

## EXHIBIT D

### **(Items Agreed to By WEHI With Respect to the Association in Connection With the Proposed Development)**

1. 496 residential upscale/luxury apartment units, 20% of which shall be low and moderate income housing units;
2. Building layout as set forth in the Concept Plan, subject to paragraph 5.2 of the Settlement Agreement;
3. Buildings of Proposed Development to have a minimum 100-foot setback from Association property;
4. To the extent possible, WEHI to minimize disturbance of 100-foot buffer for installation of utilities;
5. Berms with nondeciduous trees to be constructed and installed, similar to the Vizcaya project berms; to be determined by a joint, site specific inspections. The Association has the right to review landscape plans and installations WEHI's landscape architect, upon request. Temporary irrigation shall be provided on berms for initial tree growth. [Notwithstanding, based on the increased building setbacks and woodlands preservation, the parties recognize that such berms may not be necessary and/or desirable as adequate year-round buffer/screening may be provided. Therefore, the parties agree to consider omission of berms based on the extent of, for instance, preserved woodlands, undisturbed areas, setbacks, and elevations and agree to review these issues following the balloon test described in No. 31 below.]
6. Proposed Development to have amenities such as a pool/clubhouse, open space, features related to open space, i.e. walking trails, playground, etc., and other amenities related to the operation of an apartment complex. The amenities within the Development, excluding the dog/cat daycare and boarding facility identified in paragraph 33 below, shall not be open to the general public. Residents of the Association shall have the right to utilize any walking trails. Points of access to any such trails shall be provided at areas mutually agreeable to the parties, but shall not promote the parking of vehicles at such access points. (For instance, parking areas shall not be constructed without Association approval.);
7. The main public access to the Subject Property shall be via Warner Road and Kuzik Drive, as set forth in the Concept Plan, because same is likely required by New Jersey's Residential Site Improvement Standards ("RSIS"). However, if RSIS permits the closure of Kuzik Drive, then Kuzik Drive shall be designated for emergency access only. If RSIS requires Kuzik Drive to remain open, WEHI shall seek a waiver from RSIS requirements before the Planning Board in connection with WEHI's application for the Proposed Development. If the request for a waiver is denied, then Kuzik Drive shall serve as a secondary access point along with Warner Road. If Kuzik Drive remains open, WEHI shall employ traffic calming measures (i.e., speed bumps, humps and/or tables) intended

to route as much traffic as possible onto Warner Road, to the extent permitted by RSIS (to be discussed and designed as the construction of the Proposed Development progresses);

8. Bayowski Drive shall remain a cul-de-sac, but may provide emergency access to the Subject Property;
9. Emergency access to the Subject Property shall be via Howell Drive and Bayowski Drive, to the extent required by the Township and/or Planning Board. If permitted by RSIS or if WEHI obtains a waiver (see No. 6, above), then Kuzik Drive shall also serve as emergency access to the Subject Property. All emergency access points shall include physical barriers to deter and prevent non-emergency access;
10. WEHI to install speed bumps/traffic calming devices and/or signage on Association lands where necessary (to be discussed and designed as the construction of the Proposed Development progresses);
11. WEHI to install landscaping, buffering and speed calming measures/devices along Warner Road and Kuzik Drive within Association lands in connection with transforming Warner Road into a “boulevard” (to be discussed and designed as the construction of the Proposed Development progresses);
12. The construction of the Proposed Development will not result in any loss of parking on Association lands;
13. Before the commencement of construction of the Proposed Development, and within thirty (30) days following nonappealable site plan and related municipal land use approvals for the Proposed Development, WEHI will pave the portion of Oval Road from Oval Road’s intersection with Eagle Rock Avenue to Oval Road’s intersection with Warner Road;
14. Contemporaneously with the commencement of the paving of the first portion of the final course of roadway paving within the Proposed Development, WEHI shall restore and repave the following Association roads (the “**Shared Roads**”): Oval Road from Eagle Rock Avenue to Warner Road; Warner Road; Kuzik Drive; Reger Lane; a portion of Lapis Circle (southeast quadrant connecting Reger Lane to the northeast segment of Lapis Circle and continuing to its intersection with Kuzik Drive) and Bayowski Drive;
15. Warner Road shall be the only road utilized by WEHI in connection with the construction of the Proposed Development. WEHI shall in good faith limit construction traffic and employ dust control/street cleaning measures, as necessary. WEHI shall not permit construction deliveries on Saturday, Sunday or holidays. No construction parking/idling shall take place within or near Association property;
16. WEHI shall provide the Association with at least 2-weeks’ notice of any road closures or utility interruption;

