**STATE OF RHODE ISLAND** **SUPERIOR COURT**
**PROVIDENCE, SC**

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| Nicholas E. Cambio, Trustee, The Nicholas E. Cambio, Roney A. Malafronte, and Vincent A. Cambio Trust<br>Petitioners | : | |
| v. | : | P.M. No. 13-0350 |
| Commerce Park Realty, LLC<br>Commerce Park Properties, LLC<br>Commerce Park Commons, LLC<br>Commerce Park Associates 4, LLC<br>Catapult Realty, LLC<br>Respondents | : | |
| Matthew J. McGowan, as and only as Receiver for Commerce Park Realty, LLC<br>Commerce Park Properties, LLC<br>Commerce Park Commons, LLC<br>Commerce Park Associates 4, LLC, and Catapult Realty, LLC<br>Petitioner | : | |
| vs. | : | P.B. No. 13-5001 |
| Commerce Park Management, LLC<br>Respondent | : | |

**THIRD CONSENT ORDER WITH THE HIGHLANDS AT HOPKINS HILLS CONDOMINIUM ASSOCIATION**

The Receiver of Commerce Park Realty, LLC ("CPR"), Commerce Park Properties, LLC, Commerce Park Commons, LLC, Commerce Park Associates 4, LLC, Catapult Realty, LLC, and Commerce Park Management, LLC ("CPM") (collectively, the "Receivership

Entities"), subject to approval of this Court (the "Court"), and The Highlands at Hopkins Hill Condominium Association, Inc., for itself and its unit owners, by and through its elected Executive Board, acting by and through its legal counsel (collectively, the "Association"), hereby agree as follows:

***Recitals***

A. The Receivership Entities, except for CPM (which owns no real estate), own various improved and unimproved properties within the Centre of New England ("CNE"), a mixed-use development which covers over 400 acres primarily within Coventry, but also within West Greenwich, and, to a very limited extent, East Greenwich, Rhode Island.

B. Within CNE is a large residential condominium development in Coventry called The Highlands at Hopkins Hill ("Highlands") in which there are presently, through its existing phases (the "Existing Highlands"), 152 finished and occupied, free-standing residential condominium units.

C. The main roadways in the overall CNE development, all of which are privately owned by and titled in the name of one of more of the Receivership Entities, have not been finished, nor have the majority of the roadways in the Existing Highlands, which are also privately owned. The Association has asserted various monetary claims in these receivership proceedings, including those alleging that promises were made to it and the Highlands unit owners that the Highlands roadways would be finished, and that those roadways, in any event, were statutorily required to have been finished by the "Developer" thereof, as required under the Rhode Island Condominium Act, R.I. Gen. Laws §34-36.1-1.01 *et seq.* (the "Condominium Act"). It has also asserted claims due to their not having been a water system for the Highlands development (but rather each Highlands residential unit having individual water wells) as was

provided for it and its members in the Condominium Declaration. No such water system was provided until it was provided during these receivership proceedings, and then only with the Association participating (with the Receiver) in the costs of that.

D. There are remaining final and presently uncompleted and undeveloped sub-phases in the Highlands (within Coventry Assessor's Plat 13, Lot 22) in which, on paper, upwards of an additional 66 residential condominium units can be constructed (for these purposes, the "66 Lots"). The Receiver has entered into a purchase and sale agreement for the sale of the 66 Lots to DeBlois Building Co. or its affiliate, D2 Homes, Inc. (hereafter "DeBlois Building") for the gross price of $1.95 million, with that proposed sale having been approved by the Court through its March 19, 2024 sale order (entered by Justice Stern).

E. Through prior dealings of the Receiver, including agreements between he and the Association, and various Court approvals, including through a second and most recent consent order between the Receiver and the Association, which was approved by the Court on August 31, 2020 (the "Second Consent Order"), all of the 152 units in the Existing Highlands now have water provided to them through the local public water utility, Kent County Water Authority ("KCWA"), which controls the large main water line just outside of the entrance to the Highlands development on Hopkins Hill Road in Coventry. As provided for in detail in the Second Consent Order, the Association and the Receiver each participated in the costs associated with bringing KCWA-sourced water into the Highlands, and the Association maintains that it holds in these proceedings a claim for what it had to contribute therefor. It was noted in the Second Consent Order that there were a number of final remaining issues and disputes to be resolved on several matters between the Receiver and the Association, and that they would work

toward a resolution of them through a third and final comprehensive consent order. They have done so and this is that consent order.

