PLANNING COMMISSION EXHIBIT

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RIVER SOUND DEVELOPMENT, LLC
MODIFICATION TO SPECIAL EXCEPTION APPLICATION
THIRD SUPPLEMENT TO RESPONSE TO REVIEW COMMENTS

To: Old Saybrook Planning Commission
From: River Sound Development, LLC ("River Sound" or "Applicant" herein)
Date: **February 16, 2011**

River Sound is hereby supplementing its Response to Review Comments dated December 29, 2010 and its Supplement dated January 5, 2011 and it s Supplement dated January 19, 2011. For the sake of brevity, this Supplement will only seek to respond to reports or matters not previously addressed.

I. "Phasing" Interpretation.

In its Second Supplement to Response dated January 19, 2011, the Applicant addressed the issue of the term "Phase" in Section 56.6.8 of the Zoning Regulations as interpreted by the Land Use Department and by Commission counsel. The Applicant stated that it would proceed without further debating the interpretation of "Phasing", with the expectation that the Commission will concur with the interpretation of its staff and its attorney.

In order to clarify the Applicant's position regarding "phasing" and in order to make it position consistent with the documentation filed in this Application, the Applicant hereby withdraws its request to have the three identified "pods" considered as "stand-alone" developments which could proceed to final subdivision plans, independently and separately, and not be subject to the provisions of Section 56.6.8 of the Zoning Regulations.

This request withdrawal will be implemented by deletion of the request for such "stand-alone" treatment and related provisions in the filed Statement of Use attached to the Application documents, by Notes on the Plans RS-1 through RS-6 concerning deferred construction of roadway improvements being deleted, and by elimination of the Applicant's Proposed Conditions relating to development of the Plan without being subject to the provisions of Section 56.6.8 of the Zoning Regulations.

Finally, the Applicant has acknowledged and agreed that reliance upon the interpretation of Section 56.6.8 and its affect on this application is integral to any decision that the Commission may make.

II. Secondary/Emergency Access to Ingham Hill Road.

The Applicant believes that the comments of Traffic Engineer, Bruce Hillson, in his Memo dated November 22, 2010 and his subsequent Memorandum dated January 7, 2011 related to the need for a secondary access to Ingham Hill Road were if the Modification to the Special Exception were to permit "stand-alone" development of the lots along Ingham Hill Road without providing two additional outlets off Ingham Hill Road (to Route 153 in Westbrook and over the Valley Railroad to Bokum Road) per the original plan. Since the Applicant has withdrawn its request to allow "stand-alone" development and any request for deferral of roadway improvements, the Applicant believes this issue is moot. The Special Exception as modified would still require three points of access.

During an earlier portion of this application, it was also suggested that the Applicant look at the potential for a secondary access to Ingham Hill Road. The Applicant responded to that suggestion and provided a potential emergency access over Town owned land and/or a deeded easement to the Town. Providing that information, as well as an additional map showing the potential connection (Exhibit 96) should not be construed as an acknowledgment or agreement that the Applicant should be required to provide that emergency access as part of this Application.

III. ASap Traffic Engineering "Peer Review" dated January 19, 2011.

The main thrust of the "Traffic Engineering Peer Review" is contained on the first page of the Memo: "This Application is a Modification to the 2005 approved Special Exception. The basis for evaluating traffic burdens from the project should be the full development of the site, not just the three residential pods."

The Memo then goes on to suggest off site improvements for Ingham Hill Road and Bokum Road as well as a recommendation that "a detailed traffic review by the STC be conducted as soon as possible so that remedial measures can be formulated and implemented" for intersections with State roads (Route 153 and Route 154).

The Applicant submits that this is already a requirement of the Special Exception approved in 2005. That Condition would remain unchanged.

IV. Consulting Civil Engineer Report dated 1/31/2011 (Exhibit 90).

The Applicant would note and believes the Consulting Civil Engineer would agree that the three proposed areas for modification to the original Plan have received more extensive scrutiny for the Preliminary Plans than has any other Open Space Subdivision, including that of the Piontkowski property immediately adjacent to the Pianta parcel.

The Applicant submits that all the technical issues and requirements have been met in the Revised Plan revised through February 11, 2011.

