



CHAPPAQUA CROSSING

**VERIFIED PETITION IN THE
APPLICATION OF
SG CHAPPAQUA B, LLC
FOR THE ESTABLISHMENT OF AN MFPD DISTRICT
PURSUANT TO SECTION 60-417.4 OF THE TOWN CODE OF
THE TOWN OF NEW CASTLE**

CARTER LEDYARD
& MILBURN LLP
*Co-counsel for Petitioner
SG Chappaqua B, LLC*
2 Wall Street
New York, NY 10005
(212) 238-8671

SHAMBERG MARWELL
DAVIS & HOLLIS, P.C.
*Co-counsel for Petitioner
SG Chappaqua B, LLC*
55 Smith Avenue
Mount Kisco, NY 10549
(914) 666-5600

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY3

II. GENERAL OVERVIEW6

 A. Historical Use of the Site and Procedural History7

 1. Downsizing of Reader’s Digest and Need for Corporate Campus.....7

 2. Summit/Greenfield’s Prior Proposals to the Town 10

 B. Distinction Between the Earlier Planned Campus Proposal and This Proposal 12

 C. Chappaqua Crossing Project Description..... 13

 D. Current Site Conditions 15

 1. Current Zoning 15

 2. Overview of Existing Buildings, Site and Environs 16

 E. MFPD District Floating Zone 17

 F. Senior Age-Restricted Residential Component Description 19

 G. Affordable Component Description 20

III. COMPLIANCE WITH MFPD..... 21

 A. Intent of Town’s Multifamily Zones 21

 B. Specific Criteria of MFPD District and Compliance with Criteria 23

 C. Compliance with § 60-417.413 29

 D. Density Incentive Discussion 30

 1. Senior Age-Restricted Apartments..... 30

 2. Affordable Apartments..... 31

 3. Other Potential Density Bonus Features 31

IV. COMPLIANCE WITH TOWN DEVELOPMENT PLAN..... 32

 A. Review of the Town Development Plan 32

 B. Chappaqua Crossing Complies With and Advances the Town Development Plan 34

V. AFFORDABLE HOUSING 38

 A. Introduction/Overview 38

 B. *Berenson* and Its Progeny..... 39

 C. Westchester County Planning Authority 42

 D. Local and Regional Need/Mandate 43

 E. Elected Officials Recognize Need for Affordable Housing in the Town and County 45

 F. Affordable Component of Chappaqua Crossing 48

 G. Appropriateness of Location for Multifamily Affordable Housing 50

 H. Lack of Alternative Sites for Affordable/Array of Housing 51

 I. Implementation..... 52

 J. Ensuring Future Affordability 53

 K. Implications 54

VI.	SENIOR AGE-RESTRICTED HOUSING.....	54
A.	Introduction/Overview	54
B.	Need For and Support of Density.....	57
C.	Legality/Enforceability of Proposed Age Restrictions.....	59
	1. The Federal Fair Housing Act.....	59
	2. New York Statutes and Case Law.....	60
	3. Local Legislative Enactment.....	61
D.	Enforcement of Senior Age-Restrictions	62
	1. Town Code	62
	2. Deed and Other Notice of Age-Restrictions	63
VII.	CHAPPAQUA CROSSING -TECHNICAL INFORMATION	65
A.	Land Description	65
B.	Existing Buildings and Parking.....	66
C.	Subdivision and New Zoning Boundaries.....	66
D.	New Residential Buildings and Parking.....	67
E.	Access and Circulation.....	69
F.	Landscaping	71
VIII.	MANAGEMENT OF CHAPPAQUA CROSSING.....	72
A.	Ownership Structure.....	72
B.	Maintenance and Safety of Facilities	73
C.	Open Space Plan Requirements (Criteria of Section 60-417.413	73
IX.	BENEFITS TO TOWN.....	74
A.	Providing Affordable and Senior Age-Restricted Housing.....	74
B.	Increased Tax Revenue	74
C.	Providing Land for Municipal Use.....	75
D.	Providing Road Improvements to Improve Existing Conditions	75
E.	Open Space and Campus Character Preservation	75
F.	Minimal Impacts on the School District	76
X.	REQUESTED RELIEF.....	76
XI.	CONCLUSION.....	77

TOWN BOARD: TOWN OF NEW CASTLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

In the Application of

SG Chappaqua B, LLC

**VERIFIED
PETITION**

For the Establishment of an MFPD District pursuant to
Section 60-417.4 of the Town Code of the Town of
New Castle.

TO THE TOWN BOARD OF THE TOWN OF NEW CASTLE:

The Applicant, SG Chappaqua B, LLC, by its attorneys, Shamberg Marwell Davis & Hollis, PC of 55 Smith Avenue, Mount Kisco, New York, and Carter Ledyard & Milburn LLP, of 2 Wall Street, New York, New York, as and for its Verified Petition alleges and states as follows:

1. SG Chappaqua B, LLC (“Summit/Greenfield” or the “Applicant”) is the owner of the former Reader’s Digest property located in the Town of New Castle (the “Town”) and submits by this Petition its Application for rezoning of a 64.3 acre portion of the property to the existing Multifamily Planned Development District (the “MFPD District”), which will allow the adaptive reuse of this portion of the property for senior age-restricted and affordable housing. Summit/Greenfield respectfully submits that this proposal, to be known as “Chappaqua Crossing,” warrants this Board’s approval as it:

- Proposes 222 units of senior age-restricted (55 years and older) market-rate housing, 24 units of affordable senior age-restricted housing and 32 units of affordable non age-restricted workforce housing, for a total of 278 housing units;

- Complies with the density and all other Town standards for the establishment of the MFPD District pursuant to the Town Zoning Code, without seeking any density bonuses;
- Maintains 520,000 square feet of existing commercial office use in the B-RO-20 Research and Office Zoning District (the “B-RO-20 District”) on the remaining 49.4 of the 87.3 acres presently zoned B-RO-20; and
- Furthers the goals of the Town Development Plan (the “TDP”).

Chappaqua Crossing will provide substantial municipal benefits, including:

- Providing a premier senior age-restricted housing development to meet the local and regional demand for such housing;
- Contributing significantly to the Town’s legal obligation to provide 255 units of affordable housing – its “fair share” allocation of affordable housing – to meet local and regional needs, in a privately-financed initiative;
- More than doubling the current tax revenue generated from the property;
- Making limited demands on municipal services and having minimal impacts on local schools, as children will be prohibited from residing in all of the age-restricted units;
- Maintaining 50 acres of open space;
- Providing a 2-acre parcel on Roaring Brook Road for municipal use such as a municipal pool, a new station for police, ambulance or fire use;
- Providing substantial traffic improvements along Bedford Road and Roaring Brook Road to improve the present conditions on those roadways; and
- Furthering the goals of the Westchester County Greenway Compact Plan, which the Town recently adopted.

I. EXECUTIVE SUMMARY

2. After 2½ years of extensive discussions between Summit/Greenfield and the Town, the Town Board spoke clearly at its December 12, 2006 meeting as it denied Summit/Greenfield's Petition for the rezoning of the entire former Reader's Digest property to a proposed new zoning district, the Planned Campus District, which would have included commercial office and residential components (the "Planned Campus Petition"). The Board criticized the Planned Campus Petition for the following reasons: a) the lack of attention to, and/or conformity with, the TDP; b) the Board's discomfort with an entirely new zone with which the Town had no experience or history; c) increased traffic; d) impacts on the Town's schools; and e) a general feeling that the Planned Campus Petition and its corresponding residential proposal offered no benefit to the Town. It was, however, acknowledged that "there will presumably be change at Reader's Digest."

3. Summit/Greenfield listened carefully and has developed this proposal for Chappaqua Crossing that addresses the Board's concerns as follows.

(a) Conformity with the TDP (and the recently adopted Greenway Compact)

The TDP recognizes the importance of Reader's Digest and its corporate campus within the community and envisions its continued presence within the Town in large part to maintain the commercial tax base. Within the constraints of today's business environment, Chappaqua Crossing will preserve the Reader's Digest presence, albeit on a reduced and realistic level, and will preserve 520,000 of the existing 700,000 square feet of commercial office space and its tax base.

The TDP further envisions that the Town shall provide an array of housing to meet both local and regional needs. Chappaqua Crossing will be a residential community on 64.3 acres, of which 88.5 % of the units will be age-restricted housing so that at least one resident must be age

55 or older, and no children under the age of 18 shall be allowed to reside in the units. No such housing exists within the Town. This responds to the special needs of the Town and the region's senior population. The proposal complies in all respects with the Town's existing MFPD District zoning standards and density provisions. As discussed in detail below, deed restrictions will ensure that all 246 age-restricted units will remain age-restricted.

In addition, Chappaqua Crossing will provide 56 units of affordable housing that will be divided between 32 units of workforce affordable housing, the only units in which children may reside, and 24 units of senior age-restricted affordable housing. These 56 units will count towards the Town's 255 unit affordable housing allocation, as established by the Westchester County Housing Opportunity Commission and discussed further below. In summary, the three types of housing proposed for Chappaqua Crossing – workforce affordable, senior age-restricted affordable and senior age-restricted market rate – will provide a true array of housing within the Town. *See* Illustrative Site Development Plan, attached hereto as **EXHIBIT 1**.

(b) Compliance with existing zoning regulations

Chappaqua Crossing calls for the rezoning of 64.3 acres of the Property to the Town's existing MFPD District in furtherance of both the Town Zoning Code's stated intent to encourage the development of multifamily housing and the TDP's goal of providing diverse types of housing within the Town. Furthermore, the Town has extensive history and familiarity with the MFPD Zoning District, as the Town enacted the multifamily district regulations (Zoning Code § 60-417) in 1979 and, upon information and belief, has established three other MFPD District parcels within its borders.

(c) Traffic Impacts

Chappaqua Crossing includes substantial off-site traffic improvements along Bedford Road and Roaring Brook Road to improve existing conditions. Chappaqua Crossing is also expected to generate *less* overall traffic than would be generated by full occupancy of the

existing 700,000 square feet of commercial space currently existing on the property (not considering a potential 300,000 square foot expansion of commercial and research space) and incorporates a 70-unit (20%) reduction in residential density compared to the Planned Campus Petition.

(d) Impacts on schools

Only the 32 workforce affordable units, or 11.5% of the total housing units, will allow children to be residents, thereby minimizing the impact on local schools. As discussed further below, a maximum of 20-25 children are projected to be added to the School District as a result of the 32 workforce units, which are proposed to consist of twenty-two (22) 2-bedroom units and ten (10) 3-bedroom units. Further, while the impacts to the School District will be minimal, Chappaqua Crossing will give valuable and integral workforce members of the Town and surrounding communities, many of whom serve as volunteers or are employed by the Town (including police officers, fire fighters, teachers and municipal workers), the opportunity to be homeowners within the Town and to have their children attend the Chappaqua schools. *See* “Volunteer Firefighters, Priced Out of Suburbia,” New York Times, July 8, 2007 (discussing the diminishing ranks of Town volunteers caused by the lack of affordable housing within the Town), attached hereto as **EXHIBIT 2**.

(e) Other benefits to the Town

In addition to providing these benefits to the Town and its residents that are also goals of the TDP, Chappaqua Crossing offers these benefits:

- Chappaqua Crossing is anticipated to more than double the current real property taxes generated from the Property, while continuing to make minimal demands on municipal services.
- Approximately 50 acres of open space will be preserved for buffer and passive recreation by residents.

- Summit/Greenfield also proposes the dedication of a 2 acre parcel on Roaring Brook Road for municipal use, as the Town has previously expressed a desire for a site for facilities such as a municipal pool or a new station for police, ambulance or fire use.

4. In short, the Applicant has listened to the community's concerns and has designed a proposal that addresses the Town's fiscal, aesthetic, commercial, residential, societal, legal, and environmental priorities. The Applicant therefore requests that the Town Board expeditiously review, consider, and approve Chappaqua Crossing.

II. GENERAL OVERVIEW

5. The Applicant is a limited liability company organized under the laws of the State of Delaware, with offices at 40 North Water Street, South Norwalk, Connecticut. The former Reader's Digest campus, located at 480 Bedford Road, consists of two tax parcels and totals 115.7 acres in the Town of New Castle (the "Town"). The main parcel is 113.7 acres, and is designated on the Town Tax Map as Tax Lot No. 93.9-1-1; approximately 87.3-acres are located within the B-RO-20 District and the remaining 26.4 acres are within the R-1A One Family Residence District (the "R-1A District"). The second parcel is a 2-acre undeveloped parcel that is designated as Tax Lot No. 92.12-2-1; it is located within the R-1A District on Roaring Brook Road east of the Metro-North Harlem Division Rail Line. See **EXHIBIT 3**, Area Zoning Map. Summit/Greenfield also has an option to acquire four adjacent residential lots, three which are currently improved with single family residences, totaling approximately 4.0 acres along Roaring Brook Road that are in the R-1A District and border the main parcel along the south with frontage on Roaring Brook Road. These six parcels, which are the subject of Summit/Greenfield's Application, are collectively referred to as the "Property." See Preliminary Site Development Plan and Existing Conditions Map attached hereto as **EXHIBIT 4**.

A. Historical Use of the Site and Procedural History

6. Reader's Digest moved its corporate headquarters to Chappaqua in the 1930s and over time expanded the commercial facilities as it grew to full occupancy of the existing 700,000 square feet by the 1980s (the "Reader's Corporate Campus" or the "Campus"). At its peak, Reader's had 3,500 employees working three continuous shifts and had a fleet of buses to shuttle employees back and forth from the local train stations and other sites in the County. Its presence in the Town for nearly eight decades has made Reader's Digest an integral part of the Town's history.

7. Reader's corporate headquarters became a model for many campus-style corporate office complexes that developed in and around Westchester County in the latter half of the twentieth century. These corporate campuses tended to be centrally located in relatively undeveloped municipalities with total land areas in excess of 100 acres, creating park-like buffers from adjacent properties, and were self-contained and self-sufficient, offering many amenities on-site, such as cafeterias, recreation areas for employees, and other services.

8. In time, the locations and attractive ambiance of these corporate campuses encouraged the development of new housing in the areas, much of which developed after the original corporate campus. This was the case with Reader's Digest, whose presence spurred private subdivisions, which, together with community facilities such as Horace Greeley High School ("Horace Greeley"), were constructed without corresponding road improvements to keep pace with the immediate and surrounding areas' growth.

1. Downsizing of Reader's Digest and Need for Corporate Campus

9. Trends in technology and the publishing industry in the last two decades caused Reader's Digest to explore reducing its need for its 700,000 square foot corporate campus headquarters

as technological improvements, and the general trend of corporate downsizing, made full occupancy of its campus no longer necessary or economically feasible.

10. Westchester County has experienced a similar trend of downsizing where numerous businesses have forgone or abandoned similar single-user campuses as they are no longer financially sustainable in their present form. It has been Summit/Greenfield's experience that commercial tenants no longer desire to be isolated on these campuses and actually prefer to be grouped with other tenants or to be located in central business districts.

11. The current tenant and square footage restrictions contained in the Town's B-RO-20 District regulations, for which there is no planning or zoning justification, has made it difficult to lease the balance of the vacant commercial space at the Reader's Corporate Campus. The experience of Summit/Greenfield with respect to its ability to lease portions of this Property is similar to the experience of the owners of other corporate campuses, that is, there are few large commercial tenants seeking such a large amount of space in Westchester County, due in large part to the substantial costs associated with these types of facilities.

12. The Town is not the first municipality to face the challenge of changed market conditions and technological circumstances that impact the need for commercial office or industrial uses. Other municipalities have taken a fresh look at commercially and industrially zoned properties, similar to the Reader's Corporate Campus, in order to provide orderly transition from past uses to new uses of these large properties, and have acknowledged such changed conditions and trends. In an effort to find adaptive reuses of these properties compatible with their surroundings, many corporate campus or institutional facilities have been converted to multi-tenant, mixed use or residential facilities.¹

¹ Examples include the former 173 acre Union Carbide headquarters in the Town of Danbury, CT (conversion to mixed use development with multi-tenant and residential use), the former Drum Hill School in Peekskill, NY (conversion to a 120 unit Senior Living Community), the former St. Agnes Hospital in White Plains, NY a 23 acre site (conversion to 335 senior residential condominium units, assisted living facilities and medical office use), the 80 acre United Technologies building of 1.5 million sq. ft. in Norwalk, CT (conversion to multi-tenant use), One Pepsi Way, in Somers, NY (522,000 sq. ft. conversion from single to multi-tenant use), the former General Foods headquarters located at 333 Westchester Avenue, White Plains, NY (600,000 sq. ft. conversion to multi-tenant use), and the former CVS and Lillian Vernon Headquarters at One Theall Road, Rye NY (65,000 sq. ft. conversion to a medical-use facility).

