2026 Amended Housing Element & Fair Share Plan

Township of Clinton
Hunterdon County, New Jersey

June 19, 2025
Adopted June 30, 2025
Amended February 19, 2026
Amendments Adopted March 2, 2026
Endorsed by Council March 11, 2026

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2026 AMENDED HOUSING ELEMENT & FAIR SHARE PLAN

TOWNSHIP OF CLINTON
HUNTERDON COUNTY, NEW JERSEY

PREPARED FOR:
CLINTON TOWNSHIP PLANNING BOARD

BA# 4134.08

The original document was appropriately signed and sealed on February 19, 2026 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.

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EXECUTIVE SUMMARY

Clinton Township's 2026 Amended Housing Element and Fair Share Plan ("HE&FSP") of the Master Plan has been prepared to address the manner in which the Township will fulfill its Fourth Round affordable housing obligations in accordance with P.L. 2024, c.2. commonly referred to as the "Fair Housing Act 2" or "2024 Fair Housing Act Amendments" ("FHA-2"). As detailed herein, the Township's Fourth Round and Prior Round affordable housing obligations are derived from several sources. These sources include the regulatory provisions of the Council on Affordable Housing ("COAH"), prior settlement agreements with Fair Share Housing Center ("FSHC") for the Third Round, prior Court-approved Judgments of Compliance and Repose, and the amended FHA establishing a new Fourth Round compliance process and associated housing need calculations prepared by the Department of Community Affairs ("DCA'). As mandated by the FHA-2, the Township's affordable housing obligation and Fair Share Plan mechanisms also take into consideration conformance with the Highlands Regional Master Plan ("RMP") as amended and Highlands Council guidance for developing new affordable housing in the Highlands Region.

The Township's affordable housing obligations are summarized as follows:

TABLE 1 – CLINTON TOWNSHIP AFFORDABLE HOUSING OBLIGATIONS SUMMARY

Round	Obligation	RDP	Unmet Need
Present Need (Rehabilitation) Obligation	0 units	N/A	N/A
First & Second Round Obligation (1987-1999)	335 units	-	-
Third Round Obligation (1999 – 2025)	337 units	-	-
Fourth Round Obligation (2025 – 2035)	150 units (1)	22 units	128 units

(1) Clinton Township's DCA calculated Fourth Round Prospective Need Obligation of 174 units was modified through a mediation agreement between Clinton Township and FSHC.

The Township has adopted several HE&FSPs to address its affordable housing obligations through the first three compliance rounds. These are described herein. In accordance with the FHA-2, all new ordinances and ordinance amendments identified herein must be adopted no later than March 15, 2026.

First & Second Round Obligation

In 1987, COAH adopted a "fair share" methodology to determine municipal housing need numbers for the First Round that was utilized again in 1994 for the Second Round resulting in a combined obligation of 335 units for Clinton Township for the period 1987-1999. The Township received substantive certification of its First Round Housing Plan from COAH on February 3, 1993 and of its Second Round Plan on March 7, 2001. The Township addressed its combined First and Second Round obligation of 335 units in its entirety through the plan components summarized in Table 2, most of which are rental units except as otherwise indicated.

TABLE 2 – CLINTON TOWNSHIP FIRST & SECOND ROUND PLAN MECHANISMS

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Prior Cycle Credits (Pre-1986)						
Credits Without Controls	-	13	-	-	13	Complete
RCA with New Brunswick	-	108	-	-	108	Complete
Inclusionary & Group Home Rentals					55	
Village Green at Annandale	49/25	4	-	-	4	Complete
The Mews (Senior Housing)	47/3	35	x 1.33 (1)	3 (3)	38	Complete
CRC Longview Group Home	10/1, 9.01	4	x 2 (2)	4	8	Pending
142-144 West Main Street	60/3, 4	3	x 2 (2)	2	5	Complete
100% Affordable Rentals						
Willows at Annandale	60.03/26	66	x 2 (2)	66	132	Complete
100% Affordable – Municipally Sponsored Rentals					27	
Annandale Village, LLC	53/3	1	-	-	1	Approved (4)
Clinton Woods	82/4.04	26	-	-	26	Complete
Total	-	260	-	75 (3)	335	-

(1) Senior restricted bonus credits per Third Round Rules.
(2) Rental bonus credits per Third Round Rules.
(3) Bonus credits are capped at 25% of the total obligation.
(4) Site plan approved by Planning Board.

Third Round Obligation

On December 12, 2017, Clinton Township entered into its original Settlement Agreement ("Initial Agreement") with FSHC establishing its Third Round affordable housing obligation of 337 units. This Settlement Agreement was subsequently amended on February 7, 2018 ("Amended Agreement"), June 15, 2020 ("Second Amendment to the Agreement") and May 2, 2021 ("Third Amendment to the Agreement") to facilitate modifications to the Township's Third Round Fair Share Plan, specifically to replace certain plan mechanisms with others deemed to be more realistic as such opportunities became available. The Township's Third Round Settlement Agreements with FSHC and amendments are attached to hereto in the Appendix.

The Clinton Township Planning Board adopted its original Third Round HE&FSP on May 7, 2018 in accordance with the December 12, 2017 Settlement Agreement with FSHC. The Board adopted several amendments to the HE&FSP on June 7, 2021 and March 6, 2023 to reflect the several amendments to the Settlement Agreement. The Township was first granted a Final Judgment of Compliance (Third Round "JOR") for it's Third Round HE&FSP on January 9, 2019 and on December 10, 2021 for the Third Amendment to the Agreement. In addition, the Township received a Consent Order dated October 12, 2023 authoring modification of the Willows at Spruce Run project to a 96-unit 100% affordable development to be constructed in phases. The Township satisfied the entirety of its 337-unit Third Round Obligation with a combination of plan mechanisms including several inclusionary developments and municipally sponsored 100% affordable rental developments as summarized in Table 3, all of which are rental units except as otherwise indicated.

It is noted that the status of two of the Township's Third Round plan mechanisms are indicated as durational adjustments as they have been determined to be realistic opportunities for inclusionary development but lack the necessary water and/or sewer capacity to support the development. In accordance with N.J.A.C. 5:93-4.3, the lack of sewer and water capacity shall constitute a durational adjustment of the municipal housing obligation. The Township has prioritized these sites in coordination with the applicable utilities to ensure that they will be first in line to receive such capacities when available and are otherwise developable.

TABLE 3 – CLINTON TOWNSHIP THIRD ROUND PLAN MECHANISMS

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Inclusionary Development					139	
Headley Farm Estate	46/33, 33.01	104	-	-	104	Pending
108 Alton Place	79.07/1	28	-	-	28	Pending
Grayrock Road (AH-10 Zone)	77.01/2,4	3	-	-	3	Approved (2)
Grayrock Road (AH-10 Zone)	77.01/3	4	-	-	4	Duration Adjustment (3)
100% Affordable Municipally Sponsored Rentals						
Clinton Woods	82/4.04	58	x 2 (1)	58	116	Complete
Willows at Spruce Run (Family Units)	70/6, 6.01	80	-	-	80	Under construction
Willows at Spruce Run (Special Needs Units)	70/6, 6.01	2	-	-	2	Under construction
Total	-	279	-	58	337	-

(1) Rental bonus credits per Third Round Rules.

(2) The Greyrock Crossing, LLC application was approved by Planning Board in 2024.

(3) "Durational Adjustment" means a deferral of the municipal low and moderate-income housing obligation based on the lack of infrastructure pursuant to N.J.S.A. 52:27D-307(c)(2) and NJ.A.C. 5:93-4.

Fourth Round Obligation

In accordance with the methodology prescribed in the FHA-2, the DCA calculated for Clinton Township a Fourth Round Prospective Need Obligation of 174 units and Present Need (Rehabilitation) Obligation of 0 units. The Act makes clear that the DCA's Fourth Round municipal housing need calculations are advisory and non-binding, and require municipalities to determine their respective affordable housing obligations utilizing the same methodology. Upon inspection of the DCA's land capacity factor analysis mapping made public in November 2024, the Township concluded that modification of the DCA calculated Prospective Need Obligation of 174 units was warranted based on the latest up to date data and local information. The Township adopted Resolution No. 2025-36 on January 22, 2025 to modify its Prospective Need Obligation to 109 units based on its more current local data and information as applied to the methodology prescribed in the FHA-2. The Township subsequently filed Resolution No. 2025-36 with the Affordable Housing Dispute Resolution Program on January 23, 2025 indicating same in accordance with the requirements of N.J.S.A. 52:27D-301, *et seq*. and the timeframes set forth in Administrative Office of the Courts ("AOC") Directive #14-24.

For the purposes of establishing its Fourth Round affordable housing obligation, and while the Township disputed FSHC's objections that the Township's Fourth Round Prospective Need should be more than 109 units, Clinton Township entered into a Mediation Agreement with FSHC executed March 27, 2025 modifying the Township's Fourth Round Prospective Need Obligation to 150 units and confirming its Present Need Obligation of 0 Units. The Program issued an Order dated March 28, 2025 that officially set the Township's Fourth Round affordable housing obligation in accordance with the FSHC Mediation Agreement.

The Township's Resolution 2025-36 noted that the Township reserves the right to seek an adjustment of its Fourth Round Prospective Need Obligation available under the FHA-2 and compliance mechanisms adopted by COAH. Specifically, the FHA-2 requires municipalities that are fully conforming with the Highlands Regional Master Plan ("RMP"), including Clinton Township, to conduct a Highlands Build-Out Analysis. Clinton Township's Build-Out Analysis forms the basis of its Vacant Land Analysis ("VLA") conducted in compliance with the FHA, applicable COAH regulations and Highlands Municipal Build-Out Update. The Township's VLA analyzed private and publicly owned vacant parcels (Property Classes 1 and 15C), farm qualified properties (Property Class 3B), recent development approvals and environmental constraints, among other considerations, resulting in its Fourth Round Realistic Development Potential ("RDP") of 22 units and Unmet Need (difference between Prospective Need Obligation and RDP) of 128 units.

In addition to the RDP calculation, the FHA-2 includes language which requires municipalities seeking a vacant land adjustment to satisfy at least 25% of the Fourth Round RDP obligation through redevelopment. Specifically, amended Section 1 of P.L.1995, c.231 (C.52:27D-310.1) of FHA-2 states:

> *Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall as part of the process of adopting and implementing its housing element and fair share plan identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.*

Clinton Township interprets this requirement to mean 25% of the Township's Fourth Round Unmet Need of 128 units resulting in a redevelopment obligation of 32 units (128 units * 25%).

Clinton Township will address the entirety of its combined 22-unit Fourth Round RDP and 32-unit redevelopment obligation totaling 54 units with several plan mechanisms, including inclusionary development and 100% affordable municipally sponsored rental development as summarized in the table below, all of which are rental units except as otherwise indicated.

TABLE 4 – CLINTON TOWNSHIP PLAN MECHANISMS TO ADDRESS COMBINED FOURTH ROUND RDP & REDEVELOPMENT OBLIGATION

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Inclusionary Development						
9 Main St./Village Green	49/25	2	x 0.5	1	3	To be rezoned
100% Affordable Municipally Sponsored Rentals						
Willows at Spruce Run (Special Needs)	70/6, 6.01	8	x 2	8	16	Under construction
Willows at Spruce Run (Family)	70/6, 6.01	6	-	0	6	Under construction
3 Grayrock Road	74/19	25	x 2	4 (1)	29	Approved
Total		41	-	13 (1)	54	-

(1) Bonus credits are capped at a maximum of 25% of the Fourth Round Obligation.

Since the Township adopted its June 2025 HE&FSP, three challenges to the Township's Fourth Round HE&FSP were submitted to the Affordable Housing Dispute Resolution Program (the "Program") by the August 31, 2025 statutory deadline to file such challenges. These include challenges from Fair Share Housing Center which objected to over 400 hundred municipal HE&FSPs statewide and ExxonMobil Technology and Engineering Company and CNC Ventures, LLC d/a/ Beaver Brook Country Club ("CNC-BBCC") whose development proposals are identified in Section 4.4 of this Plan as having been considered by the Township but not included as compliance plan mechanisms. In addition, CRC Communities at Headley Farms Estate, Inc. ("CRC") also filed as a challenger to the Township's HE&FSP as the developer for the CRC Headley site included as a 3rd Round Plan mechanism to address a portion of the Township's affordable housing obligation. CRC was formally identified as a "conditional challenger" by both the Program Judge and Vicinage Judge.

Subsequent to the filing of these challenges, the Township engaged in the Program's mediation process. To date, the Township has not reached settlement agreements with these challengers to its HE&FSP. On January 19, 2026, the Honorable Thomas C. Miller, A.J.S.C. (Ret.) Program Judge issued his recommendation (see Appendix) to the Mount Laurel Vicinage Judge including the Township's assigned Special Adjudicator's, Sanyogita S. Chavan, AICP, PP's report dated January 24, 2026. On February 9, 2026, the Honorable William G. Mennen, J.S.C. Mount Laurel Vicinage Judge issued an order (see Appendix) appointing a new Special Adjudicator, Frank Banisch, III, PP, AICP and scheduled a case management conference on March 24, 2026 to update the court on the status of settlement negotiations. On February 11, 2026, the Township adopted Resolution No. 2026-59 (see Appendix) with a commitment to further amend its HE&FSP pending the Court's determination of these outstanding disputes.

The Township's 2026 Amended HE&FSP addressing its Fourth Round affordable housing obligations is divided into the following sections:

- Section 1: Introduction
  The first section of the 2026 Amended HE&FSP provides an introduction to affordable housing. It summarizes what affordable housing is, offers an overview of the history of affordable housing in the state, and explains the role of a housing element and fair share plan.

- Section 2: Housing Element
  Section 2 contains the Housing Element for Clinton Township. It offers a community overview of the Township, as well as background information regarding its population, housing, and employment characteristics. It also provides projections of the Township's housing stock and employment.

- Section 3: Fair Share Obligation
  Section 3 provides an overview of the Township's fair share obligation. It includes a brief history of the methodologies utilized to calculate affordable housing obligations throughout the state. In addition, this section includes a summary of the Township's Highlands Build-Out Analysis and Vacant Land Analysis.

- Section 4: Fair Share Plan
  Finally, Section 4 details the manner in which the Township has addressed its prior First, Second and Third Round obligations, how it will address its Fourth Round Prospective Need Obligation, and how same is consistent with the FHA, applicable COAH and UHAC regulations, State planning initiatives and Highlands Regional Master Plan ("RMP").

Section 1: Introduction

The following section provides an overview of affordable housing in New Jersey, the role of a housing element and fair share plan and the Township's previous compliance efforts.

1.1 Defining Affordable Housing

Affordable housing is income-restricted housing available for sale or rent at varying income thresholds generally characterized as very-low (30%), low (50%) and moderate-income (80%) households in relation to the respective housing region's median income. New Jersey is divided into six housing regions. Clinton Township is located in Region 3 which includes Hunterdon, Middlesex and Somerset Counties.

The State's regional income limits are updated annually with different categories based on household income levels and size. Table 5 provides a sample of the 2025 regional income limits for Region 3. For example, a four-person household with a maximum income of $122,720 could qualify for affordable housing in Clinton Township. The complete 2025 NJHMFA income table is provided in the Appendix.

Table 5 – 2025 Region 3 Income Limits

Income Level	2 Person	3 Person	4 Person	5 Person
Median (100%)	$122,800	$138,100	$153,400	$165,700
Moderate (80%)	$98,240	$110,480	$122,720	$132,560
Low (50%)	$61,400	$69,050	$76,700	$82,850
Very-Low (30%)	$36,840	$41,430	$46,020	$49,710

Source: NJHMFA UHAC 2025 Affordable Housing Regional Income Limits by Household Size effective May 16, 2025.

Affordable housing exists in several forms including 100% affordable developments, deed-restricted accessory apartments, special needs/supportive housing or group homes, assisted living facilities, age-restricted housing and inclusionary development in which a certain percentage of the housing units are reserved for affordable housing while the remaining units are market rate.

1.2 History of Affordable Housing in New Jersey

Municipal affordable housing requirements in New Jersey began in 1975 when the New Jersey Supreme Court rendered its 'Mount Laurel I' decision which established that every developing municipality in the State has a constitutional obligation to provide a realistic opportunity for the creation of affordable housing. The Mount Laurel I decision was followed by a series of New Jersey Supreme Court decisions known as the 'Mount Laurel Doctrine' and State legislation which provided further clarity regarding municipal housing need calculations, compliance requirements and administrative review. Most recently, in March 2024, the State Legislature adopted amendments to the Fair Housing Act originally enacted in 1985 to create a new Fourth Round municipal compliance program for the period 2025 to 2035.

- Mount Laurel I. In 1975, the New Jersey Supreme Court in its So. Burlington Cty. NAACP v. Township of Mount Laurel decision, commonly referred to as 'Mount Laurel I', determined that every developing municipality in New Jersey has a constitutional obligation to provide a realistic opportunity for the construction its fair share of affordable housing. A 'realistic opportunity' means that municipalities cannot have exclusionary zoning that prohibits the development of affordable housing. Municipalities initially disregarded this obligation given the decision's general lack of guidance including regulatory standards, housing need numbers and an agency to administer such a program.

- Mount Laurel II. The New Jersey Supreme Court's 1983 decision known as 'Mount Laurel II' clarified that all municipalities, whether developing or not, have a constitutional obligation to provide for their fair share of affordable housing. The Mount Laurel II decision called upon the State Legislature to enact legislation that would shift the responsibility of the courts from having to administer the affordable housing process and determine municipal housing need numbers. The decision also introduced the concept of the 'builder's remedy' suit whereby developers could challenge municipal zoning to develop affordable housing where municipalities did not otherwise meet their fair share obligation.

- Fair Housing Act. The State Legislature responded to the Mount Laurel II decision by passing the Fair Housing Act in 1985 which established the framework for an administrative affordable housing process and creation of the Council on Affordable Housing (COAH), the agency intended to implement the process. COAH would be responsible for assigning municipal fair share housing obligations, reviewing municipal affordable housing plans and issuing substantive certification for compliant plans. A town in receipt of substantive certification would be immune from builder's remedy suits.

- Mounter Laurel III. The New Jersey Supreme Court affirmed the validity of the Fair Housing Act in its 1986 'Mount Laurel III' decision.

- First Round. The First Round of affordable housing governed by COAH covered the period 1987 to 1993 with municipal affordable housing obligations based on a "fair share" methodology.

- Second Round. The Second Round of affordable housing spanned from 1993 to 1999 which also utilized a "fair share" methodology to assign municipal affordable housing need numbers.

- Third Round. While the First and Second Rounds utilized a 'fair share' methodology, COAH utilized a new 'growth share' methodology in preparing the Third Round substantive and procedural rules and affordable housing need numbers first adopted in 2004, 5 years after the expiration of the Second Round, intending to cover the period from 1999 to 2014. However, these rules were challenged and ultimately invalidated by the Appellate Division in 2007 which directed to adopt revised rules. COAH adopted its second iteration of the Third Round rules in 2008 that were also challenged and again invalidated by the Appellate Division in 2010 which directed COAH to revert back to the original 'fair share' methodology. This decision was affirmed by the New Jersey Supreme Court in 2013. COAH published its third iteration of Third Round rules in 2014 but failed to adopt the regulations in a deadlocked 3-3 vote.

- Mount Laurel IV. In the New Jersey Supreme Court's 2015 'Mount Laurel IV' decision, the Court decided that COAH had become dysfunctional and returned jurisdiction of municipal affordable housing administration to the trial courts as had been the arrangement prior to the creation of COAH in 1985. The decision included procedures for municipal participation but did not provide housing need numbers leaving municipalities to determine their affordable housing obligations. Several sets of housing need numbers were prepared by various entities which, in most cases, led to individual municipal settlement agreements with Fair Share Housing Center and intervening developers. Municipalities receiving substantive certification of their Third Round plans from the courts received immunity until the end of the Third Round in July 2025.

- Gap Period Decision. On January 18, 2017, the New Jersey Supreme Court ruled that municipalities are responsible for affordable housing obligations that accrued during the "gap-period" between 1999 and 2015 when prior iterations of the Third Round rules were being litigated.

- Fair Housing Act Amendments (A-4/S-50). On March 20, 2024, Governor Murphy signed the A4/S50 Bill into law, which significantly amended the FHA for the 4th Round and beyond (FHA-2"). The amendments to the FHA eliminated COAH, kept superior oversight of the trial courts to ultimately approve municipal HE&FSPs, and created a new entity to act as an intermediary in resolving disputes and reviewing municipal plans known as the Affordable Housing Dispute Resolution Program, commonly referred to as "the Program," which consists of seven retired Mount Laurel Judges who have the discretion to hire "Special Adjudicators," which were formerly called Court Special Master in previous rounds. FHA-2 also involved the Department of Community Affairs ("DCA") and the Administrative Office of the Courts ("AOC") in the process.

  The DCA was designated by the FHA-2 as the entity responsible for calculating the state's regional needs as well as each municipality's present and prospective fair share obligations pursuant to the methodology set forth in the unpublished Jacobson Decision. However, the FHA-2 makes it clear that these numbers are advisory and non-binding, and that each municipality must set its own obligation number utilizing the same methodology. The Program was tasked to handle any disputes regarding affordable housing obligations and plans, and issuing recommendations to the Superior Court judges, as the Courts were kept in the process to ultimately issue a Compliance Certification formally approving a municipality's HE&FSP, which would continue immunity from all exclusionary zoning lawsuits until July 30, 2035.

1.3 Housing Element and Fair Share Plan Requirements

The Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) stipulates that municipalities must adopt a master plan containing at least a land use plan element and housing plan element in order to lawfully adopt and enforce a zoning ordinance. The HE&FSP serves as the blueprint for how a municipality will satisfy its fair share of affordable housing. Municipalities without an approved HE&FSP are susceptible to a builder's remedy (exclusionary zoning) lawsuit whereby a prospective developer can file suit to circumvent the municipality's zoning ordinance and rezone specific property to permit housing development at higher densities and intensities than a municipality would otherwise allow for the provision of a certain percentage of units reserved as affordable.

C.52:27D-310, Essential components of municipality's housing element, of the 2024 Fair Housing Act Amendments sets forth the required HE&FSP components as follows:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);

f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;

g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);

h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

Section 2: Housing Element

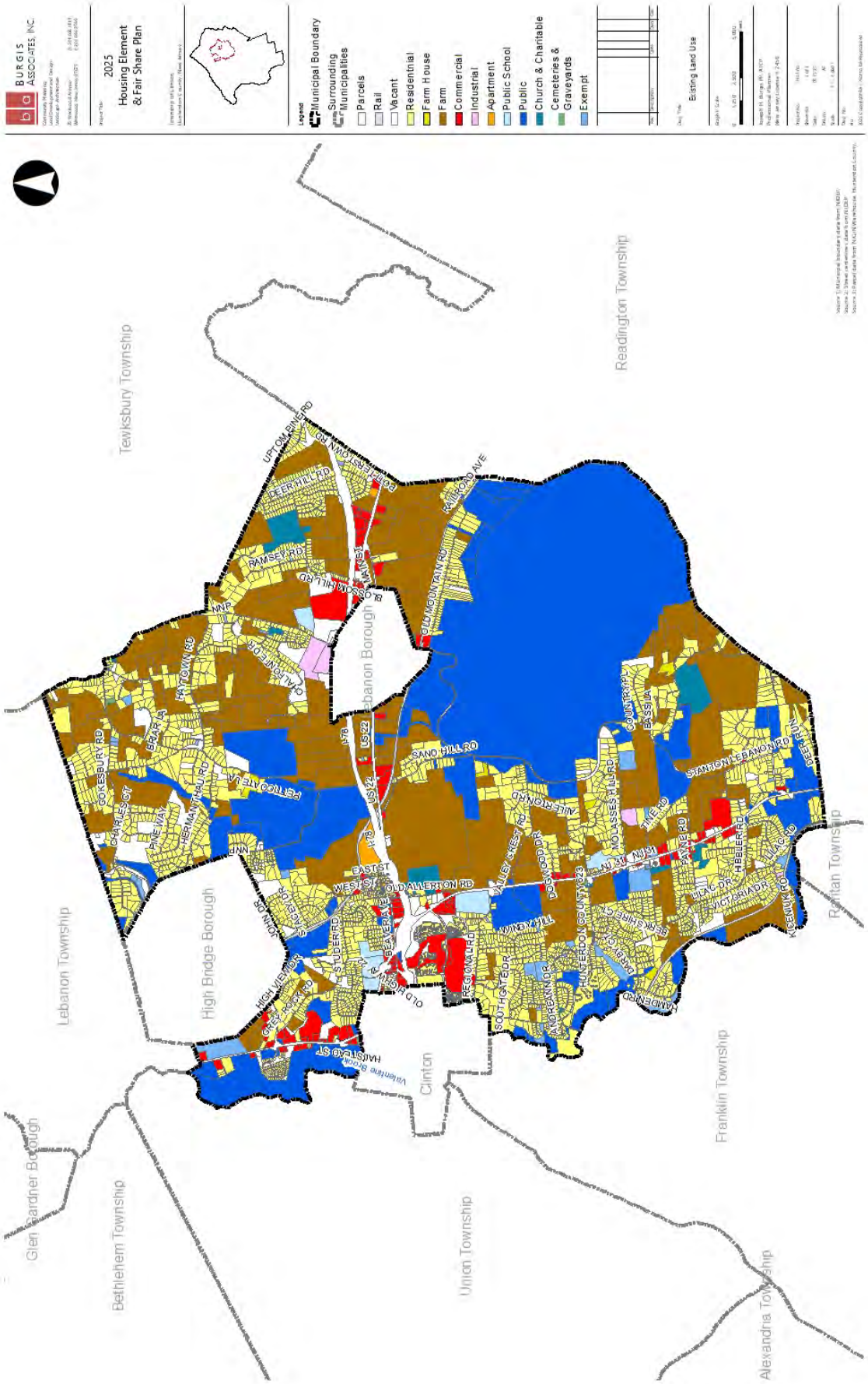
This section provides the Housing Element portion of Clinton Township's Fourth Round HE&FSP including an overview of the Township's existing land use pattern and information pertaining to population, housing and employment characteristics and projections.

2.1 Community Overview

Clinton Township comprises a land area of approximately 21,693 acres located in northwest Hunterdon County. The 8 municipalities adjacent to Clinton Township include Tewksbury, Union, Readington, Raritan and Franklin Townships, Town of Clinton and Boroughs of Lebanon and High Bridge. The Township is located at the crossroads of Interstate Route 78, State Route 31 and U.S. Route 22 with additional regional access via County Routes 623, 629, 639 and 641. Public transportation options include a bus park and ride located at the intersection of Center Street and Route 31 and NJ Transits Raritan Velly Line accessed via Annandale Station.

The Township is characterized by rolling hills and its agricultural heritage with substantial areas devoted to permanent open space and farmland. The majority of residential development in the Township has occurred west of Route 31 and north of Route 78 which consists of single-family homes, townhouses and multifamily development. Commercial uses are generally concentrated along Routes 31 and 22 with commercial nodes located along Beaver Avenue and Center Street. Spruce Run and Round Valley Reservoirs both located in Clinton Township provides drinking water to approximately 2.5 million people in the State while much of the local housing stock is served by wells underscoring the significance of water and land conservation in the vicinity of these regional resources. The Township is also impacted by the South Branch of the Raritan River, Beaver Brook and associated tributaries, many of which are classified as Category One streams warranting the highest levels of protection in New Jersey. The accompanying Existing Land Use Map depicts the distribution of land uses and major water resources throughout the Township.

The Township is located in the New Jersey Highlands region with 97% (21,054 acres) of its land area located in the Highlands Planning Area and 3% (639 acres) located in the Preservation Area along the Township's northern boundary. In December 2009, the Clinton Township Mayor and Council adopted Resolutions Nos. 144-09 and 145-09 (appendices A-1 and A-2) petitioning the Highlands Council for plan conformance for its lands located in both the Highlands Preservation and Planning Areas. The Highlands Council approved the Township's petition for plan conformance on June 18, 2015. Clinton Township is now fully conforming with the Highlands Regional Master Plan ("RMP") having received Highlands Council approval for Highlands Modules 1, 2 and 3 and adoption of the Township's Highlands Land Use Ordinance, the first iteration of which was adopted in January 2021 and latest in December 2024 via Ordinance No. 1205-2024 to implement recent Highlands RMP amendments, including a mandatory affordable housing set-aside of 20% for all residential development of five units or more.


BURGIS ASSOCIATES, INC.
2025
Housing Element
& Fair Share Plan
Legend
Municipal Boundary
Surrounding Municipalities
Parcels
Rail
Vacant
Residential
Farm House
Farm
Commercial
Industrial
Apartment
Public School
Public
Church & Charitable
Cemeteries & Graveyards
Exempt
Existing Land Use
Tewksbury Township
Readington Township
Lebanon Township
High Bridge Borough
Lebanon Borough
Clinton
Raritan Township
Franklin Township
Glen Gardner Borough
Bethlehem Township
Union Township
Alexandria Township
Valentine Brook
US 22
NJ 78
EAST ST
WEST ST
OLD ALLERTON RD
BEAVER AVE
OLD MOUNTAIN RD
RAILROAD AVE
SAND HILL RD
STANTON LEBANON RD
COUNTRY LN
BASSLA
MOLASSES MILL RD
ALLEY GREEN RD
VALLEY CREST RD
DOGWOOD DR
WILLOW WAY
COUNTY RD 23
REGIONAL RD
SOUTH GATE DR
ANDREA DR
HUNTERDON
PARKSHIRE
VICTORIA DR
LILAC DR
HIBBLER RD
KOCENUK CT
LILAC RD
DEER RUN
UPTON RIVER RD
DEER HILL RD
RAMSEY RD
BLOOMSBURY RD
HAYTOWN RD
BRAY LA
GOKESBURY RD
CHARLES CT
HERMAN MILL RD
FETTUCCIA LN
JOHN DR
STUDER RD
HIGH VIEW DR
CHERRY HOOK RD
HALSTEAD ST
OLD HIGH ST

2.2 INVENTORY OF MUNICIPAL HOUSING STOCK

This section of the Housing Element provides an inventory of the Township's housing stock as required by the Fair Housing Act as amended in 2024. The inventory details such housing characteristics as age, condition, purchase/rental value, and occupancy of the Township's existing housing stock. It also details the number of affordable housing units available to low-and-moderate income households and the number of substandard housing units capable of being rehabilitated.

It is noted that there may be inconsistencies in some of the data presented herein derived from the various data sources which include estimates that in some cases clearly exhibit margins of error. However, this information from the U.S. Decennial Census and American Community Survey Estimates prepared by the U.S. Census Bureau is considered among the most reliable and current data available and as such, is utilized in this document to illustrate trends and projections impacting the Township's housing stock.

1. Number of Dwelling Units. The Township experienced its most significant growth from 1990 to 2000 for the period depicted with modest growth occurring between 2000 and 2020. The decrease in housing units shown from 2000 to 2023 represents an error in the American Community Survey Estimate during which the number of housing units in the Township remained stable. These figures do not include the 84-unit, 100% affordable Clinton Woods development located on the Marookian site at Block 82 Lot 4.04 which began leasing units in 2023. The Township's housing stock is anticipated to increase by over 700 hundred units in the next decade from the several housing developments included in the Township's Third and Fourth Round Fair Share Plan's summarized in Section 4.

TABLE 6 - DWELLING UNITS (1990-2023)
CLINTON TOWNSHIP, NEW JERSEY

Year	Total Dwelling Units	Numerical Change	Percentage Change
1990	3,514	-	-
2000	4,234	720	17.0%
2010	4,516	282	6.7%
2020	4,888	372	8.2%
2023	4,807	(81)	(1.7%)

Source: U.S. Decennial Census 1990 - 2020; 2023 American Community Survey 5-Year Estimates.

2. Occupancy Status. The Township's housing stock experienced a decrease in ownership from 2010 to 2020 but has since increased again. The recent increase in ownership is due in part to the recent boom in home sales since the COVID-19 Pandemic, the height of which began in March 2020 and led to an influx of home and land purchases in rural and suburban areas. The relative rate of homeownership in the Township is anticipated to decrease somewhat over the next decade due to the several residential developments included in the Township's Third and Fourth Round Fair Share Plans which include several hundred rental units and some for sale units.

TABLE 7 - HOUSING UNITS BY TENURE AND OCCUPANCY STATUS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020		2023	
Category	**Units**	**Percent**	**Units**	**Percent**	**Units**	**Percent**	**Units**	**Percent**
Owner-Occupied	3,748	88.5%	3,922	86.8%	4,024	82.3%	4,273	88.9%
Renter-Occupied	381	9.0%	500	11.1%	634	13.0%	469	9.8%
Vacant	105	2.5%	94	2.1%	230	4.7%	65	1.4%
Total Units	4,234	100.0%	4,516	100.0%	4,888	100.0%	4,807	100.0%

Source: U.S. Decennial Census 2000 - 2020; 2023 American Community Survey 5-Year Estimates.

