

**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2020-\_\_\_\_\_**

**AUTHORIZING MEMORANDUM OF UNDERSTANDING WITH HARTZ  
MOUNTAIN INDUSTRIES REGARDING SETTLEMENT OF VARIOUS DISPUTES,  
INCLUDING RELATED TO 750 WALNUT AVENUE**

**WHEREAS**, in response to the New Jersey Supreme Court’s decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey (“Court”), entitled In the Matter of the Application of the Township of Cranford, County of Monmouth, Docket No MON-L-6026-08, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the “DJ Action”); and

**WHEREAS**, the Township simultaneously sought and ultimately secured an Order protecting Cranford from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, Hartz, by and through certain subsidiaries, is the fee owner of real property, comprised of roughly 30.5 total acres, identified on the Tax Map of the Township of Cranford as Block 541, Lot 2, Qualifiers C01 through C07, and known as 750 Walnut Avenue (the “Property”); and

**WHEREAS**, Hartz participated in the Township’s Declaratory Judgment Action via intervention;

**WHEREAS**, the Parties have reached an agreement to resolve their various disputes regarding the Property, the DJ Action, and the Township’s Affordable Housing Plan wherein, among other things, Hartz will develop the Property to include an inclusionary project consisting of units which will be set-aside for very low, low and moderate income households (“**Inclusionary Development**”), which Inclusionary Development is part of the Township’s Compliance Plan that is subject of a settlement agreement between the Township and Fair Share Housing Center (“FSHC Settlement Agreement”); and

**WHEREAS**, the Parties wish to enter into this MOU which sets forth the terms, conditions, responsibilities and obligations of the Parties relative to creating a realistic opportunity to develop the Inclusionary Development.

**NOW THEREFORE BE IT RESOLVED** by the Township Committee of the Township of Cranford, that the Mayor and Construction Official be, and hereby are, authorized to execute a Memorandum of Understanding in substantially the form approved by the Township Committee, and related documents necessary to implement the same.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held December 15, 2020.

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Patricia Donahue, RMC  
Township Clerk

Dated:

## MEMORANDUM OF UNDERSTANDING FOR SETTLEMENT

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between:

**TOWNSHIP OF CRANFORD**, a municipal corporation of the State of New Jersey, County of Union, having an address at \_\_\_\_\_, Cranford, New Jersey \_\_\_\_\_ (hereinafter the “**Township**”) and **HARTZ MOUNTAIN INDUSTRIES, INC.** (“Hartz” or “Hartz”) and with the Township, collectively referred to herein as the “**Parties**”) as of \_\_\_ December 2020 (the “**Effective Date**”).

**WHEREAS**, in response to the New Jersey Supreme Court’s decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey (“Court”), entitled In the Matter of the Application of the Township of Cranford, County of Monmouth, Docket No MON-L-6026-08, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the “DJ Action”); and

**WHEREAS**, the Township simultaneously sought and ultimately secured an Order protecting Cranford from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, Hartz, by and through certain subsidiaries, is the fee owner of real property, comprised of roughly 30.5 total acres, identified on the Tax Map of the Township of Cranford as Block 541, Lot 2, Qualifiers C01 through C07, and known as 750 Walnut Avenue (the “Property”); and

**WHEREAS**, Hartz participated in the Township’s Declaratory Judgment Action via intervention;

**WHEREAS**, the Parties have reached an agreement that Hartz will develop the Property to include, among other things, an inclusionary project consisting of units which will be set-aside for very low, low and moderate income households (“**Inclusionary Development**”), which Inclusionary Development is part of the Township’s Compliance Plan that is subject of a settlement agreement between the Township and Fair Share Housing Center (“FSHC Settlement Agreement”); and

**WHEREAS**, the Parties wish to enter into this MOU which sets forth the terms, conditions, responsibilities and obligations of the Parties relative to creating a realistic opportunity to develop the Inclusionary Development.

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, agree to the terms set forth as follows:

## ARTICLE I – BASIC TERMS AND CONDITIONS

**1.1 Purpose.** The purpose of this MOU is to memorialize the material terms of the parties' agreement to create a realistic opportunity for the construction of the Inclusionary Development, in addition to certain non-residential use as described herein, and to generate 38 affordable housing credits (plus applicable bonus credits) for the Township to apply to its Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations. The Township shall adopt a redevelopment plan that will allow the Inclusionary Development proposed by this MOU, in accord with the timeframes and standards set forth.

**1.2** This MOU memorializes the terms and conditions by which the Parties agree to include the Property as an inclusionary development site as part of the Township's Compliance Plan. The Parties agree to cooperate in the preparation of a fully integrated agreement containing all of the terms and conditions, including the material terms contained herein, of the Parties' agreement as well as to ensure that the Court approves the FSHC Settlement Agreement on the same terms as set forth herein.

