

2022 SPECIAL PERMIT **TUXEDO RESERVE**

This document, including its Articles and Appendices, constitutes the 2022 Special Permit for the Planned Integrated Development known as Tuxedo Reserve.¹ This Special Permit replaces and supersedes the 2004 Special Permit, the 2010 Amended and Restated Special Permit, and the 2015 Special Permit.²

ARTICLE I. ENUMERATION OF APPROVALS GRANTED

The following approvals have been granted to the Project:

1. 2022 Special Permit Approval.
2. 2022 Preliminary Plan Approval. The 2022 Preliminary Plan, last revised September 8, 2022 (the “2022 Preliminary Plan”), is attached hereto as Appendix B³ and incorporated herein by reference.
3. The Design Standards. The Design Standards include:
 - a. the 2022 Smart Code for the Project, dated September 16, 2022 (inclusive of the 2022 Regulating Plan), attached hereto as Appendix C and incorporated herein by reference;
 - b. the 2022 Performance Standards for the Project, dated September 16, 2022, attached hereto as Appendix D and incorporated herein by reference; and
 - c. the 2022 Architectural and Landscape Design Guidelines for the Project, dated September 16, 2022, attached hereto as Appendix E and incorporated herein by reference.

The Approvals apply to all of those lands included in Tuxedo Reserve that are set forth in the materials attached hereto as Appendix F and incorporated herein by reference, including all lands added to Tuxedo Reserve following approval of the 2004 Special Permit and 2004 Preliminary Plan, the 2010 Special Permit and 2010 Preliminary Plan, and the 2015 Special Permit and 2015 Preliminary Plan.

¹ The Applicant shall advise the Town of any project name change in the future and in the event of such name change this Special Permit shall be administratively amended to include the new name change within the text of the Special Permit and then re-recorded pursuant to the recording requirement in this Article II.

²All references in this document to Special Permit shall mean the 2022 Special Permit.

³ The 2022 Lead Agency Findings and Local Law No. 5 of 2022 are annexed as Exhibits A and A-1, respectively.

**ARTICLE II. COMPLIANCE REQUIREMENTS; RECORDATION;
BINDING EFFECT; SUCCESSORS; SEVERABILITY**

A. Compliance Required

1. The grant and approval of this Special Permit and of the 2022 Preliminary Plan for the Project is subject to and conditioned upon:

- a. full compliance with the 2022 Preliminary Plan;
- b. full compliance with this Special Permit, including the Design Standards comprising the Smart Code (including the Regulating Plan), Performance Standards, and Architectural and Landscape Design Guidelines, subject to any permitted waiver or modification granted by the Town Board or Planning Board as authorized herein;
- c. full compliance with all of the mitigation measures, Project specifications, best management practices, performance standards and other commitments, incorporated in the 2022 Preliminary Plan, the Design Standards (including the Smart Code, Regulating Plan, Performance Standards, and Architectural and Landscape Design Guidelines), the 2009 Technical Memorandum, the Final Supplemental Environmental Impact Statement (“FSEIS”), the 2010 SEQRA Findings Statement, including all of their appendices, the 2015 Amended SEQRA Findings Statement, and the 2022 Technical Memorandum. The 2004 SEQRA Findings Statement, 2010 SEQRA Findings Statement, and 2015 Amended SEQRA Findings Statement are attached hereto as Appendix I, I-1, and I-2, respectively. The 2022 Amended SEQRA Findings Statement is attached hereto as Appendix A;
- d. full compliance with all mitigation measures, Project specifications, best management practices, and performance standards set forth in earlier environmental impact statements and finding statements for the Project which have not been superseded, modified, or revised by this Special Permit, 2022 Preliminary Plan, the Design Standards, the 2015 Amended Findings Statement, the 2010 Findings Statement, the 2009 Technical Memorandum, the FSEIS, or the 2022 Technical Memorandum;
- e. full compliance with any subdivision and site plan approved by the Planning Board for the Project including any terms and conditions attendant to such approval and all notes and other information on the approved subdivision plat or site plan; and
- f. full compliance with any permit or approval for the Project issued by any other Federal, State or local agency with jurisdiction over the Project including any terms and conditions attendant to such permit or approval.

2. The Town Board may, after 30 days’ prior written notice and an opportunity to be heard at a public hearing, suspend the issuance of building permits or certificates of occupancy concerning a specific parcel or parcels of property or portion(s) thereof for a failure to fully comply as set forth hereinabove, or may immediately suspend a permit or certificate concerning a specific parcel or parcels of property or portion(s) thereof in the event any failure to

comply presents an imminent threat to the health safety and welfare of the public or the environment. The Town Board may also, after 30 days' prior written notice and public hearing, revoke this Special Permit for failure to fully comply with the conditions of this Special Permit. Such revocation shall not abrogate the Applicant's affirmative obligations hereunder for any portion of the Project constructed or partially constructed at the time of revocation. Notwithstanding anything to the contrary, the Town Board shall not suspend any building permits or certificates of occupancy, or revoke this Special Permit, provided the Applicant cures any noncompliance within thirty (30) days of its receipt of written notice of same from the Town Board or any enforcement official of the Town (or, if such cure(s) is not able to be performed within thirty (30) days and the Applicant fails to commence such cure(s) within thirty (30) days or within a reasonable timeframe under the circumstances, or fails thereafter diligently to prosecute such cure(s) to completion), except that, in the event failure to comply presents an imminent threat to the health safety and welfare of the public or the environment, the Town may immediately take whatever actions it deems are necessary, including but not limited to, issuance of stop work orders and the suspension of the issuance of building permits and certificates of occupancy to address and ameliorate such imminent threat. All notices required hereunder shall set forth the noncompliance with sufficient specificity to inform the Applicant of (i) which specific provision of the applicable permit or approval document requires compliance, and (ii) the necessary corrective measure(s) to remedy the noncompliance.

B. Recording of Special Permit

This Special Permit shall be executed by the Applicant and the Town in a form that is recordable by the Orange County Clerk and the Applicant consents to recording of this Special Permit in the chain of title of the property.

C. Binding Effect and Successors

1. This Special Permit runs with the land and is binding upon the Applicant and any successor in interest to the Applicant, including, without limitation, subsequent purchasers and transferees, vendees, heirs, assignees, distributees, mortgagees, agents, employees and contractors, and the Tuxedo Reserve Homeowners Association ("TRHOA") required to be created pursuant to Article XXIII below, except that the obligations set forth in Article XIV (Tuxedo Union Free School District), Article XV (Community Event Building), Article XIX (Hamlet Revitalization), and Article XX (PILOT) shall be the sole responsibility of the Applicant and shall not bind or obligate any individual lot owner or homeowner, or the TRHOA.

2. Notwithstanding anything to the contrary, after the Applicant constructs at its own cost and expense a community event building for shared use with the Town pursuant to Article XV below, the Applicant may thereafter assign its financial or other obligations under this Special Permit to the TRHOA with respect to such shared use of the community event building, provided that for said assignment to be effective, the board of directors of the TRHOA shall adopt a written resolution expressly accepting and assuming the Applicant's obligations, and a copy of said resolution shall be provided to the Town Board.