3. Housing Characteristics. Tables 8 and 9 quantify the types of units that comprise the Township's housing stock and the bedroom distribution among units. It is noted that the number of 1-unit attached (townhouses) shown for the year 2000 appears to be an inaccurate estimation. Between 2010 and 2023, the number of townhouses in the Township increased by at least 150 units resulting from the Willows at Annandale (66 units) and Clinton Woods (84 units) projects. The number of townhouse and multifamily units is expected to further increase from the several residential developments included in the Township's Third and Fourth Round Fair Share Plans.

TABLE 8 - UNITS IN STRUCTURES (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

Units in	2000		2010		2020(1)		2023	
Structure	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
1-unit, detached	3,347	79.1%	3,321	73.5%	3,414	78.6%	3,659	76.1%
1-unit, attached	430	10.2%	557	12.3%	304	7.0%	621	12.9%
2 units	74	1.7%	89	2.0%	76	1.7%	71	1.5%
3 or 4 units	117	2.8%	161	3.6%	93	2.1%	89	1.9%
5 to 9 units	131	3.1%	198	4.4%	248	5.7%	157	3.3%
10 to 19 units	111	2.6%	105	2.3%	180	4.1%	170	3.5%
20 or more units	8	0.2%	85	1.9%	30	0.7%	40	0.8%
Mobile home	16	0.4%	0	0.0%	0	0.0%	0	0.0%
Boat, RV, van, etc.	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total	4,234	100.0%	4,516	100.0%	4,345	100.0%	4,807	100.0%

Source: U.S. Decennial Census 1990 - 2000; 201 & 2023 American Community Survey 5-Year Estimates.
(1) Based upon ACS data and as such, differs from data in Tables 1 and 2.

The bedroom distribution of units in the Township has remained relatively stable with apparent decreases in the number of 1-bedroom units and increase in the number of 4-bedroom units. The residential developments included in the Township's Fair Share Plan will increase the numbers of 1 and 2-bedroom units.

TABLE 9 - NUMBER OF BEDROOMS IN HOUSING UNITS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020[1]		2023	
Bedrooms	Number	Percent	Number	Percent	Number	Percent	Number	Percent
0	0	0.0%	0	0.0%	13	0.3%	0	0.0%
1	354	8.4%	389	8.6%	251	5.8%	243	5.1%
2	613	14.5%	681	15.1%	553	12.7%	767	16.0%
3	1,171	27.7%	1,106	24.5%	1,133	26.1%	1,258	26.2%
4	1,783	42.1%	1,990	44.1%	2,012	46.3%	2,229	46.4%
5 or More	313	7.4%	350	7.8%	383	8.8%	310	6.4%
Total	4,234	100.0%	4,516	100.0%	4,345	100.0%	4,807	100.0%

Source: U.S. Decennial Census 1990 – 2000; 2010 - 2023 American Community Survey 5-Year Estimates.
(1) Based upon ACS data and as such, differs from data in Tables 1 and 2.

4. Housing Age. As shown in Table 10, 49.3% of the Township's housing stock was constructed between 1980 and 2000. Only 9.0% of housing units were constructed after 2000 indicating that approximately 91% of all housing units are 25 years or older. Not factored in this data is the 84-unit 100% affordable Clinton Woods development on the Marookian site which began leasing in 2023 and was fully occupied in 2024. The slowdown in housing starts since 2000 is likely attributable to several factors including the lack of available public sewer and water in Clinton Township and Highlands regulations.

TABLE 10 - YEAR STRUCTURE BUILT
CLINTON TOWNSHIP, NEW JERSEY

Year Built	Units	Percent
2020 or later	0	0.0%
2010 or 2019	86	1.8%
2000 to 2009	346	7.2%
1990 to 1999	1,138	23.7%
1980 to 1989	1,231	25.6%
1970 to 1979	726	15.1%
1960 to 1969	495	10.3%
1950 to 1959	271	5.6%
1940 to 1949	67	1.4%
1939 or earlier	447	9.3%
Total	4,807	100.0%

Source: 2023 American Community Survey 5-Year Estimates.

5. Housing Conditions. Overcrowding is defined as housing units with more than one occupant per room. As shown in Table 11, since at least 2000, the Township has had very few housing units (less than 1%) considered to be overcrowded.

TABLE 11 - OCCUPANTS PER ROOM (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

Occupants	2000		2010		2020		2023	
Per Room	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1.00 or less	4,121	99.8%	4,416	99.9%	4,140	99.0%	4,742	100.0%
1.01 to 1.50	8	0.2%	6	0.1%	28	0.7%	0	0.0%
1.51 or more	0	0.0%	0	100.0%	13	0.3%	0	0.0%
Total	4,129	100.0%	4,422	100.0%	4,181	100.0%	4,742	100.0%

Source: U.S. Decennial Census 1990 - 2000; 2010 - 2023 American Community Survey 5-Year Estimates.

6. Housing Facilities. It is estimated that all of the housing units in Clinton Township contain complete kitchen and plumbing facilities. Approximately 98.5% of housing units utilize standard heating equipment. This information reveals that few housing units in Clinton Township are characterized as deficient with respect to these indices.

TABLE 12 - KITCHEN, PLUMBING & HEATING FACILITIES FOR OCCUPIED DWELLING UNITS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020		2023	
Facilities	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Kitchen:								
With Complete Facilities	4,122	99.8%	4,422	100.0%	4,181	100.0%	4,742	100.0%
Lacking Complete Facilities	7	0.2%	0	0.0%	0	0.0%	0	0.0%
Plumbing:								
With Complete Facilities	4,113	99.6%	4,408	99.7%	4,181	100.0%	4,742	100.0%
Lacking Complete Facilities	16	0.4%	14	0.3%	0	0.0%	0	0.0%
Heating Equipment:								
Standard Heating Facilities	4,088	99.0%	4,370	98.8%	4,065	97.2%	4,673	98.5%
Other Means, No Fuel Used	41	1.0%	52	1.2%	116	2.8%	69	1.5%

Source: U.S. Decennial Census 1990 - 2000; 2010 - 2023 American Community Survey 5-Year Estimates.

7. Purchase and Rental Values. For several decades, the Township experienced median gross rents higher than Hunterdon County. In 2023, the Township's median gross rent was estimated at $2,401 more than 40% higher than that of the County's median gross rent of $1,707. The Township's median gross rent increased an estimated 75% since 2010.

TABLE 13 - GROSS RENT OF SPECIFIED RENTER-OCCUPIED HOUSING UNITS (1990-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020		2023	
Rent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Less than $200	7	1.9%	-	-	-	-	-	-
$200 to $299	0	0.0%	-	-	-	-	-	-
$300 to $499	7	1.9%	-	-	38(3)	9.2%(3)	0(3)	0.0%(3)
$500 to $999	148	40.9%	70(2)	14.0%(2)	0	0.0%	22	4.7%
$1,000 to $1,499	116	32.0%	230	36.0%	70	17.0%	28	6.0%
$1,500 to $1,999	84(1)	23.2%(1)	155(1)	31.0%(1)	145	35.2%	105	22.4%
$2,000 to $2,499	-	-	-	-	65	15.8%	58	12.4%
$2,500 to $2,999	-	-	-	-	37	9.0%	68	14.5%
$3,000 or more	-	-	-	-	15	3.6%	122	26.0%
No Cash Rent	0	0.0%	45	9.0%	41	10.0%	66	14.1%
Total	362	100.0%	500	100.0%	412	100.0%	469	100.0%
Median Gross Rent	$1,602		$1,367		$1,764		$2,401	
Hunterdon County Median Gross Rent	$867		$1,154		$1,443		$1,707	

Source: U.S. Decennial Census 1990 - 2000; 2010 - 2023 American Community Survey 5-Year Estimates.

(1) Denotes rents of $2,000 or more per revised Census categorization.

(2) Denotes rents of less than $500 per revised Census categorization.

(3) Denotes rents of less than $300 per revised Census categorization.

Since 2000, the value of owner-occupied housing units in Clinton Township has increased approximately 62% while the median value of owner-occupied housing units in Hunterdon County more than doubled based on Census data. 91% of the Township's owner-occupied housing units were valued over $300,000 with about 60% valued at $500,000 or more.

TABLE 14 - VALUE OF SPECIFIED OWNER-OCCUPIED HOUSING UNITS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020		2023	
Value Range	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Less than $50,000	0	0.0%	7	0.2%	15	0.4%	83	1.9%
$50,000 to $99,999	36	1.1%	7	0.2%	0	0.0%	19	0.4%
$100,000 to $149,999	182	5.4%	16	0.4%	20	0.5%	0	0.0%
$150,000 to $199,999	312	9.2%	118	3.0%	152	4.0%	79	1.8%
$200,000 to $299,999	1,385	40.7%	438	11.2%	262	7.0%	203	4.8%
$300,000 to $499,999	1,347	39.6%	1,380	35.2%	1,853	49.2%	1,343	31.4%
$500,000 to $999,999	122	3.6%	1,828	46.6%	1,435	38.1%	2,430	56.9%
$1,000,000 or More	16	0.5%	128	3.3%	32	0.8%	116	2.7%
Total	3,400	100.0%	3,922	100.0%	3,769	100.0%	4,273	100.0%
Median Value	$283,900		$499,400		$455,600		$458,800	
Hunterdon County Median Value	$245,000		$446,700		$418,700		$498,800	

Source: U.S. Decennial Census 2000; 2010 – 2023 American Community Survey 5-Year Estimates.

8. Number of Units Affordable to Low- and Moderate-Income Households. Clinton Township is placed in housing Region 3, which is comprised of Hunterdon, Middlesex and Somerset Counties. Based on the New Jersey Housing and Mortgage and Finance Agency's May 16, 2025 update of its UHAC 2025 Affordable Housing Regional Income Limits by Household Size, the median household income for a four-person household in Region 3 is $153,400. A four-person moderate-income household earning 80% of the region's median income would have an income not to exceed $122,720.

   An affordable sales price for a four-bedroom moderate-income household earning 80% of the median income is estimated at $415,000. In 2023, the percentage of housing units in Clinton Township valued at less than $500,000 was estimated to be 40.4%.

   For renter-occupied housing, an affordable monthly rent for a four-person moderate-income household is estimated at approximately $3,068. According to the most recent Census data, approximately 10.7% of the Township's rental units have a gross rent less than $1,500. However, it is noted that the 100% affordable Willows at Annandale and Clinton Woods sites have a combined total of 150 affordable rental units. At a minimum, the Willows at Spruce Run 100% affordable development which received final site plan approval in 2024 will add another 96 affordable rental units to the Township's housing stock within the next several years.

9. Substandard Housing Capable of Being Rehabilitated. The DCA's October 18, 2024 of "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" calculated Present Need obligations representing the number of units in a municipality that are in need of rehabilitation and are not likely to experience 'spontaneous rehabilitation'. This DCA report assigned Clinton Township a Fourth Round Present Need or Rehabilitation Obligation of 0 units.

2.3 PROJECTION OF MUNICIPAL HOUSING STOCK

The FHA-2 regulations require the HE&FSP to include a projection of the community's housing stock, including the probably future construction of low and moderate-income housing for the ten-year round, which for the Fourth Round is from 2025 to 2035. This projection shall be based upon an assessment of data which minimally must include the number of residential construction permits issued, approvals of applications for residential development, and probable residential development of lands. Each of these items are identified and outlined below.

1. Housing Units Constructed. Table 15 illustrates the number of residential building permits issued for new construction between 2004 and 2023 according to the DCA's New Jersey Construction Reporter. During this period, a total of 379 building permits were issued for new construction, 157 of which were for multifamily development. 47% of the Township's residential growth during this period occurred between 2004 and 2006 while the subsequent increase in multifamily housing was due to several developments included in the Township's Fair Share Plan to address its affordable housing obligations.

TABLE 15 - NUMBER OF BUILDING PERMITS ISSUED (2004-2023)
CLINTON TOWNSHIP, NEW JERSEY

Year Issued	Single and Two-Family	Multifamily	Total
2004	93	0	93
2005	72	0	72
2006	12	0	12
2007	9	0	9
2008	8	0	8
2009	3	0	3
2010	3	0	3
2011	0	0	0
2012	1	0	1
2013	2	0	2
2014	3	0	3
2015	3	0	3
2016	0	35	35
2017	2	0	2
2018	1	0	1
2019	2	54	56
2020	3	0	3
2021	4	0	4
2022	0	68	68
2023	1	0	1
Total	222	157	379

Source: New Jersey Construction Reporter.

2. Probable Residential Development of Lands. Based on the Township's Third and Fourth Round Fair Share Plan mechanisms identified herein, it is anticipated that approximately 750 new housing units will be constructed in the Township within the next decade. This includes the 96-unit 100% affordable Willows at Spruce Run project which received final site plan approval in 2024, 400 inclusionary units at the CRC Headley site which is pending before the Planning Board, 140 inclusionary units at 108 Alton Place which received sufficient water and sewer allocation and the approved 25-unit 100% affordable development at Grayrock Road. It is unlikely that any significant housing development will occur beyond the sites identified in this plan due to the lack of developable vacant land, lack of sewer and water availability and environmental constraints.

2.4 POPULATION ANALYSIS

The MLUL requires that a Housing Element provides data on the municipality's population, including population size, age and income characteristics.

1. Population Size. As indicated in Table 16, Clinton Township experienced significant population increase from 1960 to 2000 but stabilized thereafter. It is noted that the following period coincided with the 2008 Financial Crisis and corresponding housing market crash as well as the Township's inclusion in the Highlands Region created in 2008. The Township became fully conforming with the Highlands Regional Master Plan ("RMP") in 2016. These factors have somewhat limited housing growth and associated population growth in Clinton Township since 2000. However, it is noted that two 100% affordable rental developments totaling 150 units have been occupied since 2024 (66 units began leasing in 2023 with several hundred more units included in the Township's Third and Fourth Round Fair Share Plans that will result in further increases to the Township's population within the next decade. According to the 2023 American Community Survey, Clinton Township had an estimated population of 13,347 residents representing an increase of 3% since 2000.

TABLE 16 - POPULATION GROWTH
CLINTON TOWNSHIP, NEW JERSEY

Year	Total Population	Numerical Change	Percentage Change
1960	3,770	-	-
1970	5,119	1,349	35.8%
1980	7,345	2,226	43.5%
1990	10,816	3,471	43.3%
2000	12,957	2,141	19.8%
2010	13,478	521	4.0%
2020	13,505	27	0.2%
2023	13,347	(158)	(1.2%)

Source: U.S. Decennial Census 1960 - 2020; 2023 American Community Survey 5-Year Estimates.

2. Age Characteristics. The Township's age characteristics are outlined in the table below. As shown, the Township's median age increased from 36.4 years old in 2000 to 43.5 years old in 2023. In 2023, approximately 35% of the Township's population consisted of school-aged children between the ages of 5 and 19. Roughly 18% of the population was 65 and over where in 2000 this age cohort represented 7% of the population.

TABLE 17 - AGE CHARACTERISTICS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2020		2023	
Age	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Under 5 years	852	6.6%	584	4.3%	587	4.3%	717	5.4%
5 to 19 years	2,818	21.7%	2,975	22.1%	2,323	17.2%	2,338	17.5%
20 to 24 years	1,166	9.0%	1,298	9.6%	1,451	10.7%	990	7.4%
25 to 34 years	1,372	10.6%	1,032	7.7%	1,380	10.2%	1,349	10.1%
35 to 44 years	2,363	18.2%	1,704	12.6%	1,303	9.6%	1,528	11.4%
45 to 54 years	2,226	17.2%	2,647	19.6%	1,889	14.0%	1,648	12.3%
55 to 64 years	1,209	9.3%	1,801	13.4%	2,362	17.5%	2,354	17.6%
65 to 74 years	570	4.4%	863	6.4%	1,375	10.2%	1,324	9.9%
75 to 84 years	261	2.0%	430	3.2%	658	4.9%	773	5.8%
85 years +	120	0.9%	144	1.1%	219	1.6%	326	2.4%
Total	12,957		13,478		13,505		13,347	
Median Age	36.4		40.9		43.1		43.5	

Source: U.S. Decennial Census 2000 - 2010; 2020 - 2022 American Community 5-Year Estimates.

3. Average Household Size. From 1980 to 2023, the average household size in Clinton Township has decreased from 3.12 persons per household to 2.59. This is likely due to a reduction in the number of children per household since 2000 which is indicated by the sharp drop off in average household size of 3.14 in 2000 to 2.68 in 2010 which has reduced further since.

TABLE 18 - AVERAGE HOUSEHOLD SIZE (1990-2023)
CLINTON TOWNSHIP, NEW JERSEY

Year	Average Household Size
1990	3.12
2000	3.14
2010	2.68
2020	2.56
2023	2.59

Source: U.S. Decennial Census 1990 - 2000; 2010 – 2023 American Community Survey 5-Year Estimates.

4. Household Income. The Township's household income distribution from 1999 (2000 U.S. Decennial Census) to 2023 is shown in Table 19. As indicated, the Township's median income increased 59.2% since 1999. The Township's median income has remained above that of Hunterdon County since at least 1999. Roughly 71% of Township households had incomes of $100,000 or more in 2023.

TABLE 19 - HOUSEHOLD INCOME DISTRIBUTION (1999-2023)
CLINTON TOWNSHIP, NEW JERSEY

Income Category	1999		2010		2020		2023	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Less than $10,000	53	1.3%	54	1.2%	171	4.1%	138	2.9%
$10,000 to $14,999	37	0.9%	36	0.8%	25	0.6%	47	1.0%
$15,000 to $24,999	117	2.8%	208	4.7%	50	1.2%	47	1.0%
$25,000 to $34,999	112	2.7%	222	5.0%	155	3.7%	100	2.1%
$35,000 to $49,999	252	6.1%	341	7.7%	92	2.2%	270	5.7%
$50,000 to $74,999	793	19.2%	580	13.1%	431	10.3%	337	7.1%
$75,000 to $99,999	781	18.9%	452	10.2%	447	10.7%	375	7.9%
$100,000 to $149,999	983	23.8%	916	20.7%	748	17.9%	1,010	21.3%
$150,000 to $199,999	577	14.0%	1,743	39.4%	560	13.4%	555	11.7%
$200,000 or more	421	10.2%	-	-	1,501	35.9%	1,864	39.3%
Total	4,126	100.0%	4,422	100.0%	4,181	100.0%	4,742	100.0%
Median Household Income	$96,570		$120,565		$145,824		$153,771	
Hunterdon County Median Income	$79,888		$100,980		$117,858		$139,453	

Source: U.S. Decennial Census 2000; 2010 – 2023 American Community Survey 5-Year Estimates.

5. Housing cost-burden. Households that pay more than thirty percent (30%) of their income for housing are considered to be cost-burdened, and may have difficulty affording basic necessities such as food, clothing, transportation, and medical care. The 2023 ACS estimates that approximately 46.3% of renter-occupied and 25.8% of owner-occupied housing units have housing costs of at least 30% of their incomes.

TABLE 20 - HOUSING COST AS PERCENTAGE OF INCOME (2023)
CLINTON TOWNSHIP, NEW JERSEY

Percentage of Income	Owner-occupied (1)		Renter-occupied	
	Number	Percent	Number	Percent
Less than 15.0%	-	--	47	10.0%
15.0% to 19.9%	1,986(2)	48.1%(2)	80	17.1%
20.0% to 24.9%	746	18.1%	92	19.6%
25.0% to 29.9%	334	8.1%	33	7.0%
30.0% to 34.9%	336	8.1%	33	7.0%
35.0% or more	689	16.7%	87	18.6%
Not computed	40	1.0%	97	20.7%
Total Occupied Units	4,131	100.0%	469	100.0%

Sources: 2023 American Community Survey 5-Year Estimate
(Note: Does not include households with zero or negative income)
(1) Includes owner-occupied units with and without mortgages.
(2) Denotes percentage of income of less than 20.0%.

2.5 EMPLOYMENT ANALYSIS

The MLUL requires that the housing element include data on employment characteristics in the community. The following is noted with respect to employment status and related information.

1. Employment Status. Table 21 summaries the employment status of Township residents age 16 and over. Historically, approximately 60% of the Township's working age population was in the civilian labor force. In 2000, there was a decrease in participation in the civilian labor force to 54% which may be attributable to the COVID-19 Pandemic and/or anomalies in the data. There was also an increase in the percentage of the Township's population age 65 and over from 7.3% to 18.1% since 2000. In the same period, the Township's unemployment rate increased from 2.1% to 4.0% in 2023,

TABLE 21 - EMPLOYMENT STATUS- POPULATION 16 & OVER (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

Employment Status	2000		2010		2020		2023	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
In labor force	6,170	62.6%	6,207	58.3%	5,908	53.9%	6,578	59.2%
Civilian labor force	6,170	62.6%	6,201	58.2%	5,898	53.8%	6,578	59.2%
Employed	5,958	60.1%	5,847	54.9%	5,502	50.2%	6,136	55.2%
Unemployed	212	2.1%	354	3.3%	396	3.6%	442	4.0%
Armed Forces	0	0.0%	6	0.1%	10	0.1%	0	0.0%
Not in labor force	3,740	37.7%	4,443	41.7%	5,055	46.1%	4,528	40.8%
Total Population 16 and Over	9,910		10,650		10,963		11,106	

Source: U.S. Decennial Census 2000; 2010 – 2023 American Community Survey 5-Year Estimates.

2. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of employed residents of Clinton Township. Since 2000, roughly 60% of Township employees worked in management, business, science or the arts while the second largest cohort working in sales and office roles accounted for approximately 22%. The distribution of employees in the five Census categories shown has remained relatively stable since 2000

TABLE 22 - EMPLOYED RESIDENTS AGED 16 AND OVER BY OCCUPATION (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

Occupation	2000		2010		2020		2023	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Management, Business, Science & Arts	3,542	59.4%	3,519	60.2%	3,357	61.0%	3,664	59.7%
Service	411	6.9%	417	7.1%	394	7.2%	427	7.0%
Sales & Office	1,339	22.5%	1,246	21.3%	1,176	21.4%	1,388	22.6%
Natural Resources, Construction & Maintenance	296	5.0%	315	5.4%	226	4.1%	345	5.6%
Production, Transportation & Material Moving	370	6.2%	350	6.0%	349	6.3%	312	5.1%
Total	5,958	100.0%	5,847	100.0%	5,502	100.0%	6,136	100.0%

Source: U.S. Decennial Census 2000; 2010 - 2023 American Community Survey 5-Year Estimates.

In 2023, the categories representing the largest groups of employed Township residents were educational, health and social services at 19.5%, manufacturing at 16.6% and finance, insurance, real estate and rental and leasing at 12.9%. The employment category experiencing the most significant increase from 2000 to 2023 was finance, insurance, real estate and rental and leasing accounting for 8.5% of employed residents in 2000 and 12.9% of employed residents in 2023. The largest decrease was in information related professions which accounted for 7.1% of employed residents in 2000 and 4.5% in 2023.

TABLE 23 - EMPLOYED RESIDENTS AGE 16 AND OVER, BY INDUSTRY (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

	2000		2010		2023	
Industry	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
Agriculture, forestry, fishing, hunting and mining	16	0.3%	15	0.3%	18	0.3%
Construction	321	5.4%	323	5.5%	335	5.5%
Manufacturing	1,102	18.5%	908	15.5%	1,020	16.6%
Wholesale trade	210	3.5%	227	3.9%	147	2.4%
Retail trade	495	8.3%	489	8.4%	643	10.5%
Transportation and warehousing, and utilities	210	3.5%	197	3.4%	264	4.3%
Information	421	7.1%	236	4.0%	278	4.5%
Finance, insurance, real estate and rental and leasing	508	8.5%	673	11.5%	793	12.9%
Professional, scientific, management, administrative and waste management services	942	15.8%	1,091	18.7%	804	13.1%
Educational, health and social services	1,121	18.8%	1,023	17.5%	1,199	19.5%
Arts, entertainment, recreation, accommodation and food services	248	4.2%	336	5.7%	274	4.5%
Other services	239	4.0%	151	2.6%	239	3.9%
Public administration	125	2.1%	178	3.0%	122	2.0%
Total	5,958	100.0%	5,847	100.0%	6,136	100.0%

Source: U.S. Decennial Census 2000; 2010 & 2023 American Community Survey 5-Year Estimates.

2.6 HOUSING AND EMPLOYMENT PROJECTIONS

The following section provides estimated housing and employment projections in the Township based on trends from the data presented herein.

1. Probable Future Employment and Regional or Community Factors Impacting Upon Future Municipal Employment. As indicated in Table 24, employment in Clinton Township has decreased by 17.1% from 2014 to 2023. This is the result of several corporate entities having relocated out of the Township in that period. Given the limited availability of developable land, opportunities to develop new nonresidential development that would substantially increase the number of jobs in the Township is limited. The State Development and Redevelopment Plan states that new housing and affordable housing should occur where there are employment opportunities and job growth where Clinton Township has experienced a significant decline in employment opportunities.

TABLE 24 - COVERED EMPLOYMENT TRENDS (2014-2023)
CLINTON TOWNSHIP, NEW JERSEY

Year	Number of Jobs	Change in Number of Jobs	Percent Change
2014	3,902	-	-
2015	3,874	(28)	(0.7%)
2016	3,757	(117)	(3.0%)
2017	3,595	(162)	(4.3%)
2018	3,763	168	4.7%
2019	3,953	190	5.0%
2020	3,502	(451)	(11.4%)
2021	3,349	(15)	(4.4%)
2022	3,248	(101)	(3.0%)
2023	3,236	(12)	(0.4%)

Sources: Department of Labor and Workforce Development.

2. Projection of the Municipality's Housing Stock. As indicated below, Clinton Township had a net housing increase of 125 units over the last 10-year period based the number of building permits issued for new residential construction and number of demolition permits issued. It is noted that within this period, at least 122 of the 141 (86.5%) building permits issued for new residential construction were for multifamily development. The Township's existing 100% affordable Willows at Annandale site (66 units) and Clinton Woods site (84 units) alone created 150 new affordable housing units within the last decade which do not appear to be accurately reflected in the State's permit data.

TABLE 25 - ANALYSIS OF RESIDENTIAL CERTIFICATES OF OCCUPANCY AND DEMOLITION PERMITS (2000-2023)
CLINTON TOWNSHIP, NEW JERSEY

Year Issued	One & Two Family	Multifamily	Mixed-Use	Total	Demos	Net Growth
2014	3	0	0	3	3	0
2015	3	0	0	3	2	1
2016	0	0	0	0	0	0
2017	2	0	0	2	1	1
2018	1	0	0	1	1	0
2019	2	54	0	56	3	53
2020	3	0	0	3	1	2
2021	4	0	0	4	2	2
2022	0	68	0	68	2	66
2023	1	0	0	1	1	0
Total	19	122	0	141	16	125

Source: New Jersey Department of Community Affairs Construction Reporter.

3. Probable Future Construction of Housing Affordable to Low and Moderate-Income Households (2015-2025). New housing construction in the Township will be focused at the sites identified in Section 4, Fair Share Plan, of this document. These developments are summarized in the table below. As shown, the Township's housing stock is anticipated to increase by roughly 682 units of which 258 units (37.8%) are designated for low and moderate-income households over the next decade. This estimate represents an increase of 14.2% to the Township's housing stock as of 2023 and does not include additional units that may be created elsewhere, including single-family detached dwellings where permitted.

TABLE 26 – ANTICIPATED RESIDENTIAL DEVELOPMENT (2025 – 2035)
CLINTON TOWNSHIP, NEW JERSEY

Site	Block/Lot	Total # Units	# AH Units	Status
Willows at Spruce Run	70/6, 6.01	96	96	Under Construction
Headley Farm Estate	46/33, 33.01	400	104	Pending Site Plan Application
108 Alton Place	79.07/1	140	28	Durational Adjustment (1)
3 Grayrock Road 100% Affordable Development	74/19	25	25	To Be Rezoned as Fourth Round Plan Mechanism
Greyrock Crossing	77.01/2, 4	18	3	Final Site Plan Approval Granted
Annandale Village, LLC	53/3	12	2	Final Site Plan Approval Granted
Total		682	258	-

(1) "Durational Adjustment" means a deferral of the municipal low and moderate-income housing obligation based on the lack of infrastructure pursuant to N.J.S.A. 52:27D-307(c)(2) and NJ.A.C. 5:93-4.

Section 3: Fair Share Obligation

The following section provides an overview of the Township's Fourth Round fair share obligation. It includes a brief overview of the methodology utilized to calculate affordable housing obligations throughout the State.

3.1 Summary of Fair Share Obligation

On March 20, 2024, Governor Murphy signed Bill A4/S50 Bill into law, thereby significantly amending the Fair Housing Act ("FHA") originally adopted in 1985. The amended FHA commonly referred to as the Fair Housing Act-2 ("FHA-2") eliminated COAH and created the new Affordable Housing Dispute Resolution Program ("The Program") consisting of seven retired Mount Laurel judges to review municipal compliance plans and resolve disagreements between municipalities and objectors. The legislation also tasked the DCA with calculating municipal Present and Prospective Need obligations, and the Administrative Office of the Courts (AOC) with creating rules related to the required procedures for the Program and the Courts to function together in accordance with the FHA-2. The FHA-2 also established a new methodology for calculating municipal affordable housing-need numbers, municipal compliance requirements and administrative review process through the Program for the 4th and subsequent rounds. These rounds span a period of 10 years each whereas the First and Second Rounds administered by COAH covered 6-year periods. The 3rd Round extending from 1999 to 2025 (26 years) was an anomaly due to extensive litigation and COAH becoming dysfunctional to such a degree that the Court ruled it could no longer administer the State's affordable housing process and returned it to the trial courts.

The FHA-2 designates DCA as the entity responsible for calculating the State's regional affordable housing needs. Specifically, N.J.S.A. 52:27D-304.2 establishes the methodology to be utilized by DCA to determine the State's regional prospective needs of low- and moderate-income housing for the ten-year period spanning from July 1, 2025 to June 30, 2035. In summary, the projected household change for this period is estimated by establishing the household change experienced in each of the State's six regions between the most recent federal decennial census and the second-most recent decennial census. This household change, if positive, is then divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region for the next ten years. According to the DCA, this methodology resulted in a statewide prospective need of 84,698 low- and moderate-income units.

In addition, DCA was tasked with calculating individual municipal present need (rehabilitation) and prospective need obligations. However, the FHA-2 states that these DCA calculations are advisory and non-binding, and that each municipality is responsible for determining its own obligation utilizing the same methodology. Clinton Township conducted a review of the DCA calculations and based on more current local information as it relates to the land capacity factor data and mapping, determined the Township's Fourth Round Prospective Need Obligation should be modified from 174 units to 109 units.

On January 22, 2024, Clinton Township adopted a binding resolution (see Appendix) accepting the DCA's calculated Present Need of 0 and modified Prospective Need Obligation of 109 units thereby establishing the Township's Fourth Round affordable housing obligations. The Township's Prospective Need Obligation of 109 units was challenged in February 2025 by FSHC and the New Jersey Builders' Association ("NJBA"). Ultimately, following a Court settlement conference, the Township entered into a Mediation Agreement with FSHC executed March 27, 2025 setting the Township's Fourth Round Present Need Obligation at 0 units and Prospective Need Obligation at 150 units, which was also accepted by the NJBA. The Township's Fourth Round obligation was confirmed by Judge Miller in his Order dated March 28, 2025.

In addition, the Township's Resolution No. 2025-36 noted that the Township reserves the right to adjust its Prospective Need Obligation by taking any adjustments that may be available under the Amended FHA. ,One such adjustment is through a Highlands Vacant Land Analysis which is required by N.J.S.A. 52:27D-310.h. This analysis results in a Realistic Development Potential ("RDP") of 22 units and Unmet Need of 128 units.

TABLE 27 – CLINTON TOWNSHIP SUMMARY OF FOURTH ROUND OBLIGATION

Affordable Obligation	# Units
Present Need (Rehabilitation)	0
Prospective Need	150 (1)

(1) 2025 Mediation Agreement with FSHC modified the Township's DCA calculated Fourth Round Prospective Need of 174 units.

3.2 REALISTIC DEVELOPMENT POTENTIAL (RDP)

Clinton Township is among the 88 municipalities in New Jersey located in the Highlands Region. As of 2016, the Township fully conforms with the Highlands Regional Master Plan ("RMP") in both the Highlands Preservation and Planning Areas and is therefore required to conduct a Highlands Build-Out Analysis pursuant to N.J.S.A. 52:27D-310.h and in accordance with the procedures set forth in the Highlands RMP. The Township's Highlands Build-Out Analysis serves as the basis of its Vacant Land Analysis conducted in accordance with the FHA-2 and applicable COAH regulations.