13. In fact, the Town had anticipated these possible changed conditions in its TDP.

The Town realized years ago that these institutional facilities could result in senior residential opportunities. Specifically, the TDP stated,

Conversion of Institutional Facilities – New Castle is home to a number of large institutional organizations that, for reasons of economics or other concerns, may someday choose to relocate elsewhere. Many of these organizations own properties containing buildings that should be evaluated for potential conversion to senior citizen housing.²

TDP p. 127.

14. Additionally, as set forth in the TDP, the Town actively decided to discourage the development of new office and research facilities as it acknowledged that the Town is not suitable for this type of commercial development. Rather, its Zoning Code was adopted to further the desire to maintain the residential character of New Castle. TDP p. 105. As a result, the Reader's Corporate Campus has become an isolated commercial property in the Town, one that is virtually unmarketable due to the B-RO-20 District restrictions.

15. Reader's Digest's first step in its efforts to re-evaluate the use of its Corporate Campus was to meet with Town officials to consider various options for the re-occupancy or redevelopment of the Property. Recognizing that such an undertaking required development experience, Reader's sought outside development partners to suggest alternative approaches to the future use of the Property that could respond to the declining need for corporate headquarters space.

16. Reader's conducted a national search for a partner or purchaser that would share its sense of commitment to the Campus, the surrounding community and the Town, and selected the award-winning development team of Summit/Greenfield. Summit/Greenfield has extensive prior experience and success in commercial and mixed-use adaptive re-use projects, including Maritime Place in South Norwalk, CT and Norden Park in Norwalk, CT, a former corporate campus facility. Maritime

² Although the TDP calls for the "conversion" of existing buildings to senior housing, the buildings at the Reader's Corporate Campus were studied and it was determined that they cannot be economically converted to residential use.

Place is a \$45 million dollar project that includes a 280-unit retail, office, condominium and apartment development, including 10% affordable housing. Phase 1 of Maritime Place, the Lock Building, has won numerous architectural and design awards. Norden Park, the former Northrup/Grumman Technologies corporate campus, is an 80-acre, 1,500,000 square foot, \$100+ million dollar redevelopment that involved the previous owner transitioning to tenant status, along with new commercial tenants also leasing space. Norden Park has also won numerous awards for its architecture and adaptive reuse design. Summit/Greenfield has completed successful residential projects including Mansfield Landing in East Haven, CT (a 255 unit condominium and marina complex), Greenwich Close in Cos Cob, CT (39 unit condominium project), Sherwood Farms, in Westport, CT (17 single family home development) and Three Creek Ranch in Jackson, WY (a 710-acre 133 lot planned residential recreation community).

17. Even before it was chosen, Summit/Greenfield had commenced planning for the future of the Property by meeting with Town officials and residents and has spent approximately 3 years and significant financial resources to develop an appropriate and financially sound solution for the Property, mindful of the interests and concerns of both the community and itself, and of the Property's unique position in the Town.

2. Summit/Greenfield's Prior Proposals to the Town

18. Summit/Greenfield's efforts in searching for the proper solution for the Property that would further the Town's goals as stated in the TDP and garner community support formally began in July, 2004. As part of that effort, Summit/Greenfield had initial meetings with Town officials and began an information gathering and education process with them, as well as with the neighbors of the Property, concerned citizens and the local real estate community.

19. In April, 2005 Summit/Greenfield sought relief from the single-user restriction within the B-RO-20 District. At the time Reader's Digest had reduced its occupancy to only 225,000

square feet of commercial office space and had the right to use certain common amenities consisting of 75,000 square feet, leaving approximately 400,000 square feet of space vacant. As the B-RO-20 District single-user restriction prevented the use of this space by another tenant, the single-user restriction did not permit the use of approximately two-thirds of the existing office buildings. Summit/Greenfield petitioned the Town Board to have the restriction lifted within the B-RO-20 District to allow up to four tenants to occupy the existing buildings with certain square footage limitations (the “Four-Tenant Petition”). This tenant limitation and restriction on square footage was proposed due to the stated desire of a potential tenant to lease up to 155,000 square feet of office space, Reader’s Digest’s occupancy of 225,000 square feet, and the presence of two tenants that had operated on site for sometime.³ When it submitted the Four-Tenant Petition, Summit/Greenfield also planned for the eventual elimination of approximately 200,000 square feet of commercial space as proposed and in conjunction with the anticipated approval of the Planned Campus Petition. The Town Board granted the Four-Tenant Petition and amended the B-RO-20 District regulations accordingly in 2005.

20. It has become apparent, however, that the four-tenant and square footage restrictions as approved in 2005 have significantly hindered Summit/Greenfield’s ability effectively to market and lease the Property. Summit/Greenfield, therefore, intends to apply for a variance pursuant to Section 60-543.24⁴ to obtain relief from the existing four-tenant and square footage restrictions.

³ Pepsico, under strict time constraints, was ready to take occupancy of that space and had made initial expenditures toward the anticipated improvement of the space. However as the single-tenant restriction still affected the Property, and despite Summit/Greenfield’s and the Town’s best efforts to have the restriction lifted as quickly as possible, by the time this was achieved, Pepsico was no longer interested in leasing the space.

⁴ Section 60-543.24 provides:

Variations when subdivision, site plan or special permit applications are involved. Where a proposed site plan contains one or more features which do not comply with the zoning regulations, or where a proposed special permit use contains one or more features which do not comply with the zoning regulations, or where a proposed subdivision plat contains one or more lots which do not comply with the zoning regulations, application may be made to the Board of Appeals for an area variance or variances without the necessity of a decision or determination of an administrative official charged with the enforcement of this chapter or a referral by an approving agency acting pursuant to this chapter.

21. Finally, as this Board is well aware, Summit/Greenfield pursued the Planned Campus Development District, a proposed new zoning district that would have allowed mixed-uses on the Property, including unlimited multi-tenant occupancy of existing commercial buildings 100-500, and 348 age-restricted, market-rate condominium and townhome units. However, the Town Board rejected the Planned Campus Petition at its December 12, 2006 Meeting.

B. Distinction Between the Earlier Planned Campus Petition and This Proposal

22. This Application differs from the Planned Campus Petition in significant ways. First and foremost, the Applicant proposes 56 affordable units consisting of 20% of the proposed residential density, while the Planned Campus Petition proposed no affordable units. These units include 24 units of senior age-restricted affordable and 32 units of workforce non age-restricted affordable. All 56 units of affordable housing will be reserved for people meeting the maximum 80% of Westchester County median income limits as set by U.S. Department of Housing and Urban Development (“HUD”) and would therefore count toward the Town’s 255 affordable housing units for the years 2000-2015, as assigned by the Westchester County Housing Opportunity Commission and discussed fully in Section V herein.

23. Second, the proposal employs the Town’s existing MFPD District floating zone, enacted in 1979 and with which the Town has established history and familiarity, on a portion of the Property, while retaining approximately 520,000 square feet of the commercial space in the B-RO-20 District. The Planned Campus Petition proposed the creation of a new zone for the entire Property, a zone with which the Town had no history or familiarity.

24. Third, the proposed number of residential units has been reduced from 348 to 278, a reduction of 70 units or 20%, a density which is lower than that allowed pursuant to MFPD District regulations and without the Town granting any available density bonuses.

25. Fourth, the proposal involves buildings that are no more than three-stories and 35 feet in height and is fully compliant with existing MFPD District regulations as discussed further below, while the Planned Campus Petition proposed 5 story residential buildings with a maximum height of 70 feet.

26. Fifth, Chappaqua Crossing offers other municipal benefits that the Planned Campus Petition did not, including the restriction that no children will be allowed to live in any of the 246 senior age-restricted units, 50 acres of open space which will be maintained for passive recreation, and two one-acre lots on Roaring Brook Road which will be dedicated to the Town for municipal use, in addition to the off-site traffic improvements which had been proposed as part of the Planned Campus Petition.

C. Chappaqua Crossing Project Description

27. The establishment of the MFPD District on 64.3 acres of the Chappaqua Crossing Property complies with the MFPD District development standards and is in accordance with the stated intent of the multifamily districts pursuant to the Town Zoning Code and in furtherance of the Town's multifamily and senior affordable housing goals. Of the 278 proposed units, 234 are proposed to be 2- and 3-bedroom flats with condominium ownership, while 44 are proposed to be 2 and 3-bedroom townhouses, to be conveyed in fee simple. The proposed density of Chappaqua Crossing – 278 units or 4.3 units per acre – is consistent with the Town's medium density designation as set forth in the TDP, and complies with the basic permitted MFPD District densities without the application of any available incentive density bonuses pursuant to § 60-417.424⁵, which potentially could increase Chappaqua Crossing's density by up to 100%. Here, the MFPD Parcel will serve as a transitional use between the B-RO-20 District and the R-1A District that otherwise surrounds the Property.

⁵ A more detailed discussion of density bonuses is provided in Section III.D.

28. The removal of 180,000 square feet of existing office building and the use of parking areas as building sites will allow the use of the MFPD Parcel's areas of prior disturbance as building pads for the proposed residential buildings. This will limit the addition of new impervious area from the development of Chappaqua Crossing and will result in the preservation of 50 acres of the overall Property as open space. Chappaqua Crossing will also include a clubhouse, swimming pool, gardens and walking paths for its residents. Additionally, Chappaqua Crossing will be only approximately two miles from the hamlet center and its commuter train services, shopping, post office and library.

29. The Applicant believes that the MFPD Parcel represents one of the only viable undeveloped and appropriate parcels within the Town that can support any significant contribution to the Town's allocation of affordable units.⁶ Furthermore, affordable housing is often not possible to develop due to the lack of available and appropriate land, prohibitive land costs in Westchester County, and associated building and approval costs. Chappaqua Crossing, however, allows the Applicant internally to subsidize the project costs associated with its affordable housing units through the unique combination of market rate housing proposed in compliance with MFPD District development standards and the existing commercial office space with the four tenant and square footage restrictions removed.

30. Summit/Greenfield submits that this proposal responds to the very serious housing concerns of the Town and surrounding Westchester County region, and current demographic trends and market needs, while being mindful of appropriate density permitted pursuant to the Zoning Code. Demographic data establishes the demand for senior age-restricted housing within this

⁶In addition to the MFPD District, the Multifamily Design Residential Development District ("MFDRD District"), is "[a] multifamily development approved by the Planning Board pursuant to the requirements of § 60-437.9 hereof." The MFDRD District is intended to provide a low-density form of multifamily housing on the Town's remaining large parcels of residentially zoned land with a minimum required lot area of equal to 100 times the minimum lot size required for one-family dwellings in the district in which it is located. As it requires such a large developable parcel, it would hypothetically allow for a significant contribution to the Town's affordable housing allocation. However, upon information and belief, since its enactment in 1979, no MFDRD District has ever been established in the Town.

community as discussed in Section VI, while the need for affordable housing has been clearly established in both the Town and Westchester County, as discussed in detail in Section V.

31. Additionally, the Project's 20% workforce/senior affordable component will provide housing for valuable and integral members of the Town and community, many of whom service the community as volunteers or through their employment with the Town and School District (including police officers, fire fighters, teachers and municipal workers) but who cannot afford to live in the area they service.

32. In addition to providing a true array of housing for the Town and region, Chappaqua Crossing will provide significant benefits to the Town. The Project will maintain and enhance the Reader's Corporate Campus as a community resource, recognizing its historical significance and contribution to the community, while substantially increasing real property tax revenue generated from the Property. It is anticipated that Chappaqua Crossing will make only minimal demands upon municipal services, including the schools, as only the workforce affordable units will permit children as residents. Chappaqua Crossing also proposes the dedication of approximately 2-acres of land to the Town for municipal use and significant off-site traffic improvements to Roaring Brook Road and Bedford Road.

D. Current Site Conditions

1. Current Zoning

33. For the purposes of this Application, the overall Property consists of six parcels totaling 119.7 acres:

Description	Tax Lot	Area (ac)	Owner
Main Parcel- 400 Bedford Rd.	93.9-1-1	113.7	Summit/Greenfield
Undeveloped Roaring Brook Road Parcel	92.12-2-1	2.0	Summit/Greenfield (S/G)
15 Roaring Brook Road	93.9-1-7	1.1	Reader's Digest (RD); S/G has option to acquire
21 Roaring Brook Road	93.9-1-8	1.05	RD; S/G option to acquire
31 Roaring Brook Road	93.9-1-9	0.8	RD; S/G option to acquire
57 Roaring Brook Road	93.9-1-10	1.05	RD; S/G option to acquire
Total		119.7 acres	

34. The main parcel is depicted on the Area Zoning Map (**EXHIBIT 3**) and contains the only B-RO-20 zoned property within the Town. Under existing B-RO-20 District regulations, and as acknowledged in the TDP, the Property has the capacity for additional B-RO-20 development.

2. Overview of Existing Buildings, Site and Environs

35. The main parcel is improved with approximately 700,000 square feet of office space and associated uses that were constructed and/or utilized by Reader's Digest beginning in 1939. It includes the main building complex that extends approximately 1200 feet in a north-south direction within the western section of the Property. The signature white cupola standing approximately 110 feet tall measured from the front of the building and taller when viewed from the rear or west of the site sits atop the center of the oldest portion of the building (which Reader's Digest now leases) and is an established visual landmark clearly visible from the Saw Mill River Parkway and Roaring Brook Road to the west. Accessory buildings totaling approximately 29,000 square feet and located in the center and eastern section of the Property include the Wallace Auditorium, a former single-family house utilized for office purposes (Bedford Valley House), a maintenance garage, a former single-family house

utilized as a corporate guest house, and a gate house. Approximately 1,680 parking spaces in ten on-grade lots are located primarily east and north of the main building. See **EXHIBIT 5**, Aerial Photograph.

36. Reader's Digest currently leases approximately 265,000 square feet of office space in the existing office complex. It is anticipated that due to internal reorganization Reader's Digest may expand this amount to occupy a total of 296,000 square feet. Reader's also has the right to utilize 75,000 square feet of common support space in the complex. These buildings contain amenities such as a conference center, a full-service cafeteria and dining rooms, a fitness center, and convenience retail, while also housing property infrastructure such as emergency generators, HVAC systems, and main electrical switch gear.

37. The Property is bordered on the north, east and south by existing single-family residential neighborhoods in the R-1A District. Horace Greeley and the School District's administrative offices are also located to the south with access from Roaring Brook Road near the south center of the Property. On the west, the Property is bounded by the Metro-North Harlem Division Rail Line, Chappaqua Brook and the Saw Mill River Parkway.

38. A perimeter band of open space, which will remain undisturbed in the proposed Project and available to Chappaqua Crossing residents for passive recreation, wraps around the main office building and parking areas and consists of woodlands, meadows and lawn areas, generally ranging from 100 to 600 feet in depth. A north-south watershed divide runs through the center of the Property and the Wallace Auditorium, with the land to the east sloping towards a pond and surrounding wetland adjoining Cowdin Lane, and the land to the west sloping towards the Chappaqua Brook.

E. MFPD District Floating Zone

39. As discussed further below, the Applicant requests that the Town Board apply the Town's MFPD District floating zone to the to-be-subdivided 64.3 acre MFPD Parcel in furtherance

of the Zoning Code's stated intent with respect to multifamily zoning districts. The specific purpose and intent of the MFPD District, which was established in 1979 along with the other multifamily zoning districts in direct response to the New York Court of Appeals decision in *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975), is to "provide the opportunity within the Town of New Castle for the development on a planned basis of medium-density multifamily housing on sites located in existing single-family residential neighborhoods but in reasonable proximity to shopping services and other community facilities and with access to major roads." § 60-417.4. All MFPD Districts which have not been designated as such on the Town Zoning Map are to be established on a floating zone basis, subject in each instance to the approval of the Town Board and in accordance with an approved preliminary development plan. The proposed Chappaqua Crossing MFPD Parcel complies fully with the MFPD District development and density standards and falls squarely within its stated purpose and intent pursuant to the Zoning Code, as discussed in Section III below.

40. The procedure for the establishment of an MFPD District is set forth in Section 60-417.41 of the Town Zoning Code. It requires a two-stage review process which includes the approval of a preliminary development concept plan and the reclassification of a specific parcel or parcels for development in accordance with that plan by the Town Board, and approval of a final, detailed site development plan and subdivision plat by the Planning Board.

41. This review process must include review pursuant to the regulations promulgated under the State Environmental Quality Review Act ("SEQRA") N.Y. Env'tl. Conserv. Law § 8-0101 et seq. (McKinney 2007). As the proposed action involves the granting of a zoning change for more than 25 acres and therefore is a Type I Action as classified by SEQRA, a full coordinated environmental review is contemplated that will include preparation by the Applicant, and review and adoption by the Town, of a Draft Environmental Impact Statement and a Final Environmental Impact Statement. A Full Environmental Assessment Form (Part I) is attached hereto as **EXHIBIT 6**.

42. Chappaqua Crossing will involve the reduction of the Property's existing B-RO-20 and R-1A Districts, all of which will be reviewed by the Town Board. It is expected that the Town Board will act as Lead Agency for the purpose of SEQRA review of the proposed project, and that the Planning Board and Zoning Board of Appeals will act as Involved Agencies.

