existing structure within a floodway shall also be in accordance with **§ 166-81** of this ordinance and the floodway requirements of N.J.A.C. 7:13.

**§ 166-63 Prohibited in floodways.** The following are prohibited activities:

- (1) The storage of unsecured materials is prohibited within a floodway pursuant to N.J.A.C. 7:13.
- (2) Fill and new structures are prohibited in floodways per N.J.A.C. 7:13.

**§ 166-64 Sewer facilities.** All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with the New Jersey septic system regulations contained in N.J.A.C. 14A and N.J.A.C. 7:9A, the UCC Plumbing Subcode (N.J.A.C. 5:23) and Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwater into the facilities and discharge from the facilities into flood waters, or impairment of the facilities and systems.

**§ 166-65 Water facilities.** All new and replacement water facilities shall be designed in accordance with the New Jersey Safe Drinking Water Act (N.J.A.C. 7:10) and the provisions of Chapter 7 ASCE 24, to minimize or eliminate infiltration of floodwater into the systems.

**§ 166-66 Storm drainage.** Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.

**§ 166-67 Streets and sidewalks.** Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

**§ 166-68 Limitations on placement of fill.** Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwater, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the UCC (N.J.A.C. 5:23). Proposed fill and encroachments in flood hazard areas shall comply with the flood storage displacement limitations of N.J.A.C. 7:13.

**§ 166-69 Hazardous Materials.** The placement or storage of any containers holding hazardous substances in a flood hazard area is prohibited unless the provisions of N.J.A.C. 7:13 which cover the placement of hazardous substances and solid waste is met.

## **ARTICLE XIII MANUFACTURED HOMES**

**§ 166-70 General.** All manufactured homes installed in flood hazard areas shall be installed pursuant to the Nationally Preemptive Manufactured Home Construction and Safety Standards Program (24 CFR 3280).

**§ 166-71 Elevation.** All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the frame is elevated to or above the elevation specified in **§ 166-81**.

**§ 166-72 Foundations.** All new, relocated, and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on foundations as specified by the manufacturer only if the manufacturer's installation instructions specify that the home has been designed for flood-resistant considerations and provides the conditions of applicability for velocities, depths, or wave action as required by 24 CFR Part 3285-302. The Floodplain Administrator is authorized to determine whether the design meets or exceeds the performance necessary based upon the proposed site location conditions as a precondition of issuing a flood damage prevention permit. If the Floodplain Administrator determines that the home's performance standards will not withstand the flood loads in the proposed location, the applicant must propose a design certified by a New Jersey licensed design professional and in accordance with 24 CFR 3285.301 (c) and (d) which conforms with ASCE 24, the accepted standard of engineering practice for flood resistant design and construction.

**§ 166-73 Anchoring.** All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

**§ 166-74 Enclosures.** Fully enclosed areas below elevated manufactured homes shall comply with the requirements of **§ 166-81**.

**§ 166-75 Protection of mechanical equipment and outside appliances.** Mechanical equipment and outside appliances shall be elevated to or above the elevation of the bottom of the frame required in **§ 166-81** of these regulations.

**Exception.** Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by **§ 166-81**, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

## **ARTICLE XIV RECREATIONAL VEHICLES**

**§ 166-76 Placement prohibited.** The placement of recreational vehicles shall not be authorized in coastal high hazard areas and in floodways.

**§ 166-77 Temporary placement.** Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use and shall be placed on a site for less than 180 consecutive days.

**§ 166-78 Permanent placement.** Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of **§ 166-81** for habitable buildings and **§ 166-72**.

## **ARTICLE XV TANKS**

**§ 166-79 Tanks.** Underground and above-ground tanks shall be designed, constructed, installed, and anchored in accordance with ASCE 24 and N.J.A.C. 7:13.

## **ARTICLE XVI OTHER DEVELOPMENT AND BUILDING WORK**

**§ 166-80 General requirements for other development and building work.** All development and building work, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the Uniform Construction Code (N.J.A.C. 5:23), shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of **§ 166-42(1)** of this ordinance when located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic and hydrodynamic loads, including the effects of buoyancy, during the conditions of flooding up to the Local Design Flood Elevation determined according to **§ 166-16**;
- (4) Be constructed of flood damage-resistant materials as described in ASCE 24 Chapter 5;
- (5) Have mechanical, plumbing, and electrical systems above the Local Design Flood Elevation determined according to **§ 166-16** or meet the requirements of ASCE 24 Chapter 7 which requires that attendant utilities are located above the Local Design Flood Elevation unless the attendant utilities and equipment are:
  - a. Specifically allowed below the Local Design Flood Elevation; and
  - b. Designed, constructed, and installed to prevent floodwaters, including any backflow through the system from entering or accumulating within the components.