By way of background, the Highlands Act was adopted by the State Legislature in 2004 following which, the Highlands RMP was adopted by the Highlands Council in 2008. COAH simultaneously in 2008 updated its Third Round Rules (N.J.A.C. 5:97) to recognize the newly adopted Highlands regulations as soon as they became available. N.J.A.C. 5:97-3.13(b)3, requires "*sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission,* ***shall adhere to the land use policies delineated in*** *The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50;* ***The Highlands Water Protection and Planning Act rules****, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Zone Management Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable.*"

The provisions of the Third Round Rules pertaining to Highlands regulations and compliance have not been invalidated. Therefore, it is clear that municipalities within the Highlands Region have had to apply Highlands regulations in addressing their affordable housing obligations since at least 2008 when the Highlands RMP was adopted.

The Fair Housing Act amendments specifically recognize the importance of the Highlands Regional Master Plan in governing the responsible development of affordable housing in the Highlands Region. Specifically, N.J.S.A. 52:27D-310.hrequires conforming municipalities to include in their HE&FSP a "*consideration of the most recent Highlands Municipal Build-Out report.*" Furthermore, with respect to the computation of adjustments to the municipal prospective need for municipalities in the Highlands Region, the FHA-2 excludes as vacant "*environmentally sensitive lands where development is prohibited by any State or federal agency, including but not limited, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L. 2004, c. 120 for lands in the Highlands Preservation Area and lands in the Highlands Planning Area for Highlands-conforming municipalities.*"

In December 2025, New Jersey adopted its long-awaited State Development and Redevelopment Plan ("SDRP") which states "*for more than two decades, the New Jersey Highlands region has been recognized at both the federal and state level for its exceptional natural, cultural, and agricultural value. This recognition reflects the need for the Highlands to be considered differently from the rest of New Jersey in terms of land use planning and agency collaboration and coordination.*" The SDRP includes the following Highlands considerations applicable to the Township's Fourth Round VLA:

1. Use of the RMP Land Use Capability Zone Map as the State Plan map for the Highlands Region.
2. Coordination of affordable housing policies and obligations with the RMP.
3. Continued recognition of conforming municipalities as having received plan endorsement.
4. Any municipal master plan and development regulations or county master plan and associated regulations that have been approved by the Highlands Water Protection and Planning Council pursuant to section 14 or 15 of P.L.2004, c.120 (C.13:20-14 or C.13:20-15) shall be deemed the equivalent of having those plans endorsed by the State Planning Commission.

The above demonstrates consistent and concerted effort by the State to enforce municipal compliance with the Highlands RMP when addressing municipal affordable housing obligations in recognition of the importance of the Highlands Region as a special resource area to be maintained and preserved.

On April 18, 2024 in response to the Fair Housing Act amendments, the Highlands Council adopted an amendment to the RMP which provides standards based on the RMP and FHA-2 establishing appropriate locations for affordable housing development based on the goals, objectives and policies of the RMP. Affordable housing development in Highlands conforming municipalities must be consistent with the RMP Land Use Capability Zone (LUCZ) designations while providing protection of individual environmental resources.

To further guide municipalities in developing plans to address their affordable housing obligations, the Highlands Council issued a Highlands Municipal Build-Out Update (see Appendix) issued on November 1, 2024 which specifies the procedures and criteria for conducting a municipal build-out analysis to calculate the municipality's realistic development potential ("RDP"). The guidelines apply environmental and regulatory constraints to develop a dataset that identifies parcels that can support the development of five units or more and have a net developable area of 0.83 acres or greater. This is consistent with the vacant land analysis criteria set forth in the FHA-2 and N.J.A.C. 5:93-4.2. In addition, the dataset from the Highlands Build-Out analysis provides information as to whether parcels have access to water and sewer infrastructure. This is distinct from the consideration of the availability of water and sewer capacity which the Township did not factor in its analysis in determining its RDP.

The Township conducted its Fourth Round Highlands Build-Out Analysis through the Highlands Council's Highlands Build-Out Portal application pursuant to the requirements set forth in the FHA-2, COAH regulations and Highlands Municipal Build-Out Update. The analysis is intended to produce a complete dataset of parcels that can support the development of 5 units or more with a net developable acreage of 0.83 acres or greater consistent with the standard vacant land analysis as prescribed in Rounds One through Four.

The Highlands Build-Out Tool base dataset which constitutes a preliminary Highlands determination is derived from the geoprocessing of Highlands data inputs and every parcel in the municipality. The tool intersects each data source to the primary 2024 Parcels and MODIV data layer and applies Highlands determination rules summarized in the Highlands Build-Out Update document. These rules include relevant property tax classifications (1, 3B, 15C and 15F), application of environmental resources and constraints, application of Highlands Land Use Capability Zones and factors whether any particular site is served by sewer or septic with corresponding densities. This preliminary dataset is provided in the Highlands Build-Out Portal for municipal review and confirmation.

Clinton Township's review and updates to its preliminary Highlands Build-Out dataset included confirmation of the information contained therein, completion of parcels with missing information or parcels flagged as needing confirmation. The Township completed or adjusted information for 71 "review" parcels in the dataset. In addition, the Township confirmed and updated property tax classifications, reviewed known preserved parcels, reviewed adjacent parcels with common ownership, confirmed if parcels were served by sewer or septic and determine if a parcel is eligible or not eligible for development based on whether the parcel could be developed with 5 units or more. In addition, the Township reviewed parcels of interest including parcels within objector sites, identification of 3 Grayrock Road as vacant and review of parcels with recent development approvals.

Upon completion of the Township's Highlands Build-Out Analysis, the Portal produced a report for further municipal review and updates. This included the determination and application of sewer (if in a valid sewer service area) or septic densities, as applicable, application of site-specific sewer densities based on the character of the surrounding area and application of septic densities based on Highlands Land Use Capability Zones and RMP as required by Statute. This information applied to the Township's parcel dataset yielded the Township's total development potential expressed in units. This number of total units was then applied to a 20% affordable housing set-aside that resulted in the Township's final Realistic Development Potential ("RDP") calculation.

To reiterate, the Township's VLA identifies vacant sites which could be developed with 5 units or more applied to a 20% affordable housing set-aside which results in the Township's Fourth Round RDP calculation. The analysis appropriately excludes environmental constraints consistent with standard VLA procedures and applies Highlands regulations as required by Statute. The Township's VLA is more inclusive than a standard VLA absent Highlands RMP consideration in that it requires a review of underdeveloped parcels with property tax classifications 3B, 15C (public property) and 15F (other exempt). This is in addition to consideration of all privately and publicly owned vacant parcels, as well as underutilized sites such as driving ranges, farms in State Development and Redevelopment ("SDRP") Planning Areas 1 and 2, nurseries, golf courses not owned by their members, and non-conforming uses. It also factors the gross land area for lots with septic systems as opposed to net acreage after environmentally constrained areas are eliminated.

The Township's VLA results in a Fourth Round Realistic Development Potential ("RDP") of 22 units and Unmet Need (difference between Prospective Need Obligation and RDP) of 128 units.

1. Fourth Round RDP

The Township's Fourth Round VLA identified 9 parcels which qualify as contributing to the Township's RDP as summarized below and depicted on the accompanying VLA Map.

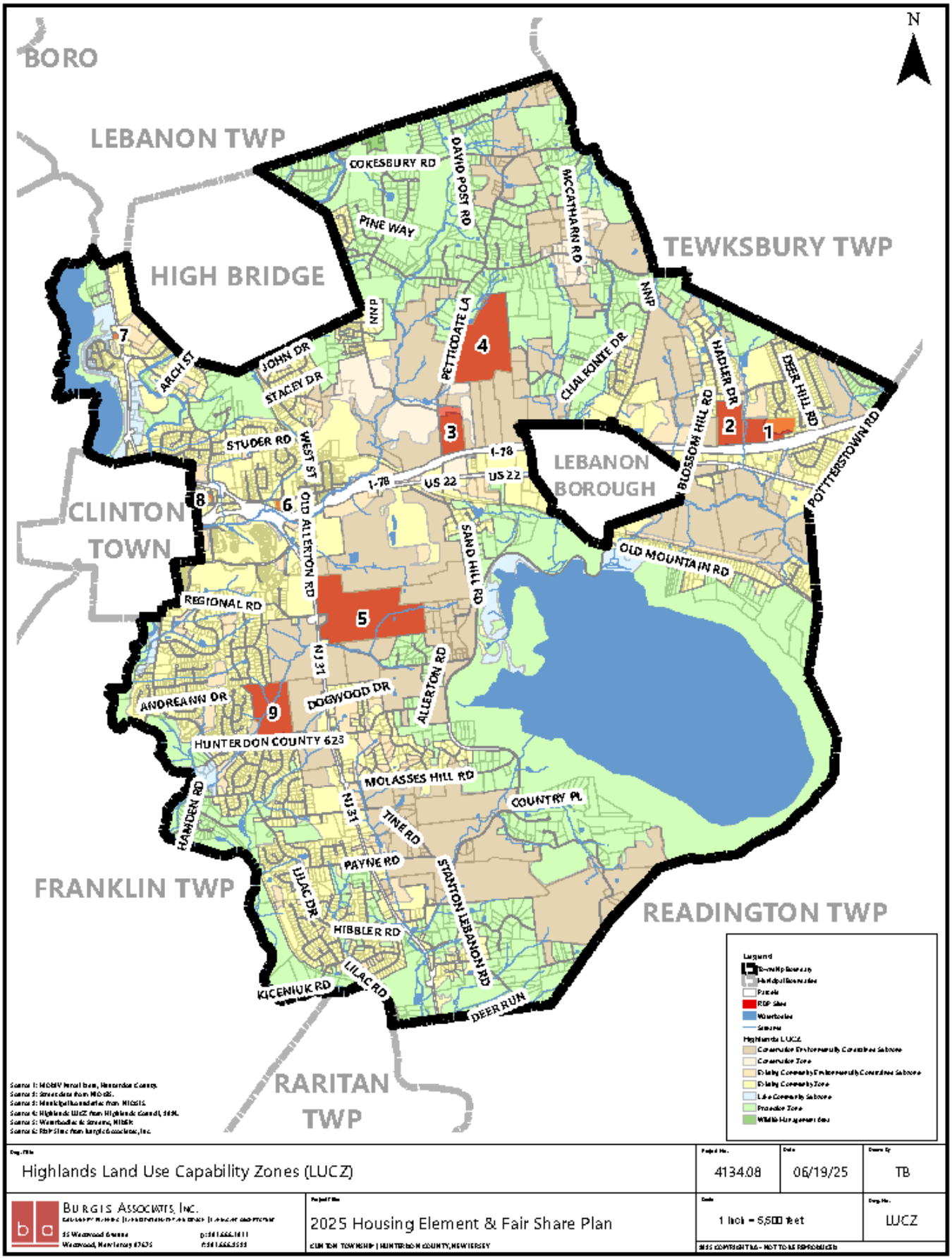
TABLE 28 – SUMMARY OF 4TH ROUND RDP SITES

Site ID	Block	Lot	Land Area (Ac)	Constrained Area (Ac)	Developable Area (Ac)	Highlands LUCZ	Sewer	Total Units (1)	RDP
1	4	20	53.16	15.47	37.69	ECZ: 21.03; CZ: 32.13	No	5.5	1.1
2	4	22	52.49	31.33	21.16	CZ	No	5.2	1.0
3	13	1	51.35	34.09	17.27	CZ	No	5.1	1.0
4	13	38	182.08	63.63	118.45	CZ	No	18.2	3.6
5	30	17	242.73	77.91	164.82	CZ	No	24.3	4.9
6	59	4	2.69	1.57	1.12	ECZ	Yes	6.7	1.3
7	68	24	1.67	0.06	1.61	ECZ	Yes	9.7	1.9
8	74	19 (2)	1.44	0.13	1.31	ECZ	Yes	25.0	5.0
9	82	54	91.79	59.58	32.20	CZ	No	9.2	1.8
Total			679.4	283.77	395.63	-	-	109	22

(1) Presumptive densities of 6 du/ac where there is sewer; 9 ac/du in EZC without sewer & 10/ ac/du in CZ.

(2) Formerly Block 74 Lots 18, 19 and a portion of Lot 16 that have been consolidated as the result of an approved subdivision and are included in the Fair Share Plan as a 25-unit 100% affordable development.

CZ: Conservation Zone; ECZ: Existing Community Zone.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LEBANON TWP
HIGH BRIDGE
TEWKSBURY TWP
CLINTON TOWN
LEBANON BOROUGH
FRANKLIN TWP
READINGTON TWP
RARITAN TWP
COKESBURY RD
DAVID POST RD
MACCATHARN RD
PINE WAY
PETTICOATE LA
CHALFONTE DR
HADLER DR
DEER HILL RD
BLOSSOM HILL RD
POTTERSTOWN RD
ARCH ST
JOHN DR
STACEY DR
STUDER RD
WEST ST
I-78
US 22
OLD ALLERTON RD
SAND HILL RD
OLD MOUNTAIN RD
REGIONAL RD
NJ 31
ALLERTON RD
ANDREANN DR
DOGWOOD DR
HUNTERDON COUNTY 623
MOLASSES HILL RD
COUNTRY PL
HAMDEN RD
TINE RD
PAYNE RD
LILAC DR
STANTON LEBANON RD
HIBBLER RD
KICENIUK RD
LILAC RD
DEER RUN
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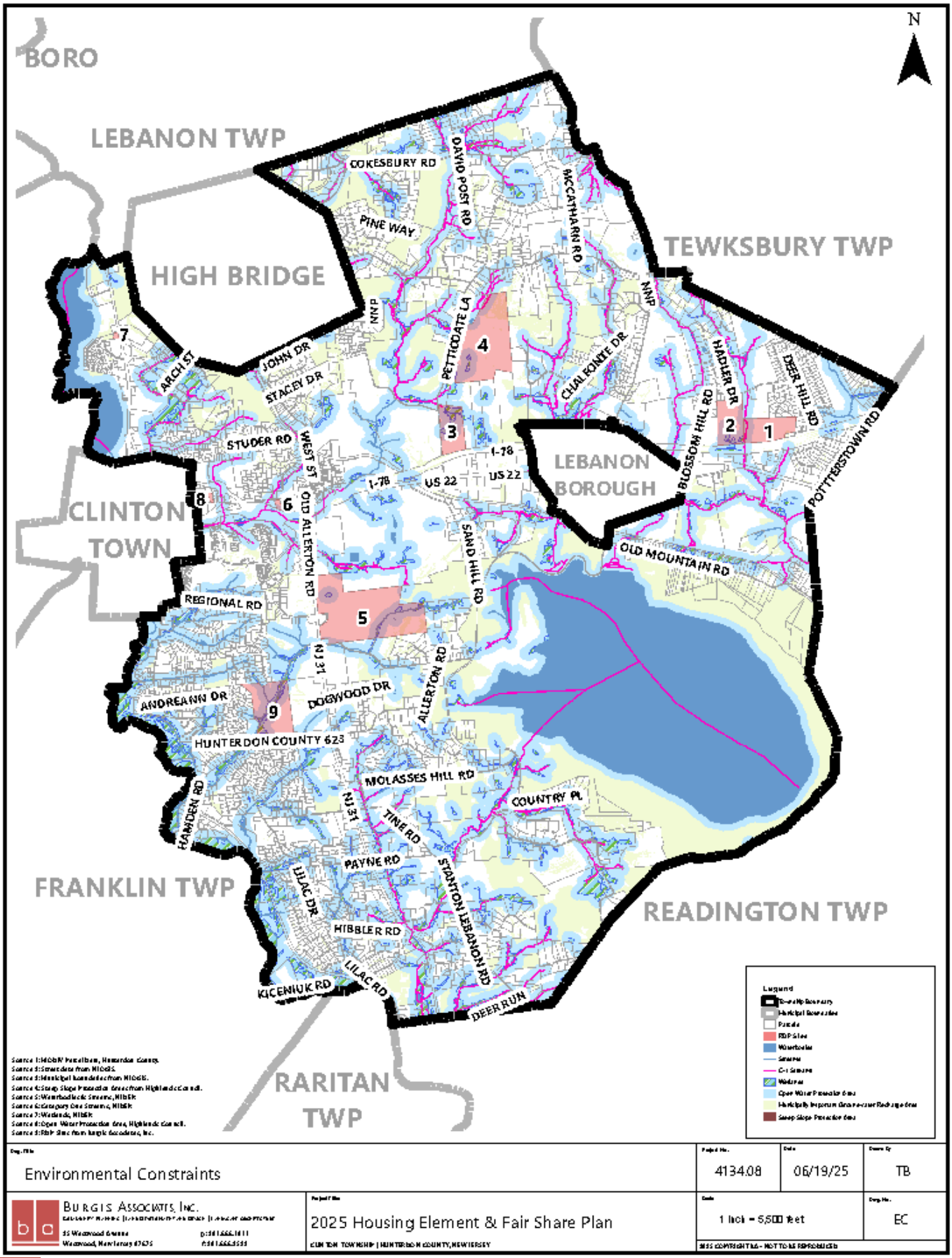
Legend
Highlands LUCZ
Highlands Land Use Capability Zones (LUCZ)
4134.08
06/19/25
TB
BURGIS ASSOCIATES, INC.
2025 Housing Element & Fair Share Plan
1 inch = 5,500 feet
LUCZ



Dwg. Title	Project No.	Date	Drawn By
Environmental Constraints	4134.08	06/19/25	TB

BURGIS ASSOCIATES, INC.
55 Westwood Avenue
Westwood, New Jersey 07675
p: 201.666.1811
f: 201.666.2553

Project Title: 2025 Housing Element & Fair Share Plan
CLINTON TOWNSHIP | HUNTERDON COUNTY, NEW JERSEY

Scale: 1 Inch = 5,500 feet
Dwg. No.: EC

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Section 4: Fair Share Plan

This Fair Share Plan component of the Township's 2026 Amended HE&FSP addresses the manner in which the Township will affirmatively address its affordable housing obligations through 2035 while at the same time address planning concerns, maintain the overall character of the community and demonstrate conformance with the Highlands Regional Master Plan. The Township's affordable housing obligations are as follows:

TABLE 29 – CLINTON TOWNSHIP AFFORDABLE HOUSING OBLIGATIONS SUMMARY

Category	Obligation	Unmet Need
1st & 2nd Round Obligation (1987-1999)	335 units	0 units
3rd Round Obligation (1999-2025)	337 units	0 units
4th Round Obligation (2025-2035)	150 units adjusted to 22-unit RDP through a VLA*	128 units (1)
Present Need (Rehabilitation) Obligation	0 units	N/A

* RDP = Realistic Development Potential. VLA = Vacant Land Adjustment.
(1) Inclusive of 32-unit redevelopment obligation.

4.1 GENERAL PROVISIONS

The following are maximum and minimum requirements which the Township's Fair Share Plan must comply with:

1. 4th Round Bonuses. 4th Round bonuses will be applied in accordance with N.J.A.C. 52:27d-311.k.

2. Very-Low Income and Low-Income Units. At least 50 percent of the units addressing the 4th Round Prospective Need obligation shall be affordable to very low-income and low-income households with the remainder affordable to moderate-income households. A minimum of 13 percent of the affordable units will be made available to very low-income households, defined as households earning 30 percent or less of the regional median income by household size.

3. Rental Component. At least 25 percent of the Round's Prospective Need obligation shall be met through rental units, including at least half of the rental units available to families.

4. Families. At least half of the actual units created to address the Round's Prospective Need obligation must be available to families.

5. Age-Restricted Cap. No more than 30 percent of all units developed or planned to meet the Round's Prospective Need obligation shall be met with age-restricted units.

4.2 PLAN COMPONENTS

Clinton Township's various plan mechanisms to address its affordable housing obligations are summarized below. The Plan Components Map at the end of this section illustrates the locations of all of the plan components identified herein.

All sites included in the Township's Fair Share Plan must meet the site suitability criteria set forth in N.J.A.C. 5:93-1.3 listed below. This analysis includes a review of the Township's several undeveloped plan mechanisms as it relates to the statutory site suitability criteria.

Approvable Site: A site that may be developed for low and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate-income housing.

Available Site: A site with clear title, free of encumbrances which preclude development for low and moderate-income housing.

Developable Site: A site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

Suitable Site: A site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

The Township's various affordable housing sites were selected based on a comprehensive range of factors including proximity to public and regional transportation, location within developed areas, surrounding development patterns and conformance with the Highlands RMP. In addition, the sites are located within or adjacent to existing water and sewer utilities allowing for future connectivity as may be required to accommodate the developments. Ultimately, the Township's 2026 Amended HE&FSP continues to provide a realistic opportunity to satisfy the Township's constitutional affordable housing obligation for the Fourth Round in a manner that conforms with the Highlands RMP.

1. Present Need (Rehabilitation) Obligation

   The DCA assigned Clinton Township a Present Need obligation of 0 units which the Township accepted on January 22, 2025 in its Resolution No. 2025-36.

2. Prior (First, Second & Third) Round Obligations

The Township's Court-approved 2018 Settlement Agreement with FSHC as amended establishes the Township's combined First and Second Round Obligation of 337 units and Third Round Prospective Need of 335 units. The Township utilized several plan mechanisms to satisfy the entirety of both of those obligations, including prior cycle credits, regional contribution agreement ("RCA") with New Brunswick, inclusionary rental development, 100% affordable rental development and senior housing as summarized in the following two tables, all of which are rental units except as otherwise indicated. Inclusionary developments consist of a mix of market-rate and affordable units typically with a minimum 20% affordable housing set-aside as required in the Highlands Region. For example, an inclusionary development of 100 units with a 20% affordable housing set-aside would consist of 80 market-rate units and 20 affordable units.

All of the Township's Prior Round plan mechanisms now have sufficient water and sewer capacity, with the exception of Block 77.01 Lot 3 in the AH-10 Zone, and remain realistic opportunities for inclusionary or 100% affordable development, as applicable. It is anticipated that all sites not currently developed are either in the process of being developed, pending Planning Board approval are will be submitting a complete application to the Planning Board within the near future.

TABLE 30 –FIRST & SECOND ROUND PLAN MECHANISMS

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Prior Cycle Credits (Pre-1986)						
Credits Without Controls	-	13	-	-	13	Complete
RCA with New Brunswick	-	108	-	-	108	Complete
Inclusionary & Group Home Rentals					55	
Village Green at Annandale	49/25	4	-	-	4	Complete
The Mews (Senior Housing)	47/3	35	x 1.33 (1)	3	38	Complete
CRC Longview Group Home	10/1, 9.01	4	x 2 (2)	4	8	Pending Site Plan App.
142-144 West Main Street	66/3, 4	3	x 2 (2)	2	5	Complete
Annandale Village, LLC	53/3	1	-	-	1	Approved
100% Affordable Rentals						
Willows at Annandale	60.03/26	66	x 2 (2)	66	132	Complete
100% Affordable – Municipally Sponsored Rentals						
Clinton Woods (84 Total Units)	82/4.04	26	-	-	26	Complete
Total	-	260	-	75	335	-

(1) Senior restricted bonus credits per Third Round Rules.
(2) Rental bonus credits per Third Round Rules.

TABLE 31 –THIRD ROUND PLAN MECHANISMS

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Inclusionary Development					139	
Headley Farm Estate	46/33, 33.01	104	-	-	104	Pending
108 Alton Place	79.07/1	28	-	-	28	Pending
Grayrock Road (AH-10 Zone)	77.01/2,4	3	-	-	3	Approved (2)
Grayrock Road (AH-10 Zone)	77.01/3	4	-	-	4	Durational Adjustment (3)
100% Affordable Municipally Sponsored Rentals						
Clinton Woods (84 Total Units)	82/4.04	58	x 2 (1)	58	116	Complete
Willows at Spruce Run (Family Units)	70/6, 6.01	80	-	-	80	Under construction
Willows at Spruce Run (Special Needs Units)	70/6, 6.01	2	-	-	2	Under construction
Total	-	279	-	58	337	-

(1) Rental bonus credits per Third Round Rules.

(2) The Greyrock Crossing, LLC application was approved by Planning Board in 2024.

(3) "Durational Adjustment" means a deferral of the municipal low and moderate-income housing obligation based on the lack of infrastructure pursuant to N.J.S.A. 52:27D-307(c)(2) and NJ.A.C. 5:93-4.

3. Fourth Round Obligation

The Township' will satisfy the entirety of its Fourth Round RDP of 22 units and Redevelopment Obligation of 32 units totaling 54 units with several plan mechanisms, including inclusionary and 100% affordable developments as summarized below, all of which are rental units except as otherwise indicated.

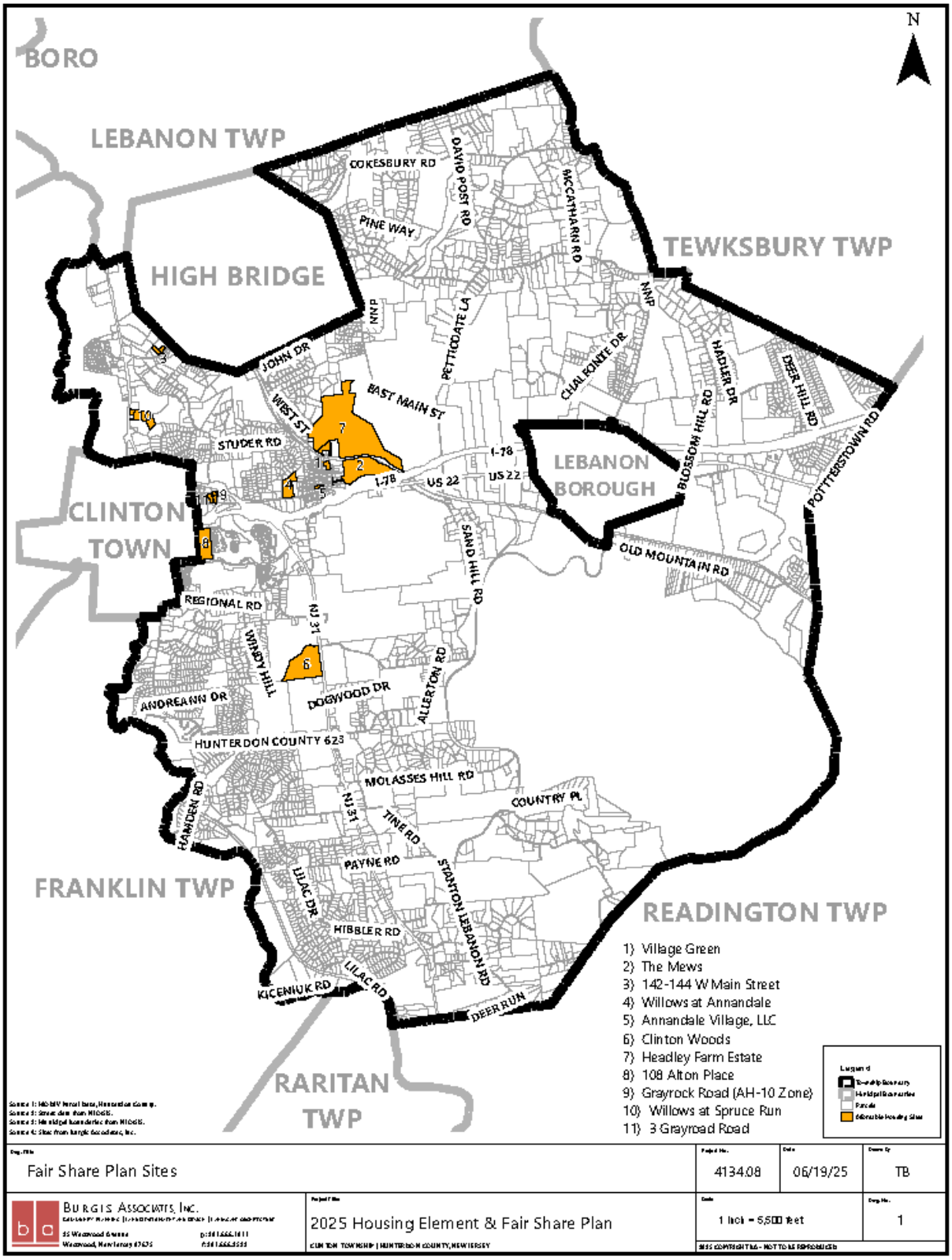
TABLE 32 –PLAN MECHANISMS TO ADDRESS COMBINED FOURTH ROUND RDP & REDEVELOPMENT OBLIGATION

Plan Mechanism	Block/ Lot	# Units	Bonus Credit Multiplier	Bonus Credits	Total Credits	Status
Inclusionary Development						
9 Main St./Village Green	49/25	2	1 x 0.5	1	3	To be rezoned
100% Affordable Municipally Sponsored Rentals						
Willows at Spruce Run (Special Needs)	70/6, 6.01	8	x 2	8	16	Under Construction
Willows at Spruce Run (Family)	70/6, 6.01	6	x 2	4 (1)	10	Under Construction
3 Grayrock Road	74/19	25	-	-	25	Approved
Total	-	41	-	13 (1)	54	-

(1) Bonus credits capped at a maximum of 25% of the total obligation.

4.3 Development Sites & Plan Mechanisms

The Township's affordable housing sites and plan mechanisms identified in Section 4.2 are discussed in this section. The Plan Components Map below illustrates the locations of the sites identified herein.



1. Prior (First, Second and Third) Rounds Plan Mechanisms

A. Credits Without Controls. In accordance with N.J.A.C. 5:93-3.2, Clinton Township initiated the Credits without Controls process in May 1999. The Township collected 200 surveys of which, 80 were submitted to COAH for review. Through its review, COAH found 28 of those units to represent income-eligible households, which all were from the Beaver Brook (Block 79.02) and Oak Knoll (Block 82.13) developments. COAH calculated the affordability factors of these developments and granted the Township eligibility for 13 credits without controls units. COAH's approval of these credits is included in the appendix of this document.

B. Regional Contribution Agreement (RCA). The Township entered into a regional contribution agreement (RCA) with the City of New Brunswick to transfer funds for the development of 108 affordable housing units for the same number of credits. On August 26, 2002, the Township made its final payment toward this agreement having paid a total of $2,265,000 to the City of New Brunswick in accordance with the RCA. The Roberts Bill, P.L. 2008, c. 46, eliminated the use of regional contribution agreements in satisfying affordable housing obligations precluding the Township from entering into any additional RCA's.

C. CRC Longview Group Home (Block 10 Lots 1 & 9.01). The 4 proposed group home bedrooms at Longview were a condition of approval in the Planning Board's Resolution No. 2009-17 approving CRC's preliminary subdivision application for the creation of 15 lots. The condition stipulates that CRC is required to fund the purchase by a qualified non-profit of 4 qualified group home bedrooms for persons with developmental disabilities. CRC submitted an active application to the Planning Board which is scheduled for a public hearing in July 2025. The developer will be required to confirm the required provision of affordable housing to be provide shortly after Board approval, if approved.

D. 142-144 West Main Street (Block 66 Lots 3 & 4). This West Main Street gut rehabilitation project was included in the Township's Second Round Plan accounting for 3-units as previously certified by COAH. In 1995, a certificate of occupancy was issued to the Hunterdon County Housing Corporation (HCHC) for the rehabilitation of 3 affordable units on the 3-acre property.

E. Village Green at Annandale (Block 49 Lot 25). Village Green at Annandale is a mixed-use development that had been approved with the inclusion of three units of affordable housing. In February 2015, amendments to the plan were approved increasing the number of affordable units to four. The site is now developed and occupied with a total of 26 units, including 4 affordable units and several commercial spaces. As noted in the section outlining the Fourth Round Fair Share Plan Mechanisms, the Township will rezone this site to facilitate the creation of an additional 8 units, 2 of which will be designated for low and moderate-income households, increasing the site total to 34 units, including 6 affordable units and allow 2 commercial spaces to remain.

F. The Mews Senior Housing (Block 47 Lot 3). The Mews is an existing inclusionary development consisting of 35 senior-restricted low- and moderate-income rental housing units. The 43-acres property received approval for the development of 221 units in 2001 which are now developed and occupied. The Township applied 38 senior-restricted housing units and bonuses, or a maximum of 25%, toward its Prior Round obligation of 335 units.