3. In the event the Applicant transfers any interest in the Project, it shall provide a copy of this Special Permit to the transferee upon such transfer. Within ten (10) business days of such transfer the Applicant shall provide the Town Board with written notice of the transfer which notice shall contain the following: (a) the name and address of the transferee (b) the date of the transfer (c) the precise interest in the Project that was transferred and (d) a sworn statement in writing from the transferee that it has received a copy of the 2022 Special Permit, that it understands all of the terms and conditions of this Special Permit and that it agrees to be bound by all of the applicable terms and conditions of the 2022 Special Permit that are applicable to the property that was transferred.

D. Severability

Should any part of this Special Permit be rendered or declared invalid by a court of competent jurisdiction, the invalidation of such part or portion of this Special Permit shall not invalidate the remaining portions hereof, and they shall remain in full force and effect.

ARTICLE III. LIMITATIONS ON PROJECT USES

A. The Project shall be developed and constructed in compliance with the 2022 Preliminary Plan, this Special Permit, and the Design Standards, including the Smart Code and its associated Regulating Plan, the Performance Standards, and the Architectural and Landscape Design Guidelines. No more than 1,609 residential units may be constructed on the Project site under this Special Permit.⁴ No more than 500 residential units shall be multi-family residential units as defined in the Smart Code and no less no less than 269 units shall be single family detached units and no less than 174 units shall be duplex units.⁵ Except for the annexation parcels referred to in Article XIII, all residential uses must be located in the Project's Southern Tract.

⁴ The prior PID Local Law authorized up to an additional 180 units of housing for senior citizens and persons in need of congregate care or assisted living beyond the 1195 residential unit cap set forth in the prior PID Local Law. The maximum unit count of 1,609 authorized under this Special Permit is inclusive of age-restricted, active adult housing.

⁵ Section 98-23 was amended in its entirety by Local Law #4A of 1999. Section 2 of Local Law #4A of 1998 exempted Tuxedo Reserve from review under its provisions and mandated review of the Project under the Planned Integrated Development regulations in effect immediately prior to the adoption of the Local Law. Local Law #4A of 1998 was amended by the Town Board by adoption of Local Law #5 of 2010 concurrent with the approval of the 2010 Special Permit which authorized a revised unit mix for the Project. A copy of Local Law #5 of 2010 is attached hereto as Appendix G and a copy of Local Law #4A of 1998 is attached hereto as Appendix H-1. As part of the Town Board's approval of the 2022 Special Permit, Section 2 of Local Law # 4A of 1998 has been further amended by Local Law #5 of 2022 (attached hereto as Appendix A-1) to prescribe the following development standards and limits for Tuxedo Reserve: "No more than 1,609 residential dwelling units may be constructed on the Tuxedo Reserve Planned Integrated Development of which no more than 500 units shall be multi-family units and no less than 269 units shall be single family detached units and no less than 174 shall be duplex units."

B. Notwithstanding anything to the contrary in this Special Permit or the 2022 Preliminary Plan, on or before the date that is one (1) year following the issuance of the first building permit for the Project, the Applicant shall submit to the Town Board an amended Preliminary Plan that substitutes 30 townhouse, stacked townhouse and/or multifamily units that are currently shown on the 2022 Preliminary Plan with 30 non-age-restricted single family detached units (to reach the minimum of 269 single family detached units Upon such submission, the 2022 Preliminary Plan shall be deemed so amended and no amendment of this Special Permit shall be required. For avoidance of doubt, the 30 new single family units are not required to be located in the same neighborhood as the units they are substituting. The total number of residential units shall remain a maximum of 1,609.

C. No more than 3,070 bedrooms may be constructed on the Project Site in units that are not for active adults. There is no bedroom count limit for active adult units, provided that no more than 3,620 bedrooms in total may be constructed on the Project Site.

D. Non-residential uses on the Southern Tract shall be limited to those uses identified on Smart Code Table 1. There shall be a minimum of 35,000 square feet of Commercial uses (as defined in the SmartCode) generally along Quail Road and facing toward the town center in the Commons as shown on the 2022 Preliminary Plan. In no event shall Project Amenities and Commercial uses on the Southern Tract exceed 100,000 square feet. Subject to obtaining approvals required by the Village of Sloatsburg, a farm stand, retail store or restaurant of up to 3,000 square feet shall be a permitted use on the portion of the Project site located within the Village of Sloatsburg near Route 17.

E. Subject to the provisions of Article XXI, the Project may also include 196,100 square feet of office/light industrial/flex space on the Northern Tract on the LIO Parcel, or such other use(s) approved by the Town Board or allowed in accordance the Town of Tuxedo Zoning Chapter.

ARTICLE IV. DESIGN STANDARDS; WAIVERS

A. In order to assure that the Project is developed in accordance with the design, scale, density, and character approved by the Town Board, this Special Permit incorporates Design Standards specific to the Project. The Design Standards, which consist of the Smart Code and its associated Regulating Plan, the Performance Standards, and the Architectural and Landscape Design Guidelines, collectively establish standards and guidelines for each type of community or area in the Project, including its open space preservation areas, the Commons, and the various communities for residential development.

B. The Smart Code and its associated Regulating Plan establish planning and development standards, including rules for building type, bulk, lot layout, etc. The Performance Standards establish various engineering and similar design requirements for streets, other infrastructure, etc. The Architectural and Landscape Design Guidelines establish the visual design criteria for the Project's buildings, structures, lighting, and other improvements. Collectively, the Design Standards create a set of standards and guidelines that determine the character of each neighborhood in the Project.

C. In order to provide a limited degree of flexibility during the build-out of the Project, the Planning Board is hereby authorized during its site plan and/or subdivision review to grant a modification(s) or waiver(s) to the Design Standards as may be specifically authorized in each of the Smart Code, Performance Standards, and Architectural and Landscape Design Guidelines. The Smart Code also identifies certain items which the Planning Board is not authorized to modify or waive; any modifications or waivers to those enumerated items require approval by the Town Board. In the event the Planning Board denies any requested modification or waiver, the Applicant may take an appeal to the Town Board, which may exercise its discretion to reverse or affirm or modify and affirm the action of the Planning Board, or take other legislative action as the Town Board may deem appropriate.

D. The 2022 Preliminary Plan, which incorporates the Regulating Plan and Road Hierarchy Plans, is included as Appendix B of this Special Permit.

ARTICLE V. AUTHORIZED MINOR MODIFICATIONS OF 2022 PRELIMINARY PLAN

A. During the course of its review of subdivision and site plan applications, and in addition to any other authority granted to the Planning Board herein and in the Smart Code, Performance Standards, and Architectural and Landscape Design Guidelines, the Planning Board is authorized to approve authorized minor deviations from the 2022 Preliminary Plan without additional SEQRA review or Town Board approval so long as the authorized minor deviation in question is consistent with this Special Permit, the Design Standards, and the maximum bedroom and unit counts set forth in Article III.