- (6) Not exceed the flood storage displacement limitations in fluvial flood hazard areas in accordance with N.J.A.C. 7:13; and
- (7) Not exceed the impacts to frequency or depth of offsite flooding as required by N.J.A.C. 7:13 in floodways.

**§ 166-81 Requirements for Habitable Buildings and Structures.**

(1) Construction and Elevation in A Zones not including Coastal A Zones.

- a. No portion of a building is located within a V Zone.
- b. No portion of a building is located within a Coastal A Zone, unless a licensed design professional certifies that the building's foundation is designed in accordance with ASCE 24, Chapter 4.
- c. All new construction and substantial improvement of any habitable building (as defined in **ARTICLE X** located in flood hazard areas shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in **§ 166-16**, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate.
- d. All new construction and substantial improvements of non-residential structures shall:
  - i. Have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in **§ 166-16**, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate; or
  - ii. Together with the attendant utility and sanitary facilities, be designed so that below the Local Design Flood Elevation, the structure:
    - 1. Meets the requirements of ASCE 24 Chapters 2 and 7; and
    - 2. Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a Floodproofing Certificate, and is confirmed by an Elevation Certificate.
- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
  - i. For habitable structures, be situated at or above the adjoining exterior

grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited;

- ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of **§ 166-81(1)(d)ii** are met;
- iii. Be constructed to meet the requirements of ASCE 24 Chapter 2;
- iv. Have openings documented on an Elevation Certificate; and
- v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C.7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
  1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
  2. The depth of flooding that the enclosure would experience to the Flood Hazard Area Design Flood Elevation;
  3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

**§ 166-82 Garages and accessory storage structures.** Garages and accessory storage structures shall be designed and constructed in accordance with the Uniform Construction Code.

**§ 166-83 Fences.** Fences in floodways that have the potential to block the passage of floodwater, such as stockade fences and wire mesh fences, shall meet the requirements of **§ 166-42(1)** of these regulations. Pursuant to N.J.A.C. 7:13, any fence located in a floodway shall have sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement. Foundations for fences greater than 6 feet in height must conform with the Uniform Construction Code. Fences for pool enclosures having openings not in conformance with this section but in conformance with the Uniform Construction Code to limit climbing require a variance as described in **ARTICLE VIII** of this ordinance.

**§ 166-84 Retaining walls, sidewalks, and driveways.** Retaining walls, sidewalks and driveways that involve placement of fill in floodways shall meet the requirements of Section 105.3(1) of these regulations and N.J.A.C. 7:13.

**§ 166-85 Swimming pools.** Swimming pools shall be designed and constructed in accordance with the Uniform Construction Code. Above-ground swimming pools and below-ground swimming pools that involve placement of fill in floodways shall also meet the requirements of **§ 166-42 (1)** of these regulations. Above-ground swimming pools are prohibited in floodways by N.J.A.C. 7:13.

**§ 166-86 Roads and watercourse crossings.**

(1) For any railroad, roadway, or parking area proposed in a flood hazard area, the travel surface shall be constructed at least one foot above the Flood Hazard Area Design Elevation in accordance with N.J.A.C. 7:13.

(2) Roads and watercourse crossings that encroach into regulated floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, shall meet the requirements of **§ 166-42 (1)** of these regulations.

## **ARTICLE XVII TEMPORARY STRUCTURES AND TEMPORARY STORAGE**

**§ 166-87 Temporary structures.** Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

**§ 166-88 Temporary storage.** Temporary storage includes storage of goods and materials for a period of less than 180 days. Stored materials shall not include hazardous materials.

**§ 166-89 Floodway encroachment.** Temporary structures and temporary storage in floodways shall meet the requirements of **§ 166-42 (1)** of these regulations.