43. Pursuant to § 60-417.412, once the Town Board has received a complete application for establishment of a new MFPD District, it must refer the application to the Planning Board for its review and report. Within 65 days thereafter the Planning Board shall report its recommendations back to the Town Board. § 60-417.413.

44. The Town Board must then schedule and hold a public hearing within 45 days of its receipt of the Planning Board's report and recommendation of the MFPD Application or the expiration of the Planning Board review period, whichever occurs first. § 60-417.414. Within 45 days of the date of the close of the public hearing, the Town Board must approve, approve with modifications or disapprove the preliminary development concept plan and the establishment of the MFPD District. § 60-417.415[a].

45. If the Town Board approves the Application, the Town's official Zoning Map will be amended to reflect the new MFPD District and site plan and subdivision review may proceed before the Planning Board. §§ 60-417.415[a]-416.

F. Senior Age-Restricted Residential Component Description

46. Chappaqua Crossing will be an "active-adult" multifamily residential community with 246 of the total 278 units proposed to be restricted so that at least one household member must be 55 and older, with no residents permitted under the age of 18 years.⁷ An active-adult senior residential community offers many amenities to its residents and benefits to the community, including providing financial stability to the Town as a result of tax revenue from the MFPD Parcel while at the same time

⁷ See Section VI herein for a complete description of this restriction and its compliance with Federal, State and Town Law.

limiting the impact that residential use will have on local schools and local roadway conditions, and providing an alternative for aging residents of the Town and region that does not currently exist. Forty-four (44) of the senior units are proposed to be townhomes while 202 are proposed to be flats.

47. Extensive amenities often sought by seniors are proposed for Chappaqua Crossing, including a recreational and social clubhouse complex that will offer many social, health and wellness activities, and will feature a swimming pool, media rooms and meeting areas, accessible for residents. A jitney service is proposed to shuttle residents and employees of Chappaqua Crossing to and from the train station and the downtown hamlet area. Chappaqua Crossing will feature 24-hour security and a concierge service for the safety and convenience of residents. Additionally, the residences have been designed to provide nearly all resident parking within or below the buildings for the ease and comfort of residents, while minimizing impervious surface coverage and controlling storm water runoff. The significant costs associated with these amenities, along with other infrastructure improvements, and most importantly, the cost of developing affordable housing, need to be internally subsidized and distributed over the market-rate residential development base and commercial component, including the removal of the four-tenant and square footage restriction. Two-hundred and twenty-two (222) market-rate units represent an acceptable scale to enable the overhead to be within a reasonable range.

G. Affordable Component Description

48. Chappaqua Crossing's proposed affordable component represents 22% of the Town's allocation of 255 affordable units assigned by the Westchester County Housing Opportunity Commission for the period 2000 - 2015. The Applicant proposes that these units be filled using a lottery system that gives preference to Town municipal employees, School District employees, police officers, volunteer emergency responders and local senior citizens who may otherwise be forced to leave the Town due to fixed incomes, in an attempt to preserve the same hierarchy of priority of affordable units envisioned in the Town Zoning Code. § 60-417.2121.

49. The 24 senior age-restricted affordable units are proposed to be distributed throughout the 170 2-bedroom flats of the North Village, as these units will be fully integrated with the market-rate senior age-restricted units.

50. The 32 workforce units will be located on the east side of the MFPD Parcel, in a portion of what will be referred to as the “East Village,” one of two “villages” designed to create neighborhoods within the MFPD Parcel. These units located closest to Horace Greeley will comprise two, three-story buildings with a play area for children, as the workforce units will be the only housing at Chappaqua Crossing in which children will be permitted to live and will provide a sense of community and foster social interaction among Chappaqua Crossing’s younger residents.

51. The senior age-restricted affordable and workforce units will have access to all of Chappaqua Crossing’s amenities including the aforementioned clubhouse and recreational facilities and 50 acres of open space.

III. COMPLIANCE WITH MFPD

52. As proposed, Chappaqua Crossing complies with the Town Zoning Code requirements for multifamily housing as a MFPD District floating zone pursuant to § 60-417.4.

A. Intent of Town’s Multifamily Zones

53. The Town established the multifamily zoning districts with the purpose of encouraging a broad array of housing types, dwelling unit sizes and forms of ownership/occupancy. The Town Board enacted these multifamily districts on October 29, 1979 by Local Law No. 16-1979 in response to *Berenson v. New Castle*, to “provide suitable opportunities within the Town for the development of housing designed to satisfy the needs of smaller households, *particularly the young and the elderly, and of families of low/moderate income....*” § 60-417.1 (emphasis added).

54. The multifamily zoning districts are “intended to encourage the construction of multifamily housing” on sites determined by the Town to be appropriate “based upon criteria established in the Town Plan and in conformance with the standards recommended therein, which standards are designed to promote the public health, safety and general welfare, and to encourage the development of housing which is responsive to the variety of special size, design, locational and *economic needs of present and future residents of the Town and the region.*” § 60-417.1 (emphasis added).

55. This local law created four different zoning districts within the Town of New Castle that would allow the Town to meet these goals. These districts include the Multifamily Residence District - Chappaqua (“MFR-C”) § 60-417.2, the Multifamily Residence District – Millwood (“MFR-M District”) § 60-417.3 (“MFR-M District”), the Multifamily Planned Development District (“MFPD District”) § 60-417.4 and the Multifamily Designed Residential Developments (“MFDRD”) § 60-437.9.

56. The specific purpose and intent of the MFPD District is to “provide the opportunity within the Town of New Castle for the development on a planned basis of medium-density multifamily housing on sites located in existing single-family residential neighborhoods but in reasonable proximity to shopping services and other community facilities and with access to major roads.” § 60-417.4. MFPD Districts that have not been designated as such on the Town Zoning Map shall be established on a floating zone basis, subject in each instance to the approval of the Town Board and in accordance with an approved preliminary development plan.

57. Floating zones such as the MFPD District in the Town Zoning Code meet the need for flexibility in modern zoning codes since the location of the new zone is left for future determination, as demand develops, and applications are granted which meet all conditions specified by the Zoning Code.

B. Specific Criteria of MFPD District and Compliance with Criteria

58. Chappaqua Crossing complies with the specific criteria and standards set forth in the Town Zoning Code for the establishment of an MFPD District in § 60-417.4.

59. Section 60-417.42 sets forth the development standards with which the potential MFPD District must comply to warrant the application of the floating zone to the site. The MFPD District development is governed by the same standards as the MFR-C District as set forth in § 60-417.2 unless modified by the five specific development standards that apply solely to the MFPD District. These categories include location, minimum site size, ownership, density and coverage.

60. Specifically, the development standards in § 60-417.42 provide:

60-417.421. Location. The establishment of MFPD Districts shall be permitted only within R-¼A, R-½A, R-1A and nonresidential districts and only when the location is within ½ mile of the boundary of a business district.

60-417.422. Minimum site size. The minimum site size required for the establishment of an MFPD District shall be five acres, but, in any case, the site shall be of such shape, dimension, topography and location as will allow for an appropriate and attractive development with proper setbacks, screening and a harmonious relationship with adjoining land uses and the natural physical terrain.

60-417.423. Ownership. A proposed MFPD District site may be owned by one or more persons or corporations but shall be presented as a single parcel of land at the time application for rezoning is made. The application shall be jointly filed by all owners and, if approved, shall be jointly binding on them. If required by the Planning Board, this shall be confirmed by written agreement, in recordable form satisfactory to the Town Attorney.

60-417.424. Density. The permitted basic and incentive densities within an MFPD District shall be calculated as in the MFR-C District, except that they shall be based upon the following minimum lot area standards:

<u>Dwelling Unit Size</u>	<u>Minimum Gross Lot Area Requirement Per Dwelling Unit (square feet)</u>
Efficiency (studio) apartment	4,400
1-bedroom apartment	6,600
2-bedroom apartment	8,800
3-bedroom apartment	11,000
4-bedroom apartment	13,200
1-family detached dwelling	13,200

The granting of any incentive density increase within an MFPD District and the amount of such increase shall be determined by the agency responsible for the approval of the preliminary development concept plan.

60-417.425. Coverage. The maximum permitted building coverage within an MFPD District shall be 15%, and the maximum permitted development coverage shall be 30%. Such coverage shall be calculated on the basis of nonwetland areas plus 33% of any wetland areas on the site. Parking structures located wholly underground shall be excluded for the purpose of these calculations.

61. The proposed Chappaqua Crossing project meets all the development standards provided above and as such is appropriate for the establishment of the MFPD District.

62. Chappaqua Crossing satisfies § 60-417.421 as the MFPD District proposed is entirely within the R-1A and B-RO-20 (nonresidential) Districts, and is within ½ mile of the boundary of a business district, the B-RO-20 District, which is the current zoning of a portion of the Property and will remain for the 49.4 acre Office Parcel.

63. The minimum site size required pursuant to § 60-417.422 for the establishment of an MFPD District is five acres, which Chappaqua Crossing exceeds, as it is proposed to be 64.3 acres. The Applicant has designed Chappaqua Crossing to utilize the existing topography of the land to minimize the visibility of buildings from the surrounding neighborhoods, and includes significant setbacks, in many instances exceeding the setbacks required in the MFPD District pursuant to the “Lot and Bulk Regulations” of § 60-411, Schedule of Regulations for Residence Districts. Further, the sites selected for the proposed residential buildings take advantage of existing mature vegetation and

screening, including the wooded areas, the meadow and pond to provide a harmonious transition between the adjoining residential and business land uses.

64. This Petition is made by and on behalf of the sole ownership entity of the proposed MFPD Parcel, and therefore the requirement of § 60-417.423 is satisfied.

65. Chappaqua Crossing proposes to create 278 units on approximately 64.3 acres of land and is less than the permitted basic density pursuant to the formula found in § 60-417.424. The proposal includes 246 two-bedroom units that require a minimum gross lot area requirement of 8,800 square feet (2,164,800) and 32 three-bedroom units that require a minimum gross lot area of 11,000 square feet (352,000). Therefore, this would require a total of 2,516,800 square feet to meet the total minimum gross lot area. Calculation of the minimum gross lot area is determined on the basis of nonwetland areas, plus 33% of any wetland areas on the site. The total acreage of the proposed MFPD Parcel is 64.3 acres with 7.3 acres of wetlands. With a 67% (4.89 acres) reduction for wetlands, the net acreage for MFPD density calculations is approximately 59.4 acres or approximately 2,587,400 square feet. The proposed MFPD Parcel exceeds this requirement by approximately 70,600 square feet or 1.6 acres.

66. Finally, Chappaqua Crossing's MFPD Parcel complies with § 60-417.425 as it does not exceed either the maximum building coverage of 15% or the maximum permitted development coverage of 30%.

67. Thus, Chappaqua Crossing complies with all the MFPD District development standards set forth in § 60-417.42.

68. Development within an MFPD District is also governed by the MFR-C development standards set forth in § 60-417.2 unless superseded by the specific MFPD development standards discussed above, and include:

§ 60-417.22. Traffic access. Properties within an MFR-C District shall have either direct frontage on a major or collector road as shown on the Town Plan or safe and convenient access to such a road without passing through a one-family residence neighborhood.

§ 60-417.23. Utilities and services.

§ 60-417.231. Water and sewer service. MFR-C Districts are intended to be established only on lands located within or adjacent to public water and sewer districts. If land in an MFR-C District is not presently within such utility district(s), the establishment of the zoning district shall be contingent upon the creation or expansion of such utility district(s) to include the entire area of lands so zoned. All dwelling units constructed in the MFR-C District shall be connected to public water and sewer systems in accordance with standards approved by the Town Engineer, the Westchester County Health Department and any other county, state or federal agencies having jurisdiction. All dwelling units shall be separately metered for water.

§ 60-417.232. Drainage. Stormwater drainage systems serving any multifamily development shall be designed so that the rate of runoff from the site during a one-hundred-year storm will not exceed that which would have occurred prior to its construction. The calculation of such runoff rate and the design of the drainage system shall be subject to the approval of the Town Engineer. The Planning Board may, based upon the recommendation of the Town Engineer, waive or reduce this requirement where it is determined that, due to the nature or location of the property within its watershed, such a standard may be unnecessary or inappropriate.

§ 60-417.233. Refuse storage and collection. Plans for the storage and collection of refuse within any multifamily development shall be subject to Planning Board approval. The outside storage of refuse, if permitted, shall be in rodentproof containers conveniently located and enclosed or otherwise screened from view. Such facilities shall comply with all setback requirements applicable to principal buildings.

§ 60-417.234. Underground utilities. All utilities within any multifamily development, including electric, telephone and cable television service, shall be placed underground.

§ 60-417.235. Fire Protection. All site plans for multifamily development shall provide proper access for fire-fighting equipment and personnel and shall provide hydrants in such number and location and with such water pressure as may be determined adequate and approved by the Planning Board, based upon the recommendations to the Town Engineer and the Fire Department having jurisdiction.

§ 60-417.25. Off-street parking. Off-street parking shall be provided in accordance with the standards and requirements of § 60-426 of this chapter.⁸ In addition, the following special standards shall apply in the MFR-C District:

60-417.251. At least 1/3 but no more than 90% of the minimum number of required parking spaces shall be enclosed.

60-417.252. No more than one of the minimum required parking spaces for each dwelling unit may be designed or reserved exclusively for the use of the occupants of that unit.

60-417.253. At least 20% of the minimum number of required parking spaces shall be designed and reserved for the use of visitors and guests.

⁸Pursuant to § 60-426 multifamily dwellings in residence districts must comply with the minimum parking required off-street parking of one (1) space for each dwelling unit, plus ½ space per bedroom.

§ 60-417.26. Recreation and Open Space. ...

60-417.262. Private Outdoor space. Each individual multifamily dwelling unit shall, if practicable, be provided with a private outdoor space in the form of a patio, terrace, garden, courtyard, deck or balcony, which space shall be immediately adjoining and directly accessible to the dwelling unit which it serves.

60-417.263. Other open spaces. All portions of any multifamily development which are not used for one or more of the purposes permitted above shall be designed and maintained as permanent open space, either to be landscaped or preserved in its natural state, all in accordance with plans approved by the Planning Board.

§ 60-417.27 Other Requirements.

60-417.271. Individual unit access. In general, each individual dwelling unit within any multifamily development shall have its own separate entrance/exit leading directly to the outside. The Planning Board may waive this requirement as a part of site plan approval where said Board determines that the basic intent of this requirement in terms of safety and the avoidance of common hallway areas can be met through other elements of the building design.

60-417.272. Central antenna systems. If cable television service is not available to service a proposed multifamily development, a central exterior radio/television antenna system or earth station may be provided in accordance with plans approved by the Planning Board. Exterior antennas for individual multifamily buildings or dwelling units shall not be otherwise permitted.

69. Chappaqua Crossing was designed to meet all development standards provided above, some of which will be specifically addressed during the procedural second step of the MFPD approval process, while the remainder have already been met. The MFPD District is a floating zone, where initially only a preliminary development concept plan is to be approved by the Town Board prior to applying the floating zone to the Town Zoning Map and site plan approval by the Planning Board is the second step in the process.⁹

70. Chappaqua Crossing satisfies § 60-417.22 of the Zoning Code as the proposed MFPD Parcel has direct frontage on Bedford Road (Route 117) and Cowdin Lane, with Bedford Road

⁹ Pursuant to Section 60-417.411[e], a preliminary concept plan is required for application to the Town Board for the establishment of an MFPD Floating Zone District. Final Site Plan review shall be before the Planning Board once the MFPD District has been established.

being a major or collector road pursuant to the TDP. Additionally, the Property is directly accessed from the Saw Mill River Parkway by Exit 33 (Reader's Digest Road).

71. Chappaqua Crossing complies, or will comply in the second procedural stage of the approval process, with all the development standards set forth in § 60-417.23 for water and sewer service, drainage, refuse and storage collection, underground utilities and fire protection. The Property is adjacent to public water and sewer supply as the southern portion, including the existing office buildings, lies within the Saw Mill River Sewer District and is connected to the Westchester County Saw Mill Valley trunk sewer and the Property is currently served by connections to the Town Water System mains in Bedford and Roaring Brook Roads.¹⁰ Any future connections to the public water and sewer systems shall be performed in accordance with standards approved by the Town Engineer, the Westchester County Health Department and any other county, state or federal agencies having jurisdiction. As proposed, all dwelling units shall be separately metered for water. The Chappaqua Crossing stormwater drainage systems will be designed so that the rate of runoff from the Property during a one-hundred-year storm will not exceed that which would have occurred prior to construction, and shall be subject to the approval of the Town Engineer. At the appropriate time the Applicant will submit plans for storage and collection of refuse from the Property which shall be properly secure from rodents, appropriately screened and shall comply with applicable setbacks. Additionally, all utilities that will service the MFPD Parcel, including electric, telephone and cable television service shall be underground. Finally, the Applicant will insure that Chappaqua Crossing provides proper access for fire-fighting equipment and personnel, and the proper location and number of hydrants as approved by the Planning Board based upon the recommendations of the Town Engineer and Fire Department of jurisdiction.