B. Authorized minor deviations include:

1. minor changes in the 2022 Preliminary Plan to make minor alterations to the location of infrastructure, roads, and amenities to address site conditions and/or planning/engineering considerations. In approving such minor changes to the 2022 Preliminary Plan, the Planning Board may authorize disturbance of wetland areas that are not under the jurisdiction of the ACOE or NYSDEC, so long as such wetland areas do not function as vernal pools for species of special concern and/or threatened or endangered species; and

2. changing any of the Building Types shown on the Concept Plan (Figure No. 5-1 in the Preliminary Plan) and as defined in the Smart Code to a different Building Type provided that the changed Building Type is permitted within a Transect zone applicable to that Project location based on Smart Code Table 1 and as shown on the Regulating Plan (Figure No. 1-2 in the Preliminary Plan), subject to the cap on multi-family units and bedrooms, and the minimum required number of single family detached units and duplex units, as set forth above in Article III. Notwithstanding the foregoing, (i) no such changes in Building Types shall be permitted within Project areas designated as the Commons (see Overall Land Development Plan, Figure No. LDP-6 in the Preliminary Plan) until after the issuance of the 160th building permit for a multi-family unit, except that at any time a multi-family building in the Commons may be changed to a 12-plex, (ii) a multi-family building cannot be substituted for a mixed-use building in the Commons if such change would cause the Commercial use to fall below 35,000 sf as set forth above in Article III.D,

(iii) no such changes in Building Types shall be permitted within Project areas designated as West Terrace, except that a non-age-restricted single family detached unit may be substituted only for another non-age-restricted single family detached unit, and a townhouse may be substituted only for another townhouse that is of equal or larger size or a non-age-restricted single family detached unit, and (iv) at all times, no single or cumulative change of unit types shall materially detract from the PID requirement that the Tuxedo Reserve development provides a diversity of housing types as reflected in the 2022 Preliminary Plan attached as Appendix B.

ARTICLE VI. STREETS, DESIGN, DEDICATION, AND MAINTENANCE

A. All streets in Tuxedo Reserve shall be constructed in accordance with the 2022 Preliminary Plan; the Design Standards, including the Smart Code and its associated Regulating Plan, Performance Standards, and to the extent applicable to the Project and not inconsistent with the Project's Design Standards, the Town's street specifications as set forth in the Town subdivision regulations (the "Town Street Specifications"). The Town Highway Superintendent may, on a case by case basis, modify the Town Street Specifications to the extent authorized by the Town Code.

B. The Applicant shall offer for dedication to the Town the Project's three spine roads and their rights-of-way (and all infrastructure and street trees contained therein) as shown on the 2022 Preliminary Plan: Quail Road, Bridle Trail, and Two Hill Road. Each final subdivision and site plan approval shall be conditioned upon the Applicant making an offer of dedication of that portion of Quail Road, Bridle Trail, and/or Two Hill Road that is within the portion of the Project being granted final subdivision or site plan approval. Upon acceptance of dedication, the Town shall be responsible for the maintenance of these roads and all stormwater drainage facilities and infrastructure in the road right-of-way, except as otherwise agreed in writing between the Town and Applicant in a Maintenance Agreement or other document.

C. Except for those roads accepted for dedication by the Town, the TRHOA shall own and maintain at its sole cost and expense all other roads and all stormwater drainage facilities and infrastructure in the road right-of-way. In addition, the TRHOA shall be responsible for maintenance of all rock walls whether or not such walls are located within a public right-of-way.

ARTICLE VII. ACCESS AND TRAFFIC CONTROL

A. Except as otherwise provided in this paragraph, the Project shall contain the following entry/exit access points as depicted on the 2022 Preliminary Plan: NYS Route 17 in the Town of Tuxedo, NYS Route 17 in the Village of Sloatsburg, and Eagle Valley Road (Rockland County Route 68). The construction of Quail Road (with connection to NYS Route 17 in the Village of Sloatsburg) shall be completed from an area near the Commons to the north entrance along NYS Route 17 prior to the issuance of the first certificate of occupancy for the Project, with the balance of Quail Road to the south entrance along NYS Route 17 completed prior to the 500th building permit for the Project. In addition, the Project may contain two "emergency access only" points at Mountain Road in the Town of Tuxedo and South Gate Road in the Village of Tuxedo Park. The Mountain Road emergency access point shall be constructed and completed not later than the issuance of the 20th certificate of occupancy for the Project. Unless the Town Board

determines otherwise, the Eagle Valley Road entrance connecting to Bridle Trail Road shall be constructed and completed prior to the issuance of the 50th certificate of occupancy for any active adult dwelling. The South Gate Road emergency access will be constructed if the Town Board determines that such access is required during the Project. If required by Rockland County or New York State, the Applicant shall design and install a traffic signal at the intersection of Eagle Valley Road (Rockland County Route 68) and Sterling Mine Road (Rockland County Route 72). The design and installation of this traffic signal shall be reviewed and approved by Rockland County or the State of New York as appropriate.

B. All on-site and off-site traffic mitigation measures shall be implemented in the manner and time frame described in Appendix J. The traffic Monitoring Program established for the Project shall be implemented in the manner and time frame described in Appendix J. A jitney service shall be established, funded and operated by the TRHOA in the manner and time frame set forth in Appendix J. The jitney service shall be in place prior to the issuance of the 100th certificate of occupancy for the Project, or as otherwise may be authorized by the Town Board upon request of the Applicant. The availability of this jitney service shall be disclosed in the documents filed with the New York State Attorney General for the establishment of the Tuxedo Reserve Home Owners Association. The operation of the jitney service shall be monitored in accordance with the Monitoring Program described in Appendix J. In the event ridership falls below estimates set forth in the FEIS Monitoring Program, modifications to the jitney service shall be made by the Applicant in consultation with the Town Board with a goal to increase ridership to projected levels. Notwithstanding the foregoing, if the Town Board, after consultation with the Applicant, determines that a jitney service is not a necessary or valued service (whether due to lifestyle of the residents, other mobility options, or any other reason), then the Town Board may modify or eliminate the jitney service, in which case the Town Board shall consider if any other service or mitigation is reasonably required to comply with the Town's SEQRA Findings. The TRHOA documents filed with the NYSAG shall disclose this contingency.

C. All monitoring required hereunder shall be undertaken by a reputable traffic consultant selected by the Town Board. The Planning Board shall be responsible for overseeing and managing such monitoring. All reasonable expenses incurred by the Town in connection with the Traffic Monitoring Program shall be reimbursed to the Town by the Applicant in accordance with a separate escrow agreement to be entered for this purpose. The Town shall cause its traffic consultant to reasonably coordinate with the Applicant's traffic consultant during the implementation of the Traffic Monitoring Program.

D. Construction vehicles shall avoid, to the maximum extent practicable, entering and exiting the Project site between 7:30 and 8:30 AM and between 5:00 pm and 6:00 pm on weekdays to avoid the weekday peak hours of traffic. The Applicant shall, at its sole cost and expense, coordinate with local police authorities for appropriate traffic management in the event construction traffic is likely to disrupt normal traffic flows on highways and roads adjacent to the Project site.

**ARTICLE VIII. SUBDIVISION AND SITE PLAN REVIEW PROCESS;
PLOT PLAN; ARCHITECTURAL REVIEW; AND
ISSUANCE OF BUILDING PERMITS**

The following process is a guide to the Planning Board and other Town Boards, agencies, and employees to facilitate the orderly processing of subdivision, site plan, and other applications necessary for development of Tuxedo Reserve in accordance with the Town Code and this Special Permit. It is in no way intended to supersede the procedural requirements of the Town Code:

A. Subdivision and Site Plan Review Process.

1. Preliminary Subdivision Plat and/or Site Plan Approval. The Planning Board shall review all applications for preliminary subdivision approval and for site plan approval in accordance with the procedures and requirements set forth in the Town Code for such review and this Special Permit. Prior to approval of a preliminary subdivision plat or a site plan, the application shall be referred to the Architectural Review Board (“ARB”) for preliminary review and comment on the conceptual exterior design of those structures whose design is to be approved as part of the preliminary subdivision approval or site plan approval, if any. For purposes of the Project, the Planning Board shall serve as the ARB unless the Town creates a separate ARB.