17. During construction of the Proposed Development, WEHI shall ensure access to and passage along Warner Road and Oval Road, and Warner Road and Oval Road shall be kept in good repair, i.e. fixing of potholes, etc.;
18. At the commencement of construction of the Proposed Development, WEHI and the Association shall divide the cost for the maintenance of Warner Road and the portion of Oval Road from Eagle Rock Avenue to its intersection with Warner Road, and any other common costs incurred by the Association in accordance with the ratio of 496 (WEHI): 300 (Association). As used in this Agreement, maintenance with respect to the Shared Roads shall mean and include, by way of example and not limitation, services, maintenance, repair, improvement and replacement with respect to the following: snow, ice, leaf and debris removal; catch basin and stormwater cleanout and repair; curb repair; paving; crack filling; traffic calming devices; sealcoating; line striping; and lawn, irrigation and landscaping services of the boulevards and island areas. The Association shall not be responsible for any roads or other improvements within or installed in connection with the Proposed Development, unless otherwise expressly agreed by the parties;
19. At the commencement of Construction, WEHI and the Association shall divide the cost of snow removal for Bayowski Drive and Kuzik Drive;
20. WEHI will support any effort by the Association to have Oval Road dedicated to the Township of West Orange;
21. WEHI will obtain approval for and install a traffic signal at the intersection of Oval Road and Eagle Rock Avenue;
22. WEHI will agree to install a bus shelter on the eastbound side of Eagle Rock Avenue at the entrance to Oval Road, to the extent WEHI is permitted to do so by the Township of West Orange and/or the County of Essex under conditions reasonable to WEHI;
23. WEHI does not intend to utilize the Association's sewerage pump station in connection with the Proposed Development. However, if engineering concerns and/or the Township require the use of the Association's pump station, WEHI shall, at its own cost, upgrade the pump station so that sewer services to the Association will not be adversely affected by the Proposed Development. In that event, WEHI shall enter into an agreement pursuant to which WEHI will split the cost/maintenance for the pump station on a 300:496 ratio. If WEHI needs to utilize the pump station, no upgrades to the pump station may be performed until WEHI and Association enter into a separate agreement regarding the use of and upgrades to the pump station, which the parties will negotiate in good faith;
24. WEHI will install a guardhouse with a gate, subject to approval by the Planning Board of the Township of West Orange, to be utilized by the Association and the Proposed Development.

WEHI recognizes that the Association's preference is to have the guardhouse located on Oval Road southeast of Oval Road's intersection with Bongart Drive. However, WEHI and the Association recognize the existence of a Declaration of Easement and Right of Way Agreement dated January 19, 1988 (the "Easement") recorded with the Essex County Clerk in Deed Book 5012, Page 571 between WEHI (predecessor in interest to the lands owned by the Association), Essex Fells Country Club, and Allied Signal, Inc., which Easement is binding upon the Association. Notification of the Easement was contained in the Public Offering Statement for the Association's condominium. Although it is not clear from the Easement as to which party or parties hold a fee simple ownership interest in Oval Road, or any portion thereof, the Easement generally provides that each party to the Easement grants to the other parties to the Easement "a permanent easement for reasonable ingress and egress on and across" all of Oval Road from Oval Road's intersection with Eagle Rock Avenue to the border of the Township of Essex Fells. The parties recognize that it is possible that all of Oval Road is not owned by the Association. The parties further recognize that Essex Fells and West Orange also have emergency access rights over a portion of Oval Road.

Notwithstanding the Easement, WEHI will attempt to obtain all necessary land use approvals for the installation of the guardhouse on Oval Road southeast of Oval Road's intersection with Bongart Drive, the Association's preferred location. However, if after reasonable due diligence, WEHI determines in good faith that the Easement or any other legal impediment will prevent the installation of the guardhouse on Oval Road, WEHI will notify the Association of any such impediment and meet with the Association in good faith to decide upon an alternate, mutually-agreeable location for the guardhouse, including but not limited to Warner Road (which could necessitate the installation of a gate on Bongart Drive at its intersection with Oval Road or the conversion of Bongart Drive into a cul-de-sac so as to prevent access from Oval Road via Bongart Drive).

The installation of the guardhouse, no matter where the ultimate location, shall be subject to a site plan application to the Planning Board filed by WEHI with the consent of the Association. At WEHI's sole discretion, WEHI may choose to have the guardhouse included on its site plan application for the Proposed Development or in a separate, contemporaneously-filed application only concerning the guardhouse.

25. WEHI shall have the Association and the Association's management company named as additional insureds on WEHI's Comprehensive General Liability insurance policy and on the CGL policies of any subcontractors;
26. WEHI will indemnify the Association and the Association's management company for any damage to Association property resulting from construction related activities;
27. The construction of the Proposed Development will have no negative impact on the Association's utilities, including electricity and water pressure;

28. WEHI and the Association will enter into an agreement for the monthly payment by WEHI of its portion (496/796) of shared costs for maintenance of all Shared Roads and the guardhouse as of the date set forth in No. 18, above;
29. WEHI will consult the Association, and any professionals retained by the Association, during the engineering phase of the Proposed Development, as necessary, and WEHI will simultaneously submit a complete copy of any Planning Board and any other development application and related submissions (including traffic reports and drainage reports) to the Association;
30. WEHI will abide by any regulations or ordinance regarding blasting activities on the Subject Property. WEHI agrees to provide not less than three-days' notice for any blasting activities, which shall only take place between the hours of 10 a.m. and 2 p.m.;
31. WEHI will perform a balloon test on the Subject Property to demonstrate the height of the buildings of the Proposed Development. (NOTE: This test may have been performed prior to the execution of this Agreement.);
32. WEHI shall keep the Association fully and contemporaneously informed regarding construction activities on the Subject Property and shall utilize a website and/or social media available to the Association and its members for construction updates and communications; and
33. The Association agrees that WEHI may create and maintain an area on the Subject Property for a well-supervised dog/cat daycare and boarding facility, which amenity will be available to members of the Association, residents of the Proposed Development and members of the general public. There will be no cost to the Association for the construction of this facility. If individual members of the Association want to utilize the facility, they will do so at their own cost.