72. Chappaqua Crossing will comply with the parking standards set forth in § 60-417.25, with one parking space for each dwelling unit and ½ space for each bedroom, of which no more

¹⁰ Applicant, with the cooperation of the Town, would petition the Westchester County Board of Legislators to extend the Saw Mill River Sewer District to the MFPD Parcel.

than 90% of the minimum parking spaces shall be enclosed. All resident parking areas will be located within or below the residential buildings, with centrally located visitor parking and drop-off areas within each of the two villages. The total parking proposed for Chappaqua Crossing's residential component is 664 parking spaces, with 502 residential spaces located within buildings, 137 on-grade visitor spaces and 25 on-grade clubhouse spaces. The required parking for Chappaqua Crossing based upon zoning regulations is 572 spaces. The 137 on-grade visitor spaces represent 24% of the total required parking and the 502 enclosed parking spaces represent 88% of the total required parking. The total parking supplied for the North Village is 352 spaces, a combination of 282 spaces for resident parking and 70 spaces devoted to visitor parking. The total parking supplied for the East Village is 287 spaces, with 220 spaces for residents and 67 spaces for visitors.

73. Where practicable, Chappaqua Crossing will provide private or shared outdoor space in the form of patios, terraces, gardens, courtyards, subject to approval by the Planning Board.

74. Section 60-417.27, "Other requirements" requires that generally each unit within any multifamily development shall have its own separate entrance/exit leading directly to the outside; however, the "Planning Board may waive this requirement as a part of site plan approval where said Board determines the basic intent of this requirement in terms of safety and the avoidance of common hallway areas can be met through other elements of the building design." (§ 60-417.271). As cable television service is available to the MFPD Parcel, § 60-417.272 is satisfied.

C. Compliance with § 60-417.413

75. Pursuant to the Zoning Code, any application that is made for the establishment of a new MFPD District shall be referred to the Planning Board for its review and report. Pursuant to § 60-417.413,

In preparing its report and recommendation, the Planning Board shall take into consideration the recommendation of the Town [Development] Plan, the existing nature and arrangement of land uses in the area, the relationship of the proposed design and location of buildings on the site, traffic circulation both on and off the

site, the adequacy of available community facilities and utilities to service the proposed development, compliance of the proposed development with the standards and requirements of this chapter, the then current need for such housing, and such other factors as may be appropriately related to the purpose and intent of this section and the Town Code.

76. As discussed above, Chappaqua Crossing satisfies all of these criteria to be considered by the Planning Board in its initial review and recommendation.

D. Density Incentive Discussion

77. Pursuant to the MFPD District, significant density incentives are available for project features such as senior housing, affordable housing, underground parking and open space preservation, as these features were legislatively determined to be desirable by and for the Town. For a project that incorporates these features such as Chappaqua Crossing, this could result in significant unit increases above the basic density permitted in the MFPD District, and density could be increased up to 100%.¹¹

78. As proposed, Chappaqua Crossing does not seek any density incentives as it complies with the basic density permitted in the MFPD District despite the fact that it contains many project features for which density bonuses could be granted. These features have been legislatively determined by the Town to be desired and the fact that Chappaqua Crossing includes these features without seeking any bonuses further demonstrates its appropriateness for the Town.

1. Senior Age-Restricted Apartments

79. For example, the Town Zoning Code MFPD District provisions provide density incentives for each 2% of the units allocated to senior citizens, a 1% increase in density is permitted. Chappaqua Crossing proposes 246 senior age-restricted units that comply with the Zoning Code

¹¹ Pursuant to § 60-417.424, density incentives permitted in the MFPD District are calculated as in the MFR-C District, which standards are set forth in § 60-417.212. This section provides “that the density within [a] development may be increased up to 100% beyond the basic permitted density....”§ 60-417.212.

definition of “Senior Citizen Apartment,” as they will be restricted to occupancy of at least one person over the age of 55. § 60-210. Therefore the possible density incentive that would be available pursuant to the Town Zoning Code would be 44%, or up to 122 units.

2. Affordable Apartments

80. Pursuant to the Town Zoning Code the MFPD District also provides density incentives for each 1% of the units allocated as “low/moderate income families”, a 2% increase is permitted up to a maximum increase of 30%, and 1% for each 1% thereafter, up to a maximum increase in density of 50%. The definition for “low/moderate income families” as provided in the Town Code is outdated in such a way that if applied, would prohibit nearly every Town or School District employee from being eligible for the proposed affordable homes. As discussed in Section V herein, Westchester County’s definition and associated benchmarks have been proposed as the governing standards for determining eligibility for the affordable units. If revised, the possible density incentive that would be available pursuant to the Town Zoning Code would be 35%, or up to 97 units.

3. Other Potential Density Bonus Features

81. Chappaqua Crossing also incorporates other incentive features that may be rewarded with density incentive bonuses including underbuilding parking (2% for each 5% of the gross number of required off-street parking spaces provided under principal buildings), recreational facilities (15%), special buffer screening techniques (15%), construction of related off-site improvements (15%), and the dedication of land for public purpose (15%). Therefore the total possible density incentive that would be available pursuant to § 60-417.212 of the Town Zoning Code would be 170%. However, as noted above, § 60-417.212 limits the maximum permitted density bonus at 100% or an additional 278 units.

IV. COMPLIANCE WITH TOWN DEVELOPMENT PLAN

82. The Town comprehensive plan or TDP adopted in 1989 is intended to guide the future growth and development of the Town to encourage the most beneficial and appropriate relationships of the uses of land. Chappaqua Crossing complies with the visions, standards and goals contained in the TDP.¹²

A. Review of the Town Development Plan

83. The TDP describes conditions existing in the Town at the time of its adoption, including land use, environmental factors, housing, demographics, fiscal and regional planning framework, and sets forth the Town's planning goals and policies based on those conditions.

84. The TDP has as two of its planning goals that: (1) "opportunities should continue to be provided for the development of a range of housing alternatives that are varied in density, residential type, living environment, ownership arrangement and cost," and (2) "additional opportunities should be created for the provision of housing designed to meet the special needs of senior citizens." TDP p. 103-04.

85. The encouragement of "alternative housing," as it is referred to in the TDP, is the subject of an entire section in the TDP, with the associated criteria for its development found in the "Residential Land Use Policy." The Residential Land Use Policy states that "[i]t is the intent of this Plan to provide opportunities for the development of both single-family and multifamily dwellings." The TDP goes on to say that in order

[T]o implement the goal of providing opportunities for the development of a broad array of housing types, this Plan continues to recommend that *multifamily housing not be concentrated in any one area of the Town, but that such housing instead be dispersed in various locations*, with its characteristics

¹² The Board reviewed the TDP in connection with the Planned Campus Petition and determined that it is a useful tool. Deputy Supervisor Barbara Gerrard stated that "...previous Boards have discussed revising the Master Plan from time to time. The opinion of everyone who has read it, with very few exceptions, was [that the TDP is] a very well thought out document that provided tremendous insight and guidance for future Boards, including this one." See Town Board Meeting Minutes, December 12, 2006 attached hereto as **EXHIBIT 7**.

tailored to be compatible with the particular residential environment in which it is located.

TDP p. 111(emphasis added). These criteria include: accessibility; utility services (sewer service districts, public water supply etc.); adjoining land uses; traffic access; topography; and site size. *Id.*

86. The TDP explains that “such multifamily units are designed to help the present and future housing needs of the following population groups:

- Volunteer emergency services workers and other persons employed in New Castle, particularly those who hold jobs that are essential to the operation of the Town as a community, but whose incomes are not adequate to finance the purchase price of single-family detached homes at prices prevailing in northern Westchester.
- Town residents who have raised their families and no longer wish to maintain their own single-family homes, but who would like to continue living in the community.
- Retired persons and other individuals wishing to remain in the community but who, because of reduced incomes, can no longer afford to maintain a single-family residence.
- Young couples, childless couples and single people who have grown up or come to work in the New Castle area, but who cannot yet afford or do not desire to reside in a single-family home.
- Residents and potential residents of the region.

TDP p. 110-11.

87. The planning goals for residential housing set forth in the TDP call for “[a]dditional opportunities [to] be created for the provision of housing designed to meet the special needs of senior citizens.” TDP p. 104. The conversion of institutional facilities into “shared living residences or more conventional multifamily apartments limited in occupancy to senior citizens” is also contemplated. TDP p. 127. The TDP also recognizes the changing age demographics within the Town and anticipated accompanying change in housing preferences for that age group, stating that:

Among those 55 years of age or older, housing choice and cost are undoubtedly two major factors in the decision to move out of New Castle The single-family dwelling has constituted the predominant housing type in New Castle because of its obvious utility for raising a family in a suburban environment. However, *older families without children living at home – the so-called “empty-nesters” – may find this type of homeownership over burdensome as well as uneconomical*, particularly

in view of the fact that family income often decreases around retirement, thus creating pressures to limit housing cost, especially those attributable to educational and recreation services.

TDP p. 38 (emphasis added).

88. Furthermore, the TDP calls for the designation of land for open space preservation and recreational use, specifically:

Permanent preservation of natural and cultural resources should receive a high priority in the overall planning for the future development of New Castle. These resources include rivers and streams, lakes and ponds, wetlands, flood plains, aquifers and aquifer recharge areas, wildlife habitats, forested areas, steep slopes, stone walls and other historic structures and sites.

TDP p. 105.

89. The TDP also notes that School District revenue trends have become increasingly dependent on property taxes as a source of revenue. TDP p. 69. School trends are also discussed, including the peak enrollment level in 1974 of a total of 4,030 students. The TDP reports that since then, enrollment had rapidly declined at an average of nearly 90 students per year. TDP p. 205. It is stated that “there appears to be ample building capacity to meet the [School] District’s needs through the 1990’s and probably well into the next century.” TDP p. 209.¹³

B. Chappaqua Crossing Complies With and Advances the Town Development Plan

90. Chappaqua Crossing will further the following goals of the TDP: providing alternative and affordable housing and housing to meet the “special needs” of seniors, contributing to the “array” of housing recognized and envisioned by the TDP, while implementing the high standards of

¹³ The TDP’s predictions regarding school enrollment are no longer true today. The 1973-74 enrollment peak of 4,030 students will likely be topped in the 2008-09 school year, according to a 1999 demographic study conducted for the District. The study was discussed in the Draft Environmental Impact Statement prepared for the new Seven Bridges Middle School, completed in 2005, and available on the School District’s website. The school is 160,000 square feet in size and accommodates up to 750 students.

residential development the Town has long enjoyed and generating increased tax revenue from the Property.

91. Although the TDP states that the Town exhibits a wide variety of housing options that are “broad in density, residential type, living environment, ownership arrangement and cost,” and that it “has contributed to an expanded range of housing choice in northern Westchester,” nearly twenty years later, this is only partially true. TDP p. 110, 123. The Applicant’s research has revealed that the Town has only approximately 68 affordable units and zero units designated specifically for seniors and zero specifically dedicated for members of the workforce within the hamlet of Chappaqua, despite provisions in the Town Code regarding low/moderate income housing and senior citizen housing. While the Town does have multifamily dwellings in the form of townhomes and condominiums, the majority of these dwelling units are high-priced, market rate units, with the major exception being the Stone Creek development located on North State Road in the Hamlet of Millwood near the Town of Ossining municipal border which consists of 52 units of affordable housing. With 32 units of affordable workforce housing and 24 units of senior age-restricted affordable housing proposed, Chappaqua Crossing will make a major contribution to create the true range of housing within the Town that is contemplated in the TDP – that is diverse in its type and cost.

92. While the TDP states that “to a greater extent than other forms of housing, the creation of accessory apartments has addressed the need for less costly units for senior citizens,” accessory apartments alone do not solve the problem of affordable housing. TDP p. 125. Accessory apartments do not provide the services and social aspects that seniors often desire and cannot be regulated so that it is ensured that they are provided specifically for seniors and/or that rents are affordable. Additionally, because none of the existing multifamily developments within the Town are designated specifically for seniors, and even though those multifamily units in existence are by nature usually less costly than single family homes and have relatively few maintenance burdens, without a

senior-designated development, the Town lacks a true choice for seniors within the Town and the surrounding region who wish to live in a senior community along with their peers.

93. Pursuant to the TDP's criteria for the development of multifamily housing, the proposed MFPD Parcel is appropriate.

- *Accessibility* - Chappaqua Crossing will provide many services on-site for residents, including a community center and open space for passive recreation, thereby eliminating the need to travel off-site for some services. Additionally, a jitney service will provide residents with convenient access to the hamlet of Chappaqua, public transportation services and many community facilities. The Westchester County Bee-Line bus route along 117 also provides convenient service to the surrounding areas.
- *Utility Services* - The southern portion of the Property is already within the Saw Mill River Sewer District and is connected to the Westchester County Saw Mill Valley trunk sewer. The Westchester County Board of Legislators would have to be petitioned to extend the Saw Mill River Sewer District to the MFPD Parcel. In addition, the Property is served by the existing public water supply.
- *Adjoining Land Uses* – Chappaqua Crossing will serve as a transitional use between the less intensive residential use of the R-1A District surrounding it and the more intensive business office use of the remaining portion of the existing B-RO-20 parcel. Both setbacks and screening will aid the transition between these three separate uses.
- *Traffic Access* – Chappaqua Crossing will be located directly east of Exit 33 off of the Saw Mill River Parkway with a large percentage of employees and residents accessing the site at the west entrance. Additionally, proposed design features, including vehicular access to the Property being separated by use will provide safe and adequate traffic access. There will be cross-access easements over the access road from Route 117 between the B-RO-20 Parcel and the MFPD Parcel, and the residential and office parcels will share ownership and use of the access road from Roaring Brook Road. Proposed improvements to Roaring Brook Road will actually improve existing traffic conditions at and around the Property.
- *Topography* – The MFPD Parcel is appropriate for multifamily development, as the elimination of existing 180,000 of office space and accessory buildings, and the utilization of existing parking areas, allows for the development to occur in previously disturbed areas to minimize impacts. Furthermore, no site disturbance will occur in the Property's wetlands.
- *Site Size* – The MFPD Parcel fully complies with MFPD District regulations, including proposed setbacks and density. Trees and other landscaping will

be added to the perimeter of the 64.3 acre MFPD Parcel to augment existing screening of the residential units from adjoining land uses.

94. As a specific example of how Chappaqua Crossing will be consistent with the “high standards of residential development that are characteristic of the Town,” the Applicant intends to maintain the Georgian style architecture and signature cupola of the existing office building, and to enhance the campus with appropriately designed housing and club house that are cohesive and aesthetically pleasing and complement the Property’s existing architecture. Moreover, Chappaqua Crossing would result in the preservation of 50 acres as open space that consist of wetlands, woodlands, and meadows for passive recreation. TDP p. 104, 147.

95. Chappaqua Crossing would further the TDP goal of generating and maintaining strong tax revenue from the Property for the benefit of the Town and the School District by significantly increasing the overall real property tax revenue currently generated by the Property, while having a minimal effect on school enrollment. Since Chappaqua Crossing will be primarily senior age-restricted units with only 22 two-bedroom units and 10 three-bedroom units that will permit children as residents – the workforce affordable units - the impact on the School District is estimated to be minimal.

96. It should also be noted that the TDP states that the presence of Reader’s Digest should be encouraged due to the Town’s positive experience with Reader’s, while at the same time stating that “no more development of major new office, research or industrial facilities be permitted on sites not already zoned for these purposes.” TDP p. 134. Summit/Greenfield has retained Reader’s as a tenant and is preserving approximately 520,000 of the existing 700,000 square feet of commercial office use on the 49.4 acre Office Parcel.

97. Thus Chappaqua Crossing’s 520,000 square feet of commercial office space will continue to provide the majority of the commercial tax base within the Town without any significant changes to the Property’s zoning. However, in light of changed market conditions, the Town must recognize that the commercial real estate market and corporate campus trends have changed in such a

way that it is unlikely that another single corporation would wish to occupy the entire Property as Reader's Digest did for approximately 75 years. The Applicant's experience in attempting to lease the facility for the last several years has confirmed these expectations. Summit/Greenfield submits that the proposal in the Petition furthers and implements the vision of the TDP in a matter consistent with current corporate practices and market requirements.

V. AFFORDABLE HOUSING

A. Introduction/Overview

98. As one of the wealthiest counties in the United States, the cost of housing within Westchester County and its individual municipalities has rapidly increased to a point where housing and home ownership are often out of the reach of many residents, including members of the workforce and senior citizens. Since only 2001, the median price of housing in Westchester County has risen some 67%, with the average price of a home rising from \$449,900 in 2001 to \$749,500 in 2006. Meanwhile, incomes rose only 13% during the same period with the median household income rising from \$63,583 in 1999 to \$72,000 in 2006.¹⁴

99. Furthermore, Westchester County lost 61,668 people between the ages of 20-34 from 1995-2005, or a 28 percent decline.¹⁵ The ability to purchase a home in Westchester County has become a luxury that only the upper and upper-middle classes can afford, often out of reach for the other socio-economic classes.