2. Final Subdivision and/or Site Plan Approval. The Planning Board shall review all applications for final subdivision and/or site plan approval in accordance with the procedures and requirements set forth in the Town Code for such review and this Special Permit. Final subdivision and/or site plan approval shall be conditioned on ARB review and approval of the exterior design of those structures to be approved as part of the final subdivision and/or site plan approval. As it deems appropriate, the Planning Board shall indicate applicable requirements by note and/or design on each subdivision and site plan approved by the Planning Board. The Planning Board is authorized to grant Preliminary and Final Subdivision and/or Site Plan Approval concurrently, provided that prior to any such combined approval the ARB shall conduct its preliminary review as set forth above.

3. Building Permit. The Applicant is permitted to submit a building permit application to the Building Department prior to final approval from the Planning Board and ARB to commence the Building Department’s review, but in no event shall the Building Inspector issue a building permit for site work on any lot in Tuxedo Reserve unless and until:

- a. final plan approvals (site plan and/or subdivision, as applicable) have been received from the Planning Board;
- b. all applicable required outside agency permits have been obtained;
- c. all required fees have been paid and any outstanding accounts brought current;
- d. all required financial assurances and bonds have been posted and are maintained;

e. all applicable prerequisites and requirements for issuance of a building permit have been satisfied under Section 37-4 of the Town Code, including but not limited to, conformance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code; and

f. there is compliance with this Special Permit, the 2022 Preliminary Plan, and the applicable Design Standards, including the bulk requirements on Smart Code Table 1.

4. Building Permit. In no event shall the Building Inspector issue a building permit for any building or unit in Tuxedo Reserve unless and until:

a. all required approvals have been obtained from the Architectural Review Board, including, but not limited to, a determination by the ARB that the building or structure is in conformity with the applicable provisions of the Architectural and Landscape Design Guidelines;

b. all prerequisites and requirements for issuance of a building permit have been satisfied under Section 37-4 of the Town Code, including but not limited to, conformance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code; and

c. there is compliance with this Special Permit, the 2022 Preliminary Plan, and the Design Standards, including the bulk requirements on Smart Code Table 1.

B. The ARB's role shall be to confirm that the exterior of proposed building designs and other Project elements are consistent with the Architectural and Landscape Design Guidelines approved by the Town Board, and upon such confirmation, the ARB shall issue its approval. The ARB is hereby empowered to retain architects and landscape architects to assist it in fulfilling this duty. The Applicant shall reimburse the Town for the ARB's reasonable outside consulting costs, if any. The Town Board shall approve the retention of architects and landscape architects to assist the ARB after receiving recommendations from the ARB and following consultation with the Applicant. The ARB is authorized to pre-approve home designs and infrastructure element designs and to authorize such designs to be replicated on designated lots or locations without need for subsequent ARB approval.

ARTICLE IX. CLEARING, GRADING AND FILLING REQUIREMENTS

Any clearing, grading and filling activities on the Project site shall be conducted in conformance with the requirements of §98-43 of the Town of Tuxedo Zoning Law. In addition, there shall be full compliance with the preservation measures set forth in the Performance Standards in the Design Standards related to existing trees, vegetation and soil as reasonably administered by the Planning Board and with the understanding that strict application of these measures may not be

feasible where site conditions make it impossible or impracticable to preserve a tree or trees. In addition, the Planning Board, at the time of preliminary subdivision or site plan approval, may impose additional reasonable conditions on Project construction for the preservation and protection of trees, vegetation and soil.

ARTICLE X. BLASTING

A. Any blasting required in connection with the Project shall conform to all State and Town blasting regulations as well as all blasting protocols set forth in the Performance Standards included in the Design Standards. The Planning Board shall review and approve all blasting plans at the time of the Planning Board’s final subdivision or site plan approval.

B. In the event blasting resulting from the Project disrupts service to the water supply wells at enumerated properties on those portions of Mountain Road, Hillside Avenue and Southside Place that abut the Project, the Applicant shall immediately, and at its sole cost and expense, take whatever steps are reasonably necessary to restore such service including but not limited to repair of the well, replacement of the well or connection to the Project's water system. In the event connection is made to the Project's water system, there shall be no charge to the property owner for such connection or for the water received from the water system.

ARTICLE XI. BULK SUBDIVISION

For financing and ownership transfer purposes, the Applicant shall be entitled to apply for and obtain from the Planning Board bulk subdivision approval or modifications to previously issued bulk subdivision approvals at any time after issuance of this Special Permit. No construction or ground disturbance shall be authorized by such bulk subdivision approval or modified bulk subdivision approval and a note to this effect shall be placed on any bulk subdivision plan.

ARTICLE XII. OPEN SPACE

A. Southern Tract:

1. Open space areas on the Southern Tract are delineated in the Preliminary Plan. Areas designated as “shared open spaces” and as “dedicated open spaces” shall be restricted in perpetuity by a Declaration of Covenants and Restrictions which ensures that such open space can never be developed for commercial or residential uses and which ensures that any recreational or other similar activity on or in such open space is consistent with the Project as delineated in this Special Permit, the Preliminary Plan, the Smart Code’s Regulating Plan, and all applicable site plans and subdivision approvals. The Town shall be a designated beneficiary of the Declaration of Covenants and Restrictions. In addition, those lands depicted on the Preliminary Plan designated to be restricted by conservation easement shall be further encumbered by a Conservation Easement. Such Conservation Easement shall be granted to the Town or a land trust or other open space protection entity acceptable to the Town. The Declaration of Covenants and Restrictions and the Conservation Easement required herein shall be reviewed and approved by the attorney for the Town prior to their filing and recording in the office of the Orange County Clerk. Such Covenants and Restrictions and the Conservation Easement shall allow installation of Water Supply

infrastructure, including wells, pumps, tanks, limited maintenance access ways and similar water infrastructure improvements, as well as any 12 other infrastructure elements for the Project that are designated to be located in the areas to which such Covenants and Restrictions and Conservation Easements are to apply, all subject to Planning Board approval.

2. The 31.682 +/- acre Conservation Buffer depicted on the Preliminary Plan shall be gifted to the Village of Tuxedo Park. A Conservation Easement shall be placed upon such land prohibiting any development of the land for any purpose. Such Conservation Easement shall be granted to the Town. The Village shall comply with and be bound by the terms and conditions of this Special Permit and shall acknowledge such in the manner prescribed in Article II.B. The attorney for the Town shall be provided with copies of all documents of agreement and transfer for review and approval to ensure donor and donee's compliance with this provision.

3. A 2.00 +/- acre parcel shall be gifted to the Tuxedo Club in the location designated on the Preliminary Plan. The gift of the approximate 2-acre parcel shall be subject to the reservation of an easement by the Applicant and the simultaneous conveyance by the Applicant of an identical easement to the Town for the limited purposes of:

a. providing emergency access to the Project by means of emergency vehicles such as fire trucks, ambulances, and police vehicles but not to be used for access by the general public or as an access for construction or maintenance vehicles of the Applicant or its agents, contractors or employees; such access shall be constructed in a manner provided for by the Planning Board in its site plan review of the Project but, at a minimum, shall be designed to assure, to the maximum extent practicable that the property is not misused by the general public to become an unauthorized point of general ingress and egress;

b. installing and maintaining such drainage pipes, detention basins, and other structures as may be required by the Planning Board in its site plan review of the Project; and

c. installing and maintaining utilities, lighting and signage. In addition, a Declaration of Covenants and Restrictions shall be placed on the 2.00 +/- acre parcel prohibiting the development of the land for any purpose except the three limited purposes described above. The Town of Tuxedo shall be designated as a beneficiary of the Declaration of Covenants and Restrictions.