## ARTICLE II – HARTZ OBLIGATIONS

**2.1 The Property.** The Property is roughly 30.5 total acres, identified on the Tax Map of the Township of Cranford as Block 541, Lot 2, Qualifiers C01 through C07, and known as 750 Walnut Avenue. The Property will be subdivided in roughly two equal halves (roughly 15.25 acres each) in a manner substantially consistent with the concept plan attached hereto as **Exhibit A**. As described in Section 2.2 of this Agreement, half of the site under the Redevelopment Plan shall permit an inclusionary project consisting of 250 total market rate units, of which 15% or 38 units shall be affordable to the region's low and moderate income households (the "Inclusionary Development"). Under the Redevelopment Plan, the balance of the site shall permit approximately 240,000 s.f. of non-residential uses in no more than two buildings as illustrated by the attached concept plan.

**2.2 Inclusionary Development.** Hartz is firmly committed to and will develop its Inclusionary Development to include an inclusionary project yielding 38 family affordable rental housing units. The affordable housing set-aside shall be 15% of the rental market-rate units.

**2.3 Affordable Housing Set-Aside.** Hartz shall have an obligation to deed-restrict 38 of the residential units in the Inclusionary Development as very low, low and moderate income family affordable rental units. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws. In addition, the affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period"), which period may be extended by the Township, so that the Township may count the units against its obligations to provide affordable housing. This obligation includes, but is not limited to Hartz's obligation to comply with (1) bedroom distribution requirements (2) income split requirements, (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, and (7) deed restriction requirements. The distribution of the affordable housing units shall be in compliance

with COAH's Round Two substantive regulations, N.J.A.C. 5:93 (and N.J.A.C. 5:97-6.6 governing Redevelopment), which the Parties believe will govern the issue, or as approved by the Special Master and the Court. The Fair Housing Act's definition of very low-income shall control for purposes of the Hartz's obligation to provide very low-income units. Hartz agrees to comply with UHAC bedroom distributions for very-low income units in the same distribution as required for low-income units.

#### **2.4 Obligation to Support FSHC Settlement Agreement and Township's HEFSP.**

As it pertains to the Township's application for approval of its Settlement Agreement with FSHC and Housing Element and Fair Share Plan, as may be amended, provided the Township is not in default under this Agreement, the Developer, including any affiliated entities, shall not directly or indirectly oppose or undertake any further action to interfere with the Court's adjudication of the Township's affordable housing obligations and compliance standards. Provided the Township is not in default under this Agreement, the Hartz shall also not directly or indirectly oppose or undertake any further action to interfere with the Court's approval and/or implementation of the Township's Housing Element and Fair Share Plan, as it may be amended in any form, unless the Housing Element and Fair Share Plan deprives the Hartz of any rights created hereunder, or unless the Township or any other defendants or interested parties in the Township's DJ Action undertake any action to obstruct or impede the Hartz from securing such approvals as it needs to develop the Project contemplated herein or unless Hartz is prevented by any third party from effectuating the development contemplated in this Agreement. In addition, Hartz, or its successors, assigns, or operating under a different form of limited liability corporation or other business entity identified in this Agreement, shall not seek to develop another parcel in the Township with a market rate, inclusionary or one hundred percent (100%) affordable project, unless said project has been specifically authorized and approved by the Township, the Township Planning Board or the Township Zoning Board. Hartz and any successors in interest shall not make any arguments relative to the Property's creation of Realistic Development Potential ("RDP") and/or treatment as an RDP Site as opposed to an unmet need mechanism in Round 3 or any subsequent affordable housing Round in the future.

**2.5 Obligation to Offset Certain Costs Associated With This Settlement and the Associated Fairness Hearing.** The Hartz acknowledges that they shall be responsible to pay to FSHC \$25,000 for legal and professional fees associated with the Hartz objections and FSHC attorney fees relating to the Property.

**2.6 Applications:** Except as modified by the Redevelopment Plan or Agreement, Hartz shall submit all applications for development in a manner substantially consistent with the Concept Plan attached to this Agreement as Exhibit A.

**2.7 Dismissal of Pending Actions:** Within 21 days of the execution of this Agreement, Hartz shall dismiss and/or withdraw its opposition to, as applicable, with prejudice, and without allocation of costs and fees, the following actions:

Pending Before the County of Union Taxation Board:

*H-Cranford Credit L.P v. Cranford Township*, Nos. 004669-2018, 004485-2019, 003080-

2020, pertaining to 750 Walnut Avenue, Block 541, Lot 2, C02 & C03;

*H-Cranford Conduit L.P. v. Cranford Township*, Nos. 004673-2018, 004474-2019, 003073-2020, pertaining to 750 Walnut Avenue, Block 541, Lot 2, C01;

With respect to *Trinitas Regional Medical Center v. Cranford Township*, Docket No. 006389-2017, pertaining to 750 Walnut Avenue, Block 541, Lot 2, C01, Hartz waives application of the Freeze Act with respect to any property tax reduction arising therefrom.

Pending before the Superior Court, Law Division:

*Hartz Mountain Industries, Inc., LLC, et al. v. Township of Cranford, et al.*, No. UNN-L-3679-19;

Pending before the Superior Court, Appellate Division:

*Hartz Mountain Industries, Inc. et al. v. Township of Cranford, et al.*, No. A-003218-19; and

*Cranford Development Assocs., LLC, et al. v. Township of Cranford and Hartz Mountain Indus. Inc., et al.*, No. A-002812-18.