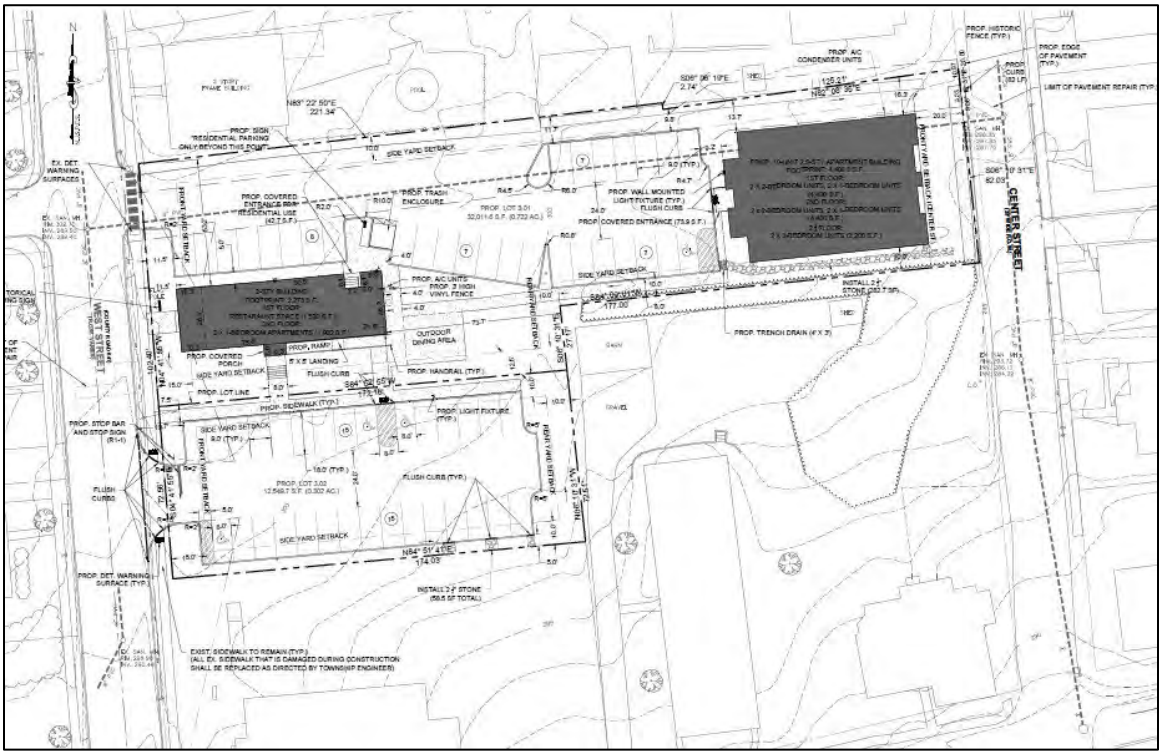
G. Willows at Annandale (Block 60.03 Lot 26). The property formerly known as the Beaver Brook Homestead is a 10.65-acre parcel located in Annandale Village. The Clinton Township Mayor and Council designated the site an "area in need of redevelopment" by Resolution No. 131-15, dated December 9, 2015. A redevelopment plan was subsequently prepared for the site, adopted by Ordinance No. 1080-16, dated January 27, 2016, establishing a new AH-4 Affordable Housing District. In August 2017, the developer, Ingerman, received an award for New Jersey Housing Mortgage and Finance Agency's competitive 9% financing. The site is now developed and occupied as of 2019.

The development consists of 66 100% affordable multifamily units allocated as one-, two- and three-bedroom units in accordance with COAH requirements. These units include a hybrid of flats and townhouses designed with architectural features consistent with the historic main house. In addition, the development features a central community green space, preservation of the northerly area of the site with environmentally sensitive areas and restoration of the historic main house for use as a community center.

The site is located within a developed area of the community adjacent to the Annandale Historic District within walking distance to the Annandale Train Station. While the northerly portion of the site is impacted by environmental constraints, the southerly portion of the site where the site is developed is generally unconstrained. The site is located in close proximity to highway Routes 78, 31 and 22 providing convenient regional access.

H. Annandale Village (Block 53 Lot 3). The Township's Annandale Village site formerly known as the "Old Municipal Building" or "Fox/seals" site is located in the heart of the Annandale historic district within walking distance to the Annandale Train Station. The approximately 1-acre flag-shaped parcel is developed with a large structure and associated paved areas deemed to have some historic significance given the building's original use as a general store, and later the Township's municipal offices, fire department, post office and other miscellaneous uses.

The Township adopted a Redevelopment Plan for mixed-use development of the site after which the selected developer received final site plan approval in 2020 to improve the existing historic building with a commercial space on the first floor and two apartments above, one of which will be affordable, and develop a second multifamily building consisting of 10 units fronting Center Street. The southern portion of the property was subdivided and will become a public surface parking lot for the surrounding neighborhood. The Township anticipates that construction on the site will begin shortly.



I. Clinton Woods (Marookian Site) (Block 82 Lot 4.04). The Clinton Woods site is an 84-unit 100% affordable multifamily development located on Route 31 S at Block 82 Lot 4.04. The property is a 6-acre flag lot that was subdivided from the larger Marookian tract to satisfy a portion of the Township's Third Round affordable housing obligation. The site is now developed and occupied.

J. Headley Farm Estate (Block 46 Lots 33 & 33.01). CRC Communities at Headley Farms Estates, Inc. ("CRC") seeks to construct an inclusionary housing development on the property identified as Block 46, Lots 33 and 33.01 on the official tax map of the Township (the "Property"). The Project includes 400 total units, including a 26% set aside that will yield 104 low- and moderate-affordable units (the "Project") on the 155-acre tract. This project will provide the highest affordable housing set-aside of any inclusionary development and highest total number of affordable units in any development in Clinton Township.

The development is contemplated around the existing road network and within the cleared areas of the site. While the periphery of the site has environmental constraints, the proposed development is generally away from those features within the developable 79.96 acres. Access to the site will be provided via East Main Street and Petticoat Lane with regional access via Routes 22, 78 and 31 in close proximity.

The Project is included in the Township's Third Round Affording Housing and Fair Share Plan pursuant to a Settlement Agreement with Fair Share Housing Center approved by a Judgment of Compliance and Repose entered by the Superior Court of New Jersey. In addition, the New Jersey Highlands Water Protection and Planning Council approved the Township's petition to create a Highlands Center which includes the site and parcels to the south to allow for the proposed density of 5 units per acre based on the developable 79.96 acres and required site improvements. The site was rezoned in the AH-8 Affordable Housing District by Ordinance No. 1121-18 adopted November 7, 2018 to facilitate the contemplated 400-unit inclusionary development of the site.

Where the project had previously been considered a durational adjustment site due to a lack of sufficient sewer and water, CRC has since obtained the necessary water and sewer capacities for the entirety of the 400-unit development. CRC reached a Settlement Agreement (see Appendix) with the Town of

Clinton on October 22, 2025 for a water reservation sufficient to accommodate 400 units. The site will be served by an on-site sewer treatment facility supported by a site-specific amendment to the applicable Water Quality Management Plan ("WQMP") approved by the Highlands Council (see Appendix).

The Project continues to present a realistic opportunity for the development of affordable housing in accordance with applicable law. CRC has submitted a preliminary site plan application to the Clinton Township Planning Board which has been deemed complete (see completeness determination in Appendix) and is scheduled for the Board's April 20, 2026 public meeting.

Water Quality Management Plan Amendment

The Project will be served by an on-site treatment and disposal system. Because the Project site is not currently in a sewer service area, the Project requires a Water Quality Management Plan (WQMP) amendment for the permitting of this system. This application for WQMP amendment was filed with the New Jersey Department of Environmental Protection (NJDEP) in December 2022. CRC has responded to all NJDEP comments on the WQMP amendment to date and the application remains pending.

In connection with the pending WQMP amendment, CRC has also engaged in extensive coordination with the Highlands Council regarding its consistency review of the WQMP amendment with the Regional Master Plan. In January 2023, the Highlands Council advised that its consistency certification would be subject to the adoption by Clinton Township of an ordinance establishing the Annandale Highlands Center. By Ordinance adopted on May 10, 2023, the Township implemented the Highlands Council approval of its Petition for Center Designation and established the Annadale Highlands Center.

The Highlands Council also required the submission and approval of a Site-Specific Water Deficit Mitigation Plan demonstrating the water conservation and mitigation measures for the Project. CRC engaged a consultant, One Water Consulting, LLC ("One Water"), to prepare the Site-Specific Water Deficit Mitigation Plan for the Project. CRC submitted the Site-Specific Water Deficit Mitigation Plan prepared by One Water to the NJDEP and Highlands Council in January 2025.

More recently, the Highlands Council required the submission of additional information from the Town of Clinton (the "Town") regarding water capacity for the Project and the submission of a completed and adopted municipal-wide Water Use and Conservation Management Plan ("WUCMP") for the Township. On September 11, 2025, the Highlands Council issued its consistency determination finding the proposed WQMP amendment consistent with the Highlands RMP. NJDEP's approval of the WQMP is imminent.

Status of Other NJDEP Approvals

CRC has also worked diligently to obtain other NJDEP approvals.

- CRC applied for a new Letter of Interpretation (LOI) from the NJDEP. The NJDEP has signed off on the Wetland Delineation Plan and CRC is awaiting the signed plan and issuance of the LOI.

The NJDEP recently advised that it misplaced CRC's initial submission which required CRC to resubmit and has delayed issuance of the LOI.

- CRC also submitted for and obtained NJDEP Flood Hazard Area Verification Approval dated December 14, 2023 for the Project.

Water Availability

Where the CRC site was previously a durational adjustment site due to a lack of available water capacity, as noted above, CRC executed a Settlement Agreement with the Town of Clinton on October 22, 2025 for a water reservation to accommodate the entirety of the 400-unit project.

On-Site Treatment and Disposal Facility

As noted, the Project will be served by an on-site treatment and disposal system. The Highlands Council issued CRC a Highlands consistency determination on September 11, 2025 rendering the requested WQMP amendment consistent with the Highlands RMP. NJDEP approval of the WQMP amendment is anticipated to be received shortly.

Ongoing Hydrogeological Investigation

CRC is also actively engaged in the due diligence and hydrogeological investigation necessary to advance the Project.

To that end, CRC engaged a consultant, Dwyer Geosciences, Inc. ("Dwyer Geosciences") to undertake the necessary investigation for the design of the Project's wastewater and stormwater management facilities, which in turn impacts CRC's ability to develop a complete and cost-effective site layout for the Project. This investigation takes significant time and is ongoing.

- As part of this investigation, test pits were completed during the first week of January of 2024. Based on the results of this testing, Dwyer Geosciences recommended the installation of monitoring wells so that a water source would be available for infiltration testing.
- Drilling of test borings and the installation of five monitoring wells were completed during the last week of June and first week of July of 2024. This was followed by a multiple-well aquifer test during the first week of July of 2024.
- Based on the results of the aquifer test, Dwyer Geosciences determined that additional ground-water elevation information was needed to calibrate the ground-water mounding analysis and more accurately account for interactions with the Project's stormwater basins.
- On or about November 15, 2024, water levels were obtained from the five monitoring wells as well as from older wells located on the Property in connection with prior geotechnical investigations.
- Based on these levels, Dwyer Geosciences determined that additional investigation of the aquifer hydraulic boundary conditions at the far southeast corner of the Property, where several fault zones are mapped by the New Jersey Geological Survey, was needed.
- An additional monitoring well was installed in this area in February of 2025.

- The additional information was used to calibrate a numerical ground-water flow model for the site to confirm wastewater discharge capacity for the project.

Based on the extensive hydrogeologic evaluation performed for the Project, Dwyer Geosciences has confirmed the feasibility of the subsurface discharge for the Project. This analysis will be supplemented in connection with the New Jersey Pollutant Discharge Elimination System ("NJPDES") discharge permit and Treatment Works Approval ("TWA") applications to be made to the NJDEP. Once CRC receives initial approval of the WQMP amendment, it will submit its NJPDES discharge permit application and prepare its TWA application while the NJPDES discharge permit application is under review.

Next Steps

CRC's preliminary site plan application pending before the Planning Board is scheduled for April 20, 2026. CRC will move forward with an application for final site plan approval for the Project upon receipt of NJDEP's approval of the WQMP amendment. In addition, CRC was designated a "conditional challenger" to the Township's 4th Round HE&FSP for participation in any subsequent mediation or fairness proceedings.

K. <u>108 Alton Place (Block 79.07 Lot 1).</u> 108 Alton Place is a rectangular 16.17-acre site located in the westerly area of the Township in close proximity to Routes 31, 22 and 78. Access to the site may be provided via Alton Place and/or St. Ledger Way. A riparian buffer impacts the northerly portion of the site while the remaining 13.73 acres of the site are unconstrained.

The development proposal features a 140-unit inclusionary development with a 20% affordable housing set-aside yielding 28 affordable units. This translates to a density of approximately 10 units per acre within the developable 13.73 acres of the site, including a mix of townhouse and multifamily units consistent with the surrounding development pattern generally comprised of townhouses developed at similar densities. All of the affordable units will be included as apartments.

The site was rezoned within the AH-6 Affordable Housing District by the adoption of Ordinance 1120-18 on September 12, 2018. Where the site was previously a durational adjustment site due to a lack of available water and sewer capacity, the developer of 108 Alton Place has since obtained sufficient water (see water capacity reservation in Appendix) and sewer capacity (see will serve letter from Clinton Township Sewerage Authority in Appendix) to accommodate the entirety of the 140-unit development.

L. Grayrock Road (AH-10 Zone) (Block 77.01 Lots 2, 3 & 4). The AH-10 Zone encompasses 3 parcels with frontage on Grayrock Road, Center Street and Old Highway 22. The site serves as a transitional area between the VR Village Residential Zone to the west and HC Highway Commercial Zone to the east. Lots 2 and 4 received site plan approval from the Planning Board in 2024 for the development of a three-story, 18-unit multifamily building that includes 3 affordable housing units.

M. Willows at Spruce Run 100% Affordable Development (Block 70 Lots 6 & 6.01). Willows at Spruce Run is a 96-unit 100% affordable development, including 10 special needs bedrooms, at Block 70 Lots 6 and 6.01. The site is roughly 12 acres in area fronting Route 31 N where the rear half of the site is impacted by steep slopes and other environmental constraints. The site received final site plan approval from the Planning Board in 2024 and is currently under construction. A portion of the special needs units are surplus credits that are applied to the Township's Fourth Round affordable housing obligation.

2. Fourth Round Plan Mechanisms

A. 9 Main Street/Village Green (Block 49 Lot 25). The Village Green site is a 1.93-acre corner lot with frontages on Main Street and East Street immediately south of the Annandale Train Station developed with a mix of commercial spaces and apartments. There are four existing affordable units which satisfy a portion of the Township's Third Round affordable housing obligation as previously discussed. The Township will rezone the property to a new AH-11 Affordable Housing District to accommodate the conversion of all but two of the existing commercial spaces into 8 new residential apartment units, including 2 low and moderate-income units to satisfy a portion of the Township's Fourth Round affordable housing obligation. The site will have a total of 34 units, including 6 affordable units and 2 commercial spaces. The existing site conditions are not expected to change significantly given most of the proposed improvements will occur in the interior of the existing structures.

B. Willows at Spruce Run (block 70 Lots 6 & 6.01). As indicated above, the Willows at Spruce Run is a 96-unit 100% affordable development currently under construction. The development generates surplus units including 8 of the 10 special needs units and 2 family units plus 12 bonus credits for a total of 26 credits applied to the Township's Fourth Round affordable housing obligation.

C. 3 Grayrock Road 100% Affordable Development (Block 74 Lot 19). This 1.44-acre parcel has frontages on Grayrock Road, Center Street and Fairview Avenue within walking distance to the C-1 Zone and bus Park and Ride on Center Street. The property received prior site plan approval for medical office use, the construction of which began nearly a decade ago but stalled shortly thereafter due to market conditions. The site has since remained vacant with some retaining walls, stormwater management and other site improvements installed. The Township adopted the 3 Grayrock Road Non-Condemnation Redevelopment Plan for Block 74 Lot 19 on August 13, 2025 by Ordinance No. 1215-2025 to facilitate the construction of a 25-unit 100% affordable multifamily development consistent with the AH-10 Zone located on the east side of Grayrock Road. The developer, Ingerman, received preliminary site plan approval from the Planning Board on October 6, 2025 via Resolution No. 2025-06 (see Appendix). The developer applied to the NJHMFA's 2025 round for 9% LIHTC financing, the results of which are anticipated in the near future.

4.4 Developments Not Included

The Township's Fourth Round Fair Share Plan addresses the entirety of its various affordable housing obligations with a variety of mechanisms that conform with the Highlands RMP. In accordance with the FHA-2 and pertinent COAH regulations, the Township is entitled to select development sites and plan mechanisms deemed most appropriate for the community in satisfying its affordable housing obligations. The Township received several development proposals not included in its Fair Share Plan as summarized below.

1. Exxon. Exxon proposed an inclusionary development on Block 30 Lot 30 as identified in Township tax records currently developed and occupied as a research and development facility. The development proposal which has ranged between 255 units and 750 residential units in addition to maintaining the existing R&D facility and potentially adding other uses is unrealistic for several reasons. The portion of the site where residential development is proposed is located in the Highlands Conservation Environmentally Constrained Sub-Zone (CECSZ) into which the extension of utilities is prohibited and where the development of affordable housing is discouraged pursuant to the Highlands RMP and Affordable Housing Implementation Guidelines.

   The proposal has not accurately reflected the actual development constraints impacting the property including Highlands land use capability zone designations and environmental features and associated buffers that greatly limit the potential development footprint of any prospective development of the site in addition to the R&D facility to remain. Exxon is entitled to initiate a Highlands Redevelopment process directly through the Highlands Council to develop an area equivalent to an additional 30% of the site's existing contiguous impervious coverage. However, to date, the developer has not pursued this opportunity.

   The site only has permits for on-site industrial water and wastewater utilities. At present, it is unclear whether the site can obtain NJDEP permitting for on-site residential water and wastewater utilities given the presence of C-1 streams and associated buffers impacting the site. In addition, the Applicant has not specified how much water and sewer capacity will be required for the proposed nonresidential uses of the site leaving to question the amount of remaining capacities available for residential development. Furthermore, it remains unclear how the proposed development can occur in the area of the existing spray field that supports the nonresidential use which may or may not be able to be converted into a new on-site wastewater treatment system that discharges wastewater into the ground. Therefore, the Applicant has yet to demonstrate the feasibility of developing any of the various iterations of residential development on the site. If some iteration of residential development on this site is included in the Township's Fourth Round Plan, the site would be a durational adjustment site for the reasons stated above.

   Finally, the developer has not submitted a comprehensive plan for the site demonstrating that the various undefined mix of uses can be supported in consideration of the above. It is unclear that residential development can safely occur adjacent to the existing industrial use to remain, which again is undefined. The site is also not proximate to public transportation and is not served by public sewer or water which are significant considerations in the Township's affordable housing site selection criteria.

2. Beaver Brook Country Club. Beaver Brook Country Club proposed an inclusionary development on the designated golf course open space areas of the Country Club property identified as Block 79.01 Lot 4, Block 79.02 and Block 79.10 Lot 10 in Township tax records. Based on a title search of the subject parcels and prior site approvals, the prospective developer does not have the right to develop these areas of the site with housing. In addition, the developer has not secured water or sewer capacity to serve the development and would therefore be a durational adjustment site if included in the Township's Fourth Round Plan.

3. Hionis. Representatives of property listed as Block 4 Lots 20, 22 and 23 in Township tax records proposed an inclusionary development of the site. However, the site does not have enough sewer and water capacity sufficient to accommodate the proposed 500 to 700 units on the property. In addition, the proposal does not take into consideration the appliable Highlands regulations and environmental constraints impacting the property that significantly limit the developable area and prohibit the extension of utilities.

4. Solar Field. The owner of Block 47 Lots 18 and 19 had proposed multifamily development of the approximately 3-acre site currently developed with a solar array. However, the conceptual development of the site was deemed unrealistic and infeasible as the developer could not demonstrate a clear path to obtaining the necessary water and sewer capacity to support the development.

4.5 Crediting Documentation and Ongoing Compliance

Clinton Township commits to adhering to the State's Fourth Round compliance requirements. In addition, all crediting documentation submitted to and approved by the Court as part of the Township's Third Round Housing Element and Fair Share Plan remains on file with and accessible from the Court.

On February 11, 2026, the Township adopted its Fourth Round Spending Plan via Resolution No. 2026-57 (see Appendix) and Intent to Bond via Resolution No. 2026-58 (see Appendix).

4.6 Consistency with State Planning Initiatives & Other Plans

As noted in Section 1 of this plan, a HE&FSP must also include:

- An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission; and

- An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

Accordingly, the following subsection analyzes the consistency of this HE&FSP to the above referenced state planning initiatives as well as consistency with the Highlands Regional Master Plan. For municipalities in the Highlands Region, the FHA-2 requires an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands

in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for P.L. 2024, CHAPTER 2 32 redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan.

1. Highlands Regional Master Plan ("RMP")

   On April 18, 2024, the Highlands Council adopted the Highlands Affordable Housing RMP Amendment. This Amendment provides standards based on the RMP and FHA-2 regarding suitable locations for affordable housing based on the Highlands RMP goals, objectives and policies. The Highlands Council subsequently published its Highlands Affordable Housing Implementation Guidelines dated October 2024 to assist municipalities in evaluating Highlands RMP conformance when reviewing proposals for residential development. The following are Highlands RMP goals and objectives that relate to the development of affordable housing in the Highlands Region:

   - Compliance mechanisms that limit development should be favored over those that promote more development.

   - Inclusionary developments provide density bonuses for developers to support the imposition of a set aside. Although municipalities have the right to rely on "inclusionary" developments to satisfy their Highlands Municipal Affordable Housing Guidelines affordable housing obligations, reliance on this technique is discouraged to limit the impact on the scarce resources of the region. Reliance on 100% affordable projects and other techniques that place less stress on infrastructure are encouraged to reduce impact on the ecosystem and water resources.

   - Regarding the design of affordable housing projects, energy usage can increase the cost of housing, as can dependence on cars. Incorporation of green building standards as outlined by the EPA should be part of any housing project. Solar readiness should be considered in design as on-site solar generating facilities can assist in offsetting electricity costs and the proper orientation of buildings can provide energy savings. Finally, planning for future electric vehicle (EV) charging is of particular importance for multi-family and apartment style housing where it is typically more difficult for occupants to install their own chargers than at a single-family home.

   - Affordable housing site criteria:

     (1) Sites should be proximate to public transportation options such as bus and/or train service. A site qualifies as being "proximate" to transit if it is within a half mile of an existing or proposed transit stop and that it is a walkable route (i.e. accessible by sidewalks). Sites within ½ mile of a transit stop may be eligible for one unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius surrounding a New Jersey Transit rail or bus station.

     (2) Sites should be accessible to schools.

     (3) Sites should be accessible to employment, using the walkable/transit criteria above.

(4) Sites should be proximate to shopping areas, using the criteria above.

(5) Sites should be served by public water and public sanitary sewer.

(6) Sites should be close to recreational opportunities.

(7) Sites should avoid regulated environmental resources of the Highlands Region as set forth in the Highlands Act and/or the regulations of the New Jersey Department of Environmental Protection including but not limited to: special environmental zones; Highlands open water buffers; prime/municipally important groundwater recharge areas; vernal pool buffers; significant natural areas, areas of severe steep slopes (20%+).

(8) Sites that necessitate significant extension of water and sewer service should be avoided. Said another way, in accordance with the mission of the Highlands Act, municipalities should be extremely judicious in extending sewer and water service and thereby encouraging the development the Legislature enacted the Highlands Act to suppress.

(9) Sites should comply with the most recent Flood Hazard Area rules.

(10) Sites should not be located in close proximity to industrial or other uses with the potential for health and safety impacts.

2. State Development and Redevelopment Plan (SDRP)

The State Development and Redevelopment Plan was adopted in 2001 prior to the State Legislature's adoption of the New Jersey Highlands Water Protection and Planning Act in 2004 and subsequent Highlands Council's adoption of the Highlands Regional Master Plan in 2008. The Highlands RMP governs the development of Highlands-conforming municipalities apart from the SDRP. The FHA-2 in prescribing the methodology to calculate a municipality's land capacity factor recognizes the Highlands Preservation and Planning Areas, Highlands Land Use Capability Zones (LUCZ) and whether sites are within a designated sewer service area as criteria for determining the municipality's land capacity factor. Furthermore, the FHA-2 exempts all lands within the Highlands Preservation Area and not in the Highlands Existing Community Zone (ECZ) or Highlands Center from generating an affordable housing obligation as such locations are contrary to the goals, policies and objectives of the Highlands RMP.

3. Multigenerational Family Housing Continuity Commission

The Multigenerational Family Housing Continuity Commission was established by the State of New Jersey in 2021. As noted in N.J.S.A. 52:27D-329.20, one of the primary duties of the Commission is to "prepare and adopt recommendations on how State government, local government, community organizations, private entities, and community members may most effectively advance the goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity, through the modification of State and local laws and policies in the areas of housing, land use planning, parking and streetscape planning, and other relevant areas." As of the date of this HE&FSP, the Multigenerational Family Housing Continuity Commission has not yet adopted any recommendations.

Appendix

4th Round Complaint for Declaratory Relief Pursuant to AOC Directive #14-24 w/ Resolution

Jonathan E. Drill - Attorney ID: 019911983
STICKEL, KOENIG, SULLIVAN & DRILL, LLC
571 Pompton Avenue
Cedar Grove, New Jersey 07009
Ph: (973) 239-8800
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Email: jdrill@sksdlaw.com
Attorneys for Declaratory Plaintiff
Clinton Township

IN THE MATTER OF THE APPLICATION OF THE CLINTON TOWNSHIP	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUNTERDON COUNTY DOCKET NO.: HNT-L-_____-25 Civil Action AFFORDABLE HOUSING COMPLAINT FOR DECLARATORY RELIEF PURSUANT TO AOC DIRECTIVE #14-24

Declaratory Plaintiff, the Clinton Township (the "Township" or "Clinton"), a municipal corporation of the State of New Jersey, with principal offices located at 1225 Route 31 South, Lebanon, NJ 08833, by way of this Declaratory Judgment Action ("DJ Action") filed pursuant to AOC Directive # 14-24 alleges and says the following:

BACKGROUND AND JURISDICTION

1. The Township is a municipal corporation of the State of New Jersey.

2. The Clinton Township Planning Board (the "Planning Board") is a municipal agency created and organized under the Municipal Land Use Law (the "MLUL"), specifically, N.J.S.A. 40:55D-23, and is responsible for, among other duties and obligations, adopting the Housing Plan element and Fair Share Plan element ("HPFSP") of Clinton 's Master Plan pursuant to N.J.S.A. 40:55D-25.

3. Through this DJ Action, the Township seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the "Program") pursuant to P.L. 2024, c.2 (hereinafter, the "Act") and secure the jurisdiction of the Court pursuant to AOC Directive # 14-24; (b) have the Program and the Court approve Clinton's Fourth Round Present Need and Prospective Need affordable housing obligations as set forth in the resolution adopted by the Township, which is, attached hereto as **Exhibit 1**; (c) have the Program and the Court approve a HPFSP to be adopted by the Planning Board and endorsed by the Township Council and issue a "Compliance Certification" pursuant to the Act or other similar declaration such as a judgment of compliance and repose; (d) to the extent it is not automatically granted pursuant to the Act, have the Program and the Court confirm the Township's immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of the Fourth Round, i.e., through June 30, 2035; and

(e) have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receives and obtains all protections as afforded to it in complying with the requirements of the Act, including but not limited to all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

APPROVAL OF PRESENT NEED AND PROSPECTIVE NEED NUMBERS

4. The Township repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act adopted a methodology to calculate every municipality's fair share present need and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

6. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's fair share present need and prospective need affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

7. The DCA issued said report on October 18, 2024 (the "DCA report").

8. Pursuant to the DCA report, the DCA calculated the Township's fair share present need obligation at zero (0) units and the Township's fair share prospective need obligation at 174 units.

9. Pursuant to the Act, the DCA report is non-binding and each municipality, after considering the DCA calculated numbers, must determine its present and prospective fair share obligations for affordable housing in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and -304.3 by resolution, which resolution shall describe the basis for the municipality's determination and bind the municipality to adopt a HPFSP pursuant to the Act.

10. The Township accepts the DCA calculated Present Need number of zero (0) units and, for the reasons set forth in the memo attached to the resolution adopted by the Township which is attached hereto as **Exhibit 1**, the Township accepts the methodology used by the DCA to calculate its fair share prospective need number but, applying more up to date data based on local knowledge and records, including but not limited to land use approvals granted, building permits issued, and conservation easements recorded, modifies the DCA prospective need number from 174 to 109 units and determines that its fair share affordable housing obligations for the Fourth Round are: present need of zero (0) units, and prospective need of 109 units.

11. The Township seeks the approval of and confirmation by the Program and the Court of its fair share present need and prospective need obligations for the Fourth Round as set forth in the resolution with attached exhibits attached hereto and made a part hereof as **Exhibit 1**.

12. As set forth in the resolution, the Township reserves all rights to amend its fair share affordable housing obligations in the event of legislative changes to the Act, or by judicial decisions altering the Act or the meaning of the Act.

WHEREFORE, the Township seeks a declaratory judgment for the following relief:

a. Declaring that the Township has established jurisdiction with the Program and with the Court so as to confirm its fair share present and prospective affordable housing obligations as set forth in the resolution attached hereto as Exhibit 1;

b. Declaring the fair share present and prospective affordable housing obligations of the Township under the Act;

c. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations; and

d. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable regulations.

COUNT II

APPROVAL OF HOUSING PLAN ELEMENT AND FAIR SHARE PLAN ELEMENT

13. The Township repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

14. Pursuant to the Act, a HPFSP to address the Township's fair share affordable housing obligations must be prepared and adopted by the Planning Board by June 30, 2025.

15. The Township hereby commits to have such a HPFSP prepared and adopted in accordance with the Act, which HPFSP will apply as appropriate and in accordance with the Act; any applicable adjustments, including but not limited to a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; an adjustment based upon any ruling in litigation involving affordable housing

obligations; and any other applicable adjustment permitted in accordance with the Act and/or applicable regulations.

16. Upon the Planning Board's adoption of the HPFSP, the Township will file it with the Court within 48 hours of the adoption of the HPFSP or prior to June 30, 2025, whichever is sooner, for submission to the Program and will seek approval of the HPFSP and the issuance of the relief set forth below.

WHEREFORE, the Township seeks a declaratory judgment for the following relief:

a. Declaring that the Township has established jurisdiction with the Program and with the Court so as to confirm its fair share present and prospective affordable housing obligations as set forth in the resolution attached hereto as Exhibit 1;

b. Declaring the fair share present and prospective affordable housing obligations of the Township under the Act;

c. Declaring the approval of the Township's HPFSP which is subsequently adopted by the Planning Board, endorsed by the Township Council, and filed with the Court for submission to the Program, including, as appropriate and applicable, any and/or all of the adjustments referenced above;

d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations;

e. Declaring that the Township is constitutionally compliant and issuing a compliance certification or judgment of compliance and repose or such other protections as afforded to it in complying with the requirements of the Act, including but not limited to all immunities and presumptions of validity necessary to satisfy its affordable fair share housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation for the Fourth Round (beginning July 1, 2025 and ending June 30, 2035); and

f. Declaring such other relief that the Program and/or Court deems just and proper within the parameters of the Act and applicable regulations.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Clinton Township

By: Jonathan E. Drill

Date: January 23, 2025

CERTIFICATIONS PURSUANT TO RULE 4:5-1(b)(2) AND -1(b)(3)

In accordance with R. 4:5-1(b)(2), I certify that the matter in controversy is not currently the subject of any other court action or arbitration proceeding now pending or contemplated. I certify that at this time I do not contemplate filing any other court action or any arbitration proceeding. I certify that at this time no additional parties should be joined in the action. In accordance with R. 4:5-1(b)(2) and -1(b)(3), I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b). I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Clinton Township

By: Jonathan E. Drill

Date: January 23, 2025

DESIGNATION OF TRIAL COUNSEL PURSUANT TO
R. 4:5-1(c) and R. 4:25-4

In accordance with R. 4:5-1(c) and R. 4:25-4, Jonathan E. Drill, Esq. of Stickel, Koenig, Sullivan & Drill, LLC is hereby designated as trial counsel for Defendant.