The Tuxedo Club shall comply with and be bound by the terms and conditions of this Special Permit and shall acknowledge such in the manner prescribed in Article II.B. The attorney for the Town shall be provided with copies of all documents of agreement and transfer for review and approval to ensure donor and donee's compliance with this provision.

B. Northern Tract: Pursuant to the offer of the Applicant, open space areas on the Northern Tract shall be gifted or otherwise restricted by conservation easement as depicted on the Preliminary Plan as follows: approximately 702.28 +/- acres to be gifted, and restricted by conservation easement, to a conservation organization acceptable to the Town or to the Town; and, 50.26 +/- to be gifted to the Village of Tuxedo Park as a Conservation Buffer. The terms of such

gifts shall require that the open space gifted can never be developed for any purpose and that the donees agree to comply with and be bound by the terms and conditions of this Special Permit. All of these lands shall be encumbered by a Conservation Easement. Such Conservation Easement shall be granted to a land trust or other open space protection entity acceptable to the Town. The attorney for the Town shall be provided with copies of all documents of agreement and transfer for review and approval to ensure donor and donee's compliance with the applicable provisions of this Special Permit. The requirement for a Conservation Easement shall not be applicable to any lands gifted to the Palisades Interstate Park Commission.

C. Fox Hill Tract: Pursuant to the offer of the Applicant, the entire Fox Hill Tract, less the annexation parcel of 24.27 +/- acres shall be gifted to the Village of Tuxedo Park. A Conservation Easement shall be placed upon such land prohibiting any development of the land for any purpose except that the Village may use the ravine near the race track located off of Clubhouse Road as a chipping facility to chip leaves and brush. Such Conservation Easement shall be granted to a land trust or other open space protection entity acceptable to the Town. The Village shall comply with and be bound by the terms and conditions of this Special Permit and shall acknowledge such in the manner prescribed in paragraph 3 above. The attorney for the Town shall be provided with copies of all documents of agreement and transfer for review and approval to ensure donor and donee's compliance with this provision.

D. All Gifts, Conservation Easements, Declarations, etc. required under this Article shall be made prior to the issuance of the first building permit and prior to the commencement of any construction and of any disturbance of the Project site. The Applicant shall provide evidence, satisfactory to the attorney for the Town, of completion of all land donations, etc. required under this Article.

ARTICLE XIII. RESERVED FOR FUTURE USE

ARTICLE XIV. TUXEDO UNION FREE SCHOOL DISTRICT

A. Prior to the issuance of the first building permit for the Project, the Applicant shall:

1. offer to donate the approximately 40 acres depicted on the 2022 Preliminary Plan as a future school site and/or site for athletic fields, playing fields, or other recreation facilities, to the TUFSD. In the event that the TUFSD ever declines or rejects the offer of the donation of the parcel, the Applicant shall then offer the parcel to the Town. As part of its first subdivision application to the Planning Board, the Applicant shall apply for a lot line change approval to create the separate lot to be donated to the TUFSD as shown on the 2022 Preliminary Plan;

2. undertake, at its own expense, any environmental remediation of the parcel necessary for the intended use of the parcel; and

3. comply with the letter agreement between the Applicant and TUFSD dated June 2, 2014, accepted July 1, 2014 (or as amended) attached hereto as Appendix K and made a part hereof.

B. A copy of the agreement between the Applicant and the TUFSD shall be filed with the Town Board and accompanied by an opinion of counsel, in a form approved by the Attorney for the Town, rendered by the attorneys for the school district and the Applicant that the Agreement was properly authorized and an agreement that is binding upon the parties.

C. Nothing contained in this Special Permit shall prevent the Applicant and TUFSD from mutually agreeing to modify the agreement between them (Appendix K) and in such event, no amendment of this Special Permit shall be required provided that any modification to the agreement does not materially change the 2022 Preliminary Plan.

ARTICLE XV. COMMUNITY EVENT BUILDING

A. The Applicant shall construct, at its own cost and expense, a community event building (“Event Building”) in the Commons on a separate subdivided lot as shown on the Project’s 2022 Preliminary Plan. The Event Building is anticipated to contain approximately 4,000 square feet of usable space, and have a seating capacity of a minimum of 200 persons. The Applicant, TRHOA, and Town shall share the use of the Event Building after an initial three-year period following its construction, during which the Applicant shall have sole and exclusive use of the Event Building.

B. All terms and conditions relating to the shared use of the Event Building shall be set forth in a written agreement entered between the Applicant and Town on or before the expiration of the Applicant’s three-year exclusive use period (“Event Building Agreement”). The Event Building Agreement shall include provisions regarding, for example, the shared use of the Event Building by the parties (including the frequency thereof) regardless of who owns it. The Event Building Agreement shall also include an option for the Town to purchase the Event Building for a period of five (5) years following the end of the Applicant’s exclusive use period at a cost equal to the Applicant’s hard and soft construction costs to build the Event Building. Regardless of whether the Applicant or Town owns the Event Building, (i) the Town shall have the right to make the Event Building available for civic-oriented purposes, including, without limitation, temporary use by the Tuxedo Public Library for programs consistent with the Library’s mission, and (ii) the Applicant and/or TRHOA shall have the right to use the Event Building for TRHOA meetings and special events (e.g., arts and crafts programs, book club, lectures, classes, music, movies, weddings and other celebrations).

ARTICLE XVI. RECREATION AND TOWN FACILITIES

A. The trail system in the Southern Tract shall be constructed by the Applicant at its sole cost and expense, and shall be made permanently available to Town residents on the following terms and conditions:

1. Access to the trail system by Tuxedo residents shall be by use of an annual “free of charge” permit system administered by the Tuxedo Reserve Homeowners Association.

2. The Tuxedo Reserve Homeowners Association shall be responsible for all trail maintenance. The trail system shall be made available to Town residents simultaneous with it

being made available for residents of Tuxedo Reserve.

3. The offering plan filed in the office of the New York State Attorney General establishing the Tuxedo Reserve Homeowners Association shall disclose the permanent availability of the trail system to Town of Tuxedo residents as well the fact that such access shall be free of charge.

4. No motorized vehicles of any nature shall be permitted on the trail system except as necessary for access to maintain the system and for security. Nor shall the trail system be lighted in any manner except for purposes of safety and trail heading marking.

5. The Tuxedo Reserve Homeowners Association shall be authorized to adopt and enforce rules and regulations for the use and operation of the trails system. These rules and regulations shall be provided to the Town so the Town can confirm that adequate access is in fact provided.

B. The Applicant shall construct neighborhood parks, playgrounds, one or more indoor recreational facilities, and such other recreational facilities as are shown on the 2022 Preliminary Plan and as approved by the Planning Board on subdivision or site plans, all in accordance with the Design Standards.