F. Through a November 2023 proposal and estimate, along with accompanying engineering plans, D'Ambra Construction Company, Inc. ("D'Ambra"), a heavy and roadway construction company (whose primary offices and facilities happen to be located in the CNE development), proposed that it would reconstruct Centre of New England Boulevard, the main thoroughfare running through the CNE development, both in the New London Turnpike side and in the Hopkins Hill side of that development, as well as Universal Boulevard, the Marriott Residence Inn access road, the Hampton Inn access road, and the so-called Ryan Herco access road, as well as perform other roadway and associated work at the CNE development, for a total cost of $2,285,000.00 (the "Main Roadways Proposal and Plans"; copy attached as Exhibit A).

G. In September 2023, D'Ambra presented a proposal and estimate with accompanying plans and descriptions for the reconstruction of all of the roadways in the Highlands (the so-called Green Area for $174,500; Red Area for $340,000; Blue Area for $99,750, and Orange Area for $119,500), which totaled $733,750 (the "Highlands Roadways Proposal and Plans"; copy attached as Exhibit B).

H. There are similarly privately owned and maintained water and sewer lines under the privately owned roadways at the CNE development, including those in the Highlands.

I. The Receiver is holding funds from the net proceeds of prior Court-approved sales of real estate in these receivership proceedings, and, as noted, the Court has approved a $1.95 million purchase and sale agreement with DeBlois Building for the sale of the 66 Lots, also shown as "Developable Lot 1" at CNE, as shown on the map and aerial view of CNE attached as Exhibit C hereto (the "CNE Map"). He has also received offers from and is actively

working with potential buyers for the sale of other CNE property, including for "Developable Lots 2 and 3" as shown on the CNE Map, with the Court also having approved a sale of those lots through a March 19, 2024 sale order (entered by Justice Stern). The closing on the sale of Developable Lots 2 and 3 is subject to certain contingencies, including those relating to the completion of both the main CNE roadways and all of the Highlands roadways.

J. The Association wishes to own and control the Highlands roadways and its water and sewer lines, and the Receiver, as part of an overall resolution of issues and disputes with the Association, is willing to convey the same to the Association, but subject to reservations and assurances of unrestricted rights to the use of the Highlands roadways and to his and others' free right and entitlement, with appropriate protections to the Highlands and the Association, to tie-into the present and future-existing sewer and water lines in and those servicing the Highlands. The buyer of the 66 Lots (Developable Lot 1) in the Highlands and the buyer for Developable Lots 2 and 3 require similar assurances about having unrestricted use of the Highlands roadways and the ability, if required or desirable, to tie-into the present and future water and sewer lines servicing and those under the roadways in the Highlands. All use and/or tie-ins of the roadways and/or water and/or sewer lines by the Receiver, certain third-party purchasers identified by the Receiver, or others, are to be those that cause no material and substantial harm to and are to be at no additional cost to the Highlands and shall be governed by a separate use and maintenance agreement, which shall be recorded in the applicable land evidence records.

K. DeBlois Building, the buyer of the 66 Lots (Developable Lot 1), as well as the buyer for Developable Lots 2 and 3, also require assurances that the main CNE roadways and the Highlands roadways will be reconstructed and completed, and require, too, that, to whatever extent money from their purchase of such properties is intended to be used for such roadway

reconstruction purposes, escrow and other appropriate arrangements are put in place to ensure that such roadways are properly reconstructed and completed with those funds.

L. The reason the roadways at the CNE development, including those in the Highlands, have largely never been fully completed to this point (with almost all of them having had merely a binder coat of asphalt for many years prior to the receivership filings and thereafter) is because of the financial constraints on the initial developer and other financial and related complicating factors and circumstances. Among those are that the Receiver had disputes and litigation with so-called "hard money" lenders who claimed to be owed hundreds of millions of dollars from loans or refinanced obligations with the Receivership Entities and, as part of that, had taken back mortgages encumbering the private roadways at the CNE development as part of their collateral for those obligations. The Receiver asserted that the loan obligations to such lenders were usurious under the Rhode Island Usury Statute and thus not lawfully owed and that, as one of the further consequences under that statute, such lenders' mortgages, including on the CNE private roadways, should be declared to be legally void. The Receiver had been reluctant to expend funds on the improvement and reconstruction of the CNE roadways when that would potentially compromise or add complexity to that critical usury litigation, which was central to these proceedings and to their outcome, where use of such funds might only enhance the collateral of such lenders against whom the Receiver had asserted his very substantial usury claims. After years of litigation and earlier unsuccessful efforts to resolve such matters, the Receiver, through orders of this Court that were ultimately upheld by the Rhode Island Supreme Court, prevailed in the usury litigation against such lenders. As a result, those lenders have lost all of their claims against the Receivership Entities and, as importantly, all of their mortgages, including on the private roadways at CNE are void; and thus, in addition to the great benefit to

the creditors in these proceedings from such judicial determinations, a clear path was thereby created for money to be put into and devoted to the reconstruction of the CNE roadways.

