# <u>CONCEPTUAL PLAN FOR DEVELOPMENT</u>

# <u>OF AFFORDABLE CONDOMINIUM HOMES</u>

# <u>IN THE PROPOSED SOCIETY HILL AT PISCATAWAY</u>

# <u>TOWNSHIP OF PISCATAWAY, NEW JERSEY</u>

PREPARED BY:

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OF AFFORDABLE CONDOMINIUMS
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INTRODUCTION:

Attached is a proposed plan which attempts to balance the needs and interests of the Township of Piscataway, K. Hovnanian at Piscataway, Inc., purchasers of these moderately priced dwelling units and the financial market which will be issuing mortgages on these units. It is best to examine the specific needs of each of these entities with regard to the plan.

Township of Piscataway

The Township desires to create a realistic opportunity for families of low/moderate income to obtain quality, affordable housing within the township. The Supreme Court of New Jersey, in So. Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390 (Jan. 20, 1983), otherwise known as Mt. Laurel II, provided guidelines and criteria by which the Township of Piscataway could determine whether they are providing a "realistic" opportunity for families of low/moderate income to obtain housing in East Brunswick.

In an effort to fulfill this constitutional obligation, the Township of Piscataway has adopted a provision in its zoning ordinance, Section 21-1011 which provides for an additional two units per acre provided that the developer erects these two units as low and moderate units, one Low Income Unit and one Moderate Income Unit, within the development. The developer may thus increase the density by 2 units per acre.

K. Hovnanian at Piscataway, Inc.

The developer is interested in taking advantage of the zoning provision and' is proposing to include within the development a total of 109 Affordable Condominiums consisting of 55 Moderate Income Condominiums and 54 Low Income Condominiums.

The attached proposed plan sets forth the mechanism for providing these 109 Affordable Condominiums. The details of the plan will be presented later herein. The developer believes that this plan enables it to sell these 109 units, thereby, providing quality, affordable housing to lower income families. Footnote 8 of Mt. Laurel II describes the concept of "affordability" in terms of the maximum percentage of a families gross aggregate income which can be spent for the total housing costs. The definition of "affordable", therefore, fluctuates in relation to the interest rate charged for the money borrowed by the purchaser in order to purchase the home. The purchase price, consequently, needs to adjust itself in order to reflect changes in mortgage interest rates so that these 109 units will be affordable to lower income families. The developer's financial exposure for these 109 units should not be unlimited, however, for that creates the opportunity for completely eliminating the rationale underlying the incentive zoning provisions. It is also contrary to the principles set forth in Mt. Laurel II. If the developer's exposure to losses on the moderately priced units were unlimited, there simply would be no incentive to build these units because these losses could potentially more than offset any additional profit earned by virtue of the bonus units.

> "Sole reliance on "incentive" techniques (or, indeed, reliance exclusively on any one affirmative device) may prove in a particular case to be insufficient to achieve compliance with the constitutional mandate." Mt. Laurel II, p. 446.

If the potential loss is greater than the potential profit resulting from these moderately priced units, then there

> ...is absolutely no reason why he (the developer) should take advantage of this opportunity if, as seems apparent his present housing plans will result in a higher profit. There is simply no inducement, no reason, nothing affirmative, that makes this opportunity "realistic". For an opportunity to be "realistic" it must be one that is at least sensible for someone to use. ibid, p.443.

The plan must be workable and sensible from the aspect of the developer, but must also be workable and sensible from the aspect of the purchasers of the units, the financial institutions extending mortgages on these units and the Township of Piscataway.

Lower Income Purchasers

This is really the most important person in this entire scheme because it is for him that this plan is being proposed. The ultimate objective of any affordable housing plan is to enable persons who have in the past been "locked out" of enjoying the benefits, pleasures, pride and personal satisfaction associated with home ownership to be able to purchase one of these Affordable Condominiums. It is absolutely essential that we do not overlook the realities of the world and unduly restrict not only the initial purchaser's ability to acquire one of these units, but also the ability of every owner to operate and eventually sell his unit to a new owner. It would be inequitable to enable an individual to purchase one of these units and then make it virtually impossible for him to sell it at a later date. The affordable housing plan must, therefore, be flexible enough to have the ability to adapt and respond to changes in the mortgage finance market so that future purchasers will be able to avail themselves of whatever mortgage financing is available at the time they are seeking to purchase one of these units. This is absolutely critical for the plan to work because the owners of these affordable condominiums would be unable to resell these homes if prospective purchasers could not obtain the mortgage financing necessary to complete the purchase.