C. The Applicant shall pay a recreation fee per dwelling unit in accordance with the applicable requirements of the Town's Zoning Law and Subdivision Regulations, and New York State Town Law Sections 274-a and 277, subject to any credits pursuant to Section D below. The recreation fee shall be paid at the time that a building permit is issued for that unit.

D. The Applicant may pursue the acquisition of other land, or offer to donate other land within the Project (including potentially the School site referenced in Article XIV if the School does not accept title), that may be suitable for use by the Town for active recreation use, or the Applicant may construct active recreation facilities to be donated to the Town for Town-wide use. If the Applicant acquires such property or constructs such active recreation facilities for Town-wide use and the Town Board agrees to accept the donation of such land or facilities, then the Applicant shall be credited against the recreation fees payable by the Applicant the fair market value of such land and facilities. The fair market value of such land shall be determined by a certified appraisal prepared by a real estate appraiser of the Town Board's choosing licensed in the State of New York. The fair market value of such recreation facilities shall be the actual design and construction costs incurred by the Applicant, and sufficient proof of same shall be submitted to the Town Board to its reasonable satisfaction. Any such credit shall be applied on a pro rata basis to the recreation fees payable for each unit as to which recreation fees have not been paid at the time of the offer of the donation of the land or the facilities. Notwithstanding anything to the contrary, the Applicant shall not be entitled to any such credit for its up-front construction costs and long-term maintenance costs related to the trail system referenced above.

E. Based on the Town's articulated need, the Applicant and the TRHOA shall lease to the Town for one dollar per year for 30 years, approximately 3,000 square feet of garage/storage space with two dual bays (for a total of four), to be built by the Applicant by not later than six (6)

months following the date that the Town accepts dedication of all or a portion of the Project's three spine roads referenced in Article VI.A above, and at such location as proposed by the Applicant and approved by the Planning Board in consultation with the Highway Superintendent. The garage shall be used by the Town for storage for equipment and materials needed to fulfill its maintenance responsibilities in Tuxedo Reserve. Notwithstanding anything to the contrary, the Applicant and Town shall consult with each other to determine whether such garage/storage space shall be provided in a standalone building for the Town's sole use and occupancy, or as dedicated space with separate access in a building shared with the TRHOA or Applicant. The Town and the TRHOA shall maintain appropriate all risk insurance on the building and the equipment therein, naming each other as additional insureds. The garage/storage space may not be used for the storage of any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant under applicable federal, state or local law, ordinance, rule or regulation ("Applicable Laws"), or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws.

ARTICLE XVII. WATER SUPPLY

Southern Tract. As of the date of this Special Permit, the Tuxedo Farms Water Transportation Corporation has been formed in accordance with the following:

1. limitation of the corporation's service area to the Town of Tuxedo and elimination of any extension rights under Transportation Corporation Law Section 46;
2. prohibiting water sales to locations outside the Town and elimination of any extension rights to extend pipes in adjoining Cities, Towns and Villages under Transportation Corporation Law Section 43;
3. granting the Town a right of first refusal giving it the ability to acquire the Corporation's assets or shares at a fair market value in the event the assets or shares are proposed for transfer, merger or consolidation;
4. the right of the Town to take possession and title to the assets in the event the system fails to provide pure and wholesome water at reasonable rates to its customers or is not operated in material compliance with the health and safety standards maintained and issued by the Town, NYS Department of Health, NYSDEC and NYS Public Service Commission (hereafter "Agencies"); however the Corporation shall first be provided with the right and opportunity to correct any deficiency identified by the Agencies in a timely manner;
5. formation of a back-up water district pursuant to the Town Law provisions for special improvement districts to put in place and be effective in the event the Water Works Corporation fails to provide pure and wholesome water at reasonable rates to its customers or is not operated in material compliance with the standards, maintained and issued by the Agencies; however the Corporation shall first be provided with the opportunity to correct any deficiencies identified by the Agencies in a timely manner;

6. the real property tax assessment of the Water Works Corporation facilities for real tax purposes may be on an "income" approach and not subject to challenge as to taxing methodology; and

7. prohibiting the sale or transfer of the Water Works Corporation or any of its assets unless the transferee acquires the Corporation or any of its assets subject to items (1) through (6) set forth above, and all conditions of the original consent to form the Water Works Corporation. For purposes of this provision, water shall be deemed "pure and wholesome" if it meets or exceeds applicable regulatory standards issued by the NYSDEC and NYSDOH for drinking water supplies. Furthermore, "reasonable rates" shall mean those rates approved by the Public Service Commission for the sale of water by the Water Works Corporation.

B. Northern Tract: If the Applicant develops the Northern Tract, water supply in the Northern Tract shall be provided by the development of on-site ground water resources. Well testing, in accordance with NYSDEC requirements, shall be conducted at the time the first site plan/ subdivision is submitted for the Northern Tract. In the event a community water supply system is required to service Northern tract uses, a Water Works Corporation shall be required which, at a minimum, would be subject to all of the same terms and conditions set forth above for the Water Works Corporation in the Southern Tract. Under no circumstance shall any water supply generated on the Northern Tract be permitted to be sold outside of the Northern Tract. A backup water improvement district for this Northern Tract shall also be similarly established at the Applicant's cost.

C. Prior to conducting any additional well testing for the Project, a water supply testing protocol shall be submitted to the Town Engineer and Planning Board for review and approval. Upon completion of additional well testing for the Project, the results of such testing shall be provided to the Town Engineer and Planning Board who shall confirm that such testing yields a sufficient quantity and quality of water to service the Project or portion of the Project proposed to be constructed.

D. During site plan review, the Applicant shall demonstrate to the reasonable satisfaction of the Planning Board and Town Engineer that there is sufficient water availability to service the projected water demand for each proposed use shown on the site plan, or that the necessary water infrastructure improvements will be made as part of that portion of the Project proposed to be constructed.

E. The Applicant or any successor Water Works Corporation shall monitor designated preexisting water supply wells on Mountain Road, Hillside Avenue and Southside Place in accordance with the protocol attached hereto as Appendix L and made a part hereof. All monitoring reports are to be filed with the Town Clerk, the Town Engineer, and the Planning Board. Remedial actions shall be taken by the Applicant or any successor Water Works Corporation, at its sole cost and expense, as required in Appendix L. Failure of the Applicant to undertake such remedial actions as required shall constitute a violation of the Special Permit.

ARTICLE XVIII. SANITARY SEWER

A. Southern Tract. The Tuxedo Farms Local Development Corporation has been formed and has issued bonds to finance the construction of a new sewage treatment plant in the Tuxedo hamlet to replace, on the same site, the existing sewage treatment plant at the end of Contractor's Road (the "Replacement Sewage Treatment Plant").

The Replacement Sewage Treatment Plant complies with the following conditions:

a. Such Replacement Sewage Treatment Plant at full capacity is capable of accommodating all sewage flow from planned development on Tuxedo Farm's Southern Tract and the users and property owners served by or entitled to be served by the Town's existing sewage treatment plant facility.

b. Such Replacement Sewage Treatment Plant is designed for an advanced tertiary level of treatment capacity.

2. The Replacement Sewage Treatment Plant has been constructed at the Applicant's sole cost and expense in the manner authorized and detailed in the Memorandum of Understanding for Construction & Operation of a New Wastewater Collection System and Sewage Treatment Plant, dated December 29, 2014, and incorporated in Appendix P.