M. While the usury litigation was ongoing, the Receiver had explored a number of options and alternatives to address the reconstruction of the roadways, including those with private lenders, banks, and the possibility of state-subsidized lending through a program with the Rhode Island Commerce Corporation, as well as a possible direct financing arrangement with D'Ambra.

N. D'Ambra or an affiliate owns property and facilities at and operates its heavy and roadway construction business from 80 Centre of New England Boulevard (in the Hopkins Hill side of that roadway), with "Developable Lot 8," as shown on the CNE Map, being behind that D'Ambra property. During his discussions with D'Ambra about the possibility of a direct roadway reconstruction financing arrangement with it, the Receiver became aware that D'Ambra was interested in acquiring 3.5 acres of land from Developable Lot 8, behind and contiguous to its existing property, for expansion of its existing property, facility, and operations at the CNE development.

O. Following discussions and negotiations with D'Ambra and its counsel, the Receiver has now agreed, subject to approval of the Court, on an arrangement, as memorialized through an agreement between the Receiver and D'Ambra (the "Receiver-D'Ambra Roadway Reconstruction Agreement") setting out the terms, conditions, and provisions under which the Receiver would engage with D'Ambra to reconstruct both the main CNE roadways and the Highlands roadways (consistent with both the Main Roadways Proposal and Plans and the Highlands Roadways Proposal and Plans) in exchange for certain upfront and other scheduled payments to be made to D'Ambra towards the costs of that, and for D'Ambra, to the extent funds

that are committed and available to the Receiver are insufficient to do so, to finance the remainder of such roadway reconstruction costs (with such remaining amount preliminarily projected to be $1.2 million) financed over 54 months at 6.75%. Contemporaneous with the filing of the motion seeking Court approval of this Consent Order, the Receiver is filing a motion for the approval of the Receiver-D'Ambra Roadway Reconstruction Agreement.

P. At the same time, the Receiver will seek Court approval of the proposed use and distributions of funds that are presently held by him as well as of the net proceeds the Receiver expects to receive from the sale of the 66 Lots, and from other and future sale of property of the Receivership Entities. Such uses and proposed distributions of funds—to the Association, D'Ambra, and to other creditors and parties in interest—are set out in the distribution spreadsheet attached as Exhibit D hereto (including as the same may be modified, the "Distribution Spreadsheet").

Q. The Association alleges that its claims identified above, as well as its other claims, totaling hundreds of thousands of dollars, including for alleged unpaid condominium assessments owed on long vacant "declared" units in the Highlands owned by a Receivership Entity (including assessment liens on the so-called "roadway units"), are fully or largely secured by statutory priority assessments liens as provided for under Section 3.15(b)(2), 3.16 and 3.21 of the Condominium Act. It further maintains that the $325,000 of funds that were escrowed to pay Association claims under the Second Consent Order did not cap its claims, or all of its claims, such that it continues to hold all of its asserted claims. Additionally, it asserts that, through the legal voiding of the usurious lenders' mortgages, the Association's liens ascended into an elevated lien position.

R. In addition to defending and objecting to many of those claims, the Receiver has asserted affirmative claims against the Association that it was required—as are all owners and occupants throughout the entire CNE development, he maintains—to pay common area maintenance ("CAM") for the maintenance of all of the privately owned roadways and common areas throughout the entire development, and that the Association did not do so and thus owes the Receiver hundreds of thousands of dollars in unpaid CAM charges. The Association denies these claims and relies upon a written and recorded waiver of the obligation to pay such CAM charges. The Receiver is of the position that, for a number of reasons, such a waiver is legally ineffective. The Receiver and Association wish to resolve their disputes about past and future CAM responsibilities, including by agreeing on what CAM percentage or amounts the Association shall be obligated to pay going forward.

S. There are sewer lines that are used both by the Association unit owners and by others at the CNE development, and the Association believes that other parties nearby to the Highlands have been chiefly or solely responsible for occasional sewer line clogs and back-up's and the Association wishes to have its monetary claims and other rights and remedies against such contributing or responsible parties acknowledged and preserved.

T. Further, in connection with the sale and development of the 66 Lots, there must be assurances that those lots will be retained within the Highlands condominium regime and will not be withdraw therefrom, and that, to facilitate that, the Association agrees to take any and all steps required under Section 2.10 of the Condominium Act to secure the necessary approval of unit owners for a six (6)-year extension of the development rights in respect to the 66 Lots. Also important in regard to that sale are assurances that the Association will not charge more than a specified monthly amount for Association dues for the first 12 months once for each residential

unit declared prior to June 1, 2026. It is important, too, that no portion of the Association's $175,000 contribution to the Highlands roadway reconstruction costs, provided for herein, will be assessed or charged to the 66 Lots or its residential unit owners, but will be paid solely from the Association's reserves or by assessments against the 152 units or the owners thereof in the Existing Highlands.