V. Miscellaneous.

As previously noted, the Applicant believes there is an anomaly in the Zoning Regulation which allow lots in the Residence AAA District not to be required to be served by public water "so long as they demonstrate adequate water service." while lots in the Residence C Conservation District without public water must contain an area of at least 60,000 square feet. In this proposed Modification, the Applicant has met the requirements of the current Regulations under Section 56.6.4. which allows no lot area reduction.

The Applicant has suggested, however, that where an additional 40% of open space is required, there ought to be at least some lot size reduction as long as Public Health Code requirements for water and sewerage disposal at satisfied. Again, the Applicant has met the 60,000 square foot lot requirement. However, where it was able to do so, it has subjected individual lots to conservation restrictions of 24,000 square feet (40% of the 60,000 square foot minimum requirement). If, and only if, a Zoning Regulation change were made to allow reduction of the minimum lot size in an Open Space Subdivision, these areas could be incorporated into adjacent deeded Open Space in a final subdivision plan.

VI. Intervention.

The Connecticut Fund for the Environment has intervened in these proceedings under Connecticut General Statutes §22a-19 which provides in pertinent part "the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare."

It should be noted first that an intervention merely requires the filing of a verified complaint or pleading. Intervention is a matter of right, whether or not those allegations ultimately prove to be unfounded. Dietzel V. Planning Commission of Town of Redding (2000) 758 A.2d 906, 60 Conn. App. 153.

Thus, there must be substantial evidence in the Record that the project involves conduct "reasonably likely to cause unreasonable pollution, impairment, or destruction of a natural resource" before there is any requirement to consider feasible and prudent alternatives to the conduct. Evans V. Plan and Zoning Commission of the Town of Glastonbury (2002) 808 A.2d 1151, 73 Conn. App. 647.

The Applicant submits that not only is there no credible evidence in the Record of "unreasonable pollution, impairment, or destruction of a natural resource", there is no credible evidence that the conduct is "reasonably likely" to cause any pollution, impairment or destruction of a natural resource.

In this regard, the Applicant will rely upon the reports, testimony and work product of its Engineers, Robert Doane and Darcey Collins, its Environmental Consultant Michael Klein and its Herpetologist Dr. Michael W. Klemens.

As has been pointed out by Michael Klein, the application process for the Special Exception is a two part process. The Intervenor challenged this process in Court when it appealed the granting of the original Special Exception in March, 2005. The Intervenor did not prevail on its challenge of the two part process. That two part process is one in which the parameters of the final subdivision application are established. However, it does not approve in and of itself any "conduct". The Applicant believes that this two part process in and of itself is sufficient reason to deny the intervention.

However, as stated above, the Applicant has clearly and unequivocally demonstrated for the Record that there is no reasonable likelihood of any pollution, impairment or destruction of natural resources by this Modification to the original Preliminary Plan which was approved in 2005. The Intervenor also challenged those findings of the Commission and did not prevail. The Applicant is confident that it would not prevail with respect to this intervention either.

VII. Lucas Vs. South Carolina Coastal Council.

Both Attorney Branse and Attorney Rothenberger expressed a concern that this Modification would allow for the potential development of the "good land" which would allow a subsequent purchaser of the remaining "bad land" (my term) to either develop that land or have a constitutional "taking" claim.

The Applicant believes that this case is inapplicable to the present status of this Application.

First, the Applicant has withdrawn its request for "stand-alone" development of the three identified perimeter areas of its property. It seeks only to have the original Special Exception modified to allow development of these properties as part of the entire approved Plan. It is further acknowledged that any decision allowing this Modification to the Special Exception is a modification of the entire Plan, and any approval in reliance on that understanding is integral to the decision. In other words, approval of this Modification would not permit piecemeal development of the perimeter of the property.

Second, even if this Special Exception lapsed by reason of time, or the Applicant withdrew the Special Exception, any development of the bulk of its property (Map 56, Lot6 consisting of approximately 880 acres) would still require a subdivision application of the property. It would only be under such a future proposed development scenario of

the entire bulk of the property that Lucas might be relevant, if such a proposal were to separate out undesignated "bad land" without incorporating it into an overall plan.

Respectfully submitted,

RIVER SOUND DEVELOPMENT, LLC

By _____
David M. Royston, Its Attorney