Hartz further waives all rights to enforce the February 28, 2020 Order Granting Plaintiffs' Motion for Counsel Fees in the action *Hartz Mountain Industries, Inc. et al. v. Township of Cranford, et al.*, No. UNN-L-1051-19 (N.J. Super. Ct.)

Relative to *Cranford Development Assocs., LLC, et al. v. Township of Cranford and Hartz Mountain Indus. Inc., et al.*, No. A-002812-18. The Parties agree that Hartz will withdraw its opposition to the appeal and the Parties will jointly request that the matter be remanded to the trial court in the context of approval of this Agreement and/or the Fair Share Housing Center Agreement. In either event, Hartz agrees not to challenge the ability of the Township to claim rental bonus credits on any prior affordable housing project, including the Birchwood project.

### **ARTICLE III TOWNSHIP OBLIGATIONS**

**3.1. Obligation To Adopt A Redevelopment Plan.** The Township shall adopt the amended Redevelopment Plan required to permit the development of the Property in a manner consistent with the terms of this Agreement. The Township shall designate Hartz as the Redeveloper. Hartz shall provide the Township with the standards, and requirements of the proposed Redevelopment Plan within one (1) month from the date of this MOU. The Township and Hartz will cooperate in a mutually collaborative effort to adopt the Redevelopment Plan, including with revisions if appropriate, within three (3) months from date the Township receives the proposed Plan from Hartz.

**3.2 Payment In Lieu Of Taxes For The Inclusionary Development.** Upon adoption of the Redevelopment Plan, in connection with the Inclusionary Development only, Developer shall submit an application to the Township for a PILOT (also known as a Financial Agreement)

under the LTTE Law for a maximum term of 30 years. The Township has reviewed preliminary financial data from Hartz and acknowledges that such data indicates the need for a Long Term Tax Exemption, and that such exemption is likely appropriate for the Project. The Developer's PILOT application shall comply with the requirements of the LTTE Law. The Township shall consider and approve a PILOT for the Inclusionary Development for a maximum term of 30 years, which provides for an annual service charge (as defined in the LTTE Law) of 11.5% of gross revenue in years 1-10, 12.5% of gross revenue in years 11-20 and 13.5% of revenue in years 21-30. The PILOT is a material and essential term of the settlement.

**3.3 Obligation to Process Hartz's Land Use Applications with Reasonable Diligence.** The Parties expect and agree that the Township Planning Board shall process Hartz's development applications with reasonable diligence following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL.

**3.4 Obligation to Refrain From Imposing Cost-Generative Requirements.** The Property shall be exempt from cost generative features of the Township Code pursuant to N.J.A.C. 5:93-10.1.

**3.4 Dismissal of Pending Actions:** Within 21 days of the execution of this Agreement, the Township shall dismiss and/or withdraw its opposition to, as applicable, with prejudice, and without allocation of costs and fees, the following actions:

Pending before the Superior Court, Appellate Division:

*Hartz Mountain Industries, Inc. et al. v. Township of Cranford, et al.*, No. A-003218-19.

## **ARTICLE IV – MUTUAL OBLIGATIONS**

**4.1 Tolling of Limitations Periods.** The Parties shall forbear and postpone the filing, commencement, and prosecution of any legal or equitable action related to the Property, if any, commencing on the Effective Date of this Agreement and continuing until the execution of the final agreement contemplated in Section 1.2 (the "Tolling Period"). The Tolling Period shall not be included in computing any limitations period, including but not limited to the period described in N.J. Court Rule 4:69-6(b)(3), nor will the Tolling Period be considered in support of a laches defense or any other time-based doctrine or defense, rule, or statute otherwise limiting any Party's right to preserve and prosecute any claim. Nothing in this Agreement shall have the effect of reviving any claims that are otherwise barred by any statute of limitations or other limitations period prior to the Effective Date. Nothing in this Agreement shall preclude any Party from initiating Claims or other legal action against the other Party after the expiration or termination of the Tolling Period.

**4.2 Obligation To Comply with State Regulations:** The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Development, or the performance by the Parties of

their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

**4.3 Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the introduction and adoption of the Redevelopment Plan, the Required Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing. Neither party shall take any action the effect of which would be subvert or impair right and obligation of the parties herein.

**4.4 Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property or this Agreement (“*Notice[s]*”) shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, United Parcel Service, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by electronic mail. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days’ notice as provided herein:

**TO DEVELOPER:**

Hartz Mountain Industries, Inc.  
400 Plaza Drive  
Secaucus, New Jersey 07094

**With a copy to:**

James P. Rhatican, Esq.  
Hartz Mountain Industries, Inc.  
400 Plaza Drive  
Secaucus, New Jersey 07094

**With a copy to:**

Henry Kent-Smith  
Fox Rothschild, LLP  
997 Lenox Dr  
Lawrenceville, NJ 08543

**TO THE TOWNSHIP:**

Jamie Cryan, Township Administrator  
Township of Cranford  
8 Springfield Avenue