U. The parties also wish to memorialize and obtain Court approval for their proposed agreements on the following remaining points: (i) the relative payments and contributions of the Receiver and Association towards the overall costs of reconstructing all of the roadways in the Highlands, and the specific mechanics therefor; (ii) that there will be no other claims of any nature or origin between the Receiver and the Association, other than those expressly provided for herein, that will ever be asserted by the Association against the Receiver or by the Receiver against the Association, with all of those, upon the approval of this Consent Order, having been irrevocable waived; (iii) that there will be no interest asserted to owed on or paid on any allowed Association claims; (iv) that the Association acknowledges the right of third parties to, and agrees to, such third parties' access to the 66–Lot area being made through an extension of Tammy Jean Drive in the Existing Highlands and going out to Stephanie Drive in the Existing Highlands, and Lot 3 being accessed through Angelina Drive, and Lot 2 being accessed through Stephanie Drive in the Highlands; (iv) that the issues with a community mailbox area will be fully and finally resolved through this Consent Order; (v) it will be confirmed that the Pine Hill and Granite Hill developments (including as they may be presently known) are not part of the Highlands, because, among other reasons, they effectively withdrew from the Highlands under the Condominium Act and (vi) that the Receiver will coordinate with present and future CNE

parties, as necessary, to bring to a final resolution via recorded and agreed upon documents, all use and maintenance agreements required under the Consent Order.

**NOW THEREFORE**, in light of the foregoing Recitals, the truth and accuracy of which the Receiver and Association acknowledge and agree, and in consideration of the payments, mutual covenants, undertakings, and agreements provided for herein, and for other good and sufficient consideration, the Receiver and the Association further agree as follows:

1. Requisite Votes and Authority. The Association represents that it has the authority to enter into, and to be bound by the terms and provisions of, this Consent Order both for itself and its unit owners, and that its counsel has the full right and authority to bind the Association, and all of its unit owners, in the Existing Highlands to the terms and provisions of this Consent Order; and the Association agrees that such terms and conditions shall become fully binding upon it, and such unit owners upon Court approval of this Consent Order (the "Effective Date").

2. Preclusion of All Claims; Enforceability of Consent Order. This Consent Order addresses, resolves, and settles all of the claims of any nature or origin whatsoever of the Association and its unit owners, and between the Receiver and the Association, that exist or that could have been asserted against the Receivership Entities or otherwise in the receivership proceedings or as against the Association and its unit owners, all of which are being released and waived hereby, and upon the Effective Date, neither the Association nor its unit owners and neither the Receiver nor the Receivership Entities have or will assert, directly or indirectly, any other or further claims against the other, except for a claim that may arise strictly out of the express terms and provisions of this Consent Order. In the event of any breach of the terms and provisions of this Consent Order by any party to this Consent order, including, but not limited to,

the Association including any unit owner in the Existing Highlands, the Receiver and any third-party beneficiary of the provisions of this Consent Order, including the owner or developer of Developable Lots 1, 2, and 3, shall have the right to pursue all legal and equitable claims (but with any unit owner claims being brought by the Association at its sole and reasonable discretion) and shall have the right to be paid for all of his and/or its reasonable attorneys' fees, costs and expenses incurred as a result of any such breach.

3. Initial Payments to Association/D'Ambra Construction. From the available and unreserved net proceeds of the $1.95 million sale of the 66 Lots in the Highlands, and following the Effective Date and Court approval of the Receiver-D'Ambra Roadway Reconstruction Agreement, the Receiver shall release the $325,000 that is being held by him in escrow under the Second Consent Order and, as provided in the Distribution Spreadsheet, shall pay an additional $233,750, with each such payment being for the benefit of the Association but with such sums being paid directly to D'Ambra for the roadway reconstruction work under the Highlands Roadways Proposal and Plans, with D'Ambra having earlier provided an overall estimate of $733,750 for that work. With such payments of $325,000 and $233,750 (totaling $558,750), there would then be a remaining obligation to D'Ambra of $175,000 for that work, with the responsibility for paying such $175,000 being with the Association, not the Receiver.