3. The Sewer Services Agreement and MOU is amended per Letter Agreement, dated October 26, 2022, and approved by Resolution of the Town Board, dated November 9, 2022, and attached hereto as Appendix P (see also Appendices P-1 and P-2).

B. Any sewer district extensions or new sewer district creation for the Tuxedo Reserve Project, shall be at the Applicant's sole cost.

C. During site plan review, the Applicant shall demonstrate to the reasonable satisfaction of the Planning Board and Town Engineer that there is sufficient availability in the Project's wastewater treatment plant to service the projected sewer demand for each proposed use shown on the site plan, or that the necessary sewer infrastructure improvements will be made as part of that portion of the Project proposed to be constructed.

D. Northern Tract: If the Applicant develops the Northern Tract, sewage treatment in the Northern Tract shall be via a community septic system with a Sewage Works Corporation formed pursuant to the Transportation Corporation Law provided under New York Law or, with a landowner's association which shall own and maintain said system on behalf of landowners within a commercial or industrial condominium. Such system shall be constructed and approved according to plans and specifications approved by the Town of Tuxedo, New York State Department of Health, and the New York State Department of Environmental Conservation. A back up sewer district shall be established by the Town at the Applicant's cost. The Applicant shall be required to install a package plant if Northern Tract effluent exceeds 13,629 gallons per day.

ARTICLE XIX. HAMLET REVITALIZATION

A. In order to benefit and preserve Tuxedo's community character and enhance the Tuxedo hamlet as the Town's social and commercial center, the Applicant has committed to provide a multi-million dollar fund to assist the Town Board in its continuing effort to revitalize the hamlet.

B. The fund is established and administered in accordance with the "Hamlet Revitalization Funding Program" attached hereto as Appendix M and made a part hereof.

C. Pursuant to the Hamlet Revitalization Funding Program the Tuxedo Local Development Corporation ("TLDC") was formed and the Applicant has paid one million dollars (\$1,000,000.) to the TLDC and a Guarantee has been provided from the Related Companies L.P., per the documents in Appendix M.

D. Notwithstanding anything to the contrary herein or in prior Project approvals, the Applicant shall pay the remaining \$1.1 million in grant funds to the TLDC, as follows: payment of \$100,000.00 upon the issuance of the Special Permit, and the balance of \$1,000,000.00 paid upon the issuance of the first building permit for a for-sale dwelling within the Project, and such funds shall be utilized in accordance with the Second Amended and Restated Hamlet Revitalization Fund annexed as Appendix M. Notwithstanding anything to the contrary, in the event that the first building permit is not issued on or before January 1, 2023, then at any time after such date, the Applicant shall pay all or a portion of the remaining \$1,000,000.00 upon the earlier of (i) the TLDC notifying the Applicant in writing that the TLDC has identified a viable revitalization project for which it needs such funds at that time , or (ii) the issuance of the first building permit.

E. Appendix M contains the Second Amended and Restated Hamlet Revitalization Fund, which (i) eliminates the Loan Fund that was part of Appendix M incorporated into the 2022 Special Permit, and (ii) increases the outstanding amount owed under the Grant Fund from \$1,000,000.00 to \$1,100,000.00.

ARTICLE XX. PILOT

A. In order to assist in having its Project achieve fiscal balance, the Applicant has offered to make payments in lieu of taxes (PILOT) to the Town on the 88.78 acres of LIO zoned land depicted on the 2022 Preliminary Plan (PILOT Property) under the following terms and conditions:

B. The Applicant shall make annual payments to the Town in the amount of \$100,000.00 for a period of 10 years with the first payment to be made four (4) years following the issuance of the first building permit for the Project (hereinafter the "Anniversary Date"). Thereafter, the Applicant shall make payments on or before each Anniversary Date through and including year 10. The \$100,000.00 payment shall be offset by the amount of any real property taxes generated annually by any nonresidential improvements actually constructed on the PILOT Property during the PILOT period.

C. At the conclusion of the 10 year PILOT period, the Applicant may (i) elect to continue making PILOT payments, or (ii) first offer in writing to convey the remaining undeveloped portion of the PILOT Property to the Town for \$1.00, in which case the Town may accept such offer, and in such event the Applicant and Town shall work together to effectuate such property transfer, and the obligation to make PILOT payments shall terminate upon such transfer of title. If the Town rejects such offer or does not respond to the offer within sixty (60) days (in which case the Town's right to acquire the PILOT Property shall terminate), then the obligation to make PILOT payments shall terminate upon the Applicant either (i) recording a conservation easement against the PILOT Property prohibiting any future development of such land, or (ii) transferring the PILOT Property to a public or private conservation agency. In the event the Applicant elects to continue to make PILOT payments, the amount to be paid annually shall be \$100,000.00, payable on each Anniversary Date until the PILOT Property is fully developed and a full year's real property tax payments (without regard to any tax abatements) are actually made.

D. Notwithstanding the foregoing, the Applicant at any time following the issuance of this Special Permit may transfer the PILOT Property to the Palisades Interstate Park Commission ("PIPC") without first offering to transfer the PILOT Property to the Town. Alternatively, the Applicant may (i) first offer in writing to donate the PILOT Property to the Town as a charitable contribution, in which case the Town may accept such offer, and in such event the Applicant and Town shall work together to effectuate such property transfer, or (ii) if the Town rejects such offer or does not respond to the offer within sixty (60) days (in which case the Town's right to acquire the PILOT Property shall terminate), the Applicant may transfer the PILOT Property to a public or private conservation agency other than PIPC. Under any of these scenarios, the obligation to make PILOT payments shall immediately cease upon such transfer of the PILOT Property.

E. PILOT payments due and owing in advance of any transfer of the PILOT Property or the recording of a conservation easement against the PILOT Property pursuant to paragraphs C and D above remain payable at the time of and after the transfer/easement recording, and all PILOT payments made prior to such transfer/easement recording are nonrefundable.

F. In any case where the Applicant elects to transfer the PILOT Property to a public or private conservation agency, the Town shall have the right to review and consent to said transfer based solely on the qualifications of the identified agency to own and steward the PILOT Property, such consent not to be unreasonably withheld, conditioned or delayed.

G. Prior to the issuance of any Certificate of Occupancy (Temporary or Permanent) for the Project, the terms and conditions of the PILOT shall be reduced to an agreement between the Town and Applicant.

ARTICLE XXI. CULTURAL RESOURCES

The Applicant and the OPRHP have entered into a Memorandum of Understanding which sets forth the protocols for identifying, evaluating, and mitigating potential Project impacts on cultural resources. A copy of the MOU is appended hereto as Appendix N and made a part hereof. In February, 2007 OPRHP issued a letter, a copy of which is appended hereto in Appendix N and made a part hereof, confirming that the Applicant submitted a Data Recovery Report for the Project

which fulfills the conditions of the Data Recovery Plan for the Project. In April and August 2009, OPRHP issued letters, copies of which are appended hereto in Appendix N and made a part hereof, and which collectively accept the recommendations contained in the Applicant's Phase 1B Cultural Resource Survey Addendum for Phase 1 of the Project and the Applicant's Phase 1B Cultural Resource Survey for Phases 2 and 3 of the Project. In September 2014, OPRHP issued a letter of no effect concerning additional studies of isolated areas as recommended by the Planning Board. Compliance shall continue as required by the MOU. The Applicant shall provide written confirmation of its ongoing compliance with the MOU as a condition of any Planning Board final subdivision or site plan approval.