¹⁴This information was cited in a press release by Senator Charles Schumer on Oct. 3, 2006 entitled "*Schumer Announces Bold New Federal Plan to Bring Workforce Housing to Westchester and Rockland Counties*," and available at www.senate.gov/~schumer/SchumerWebsite/pressroom/record_print.cfm?id=264365 last visited July 5, 2007.

¹⁵*Id.*

B. *Berenson* and Its Progeny

100. New York courts have made it clear that municipal governments have an obligation to zone for an array of housing, including affordable housing, and have gone even further to say that planning alone is not enough, if it is not implemented in practice.

101. The long legal history surrounding affordable housing issues includes the invalidation of the Town's zoning ordinance in 1975 as exclusionary and the subsequent court order directing a town-wide rezoning in the landmark decision of New York's highest court, the Court of Appeals, in *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975). New Castle, at the time, did not permit multifamily housing in any of its zoning districts. In its decision, the *Berenson* Court held that a community has a responsibility to zone for not only its local needs but for regional housing needs, and must provide an array of housing to meet those needs. Specifically, the *Berenson* Court set forth a two-prong test, the first prong of which is that a community's zoning ordinance must "...provide for the development of a balanced, cohesive community which will make efficient use of the town's available land." *Id.* at 109. The concern, according to the court, is whether the town "will be a balanced and integrated community." *Id.*; *See also*, "A Town is Not a Club", Patent Trader, December 15, 1977, attached hereto as **EXHIBIT 8**. The second prong of the *Berenson* test is whether the ordinance adequately considers regional needs and requirements.

102. Subsequently, in *Blitz v. New Castle*, 463 N.Y.S.2d 832, 94 A.D.2d 92 (2d Dept. 1983), the Appellate Division, Second Department, in upholding the constitutionality of the Town's then newly enacted multifamily zoning regulations, held that Westchester County's Housing Allocation Plan, which was adopted by the Westchester County Legislature, "is presumptively valid," as "the evidence ... clearly established the rationality and soundness of that legislative finding." *Id.* at 97. While the court recognized that the Allocation Plan contains some margin of error in either direction, the court concluded "that [the allocation] constitutes the best possible estimate of the housing needs of

Westchester County for the coming decade and that as a legislative finding it is entitled to great weight and the presumption of validity.” *Id.* at 98.

103. In 1995, the Appellate Division, Third Department, stated that “a municipality may not zone to exclude persons having a need for housing within its boundaries or region.” *Continental Building Company, Inc. v. Town of North Salem*, 625 N.Y.S.2d 700, 211 A.D.2d 88 (3d Dept. 1995). The *Continental* court concluded that the Town’s zoning ordinance failed to provide for affordable multifamily housing, and that “the ultimate consequence of the zoning ordinance [was] that only upper-income families could reasonably be expected to purchase residences and live in the Town, to the exclusion of all others.” *Id.* at 92. The court found that the zoning ordinance failed adequately to consider regional needs and requirements, and went on to reaffirm “the general rule that a municipality may not by its zoning ordinance create obstacles to the production of a full array of housing includes housing such as low and moderate income housing or, in other words, affordable housing.” *Id.* at 95. Plaintiffs were aided by the County Housing Allocation Plan in meeting their burden under the *Berenson* test to prove that the municipal zoning ordinance was exclusionary. The court declared the zoning ordinance to be unconstitutional and the plaintiff was granted counsel fees pursuant to 42 U.S.C. § 1988.

104. In an important decision by the Westchester County Supreme Court in *Triglia v. Town of Cortlandt*, Index No. 17976/96, 1/21/98 NYLJ 31 (col. 2), the court stated that it is not enough for a locality to call for multifamily and affordable housing in its master plan and then fail “to allow feasible provision for affordable [high density] housing construction in the most likely manner calculated to achieve that goal [i.e. multifamily housing].” *Id.* at 7. The Town of Cortlandt had amended its zoning ordinance to eliminate all multi-family housing as-of-right, including plaintiff’s pending application to build 120 two-story multi-family units, 10 units of which would have been designated affordable. The court referred directly to the Westchester County Housing Allocation Plan, stating that the Town had only 45 of its allocated affordable housing units, as allocated by the County

plan, and still needed another 137 to meet its affordable housing allocation in the following two years.

The *Triglia* court noted that the Town, “without perceived reason or any explanation, failed to follow its own Master Plan and insists upon dwelling on historical examples of having provided affordable

housing rather than substantively explaining its complete deletion of multi-housing from its ordinance.”

Id. at p.7. The court stated that:

[W]here exclusionary zoning, directly or indirectly, is shown against either racial or socioeconomic groups by the creation of obstacles to the production of a full array of housing, including ‘low and moderate income housing or, in other words, affordable housing’ such ordinances have [been] repeatedly condemned.’ When such ordinance additionally fails to meet a municipality’s own expressed present and future needs and the region’s present and future needs ... then the two branch test of *Berenson* has been failed

Id. at 8. The court then ordered the zoning ordinance to be amended to allow for multifamily housing and further, that the proposed project be approved. *Id.* at 10.

105. A more recent decision against a municipality for its failure to provide affordable housing was *Land Master Montg. I, LLC, v. Town of Montgomery*, 821 N.Y.S.2d 432, 13 Misc. 3d 870 (Sup. Ct. Orange Cty. 2006). The Town of Montgomery adopted a new comprehensive zoning plan that effectively eliminated as-of-right provisions for multifamily development in the only area of the Town in which such housing had expressly been permitted. The court noted that “the current zoning scheme, effectively, *creates the illusion of affordable housing availability* while limiting its reality to a few chosen sectors and vesting almost total control in the town.” *Id.* at 879 (emphasis added).

Furthermore, the court stated that the Town had “not adequately done [its] share to accommodate the affordable housing needs of the community either within their own boundaries or the region.” *Id.* at 879-80. The challenged zoning ordinances were declared unconstitutional and the Town was directed to pay plaintiffs’ attorneys fees.

106. These New York cases highlight the proactive role that the courts have adopted concerning affordable housing and in recognizing the legitimacy of Westchester County initiatives, including its HOC Plan to address the affordable housing crisis, particularly in light of the resistance of

some municipalities, which at times amounts to efforts to thwart the actual development of affordable housing within their municipal borders.

C. Westchester County Planning Authority

107. The primary initiative of Westchester County has been the establishment of the Westchester County Housing Opportunity Commission (the “HOC”) in 1994 pursuant to Local Law No. 7-1994 adopted by the Westchester County Board of Legislators (the “County Board”), which succeeded the Housing Implementation Commission. The HOC was charged with, among other things, soliciting the support of federal and state officials, units of local government, Westchester businesses, corporations and labor organizations, non-profit and service organizations for an equitable allocation of affordable housing in Westchester County based on its regional need, as determined by the County Board. The HOC also has the duty of assisting municipal governments in implementing affordable housing consistent with the regional housing needs of Westchester County.

108. In 1991, the Rutgers University Center for Urban Policy Research (the “CUPR”) prepared an Affordable Housing Needs Assessment report for the Westchester County Board. The County-wide regional goal was established at 5,000 units for the years 1990-1999. The Housing Implementation Commission, the HOC’s predecessor, adopted the plan in 1993.

109. The County Board of Legislators’ adoption of four local laws establishing and extending the term of the HOC, whose main task is to prepare an allocation plan based on the County’s need, in addition to the reliance and endorsement of the courts, clearly establishes the validity of the Plan.

110. The County Board of Legislators has now extended the term of the HOC through the end of 2009. The HOC has developed a new allocation plan using the data from the 2000 United States Census, which did not become available until 2003. The updated plan, which the HOC adopted November 9, 2005, discussed affordable housing needs within the County for the years 2000-2015.

D. Local and Regional Need/Mandate

111. The current total affordable housing demand for the 2000-2015 period, as determined by the CUPR, amounts to 10,768 units spread throughout the County's forty-three municipalities (the "Current Allocation Plan"). A copy of the CUPR Westchester County Affordable Housing Needs Assessment Final Report dated March 30, 2004 is attached hereto as **EXHIBIT 9**, while the Westchester County HOC Affordable Housing Allocation Plan 2000-2015, including the allocation methodology, is attached hereto as **EXHIBIT 10**. The HOC believes the Current Allocation Plan to be very conservative due to the more than 72,000 Westchester households determined in the 2000 Census to have been cost burdened. The Town's 1990-1999 allocation was 168 units, of which 65 were constructed. The remaining 103 unmet units were carried over into the Town's current allocation of 255 units for the years 2000-2015.

112. Upon information and belief, only three units have been created within the Town since the year 2000. The need for an additional 252 units remains unmet.

113. The Town recently became a Hudson River Valley Greenway Community. On May 15, 2007 the Town enacted Local Law No. 5 of 2007 and which amended Sections of the Town Code and added Chapter 136 entitled "Westchester County Greenway Compact Plan," which adopted the statement of policies, principles and guides detailed in *The Greenprint for a Sustainable Future, the Westchester County Greenway Compact Plan* (hereinafter the "Greenway Compact" a copy of which is attached hereto as **EXHIBIT 11**).

114. In order to implement the Greenway Compact, § 60-404 of the Zoning Code was amended as follows:

Westchester County Greenway Compact Plan. By Local Law No. 5 of the Year 2007, the Town of New Castle has adopted the Westchester County Greenway Compact Plan, as amended from time to time and accepted by the Town of New Castle as set forth in Chapter 136, as a

statement of policies, principles and guides to supplement other established land use policies in the Town. *In its discretionary actions under this zoning code, the review agency should take into consideration said statement of policies, principles and guides, as appropriate.* (Emphasis added.)

115. The Greenway Compact actively encourages regional cooperation and provides financial and other benefits for participating communities. This legislative action committed the Town to consider the Greenway Compact's set of environmental guidelines during discretionary acts and in turn makes the Town eligible for certain County and State funding.

116. Specifically, the Greenway Compact presents twelve policies for a sustainable future for the County. Of these twelve policies, Summit/Greenfield submits that Policy Nos. 1, 2 and 7 are furthered by Chappaqua Crossing.

117. Policy No. 1 calls for communities to “[c]hannel development whenever possible to centers where infrastructure can support growth, where public transportation can be provided efficiently and where redevelopment can enhance economic vitality.” Greenway Compact p. 13. The Property has the existing infrastructure, water and sewer that would support the proposed residential redevelopment of the former Reader's Digest campus. Public transportation can also be efficiently provided, as Chappaqua Crossing is near the existing Bee-Line Bus stop at Old House Lane and Bedford Road and will provide jitney service to the Chappaqua Metro-North Rail Road Station located just two miles south of the campus.

118. Policy No. 2 calls for communities to “enhance the appropriate functions of the County's corridors by: adapting already developed sections into efficient and attractive multi-use places, protecting the quality of scenic routes, and making road and transit improvements that will reduce congestion and ease movement on travel routes.” *Id.* at 14. Summit/Greenfield has proposed the adaptive reuse of the former Reader's Digest campus to support multiple-uses, with premier residential and commercial components. In conjunction with the development of Chappaqua Crossing, significant

road improvements have been proposed to existing failing infrastructure and a jitney service will be provided to lessen local traffic congestion as well as reduce greenhouse gas emissions.

119. Policy No. 7 calls for communities to “encourage a range of housing types that are affordable to renters and homebuyers, with each municipality addressing its needs for affordable housing as well as a share of the regional need.” *Id.* at 25. Chappaqua Crossing proposes 56 senior affordable and workforce housing units that will make a significant contribution to its current Affordable Housing Allocation of 255 as allocated by the HOC, and implicitly substantiated by the Town’s adoption of the Greenway Compact, upon information and belief, one of the only substantial parcels in the Town that could support this scale of a contribution.

E. Elected Officials Recognize Need for Affordable Housing in the Town and County

120. The need for affordable housing both within the Town and the greater Westchester County has been recognized by various local officials and politicians.

121. The Town’s own Housing Advisory Committee (the “HAC”), established in 1992 to serve as a focal point for maintaining and furthering the development of a balanced housing stock within the Town and pursuant to Chapter 10 of the Town Code,¹⁶ determined that there is a real need for affordable housing within the Town. In 2000, then HAC Member Chapin acknowledged that the Town was asked by the County to add 168 affordable housing units between 1990 and 2000 and that there were only 65 units in the Town. Chapin then stated that creating more affordable housing was an objective for the following year and that more effort should be placed on it. *See EXHIBIT 12*, Town Board Work Session Minutes, November 20, 2000.

122. The HAC reported to the Town Board in 2001 that it was receiving approximately forty to fifty calls per month that inquired into the possibility of participating in the Town’s one and only real affordable housing development. *See EXHIBIT 13*, Town Board Meeting

¹⁶ Upon information and belief, the HAC has not been active since 2006.

and Work Session Minutes, October 23, 2001. Fifty percent of the monthly inquiries were estimated to be from residents of New Castle. Additionally, at the same Board meeting, the HAC reported that it surveyed two-hundred and fifty employees who work in the Town and found an overwhelming need for affordable housing as over half of those surveyed reported that the reason that they did not live within the Town or had to leave the Town was because of the high cost of housing.

123. Elected and appointed Town officials have also stated that they support diverse housing opportunities. At a joint meeting of the Planning Board and Town Board held in May of 2006, Town Supervisor Janet Wells stated that the Board “would like very much to be able to have more [affordable housing] in the community, and it is very hard to find opportunities for affordable housing.” See **EXHIBIT 14**, Town Board Work Session and Joint Meeting with the Planning Board Minutes, May 2, 2006. The Supervisor asked the Planning Board if there were any opportunities to request the inclusion of an affordable housing component in any applications currently before the Board. It was noted by a consultant for the Planning Board that there were very few applications that had proposed affordable housing. Strategies of other municipalities were discussed, including those that mandate a certain percentage of all new housing to be affordable. The Supervisor asked if “it would be helpful if the Planning Board had an official letter from the Town stating they support affordable housing,” to which the Planning Board Counsel Lester Steinman responded, “... right now the Planning Board has what is in the zoning ordinance.” *Id.* He went on to note that, “[s]ome communities have been very aggressive about mandating affordable housing under certain circumstances ... Reader’s Digest may be one of the best opportunities to apply this.” *Id.* Supervisor Wells commented that the Town “is a down market in that the developers need a certain number of affordable housing units in order to make it work.” *Id.* Council Member Mottel added that she “feels the land cost in New Castle is also an issue.” *Id.*

124. Senator Hillary Rodham Clinton, a resident of the Town, has publicly supported affordable housing and very recently reintroduced affordable housing legislation. Senator Clinton has

also aided in launching housing programs in Westchester County, and has publicly discussed the problem of the high cost of living in Westchester, where top income brackets are more than fifty-percent higher than the national average. Senator Clinton commented on the struggle that Westchester County is facing as a “first suburb” while speaking at the Brookings Institution’s “America’s First Suburbs” Symposium in 2006, and noted that seniors face their own challenges due to rising housing costs. The Senator commented that

Affordable housing has been kind of a taboo in a lot of first suburbs. People don’t have the idea that we need affordable housing. But when *your police officers and your fire fighters, your teachers and your nurses, your aging residents, cannot afford to live in their communities anymore, this is a problem that we ignore at our peril.* We are losing the work force that actually keeps the first suburbs going, that provides the services that many who live in suburbs have come to expect.

EXHIBIT 15, Remarks of Senator Hillary Rodham Clinton at Brookings “America’s First Suburbs” Symposium dated February 15, 2006 (emphasis added).

125. In his first State of the State Address, delivered only three days after taking office, Governor Eliot Spitzer discussed the problem of high housing costs “downstate” and the necessity of using all available tools to address the problem, including rewarding municipalities that reform zoning to allow for increased development of affordable housing. See **EXHIBIT 16**, Governor Elliot Spitzer, State of the State Address entitled “One New York”, January 3, 2007.

126. Additionally, Westchester County Executive Andrew J. Spano, a strong advocate of advancing affordable housing within the County, in his recent State of the County Address announced the creation of the first ever Housing Land Trust in New York State to ensure that any new affordable housing funded by the County remains affordable forever and asked local municipalities to join the effort. See **EXHIBIT 17**, Westchester County Executive Andrew J. Spano, State of the County Address, March 22, 2007.

F. Affordable Component of Chappaqua Crossing

127. Chappaqua Crossing includes a substantial affordable component that will contribute to the Town's requirement to provide affordable housing as assigned by the County. Its use of both commercial and market rate residential serves as a unique model to provide affordable housing alternatives to Westchester County residents, many of whom provide necessary and valuable services to their communities.

128. The Chappaqua Crossing units would provide 56 units, or 22% of the Town's 255 unit affordable housing allocation for 2000-2015, of which upon information and belief, only three units have been constructed thus far.