4. Payment by Association to D'Ambra. The Association shall be solely responsible for and shall pay such remaining $175,000 obligation to D'Ambra upon the satisfactory completion by D'Ambra of the Highlands roadway reconstruction work consistent with the Highlands Roadways Proposal and Plans. Except in the case of an unexpected development, the Association shall have no further responsibility for the Highlands roadway reconstruction work, and thus, if the Highlands roadway reconstruction work exceeds the quoted $733,750, the

Receiver shall pay the additional differential amount to D'Ambra. In the event such work is completed for less than the quoted $733,750, the Receiver shall have the right to the difference. In the event of an unexpected development, the Receiver and Association shall confer and attempt to resolve such matter in good faith, failing which either party hereto may file appropriate papers with the Court to resolve the matter. The $175,000 obligation of the Association to D'Ambra will be paid by $87,500 being paid by it by the time of commencement of the Highlands roadway work and $87,500 upon the satisfactory completion of the Highlands roadway reconstruction work. If for any reason the Association has insufficient available funds with which to pay the remaining $175,000 obligation to D'Ambra for the Highlands roadway reconstruction work by the time of the satisfactory completion of such work, then the Association agrees that the remaining amount then required to be paid to D'Ambra for such work shall be financed by D'Ambra at 6.75% over 54 months, and in that instance the Association shall pay to D'Ambra the monthly amortized amount of financed obligations. The Receiver-D'Ambra Roadway Reconstruction Agreement shall provide, however, that D'Ambra will not charge any pre-payment penalty to the Association in connection with any financing of the Highlands roadway reconstruction work.

5. Later Payments to Association. In payment for the Association's claims provided for herein, the Receiver shall pay the Association those amounts as are provided for in the Distribution Spreadsheet. Specifically, from the "1st Tranche" of available net funds, as referenced in the Distribution Spreadsheet, following the sale of additional properties after the closing on the sale of the 66 Lots, the Receiver shall pay the first $200,000 of such available net funds to the Association. However, if for any reason the Association has not paid D'Ambra for any portion of the $175,000 obligation, such unpaid portion, plus any accrued interest in the

event of any Association financing with D'Ambra, of that $200,000 shall first be paid by the Receiver directly to D'Ambra and the remainder paid to the Association.

6. 2nd Tranche Payment to Association. At the "2nd Tranche" level noted on the Distribution Spreadsheet, a further $190,000 shall be paid to the Association, subject to any rights to the same as D'Ambra may have to the same in the event that, for any reason, it has not been paid the $175,000 (plus any applicable interest) for the Highlands roadway reconstruction work at that point.

7. 3rd Tranche Payment to Association. At the "3rd Tranche" level noted on the Distribution Spreadsheet, the first $160,000 shall be paid to the Association.

8. 4th Tranche Payment to Association. At the "4th Tranche" level noted on the Distribution Spreadsheet, the first $150,000 shall be paid to the Association, as the final payment to be made to it for its claims in these receivership proceedings.

9. Sequencing of Highlands Roadway Reconstruction Work. The Receiver will exercise his best efforts to have the Receiver-D'Ambra Roadway Reconstruction Agreement provide that D'Ambra will perform all of the Highlands roadway reconstruction work after it has completed the main CNE roadway reconstruction work under the Main Roadways Proposal and Plans, and, if feasible and sensible (including in consideration of the possibility and timing and logistics of the so-called "wetlands crossover" roadway and related work), before D'Ambra does any other roadway reconstruction work in the CNE development. The Receiver will exercise his best efforts to have the Highlands roadway reconstruction work completed during the present construction "season," and to ensure that, under all circumstances, such work shall be completed by no later than the spring of 2025.

10. Limited Assessments for Highlands Roadway Reconstruction Work; Other Dues and Assessments, Including Highlands CAM Assessment; Special Assessments. There shall be no charges or other assessments levied against the 66 Lots or the units thereon in the Highlands in connection with the $175,000 responsibility of the Association for the Highlands roadway reconstruction work or for the costs of financing thereof, if any. Other than that, however, the 66 Lots and units thereon shall be subject to the same dues and assessments as the 152-unit owners in the Existing Highlands. However, the Association agrees that, until June 1, 2026, as to the 66 Lots, the Association's condominium charges shall not exceed the amount of $325.00 per month, per unit for a twelve (12) month period beginning when the unit has been declared. The parties agree that additional condominium charges beyond $325.00 per month, per unit may be charged on the 66 Lots after such twelve-month period, but without recapture and, in any event, not more than what is imposed for such charges on unit owners in the Existing Highlands. Charges and assessments on units on the 66 Lots shall otherwise be further subject to the limitations and other provisions of this Consent Order.