STICKEL, KOENIG, SULLIVAN & DRILL, LLC
Attorneys for Declaratory Plaintiff
Clinton Township

By: Jonathan E. Drill

Date: January 23, 2025

TOWNSHIP OF CLINTON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

RESOLUTION
2025 – 36

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLINTON COMMITTING TO COMPLY WITH 4TH ROUND AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act ("FHA") which is codified in N.J.S.A. 52:27D-301 et seq. (hereinafter the "Amended FHA") which governs the Fourth Round (2025-2035) of affordable housing obligations of all municipalities in New Jersey; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding calculations of the fair share present need and prospective need obligations of all municipalities in New Jersey on or before October 20, 2024, and further provides that municipalities shall determine their fair share present need and prospective need obligations in accordance with the formulas established in the Amended FHA by adoption of a resolution which shall describe the basis for the municipality's determination, and which resolution shall also commit the municipality to adopt a housing plan element and a fair share plan element ("HPFSP") of the Master Plan based on the determination; and

WHEREAS, the Amended FHA also establishes the Affordable Housing Dispute Resolution Program (the "Program") within the judiciary for the purposes of resolving disputes associated with complying with the Amended FHA and obtaining a certificate of compliance with the Amended FHA, which is the equivalent of a judgment of compliance and repose for the Fourth Round of affordable housing obligations; and

WHEREAS, the Administrative Director of the Administrative Office of the Courts ("AOC") has established procedures for the Program's operation as set forth in AOC Directive #14-24, which requires any municipality which wishes to participate in the Program to file a Declaratory Judgment action in the County in which the municipality is located and attach a copy of a resolution committing to the municipality's fair share present need and prospective need numbers as calculated by the municipality after considering the DCA's non-binding calculations of same;

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its non-binding calculations of the fair share obligations for all municipalities; and

WHEREAS, the DCA Report lists in an Appendix at the end of the DCA Report the Fourth Round fair share obligations of Clinton Township (the "Township") as follows: a present need obligation of zero (0) units and a prospective need obligation for of 174 units; and

WHEREAS, the Township has reviewed the data utilized by DCA in accordance with the formulas set forth in the Amended FHA and concludes that modification of the DCA calculated prospective need number is appropriate based on the latest up to date data, specifically, a modification of the prospective need from 174 to 109, the basis of which is described in the January 17, 2025 memo (including appendices thereto) from Thomas Behrens, PP, AICP to the Township Mayor and Council (the "Planner's memo"), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Amended FHA further provides that all parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the former Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including the Amended FHA or binding court decisions (see N.J.S.A 52:27D-311 (m); and

WHEREAS, based on the foregoing, the Township determines that: its present need number is zero (0) units in accordance with the DCA calculation as set forth in the DCA report; and its prospective need number is 109, as described in the Planner's memo (including appendices) attached hereto as **Exhibit A**; and

WHEREAS, based on the foregoing, the Township commits to have adopted a HPFSP in accordance with the Amended FHA, which it will subsequently file with the Court for submission to the Program, and which will may include credits, adjustments, and compliance mechanisms adopted by COAH, and such other adjustments that may be available under the Amended FHA; and

WHEREAS, the Township reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Township also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations of the Township's fair share affordable housing obligations as determined in the within resolution, the Township reserves the right to take such position as it deems appropriate in response thereto, including that its Fourth-Round prospective need obligation should be lower than determined herein; and

WHEREAS, in light of the above, the Township finds that it is in its best interest to determine its present need and prospective need fair share affordable housing obligations in the within resolution, to declare its commitment to have adopted a HPFSP to implement its fair share obligations subject to the reservations set forth herein, and to authorize and direct its affordable housing counsel to file a declaratory judgment action in accordance with AOC Directive #14-24 to seek a certification of compliance with the Amended FHA and/or a judgment of compliance and repose;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Township hereby determines that its Fourth Round present need obligation is zero (0) units and prospective need is 109 units, subject to all reservations of rights set forth above.

3. The Township hereby further commits to have adopted a HPFSP to implement its fair share obligations which it will subsequently file with the Court for submission to the Program and may include credits, adjustments, and compliance mechanisms adopted by COAH, and such other adjustments that may be available under the Amended FHA, subject to all reservation of rights set forth above.

4. The Township hereby directs its affordable housing counsel to file a declaratory judgment complaint in Hunterdon County within 48 hours after adoption the within resolution, attaching the within resolution as an exhibit.

5. The Township authorizes its affordable housing counsel to submit and/or file this resolution with such other entities as may be determined to be appropriate.

6. This resolution shall take effect immediately, according to law.

ATTEST:

Lindsay Heller
Acting Township Clerk

Hon. Brian K. Mullay
Mayor

ADOPTED: January 22, 2025

CERTIFICATION

I, Lindsay Heller, Acting Clerk of the Township of Clinton, County of Hunterdon, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Mayor and Council of the Township of Clinton at its regular meeting held on January 22, 2025.

Lindsay Heller, Acting Township Clerk

EXHIBIT A

BURGIS ASSOCIATES, INC.

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

PRINCIPALS:
Joseph H. Burgis PP, AICP
Edward Snieckus, Jr. PP, LLA, ASLA
David Novak PP, AICP

MEMORANDUM

To: Township of Clinton Mayor and Council
From: Thomas Behrens, Jr., PP, AICP
Subject: Resolution of 4th Round Present and Prospective Need Analysis
Date: January 17, 2025
BA#: 4134.08

On March 20, 2024, Governor Murphy signed into law Bill A4/S50 amending the Fair Housing Act ("FHA"), abolishing the Council on Affordable Housing ("COAH") and establishing a new municipal affordable housing compliance program for the 4th Round extending from July 2025 to July 2035. This legislation includes the 4th Round compliance rules and procedures and prescribes the methodology by which the New Jersey Department of Community Affairs ("DCA") was directed to prepare Statewide, regional and municipal housing need numbers by October 20, 2024. The DCA subsequently released on October 18,2024 its "*Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*" report which provides non-binding, advisory municipal housing need calculations based on a Statewide Prospective Need of 84,698 low and moderate-income units. The Land Capacity Factor data (mapping) component was released by the DCA on November 27, 2024, more than one month after the reporting deadline. While the DCA was required to calculate Statewide municipal affordable housing obligations, the legislation provides that the DCA's calculations are not binding and each municipality is required to determine its own 4th Round housing obligations through the adoption of a resolution by January 31, 2025.

The DCA's calculation of Clinton Township's 4th Round fair share affordable housing obligations are as follows: Present Need Obligation of 0 units and Prospective Need Obligation of 174 units. Our review of the DCA's October 2024 report concludes the methodology utilized in its calculations complies with the legislation. However, as described in greater detail herein, applying more up to date data based on local knowledge and records, including but not limited to land use approvals granted, building permits issued, conservation easements recorded, Clinton Township's determination of its Prospective Need obligation should be 109 units, which represents a modification of the DCA calculation of 174 units. Specifically, there are sites and acreage that should not be included in the Township's Land Capacity Factor and should therefore be excluded resulting in the modification of the Township's Prospective Need Obligation.

This memorandum provides a summary of Clinton Township's determination of its 4th Round Present Need and Prospective Need Obligations.

Present Need Obligation

The DCA's October 2024 report assigns Clinton Township a 4th Round Present Need (Rehabilitation) Obligation is 0 units. Present Need refers to existing housing units occupied by low and moderate-income households deemed to be 50 years or older and be overcrowded or have a lack of adequate kitchen or plumbing facilities. Based on our review of the methodology and data utilized by the DCA to calculate Clinton Township's Present Need Obligation, we agree with this number, and it is our opinion that the Clinton Township should determine that its Present Need is zero (0) units.

Prospective Need Obligation

The municipal Prospective Need Obligations in the DCA's October 2024 report are derived as a share of the prospective need of the region in which the municipality is located. Clinton Township is located in Region 3 which includes Hunterdon, Middlesex and Somerset Counties. The Region 3 Prospective Need is 11,604 units allocated to municipalities through the region, excluding designated Qualified Urban Aid Municipalities, which are exempt under the current legislation. Municipal prospective need obligations are calculated by averaging three factors: Equalized Nonresidential Valuation Factor, Income Capacity Factor, and Land Capacity Factor, as described below.

Equalized Nonresidential Valuation Factor

Pursuant to the 2024 FHA amendments, the municipal Equalized Nonresidential Valuation Factor shall be determined as follows: "*to determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of such, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in the nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor.*"

The DCA methodology determined the Township has a 0.38% share of Region 3's change in equalized nonresidential valuation from 1999 to 2023. Based on a review of the DCA's methodology and data as they pertain to Clinton Township's assigned Equalized Nonresidential Valuation Factor, we agree with the DCA's calculation of this factor.

Income Capacity Factor

In accordance with the 2024 FHA amendments, the municipal Income Capacity Factor shall be determined by calculating the average of the following measures: *"the municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of $100 below the lowest median household income in the region; and the municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of $100 below the lowest median household income in the region, weighted by the number of the households in the municipality."*

The Income Capacity Factor is intended to compare a municipality's income to that of the lowest-income municipality in its housing region. The DCA's October 2024 report determined the Township has an Income Capacity Factor of 1.88%. Based on a review of the DCA methodology and data as they pertain to Clinton Township's assigned Income Capacity Factor, we agree with the DCA's calculation of this factor.

Land Capacity Factor

The Land Capacity Factor is intended to quantify the total developable acreage in a municipality as a proportion of the developable acreage in the Region. The DCA, in its November 2024 release of the Land Capacity Factor data, revealed that it relied on the 2020 Land Use / Land Cover (LULC) maps developed by the New Jersey Department of Environmental Protection (NJDEP) as well as the 2024 MOD-IV Property Tax List data from the Division of Taxation in the Department of Treasury, and construction permit dates from the DCA.

In accordance with the 2024 FHA amendments, the municipal Land Capacity Factor shall be determined by: "*estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the 'land use / land cover data' most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located*."

The legislation identifies the primary data sources and weighting factors to utilize in calculating a municipality's Land Capacity Factor but does not specify how to process the data. As directed, the DCA's October 2024 report establishes such a process for calculating the Land Capacity Factor, which includes the following steps:

1. Divide the weighting regions established by municipality in accordance with the 2024 FHA amendments.

2. Utilize land use/land cover data to identify vacant, developable lands. The DCA's October 2024 report identifies the codes and descriptions of the land use/land cover data used in this process. They include: cropland and pastureland; orchards/vineyards/nurseries/horticultural areas; deciduous forest areas; coniferous forest areas; plantations; mixed forest areas; old field areas; phragmites dominate old field areas; deciduous brush/shrubland; coniferous brush/shrubland; mixed deciduous/coniferous brush/shrubland; severe burned upland vegetation; and undifferentiated barren lands.

3. These lands initially deemed vacant were then further analyzed to remove rights-of-way as well as developed properties. For the latter, the DCA utilized MOD-IV tax data and selected underlying tax parcels with property class codes for residential, commercial, industrial, apartment, railroad, and school uses.

4. Construction permit data was then analyzed to capture more recent development activities that may not have otherwise been reflected in the land use/land cover or MOD-IV tax data.

5. Areas still deemed developable were then excluded based on other limiting factors including: open space, preserved farmland, category one waterways and wetlands (and associated buffers based on special area restrictions), steep slopes exceeding 15 percent, and open waters.

6. Due to limitations resulting from inconsistencies between data sources, the resulting mapping included instances of small land areas caused by an incongruous alignment of geospatial layers. To eliminate these "slivers" of leftover land, the DCA eliminated any feature part with an area less than 2,500 square feet or minimally 25 feet by 100 feet presumed to be a threshold for determining if an area of land is developable.

7. Finally, all remaining lands deemed to be developable in the municipality were summed and divided by the Region 3 developable acreage to determine the Township's share of developable land in the region referred to as its Land Capacity Factor.

Our review of the DCA's Land Capacity Factor calculations for the Township concludes the DCA methodology is consistent with the FHA amendments but applying more up to date data based on local knowledge and records, including but not limited to land use approvals granted, building permits issued, conservation easements recorded, confirms certain sites and acreage should be eliminated from the calculation as detailed in Appendix A attached hereto.

Before describing our analysis, it must be emphasized that the data released by the DCA consisted of maps with areas of pink colored shapes (for lack of a better description) representing what appeared to be developable land. After inserting block and lot lines on the maps, we were able to analyze the areas. Our analysis utilized the following criteria and results in the exclusion of a number of lots from lands the DCA identified as developable:

1. Parcels that were included as plan mechanisms in the Township's 3rd Round Housing Element and Fair Share Plan (see Township's Third Round Settlement Agreement with FSHC in Appendix B).
2. Parcels with more than one property tax classification where the primary property tax classification (e.g. Property Class 2 – Residential, 3A – Farm, 4A – Commercial, 4B – Industrial, 15C – Public, 15D-Charitable, 15F-Other Exempt, etc.) renders the parcel exempt.
3. Parcels subject to conservation easements.
4. Areas that are entirely landlocked.
5. Parcels that have building permits and/or vested development rights from recent Land Use Board Approvals (see applicable land use board resolutions in Appendix C1, C2 & C3).
6. Properties under construction or recently developed.
7. Parcels that are classified as "vacant" per the tax assessment but are developed with significant improvements or supporting infrastructure for adjacent, related uses (see applicable aerial images in Appendix D).
8. Areas or portions of areas <25 feet wide (based on DCA developable threshold of minimally 25 ft by 100 ft).
9. Areas with environmental constraints not captured in the DCA analysis.
10. Parcels that are held by a homeowners association as common space.

Based on the above and as further detailed in Appendix A, the Township's Land Capacity Factor should be refined based on local information from 2.24% to 0.56% as indicated in Table 1 below.

Table 1 – Land Capacity Factor Modification

	DCA	Clinton Township
Region 3 Developable Area	10,324 ac	10,149 ac
Township Developable Area	231.55 ac	56.35 ac
Township Land Capacity Factor	2.24%	0.56%

Prospective Need Summary

The averaging of the Township's Equalized Nonresidential Valuation Factor, Land Capacity Factor and Income Capacity Factor results in an Average Allocation of Factor of 0.94% applied to the regional Prospective Need which yields the Township's Fourth Round Prospective Need Obligation of 109 units as indicated in Table 2 below.

Table 2 – Prospective Need Obligation Summary

	DCA	Clinton Township
Household Change (Region 3)	29,009 units	29,009 units
Low & Moderate Home Estimate (Region 3)	11,604 units	11,604 units
Equalized Nonresidential Valuation Factor	0.38%	0.38%
Land Capacity Factor	2.24%	0.56%
Income Capacity Factor	1.88%	1.88%
Average Allocation Factor	1.50%	0.94%
Prospective Need	174 units	109 units

Recommendations

Our review of the DCA's October 2024 report and November Land Capacity Factor data and 2024 FHA amendments concludes that Clinton Township's Prospective Need Obligation of 174 units calculated by the DCA should be modified to 109 units for the reasons set forth above, and Clinton Township should determine that its fair share Prospective Need number is 109 units. We conclude that the DCA's calculation of Clinton Township's Present Need Obligation of zero (0) units is correct, and Clinton Township should determine that its fair share Present Need number is zero (0) units.

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Appendix A

Land Capacity Factor Analysis & Refinements as of January 17, 2025

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36058	7.37	87	19	3A	7.37	(7.37)				*0.00*	related parcel partially subject to conservation easement in favor of US Natural Resources Conservation Service; related parcel also already developed per primary property class code
36059	0.55	21	2	4A	0.55	(0.55)				*0.00*	related parcel subject to conservation easement in favor of Hunterdon Land Trust; related parcel also already developed per primary property class code
36060	0.89	87	6	3B	0.89					*0.89*	
36061	13.54	89	10	3B	11.07					*11.07*	
		89	10.03	15D	2.47		(2.47)			*0.00*	related parcel already developed per primary property class code
36062	0.11	25	11	3A	0.11		(0.11)			*0.00*	related parcel already developed per primary property class code
36063	1.32	88	3.01	1	0.42					*0.42*	
		88	3.04	1	0.90					*0.90*	
36064	0.34	88	3.04	1	0.34					*0.34*	
36065	0.08	25	11	3A	0.08		(0.08)			*0.00*	related parcel already developed per primary property class code
36066	0.06	25	11	3A	0.06		(0.06)			*0.00*	related parcel already developed per primary property class code
36067	0.62	28.01	26.02	1	0.62					*0.62*	
36068	3.59	82.02	15	3A	3.59		(3.59)			*0.00*	related parcel already developed per primary property class code
36069	0.45	82.17	28	3A	0.45		(0.45)			*0.00*	related parcel already developed per primary property class code
36070	0.28	82.17	28	3A	0.28		(0.28)			*0.00*	related parcel already developed per primary property class code
36071	0.15	82.17	28	3A	0.15		(0.15)			*0.00*	related parcel already developed per primary property class code
36072	0.93	82.17	28	3A	0.93		(0.93)			*0.00*	related parcel already developed per primary property class code
36073	0.06	82.17	28	3A	0.06		(0.06)			*0.00*	related parcel already developed per primary property class code
36074	0.39	7	6.01	1	0.39					*0.39*	
36075	0.08	7	5.02	1	0.08	(0.08)				*0.00*	related parcel entirely landlocked
36076	0.12	30	30	4B	0.12		(0.12)			*0.00*	related parcel already developed per primary property class code
36077	0.16	58	6.01	1	0.16					*0.16*	
36078	0.19	30	30	4B	0.19		(0.19)			*0.00*	related parcel already developed per primary property class code
36079	0.69	58	5	1	0.69					*0.69*	
36080	0.08	30	35	15D	0.08		(0.08)			*0.00*	related parcel already developed per primary property class code
36081	0.32	30	30	4B	0.32		(0.32)			*0.00*	related parcel already developed per primary property class code
36082	0.30	30	30	4B	0.30		(0.30)			*0.00*	related parcel already developed per primary property class code
36083	0.09	58	9	1	0.09					*0.09*	
36084	0.17	58	10	1	0.17					*0.17*	
36085	0.16	58	9	1	0.16					*0.16*	
36086	0.19	58	10	1	0.19					*0.19*	
36087	0.29	7	33	4B	0.25		(0.25)			*0.00*	related parcel already developed per primary property class code
		7	34	15D	0.04		(0.04)			*0.00*	related parcel already developed per primary property class code
36088	0.10	30	30	4B	0.10		(0.10)			*0.00*	related parcel already developed per primary property class code

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Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36089	0.59	30	35	15D	0.59		(0.59)			*0.00*	related parcel already developed per primary property class code
36090	0.06	30	30	4B	0.06		(0.06)			*0.00*	related parcel already developed per primary property class code
36091	0.32	15	5	3A	0.32		(0.32)			*0.00*	related parcel already developed per primary property class code
36092	0.20	30	35	15D	0.20		(0.20)			*0.00*	related parcel already developed per primary property class code
36093	0.12	30	30	4B	0.12		(0.12)			*0.00*	related parcel already developed per primary property class code
36094	0.07	56	1	1	0.07					*0.07*	
36095	0.34	15	5	3A	0.34		(0.34)			*0.00*	related parcel already developed per primary property class code
36096	0.28	59	2	1	0.28					*0.28*	
36097	0.77	59	4	1	0.77					*0.77*	
36098	3.05	14	3	3A	2.74		(2.74)			*0.00*	related parcel already developed per primary property class code
		14	4	3A	0.31		(0.31)			*0.00*	related parcel already developed per primary property class code
36099	1.24	14	7	3B	1.24				(1.24)	*0.00*	Board of Adjustment Resolution 2021-09 (recently granted Clinton Agricultural Associates "BIFURCATED "D(l)" USE AND "C(l)" VARIANCES TO ALLOW MIXED COMMERCIAL DEVELOPMENT CONSISTING OF RETAIL, OFFICE, FLEX SPACE AND SELF-STORAGE"; Board of Adjustment Resolution 2024-03 for preliminary and final major site plan review to redevelop the property as outlined in Resolution No. 2021-09 was approved on 12-16-2024 meeting and pending memorialization. See Appendix C for Board of Adjustment Resolution 2021-09.
36100	1.61	14	3	3A	1.61		(1.61)			*0.00*	related parcel already developed per primary property class code
36101	0.09	14	5	3B	0.09					*0.09*	
36102	0.14	14	4	3A	0.08		(0.08)			*0.00*	related parcel already developed per primary property class code
		14	3	3A	0.06		(0.06)			*0.00*	related parcel already developed per primary property class code
36103	1.11	14	7	3B	0.32				(0.32)	*0.00*	
		14	9	4A	0.79		(0.79)			*0.00*	related parcel already developed per primary property class code
36104	0.10	60	27	15C	0.10		(0.10)			*0.00*	related parcel already developed per primary property class code
36105	0.37	30	30	4B	0.37		(0.37)			*0.00*	related parcel already developed per primary property class code
36106	0.20	7	3	3A	0.20		(0.20)			*0.00*	related parcel already developed per primary property class code
36107	0.11	30	30	4B	0.11		(0.11)			*0.00*	related parcel already developed per primary property class code
36108	3.53	7	3	3A	3.53		(3.53)			*0.00*	related parcel already developed per primary property class code
36109	5.50	7	3	3A	4.57					*4.57*	
		7	20	3B	0.93					*0.93*	
36110	0.19	60.03	26.08	15C	0.19		(0.19)			*0.00*	related parcel already developed per primary property class code
36111	0.06	14	3	3A	0.06		(0.06)			*0.00*	related parcel already developed per primary property class code

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Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36112	0.50	14	9	4A	0.50		(0.50)			*0.00*	related parcel already developed per primary property class code
36113	0.34	14	9	4A	0.34		(0.34)			*0.00*	related parcel already developed per primary property class code
36114	22.97	14	5	3B	17.94					*17.94*	
		14	4	3A	1.82		(1.82)			*0.00*	related parcel already developed per primary property class code
		14	3	3A	3.21		(3.21)			*0.00*	related parcel already developed per primary property class code
36115	0.96	4.03	28	3B	0.96					*0.96*	
36116	2.22	47.02	1	1	2.22				(2.22)	*0.00*	related parcel under active develop by Hanna Memorial Cancer Center, Inc. in accordance with Planning Board resolution 2014-19 "FINAL SITE PLAN APPROVAL FOR CANCER CLINIC" as modified and amended since that time most recently by Planning Board Resolution 2024-03 "MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION #11 OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY" See Appendix XX for current aerial view of parcel and Appendix C for Planning Board resolution 2024-03.
36117	0.12	47.02	1	1	0.12				(0.12)	*0.00*	related parcel under active develop by Hanna Memorial Cancer Center, Inc. in accordance with Planning Board resolution 2014-19 "FINAL SITE PLAN APPROVAL FOR CANCER CLINIC" as modified and amended since that time most recently by Planning Board Resolution 2024-03 "MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION #11 OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY" See Appendix XX for current aerial view of parcel and Appendix C for Planning Board resolution 2024-03.
36118	0.49	4.03	28	3B	0.49					*0.49*	

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Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36119	0.20	13.01	8.02	15F	0.20		(0.20)			*0.00*	related parcel already developed per primary property class code
36120	1.55	47.02	1	1	1.55				(1.55)	*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36121	0.31	4.03	28	3B	0.31					*0.31*	
36122	0.84	13.01	1	3B	0.84					*0.84*	
36123	0.65	46	33	3B	0.65	(0.65)				*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36124	0.11	46	33	3B	0.11	(0.11)				*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36125	0.19	46	33	3B	0.19	(0.19)				*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36126	17.87	13.01	7	3A	7.37		(7.37)			*0.00*	related parcel already developed per primary property class code
		13.01	8.02	15F	10.50		(10.50)			*0.00*	related parcel already developed per primary property class code
36127	3.43	4.03	36	1	3.43					*3.43*	
36128	19.44	13.01	8	3A	10.55		(10.55)			*0.00*	related parcel already developed per primary property class code
		13.01	8.02	15F	8.89		(8.89)			*0.00*	related parcel already developed per primary property class code
36129	0.43	3.03	8	1	0.43	(0.43)				*0.00*	related parcel entirely landlocked
36130	0.07	60.03	99	1	0.07	(0.07)				*0.00*	related parcel entirely landlocked
36131	0.08	3	26	1	0.08			(0.08)		*0.00*	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.
36132	0.24	4	5	1	0.24					*0.24*	
36133	0.37	61	4	15C	0.37		(0.37)			*0.00*	related parcel already developed per primary property class code
36134	0.10	46	33	3B	0.10	(0.10)				*0.00*	related parcel included in 3rd round AH plan (400 unit Headley Farms inclusionary development)
36135	0.22	61	4	15C	0.22		(0.22)			*0.00*	related parcel already developed per primary property class code

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Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36136	2.76	3	26	1	0.99			(0.99)		*0.00*	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.
		3	27	1	1.06					*1.06*	
		3	28	1	0.71					*0.71*	
36137	1.20	3	26	1	1.20			(1.20)		*0.00*	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.
36138	2.41	3	26	1	2.41			(2.41)		*0.00*	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.
36139	50.73	46	33	3B	50.58	(50.58)				*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
		46	33.01	3B	0.15	(0.15)				*0.00*	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36140	0.45	3	13	15D	0.45		(0.45)			*0.00*	related parcel already developed per primary property class code
36141	23.66	4	20	3A	18.29		(18.29)			*0.00*	related parcel already developed per primary property class code
		4	21	3B	3.61					*3.61*	
		4	21.01	15D	0.84		(0.84)			*0.00*	related parcel already developed per primary property class code
		4	5	1	0.92					*0.92*	
36142	0.32	3	13	15D	0.32		(0.32)			*0.00*	related parcel already developed per primary property class code

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Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36143	5.21	68	9.02	1	5.21				(5.21)	*0.00*	Board of Adjustment Resolution 2024-08 recently granted Storage Developers LLC "BIFURCATED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH VARIOUS "C" VARIANCES AND EXCEPTIONS TO ALLOW THE CONSTRUCTION OF A TWO-STORY, CLIMATE CONTROLLED, SELF-STORAGE FACILITY IN THE C-1 COMMERCIAL ZONE". See Appendix for Board of Adjustment Resolution 2024-08.
36144	0.06				0.06					*0.06*	
36145	0.12	62	1	1	0.12	(0.12)				*0.00*	related parcel owned by Hilltop at High Bridge Homeowners Association and held as common open space; Tax Records show no current assessment as value is assessed to related homeowners.
36146	0.10	62	1	1	0.10	(0.10)				*0.00*	related parcel owned by Hilltop at High Bridge Homeowners Association and held as common open space; Tax Records show no current assessment as value is assessed to related homeowners.
36147	0.80	70	20	15C	0.80		(0.80)			*0.00*	related parcel already developed per primary property class code
36148	6.11	1	25	3A	6.11		(6.11)			*0.00*	related parcel already developed per primary property class code
36149	1.15	33	9.01	1	1.15					*1.15*	
36150	0.08	2	8	1	0.08	(0.08)				*0.00*	related parcel entirely landlocked
36151	0.19	44	3	1	0.19					*0.19*	
36152	4.68	68	9.01	15C	3.34		(3.34)			*0.00*	related parcel already developed per primary property class code
		68	24	1	1.34					*1.34*	
36153	0.21	46	29	1	0.21	(0.21)				*0.00*	related parcel entirely landlocked
36154	0.30	3	11.16	1	0.30					*0.30*	
36155	0.18	46	29	1	0.18	(0.18)				*0.00*	related parcel entirely landlocked
36156	1.62	66	14	3A	1.56		(1.56)			*0.00*	related parcel already developed per primary property class code
		66	12	3B	0.06	(0.06)				*0.00*	related parcel entirely landlocked
36157	0.90	66	14	3A	0.90		(0.90)			*0.00*	related parcel already developed per primary property class code
36158	0.89	66	14	3A	0.89		(0.89)			*0.00*	related parcel already developed per primary property class code
Total	*231.55*				*231.55*	*(61.03)*	*(98.84)*	*(4.67)*	*(10.65)*	*56.35*	

FAIR SHARE HOUSING CENTER

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February 5, 2018

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571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15

Dear Mr. Drill:

This letter memorializes the terms of an amended agreement reached between the Township of Clinton (the Township or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding. This amended agreement replaces in its entirety the agreement reached between the Township and FSHC dated December 12, 2017 (the "initial agreement"). The primary difference between the agreements is that the "Windy Acres" project that was included as a durational adjustment site in the initial agreement has been eliminated and replaced with the "LeCompte" project as a durational adjustment site in this amended agreement. The remaining differences between the agreements flow from the replacement of the Windy Acres project with the LeCompte project and address sewer and water capacity issues.

Background

Clinton filed the above-captioned matter on July 2, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding

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a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Clinton hereby agree that Clinton's affordable housing obligations are as follows:

Rehabilitation Obligation	10
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	335
Third Round (1999-2025) Prospective Need (per Kinsey Report[1], as adjusted through this Agreement to account for the municipality's decision to conform to the Highlands Regional Master Plan)	337

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

5. The Township conducted a structural conditions survey of the community's housing stock on November 3, 2017 through which 10 units were identified as "substandard housing" in accordance with N.J.A.C. 5:93-5.2. The Township's rehabilitation obligation is therefore reduced to no more than 10 units, subject to the Special Master's review at least 60 days prior to the compliance hearing on this matter. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied in accordance with applicable law.

6. As noted above, the Township has a Prior Round prospective need of 335 units, which is met through the following compliance mechanisms:

Site/Program	Units	Bonuses	
Prior Cycle Credits			
Existing Group Home, Block 4.03, Lot 40	5		Located at 4 Wayside Lane, this facility is operated by Venice Avenue Community Residence, Inc. It is a five bedroom group home for individuals with developmental disabilities who have no income. The non-profit organization receives funding from the State to operate the facility. During the compliance phase of the litigation, the Township agrees to provide the following for each of these credits: 1) A copy of the deed restriction on the project; 2) The Supportive and Special Needs Housing Survey Form used by the Council on Affordable Housing; 3) A copy of the facility license, if applicable
Credits Without Controls	13		Clinton Township initiated the Credits without Controls process in May 1999, in accordance with N.J.A.C. 5:93-3.2. 200 hundred surveys were submitted, 80 of which were returned to COAH. Ultimately, COAH found 28 units were found to

[1] David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

			represent income-eligible households. All surveys received were from the Beaver Brook (Block 79.02) and Oak Knoll (Block 82.13) developments. COAH calculated the affordability factors of these developments and granted the Township eligibility for 13 credits without controls units. See attached Exh. A.