## **ARTICLE XVIII UTILITY AND MISCELLANEOUS GROUP U**

**§ 166-90 Utility and Miscellaneous Group U.** In accordance with Section 312 of the International Building Code, Utility and Miscellaneous Group U includes buildings and structures that are accessory in character and miscellaneous structures not classified in any specific occupancy in the Building Code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, communication equipment structures (gross floor area less than 1,500 sq. ft.), fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), livestock shelters, private garages, retaining walls, sheds, stables, tanks and towers.

**§ 166-91 Flood loads.** Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation,

collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions up to the Local Design Flood Elevation as determined in § 166-16.

**§ 166-92 Elevation.** Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the Local Design Flood Elevation as determined in § 166-16 and in accordance with ASCE 24. Utility lines shall be designed and elevated in accordance with N.J.A.C. 7:13.

**§ 166-93 Enclosures below base flood elevation.** Fully enclosed areas below the design flood elevation shall be constructed in accordance with § 166-81 and with ASCE 24 for new construction and substantial improvements. Existing enclosures such as a basement or crawlspace having a floor that is below grade along all adjoining exterior walls shall be abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13 when the project has been determined to be a substantial improvement by the Floodplain Administrator.

**§ 166-94 Flood-damage resistant materials.** Flood-damage-resistant materials shall be used below the Local Design Flood Elevation determined in § 166-16.

**§ 166-95 Protection of mechanical, plumbing, and electrical systems.** Mechanical, plumbing, and electrical systems, equipment and components, heating, ventilation, air conditioning, plumbing fixtures, duct systems, and other service equipment, shall be elevated to or above the Local Design Flood Elevation determined in § 166-16.

**Exception:** Electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall be permitted to be located below the Local Design Flood Elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the Local Design Flood Elevation in compliance with the flood-resistant construction requirements of ASCE 24. Electrical wiring systems shall be permitted to be located below the Local Design Flood Elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

**ARTICLE XIX  
PENALTIES, SEVERABILITY AND EFFECTIVE DATE**

**§ 166-96 Penalties**

Where not included herein, any person(s) who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this ordinance shall be subject to the general penalty provisions of the Township Code regarding ordinance violations. Each day, a violation occurs shall be a separate penalty.

**§ 166-97 Severability**

Where any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

**§ 166-98      Effective Date**

This ordinance shall take effect on April 12, 2023

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**EDITH L. MERKEL, RMC**  
 Township Clerk

\_\_\_\_\_  
**WILLIAM F. SMITH**  
 Council President

\_\_\_\_\_  
**SALVATORE BONACCORSO**  
 Mayor

Ord23/3-6 23-14Ch166FloodplainManagementRegulations

	Motion to	Second	Motion to	Second				
	Introduce		Adopt		Aye	Nay	Abstain	Absent
Albanese								
Hund								
Mazzarella								
Minniti								
O'Connor								
Toal								
Smith								
Entire Council								
<b>TOTAL</b>								

TOWNSHIP OF CLARK  
Resolution 23-46  
March 6, 2023

5

A RESOLUTION REQUESTING PERMISSION FOR THE DEDICATION  
BY RIDER FOR DONATIONS – ACCEPTANCE OF BEQUESTS AND GIFTS  
(N.J.S.A. 40A:5-29) PERTAINING TO THE TV 36 STUDIO BROADCASTING CENTER

**WHEREAS** permission is required of the Director of the Division of Local Government Services for approval as a dedication by rider of revenues received by a municipality when the revenue is not subject to reasonably accurate estimates in advance; and

**WHEREAS** N.J.S.A. 40A:4-39 provides for dedicated revenues anticipated for Donations – Acceptance of Bequests and Gifts (N.J.S.A. 40A:5-29) are appropriated as revenue and are hereby appropriated for the purpose to which said revenue is dedicated by statute or other legal requirement: Acceptance of the Township of Clark’s TV 36 Studio Broadcasting Center.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the Township of Clark, County of Union, New Jersey as follows:

1. The Governing Body does hereby request permission of the Director of the Division of Local Government Services to pay expenditures for Donations – Acceptance of Bequests and Gifts (N.J.S.A. 40A:5-29) – Acceptance of TV 36 Studio Broadcasting Center Donations used for the Township of Clark’s Broadcast programming, equipment, and operations.
2. The Clerk of the Township of Clark, County of Union is hereby directed to forward two certified copies of this Resolution to the Director of the Division of Local Government Services.