Beginning as of the first day of the month following completion of the Highlands roadway reconstruction work, the Highlands and its Association (including the 66 Lots) shall pay a 1% CAM obligation to the Receiver, as Receiver of the Commerce Park Management, LLC receivership entity, with the Association and Receiver to enter into a standard CAM agreement that will provide that the Highlands CAM share shall be capped and remain at 1% of the overall CAM obligations of the CNE development and that said CAM allocation (1% of the overall CAM obligations of the CNE development) shall not increase above 1% without the written Agreement of the Highlands, or further order of this Court. The 66 Lots and units thereon shall not be exempt from the Association's assessing the agreed-to 1% share of such main CNE CAM

charges going forward, except that no CAM charge or assessment shall be made or imposed on any of the 66 Lots or the units thereon until such unit is declared. Notwithstanding anything to the contrary, however, the Highlands and the Association shall not be subject to any special assessments for the costs of the Main Roadways Proposal and Plan nor any in connection with the so-called "wetlands crossover work."

11. Extension of Highlands Development Rights. As part of this Consent Order, the Association has agreed to a six (6)-year extension of development rights for the 66 Lots, subject to securing the requisite vote required of the unit owners pursuant to Section 2.10 of the Condominium Act. Prior to or, in any event, by no later than the delivery of the Receiver's Deed to the 66 Lots to the buyer thereof, the Association agrees to take any and all steps necessary, time being of the essence, to secure the votes needed to secure such an extension and to record an amendment to the Highlands Condominium Declaration reflecting that such buyer and any successor and assignee thereof, shall have been granted an extension of an additional six years on the expiration of the Development Rights as set forth in section 20.5 of the Highlands Condominium Declaration to build the 66 Lots. Upon request, the Receiver or the Association, or both, shall execute an appropriate document(s), suitable for recording in the appropriate land evidence records, providing for or confirming such an extension. The Receiver shall pay to counsel for the Association all reasonable drafting and recording costs for the required amendment and associated attorneys' fees and costs to secure the vote of the unit owners pursuant to the Condominium Act.

12. Deed to Association for Highlands Roadways—With Reservations; Conveyance Tax. Following the delivery of the Receiver's Deed to the 66 Lots to the buyer thereof, and provided that the Association is not then in breach of any of its obligation under this Consent

Order, the Receiver shall execute and deliver a receiver's deed, for $1.00 and other good and valuable consideration, in the usual and customary form and without warranties or representations, conveying the roadways in the Highlands to the Association. Notwithstanding anything in this Consent Order or applicable law to the contrary, the Association and Receiver shall equally split the payment of any conveyance tax associated with the conveyance of such roadways to the Association, and the Receiver shall pay any other costs associated with the transfer, including, but not limited to reasonable drafting and recording costs. Such conveyance is to be made only after an inspection is performed, and reduced to writing, by the Receiver's engineer, Crossman Engineering, at the Receiver's sole expense, to rule out any material and substantial deficiencies in the sewer and water lines under the roadways. In the event such deficiencies are found, the Receiver shall correct those deficiencies prior to the transfer of the sewer and water lines to the Association, so long as said deficiencies total under $10,000. That is, the water and sewer systems shall be in good, working order prior to the Association taking on responsibility for the same, including for their maintenance, repairs and replacements. If, however, deficiencies are found in the water and/or sewer system that require over $10,000 of repair costs, the transfer pursuant to this paragraph shall be suspended so far as it shall include the water lines and sewer lines pending an agreement between the Association, the Receiver, and other parties utilizing those same systems, or failing that, a further order of this Court. That is, the transfer of the roadway units to the Association shall be completed but shall exclude the transfer of the water lines and sewer lines beneath pending the agreements or Court order(s) outlined above, and the resolution of any and all outstanding liens on the roadway units due to the Association by the Receivership Entities shall still be resolved as agreed in this Consent Order. The transfer of the water and sewer lines shall be subject to such notices and such

approvals, if any, as may be required by the Kent County Water Authority, the West Warwick Sewer Commission, and such other authorities as may be provided for by applicable law, regulation, or other requirements. Notwithstanding anything in this Consent Order to the contrary, however, following the delivery of the Receiver's Deed to the 66 Lots to the buyer thereof, the use of the Highlands roadways and the water and sewer lines thereunder, shall be subject to all of the conditions, reservations, restrictions and provisions provided for under this Consent Order, including to the roadways in the Highlands, including the roadways in the area of the 66 Lots in the Highlands, remaining fully and freely and openly available in perpetuity to all who may wish to travel over such roadways, as such roadways have been for years, including as a primary or secondary or other means of ingress and egress. Further, the Association and its unit owners agree that the water and sewer lines in or servicing the Highlands, including those under the Highlands roadways, now and in the future, shall be available to be tied into by the buyer of Developable Lots 1, 2, and 3, and by others who wish to develop other areas in the CNE development, including as a primary or secondary or other means of ingress and egress, but all subject to the provisions of this Consent Order. All use and tie-in's of the roadways and water and sewer lines by the Receiver, by certain third-party purchasers identified by the Receiver, or by others are to be of no additional cost to the Association and shall be governed by a separate use and maintenance agreement having reasonably and customary terms, which shall be recorded in the appliable land evidence records.