RCA			
RCA with City of New Brunswick	108		The Township entered into an agreement with the City of New Brunswick to transfer funds for 108 affordable housing units. This agreement was approved by COAH. The Township's final payment toward this transfer was made on August 26, 2002. In total, the Township paid $2,265,000 towards the RCA with the city. During the compliance phase of this litigation, the Township will demonstrate that the City of New Brunswick created or rehabilitated 108 creditworthy units in accordance with applicable law and the agreement between the Township and the City.
Existing Rentals			
Village Green at Annandale, Block 49, Lot 25	4		Village Green at Annandale is a mixed use development consisting of 4 affordable housing units. The development received amended plan approval in February 2015 and is now developed and occupied.
The Mews (Senior Housing), Block 47, Lot 3	35	3	The Mews is an existing inclusionary development project consists of 35 low- and moderate-income rental housing units. The 43 acre property was developed as a 221 unit residential development approved in 2001. During the compliance phase of the litigation, the municipality will provide the deed restriction(s) for this development.
Planned Projects			
CRC Longview - Group Homes, Block 10, Lots 1, 9.01	4	4	CRC obtained preliminary subdivision approval from the Planning Board memorialized in Resolution No. 2009-17 to create a 15-lot major subdivision, and the resolution contains a condition which requires that the applicant purchase four (4) qualified group home bedrooms. The developer agreed to provide the group home bedrooms. The subdivision is thus far unbuilt by virtue of the downturn in the economy but the subdivision, including the proposed four (4) qualified group home bedrooms creates a realistic opportunity because it is effectively a 6-percent set-aside (one home with four bedrooms out of 16 total homes) . During the compliance phase of the litigation, the Township agrees to provide evidence of the approvals to date.
Fox/Seals, Block 53, Lot 3, family rental	1		The Fox/Seals (Old Municipal Building) site is located in the heart of historic Annandale Village within walking distance to the Annandale Train Station. It is developed with a large structure deemed to have some historic significance with associated paved areas. A redevelopment plan for the site was adopted in August 2016 which proposes to restore a portion of the historic structure for residential and commercial use with the development of a second structure for multifamily use for a site total of 12 units. Given the expense of the historic restoration and past difficulty of realizing a viable development plan for the site, the project will create only one (1) unit of affordable housing. Water and sewer capacity have been secured to accommodate the redevelopment plan. A realistic opportunity is provided as the Township has selected a developer and entered into a redevelopment agreement for the site on October 26, 2017. The Township anticipates

			executing a developer's agreement for the redevelopment project by March 31, 2018. The Township agrees to enter into an agreement to transfer the property to a developer within one year of the date of this amended agreement. The Township anticipates the development of the site to begin in 2018.
100% Affordable Planned Projects			
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	66	66	Clinton Township adopted a redevelopment plan for the Beaver Brook Homestead site in January 2016 for a 100% affordable housing project, after which the Planning Board approved a preliminary site plan for the property as memorialized in Resolution No. 2016-08. In August 2017, the developer, Ingerman, was awarded the competitive NJHFMA 9% funding. Water and sewer capacity have been secured to accommodate the 66-unit development. An application for final site plan approval is pending before the Planning Board and it is anticipated that it will be heard in February, 2018. The receipt of funding for this development and pending final site plan application demonstrates that it provides a realistic opportunity for the development of affordable housing.
Marookian, Block 82, Lots 4, 4.03, family rental	26		The Marookian site, which will include 84 total affordable family rental units, is Township-owned property located at the southwest corner of the Route 31 and Regional Road intersection. The majority of the 139-acre site is not developable due to both environmental constraints and because it was purchased with open space funding. The Township maintains the rights to develop 6 acres of the property. Through site analysis, a 19-acre area has been identified at the southeast corner of the site that abuts Route 31 as being appropriate for development. Within this area 6 acres may be selected for the development of the contemplated 100% affordable housing project at a density of approximately 13 units per acre. The Township currently envisions a flag lot configuration that sets the developable portion of the site in a cleared area behind an existing row of mature trees. Sewer capacity has been secured for the proposed development. The Town of Clinton has designated the required amount of water to accommodate the project. The court entered an order on February 2, 2018 approving the Marookian project as part of the Township's compliance plan and the Township will apply for a water reservation from the Town of Clinton for the project within 30 days of the date of the within amended agreement. The Township intends to initiate an RFP process in selecting a developer for the site. During the compliance phase of this matter, the Township will provide a schedule for the development of this site in accordance with the terms in this agreement. Also, during the compliance phase of this matter, the municipality will provide all information necessary to demonstrate a realistic opportunity in accordance with the terms of this agreement.
Total	262	73	262+73=335

7. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 337 units:

Site – Block/Lot	Units	Bonuses	
Marookian, Block 82, Lots 4, 4.03, family rental	58	58	See Prior Round chart above. Bonuses are provided for this site because it has immediate access to water and sewer.
LeCompte, Block 29, Lot 4, family rental – Durational Adjustment Project	89		The LeCompte project would be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there currently is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental – Durational Adjustment Project	104		The Headley Farm Estate is located immediately north of Annandale Village and the Annandale Train Station. The site was previously granted approval for a 21 lot subdivision for which the road infrastructure was developed. The developer of the site now proposes a mix of townhouses and multifamily development given changes in area residential market conditions. The portion of the site contemplated for development is cleared and is without environmental constraints. The New Jersey Highlands Council has indicated the site could be included in a Highlands Center to allow for the proposed density and required site improvements. The site totals 155.02 acres, of which 86.96 are unconstrained. 400 total units will be developed at a density of 4.6 units per acre, resulting in 400 units, which at a 26% set aside would be 104 units, all of which will be rented and available to lower-income families. This density is below the presumptive densities required by COAH rules, but the developer has agreed this density provides a sufficient compensatory benefit and has agreed to accept a higher than normal set-aside obligation. Based on its location relative to existing sewer service areas, required infrastructure improvements, substantial set-aside of 26%, developer support, and proximity to public transportation, the Township will prioritize this

			site over all other inclusionary development sites in the municipality when water and sewer access and capacity are available. However, the developer may choose to install, and the Township agrees to support applications for, a package sewer plant and private water system/new public well. The Township will use its best efforts to help the developer purchase the available sewer capacity. However, the developer is responsible for purchasing its sewer capacity. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township will agree to propose Headley Farms to be in a Highlands Center and to amend the sewer service area to include it in a SSA and to take all reasonable and necessary steps to obtain those designations. During the compliance phase of this litigation, the Township will provide a letter from the developer supporting the terms of this Agreement and otherwise demonstrate this site, with the exception of the availability of public utilities, presents a realistic opportunity for the development of affordable housing in accordance with applicable law.
Alton Place- Block 79.07, Lot 1, family rental – Durational Adjustment Project	28		This 16.17 acre site of which 13.84-acres are developable will be rezoned at a density of 10-units per acre with a 20% set-aside. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available.
Total	279	58	279+58=337

8. The Township intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Development/Compliance Mechanism	Units
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- 79.07/1, family rental	28

9. The Township will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Development/Compliance Mechanism	Units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26 (funding received in 2017)	66
Marookian, Block 82, Lots 4, 4.03, family rental	84
LeCompte, Block 29, Lot 4, family rental	89

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. Subject to paragraph 10 below, in the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The Beaver Brook Homestead project has been fully funded and is expected to begin construction shortly. The schedule for construction of the Beaver Brook Homestead project shall nevertheless provide for construction to begin within two years of court approval of this settlement at the latest. The schedule shall provide for construction of the Marookian project and the LeCompte project consistent with the terms of paragraph 10 below. The Township shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the court at least 60 days prior to the compliance hearing in this matter.

10. The parties recognize that the Marookian and LeCompte developments may not be the subject of funding applications for the total number of units planned for each development in this settlement agreement; may not receive sufficient funding to develop at the number of units proposed in this settlement agreement; and may not receive funding enabling construction to begin within two years of court approval of this settlement. In view of these possibilities, the parties agree as follows:
    a. It is anticipated that the Marookian and LeCompte sites will apply for Low Income Housing Tax Credits. In the event that the funding applications for these sites is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site

within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.

b. In the event for any reason that the Marookian site is not under construction within two years of court approval of this settlement at a fairness hearing, as required by applicable law, the municipality shall, within 30 months of court approval of this settlement, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

c. The Township agrees to take all reasonable efforts to obtain water and sewer access for the LeCompte site as soon as possible. In the event for any reason that the LeCompte development is not under construction for any reason within 48 months of the of the court's approval of this Agreement at a fairness hearing, the municipality shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the LeCompte site.

d. In the event that the LeCompte project either does not have access to water or sewer utilities or is not under construction within four years of the court's approval of this Agreement at a fairness hearing, and in the event the municipality has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the municipality would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.

e. The Township and FSHC agree that Marookian and LeCompte developments present opportunities for shared amenities, including for persons with disabilities. The Township agrees that agrees that it will fund and/or obtain funding for a large

public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian and LeCompte sites to the site of the playground to allow pedestrian. The Township further agrees to require the developers of the Marookian and LeCompte sites to provide a minimum of 20% of all units as barrier free wheelchair accessible units. The Township further agrees to propose and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection between the two developments and to fund and construct the cross-walk within one year of approval of the cross-walk by the NJDOT.

11. The parties agree that the municipality may address its Third Round prospective need obligation in part through a durational adjustment.
    a. As demonstrated by the following facts, the Township does not have sufficient capacity for water or sewer to support certain of its affordable housing projects and thus is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3:

        i. The Township has secured 38,925 gallons of sewer capacity from the Town of Clinton Sewerage Authority ("CTSA") sufficient to accommodate the development of the Beaver Brook Homestead, Fox/Seals and Marookian projects in full. Private entities / individuals have rights to the remaining available capacity, but that capacity is not sufficient to accommodate all of the inclusionary and 100% affordable developments included in the settlement plan. As such, there is presently not enough sewer capacity to accommodate the LeCompte, Headley Farms, and 108 Alton Place developments as prescribed herein, requiring the support of a durational adjustment. The Township agrees to make all reasonable efforts to obtain sewer capacity from the Clinton Township Sewer Authority and/or the individuals who have rights to the remaining capacity. Robert and Kevin Benbrook along with Chuck Urban were the principals of Country Club Drive Associates (CCDA), the entity that has rights to the remaining sewer capacity but, on information and belief, it appears that there has been a reorganization of CCDA and the sewer capacity has been divided between CCDA and Robert and Kevin Benbrook. While there presently is no available sewer capacity for the LeCompte project, The Township, with the assistance of the special master, will make all reasonable efforts to obtain sewer capacity for the LeCompte project from the CTSA and/or the Benbrooks..

        ii. The allocation of sewer capacity has been prioritized based on several factors, including anticipated time of project completion, number of affordable units generated, location relative to existing SSA's, and required infrastructure improvements, among other factors. The Beaver Brook Homestead and Fox/Seals sites are redevelopment projects within an existing SSA which are anticipated to begin sitework within the next year. The Marookian site, located along Route 31, is also within an existing SSA, the development of which requires the installation of a lift station and/or forced main to connect to the existing lift station approximately half-mile

north of the property at North Hunterdon High School. Headley Farm Estate abuts the SSA serving the Village of Annandale with a readily available lift station and main to facilitate connectivity. Alternatively, the Headley site may install an advanced septic treatment plant which has been determined to be acceptable by the Highlands Council once the site has been included in a designated Highlands Center. The development of the Headley site remains a priority over the 108 Alton Place site as it will generate the most affordable housing units with the available sewer capacity. 108 Alton Place is located within an existing SSA requiring the installation of a forced main to convey discharge to the nearby lift station with connectivity available on two sides of the site. While the LeCompte site is a 100% affordable site and is located across Route 31 from the Marookian site and in the same SSA as the Marookian site, it is unlikely that it will be approved for tax credit financing in the same round as the Marookian site, so the Marookian site has priority over the LeCompte site.

iii. With regard to water capacity, the Beaver Brook Homestead development has a water reservation agreement with the Town of Clinton. Fox/Seals and Marookian have 'will serve' letters from the Town of Clinton which are anticipated to be renewed. All three of these sites have the requisite infrastructure readily available. The Township has obtained court approval of the Marookian project as part of its compliance plan (similar to what the Township obtained for the Beaver Brook Homestead site). As such, the Township will request prior to the Fairness Hearing a water reservation for the Marookian site from the Town of Clinton which it should be entitled to under the terms of the Town of Clinton ordinance governing water reservation agreements. Beyond this water capacity, there is presently not enough water to supply the development of the Headley Farm Estate, 108 Alton Place, and LeCompte sites. However, any remaining capacity will be requested from the Town of Clinton and allocated to the LeCompte project first and then to the Headley project to be supplemented with the installation of an onsite well providing a community or production water supply which may be incorporated into the existing Town of Clinton system which abuts the property. The Headley site is being given priority with regard to water capacity over the 108 Alton Place project as the Headley project will yield more affordable housing units than the 108 Alton Place and water infrastructure has already been installed on site. Water infrastructure is adjacent to both the Marookian, 108 Alton Place, and LeCompte sites making water readily available once capacity becomes available. The special master will assist the Township in attempting to obtain water for the affordable housing projects included in the settlement plan, with the LeCompte project having first priority, the Headley project having second priority, and the 108 Alton Place project having third priority.

b. In view of its request for a durational adjustment, the municipality agrees to comply with N.J.A.C. 5:93-4.3 as follows:

i. The Township will seek court approval for, and FSHC will support, a durational adjustment of 221 units and address the requirements of N.J.A.C. 5:93-4.3 through the following:

1. In accordance with N.J.A.C. 5:93-4.3(c), and the requirement to address Third Round prospective need obligation of 337 units, 221 units of which shall be deferred until adequate water and/or sewer are made available. The Township shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide water and/or sewer capacity for the sites set forth above and otherwise in accordance with paragraph 10d of this Agreement if the waiver provided by this paragraph no longer applies.

2. The Township has designated and will rezone the following sites as necessary for low and moderate income housing that lack adequate water and/or sewer as addressed more fully above:

	Units
LeCompte, Block 29, Lot 4, family rental	89
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- Block 79.07, Lot 1, family rental	28
Total:	221

3. The basis for inclusion of the LeCompte and 108 Alton Place sites as plan mechanisms to satisfy a portion of the Township's Third Round obligation, which require the support of a durational adjustment, are as follows:

   a) LeCompte: The LeCompte project will be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is currently not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-

acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.

b) 108 Alton Place: 108 Alton Place is located between two existing townhouse developments in the Township's Planned Unit Development Overlay District. The majority of the site is developable with areas of steep slopes and Highlands water protection buffers. The site is well positioned between Routes 78 and 22 to the north, Route 31 to the east and the Town of Clinton's commercial center to the west. It is anticipated that the proposed development of the site at the proposed density will result in minimal local traffic impacts. In addition, appropriate buffers and open space will be required of any future development of the site. The Township is seeking a durational adjustment for the inclusion of this site in the municipality's Fair Share Plan as there is not enough water and sewer capacity available at present to accommodate the development of the site.

4. All proposed plan mechanisms include sites within established neighborhoods of the Township with good regional access, some in close proximity to public transportation access mitigating traffic congestion and parking demand. The densities and development proposed at each site of ample size and shape take into consideration their unique property characteristics as well as surrounding development.

5. Sites identified herein are not impacted by environmental constraints to such a degree that would inhibit the proposed creation of affordable housing. Water and sewer capacity have been secured for some sites while there is not enough presently available to accommodate others. Hence, the Township is seeking a durational adjustment for sites which do not have adequate water and/or sewer supplies, though they have determined to be in appropriate locations to receive such when capacity becomes available.

6. The requirements included in N.J.A.C. 5:93-4.3(c)3 and 4 related to inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element are hereby waived in accordance with N.J.A.C. 5:93-4.3(c)4, which permits waiver of such requirements when a municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

12. The Township agrees to request that the Court continue the appointment of the Special Master in this matter for the purpose of assisting the municipality and advising the court

regarding the municipality's efforts to obtain approvals from state and local agencies required by this Agreement. The parties agree to recommend to the Court that the master, whose services shall be paid for by the Township, be directed to issue reports semi-annually to the court, with copies to the parties. The Township further agrees to respond to reasonable inquiries from the special master and FSHC regarding its efforts to obtain approvals required by this Agreement.

13. The Township agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Development/Compliance Mechanism	Very low income units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	9
Fox/Seals, Block 53, Lot 3, family rental	0
Marookian, Block 82, Lots 4, 4.03, family rental	11
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	14
Alton Place- Block 79.07, Lot 1, family rental	4
LeCompte, Block 29, Lot 4, family rental	12
Total:	50

14. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

    a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d), provided that the municipality agrees to not use bonuses to reduce the actual number of units for which a realistic opportunity must be provided, even if subject to a durational adjustment, below 279 units.

    b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

    c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

    d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

    e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

15. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network,

NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

16. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

    a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 3) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

    b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

    c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and

applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

17. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

18. As an essential term of this Agreement, within ninety (90) days of Court's approval of this Agreement after a Fairness Hearing, the Township shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement. As another essential term of this Agreement, within ninety (90) days of Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein.

19. The parties agree that if a decision of a court of competent jurisdiction in Hunterdon County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling fully the fair share obligations as established herein. In the event alternative sites are required in accordance with the terms of this Agreement, in no circumstance may the municipality provide less than 279 units of affordable housing, not including bonuses. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement, seeking leave to amend an order or judgment pursuant to R. 4:50-1, or seeking leave to provide less than 279 units of affordable housing, not including bonuses. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

20. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Township, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Township agrees to provide annual

reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

21. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

22. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this Agreement. The Township agrees to comply with those provisions as follows:
    a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
    b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.

24. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its

planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.

25. The Township agrees to make a $30,000 donation to FSHC to be used for the advancement of affordable housing. The payment shall be made within ten (10) days of the Court's approval of this Agreement after a Fairness Hearing.

26. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

27. This Agreement may be enforced by either party through a motion to enforce litigant's rights or a separate action filed in Superior Court, Hunterdon County. The prevailing party in such a motion or separate action shall be entitled to reasonable attorney's fees.

28. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

31. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

32. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

33. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

34. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

35. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

36. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

37. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

38. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833

Telecopier: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

Sincerely,

Kevin D. Walsh, Esq.
Counsel for Interested Party
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization of the governing body:

Mayor John Higgins

Dated: February 7, 2018

EXHIBIT B: 2017 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents**	Max Increase Sales***	Regional Asset Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	$60,271	$64,576	$68,882	$77,492	$86,102	$89,546	$92,990	$99,878	$106,766	$113,655	1.7%	1.99%	$166,493
	Moderate	$48,217	$51,661	$55,105	$61,993	$68,882	$71,637	$74,392	$79,903	$85,413	$90,924			
	Low	$30,136	$32,288	$34,441	$38,746	$43,051	$44,773	$46,495	$49,939	$53,383	$56,827			
	Very Low	$18,081	$19,373	$20,664	$23,248	$25,831	$26,864	$27,897	$29,963	$32,030	$34,096			
Region 2 Essex, Morris, Union and Warren	Median	$65,953	$70,663	$75,374	$84,796	$94,218	$97,987	$101,755	$109,293	$116,830	$124,368	1.7%	3.25%	$180,756
	Moderate	$52,762	$56,531	$60,299	$67,837	$75,374	$78,389	$81,404	$87,434	$93,464	$99,494			
	Low	$32,976	$35,332	$37,687	$42,398	$47,109	$48,993	$50,878	$54,646	$58,415	$62,184			
	Very Low	$19,786	$21,199	$22,612	$25,439	$28,265	$29,396	$30,527	$32,788	$35,049	$37,310			
Region 3 Hunterdon, Middlesex and Somerset	Median	$73,780	$79,050	$84,320	$94,860	$105,400	$109,616	$113,832	$122,264	$130,696	$139,128	1.7%	0.38%	$200,698
	Moderate	$59,024	$63,240	$67,456	$75,888	$84,320	$87,693	$91,066	$97,811	$104,557	$111,302			
	Low	$36,890	$39,525	$42,160	$47,430	$52,700	$54,808	$56,916	$61,132	$65,348	$69,564			
	Very Low	$22,134	$23,715	$25,296	$28,458	$31,620	$32,885	$34,150	$36,679	$39,209	$41,738			
Region 4 Mercer, Monmouth and Ocean	Median	$66,022	$70,738	$75,454	$84,885	$94,317	$98,090	$101,862	$109,408	$116,953	$124,498	1.7%	1.53%	$177,413
	Moderate	$52,817	$56,590	$60,363	$67,908	$75,454	$78,472	$81,490	$87,526	$93,562	$99,599			
	Low	$33,011	$35,369	$37,727	$42,443	$47,158	$49,045	$50,931	$54,704	$58,476	$62,249			
	Very Low	$19,807	$21,221	$22,636	$25,466	$28,295	$29,427	$30,559	$32,822	$35,086	$37,349			
Region 5 Burlington, Camden and Gloucester	Median	$58,240	$62,400	$66,560	$74,880	$83,200	$86,528	$89,856	$96,512	$103,168	$109,824	1.7%	2.09%	$154,194
	Moderate	$46,592	$49,920	$53,248	$59,904	$66,560	$69,222	$71,885	$77,210	$82,534	$87,859			
	Low	$29,120	$31,200	$33,280	$37,440	$41,600	$43,264	$44,928	$48,256	$51,584	$54,912			
	Very Low	$17,472	$18,720	$19,968	$22,464	$24,960	$25,958	$26,957	$28,954	$30,950	$32,947			
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	$51,085	$54,734	$58,383	$65,681	$72,979	$75,898	$78,817	$84,655	$90,494	$96,332	1.7%	0.00%	$136,680
	Moderate	$40,868	$43,787	$46,706	$52,545	$58,383	$60,718	$63,054	$67,724	$72,395	$77,066			
	Low	$25,543	$27,367	$29,192	$32,840	$36,489	$37,949	$39,409	$42,328	$45,247	$48,166			
	Very Low	$15,326	$16,420	$17,515	$19,704	$21,894	$22,769	$23,645	$25,397	$27,148	$28,900			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3,(b), The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administive agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).

Appendix C

2022-01-24-v3

CLINTON AGRICULTURAL ASSOCIATES
1461 ROUTE 22 EAST
BLOCK 14, LOTS 6 & 7

APPLICATION NO. BOA-2020-07

RESOLUTION MEMORIALIZING GRANT OF BIFURCATED "D(1)" USE AND "C(1)" VARIANCES TO ALLOW MIXED COMMERCIAL DEVELOPMENT CONSISTING OF RETAIL, OFFICE, FLEX SPACE AND SELF-STORAGE

RESOLUTION NO. 2021-09

WHEREAS, Clinton Agricultural Associates (the "**applicant**") is the owner of property located at 1461 Route 22 East and designated on the Township tax maps as Block 14, Lots 6 & 7 (the "**property**"), which property is operated as a garden and tree nursery (the "**nursery**") and is comprised of two "L" shaped parcels – Lot 6 ("**Lot 6**"), presently developed with a two-story frame building and shed with outdoor areas designated for nursery stock storage, and Lot 7 ("**Lot 7**"), presently developed with two sheds and eight green houses and also containing outdoor areas for nursery stock storage (the "**existing improvements**") – and the two lots totaling approximately 22.4 acres;

WHEREAS, the applicant made application to the Clinton Township Board of Adjustment (the "**Board**") for bifurcated "d(1)" use variance relief to allow self-storage and flex space uses on the property, "d(6)" height variance relief, and "c(1)" and "c(2)" variance relief (the "**application**") to allow construction of a number of buildings and associated site improvements to accommodate mixed use office and retail uses on the front portion of Lot 6 and Lot 7 and several self-storage buildings and flex space uses on the rear of Lot 7 (the "**proposed development**");

WHEREAS, at the time the application was submitted to the Board, the property was in the C-2 Commercial zoning district ("**C-2 zone**") and, although the property was subsequently re-zoned to the new C-ROM - Research, Office and Manufacturing zoning district (the "**C-ROM zone**"), the C-2 zone regulations govern the application pursuant to the "Time of Application Rule", N.J.S.A. 40:55d-10.5;

WHEREAS, neither the C-ROM zone nor the C-2 zone permit self-storage or flex space uses so "d(1)" use variances are still required and the "c" variances are also still required, and the "d" variances confer exclusive subject matter jurisdiction over the application with the Board pursuant to N.J.S.A. 40:55D--20 by virtue of N.J.S.A. 40:55D-70d and -76b;

WHEREAS, a number of documents were submitted by the applicant as well as the Board experts with regard to the application, all of which documents are on file with the Board, are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents submitted by the applicant for which

Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Variance Plans prepared by E&LP, last revised December 14, 2020, consisting of three sheets (the "**variance plans**"),

2. Representative architectural images (the "**images**"), and

3. Architectural plans, prepared by Jeffrey A. Fleisher Architects dated November 23, 2020 (the "**architectural plans**");

WHEREAS, the application was deemed to be complete;

WHEREAS, a duly noticed public hearing was held on the application, commencing March 22, 2021, continuing on April 26, 2021 and on June 28, 2021, and concluding on August 23, 2021, with affidavits of service and publication of notices of the hearing being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Tony Koester, Esq. and the Board was represented by Jonathan E. Drill, Esq.;

WHEREAS, the following individuals testified during the hearing and were subject to cross examination and questioning, and the testimony is part of the record in this matter:

1. Chris Nusser, PE (applicant's engineering expert),

2. Keith Chambers, RA, AIA (applicant's architectural expert),

3. Jim Kyle, PP, AICP (applicant's planning expert),

4. Larry Plevier, PE (Board engineering expert),

5. Tom Behrens, PP, AICP (Board planning expert),

6. Edward Snieckus, PP, AICP (Board planning expert), and

7. Harold Wilbert (applicant's and owner's principal);

WHEREAS, no exhibits were into the record during the hearing on the application:

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING

2022-01-24-v3

OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS

1. **The Property, Zoning, Existing Improvements, Surrounding Uses and Zoning.** As set forth above, the 22.4-acre property is comprised of two "L" shaped lots, Lot 6 and Lot 7, and the property is currently is operated as a nursery. The property has frontages along Route 22 East with access provided via single two-way gravel driveways on each lot as well as on the Round Valley Reservoir access road to the east of the property. As set forth above, there are existing improvements on both lots. There are areas of steep slopes towards the rear half of the property, along with a JCP&L transmission line right-of-way that traverses the property. Development surrounding the property consists the Hunterdon County YMCA on the other side of Route 22 and agricultural uses to the north, State Park office and agricultural uses to the east, rail corridor, residential development and open space to the south and a landscape contractor office and yard to the west. Certain retail and office uses are permitted in the C-2 zone as well as the C-ROM zone but, as set forth above, neither zone permits self-storage or flex space use.

2. **The Proposed Development.** As set forth above, the proposed development includes construction of a number of buildings and associated site improvements to accommodate mixed use office and retail uses on the front portion of Lot 6 and Lot 7 and several self-storage buildings and flex space uses on the rear of Lot 7. More specifically, the retail and office components are to be oriented toward the front of the property totaling 39,000 square feet and are to be distributed between four (4) two-story buildings. The retail and office components of the proposed development are permitted principal uses in the C-2 zone (as well as in the C-ROM zone). The rear of the property will contain a separate self-storage development totaling 41,000 square feet in five buildings with a 1,000 square foot office building, and 30,000 square feet of flex use building space.

3. **The Application and Specific Relief Required and Requested.** The following specific relief is required and the applicant has requested same on a bifurcated basis in accordance with N.J.S.A. 40:55D-76b, meaning the applicant seeks certain of the variances required to approve the proposed development at this time with site plan approval and possible other relief being applied for subsequently if the bifurcated relief requested is granted. First, the applicant seeks bifurcated "d(1)" use variances from ordinance section 165-161 to allow the flex space and self-storage uses as both uses are not permitted in the C-2 zone or in the C-ROM zone, so are prohibited by virtue of ordinance section 165-93 which provides there where "a use is not specifically permitted in a zone district, it is prohibited.". Second, the applicant seeks on a bifurcated basis several "c(1)" variances to maintain certain existing nonconforming conditions

including as follows: a "c(1)" variance from the Schedule of Zoning Requirements (the "**Schedule**") as to minimum lot width at the street for Lot 6 where 344.98 feet exists and is proposed, where 350 feet is required, a "c(1)" variance from the Schedule for Lot 7 as to minimum lot width at the street where 343.01 feet exists and is proposed, where 350 feet is required, and a "c(1)" variance from the Schedule as to minimum side yard setback where 55.63 feet exists to an existing structure on Lot 6 and 75 feet is required. During the course of the hearing on the application, the applicant eliminated and withdrew the request for "d(6)" height variance relief, as well as the request for the "c(2)" bulk variance relief relative to minimum side yard and minimum lot width at building.

4. **Findings as to the "D(1)" Variances to Allow the Flex Space and Self-Storage Uses.** The Board's findings as to the positive and negative criteria of the requested "d(1)" use variances from ordinance section 165-161 to allow the flex space and self-storage uses are as follows.

a. **Positive Criteria of the "D(1)" Use Variances**. The Board's findings as to the positive criteria of the "d(1)" use variances are as follows. First, the Board finds that the proposed development promotes the general welfare purposes of the Municipal Land Use Law ("**MLUL**") set forth in N.J.S.A. 40:55D-2a (to encourage municipal action to guide the appropriate use or development in a manner which will promote the public health, safety, morals, and general welfare) and -2g (to provide sufficient space in appropriate locations for a variety of uses) by providing additional storage options to area residents and flex space options for contract workers working from home to move into appropriate facilities. Second, the Board finds that the property is particularly suited for the prohibited uses proposed since those uses are compatible with the permitted uses in the zone and those that exist in proximity to the property. Further, the Board finds that the property is located within a more commercial area of the Township that is appropriate for the development proposed and, moreover, the rear of the property where the prohibited uses are proposed has limited visibility from surrounding lots and streets. Given the property's location and the fact that the rear of the property is well-shielded with significant screening already in place at the rear and side of the property along County Route 621, combined with the existing berm along 621, the Board finds that the property is particularly well-suited for the proposed prohibited uses and that the positive criteria has been met, provided the conditions below are imposed.

b. **Negative Criteria of the "D(1)" Use Variances.** As to the negative criteria of the "d(1)" use variances, the Board finds that, on balance, but provided that the conditions set forth below are imposed and complied with, the "d(1)" use variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board's specific findings on these issues are as follows. As to the first prong of the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds that the proposed development will not create any significant negative impacts on the surrounding lots and streets in light of the nature of the property and the fact that it is not readily visible from the road. More specifically, from Route 22,

there is approximately 40 feet in elevation change which eliminates the potential for visibility. As to the view from the County Route 621, the Board notes and finds that there is room on this side of the property for additional buffering to address potential views. Further, the Board notes and finds that the closest residential home to property is about 550 feet away to the south from the flex use building. For all of these reasons, the Board finds that granting the requested "d(1)" use variances subject to the conditions set forth below will not negatively impact surrounding properties. As to the second prong of the negative criteria, the Board finds that the proposed prohibited uses are compatible with existing surrounding development and that the proposed development is consistent with the purposes of the new C-ROM zone as well as several goals of the 2020 Reexamination Report, including providing a reasonable balance among various land uses and providing for desirable non-residential development in appropriate areas of the Township. As such, the Board finds that the proposed prohibited uses are reconcilable with the ordinance omission of those uses from the list of permitted uses.

5. **Findings as to the "C(1)" Variances to Allow the Pre-Existing Nonconforming Conditions to Remain** . As set forth above, there exist several nonconforming conditions on the property which are: (a) lot width at the street of 344.98-feet for Lot 6 where the Schedule requires a minimum lot width at the street required of 350 feet; (b) lot width at the street of 343.02-feet for Lot 7 where the Schedule requires a minimum lot width at the street of 350-feet; and (c) side yard setback to one of the existing structures on Lot 6 of 55.53-feet where and the Schedule requires a minimum side yard setback of 75 feet. As the applicant seeks to maintain these nonconforming conditions as part of the application, "c" variances are required and the applicant has requested "c(1)" or so-called "hardship" variances. The Board's findings as to the positive and negative criteria of the requested "c(1)" variances are as follows.

a. **Positive Criteria of the "C(1)" Variances**. As to the positive criteria of the lot width and setback variances, the Board finds as follows. First, the Board finds that the lot width and setback deviations currently exist on the property which the Board finds constitutes an extraordinary and exceptional situation uniquely affecting the property and the structure which is lawfully existing thereon because the existing deviations are lawfully created pre-existing nonconformities that the applicant's re-purposing of the site will not impact or change. Second, Board finds that the strict application of the ordinance regulations at issue will inhibit the extent to which the property can be used by, in effect, prohibiting the property from being used at all since any further development would require such relief.

b. **Negative Criteria of the "C(1)" Variances**. As to the first prong of the negative criteria of the lot width and setback variances, the Board finds that, provided the conditions set forth below are imposed and complied with, the variances can be granted without substantial detriment to the public good because no change is proposed to these conditions and there exists substantial buffering and potential for additional buffering to shield the proposed development. As to the second prong of the negative criteria, the Board finds that the variances can be granted without substantial impairment of the intent and purpose of the master plan and zoning ordinance because the

uses that are proposed as part of the application are consistent with the uses permitted in the zone and with neighboring properties.

B. CONCLUSIONS OF LAW

1. **Bifurcation of the "D(1)" and "C(1)" Variances.** N.J.S.A. 40:55D-76b provides that a developer may bifurcate a "d" variance application by first submitting the "d" variance application and then, if the "d" variance is granted, subsequently submitting a separate application for any required approval of a subdivision, site plan or conditional use. While N.J.S.A. 40:55D-76b references bifurcation of "d" variances only (the statute is silent as to bifurcation of "c" variances), the Board concludes, however, that it has the implicit authority to determine whether to permit bifurcation of a "c" variance in a particular application before it. Further, even though the statute uses language stating that a developer "may elect" to bifurcate a "d" variance application – with the implication being that the applicant has the "right" to so bifurcate – case law holds that the Board has the implicit authority to determine whether or not to permit such bifurcation in a particular application before it. Scholastic Bus Co. v. Fair Lawn Zoning Board of Adj., 326 N.J. Super. 49, 58 (App. Div. 1999). As the Scholastic Bus court held, negative criteria concerns can be "so intertwined" in the variance and subsequent subdivision, site plan or conditional use application "as to render bifurcation improvident." Id. Expanding on this, the Appellate Division subsequently held in Meridian Quality Care v. Wall Twp. Board of Adj., 355 N.J. Super. 328, 340 (App. Div. 2002) that, "while the statute appears to allow the developer to bifurcate without the Board's consent, such a procedure may not be appropriate if the Board considers the use variance and site plan issues so interrelated that both applications should be considered in a single administrative proceeding, at which the Board would decide the negative criteria based on the entire plan submitted." Significantly, the Meridian court explained that site plan details relating to "on-site and even off-site factors such as traffic flow, buffers, ingress and egress, traffic congestion, drainage, building orientation, the nature of the surrounding properties, and other factors may be significant in deciding whether the variance may be granted without substantial detriment to the surrounding neighborhood and public good, and without substantially impairing the intent and purpose of the zone plan and zoning ordinance." (emphasis added) Id. at 340-341. The Board concludes that it is appropriate in this particular application to bifurcate the "d(1)" and "c(1)" variances referenced above.

2. **The "D(1)" Use Variances to Allow the Proposed Development**. The Board's conclusions as to the requested "d(1)" use variances are as follows:

a. **Standards for Considering the "D(1)" Use Variances.** The Board has the power to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." Medici v. BPR Co., 107 N.J. 1 (1987). Our courts have held that certain uses are deemed "inherently beneficial" which

essentially means that, by definition, the use per se promotes the general welfare. Id. The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. Id. Thus, in a typical non-inherently beneficial use application – and the application here is a typical non-inherently beneficial use application – the standard the Board must employ to determine whether special reasons have been proven is whether the property is particularly suited for the very use proposed. Id. Our courts held that proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project. Price v. Himeji, 214 N.J. 263, 292-293 (2013). All that said, the Board may not exercise its power to grant a "d(1)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted … without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987). As to the zone plan (the master plan) and zoning ordinance, the Medici court held that the applicant must prove and the Board must find by an "enhanced quality or proof" that there will be no substantial impairment. The applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone. Id.

b. **Grant of the "D(1)" Variances**. As set forth in the factual findings above, the Board found that the proposed development promotes the general welfare purposes of the MLUL and that the property is particularly suited for the proposed prohibited flex space and self-storage uses, provided that the conditions set forth below are imposed and complied with. As also set forth in the factual findings above, the Board found that the "d(1)" use variances can be granted in this particular case without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance, provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that the requested "d(1)" use variances can and should be granted subject to the conditions set forth below.