129. Chappaqua Crossing's affordable housing will consist of 32 workforce affordable units and 24 senior affordable units that will share the amenities offered by Chappaqua Crossing. The senior affordable units will be dispersed throughout the senior age-restricted flats of the North Village. The workforce affordable housing at Chappaqua Crossing will be a community in and of itself while adding to the overall sense of community at Chappaqua Crossing. The workforce affordable units will be located in the two buildings closest to Horace Greeley and these units will have access to all of Chappaqua Crossing's recreational features including a playground to foster social interaction between young families. Social programs geared especially for younger residents will be offered for the families occupying the 32 workforce affordable units, allowing senior residents who wish to interact with children the opportunity to do so.

130. The eligible recipients for the affordable units at Chappaqua Crossing are proposed to be chosen by a lottery system to be overseen by the Town Board or its designated representative, that gives preference to Town municipal employees, School District employees, police officers, volunteer emergency responders and local senior citizens who may otherwise be forced to leave

the Town due to fixed incomes. Thereafter, any unfilled units would be available to the general residents first within the Town and then the greater public.¹⁷

131. The eligibility requirement proposed for Chappaqua Crossing follows the criteria and information used by the CUPR in calculating the Westchester County Affordable Housing Needs Assessment that is now the Current Allocation Plan. According to the U.S. Census, Westchester County contained 335,244 households in 2000. Households earning less than fifty-percent (50%) of the median income are considered low-income households while those that earn between fifty and eighty percent are considered moderate-income households. Using median income as determined by HUD from the year 2000, 94,336 households are considered low income and 59,001 households are considered moderate income, for a total of 153,337 income-constrained households in Westchester County. In addition, CUPR forecasted that the net increase in low and moderate income households in Westchester County between the years 2000-2015 will be 8,652.

132. Presently, households that would be eligible for the affordable units at Chappaqua Crossing would be those with a maximum total income of \$77,200 for a family of four, \$69,500 for a family of three, \$61,750 for a family of two and \$54,050 for a single member household. These numbers represent HUD's 2007 criteria of eighty percent of the median household income in Westchester County, which is \$96,500 for a family of four, and will increase accordingly based on the year of completion and marketing of the affordable units.

¹⁷ This is similar to the type of system that, upon information and belief, was used for the 52 affordable units at Stone Creek located in the Town on the Town of Ossining border, and is in accordance with the intent of the Zoning Code § 60-417.2121. Section 60-417.424, governing density in MFPD Districts, states that density shall be calculated as in the MRF-C District, where § 60-417.2121 specifies that “[a]s a condition of the granting of any density increase for incentive features [including low/moderate income families and senior citizen apartments] ... and, where determined appropriate by the Planning Board, continued eligibility priority for sale or occupancy of any such special units shall be on the following basis:

- i. Persons employed in the Town of New Castle;
- ii. Residents of the Town of New Castle, in order of length of residence in the town; and
- iii. All others.

133. The selling price of the affordable units at Chappaqua Crossing would be within the range established by Westchester County to be considered “affordable” by those falling within the low and moderate income brackets established by the County.

134. Upon information and belief, there are virtually no properties within the Town available for purchase, or appraised for value within this range, that would be comparable to the Chappaqua Crossing affordable units.

G. Appropriateness of Location for Multifamily Affordable Housing

135. As discussed in Section IV, the Property is appropriate for the development of affordable housing based on the TDP and the Town Zoning Code. As stated in § 60-417.4,

[I]t is the specific purpose and intent of the MFPD District to provide the opportunity within the Town of New Castle for the development on a planned basis of medium-density multifamily housing on sites located in existing single-family residential neighborhoods but in reasonable proximity to shopping services and other community facilities and with access to major roads.

136. The entire Property, currently zoned B-RO-20 and R-1A Residential, is surrounded by the Saw Mill Parkway on the west and the R-1A District around the remainder of the Property. The Property is within “reasonable proximity” to shopping services and community facilities. Although not considered part of the Chappaqua Hamlet itself, the MFPD Parcel is located only approximately two miles from the Hamlet center. Additionally, the Property has access to major transportation systems, as it is located immediately adjacent to the Saw Mill River Parkway, and Route 117, and is in close proximity to the Metro-North Harlem Railroad Line.

137. The MFPD Parcel is also appropriate pursuant to the site development standards found in the Zoning Code for the establishment of an MFPD District, as well as in the TDP, including accessibility, utility services, adjoining land uses, traffic access, topography and site size, as discussed at length in Sections III and IV. The MFPD Parcel readily satisfies these criteria, and upon information and belief, is one of the only remaining parcels in the Town appropriate for this type of development.

H. Lack of Alternative Sites for Affordable/Array of Housing

138. Summit/Greenfield believes there are few, if any, feasible alternatives for the development of affordable housing in town, other than Chappaqua Crossing, that would help the Town provide a true array of housing. In fact, the Town's HAC spent a substantial portion of its time trying to identify proper locations. The lack of possible sites and costs were discussed as the main reasons for the lack of affordable housing within the Town. Over the last decade, the Town has contemplated various sites, only continually to encounter obstacles that prevented the development of affordable housing at those particular locations. Several examples include the Burden Property on Route 128, the Warburg Site, and a site on Armonk Road.

139. At an April 9, 2002 Town Board Meeting, then Deputy Supervisor Wells stated she was "surprised that the Town still has individuals willing to serve on the Housing Advisory Committee because *finding a site has been so frustrating.*" **EXHIBIT 18**, Town Board Meeting Minutes, April 9, 2002 (emphasis added).

140. In the past, the Reader's Digest property has been specifically raised as a possibility for affordable housing several times. Town Board members at the March 5, 2002 Work Session discussed the potential of the Reader's Digest property for development of affordable housing due to the available space for housing and the availability of sewers. Council Member Chapin even suggested "putting together a wish list and meeting with the people at Reader's Digest." **EXHIBIT 19**, Town Board Work Session Minutes, March 5, 2002. Additionally, a former co-chair of the HAC, Barry Zelickson, urged the Town Board in 2005 to pursue affordable housing at the Reader's Digest property. *See* **EXHIBIT 20**, Town Board Work Session Minutes, February 1, 2005.

141. Upon information and belief, in searching for potential sites, the HAC and Town Board applied the "site selection criteria" and density criteria found in the TDP for appropriate multifamily sites, and the HAC's inability to find a site that the Town Board agreed was suitable was the result of the strict application of such criteria.

142. Upon information and belief, many of the previously proposed sites were areas that had been dedicated for recreation including 45 Town owned acres surrounding Warburg Park, located in the far western section of Town near the Taconic State Parkway. After plans to develop affordable housing at Warburg Park were abandoned, hiking trails were proposed instead.

143. Upon information and belief, possible sites that were investigated by the HAC and/or the Town Board include the Burden property on Route 128, the Kraus property on Campfire Road, as well as property on Washington Avenue and Armonk Road.

144. It is interesting to note that at least several of these proposed sites for affordable housing have been located some distance from the Chappaqua and Millwood hamlet centers and/or have had issues regarding access to sewers. In fact, the Town's largest contribution to its 1990-2000 Affordable Housing Allocation, the Stone Creek Development, consisting of 52 of the Town's 68 units, is located on the border of the Town of Ossining and is approximately the same distance from the amenities in Millwood as Chappaqua Crossing would be from the hamlet amenities provided by Chappaqua (1.28 miles versus 1.48 miles). While it is unclear what zoning districts may have been sought for potential developments, it is clear that the Town's own HAC actively sought locations in Town for the development of affordable housing with many of its suggested potential sites located outside of the hamlet centers where the highest densities are recommended by the TDP.

I. Implementation

145. As proposed, Chappaqua Crossing would not require the granting of any density bonuses, even though it would be eligible for bonuses that could increase the proposed residential unit count up to 100%. Therefore, the Town need not establish an agency to oversee the administration of the affordable units at the Project.

146. Instead, when units are developed according to the more current Westchester County HOC's definition of low and moderate income households, and as was the case upon

information and belief, with Stone Creek, the Town and/or the Project Sponsor may contract with a not-for-profit agency to handle many administrative details including the selection of prospective purchasers, resale of units and deed restrictions. The Housing Action Council, a not-for-profit group established in 1974 and dedicated to expanding housing opportunities for low and moderate income households throughout Westchester, Rockland, Putnam, and New York counties and other parts of the Hudson Region, is currently under contract with the Town to oversee the affordable units located at Stone Creek.

147. Summit/Greenfield proposes that Chappaqua Crossing's affordable units be administered in a similar fashion as Stone Creek, by a not-for-profit organization overseeing many of the details, including the lottery for the allocation of the units, aiding in the drafting of the deed restrictions to ensure that the units remain affordable in perpetuity, and any future resale of the units to follow the precedent set by Stone Creek and alleviate any burden on the Town.

J. Ensuring Future Affordability

148. Deed restrictions will also ensure that dwelling units designated as "affordable" remain affordable in perpetuity.¹⁸ The affordable housing at Chappaqua Crossing would be restricted as affordable in perpetuity in this manner. Binding restrictions would be placed in the deeds that restrict the selling price and the resale price of the units, as well as the incomes of the potential buyers. Deed restrictions would be recorded with the County Clerk of Westchester County, Division of Land Records and would be enforceable through the courts, most likely at the initiation of the Homeowners Association and/or Board of Directors, or possibly by the Town. Deed restrictions are the same method that Westchester County Executive Andrew Spano has proposed for the new units of affordable housing

¹⁸ It has recently been reported in the media that some affordable units in Westchester County are in danger of losing their affordability status. However, this is due to the fact that many of those units are so-called "Mitchell-Lama" units and due to the nature of the legislative initiative by which these units were established, many are eligible to lose their affordable status after twenty years or forty years.

that he called to be created in perpetuity and developed in connection with the recently created Housing Land Trust.

149. Furthermore, as discussed in Section VI, the Town Code envisions the encumbrance of deeds for dwelling units that are to be designated as senior citizen or handicapped apartments pursuant to Chapter 10 of the Code. Section 10-5(C)(4) of the Town Code states that “senior citizen and handicapped apartments shall be encumbered by the foregoing restrictions upon the initial sale of each such apartment and upon the resale of each such apartment....” § 10-5(C)(4). The deed restrictions pertaining to the 56 units of affordable senior and workforce housing will therefore follow the spirit and intent of the Town Code. So, too, will the age-restriction for the market-rate units be enforced through deed restrictions.

K. Implications

150. The impact of the affordable workforce units on the Town’s schools is expected to be minimal, as 88.5% of Chappaqua Crossing’s units are proposed to be age-restricted and prohibit occupancy to school-age children through deed restrictions. Thirty-two of Chappaqua Crossing’s dwelling units or 11.5% are proposed to be workforce affordable units in which children are permitted to reside. The balance between workforce affordable and senior age-restricted affordable units was developed, in part, with the Applicant’s desire to keep school impacts to a minimum and to assist with housing for the Town’s service providers.

VI. SENIOR AGE-RESTRICTED HOUSING

A. Introduction/Overview

151. Chappaqua Crossing will address the local and regional need for senior housing, a need which is recognized and expressed in the TDP, and is demonstrated by the Demographic Factors

Affecting the Potential Market for Chappaqua Crossing Market Rate Homes (“Senior Demographic and Market Analysis”) attached hereto as **EXHIBIT 21**.

152. The Town Board recognized this local and regional need when it enacted Local Law No. 16-1979, creating the multifamily zoning districts to provide incentives to develop and create a broad array of housing “designed to satisfy the needs of smaller households, particularly the young and the *elderly*,...” including senior citizen apartments.¹⁹ Zoning Code § 60-417 (emphasis added).

153. Chappaqua Crossing will provide senior age-restricted housing consistent with the intent of the TDP to provide for multifamily units designed to serve the present and future housing needs of

...Town residents who have raised their families and no longer wish to maintain their own single-family homes, but who would like to continue living in the community. Retired persons and other individuals wishing to remain in the community but who, because of reduced incomes, can no longer afford to maintain a single-family residence.

TDP p. 110-11. Chappaqua Crossing will provide for both senior groups as the proposed array includes multifamily condominium and townhouse dwellings to satisfy both groups’ needs.

154. The Chappaqua Crossing proposal will provide 246 senior age-restricted units in which children under the age of 18 will be prohibited from living as permanent residents and will become a model over 55 active-adult residential community that will meet the Town’s goal of providing long-term financial stability for and from the former Reader’s Digest Property.

155. The inclusion of the affordable age-restricted housing and the affordable workforce housing require that certain economies of scale be met as the market rate units along with the unrestricted commercial space, in effect, internally subsidize the project costs associated with building affordable housing, such as land, infrastructure, and special amenities necessary for seniors.

156. The range of housing options desired by senior citizens is no longer limited to apartment buildings, nursing homes or residing in the family home until it is no longer practical or

¹⁹ Apartment is defined in the Town Code as “a dwelling unit, other than an accessory apartment, that is located in a multifamily dwelling or building that is partially nonresidential in use.” § 60-210.

financially feasible to do so. Fewer seniors are choosing to relocate to warmer climates and instead prefer to remain in their own communities or familiar territory near family and friends, although seasonal living will be a feature of Chappaqua Crossing residence.

157. The proposed senior age-restricted market rate density is appropriate in light of the fact that an age-restricted community requires an extensive and highly amenitized program of services to attract sophisticated and discerning buyers while creating value and long term viability. Extensive gardens and landscaped grounds will be even more expansive than the current office park landscaping. Chappaqua Crossing homeowners and their association will be the stewards of the land and ensure its maintenance. The Chappaqua Crossing facilities will include a recreational and social complex that includes a swimming pool, exercise equipment, media rooms and social areas that will be available for use by all Chappaqua Crossing residents. There will also be 50 acres of passive recreational open space for use by residents for activities such as walking and bird watching.

158. Housing developments in neighboring municipalities provide similar benefits to residents and the community. Not only do these age-restricted residential developments allow the aging population to downsize, decreasing expenses and upkeep on their residences, but they allow the community to retain seniors who are integral and often active members of the community.

159. For example, Woodcrest Village in the neighboring Village/Town of Mount Kisco is an active-adult residential community that has been occupied since the Spring of 2005. One Woodcrest Village resident, Patricia Reilly, a lifelong resident and former Mayor of the Village/Town of Mount Kisco, recently discussed her decision to move to an active adult community:

It dawned on me that one person in a six-bedroom house didn't make sense,...I'm close to what's familiar, and there are a lot of plusses to this lifestyle.... Life goes fast...I'm 75, but I don't feel any different from when I was 45. I am, at this stage, very active.²⁰

²⁰ 55+: *The New Face of Adult Housing*, Susan Hodara, House Media Network, at <http://www.upstatehouse.com/archive/article.php?issue=46&dept=84&id=741> last visited July 5, 2007.

160. Woodcrest Village allowed Ms. Reilly, who is a nurse, to maintain her connection to her community and continue her daily ritual, which she describes as

First thing in the morning, I go to church, and after mass, my sister and brother-in-law and I go to the diner. I have lots of friends in the area, many of whom moved here, too.

It also allowed her to remain active in the community and she continues her work as a nurse substitute in the schools and serves on several committees in the Town/Village of Mount Kisco.

B. Need For and Support of Density

161. There is a strong local and regional need for housing designed for the “active-adult” (aged 55 and older) population as described in the Senior Demographic and Market Analysis.

162. Between the years 1995 to 2025, it is estimated that New York’s population will increase by 1.7 million people. According to projections by the State Office for the Aging, while the population age 60 and younger will grow by only 3 percent, the 60-and-older population will grow by 40 percent, with this increase largely driven by aging baby boomers. Regionally, by the year 2012, 28% of the Westchester County population will be 55 years or older, while 28% of the Town’s population or 4,900 people will be 55 or older. *See EXHIBIT 21*, Senior Demographic and Market Analysis.

163. This increase in population is driving innovations in adult housing, and causing the need and demand for housing such as that proposed at Chappaqua Crossing.

164. As determined by the Senior Demographic and Market Analysis there are no active adult communities in the Town of New Castle. Municipalities in northern Westchester offering this type of age-restricted senior communities as an attractive option for seniors include the neighboring Town/Village of Mount Kisco, the Village of Briarcliff Manor, and the Town of Yorktown.

165. The demand for these types of age-restricted communities is strong, demonstrated by the waiting lists that exist for many of these communities. Summit/Greenfield anticipates that while the primary target market consists of older homeowners currently living in or near

New Castle, people who formerly lived in Westchester County or have adult children in the area, specifically in the Town, would also be attracted to such a development. In fact, in an article from the November 2005 issue of *Inside Chappaqua* magazine titled, “The Changing Face of Reader’s Digest,” a copy which is attached hereto as **EXHIBIT 22**, Town Supervisor Wells was quoted as stating “I haven’t gotten any objections to having senior housing. In fact, I’ve had calls, letters, numerous conversations with people who say ‘How do I sign up?’”