13. Tie-In's to Water and Sewer Lines in Highlands; "Hot Box." The Receiver and the buyer of the 66 Lots, and buyers of other properties within the CNE development shall, at their own cost and expense, be freely entitled, without fees or costs for the right to do so, to tie-into and use the existing and future water and sewer lines and associated systems and

infrastructure items at and servicing the Existing Highlands, subject to assurances that there shall be reasonable tracking arrangements for, and that each responsible party and user shall be accountable for and shall pay its and their separate and fair shares of, all of the water and sewer usage costs, with all parties participating in any such arrangements being obligated to maintain all records of, and freely and cooperatively sharing between and among them, all sub-meter readings and measurements related to, water consumption and sewerage/effluent flow. For simplicity, economy, and so that, as is so at present, the KCWA-sourced water system servicing the existing Highlands will continue not to be considered to be a "public water system," thereby avoiding the myriad of potentially redundant and costly water testing and associated protocols required of a "public water system," there shall be no separate metering of water servicing the 66 Lots, or servicing Developable Lots 2 or 3, or any other areas of the CNE development if the same shall result in the Highland water system being deemed or determined to be a "public water system," but rather, notwithstanding any such tie-in's, there shall at all times continue to be one master meter that shall service the water system providing water to the 152 units in the Existing Highlands and thereafter to the units on the 66 Lots and to any other areas of the CNE development. All such parties shall agree that any such water tie-in's and billing arrangements shall be done in a way so as to avoid, as fully as the same is reasonably practicable, any determinations being made that any such structure, activity or arrangements have or will reasonably be found or deemed to have resulted in there being a new "public water supply system" created through the same at the CNE development.

If, despite parties' best and good faith efforts, reasonably and diligently applied, such water tie-in's result in there being a determination that the structure, activity or arrangements that have been put in place for such a water tie-in(in's) has resulted in there being a new "public

water supply system" created through the same at the CNE development, then the party who is primarily responsible for that determination having been or deemed to be made (e.g. the party that "tied-in" to the system) shall be responsible for all of the then past and future fees, costs, and expenses associated with the water system being considered and treated as a "public water supply system," including for all registration and licensing applications with, filing fees of, approvals from, and reports to be filed with, the Rhode Island Department of Health, Office of Drinking Water Quality, or similar governmental authority, and for all fees, costs and expenses for monitoring, testing, analyzing and reporting on water quality, and for preparing and filing all federal, state, and local reports and submissions associated with a public water supply system(s). Such party shall indemnify and hold the Association harmless from any such fees, costs and expenses.

Further, such water and sewer tie-ins shall be subject to assurances that doing so will not cause any additional financial obligation to or cause any harm to any material, substantial, and unreasonable extent to the use of the water or sewer lines by the Association and the Highlands unit owners. The party seeking to effect such tie-in's shall be solely responsible for the engineering and planning of and for obtaining all governmental and other approvals for, and for the costs of, as well as those for any additions, expansions, modifications or accessories (including pumps and other devices) to, the existing and future water and sewer lines, system(s) and infrastructure, including any expansion or modifications to the so-called "hot box" presently servicing the Highlands; and shall throughout reasonably ensure that such tie-in's will not substantially and materially harm to any unreasonable extent the interests or use of the Association and, if applicable, any Highlands unit owners. Such party shall restore any roadways in the Highlands that have been disturbed by such tie-in work, and also restore any water and

sewer pipes, lines, apparatuses and accessories used in such water and sewer systems, to what their condition was prior to such tie-in's, and shall exercise reasonable efforts to keep to a minimum any disruptions in such roadways or to such water and sewer service and systems caused by such tie-in work. Such party, upon request of the Association, shall also provide information and updates to the Association at all reasonable times and intervals concerning such tie-in matters.

The party who is tying into any present or future created sewer lines in the Highlands shall be obligated to enter into a standard agreement with the Receiver in connection therewith, including as provided by the West Warwick Sewer Authority (the "WWSC"), which agreement, among its other provisions, shall prohibit any harmful materials being placed in the sewer lines at the CNE development and shall obligate such party to abide by the prohibitions and requirements of the CNE Operations and Maintenance Manual, which has been provided to the WWSC.