3. **The "C(1)" Variances**. The Board's conclusions as to the "c(1)" variances are as follows:

a. **Positive Criteria of "C(1)" or "Hardship" Variances**. The Board may grant "c(1)" or so-called "hardship" variances pursuant to N.J.S.A. 40:55D-70c(1) where: (1) "(a) by reason of exceptional narrowness, shallowness or shape of a specific piece property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon; (2) the strict application of any regulation . . . would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." This is the so-called "positive" criteria of

a "c(1)" variance. The "hardship" that the applicant must prove is not that the zoning regulation at issue has zoned the property into inutility. While inutility caused by a zoning regulation would require a variance to avoid an /unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit "the extent" to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available to relieve "personal hardship" of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). A hardship variance is also not available to relieve hardship caused by a mistake, Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956), and/or for an intentionally created situation, which is referred to as a "self-created" hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979).

b. **Negative Criteria of "C(1)" Variances**. Even if an applicant proves the "positive" criteria of a "c(1)", the Board may not exercise its power to grant the variance unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70, "no variance or other relief ... may be granted ... unless such variance or other relief ... can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means the Township "master plan." Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

c. **Conclusions to Grant the "C(1)" Variances**. As set forth above, the Board found that the lot width and setback deviations currently exist on the property which the Board found constitutes an extraordinary and exceptional situation uniquely affecting the property and the structure which is lawfully existing thereon because the existing deviations are lawfully created pre-existing nonconformities that the applicant's re-purposing of the site will not impact or change. As also set forth above, the Board further found that the strict application of the ordinance regulations at issue will inhibit the extent to which the property can be used by, in effect, prohibiting the property from being used at all since any further development would require such relief. The Board concludes that this constitutes the sort of hardship that N.J.S.A. 40:55D-70c(1) was intended to relieve. As also set forth above, the Board found that the "c(1)" variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance provided that the conditions set forth below are imposed and complied iwth. As such, the Board concludes that it can and should grant the "c(1)" variances subject to the conditions set forth below.

4. **Imposition of Conditions**. Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp.

Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that "aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances" and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff'd o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J 418, 438-439 (2000) (explaining that site plan review "typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition approval on review and approval of changes to the plans by Board's experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The Board concludes that the conditions set forth below are warranted and should be imposed on all of the above-mentioned bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON AUGUST 23, 2021, AS FOLLOWS:

C. **RELIEF GRANTED**

2022-01-24-v3

1. **Bifurcated "D(1)" Use Variance for Flex Space Use.** Subject to the conditions set forth below, a bifurcated "d(1)" use variance is hereby granted from ordinance section 165-161 to allow the proposed flex space use as part of the proposed development where flex space is not permitted in the C-2 or C-ROM zones so is prohibited by virtue of ordinance section 165-93 which provides there where "a use is not specifically permitted in a zone district, it is prohibited."

2. **Bifurcated "D(1)" Use Variance for Self-Storage Use.** Subject to the conditions set forth below, a bifurcated "d(1)" use variance is hereby granted from ordinance section 165-161 to allow the proposed self-storage use as part of the proposed development where self-storage is not permitted in the C-2 or C-ROM zones so is prohibited by virtue of ordinance section 165-93 which provides there where "a use is not specifically permitted in a zone district, it is prohibited."

3. **Bifurcated "C(1)" Variances to Allow Existing Non-Conforming Lot Width Conditions To Continue.** Subject to the conditions set forth below, bifurcated "c(1)" variances are hereby granted from the Schedule to allow the nonconforming lot widths at the street of 344.98 feet for Lot 6 and 341.65 feet for Lot 7, where 350 feet is the minimum lot width at the street required.

4. **Bifurcated "C(1)" Variance to Allow Existing Non-Conforming Side Yard Setback To Continue.** Subject to the conditions set forth below, a bifurcated "c(1)" variance is hereby granted from the Schedule to allow the nonconforming side yard setback to an existing structure on Lot 6 of 55.53 feet, where 75 feet is minimum side yard setback required.

D. CONDITIONS

1. **Subject to Preliminary and Final Site Plan Review and Approval.** The grant of the within bifurcated "d(1)" and "c(1)" variances are subject to the applicant applying for and obtaining from the Board preliminary and final site plan approval of the proposed development no later than January 24, 2023 (which is within one (1) year of the adoption of the within resolution on January 24, 2022) and in accordance with the conditions set forth below and any and all conditions that may be imposed on the grant of preliminary and final site plan approval.

2. **Variance Plans and Architectural Plan Not Approved Until and Unless Site Plan Approval is Granted.** The within bifurcated "d(1)" and "c(1)" variance approvals have not approved and do not approve the variance plans or architectural plans referenced above. Additionally, the layout of the proposed improvements set forth in the variance plans has not been approved. That said, see condition #4 below.

3. **Subsequently Submitted Site Plans to Include, at Minimum, Certain Revisions from that Shown on the Variance Plans and Architectural Plans.** The site plans that are subsequently submitted to the Board for review and approval shall, at minimum, incorporate revisions to satisfy the following comments emanating in the

memos and/or letters from the following Board experts, as modified and/or supplemented by the Board members during the hearing on the application:

a. **Comments Emanating in the Memo to the Board from Tom Behrens, PP, AICP (Board planning) dated March 17, 2021** (Intentionally omitted if not listed herein):

(3) **Design Standards for Non-Residential Buildings.** The two buildings proposed to be located in the front of the property and to contain principally permitted retail uses shall comply in all respects with ordinance section 165-75 (the design standards for non-residential buildings), without exception. While the applicant may apply for exceptions from ordinance section 165-75 for the two buildings proposed to be located to the rear of the property and to contain the prohibited self-storage and flex space uses, the applicant shall be required to prove entitlement to any such exceptions at the time of site plan review and the applicant shall strive to avoid having to request any such exceptions.) The Board offers the following suggestions: The applicant can design the rear flex building to look more like a barn and the self-storage building in the rear could be designed more like a chicken coop/ farm structure.

(5) **Additional Stormwater Management Facilities.** Revise the site plans to reflect the locations of additional stormwater management facilities.

(6) **Steep Slope Disturbance.** The applicant shall endeavor to minimize steep slope disturbance. The site plans shall reflect the extent of the steep slope disturbance.

(9) **Tree Removal.** The applicant shall endeavor to minimize tree removal. The site plans shall reflect the extent of the proposed tree removal.

b. **Comments from Board Members**:

(1) **Building Height Compliance**. All of the proposed buildings shall comply with the zoning ordinance regulations as to maximum building height. The architectural plans shall reflect all buildings' heights which shall comply with the ordinance regulations. The applicant shall not seek any height variances.

(2) **Parking.** The site plans shall reflect parking for all of the proposed uses and the parking requirements for each use shall be established at the time of site plan review and approval. The applicant shall address banked spaces at the time of site plan review if it wishes to propose same.

(3) **Additional Buffering**. The site plans shall include additional buffering and include details of same.

4. **Layout and Size of Buildings**. While the within approvals have not approved and do not approve the variance plan, the variance plans show, and the within approvals contemplate, the location of the proposed two permitted retail buildings in the front of the property and the location of the two buildings proposed to contain the prohibited self-storage use and the prohibited flex space use in the rear of the property. Additionally, the size of the buildings as reflected on the variance plan has not been and is not approved. That said, in no event shall the total square footage of each type of use exceed the following: prohibited flex space: 30,000 square feet total; prohibited self-storage: 41,000 square feet total, which includes up to1,000 square feet of office; principally permitted retail with office: 29,188 square feet total. Additionally, the applicant shall review shifting the lot line to eliminate or reduce the required setback variances.

5. **Cross-Access Easements**. The applicant shall provide and record cross access easements for Lots 6 and 7, the forms of which shall be subject to approval by the Board at the time of site plan review.

6. **Flex Space Use Restrictions**. The following use restrictions shall apply to the flex space:

(a) All uses shall be permitted uses in the C-ROM zone, along with contractor storage.

(b) No site contractors or heavy equipment (as defined by weight and size) shall be permitted (meaning nothing larger than a 15,000-pound rubber tire backhoe).

(c) No warehousing or distribution as defined in the Township zoning ordinance shall be permitted.

(d) No childcare shall be permitted.

(e) No outdoor storage of vehicles or material shall be permitted.

(f) No breweries shall be permitted.

(g) No movie theaters shall be permitted.

7. **Limitation of Hours of Operation of Flex Space and Self-Storage Uses**. The hours of operation for the flex space and self-storage shall be limited to between 8 am to 10 pm.

8. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to the grant of site plan approval, prior to the issuance

of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a certificate of use. Failure to abide by this condition shall result in the relief granted herein automatically terminating and becoming null and void.

9. **Outside Agency Approvals and Permits**. The within approvals are conditioned upon and subject to the applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments.

10. **Subject to Other Laws, Regulations and Approvals.** The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

****

VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 23, 2021:

THOSE IN FAVOR: LEWIS, McTIERNAN, PFEFFER, STEVENS & YAGER.

THOSE OPPOSED: RHORBACH.

****

The above memorializing resolution was adopted on January 24, 2022 by the following vote of eligible Board members:

Members	Yes	No	Abstain	Absent
LEWIS	X			
McTIERNAN	X			
PFEFFER	X			
STEVENS	X			
YAGER	X			

ATTEST: _____
DENISE FILARDO
Board Secretary

Appendix C

2024-1 1-17-v3

CLINTON TOWNSHIP PLANNING BOARD

HANNA MEMORIAL CANCER CLINIC, INC.
BLOCK 47.02, LOT 1
1510 ROUTE 22

APPLICATION NO. PB-2024-05

RESOLUTION MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A
SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY

RESOLUTION NO. 2024-03

WHEREAS, The Janet Hanna Revocable Trust (the "owner") is the owner of a 12.5 acre lot located at 1510 Route 22 and designated on the Clinton Township (the "Township") tax maps as Block 47.02, Lot 1, having frontage on Route 22, Route 78 and Petticoat Lane (the " property"), which property is surrounded by commercial uses to the north and south and vacant land to the east and west, is situated in the C-ROM research, office and manufacturing zoning district (the "C-ROM Zone"), and is partially developed with a previously approved principally permitted medical facility, the "Hanna Memorial Cancer Clinic" (the "cancer clinic");

WHEREAS, Hanna Memorial Cancer Clinic, Inc. (the "applicant") applied for and obtained from the Clinton Township Planning Board (the "Board") preliminary site plan approval memorialized in Board Resolution No. 2013-13 adopted on August 19, 2013 ("Resolution No. 2013-13") and final site plan approval memorialized in Board Resolution No. 2014-09 adopted on October 6, 2014 ("Resolution No. 2014-09") for the construction of the medical facility to include a 12,000 square foot building (the "primary structure") to house the principally permitted cancer clinic, along with associated improvements including an access driveway on Petticoat Lane, parking and circulation, landscaping, lighting and stormwater management (the "associated improvements") as well as a memorial garden (the "proposed memorial garden") (with the primary structure, the associated improvements, and the proposed memorial garden together referred to as the "proposed development");

WHEREAS, Resolution No. 2014-09 contains a number of conditions and the applicant applied to and obtained from the Board a modification of condition #2 of Resolution No. 201409 to extend the time within which the site plans were required to be signed from April 6, 2015 to

December 31, 2025, as memorialized in Board Resolution No. 2015-14 adopted on October 19, 2015 ("Resolution No. 2015-14");

WHEREAS, condition #11 of Resolution No. 2014-09 provides as follows:

11. Time to Obtain Construction Permits and Commence and Complete Construction. The applicant shall apply for and obtain construction permits for the proposed development and a certificate of occupancy for the building by October 6, 2019 If during said period, the applicant fails to obtain all construction permits for the proposed development and a permanent certificate of occupancy for the building, the within final approval shall automatically expire and become null and void. (The aforementioned time limitations affect the life of the within final approval and run concurrently with the final approval protection period against zoning ordinance changes which is governed by N.J.S.A. 40:55D-52a and c. . . .);

WHEREAS, with the consent of the owner, the applicant made application (the "application") to the Board for the following relief: (1) a modification of condition #11 of Resolution No. 2014-09 to provide for an extension of the time within which to obtain a certificate of occupancy, (2) amended final major site plan approval to allow the elimination of the proposed memorial garden, the addition of a walkway along the west side of the primary structure connecting the front sidewalk to the side entrance door (the "proposed walkway"), and a change in tree planting locations (the "revised tree planting locations"), as well as an exception from the tree replacement ordinance (with the elimination of the proposed memorial garden, the addition of the proposed walkway and the revised tree planting locations together referred to as the "proposed site plan amendments" which modify the proposed development and which shall be referred to as the "proposed amended development");

WHEREAS, the Board has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-48b (as to amended site plan approval), -50 (as to amended final site plan approval), -51b (as to the exception(s)), and -12a (as to the modification of conditions);

WHEREAS, a number of documents were submitted by the applicant, Board and Township experts and officials with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. "Amended Preliminary and Final Site Plans", prepared by French & Perrello Associates, dated July 18, 2024, consisting of 2 sheets (the "amended site plan");

WHEREAS, the application was deemed to be complete;

WHEREAS, the Board considered the application at a duly noticed public hearing, commencing on September 16, 2024 and continuing and concluding on October 7, 2024, with affidavits of publication and service of notice being submitted to the Board and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, and the

applicant was represented during the September 16, 2024 hearing session by Alan Lowcher, Esq. and during the October 7, 2024 hearing session by Steve Gruenberg, Esq. and the Board was represented during all hearing sessions by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, the following individuals testified under oath during the hearing, were subject to cross-examination, and their testimony is part of the record in this matter:

1. Benjamin Hannallah (managing member of applicant),

2. Wayne Ingram, PE, (applicant's engineering expert),

3. Larry Plevier, PE, CME (Board's engineering expert),

4. Jim Mazzucco, LLA (Board's landscape architectural expert), and

5. Tom Behrens, PP, AICP (Board's planning expert);

WHEREAS, the following exhibit was submitted into evidence during the hearing, is on file with the Board, and is part of the record in this matter;

A-I "Site Plan Exhibit", prepared by French & Perrello Associates, dated August 29, 2024, consisting of 1 sheet (the "site plan exhibit");

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBIT REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE
LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. The Property, Zoning and Prior Approvals. The property is a "pie piece" shaped lot, approximately 12.49 acres in size, which is surrounded on three sides by roads: Interstate Route 78 to the north, Petticoat Lane to the east, and State Route 22 to the south. The property is bounded to the west along the point of the "pie piece" by the Conrail railroad line. Forest areas are located along the northern and western perimeters of the property and a line of mature trees existed along the eastern and southern property lines. Surrounding land uses include commercial (a Honda automobile dealership is located across Route 22 to the south), governmental (a county trash transfer station and a municipal water storage facility — consisting of two large water tanks — are located across 1-78 to the north), undeveloped lands to the east of the property, and a long

"sliver" lot located to the west of the railroad line (which is undeveloped). Wetlands are present in the western corner of the property. The property is situated in the C-2 zone. As set forth above, the Board granted preliminary site plan approval memorialized in Resolution No. 2013-13 and final site plan approval memorialized in Resolution No. 2014-09 for the previously approved proposed development, consisting of the 12,000 square foot building to house the principally permitted cancer clinic along with the associated improvements. As also set forth above, the previously approved proposed development is partially constructed with the primary structure being substantially complete and site work remaining unfinished.

2. The Application and Requested Relief. As set forth above, the application requests amended preliminary and final site plan approval to: 1) eliminate the proposed memorial garden, 2) add the proposed walkway, and 3) allow revised tree planting locations. The applicant additionally requests an exception from the tree replacement requirements established in site plan ordinance section 165-77.D.(5) to allow tree replacement by planting 115 trees where the ordinance requires the planting of 217 3-inch caliper trees based on a 2-to-l ratio. Finally, the applicant requests a modification of condition #11 of Resolution No. 2014-09 to provide for an extension of the time within which to obtain a certificate of occupancy.

3. Standards for Considering the Exception. N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As established in New Jersey case law, the "hardship" necessary to warrant the grant of a "c(l)" variance does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit the extent" to which the property can be used, our courts have held that "hardship" to warrant a "c(l)" variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board thus concludes that the hardship necessary to warrant the grant of an exception does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, such "hardship" is sufficient to warrant the grant of an exception. Unlike "hardship," however, "impracticable" has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that "impracticability" is derived from the root word "impractical," which is defined as "not wise to put into or keep in practice or effect"; an inability to deal "sensibly or prudently with practical matters." See, Merriam-Webster's Collegiate Dictionary (1 Ith Ed. 2004). The Board thus concludes that impracticability to warrant the grant of an exception includes situations where requiring literal enforcement of the ordinance requirements at issue would be imprudent and/or not sensible.

4. Findings and Conclusions as to the Tree Planting Exception. During the course of the hearing, the applicant and the Board, along with all the professionals, discussed the tree replacement requirements established in ordinance section 165-77.D.(5) and agreed on the

following, which the Board finds is determinative of the amount of replacement trees required. First, 325 caliper inches of trees have been removed from the property, with some removed as part of the construction of the proposed development, but approximately 20 other large mature trees removed by a landscaping subcontractor without authorization by the owner or the applicant. Nevertheless, the owner and applicant are responsible for tree replacement for the unauthorized removals as well as the planned removals. Ordinance section 165-77.D(5) requires tree replacement at a 2-to-l ratio which totals 650 caliper inches of replacement trees (325 caliper inches X 2 = 650 caliper inches), which equates to 217 3-inch caliper trees. As such, the Board finds that 217 trees are required to be planted to replace all of the trees that have been removed The Board's findings and conclusions as to the exception from the tree replacement requirement to allow the planting of 115 replacement trees instead of the 217 trees required to be planted — leaving a deficit of 102 trees — are as follows. First, as to the extent of the requested exception and whether it is reasonable to grant it, the Board finds that there simply is not enough room on the site to plant all the required trees without causing the trees that would be planted to die by overcrowding so that granting the requested exception is reasonable under the circumstances in that it will prevent planted trees from dying. Second, for this same reason, the Board finds that granting the requested exception is within the general intent and purpose of the provisions for site plan review and approval because the trees that are proposed to be planted are likely to thrive. Third, the Board finds that literally enforcing the tree replacement requirements of the ordinance is impractical in this particular application because of the limited amount of space and likelihood that if all of the required trees are planted, trees will not survive. Fourth, the Board will impose a condition on the grant of the exception (pursuant to the Tree Replacement Requirements Table set forth in ordinance section 246-3 .B) that the applicant shall pay $10,000 into the Township Tree Replacement Fund, representing 20 trees removed at $500 per tree (20 X $500 = $10,000), so that trees may be planted in another part of the Township and in order to mitigate the loss of trees caused by the unauthorized removal of 20 trees. For all of the forgoing reasons, the Board concludes that the requested exception from the tree planting requirement can and should be granted subject to the conditions below being imposed and complied with. 5.

6. Standards for Modification or Elimination of Conditions. Our courts have held that land use boards have the power to modify and/or eliminate prior approval conditions if "enforcement of the restrictions would frustrate an appropriate purpose", upon a "proper showing of changed circumstances", or upon "other good cause" warranting modification and/or amendment. Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), certif. denied 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). As to the "good cause" grounds, our courts have held that a board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or eliminate the condition is consistent with or contrary to that intent. See, Sherman, 242 N.J. Super. at 430.

7. Standards for Extensions of Time Limitation Conditions. While there is no express provision in the MLUL authorizing a limitation on the time within which an applicant must apply for and obtain a certificate of occupancy, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for boards to impose a "life" on an approval. Board Rule 2:4-9 requires that an

applicant make revisions to plans within a specified time period as well as commence and complete construction and obtain permits and certificates of occupancy within the specified time periods and provides that failure to obtain such permits and certificates of occupancy within the time periods result in the granted approvals becoming null and void. While the D.L. Real Estate

Holdings Court did not provide standards for Board's to follow in applications for modification of conditions and extensions of such time periods, the Board concludes that it should follow the standards applicable to a board's consideration of applications for extensions of the preliminary and/or final protection periods, which require a board to engage in a balancing test in which it must consider factors that weigh in favor of the extension and factors that weigh against the extension and then balance the factors to determine whether or not to grant the extensions. Jordan Developers v. Brigantine Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992). While the Jordan court upheld the board's denial of an extension request in that case on the basis of an intervening zoning change, the court held that the intervening zone change did not require denial of the extension but was a factor the board should weigh as against an extension when it balanced the positive and negative factors in determining whether or not to grant the extension. The Jordan court specifically held that the board must weigh "the public interest in the implementation of [any ordinance] change, the applicant's interest in extended protection, and the circumstances in which the need for the extension arose." Id. at 680. The Board further concludes that the required balancing test is not an "all or nothing" proposition. Certain factors may weigh against granting an extension except that, if conditions are imposed on the extension, the balance may then be tipped in the direction of granting the extension. Conditions may have to be imposed in the event the Board finds that same are necessary in order to strike the proper balance. In conclusion, in determining whether or not to grant the application at issue here, the Board must engage in a balancing test in which it must consider factors that weigh in favor of the modification of the condition and the requested extension and factors that weigh against the modification of the condition and the requested extension and then balance the factors to determine whether or not to grant the application.

8. Good Cause and Balancing the Factors in Favor of and Against the Application Warrant Modifying the Condition and Granting the Extension Request. Turning first to the issue of whether good cause exists to warrant modification of the condition at issue and whether there are any factors that weigh in favor of extending the time period in which to obtain a construction permit, the Board finds that, despite construction delays, the primary structure is substantially complete, with site works remaining unfinished. The Board notes and finds that granting the extension request is more efficient than requiring the applicant to proceed anew at this juncture. Finally, the Board finds that there are no factors that weigh against granting the extension request. Having considered these factors, the Board finds that good cause exists to modify the condition and that factors weigh in favor of granting the extension request (efficiency) and no factors that weigh against granting the extension request (because no Township zoning ordinance change applies to the proposed development). [1] For these reasons, the Board finds and concludes that it should grant the extension request, thereby extending the

[1] One ordinance change does apply to the development, but it is not a zoning ordinance change, and in any event, the applicant has agreed to comply with it to avoid the expiration of the approvals, especially considering that the final site plan protection period against ordinance changes has expired unless the requested condition modification and extension are granted. Specifically, Ordinance #1196-2024, effective May 15, 2024, adopted Chapter 246 of the Township Ordinance entitled "Tree Removal and Replacement" which establishes requirements for tree removal and replacement in the Township and includes in ordinance section 246-3.B a Tree Replacement Requirements Table. It is based on the requirements of this ordinance that the Board imposed as a condition on of the grant of the tree replacement exception that the applicant pay $10,000 into the Township Tree Replacement Fund.

deadline for the applicant to obtain a certificate of occupancy to six (6) months of the adoption of the within resolution, instead of the original deadline of October 6, 2019.

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9. Standards for Amended Preliminary and Final Site Plan Review. N.J.S.A. 40:55D-46b and -50a are the focal points for consideration of amended preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that if "any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing" is proposed, "an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development." N.J.S.A. 40:55D-46b further provides that the Board "shall" grant amended preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D- 50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance requirements, the Board must grant approval. Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. However, there are two exceptions: The first exception is where an application does not comply with all ordinance regulations and requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance regulations and requirements and grant approval if the application complies with all such remaining regulations and requirements. The second exception is where the application does not comply with all ordinance regulations and requirements, but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance requirement prior to the Board granting approval. Additionally, even if an application complies with all ordinance regulations and requirements, the Board cannot grant initial preliminary approval or amended preliminary approval unless matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety are addressed. D' Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). Further, if information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. Id. In this regard, the Board cannot grant amended final approval subject to later submission of the required detailed drawings and specifications because they are required to be submitted ahead of time pursuant to N.J.S.A. 40:55D-50a. See also, N.J.S.A. 40:55D-4 which defines "final approval" as the action of the Board taken "after all conditions, engineering plans and other requirements have been completed or fulfilled. . ."

10. Findings and Conclusions as to Amended Preliminary and Final Site Plan Approval. The Board's findings as to amended preliminary and final site plan review are as follows. In as much as the Board has concluded that the exception from the tree planting ordinance requested in the application should be granted, and provided that the conditions set

forth below are imposed and complied with, the Board finds that the application to eliminate the proposed memorial garden, construct the proposed walkway, and change the proposed tree planting locations pursuant to the amended site plan and site plan exhibit referenced above will

comply with all remaining applicable zoning ordinance regulations and all site plan ordinance requirements. Provided that the conditions set forth below are imposed and complied with, the Board further finds that all matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development. For all of the foregoing reasons, the Board concludes that it can and should grant amended preliminary and final site plan approval to the amended site plan and site plan exhibit referenced above to allow the elimination of the proposed memorial garden, construction of the proposed walkway, and new tree planting locations, provided that the conditions set forth below are imposed and complied with.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON OCTOBER 7, 2024 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT To THE CONDITIONS SET FORTH BELOW:

B. RELIEF GRANTED

1. Exception from Ordinance Tree Replacement Requirement. Subject to the conditions set forth below, an exception from ordinance section 165-77.D(5) is hereby granted to allow 115 replacement trees to be planted where 217 trees are required to be planted to replace all of the trees that have been removed.

2. Modification of Condition #11 of Resolution No. 2014-09. Subject to the conditions set forth below, the Board hereby modifies condition #11 of Resolution No. 2014-09 to grant the extension request, thereby extending the deadline for the applicant to obtain a certificate of occupancy for the primary structure from October 6, 2019 to six (6) months of the adoption of the within resolution.

3. Grant of Amended Preliminary and Final Site Plan Approval. Subject to the conditions set forth below, the Board hereby grants amended preliminary and final site plan approval to the amended site plan and site plan exhibit referenced above to allow the elimination of the proposed memorial garden, construction of the proposed walkway, and new tree planting locations as part of the proposed amended development.

c. CONDITIONS

1. Condition #11 of Resolution No. 2014-09 Modified. Condition #11 of Resolution No. 2014-09 is hereby revised to provide as follows:

11. Time to Obtain Certificate of Occupancy. The applicant shall apply for and obtain a permanent certificate of occupancy for the proposed amended development within six (6) months of the adoption of the within resolution. If during said six (6) month period, the

applicant fails to obtain permanent certificate of occupancy for the primary structure, the within amended preliminary and final site plan approval shall automatically expire and become null and void.

6)

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2. Tree Replacement Fund. The applicant shall pay $10,000 into the Township Tree Replacement Fund pursuant to the Tree Replacement Requirements Table set forth in ordinance section 246-3.B, representing 20 trees removed at $500 per tree (20 X $500 = $10,000).

3. Remaining Conditions of Resolution No. 2014-09 Remain in Full Force and Effect. Other than condition #11 of Resolution No. 2014-09, all other remaining conditions set forth in Resolution No. 2014-09 shall remain in full force and effect.

VOTE ON MOTION MADE AND SECONDED ON OCTOBER 7 2024:

THOSE IN FAVOR: AVERSA, CIMEI, HIGGINS, KLEINHANS, GLASER & MCCAFFREY.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on November 18, 2024 by the following vote of eligible Board members:

Member	Yes	No	Abstain	Absent
AVERSA	x			
CIMEI	x			
HIGGINS	x			
KLEINHANS	x			
GLASER	x			
MCCAFFREY	x			

Taylor Gribbin

TAYLOR GRIBBIN, Board Secretary

ATTEST:

Appendix C

2024-1 1-18-v5

CLINTON TOWNSHIP BOARD OF ADJUSTMENT

STORAGE DEVELOPERS, LLC
1755 ROUTE 31 SOUTH
BLOCK 68, LOT 9.02

APPLICATION BOA-2022-10

RESOLUTION MEMORIALIZING GRANT OF BIFURCATED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH VARIOUS "C" VARIANCES AND EXCEPTIONS TO ALLOW THE CONSTRUCTION OF A TWO-STORY, CLIMATE CONTROLLED, SELF-STORAGE FACILITY IN THE C-1 COMMERCIAL ZONE

RESOLUTION NO. 2024-08

WHERAS, Ganga, LLC (the "owner") owns certain property designated on the Clinton Township (the "Township") tax maps as Block 68, Lot 9.02, located on Route 31 South, south of West Main Street, and having a current post office address of 1755 Route 31 South (the " property"), which property is approximately 5.4 acres in size and is situated in the C-1 Commercial Zone (the "C-1 Zone");

WHEREAS, Landowner Marketing, LLC (the "applicant") is the contract purchaser of the property and, with the consent of the owner, the applicant made application to the Clinton Township Board of Adjustment (the "Board") for preliminary and final site plan approval (the " application") after having previously applied to and received from the Board a bifurcated "d(l)" use variance and "d(4)" floor area ratio ("FAR") variance (the "prior approvals") to allow the self-storage use and the development of the property with a self-storage building (the "proposed building") along with associated site improvements (the "proposed site improvements") (the proposed building and the proposed site improvements are together referred to as the "proposed development") which approvals are memorialized in Board Resolution No. 2023-03 adopted on November 27, 2023 ("Resolution No. 2023-03");

WHEREAS, the "d" variances previously granted confer exclusive subject matter jurisdiction over the application with the Board pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40•.55D-70d, -76b, -70% -46, -50 and -51;

WHEREAS, a number of documents were submitted by the applicant, Board and Township experts and officials with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Preliminary and Final Major Site Plan, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 16 sheets (the "site plans"),

2. Architectural Drawings, prepared by Heal Architect, LLC, dated November 1, 2023, consisting of 3 sheets (the "architectural drawings"),

3. Environmental Impact Statement, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 48 pages (the "EIS"),

4. Operations and Maintenance Manual, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 39 pages (the "Stormwater Manual"),

5. Stormwater Management Report, prepared by Colliers Engineering & Design, Inc February 21, 2024, consisting of 373 pages (the "Stormwater Management Report"),

6. Traffic Statement, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 4 pages (the "traffic statement"), and

7. Soils and Foundation Investigation Report, prepared by GZA GeoEnvironmental, Inc., dated January 20, 2023, consisting of 136 pages (the "soil and foundation report");

WHEREAS, the application was deemed to be complete;

WHEREAS, a duly noticed public hearing was held on the application, commencing on July 22, 2024, continuing to and concluding on August 26, 2024, with affidavits of service and publication of notices of the hearing being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Tim Arch, Esq. (of Bob Smith & Associates) and the Board was represented by Joseph Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC) on July 22,
2024 and Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC) on August 26, 2024;

WHEREAS, the following individuals testified during the hearing, were subject to cross examination and questioning, and the testimony is part of the record in this matter:

1. Jered Duke (applicant's development partner),

2. Daniel Bloch, PP (applicant's planning expert),

3. Mark Janiszewski, PE (applicant's engineering expert),

4. Alec Zukowski, PE (applicant's engineering expert),

5. Larry Plevier, PE (Board's engineering expert),

6. Jim Mazzucco, LLA (Board's landscape architectural expert),

7. Steven Lydon, PP, AICP (Board's planning expert), and

8. Tom Behrens, PP, AICP (Board planning expert);

WHEREAS, the following exhibits were submitted into evidence during the hearing and are part of the record in this matter:

A-I "Clinton Self Storage, Clinton NJ: Aerial" dated July 22, 2024, and

A-2"Site Plan Exhibit" dated July 22, 2024;

WHEREAS, one member of the public appeared at the hearing to request a slight increase in landscaping along a western drive aisle, and the applicant agreed to same, otherwise no other interested parties or members of the public appeared at the hearing to cross examine witnesses, testify or otherwise submit evidence;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, EXHIBITS AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE
LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. The Property, Surrounding Development, and Zoning. The property is a 5.4acre irregularly shaped lot with 426 feet of frontage on Route 31 South located south of West Main Street. The property is generally undeveloped and wooded and slopes upward significantly from the front of the property to the rear. There is a 75-foot-wide easement located along the rear property line owned by the State of New Jersey. Development surrounding the site consists of commercial uses to the north and east, with residential development to the northwest. The property is situated in the C-1 zone and also the Route 31 North Highway Corridor District. The Schedule of Requirements (the "Schedule"), which is incorporated by reference by and into ordinance section 165-86, establishes the bulk requirements for lots in the C-1 Zone.

2. The Prior Approvals and the Proposed Development. As set forth above, the applicant applied to and obtained from the Board the prior approvals as memorialized in Resolution No. 2023-03. Also as set forth above, the prior approvals consisted of a bifurcated

"d(l)" use variance and "d(4)" FAR variance to allow: (a) the self-storage use; (b) the proposed building to contain the self-storage units; and (c) the proposed site improvements. The proposed development consists of the proposed building and the proposed site improvements, with the proposed building being a two-story, 100,000 square foot climate-controlled facility featuring a drive-thru loading / unloading area situated at the front of the property. The proposed site improvements include a stormwater management basin, freestanding lighting fixtures and the septic system (the stormwater management basin, freestanding lighting fixtures and the septic system are referred to together as the "proposed accessory structures"), a driveway (the " proposed driveway"), retaining walls (the "proposed retaining walls") and a parking area (the

"proposed parking area"). The applicant also proposes signage including a pylon sign to be located at the entrance to the property (the "proposed freestanding sign") and three (3) wall signs (the "proposed wall signs"). The rear of the property will remain undeveloped, and, in fact, the applicant has proposed a conservation easement over a 2-acre portion of the rear of the property which will prohibit any and all development of the rear of the property.