166. The Town had previously identified the need for age-restricted housing or “senior citizen” apartments.²¹ The TDP acknowledged the need for senior housing in the community and commented on the senior migration from the Town due to the lack of a variety of readily available housing. Specifically,

While the number of persons over 60 years of age in New Castle continues to grow, this segment of the population would represent an even larger proportion were it not for the substantial amount of out-migration that has occurred among this age group...many retired persons might remain in the community if a greater number of smaller, less costly residential units were available.

Since 1979, the Town has attempted to provide opportunities for the creation of such units. For the segment of the senior citizen housing market that finds the lack of smaller dwellings a primary deterrent to remaining in New Castle, the construction of townhouse developments has represented an alternative to the single family detached home....The Town has also attempted to encourage senior citizen housing by offering a density bonus in exchange for the provision of senior citizen units in multifamily developments.

TDP p. 125.

167. In summary, the proposed residential density for Chappaqua Crossing is appropriate to meet the current need for these types of housing and is supported by the Senior Demographic and Market Study and its analysis of Westchester County population and real estate

²¹ Residences such as the senior age-restricted units proposed by Chappaqua Crossing are provided for in the Town Zoning Code which defines Senior Citizen Apartment as “[a] dwelling unit which is designed for and specifically limited in it’s occupancy to persons aged 55 or older, but not excluding spouses under 55, children and grandchildren over the age of 19 and adults under 55 if their presence is essential for the physical care or economic support or eligible older persons.” Zoning Code § 60-210.

market trends, the TDP and the current density permitted pursuant to the Town’s MFPD District Zoning,²² as well as the nature of, and requirements for, a quality active-adult senior community

C. Legality/Enforceability of Proposed Age-Restriction

168. Senior age-restricted communities, such as the one proposed by Chappaqua Crossing, are valid and legal pursuant to Federal, State and local law. They are an accepted form of development designed to meet the special housing needs of the elderly which are beneficial to the health, safety, morals or general welfare of the community.

1. The Federal Fair Housing Act

169. The Federal Fair Housing Act, 42 U.S.C. § 3601, et. seq., prohibits discrimination in housing, on numerous grounds; however it exempts housing that is restricted to use by seniors.

170. The Fair Housing Act does not apply with respect to “housing for older persons,” which includes housing intended or operated for occupancy by persons 55 years of age or older so long as 80% of the occupied units are occupied by at least one person who is 55 years of age or older, and the housing facility or community publishes and adheres to policies and procedures that demonstrate the requisite intent as set forth in the Federal Regulations that govern such age restricted communities. Fair Housing Act § 3607(b)(2)(c).²³

²² Chappaqua Crossing is consistent with the density permitted in the MFPD District without utilizing any density bonuses that are permissible and that the Town enacted to encourage the creation of senior citizen dwellings and that typically would be sought by a developer for an age-restricted project such as the proposed. Upon information and belief, there has been no prior development of multifamily senior age-restricted housing within the Town.

²³ The Federal Regulations that age restricted communities must abide by can be found at 24 CFR §§ 100.300-308 and a copy of the governing regulations is attached hereto as **Exhibit 23**.

2. New York Statutes and Case Law

171. Similarly, the New York Human Rights Law, which also prohibits discrimination based on age, exempts “housing intended and operated for occupancy for at least one person 55 years of age or older per unit.” N.Y. Executive Law § 296(5)(a). In determining whether the “intent and operation” of the housing is for seniors, New York law refers to the Federal Fair Housing Act and amendments as discussed above. Therefore the Federal Regulations governing the intent and operation of these communities would again apply.

172. It is within the authority of the Town to utilize its zoning power, as New Castle has done, to provide special housing accommodations “specifically designed to satisfy [the] economic, physical, psychological and social needs...” of the elderly, both regionally and locally. *Campbell v. Barraud*, 58 A.D.2d 570, 571, 394 N.Y.S.2d 909, 912 (2d Dept. 1977).

173. Senior housing zoning classifications are valid exercises of zoning authority. *Maldini v. Ambro*, 36 N.Y.2d 481, 369 N.Y.S.2d 385, 330 N.E.2d 403 (1975) *cert. denied* 423 U.S. 993, 96 S.Ct. 419 (1975).

The relevant enabling legislation pursuant to which the town board has the power to zone is section 261 of the Town Law.... By that statute the State has empowered the town to regulate and restrict the use of land ‘for the purpose of promoting the health, safety, morals or general welfare of the community.’

Id. at 484, 388, 405. An ordinance that restricts housing to those age 55 years and older is reasonable and a valid exercise of zoning power that does not violate equal protection. *See Campbell*, 58 A.D.2d 570, 394 N.Y.S.2d 909.

3. Local Legislative Enactment

174. The Town has enacted ordinances that provide the legal basis for senior age-restricted housing, such as Chappaqua Crossing. For example, the Town has adopted a definition of “senior citizen apartments,” which the Chappaqua Crossing units comply.

175. Further, the Town Multifamily Districts were specifically enacted to “provide suitable opportunities within the Town for the development of housing to satisfy the needs of smaller households, particularly the young and elderly...,” (§ 60-417.1) and to encourage this type of development, the provision of residences for these special needs groups, the Town Zoning Code provides density incentives for the creation of “senior citizen apartments.” *See* §§ 60-417.424 & 60-417.2121.

176. To oversee the operation and administration of “density bonus apartments created under the Multifamily Zoning” including senior citizen apartments, the Town enacted Chapter 10 of the Town Code, Housing Agency, by Local Law No. 8-1981, to ensure that the multifamily units are utilized for the purpose which they were created. Town Code § 10-2.

177. Although Chappaqua Crossing does not require the Town to grant any density bonuses, and therefore, will not fall under Chapter 10 of the Town Code,²⁴ the existence of this Chapter demonstrates that the Town contemplated residential senior age-restricted developments such as Chappaqua Crossing. Furthermore, the enactment of these density bonuses was a legislative determination by the Town as to what types of features it wished to encourage.

²⁴ Chapter 10 calls for the creation of a “Town Housing Agency,” responsible for “administration of the requirements in the Town Code with regard to those apartments designated or restricted in a multifamily development as a result of granting of density incentives for low or moderate income occupancy, senior citizen occupancy,... [and] for the promulgation of such rules and regulations as may be necessary to implement such requirements.” In the interim, the Housing Advisory Committee (HAC), as “appointed by the Town Board shall be considered empowered to exercise all the functions of such agency, until the Town Housing Agency is established.” The Applicant’s research shows that the Town Housing Agency has never been created and the HAC currently has no members and has not met since 2006.

178. Thus, this proposed senior age-restricted multifamily development is permissible pursuant to the Federal and New York State statutes, as age-restricted housing in which children are prohibited is not discriminatory so long as it complies with the relevant Federal Regulations, and pursuant to local law, as the MFPD Floating Zone is part of the Multifamily District sections of the Code. *See* § 60-417.1.

D. Enforcement of Senior Age-Restrictions

1. Town Code

179. It is permissible for a municipality to enact restrictions to “ensure that [senior] housing is used by the very group for which it has been designed.” *Campbell*, 58 A.D.2d at 572, 394 N.Y.S.2d at 912. The enactment of rules and regulations governing the operation of age-restricted communities allow for the enforcement of such restrictions and are permissible to achieve the municipality’s stated goal of providing housing to its elderly population. This would include Town Board legislative action to ensure that housing designated and designed as senior housing remains used by this group, which according to the definition in the Zoning Code is for individuals 55 and older, and under no circumstances under age 20. *See infra* Footnote 21.

180. As stated above, the Town has enacted Chapter 10 of the Town Code to provide the procedure for administration and calls for the establishment of an agency or committee to oversee senior housing, including the authority to promulgate rules and regulations. § 10-2.

181. Compliance with a dwelling’s age restriction limitation and the requirements of Chapter 10 and Chapter 60 is enforced through § 10-8, Certificates of Occupancy. It provides,

All certificates of occupancy issued for apartments which have been designated as density incentive apartments for ... senior citizens ... shall be endorsed with a notation that occupancy of such apartments is conditioned upon continued compliance with the provisions of this chapter, Chapter 60, Zoning, and all regulations issued thereunder.

§ 10-8. Similarly, if the Chappaqua Crossing's Certificates of Occupancy were issued as age-restricted residential and an owner of an age-restricted unit did not comply with the provisions of the Town Code, the Certificate of Occupancy of that unit would be subject to revocation and penalties could be enforced as provided for in the Zoning Code. See §§ 60-520, 521, and 524.²⁵

182. Further, any violation of the Certificate of Occupancy for the age-restricted dwelling units in Chappaqua Crossing would be subject to penalties and fines as provided in § 60-531.²⁶

2. Deed and Other Notice of Age- Restrictions

183. Although the Applicant is not seeking any density incentives for the qualifying features at Chappaqua Crossing as proposed, the age-restricted units will nevertheless be restricted in perpetuity in the same manner that the Town Code envisions restricting units for which density bonuses have been granted. Specifically, Chapter 10 mandates that units be encumbered and restricted when designated for senior occupancy upon resale as provided in § 10-5.

The senior citizen ... apartments shall be encumbered by the foregoing restrictions upon the initial sale of each such apartment and upon the resale or rental of each such apartment whether or not such apartments

²⁵ § 60-520. Certificates of occupancy or use. 60-521. It shall be unlawful for any person to use or permit the use of any building or premises, or part thereof, hereafter created, erected, changed, converted or enlarged, wholly or partially in its occupancy, use or structure, until a certificate of occupancy or use shall have been issued by the Building Inspector. Such certificate shall state that such occupancy or use is in complete conformity with the provisions of this chapter. It shall be the duty of the Building Inspector to issue a certificate of occupancy or use, provided that the proposed occupancy or use of the building or premises conforms to all of the requirements herein set forth. In the event that such occupancy or use would require an increase in the number of off-street parking or loading spaces beyond that required for the previous use, development plan approval in accordance with the standards and procedures in § 60-440 of this chapter shall be required.

§ 60-524. A certificate of occupancy or use shall be deemed to authorize, and is required for, initial, continued or changed occupancy and use of the building or land to which it applies. It shall continue in effect as long as such building and the use thereof and the use of land is in full conformance with the provisions of this chapter and any requirements made in connection therewith at the time of the issuance thereof. The details of any plan or site plan approved by the Town Board, Planning Board or Board of Appeals acting under the terms of this chapter, and any conditions attached to such approval, shall be deemed to be such requirements.

²⁶ § 60-531. Any person who shall violate any provision of this chapter, or who shall violate any other regulation made under authority conferred thereby, or who shall knowingly assist therein, shall be guilty of an offense as set forth in § 268 of the Town Law and shall be liable to a fine or imprisonment, or both, as provided therein. Each week's continued violation thereof shall constitute a separate additional violation. In addition to the foregoing punitive and remedial provisions, the town shall have such other remedies for any violation or threatened violation of this chapter as is now or may hereafter be provided by law.

are sold or leased to qualified senior citizens ... unless such restrictions are removed by a resolution of the Town Board of the Town of New Castle and a declaration is filed in the office of the County Clerk of Westchester County, Division of Land Records.

§ 10-5(C)(4). This provision requires that senior citizen apartments be restricted to such use in perpetuity, regardless of a transfer of ownership, unless the Town Board lifts the restriction.

184. The Applicant will impose deed restrictions which will guarantee that no children under the age of 18 will be permitted to reside in the age-restricted units and that at least one member of the household must be at least 55 years of age. These deed restrictions will provide contractual enforcement of the age restrictions. The restrictions will be disclosed in the Offering Plan for the Chappaqua Crossing residences and will be consistent with the deed restriction requirement set forth in Chapter 10 to further the spirit and intent of the Town Code that governs density incentive multifamily dwellings.

185. The proposed deed restrictions limiting occupancy of the Chappaqua Crossing units will restrict occupancy to seniors as defined in the Condominium Declaration and will include language that limits the resale price for the senior affordable, as well as the workforce affordable, units.

186. Additional layers of enforcement result from the restrictions disclosed and placed in the Offering Plan, which would be filed with the New York State Attorney General, as well as enforcement by the Condominium Board and Homeowner's Association through the Associations' By-laws. It is envisioned that the Condominium will be formed pursuant to the New York State law and that the Condominium owners at Chappaqua Crossing will be the sole members of the Condominium, as managed by the Board of Managers.

187. The Applicant proposes definite, clear and concise consequences including fines, with the enforcement procedure to be included in the by-laws for the enforcement of the age-restrictions against individual unit owners, which if necessary would allow proper legal action to enforce the age-restriction.

188. The existence of deed restrictions is often the primary reason an owner chooses to live in an association. Fair and uniform enforcement of an association's deed restrictions is critical to maintaining property values. Therefore, it would be in the interest of the owners/residents of the individual condominiums to enforce the age restriction provisions as well to maintain the community as proposed, and ensure the value of their interest.

VII. CHAPPAQUA CROSSING – TECHNICAL INFORMATION

A. Land Description

189. The Property exhibits a range of topographical and environmental characteristics and is oriented in a northeast to southwest direction. The character of the Property is variable with steeper gradients (35 %+) located in the western and northern portions, vegetated upland and wetland areas located on the fringes, and developed buildings and parking areas located in the center of the Property. The perimeter band of open space, which includes woodlands, meadows and lawn areas, ranges in size from 100 to 600 feet in depth and wraps around the main building and central parking areas. A north-south watershed divide runs through the center of the Property and the Wallace Auditorium. The portion of the Property to the west of the ridgeline is approximately three times as large as the portion of the site to the east of the ridgeline. The entire Property lies within the Chappaqua Brook watershed. The eastern portion of the Property slopes towards a pond and surrounding wetland adjoining Cowdin Land and drains to an unnamed tributary to Chappaqua Brook. The Chappaqua Brook flows in a northerly direction and empties into the Kisco River, which then discharges into the Croton Reservoir. The Property's high point is at elevation 448 and is located approximately 585 feet from the centerline of Cowdin Lane along the property line adjoining 37 Cowdin Lane. The Property's low point is at elevation 281 and located in the northwest corner of the Property.

B. Existing Buildings and Parking

190. The existing improvements on the Property as depicted on **EXHIBIT 4** include the main building which spans approximately 1,200 linear feet in a north-south direction and contains approximately 700,000 square feet of office space and associated uses. Five accessory buildings are located throughout the Property and include the Wallace Auditorium, a former single-family house used for office purposes (Bedford Valley House), a maintenance garage, and a former single-family house currently utilized as a guest house. In addition to these accessory buildings, a gatehouse is located at the Bedford Road entrance to the Property. There are ten on-grade parking lots with approximately 1,680 parking spaces located primarily to the east and north of the buildings at the center of the Property that are directly accessed from the central driveway off Bedford Road or from the interior loop road that begins at the Saw Mill River Parkway entrance.

C. Subdivision and New Zoning Boundaries

191. The Application proposes a reduction in the size of the existing B-RO-20 District to 49.4 acres which will retain 520,000 square feet of the main Reader's Digest buildings of which Reader's Digest currently leases 265,000 square feet.²⁷ The two northern-most buildings, 600 and 700, will be removed. Several existing parking lots east of the building will be retained, expanded and reorganized to serve the Office Parcel. The remaining 520,000 square feet of office space will be restricted from further expansion due to the B-RO-20 District coverage zoning regulation for the Office Parcel which will limit further development.

192. In addition, Summit/Greenfield proposes to combine the remaining B-RO-20 acreage (37.9 acres) with the eastern portion of the main parcel zoned R-1A (26.4 acres) to total 64.3 acres for the establishment of an MFPD District.

²⁷ The remaining 255,000 square feet is comprised of 75,000 square feet of non-leasable shared common space (cafeteria, fitness center, conference center, and mechanical office space), and 180,000 square feet of leasable office space which will be occupied by separate tenants.

193. As part of the reduction in the size of the B-RO-20 District, the boundary for the modified Office Parcel would be adjusted and delineated as shown on the Preliminary Parcelization Plan attached hereto as **EXHIBIT 24**. The proposed boundary separating the B-RO-20 District from the newly applied MFPD District generally wraps around the existing buildings and parking areas and provides the required B-RO-20 building and parking setbacks from adjoining residential districts.