Until the Receiver agrees otherwise in writing, the "hot box," which is part of the present water system servicing the Highlands, shall continue to be controlled by the Receiver, but with the Association and any other parties who are benefitted by the hot box being obligated to pay for their fair and reasonably allocated fees, costs, and expenses associated with the hot box, including the heating thereof and any maintenance and repairs thereto, as well as any required or recommended modifications thereto. Contemporaneous with the Association paying its 1% CAM charges, the costs of the maintenance and repair of the hot box shall be a CAM-reimbursable item. All use and tie-ins of the roadways and water and sewer lines by the Receiver, certain third-party purchasers identified by the Receiver, and others, shall be governed by a separate use and maintenance agreement, which shall be recorded in the applicable land evidence records. Such agreement shall also address the financial and other responsibility for

replacing sewer lines. The Association agrees that it shall be responsible for the maintenance, repairs, and replacement of any water lines in the Highlands. The Association, however, reserves its right to assert, including through such a separate use and maintenance agreement, that third-parties who use and those who may hereafter tie-into the existing or future water and sewer lines in the Highlands pay their fair and reasonably allocated or attributable costs for the maintenance, repairs, and replacement of any water or sewer lines in the Highlands, including a share fairly arising from what their actions or failings may have contributed to the maintenance, repairs and replacement of such water and sewer lines.

There are sewer lines that are used both by the Association and by others at the CNE development. The Association hereby preserves its monetary claims and other rights and remedies against such contributing or responsible parties and the Receiver agrees to exercise his best good faith efforts to seek to obtain a shared use agreement, having reasonable terms, between the Association and other CNE parties on the same sewer loop system so that all parties on the same loop shall contribute to maintenance and repair of the system as needed with the goal of relieving the Association of being solely responsible for sewer line clogs and back-up's that other parties are or may be chiefly or solely responsible for.

14. Public Offering Statements; Wells for Irrigation Only. The Receiver shall require that the buyer of the 66 Lots will provide a public offering statement to the residential buyers of the units to be constructed on such lots, with the same setting forth standard warranties per the Condominium Act. The Receiver shall further require that the buyer of the 66 Lots shall agree to only construct residential units that are architecturally substantially similar in all aspects to those in the Existing Highlands, and that the Association's Executive Board (including acting through its legal counsel) shall have the right to provide a reasonable pre-approval of the development

and unit plans as provided in the Highlands Declaration and the Condominium Act. The buyer shall also agree that, as is so with the units in the Existing Highlands, none of the 66 Lots nor the units to be constructed thereon will use KCWA-sourced water for irrigation, as that shall be prohibited throughout the Highlands development; and that such buyer, if and to the extent permitted under existing law, regulation or other requirements, will either drill an additional water well(s), including with approval of the R.I. Department of Environmental Management and other authorities, or work out an acceptable agreement or arrangement for the sharing or existing water well for purposes of irrigation on the 66 Lots. Such buyer shall agree to these items through a separate writing that shall also include an agreement that neither the Receiver nor the Association will have any liability for or associated with any claims relating to the structures built on the 66 Lots, outside of such liability of the Association provided for by the Condominium Act in the normal course.

15. Mutual General Releases. Upon the Effective Date, there shall be mutual general releases exchanged between the Receiver and Association (which shall also bind all of the Highlands unit owners), releasing any and all claims of any nature or origin, filed or unfiled, arising contractually, by statute, equitably or otherwise in existence as of the Effective Date, except only for those claims strictly arising under the terms of this Consent Order. The Association has recently become aware of a purported Rhode Island Superior Court judgment said to be in favor of the so-called "Malafronte parties" and allegedly existing prior to the transition of control date from the Developer to Association, which purports to include the Association as a defendant and judgment debtor in such case (docket no. PC-2008-7470). The Association maintains, and the Receiver agrees, that this judgment is not valid against the Association as, among other reasons, it violates the Condominium Act, including, but not limited

to Section 3.05 thereof. Notwithstanding anything to the contrary herein, the Association's obligation to be bound by and perform under this Consent Order is subject to the Receiver delivering to the Association a full release and discharge of any and all claims and/or outstanding judgments against the Association, and its unit owners, by the Malafronte parties and any of the plaintiffs in the above-referenced case.

**Agreed and Consented to:**

*Agreed to subject to Court Approval

March 25, 2024

*/s/ Matthew J. McGowan, Receiver**
Matthew J. McGowan, Esq., as Receiver
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**Highlands at Hopkins Hill Condominium Association:**

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The foregoing is hereby approved and entered as an Order of this Court:

**Enter**: /s/ Sarah Taft-Carter

Sarah Taft-Carter, Associate Justice

Dated: _____

**Per Order:**

/s/ Christine Feeney

Clerk Deputy i

Dated: June 18, 2024

https://sklawri.sharepoint.com/sites/mcgowanmatters/shared documents/general/commerce park/court papers/highlands/third consent order w condo assn/third consent order w highlands assn clean 3-25-2024.docx