ARTICLE XXII. ACTIVE ADULT HOUSING

The active adult housing for the Project shall be any market rate housing intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the Fair Housing Act, as amended, and other applicable laws and regulations (the "Active Adult Housing"). Prior to the issuance of any building permit for Active Adult Housing, the Applicant shall cause a restriction, in a form satisfactory to the attorney for the Town, to be placed on the active adult property ensuring that the required age limitation runs with the land in perpetuity.

ARTICLE XXIII. TUXEDO RESERVE HOMEOWNERS ASSOCIATION

A. Prior to the issuance of the first certificate of occupancy for a residential unit within the Project, the Applicant shall create the Tuxedo Reserve Homeowners Association for the purposes of (1) owning and managing lands and facilities owned in common by Tuxedo Reserve residents (including the jitney service and Event Building) (2) instituting a permit process for the trail system; and (3) ensuring continued compliance with this Special Permit and all requirements referenced herein. Documents creating the TRHOA shall be provided to and reviewed by the attorney for the Town in accordance with Article XXIV.

B. The Applicant shall create covenants and restrictions requiring that all property owners in the Southern Tract of Tuxedo Reserve shall be members of the Tuxedo Reserve Home Owners Association and requiring compliance with this Special Permit except as stated herein. The covenants and restrictions shall also:

1. require that the TRHOA shall grant the Town police authority to access and patrol TRHOA owned roads;
2. require each lot and unit owner to properly maintain the lawns and front yards, including fences, if such maintenance is not otherwise performed by the TRHOA;
3. require the TRHOA to undertake such maintenance if a lot or unit owner fails to do so;
4. require each lot and unit owner, at the time of purchase, to pay an appropriate sum into a reserve fund held by the TRHOA so that the TRHOA will have sufficient resources to undertake such maintenance, if necessary. The amount established for such reserve

fund shall be reviewed and approved by the Town Engineer; and

5. authorize the TRHOA to bill a lot or unit owner for the costs incurred by the TRHOA to fulfill the owner's maintenance responsibilities and if that bill is not timely paid to place a lien on the property for the costs and expenses incurred by the TRHOA to perform such maintenance and impose the lien. The documents forming the Home Owners Association shall give the TRHOA the right to maintain lots and buildings within the Project if the owner thereof fails to do so and shall also give the TRHOA the right to impose the costs of such maintenance as a lien against the affected property.

ARTICLE XXIV. ATTORNEY GENERAL FILINGS

All filings with the New York State Attorney General in connection with any matter relating to Tuxedo Reserve, including but not limited to creation of homeowners and condominium associations and amendments thereto shall be provided to the attorney for the Town simultaneous with such filing. The attorney for the Town shall ensure that all filings are consistent with this Special Permit, the 2022 Preliminary Plan and the Design Standards. All Homeowners Association and Condominium Association filings and amendments approved by the New York State Attorney General shall be filed in the offices of the Town Clerk and Planning Board.

ARTICLE XXV. FEES AND COSTS

A. The Applicant shall pay all applicable reasonable fees and costs as are required under the Town's local laws in the manner prescribed by those local laws. The Applicant shall also reimburse the Town for any additional reasonable fees and costs incurred by the Town relating to its administration and enforcement of this Special Permit. Such additional fees and costs may include, but are not limited to, legal fees for preparation, review and interpretation of legal documents required, contemplated under, or resulting from, the Special Permit; legal fees for enforcement matters and proceedings; Planning Board and Town Board consultant review fees; consultant fees for the Traffic Monitoring Program and consultant fees for a professional architect who will be dedicated to the review of architectural plans for Tuxedo Reserve. The Town shall submit invoices for such fees and costs to the Applicant on a monthly basis. The invoices shall, with sufficient specificity, set forth: (i) descriptions of all work performed on a daily basis, (ii) total time spent performing such work on a daily basis, (iii) the charge for such work, including individual billing rates, (iv) a particular statement of any disbursements charged, and (v) the total fees charged for each bill or invoice.

B. Subject to the remainder of this Article XXV, all fees and costs required to be reimbursed hereunder shall be paid within sixty (60) days of the Applicant's receipt of the fee invoice. Failure to pay within such period shall result in no further building permits or certificates of occupancy being issued until payment is made. Failure to make payment within 120 days shall be grounds for revocation of this Special Permit, provided that the Town shall provide the Applicant a reasonable opportunity to cure any such nonpayment prior to any such revocation.

C. Notwithstanding anything to the contrary set forth herein, the Applicant shall have the right to challenge the reasonableness and/or validity of any fees or costs for which the Town

is seeking reimbursement hereunder. In the event of such a challenge, the Applicant shall notify the Town of such challenge in writing within thirty (30) days of the Applicant's receipt of the fee invoice. Such written notice shall specify the amount being challenged and the reason for such challenge. The Town and the Applicant shall work diligently to reach a resolution as to such challenged amounts. In the event a resolution cannot be reached, the Applicant shall have such remedies as are allowed by law.

ARTICLE XXVI. BONDING OF IMPROVEMENTS

A. Prior to the issuance of any building permit for the Project and prior to commencement of construction or disturbance of the Project Site, the Applicant shall post a security in an amount and form acceptable to the Town to secure the completion of all offsite and on-site public improvements and on-site common area improvements required in connection with the work for which the building permit is sought pursuant to an approved site plan. This security may be reduced as construction proceeds in accordance with applicable procedures in the Town's local laws. The security posted is required to be "evergreen." In furtherance of the foregoing, a bond, letter of credit, cash, or a completion guarantee issued by a credit worthy (*i.e.*, having a fair market value net worth equal to or greater than \$100mm) guarantor shall be acceptable forms of security.

B. Prior to the Applicant completing said improvements, the Applicant shall be permitted to: (1) apply for building permits; and (2) upon the issuance of such building permit(s) commence and complete construction of the permitted structure(s). However, in no event shall the Town issue any Certificate of Occupancy for the Project, until the Applicant shall have installed in accordance with the approved site plans and all applicable governmental agency approvals, the applicable improvements within the section of development for which the occupancy permit is sought.

ARTICLE XXVII. CONTINUING JURISDICTION

The Town Board shall have continuing jurisdiction over all matters related to this Special Permit so long as the Special Permit is in effect. Nothing herein is intended to restrict or limit the rights, duties, authority or jurisdiction of any Town agency under any Town, State or Federal law, rule or regulation.

ARTICLE XXVIII. PRE-CONSTRUCTION SITE ACTIVITIES

Notwithstanding anything to the contrary in this Special Permit, the Applicant is hereby authorized to undertake limited site disturbance in order to investigate conditions on the Project site in preparation for construction. Such limited site disturbance may include roughing in of the Project access roads, well tests, soil tests, geo-technical borings, wetland delineations, surveys and the like. No rough-in of the main Project access road or access roads to test sites shall be undertaken without it first receiving a clearing and grading permit from the Planning Board. The Planning Board may require the Applicant to post a bond in a form manner acceptable to the Town Board to assure adequate reclamation of any disturbed site area.

ARTICLE XXIX. AMENDMENTS

The Town Board recognizes the complexity and duration of this Project and that from time to time ongoing planning processes as well as external factors may cause the Applicant to seek further amendments to this Special Permit. The Applicant shall submit any such application for amendment of this Special Permit to the Town Board together with supporting documentation, and the Town Board shall process such application in accordance with applicable law.

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