D. New Residential Buildings and Parking

194. The residential development program for the MFPD District will include 278 dwelling units in both condominium and fee-simple HOA ownership as set forth in the table below:

Type of Residential Unit	% of Total	# of Units
Market Rate Age-Restricted Dwelling Units:	80%	222
Affordable Age-Restricted Dwelling Units:	8.5%	24
Affordable Work-Force Housing Dwelling Units:	11.5%	32
<i>Total Dwelling Units:</i>	<i>100%</i>	<i>278</i>

195. The Chappaqua Crossing design has taken full advantage of the topography of the land in order to reduce the visibility of the proposed buildings from surrounding neighborhoods. The removal of the automotive maintenance garage, Wallace Auditorium, Bedford Valley House and adjoining parking areas will allow for the creation of a North Village containing four (4) three-story buildings with a total of 170 flats, of which 24 will be affordable and an East Village with a mix of four (4) three-story buildings with 64 flats and 44 two-story townhomes, that will form two residential neighborhoods within the campus. The residential clubhouse will be located between the two Villages and accessed via the relocated residential drive, sidewalks and footpaths. The single-family guest house near the Bedford Road entrance will remain and be used as a caretaker’s residence. Two gatehouses - one for office visitors and one for residential visitors – will be located approximately 600 feet west of

Bedford Road, where the office and residential access drives diverge. The North Village buildings include two U-shaped courtyard buildings and two I-shaped buildings with flat roofs, three stories in height with one level of below-grade resident parking. The level pad for these buildings has been created by notching into the west-facing slope to reduce the visibility of the buildings from the residential homes along the western side of Cowdin Lane. As the height of the top of the roofs of the three-story buildings is approximately elevation 427 and the second floor elevation of the closest Cowdin Lane home is approximately elevation 438, the limited views from Cowdin Lane homes will generally be over the top of the proposed buildings to the wooded hillside to the west. Existing woodland areas within the Property will be preserved and enhanced to provide vegetative buffers along the perimeter. In particular, berms and mounds with evergreen trees are proposed along the perimeter of the Property adjacent to Cowdin Lane residential lots in order to provide year-round screening. New full cut-off site lighting will improve upon existing conditions in the maintenance garage area that will minimize potential light impacts. Parking for North Village residents will be contained within parking garages underneath the buildings, while on-grade visitor parking and drop-off areas will be centrally located within and adjoining each of the two courtyards in the Village.

196. The East Village is a mix of three-story buildings with flats and two-story townhomes. The East Village has been designed using the topography of the site to step down the buildings in order to minimize the views of the project from Cowdin Lane. The design character of the four multifamily buildings will be complementary of the brick, Georgian style of the original Reader's Digest building and will transition to the two-story townhomes located on the east side of the residential loop road. Between 10 and 12 townhomes have been grouped together to form four landscaped courtyard clusters that overlook the pond and meadow. The townhomes have been grouped together rather than spread across the site in order to minimize site disturbance, as well as provide a separation from Cowdin Lane that varies between 375-450 feet, buffered by the existing pond and portions of the meadow area. Existing single-family homes along Cowdin Lane on the south end of the road across

from the pond exhibit setbacks between 60 feet and 200 feet, with the average approximately 125 feet. The homes along the northern section of Cowdin Lane are generally set back from the road between 100 feet and 150 feet. The 375 foot setback for the proposed townhomes is more than double the typical setback on Cowdin Lane.

197. It is proposed that the four single-family residential lots located along Roaring Brook Road remain zoned as R-1A, with the two western-most lots offered to the Town for municipal purposes. The remaining two single-family homes near Bedford Road will continue to provide a physical and visual buffer.

198. Pursuant to § 60-417.411[e]v, the generalized time schedule for the staging and completion of Chappaqua Crossing shall be dependent upon market conditions at the time of final approvals; however, the Applicant currently anticipates constructing the residential portion of the proposal in four to nine phases over a period of approximately five years. Renovation of the unoccupied portion of the existing office space to remain could occur concurrently and be completed in one to three years, again dependent on market conditions.

E. Access and Circulation

199. Currently, the Chappaqua Crossing Property is accessed directly from Bedford Road and Roaring Brook Road. The Property has frontage on Bedford Road, Roaring Brook Road and Cowdin Lane and automobile access for visitors to the main parcel is from Bedford Road via a gated guard booth, with additional key-controlled automobile access for employees from the western site entrance on Roaring Brook Road, just off Exit 33 of the Saw Mill River Parkway. A third entrance to the Property is located on the south side of the Property off Roaring Brook Road. While previously used for general access to the Property, the south entry is currently gated.

200. The Chappaqua Crossing access system will remain generally the same as today. The east entrance drive located on Bedford Road will be maintained for general use by visitors,

residents, office workers and service providers and will continue to be gated and manned with two gatehouses – one for office visitors and one for residential visitors. There will be cross-easements over the road allowing use by both commercial and residential users, as the access road will be split directly down the center between zoning districts and the newly created parcels. The west entrance drive, which provides direct access from the Saw Mill River Parkway, will continue to have a card access gate system for office employees and residents of the new multi-family development. An easement will be granted to the residents, guests and invitees of the MFPD Parcel over the western drive as drivers will have to pass through the Office Parcel before reaching the MFPD Parcel. The southern drive off Roaring Brook Road will continue to be gated and used only for occasional or emergency access.

201. Vehicular circulation within will generally be separated by use within the interior of the Property. At the main Bedford Road entrance, vehicles will share the main access drive for approximately 600 feet, with office traffic continuing straight into the parking and drop-off areas for the office buildings. Residential traffic will follow the new residential loop road through the East and North Villages, and can continue through the site to exit at the western entrance. Office traffic can access parking areas from the western access road just north of the office buildings. Emergency access will be available throughout the Property, with a third access point at Roaring Brook Road.

202. Pedestrian access through the Property is currently available via walking paths and the main loop road. Chappaqua Crossing proposes enhancing the pedestrian environment by adding sidewalks along the residential access road and additional walking paths around the pond, throughout the meadows, perimeter woodlands and open space, and connecting the Villages together via the residential clubhouse. Chappaqua Crossing has been designed to take advantage of the existing character and mature vegetation of the Property while emphasizing a walkable and pedestrian-friendly neighborhood that encourages residents to socialize in a park-like setting.

F. Landscaping

203. The Property contains a significant amount of existing mature vegetation, particularly around the perimeter. This perimeter band of open space is made up of woodlands, meadows and lawn areas, and generally ranges from 100 to 600 feet in depth. In total, the site will contain over 50 acres of open space, including the perimeter buffer, internal gardens, lawns and landscaped areas. The existing woodland vegetation is characterized by a mixture of hardwood trees, including red oak, American beech, tulip tree, black birch, red maple, pignut hickory and shagbark hickory. The tree canopy in the wetland areas is comprised primarily of red maple interspersed with green ash, scattered yellow birch and American beech, as well as well as typical wetland herbaceous plants and grasses. The central portion of the Property includes mowed lawn with both shade and ornamental trees.

204. Chappaqua Crossing has been designed to locate the new residential development primarily in areas of the Property that have been previously developed in an effort to reduce areas of new site disturbance. The North Village is located partially in the area where the automobile maintenance garage and parking lots were previously located. The East Village is located along the existing loop road and in the areas east of the loop road where parking lots, the Wallace Auditorium and the Bedford Valley House were previously located. Due to the siting of the new development in areas of prior disturbance, much of the existing vegetation can be maintained. In particular, the woodland buffer surrounding the perimeter of the Property will remain and continue to provide screening from vantage points in surrounding neighborhoods. The wooded area south of the entrance drive behind the four single-family lots on Roaring Brook Road will be maintained. The pond and a portion of the meadow adjacent to Cowdin Lane will be maintained and enhanced with native plantings.

205. To further reduce any potential views of the proposed buildings from adjacent residences on Cowdin Lane, the existing mature tree canopy along the property line will be enhanced with a proposed vegetated berm. The open area to the east of the North Village, just north of the proposed clubhouse, will be bermed and mounded to raise and enhance the screening that will occur with newly planted native evergreen and deciduous trees and shrubs.

206. New street trees are proposed for the residential loop road, and landscaping within both the East and North Villages will enhance the buildings and provide an attractive pedestrian environment. Supplemental landscape to enhance the buffers between the existing office building and the relocated residential loop road will be added, as well as new native ornamental entry plantings to aid in demarcating the separation between office and residential areas.

VIII. MANAGEMENT OF CHAPPAQUA CROSSING

207. Pursuant to § 60-417.411(d), Application to Town Board for Zoning Approval, an applicant must provide “[a] written statement of the proposed method of ownership and maintenance of all common utilities, facilities, and open space lands within the proposed development ” when making application for the establishment of an MFPD District.

A. Ownership Structure

208. Chappaqua Crossing proposes 278 units that will have both condominium and fee-simple ownership. The Applicant proposes a homeowner’s association for the 44 townhomes which will be conveyed in fee-simple. The Applicant currently envisions several condominium associations, with membership dependent upon the varied restrictions for the 234 flats, including a senior age-restricted market rate condominium, a senior age-restricted affordable condominium and workforce affordable condominium, with each type of condominium including different restrictions in its Declaration.

209. Each ownership entity would be part of an overlying association or “master association” that would enforce the deed restrictions set forth in the Declarations and would be recorded with the County. Additionally, the master association would own the common land and have shared maintenance and management responsibility for grounds and landscaping. Cross-easements would be created between parcels as required to ensure the benefits described herein are preserved and protected. *See EXHIBIT 24*, Preliminary Parcelization Plan.

B. Maintenance and Safety of Facilities

210. As Summit/Greenfield proposes to develop an active-adult residential community, it will include many amenities to accommodate and attract its target residents, including recreational facilities and common areas that will feature the continuation of the park-like setting both internally and throughout the perimeter, maintaining Property’s aesthetic quality and recreating a new home for its residents.

211. In addition to the maintenance staff for buildings and grounds, 24-hour security will be provided at Chappaqua Crossing.

C. Open Space Plan Requirements (Criteria of § 60-417.413)

212. Chappaqua Crossing is consistent with the TDP’s call for the “permanent preservation of natural and cultural resources...includ[ing] rivers, and streams, lakes and ponds, wetlands, flood plains, aquifer recharge areas, wildlife habitats, forested areas, steep slopes, stone walls, and other historic structures and sites.” TDP p. 105. Chappaqua Crossing will maintain the primary portion of the Reader’s Digest campus and preserve the Georgian-style buildings that are signature to the campus including the main building which features the cupola. Fifty acres of open space will also be set aside which include areas of wetlands, woodlands and meadows for passive recreation.

IX. BENEFITS TO TOWN

213. In summary, Chappaqua Crossing provides the following benefits to the Town and its residents.

A. Providing Affordable and Senior Age-Restricted Housing

214. Chappaqua Crossing fulfills 22% of the Town's allocated affordable units as set by Westchester County, creates a premier senior age-restricted housing development to meet local and regional needs, and furthers the explicit intent of the TDP and its multifamily zoning districts, which call for the creation of both age-restricted and affordable housing.

B. Increased Tax Revenue

215. The current taxes generated by the Reader's Corporate Campus and the four single-family residential homes located on Roaring Brook Road total \$1,433,000.²⁸ The office component of the total annual tax levy is \$1,359,000 and the residential component is \$73,800.

216. It is estimated that the proposed project, with 520,000 square feet of office use and 278 residential units in a combination of fee simple (44 townhouses) and condominium (234 flats) ownership will more than double the existing taxes for the property. The combined annual tax levy for both the office and residential components is estimated to be \$3,500,000. The new taxes for Chappaqua Crossing represent an estimated 144% increase in taxes for the Property which will be paid to the Town, the School District and Westchester County.

²⁸ In 2005 Summit/Greenfield settled a long-standing tax certiorari proceeding against the Town that had been initiated by Reader's Digest prior to the Applicant's acquisition of the Property. Summit/Greenfield settled this dispute as an indication of its intention to work with the Town in good faith during redevelopment of the Reader's Corporate Campus. The 2005 certiorari agreement will expire in 2007 and at that time Summit/Greenfield will re-evaluate the assessment of the Property.

C. Providing Land for Municipal Use

217. The Town has previously expressed its desire for a site for multiple municipal facilities, including a municipal pool, and police, fire and ambulance services. The Chappaqua Crossing proposal includes the conveyance to the Town of two one-acre lots on Roaring Brook Road for its desired municipal use. The lots are located directly across Roaring Brook Road from the Horace Greeley campus.

D. Providing Road Improvements to Improve Existing Conditions

218. The Applicant intends to make the following roadway improvements as illustrated by the Conceptual Roadway Improvements attached hereto as **EXHIBIT 25**, as part of the proposed project:

- a. Provision of right turn lane from Bedford Road to Roaring Brook Road;
- b. Widening of westbound Roaring Brook Road from Bedford Road to Horace Greeley High School driveway to create a second or turning lane;
- c. Reconfiguration of Reader's Digest site entrance on lower Roaring Brook Road near train line and striping of a left turn lane into the site on Bedford Road.

219. In addition to making these local roadway improvements, the proposed project includes a jitney service to the train station and the downtown hamlet area reduce traffic and for the ease of employees of the office campus and residents of the residential development.

E. Open Space and Campus Character Preservation

220. The TDP describes the Reader's Corporate Campus as one of the low density private land uses on large sites that contribute to the open space character of the Town. TDP p. 146-47. In an effort to balance appropriate future development for the Reader's Campus with the preservation of the visual open space quality, the proposed multi-family development has been sited primarily in the center of the Property in areas that have been previously disturbed. The perimeter woodland area along Roaring Brook Road will remain fully intact, and the woodland areas and slopes along the western and

northern property will remain in their present form providing 50 acres of passive recreational area for its residents. The northeastern portion of the property adjacent to Cowdin Lane residential lots will be enhanced with new berms and year-round landscaping. The pond and portions of the meadow along the southern portion of Cowdin Lane will be enhanced with passive walking paths for the residents of Chappaqua Crossing.

F. Minimal Impacts on the School District

221. As described above, the deed restrictions on the 246 senior age-restricted residential units will preclude any children under the age of 18 from residing in these units, and therefore the local schools will not experience any impact from these units (other than receiving tax revenues).

222. The 32 affordable work-force residential units will have minimal impact on the School District. It is estimated that the 32 units, 10 of which will be three-bedroom and 22 of which will be two-bedroom affordable workforce housing units, will have an average of 96 residents. It is estimated that a maximum of 20-25 public school children, distributed across all grades K-12, would be generated by these units. Thus, at the current annual cost of educating a child in the Chappaqua School System (estimated at \$20,000), the total annual cost associated with educating the 20-25 children generated by the Chappaqua Crossing workforce affordable units would be \$400,000- 500,000. This cost will be handsomely off set by the estimated \$3,500,000 of Town, County and School District taxes the new project will contribute annually.

X. REQUESTED RELIEF

223. In accordance with the procedure as set forth in Section II.E herein, and in order to consider properly the proposed Chappaqua Crossing Project, the Applicant respectfully requests that the Town Board take the following actions:

- (a) Accept this Application, declare itself to be the Lead Agency for SEQRA review purposes, commence a coordinated SEQRA review and deem the instant Application complete and refer the same to the Planning Board for formal recommendation as soon as possible;
- (b) Schedule and a hold a public hearing on the Application for establishment of an MFPD District on the Property within 45 days of either the receipt of the Planning Board's report and recommendation or from the date of referral;
- (c) Adopt a resolution to approve the preliminary development concept plan and establish an MFPD District within 45 days of the public hearing; and
- (d) Direct that the official copy of the Town Zoning Map be amended to reflect the newly established MFPD District concurrently with the adoption of the resolution.

224. Other future relief by other approval agencies will include final site development plan approval and subdivision approval by the Planning Board following the above relief, as well as an amendment by the Westchester County Board of Legislators to the boundary of the Saw Mill River Sewer District to include the MFPD District.

XI. CONCLUSION

225. Based upon the foregoing, the Applicant submits that the proposed Chappaqua Crossing proposal complies with the provisions of the Town Zoning Code MFPD District standards and furthers both the Town's own TDP vision and its legal obligations to provide an array of housing types and costs, including its obligation to provide its "fair share" allocation of affordable housing to meet local and regional needs. Chappaqua Crossing presents to the Town a unique opportunity to preserve the character of the former Reader's Digest campus while protecting and enlarging the Town's tax base

without burdening its schools or other municipal services. Chappaqua Crossing will make additional significant municipal contributions in this development proposal.

226. The Applicant requests that the Town Board begin its review process of this Application in accordance with its procedure set forth in § 60-417.4 and expeditiously grant all necessary approvals for the establishment of an MFPD District and of the preliminary development concept plan for Chappaqua Crossing.

Dated: July 9, 2007
Mount Kisco, New York

Respectfully submitted,

SHAMBERG MARWELL
DAVIS & HOLLIS, P.C.
Co-counsel for Petitioner
SG Chappaqua B, LLC
55 Smith Avenue
Mount Kisco, NY 10549
(914) 666-5600

By: /s/
John S. Marwell, a Member of the Firm

Of Counsel:
John S. Marwell
Carrie E. Hilpert
Megan K. Smith
Stuart R. Shamberg

Co-Counsel:

CARTER LEDYARD & MILBURN LLP
Co-counsel for Petitioner
SG Chappaqua B, LLC
2 Wall Street
New York, NY 10005
(212) 238-8671

By: /s/
Stephen L. Kass, a Member of the Firm

Of Counsel:
Stephen L. Kass
Ethan I. Strell

VERIFICATION

STATE OF)
) ss.:
COUNTY OF)

Felix T. Charney, being duly sworn, deposes and says:

I am a member of SG Chappaqua B, LLC, and, as such, am fully familiar with the facts and circumstances of the use of the Property at issued in this action. I am also an authorized agent of SG Chappaqua B, LLC, and the Petitioner in the foregoing action. I have read the annexed Verified Petition, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

/s/
Felix T. Charney

Sworn to before me this
9th day of July, 2007

Notary Public