## Financial Institutions

Mortgage lenders require the ability to sell its mortgages in the secondary mortgage market. In order to be able to do this, the mortgage must have Federal National Mortgage Association (FNMA) approval. FNMA, from a purely economic perspective, has propounded specific criteria applicable to "restricted" property such as the 109 units proposed to be moderately priced units. These are set forth in FNMA Announcement No. 83-01. In order for future purchasers to be able to obtain the mortgage financing needed, it is a prerequisite that the mortgages extended on these units be marketable in the secondary mortgage market. It is, therefore, necessary that the restrictions on these units comply with the criteria set forth in FNMA Announcement No. 83-01. There are, periodically, government sponsored mortgage programs, such as those offered through the New Jersey Mortgage Finance Agency, which might eliminate the need to sell these mortgages in the secondary mortgage market. These programs, however, are not predictable and should not be relied upon as the exclusive means of financing available to initial owners and subsequent purchasers of these units. These programs may always be utilized when available, however, this Plan should not restrict potential purchasers of these units to these programs.

## BRIEF OVERVIEW OF PLAN

These 109 units would be restricted to ownership and occupancy by lower income families. Both the initial purchase price and resale prices would be restricted so as to be affordable by lower income families The Affordable Housing Agency which will be created by the Township of Piscataway will be responsible for enforcing the plan and monitoring resales of these units to ensure that they remain affordable to lower income families.

The deed to each of these 109 units would contain a clause referring to this plan which is a restrictive covenant running with the land. In addition, the Master Deed for the condominium will contain a provision specifically applicable to these units. There are numerous benefits to having these units part of a condominium association.

1. These units will enjoy the same rights, privileges, duties and obligations, however, these units will be subject to reduced condominium assessments.

2. Physically these units will be constructed to the same design criteria and quality as any other condominium home and will blend in with the other homes in the development.

3. Maintenance and upkeep is taken care of by the association including a reserve for capital improvements, therefore, there is significantly less risk of deterioration when compared with single family detached residences. This not only ensures long-term, quality housing for the owner of one of these units, but also protects the tax base of the Township by maintaining these units as good ratables.

4. The association is not being given any obligation to enforce the provisions of the plan.

Very simply, that is the plan being proposed. In order to achieve a workable plan which accomplishes the ultimate objective of all participants, the following provisions were included:

A. All of the criteria set forth in the FNMA Announcement No. 83-01;

B. The Affordable Housing Agency is vested with certain rights in order to have an opportunity to "save" a unit from foreclosure and retain it as an Affordable Condominium;

C. The restrictions of this plan automatically expire with respect to an Affordable Condominium the earlier of (1) 30 years from the date of this plan; (2) upon foreclosure of the unit's first mortgage lien by the first mortgagee; and (3) the date upon which the Condominium Association ceases to exist for any reason.

D. In the event that the applicable mortgage interest rate rises above 14%, the developer has the option of either renting the unsold Affordable Condominiums to Income Qualified Persons or reducing the sales prices so that the unsold Affordable Condominiums are sold at affordable sales prices as determined in accordance with the Plan; and

E. The Agency has the option to advance sums necessary to prevent a default of a mortgage or similar problem which jeopardizes the retention of a unit as an Affordable Condominium, any sums so advanced becoming a lien upon the unit.

## CONCLUSION

It is the desire of both K. Hovnanian at Piscataway, Inc. and the Township of Piscataway to have quality housing constructed within Piscataway which is affordable to lower income families. The attached plan addresses all the issues and problems inherent in implementing this objective and attempts to balance the particular needs of the respective participants.

Respectfully submitted,

K. HOVNANIAN AT PISCATAWAY, INC.