ATTEST:

APPROVED:

\_\_\_\_\_  
EDITH L. MERKEL, RMC  
Township Clerk

\_\_\_\_\_  
WILLIAM F. SMITH  
Council President

Res23/3-6DedicationbyRider-Donations-TV36

	Motion	Second	Aye	Nay	Abstain	Absent
Albanese						
Hund						
Mazzarella						
Minniti						
O'Connor						
Toal						
Smith						
Entire Council						
TOTAL						

TOWNSHIP OF CLARK  
Resolution 23-47  
March 6, 2023

6

**WHEREAS** the New Jersey Association of County and City Health Officials (NJACCHO) approved a grant award in the amount of \$55,032.00 for the timeframe of 10/1/22 – 6/30/23 for the Township of Clark Health Department (Health Department); and

**WHEREAS** in order to receive the grant amount a Letter of Agreement Enhancing Local Public Health Infrastructure Grant (Letter of Agreement), between the parties, for reimbursement of eligible expenses by NJACCHO to the Health Department for activities and expenses identified within the approved grant application must be executed; and

**WHEREAS** the Township Council’s only intended purpose for the grant amount is to provide funding for the eligible expenses of the Health Department; and

**WHEREAS** the Township Council wishes to approve and accept the award of the grant and authorize the execution and delivery of the Letter of Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Clark:

- Section 1. The above recitals are incorporated into and are made a part of this Resolution.
- Section 2. The Township Council hereby approves the grant award.
- Section 3. The Township Council hereby approves the Letter of Agreement and authorizes the Health Department to execute and deliver the Letter of Agreement.

ATTEST:

APPROVED:

\_\_\_\_\_  
EDITH L. MERKEL, RMC  
Township Clerk

\_\_\_\_\_  
WILLIAM F. SMITH  
Council President

Res23/3-6AuthNJACCHOgrant

	Motion	Second	Aye	Nay	Abstain	Absent
Albanese						
Hund						
Mazzarella						
Minniti						
O'Connor						
Toal						
Smith						
Entire Council						
TOTAL						

TOWNSHIP OF CLARK  
Resolution 23-48  
March 6, 2023

7

**BE IT RESOLVED** by the Governing Body of the Township of Clark, County of Union, State of New Jersey that it does hereby authorize the Mayor and/or Business Administrator to execute an Agreement between Clark Township (Owner) and OCARINA INCIDENT LLC (Producer) with an address of 31 W 27th St. 11<sup>th</sup> Floor, New York, NY 10001 for use of the Recreation Center to film a motion picture on the specified dates between April 23, 2023 and May 11, 2023 and that the Producer agrees to pay the Owner the Fee of \$25,000.00 (Twenty Five Thousand Dollars) due before the first Shoot Day at the Property.

ATTEST:

APPROVED:

\_\_\_\_\_  
EDITH L. MERKEL, RMC  
Township Clerk

\_\_\_\_\_  
WILLIAM F. SMITH  
Council President

Res23/3-6AuthFilmingatRecCenter-OCARINA

	Motion	Second	Aye	Nay	Abstain	Absent
Albanese						
Hund						
Mazzarella						
Minniti						
O'Connor						
Toal						
Smith						
Entire Council						
TOTAL						

8

TOWNSHIP OF CLARK  
Resolution 23-49  
March 6, 2023

**WHEREAS** Clark Walnut Developers LLC, 820 Morris Turnpike, Short Hills, New Jersey, 07078, owner of 35 Walnut Avenue, Clark, New Jersey, has requested a refund of Thirteen Thousand, Five Hundred Eighteen Dollars (\$13,518.00) due to the overpayment of pool permit #23-107; and

**WHEREAS** the Construction Official has recommended to Council that authorization for the refund be granted.

**NOW, THEREFORE BE IT RESOLVED** by the Governing Body of the Township of Clark, that the Chief Financial Officer is hereby authorized and directed to refund Thirteen Thousand, Five Hundred Eighteen Dollars (\$13,518.00) as hereinabove stated.

ATTEST:

APPROVED:

\_\_\_\_\_  
EDITH L. MERKEL, RMC  
Township Clerk

\_\_\_\_\_  
WILLIAM F. SMITH  
Council President

Res23/3-6 RefundPoolPermit23-107

	Motion	Second	Aye	Nay	Abstain	Absent
Albanese						
Hund						
Mazzarella						
Minniti						
O'Connor						
Toal						
Smith						
Entire Council						
TOTAL						