3. The Required and Requested Relief. In order to construct the proposed development, the applicant requires and has requested "c" variances from various zoning ordinance regulations, exceptions from various site plan ordinance requirements, and preliminary and final site plan approval. The specific relief requested is as follows:

a. A "c(l)" side yard setback variance from the Schedule to allow the southerly side yard to be setback 45.6 feet from the property line where the minimum side yard setback required is 50 feet,

b. A "c(l)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 3 canopy trees, 5 ornamental evergreen trees and 117 shrubs in the front yard where 51 canopy trees, 85 ornamental evergreen trees and 341 shrubs are required,

c. A "c(l)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 3 canopy trees, 4 ornamental evergreen trees and 56 shrubs in the northerly side yard where 50 canopy shade trees, 83 ornamental evergreen trees and 332 shrubs are required,

d. A "c(l)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 6 canopy trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 canopy trees, 71 ornamental evergreen trees and 286 shrubs are required,

e. A "c(l)" variance from ordinance section 165-77.K(7)(a)[1] to allow no planting in the rear yard buffer where 19 canopy trees, 31 ornamental evergreen trees and 124 shrubs are required,

f. A "c(2)" variance from ordinance section 165-109.N(1)(d)[1] to allow the proposed freestanding sign to be setback five feet from the front lot line where a minimum setback of 15 feet is required,

g. A "c(2)" variance from ordinance section 165-71 .A(I O)(a) to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1,000 square feet of floor area or 100 parking spaces in this case,

h. A "c(2)" variance from ordinance section 165-98.E to allow the proposed stormwater basin to be located in the front yard where accessory structures are prohibited within yard setback areas,

i. A "c(2)" variance from ordinance section 165-98.E to allow the proposed freestanding lighting fixtures to be located in the front yard where accessory structures are prohibited within yard setback areas,

j. A "c(2)" variance from ordinance section 165-98.E to allow the proposed septic system to be located in the front yard where accessory structures are prohibited within yard setback areas,

k. "C(2)" variances from ordinance section ordinance section 165-98.E to allow the proposed retaining walls to sit within the north and south side yard setback areas where retaining walls are prohibited within yard setback areas,

1. A "c(2)" variance from ordinance section 165-109.N(2)(a) to allow three wall signs, where a maximum of two wall signs is permitted per facade that faces a street,

m. A "c(2)" variance from ordinance section 165-109.N(2)(a) to allow two wall signs on the south side faqade which does not face a street, where a maximum of two wall signs is permitted per fagade that faces a street,

n. An exception from ordinance section 165-77.F to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only,

o. An exception from ordinance section 165-71A(7) to allow the parking area to be set back 6 feet from the proposed building where a minimum setback of 12 feet from a principal building is required,

P. An exception from ordinance section 165-71.A(7) to allow the driveway to be setback 5 feet from the proposed building where the minimum required setback is 12 feet,

¶·An exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the northerly retaining wall to be 7.67 feet high where the

maximum retaining wall height permitted in the Route 31 North Highway Corridor District is 6 feet,

r.An exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall,

s. An exception from 165-77D(5) from the Township's tree replacement requirements, and

t.Preliminary and final site plan approval.

4. Standards for Consideration of the "C" Variances. The Board has the power to grant "c" variances under two sets of criteria: the "c(l)" or so-called "hardship" criteria and/or "c(2)" or so-called "benefits v. burdens" criteria. The Board's conclusions as to the standards it must employ to consider the "co)" and "c(2)" variances are as follows:

a. Standards for Consideration of "C(I)" Variances. The Board has the power to grant "c(l)" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D70c(1) where: (1) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (2) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, "the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." This is the so-called "positive criteria of a "c(l)" variance. Significantly, the hardship that the applicant must prove is not inutility — that without the variance the property would be zoned into inutility. While inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit "the extent" to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available for intentionally created situations as constituting "self-created" hardship. Commons v.
Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adi. ,78 N.J. 544, 553 (1979). Neither is a hardship variance available to accommodate mistakes. Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Neither is a hardship variance available to relieve "personal hardship" of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). Finally, the Board may not exercise its power to grant a "c(l)" variance otherwise warranted, however, unless the socalled "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. Standards for Consideration of "C(2) Variances. The Board has the power to grant "c(2)" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D70c(2) where "in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment." This is the so-called "positive" criteria of a "c(2)" variance. The zoning benefits resulting from permitting the deviation(s) must be for the community ("improved zoning and planning that will benefit the community") and not merely for the private purposes of the owner.
Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The Appellate Division has held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of

permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). Finally, the Board may not exercise its power to grant a "c(2)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied,

Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." Again, the phrase "zone plan" as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR co., 107 N.J. (1987).

5. Findings and Conclusions as to the "C(I)" Side Yard Setback Variance. As set forth above, the applicant has requested a "C(I)" variance from the Schedule to allow the southerly side yard to be setback 45.6 feet where the minimum side yard setback required is 50 feet. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(l)" side yard setback variance are as follows:

a. Positive Criteria of the Side Yard Setback Variance. As to the positive criteria, the Board finds as follows. First, only the southwest corner of the proposed building encroaches into the side yard setback area and, to be even more specific, just 54 square feet of the proposed building is encroaching into the setback area. This is due to the irregular shape of the property which, while oversized, is irregularly shaped. The Board finds that the irregular shape of the property is a unique characteristic of this specific property and that the strict application of the Township ordinances regarding side yard setback would result in exceptional and undue hardship upon the applicant as the applicant would be unable to develop the property in any meaningful way. For the foregoing reasons, the Board finds and concludes that the "c(l)" side yard setback variance is warranted to relieve such hardship and that the applicant has proven the positive criteria of the requested "c(l)" side yard setback variance.

b. Negative Criteria of the Side Yard Setback Variance. As to the negative criteria, the Board finds that granting a variance for the side yard setback deviation will not result in substantial detriment to the public good because, due to the topography of the property which includes an upward slope from the front to the rear of the property, the encroaching corner of the proposed building will not be visible from the surrounding lots or streets. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(l)" side yard setback variance can be granted without substantially impairing the intent and purpose of the master plan and zoning

ordinance. As such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(l side yard setback variance.

6. Findings and Conclusions as to the "C(I)" Landscape Buffer Variances. As set forth above, the applicant has requested "c(l)" variances from ordinance section 165-77.K(7) to allow 1) a buffer of 3 shade trees, 5 ornamental evergreen trees and 117 shrubs in the front yard where 51 shade trees, 85 ornamental evergreen trees and 341 shrubs are required, 2) a buffer of 3 shade trees, 4 ornamental evergreen trees and 56 shrubs in the northerly side yard where 50 shade trees, 83 ornamental evergreen trees and 332 shrubs are required, 3) a buffer of 6 shade trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 shade trees, 71 ornamental evergreen trees and 286 shrubs are required, and 4) no planting in the rear yard where 19 shade trees, 31 ornamental evergreen trees and 124 shrubs are required. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(l)" buffer variances are as follows:

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a. Positive Criteria of the Landscape Buffer Variances. As to the positive criteria, the Board finds as follows. First, the property's extreme slope makes planting extremely challenging. In addition, the property's irregular shape means that adhering to the side yard buffer requirements would push the proposed building closer to the neighboring residents to the rear of the property. As such, constructing a commercial use on the property while meeting the buffer requirements is not feasible. The intent of the buffering requirements is to screen a commercial development from outside view. In that regard, the Board will impose two conditions on any approval it grants: 1) the applicant shall work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building and, 2) the existed wooded area to the rear of the property must be preserved in a conservation area. The Board finds that the irregular shape and topography of the property are unique characteristics of this specific property and that the strict application of the Township ordinances regarding buffering would result in exceptional and undue hardship upon the applicant as the applicant is unable to develop the property in any meaningful way while leaving the required buffers. For the foregoing reasons, the Board finds and concludes that the "c(l)" landscape buffer variances are warranted to relieve such hardship and that the applicant has proven the positive criteria of the requested "c(l)" landscape buffer variances.

b. Negative Criteria of the Landscape Buffer Variances. As to the negative criteria, the Board finds that granting variances for the landscape buffer deviations will not result in substantial detriment to the public good. This is because, as set forth above, the Board will impose a condition on any approval it grants that the applicant work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building and because the existing wooded area to the rear of the property will be preserved in a

conservation area. As such, the development will not be aesthetically displeasing. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(l)" landscape buffer variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(l)" landscape buffer variances.

7. Findings and Conclusions as to the "C(2)" Freestanding Sign Setback Variance. As set forth above, the applicant has requested a "C(2)" variance from ordinance section 165-109.N(1)(d)[1] to allow the proposed freestanding sign to be setback five (5) feet from the front lot line where a minimum setback of 15 feet is required. As a preliminary matter, the Board finds that the applicant was correct in applying for a "c(2)" freestanding sign setback variance, and not a "c(l)" variance, because a "c(l)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the freestanding sign setback ordinance requirement. In this regard, the Board notes that there is no evidence to suggest that the proposed freestanding sign cannot be placed in a compliant location. That said, the Board finds and concludes that a "c(2)" variance is warranted to allow the freestanding sign setback deviation, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" freestanding sign setback variance are as follows:

a. Positive Criteria of the Freestanding Sign Setback Variance. As to the positive criteria the Board finds as follows. First, the purpose of the proposed freestanding sign is to alert passing motorists to the entrance to the proposed development, making visibility crucial. The Board finds that placing the sign five (5) feet from the highway is necessary for visibility from Route 31. The Board finds that the proposed sign placement will promote safety by providing drivers with timely notice to slow down and prepare for the turn into the property. Next, the Board finds that granting the requested freestanding sign setback variance will promote the safety purposes of zoning set forth in the MLUL, N.J.S.A. 40:55D-2a (promoting the public health, safety, and general welfare). Finally, in light of the benefits to the Township and the surrounding region that the applicant's business will provide, the Board finds that the zoning benefits arising from the grant of the requested variance are community wide public benefits and not simply a private benefit to the applicant. Provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" freestanding sign setback variance will substantially outweigh any detriment. For all of the foregoing reasons, the Board finds and concludes that the that applicant has proven the positive criteria of the requested "c(2)" freestanding sign setback variance.

b. Negative Criteria of the Freestanding Sign Setback Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the requested "c(2)" freestanding sign setback variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that there will be no negative impacts to the surrounding neighborhood resulting from the freestanding sign setback deviation. The Board finds that the deviation at issue will not result in detriment, let alone substantial detriment to the public good and, in fact, will benefit the public good by enhancing the safety along Route 31 at the entrance to the property. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that the grant of the variance will not impair the intent or purpose of the master plan and zoning ordinances. For all of the foregoing reasons, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(2)" freestanding sign setback variance.

8. Findings and Conclusions as to the "C(2)" Parking Space Variance. As set forth above, the applicant has requested a "C(2)" variance from the ordinance section 16571 .A(IO) to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1 ,000 square feet of floor area or 102 parking spaces in this case. As a preliminary matter, the Board finds that the applicant was correct in applying for a "c(2)" parking space variance, and not a "c(l)" variance, because a "c(l)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the parking space ordinance requirement. In

this regard, the Board notes that there is no evidence to suggest that the required 102 parking spaces could not be provided. That said, the Board finds and concludes that a "c(2)" variance is warranted to allow the parking space deviation, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" parking space variance are as follows:

a. Positive Criteria of the Parking Space Variance. As to the positive criteria, the Board finds as follows. First, based on the testimony of the applicant's witnesses, the Board finds that the self-storage use does not create a high parking demand. Moreover, in this particular case, the tenants do not require parking spaces at all. Rather, the design of the proposed development allows them to pull into the drive-thru loading / unloading area and gain direct and convenient access to their storage unit. The 9 proposed parking spaces are meant to be used by the occasional visitor who requires the services of office personnel. As such, the Board finds that the proposed 9 parking spaces will adequately serve the proposed development. Second, the Board finds that requiring unnecessary additional parking spaces would do nothing but add to the impervious coverage on the site and increase the area of disturbance, which is not a good alternative for the property in terms of the environment. In this regard, the Board finds that the elimination of the unnecessary parking spaces will eliminate unnecessary impervious pavement on the property which benefits the community by decreasing excess stormwater and allowing for improved stormwater draining. In addition, reducing the amount of parking spaces will make the property feel less congested and will afford more space for landscaping. The Board finds that granting the "c(2)" variance to allow 9 parking spaces as proposed will promote the environmental purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2g (providing sufficient space in appropriate locations for commercial uses according to their environmental requirements in order to meet the needs of all New Jersey citizens) and -2j (preventing degradation of the environment through improper use of land). Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the aforesaid zoning benefits will substantially outweigh any detriments. For all of the foregoing reasons, the Board finds and concludes that the applicant has proved the positive criteria of the requested "c(2)" variance.

b. Negative Criteria of the Parking Space Variance. As to the negative criteria of the "c(2)" parking space variance, the Board finds that, provided the conditions set forth below are imposed and complied with, the requested "c(2)" parking space variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant has proved the negative criteria of the requested "c(2)" parking space variance.

9. Findings and Conclusions as to the "C(2)" Accessory Structures Variances. As set forth above, the applicant requests three "c(2)" variances from ordinance section 165-98.E to allow the proposed accessory structures (the stormwater basin, freestanding lighting fixtures and

septic system) to be located in the front yard where accessory structures are prohibited within yard setback areas. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)" accessory structures variances to allow the proposed accessory structures to be located in the front yard, and not "c(l)" variances, because "c(l)" variances are not available in this case because there is no hardship that prevents or inhibits compliance with the accessory structure setback ordinance requirement. There is no evidence to suggest that the proposed accessory structures could not be located in a compliant location. That said, the Board finds and concludes that "c(2)" variances are warranted to allow the proposed accessory structures to be located in the front yard, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" accessory structure variances are as follows:

a. Positive Criteria of the Accessory Structures Variances. As to the positive criteria, the Board finds as follows. First, while the proposed accessory structures could technically be installed in compliant locations, the Board finds that each piece of equipment will function in a more effective manner if placed in front of the building. To be specific, the lighting fixtures are necessary in front of the building in order to provide optimal safety lighting. Similarly, the topography of the property dictates that the stormwater basin and septic system function best when placed in the front yard setback area. Importantly, these will not be visible from Route 31. Thus, the Board finds that granting the "c(2)" variances to allow the proposed accessory structures to be installed as proposed will enhance the efficiency of the self-storage use as previously approved in Resolution No. 2023-03. Second, the Board finds that granting the "c(2)" variances to allow the proposed accessory structures to be installed as proposed in the front yard area will promote purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (to promote the public safety and general welfare) and -2g (to provide sufficient space in appropriate locations according to environmental requirements) by providing a safe space for the self-storage use while also supporting effective stormwater management on the property. Finally, the Board finds that the foregoing zoning benefits are community-wide benefits and, provided that the conditions set forth below are imposed and complied with, the aforesaid zoning benefits will substantially outweigh any detriments. For all of the foregoing reasons, the Board finds and concludes that the applicant has proven the positive criteria of the requested "c(2)" accessory structures variances.

b. Negative Criteria of the Accessory Structures Variances. As to the negative criteria of the requested "c(2)" accessory structures variances, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested "c(2)" variances will not result in substantial detriment to the public good as there will be no substantial detriment on the surrounding lots because the proposed accessory structures will not be visible due to the topography of the property which includes an upward slope from the front to the rear of the property. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(2)" accessory structures variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As

such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(2)" accessory structures variances.

10. Findings and Conclusions as to the "C(2)" Retaining Wall Setback Variances. As set forth above, the applicant requests a "c(2)" variances from ordinance section 165-98.E to allow the proposed retaining walls to sit within the north and south side yard setback areas where retaining walls are prohibited within yard setback areas. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)" retaining wall setback variances, and not a "c(l)" variance, because a "c(l)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the retaining wall setback ordinance requirement. There is no evidence to suggest that the retaining walls could not be built in a compliant location. That said, the Board finds and concludes that "c(2)" variances is warranted to allow the retaining wall setback deviations, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" retaining wall setback variances are as follows:

a. Positive Criteria of the Retaining Wall Setback Variances. As to the positive criteria, the Board finds as follows. First, the Board finds that granting the requested "c(2)" variances to allow the retaining walls to be located in the side yard setback areas will allow the applicant to minimize grading and the area of disturbance which the Board finds will promote the environmental purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2e (promoting the establishment of appropriate concentrations that will contribute to the well-being of persons and preservation of the environment), -2g (providing sufficient space in appropriate locations for commercial uses according to their environmental requirements in order to meet the needs of all New Jersey citizens) and -2j (preventing degradation of the environment through improper use of land). Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the aforesaid zoning benefits will substantially outweigh any detriments. The Board finds and concludes that the applicant has proved the positive criteria of the "c(2)" retaining wall setback variances.

b. Negative Criteria of the Retaining Wall Setback Variances. As to the negative criteria of the "c(2)" retaining wall variances, the Board finds that, provided the conditions set forth below are imposed and complied with, the requested "c(2)" retaining wall variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant has proved the negative criteria of the "c(2)" variances.

11. Findings and Conclusions as to the "C(2)" Wall Sign Variances. As set forth above, the applicant has requested "c(2)" variances from ordinance section 165-109.N(2)(a) to allow three (3) wall signs on the fagade where a maximum of two wall signs is permitted per fagade that faces a street. The applicant proposes the following wall signs: 1) a building mounted "Extra Space Storage Drive-Thru" sign (the "primary sign") on the front building elevation not to exceed 200 square feet, 2) a building mounted "Office" sign (the "Office sign") on the southerly side elevation, and 3) a building mounted "Drive-Thru" sign (the "Drive-Thru sign")

on the southerly side elevation. The southerly side elevation does not face a street. Thus, the applicant requires two variances from ordinance section 165-109.N(2)(a) as follows: 1) to allow the Office sign and the Drive-Thru sign on a non-street facing fagade, and 2) to allow three (3) wall signs where only two (2) wall signs are permitted. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)", and not "c(l)" variances, because "c(l)" variances are not available to allow the proposed wall signs because there is no "hardship" that prevents the applicant from complying with the wall sign requirements. That said, the Board finds and concludes that "c(2)" walls sign variances are warranted. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" wall sign variances are as follows:

a. Positive Criteria of the Wall Sign Variances. The Board finds that the positive criteria of the requested "c(2)" wall sign variances has been proven for the following reasons. First, the Office and Drive-Thru signs are wayfinding signs that the Board finds are essential for efficient vehicular movement around the property. Second, as to the placement of the Office and Drive-Thru signs on a non-street facing fagade, the Board finds that they will only be effective if placed as proposed. As such, the Board finds that granting the requested wall sign variances will promote the safety purposes of zoning set forth in the MLUL, N.J.S.A. 40:55D-2a (promoting the public health, safety, and general welfare). Finally, in light of the benefits to the Township and the surrounding region that the applicant's business will provide, the Board finds

that the zoning benefits arising from the grant of the requested variances are community wide public benefits and not simply a private benefit to the applicant. As such, provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" wall sign variances will substantially outweigh any detriment. For all of the foregoing reasons, the Board finds and concludes that the that applicant has proven the positive criteria of the requested "c(2)" wall sign variances.

b. Negative Criteria of the Wall Sign Variances. Provided that the conditions set forth below are imposed and complied with, the Board finds that "c(2)" variances allowing three wall signs in total and two wall signs on a non-street facing fagade can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that there will be no negative impacts resulting from the proposed number or placement of wall signs. The Board finds that the deviation will have no negative aesthetic impact on the community because the wall signs are relatively small in size and will only be seen by people on the property and will not be visible to passing motorists. The Board finds and concludes that the requested "c(2)" wall sign variances can and should be granted subject to the conditions set forth below.

12. Conclusion to Grant all of the Requested "C" Variances. For all of the forgoing reasons, the Board concludes that all of the requested "c" variances can and should be granted subject to the conditions below being imposed and complied with.

13. Standards for Considering the Exceptions. N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for . . . site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As established in New Jersey case law, the "hardship" necessary to warrant the grant of a "c(l)" variance does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, our courts have held that "hardship" to warrant a "c(l)" variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board thus concludes that the hardship necessary to warrant the grant of an exception does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, such "hardship" is sufficient to warrant the grant of an exception. Unlike "hardship," however, "impracticable" has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that "impracticability" is derived from the root word "impractical," which is defined as "not wise to put into or keep in practice or effect"; an inability to deal "sensibly or prudently with practical

matters." See, Merriam-Webster's Collegiate Dictionary (1 Ith Ed. 2004). The Board thus concludes that impracticability to warrant the grant of an exception includes situations where requiring literal

enforcement of the ordinance requirements at issue would be imprudent and/or not sensible. Because the exceptions in this application are connected to a "d" variance, any exception otherwise warranted cannot be granted pursuant to N.J.S.A. 40:55D-76b "unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

14. Findings and Conclusions as to the Exceptions From Site Plan Ordinance Requirements Regarding the Parking Area. As set forth above, the applicant is requesting several exceptions from site plan ordinance requirements regarding the parking area as follows: (1) an exception from ordinance section 165-77.F to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only, and (2) an exception from ordinance section 16571A(7) to allow the parking area to be set back 5 feet from the proposed building where the required setback is 12 feet.. The Board's findings and conclusions as to the positive and negative criteria as to the parking exceptions are as follows:

a. Positive Criteria of the Parking Area Exceptions. As to the positive criteria of the requested parking exceptions, the Board's findings are as follows. First, the size and dimensions of the property make it difficult to create a turn-around area unless part of the parking area extends into the front yard and is situated five (5) feet from the proposed building. The Board finds that, especially given the needs of the self-storage use as approved by Resolution No. 2023-03, an appropriate turn around area is necessary for safety. As such, the Board finds that it is reasonable to grant the requested parking area exceptions so that an appropriate turn-around area can be constructed on the property. Second, the Board finds that granting the requested parking area exceptions is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested parking area exceptions.

b. Negative Criteria of the Parking Area Exceptions. As to the negative criteria of the requested parking area exceptions, the Board finds that, provided the conditions set forth below are imposed and complied with, the exceptions from the site plan ordinance regarding the parking area can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. As

such, the Board finds and concludes that the applicant proved the negative criteria of the requested parking area exceptions.

15. Findings and Conclusions as to the Exception From Site Plan Ordinance Requirements Regarding the Retaining Wall Height. As set forth above, the applicant is requesting an exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the northerly retaining wall to be 7.67 feet high where the maximum retaining wall height permitted in the Route 31 North Highway Corridor District is 6 feet. The

Board's findings and conclusions as to the positive and negative criteria as to the parking exceptions are as follows:

a. Positive Criteria of the Retaining Wall Height Exception. As to the positive criteria of the requested retaining wall height exception, the Board's findings are as follows. First, the property slopes significantly upward from front to back, meaning the retaining wall's height deviation will be noticeable from inside the property, not outside. Second, the Board finds that it would be impractical to require the applicant to construct the retaining wall at a compliant height because it will be more effective at the proposed height of 7.67 feet. Third, the Board finds that granting the requested retaining wall height exception is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested retaining wall height exception.

b. Negative Criteria of the Retaining Wall Height Exception. As to the negative criteria of the requested retaining wall height exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception can be granted without substantial detriment to the public good because the height deviation will only be visible to people on the property and will not be visible from outside of the property. The Board further finds that the retaining wall height exception can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant proved •the negative criteria of the requested retaining wall height exception.

16. Findings and Conclusions as to the Retaining Wall Setback from Driveway Exception. As set forth above, the applicant is requesting an exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall. The

Board's findings and conclusions as to the positive and negative criteria as to the retaining wall setback exception are as follows:

a. Positive Criteria of the Retaining Wall Setback from Driveway Exception. As to the positive criteria of the requested retaining wall setback exception, the Board's findings are as follows. First, as set forth above, the property slopes significantly upward from front to back. The Board finds that the proposed retaining wall placement is necessary in order to promote efficient site design and to minimize grading and disturbance. Second, the Board finds that it would be impractical to require the applicant to construct the retaining walls or the driveway in a different location which would be less efficient and create more disturbance simply for the sake of ordinance compliance. Third, the Board finds that granting the requested retaining wall setback exception is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed

and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested retaining wall setback exception.

b. Negative Criteria of the Retaining Wall Driveway Setback from Driveway Exception. As to the negative criteria of the requested retaining wall setback exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant proved the negative criteria of the requested retaining wall setback exception.

17. Findings as to the Exception From Site Plan Ordinance Requirements Regarding Tree Replacement. As set forth above, the applicant requests an exception from ordinance section 165-77.D(5) to allow less trees to be replaced than is required. The Board's findings and conclusions as to the positive and negative criteria as to the exception from the tree replacement requirement are as follows:

a. Positive Criteria of the Tree Replacement Exception. As to the positive criteria of the requested exception from the tree replacement requirement, the Board's findings are as follows. First, as to the extent of the requested exception and whether it is reasonable to grant it, the Board finds that there simply is not enough room on the site to plant all the required trees without causing the trees that would be planted to die. As such, the Board finds that granting the requested exception is reasonable in that it will prevent planted trees from dying. Second, for this same reason, the Board finds that granting the requested exception is within the general intent and purpose of the provisions for site plan review and approval because the trees that are proposed to be planted are likely to thrive. Third, the Board finds that literally enforcing the tree replacement requirements of the ordinance is impractical in this particular application because of the limited amount of space and likelihood that if all of the required trees are planted, trees will not survive. The Board finds and concludes that the applicant proved the positive criteria of the requested exception.

b. Negative Criteria of the Tree Replacement Exception. As to the negative criteria of the requested exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception from ordinance section 165-77.D(5) regarding tree replacement can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant proved the negative criteria of the requested exception.

18. Conclusion to Grant all of the Requested Exceptions. For all of the forgoing reasons, the Board concludes that all of the requested exceptions can and should be granted subject to the conditions below being imposed and complied with.

19. Standards for Considering Preliminary and Final Site Plan Review. N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance provisions, the Board must grant approval. Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219, 232 (1994). If the application does not comply with all ordinance requirements, the Board must engage in the following analysis.

a. First, where a site plan application does not comply with all ordinance provisions but the Board grants relief in terms of variances or exceptions, the Board then must review the application and site plan against all remaining ordinance provisions and grant approval if there is compliance with all such remaining provisions. If the application complies with all remaining zoning ordinance regulations and site plan ordinance requirements, the Board must grant preliminary and final site plan approval.

b. Second, where a site plan application does not comply with all ordinance provisions, but a condition can be imposed requiring a change that will satisfy the ordinance provisions, the Board can either (a) grant site plan approval on the condition that the application and/or plans are revised prior to signing the plans to comply with the ordinance provisions, or (b) adjourn the hearing to permit the applicant the opportunity to revise the application or plans to comply with the ordinance provisions prior to the Board granting preliminary approval.

C. As the application requires "c" variances from certain zoning ordinance regulations, and exceptions from various site plan ordinance requirements, the Board is not able to find that the application and site plan comply with all zoning ordinance regulations and site plan ordinance requirements, so the applicant is not entitled to preliminary and final site plan approval. However, the Board must determine, after any variances have been granted from the ordinance regulations at issue and after any exceptions have been granted from the site plan ordinance requirements, whether the application and site plans comply with all remaining applicable zoning ordinance regulations and remaining application site plan ordinance requirements. If the application and site plans comply with all remaining ordinance provisions, then preliminary and final approval should be granted, subject to the imposition of conditions as will be discussed below. Conversely, if the application and site plans do not comply with all remaining ordinance provisions, the Board must then determine whether any conditions can be

imposed to bring the application and site plans into ordinance conformance. Only if the Board determines that no conditions can be imposed to bring the application and site plan into ordinance compliance should the Board deny preliminary and final approval.

d. Finally, even if all ordinance requirements are complied with by the site plans as submitted, or as will be revised in accordance with conditions, the Board cannot grant site plan approval unless the four essential elements of a development are determined to be feasible, which are the following matters vital to the public health and welfare: stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D' Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin N.J. super. 326, 332-333 (App. Div.), celtif. denied, 95 N.J. 183 (1983), subsequently cited with approval in Ten Stary Dom v. Mauro, 216 N.J. 16, 32 (2013). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. Field; Ten Stau Dom.

16. Findings and Conclusions as to Preliminary and Final Site Plan Review. The Board's findings and conclusions as to preliminary and final site plan review for the proposed development are as follows. First, because the Board has concluded that the requested and "c(l and "c(2)" variances from the zoning ordinance regulations at issue as well as the requested exceptions from the site plan ordinance requirements at issue should be granted, and provided that the conditions set forth below are imposed and complied with, the Board finds that the application and site plans will comply with all applicable remaining zoning ordinance regulations and all applicable remaining site plan ordinance requirements. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that all matters vital to the public health (water supply, sewage disposal, stormwater drainage and management, and traffic circulation) will be adequately provided for and are appropriately designed as part of the proposed development. As such, the Board concludes that preliminary and final site plan approval can and should be granted subject to the conditions below being imposed and complied with.

17. Imposition of Conditions. Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). See also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that "aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances" and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff'd o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J 418, 438-439 (2000) (explaining that site plan review

"typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2024), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by Board's experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets,
Inc. v. Old Bridge Tp. Planning Board, 420 N.J. super. 193, 205-206 (App. Diu 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON AUGUST 26, 2024, AS FOLLOWS:

B. RELIEF GRANTED

1. Grant of Requested "C(I)" Side Yard Setback Variance. Subject to the conditions set forth below, a "c(l)" variance from the Schedule is hereby granted to allow a southerly side yard setback of 45.6 feet where the minimum side yard setback required is 50 feet.

2. Grant of Requested "C(I)" Front Yard Buffer Variance. Subject to the conditions set forth below, a "c(l)" variance from ordinance section 165-77.K(7)(a)[1] is hereby granted to allow a buffer of 3 shade trees, 5 ornamental evergreen trees and I l 7 shrubs in the front yard where 51 shade trees, 85 ornamental evergreen trees and 341 shrubs are required.

3. Grant of Requested "C(I)" North Side Yard Buffer Variance. Subject to the conditions set forth below, a "c(l)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow a buffer of 3 shade trees, 4 ornamental evergreen trees and 56 shrubs in the

northerly side yard where 50 shade trees, 83 ornamental evergreen trees and 332 shrubs are required.

4. Grant of Requested "C(I)" South Side Yard Buffer Variance. Subject to the conditions set forth below, a "c(l)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow a buffer of 6 shade trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 shade trees, 71 ornamental evergreen trees and 286 shrubs are required.

5. Grant of Requested "C(I)" Rear Yard Buffer Variance. Subject to the conditions set forth below, a "c(l)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow no planting in the rear yard where 19 shade trees, 31 ornamental evergreen trees and 124 shrubs are required.

6. Grant of Requested "C(I)" Freestanding Sign Variance. Subject to the conditions set forth below, a "c(l)" variance from ordinance section 165-109.N(1)(d)[1] is hereby granted to allow the proposed freestanding sign to be setback five feet from the front lot line where a minimum setback of 15 feet is required.

7. Grant of Requested "C(2)" Parking Space Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-71.A(10) is hereby granted to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1,000 square feet of floor area or 100 parking spaces in this case.

8. Grant of Requested "C(2)" Stormwater Basin Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow to be located in the front yard where accessory structures are prohibited within front yard setback areas.

9. Grant of Requested "C(2)" Freestanding Lighting Fixtures Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow the proposed freestanding lighting fixtures to be located in the front yard where accessory structures are prohibited within front yard setback areas.

10. Grant of Requested "C(2)" Septic System Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow the septic system to be located in the front yard where accessory structures are prohibited within front yard setback areas.

11. Grant of Requested "C(2)" Retaining Wall Setback Variances. Subject to the conditions set forth below, "c(2)" variances from ordinance section 165-98.E are hereby granted to allow the proposed retaining walls to be located within the north and south side yard setback areas where retaining walls are required to comply with the minimum side yard setbacks.

12. Grant of Requested "C(2)" Wall Sign Number Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-109.N(2)(a) is hereby granted to allow three wall signs where a maximum of two wall sign is permitted per facade that faces a street.

13. Grant of Requested "C(2)" Street Facing Wall Sign Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-109.N(2)(a) is hereby granted to allow two wall signs on the south side facade which does not face a street, where a maximum of two wall signs are permitted per fagades that face a street.

14. Grant of Requested Exception Regarding the Front Yard Parking Area. Subject to the conditions set forth below, an exception from ordinance section 165-77.F is hereby granted to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only.

15. Grant of Requested Exception Regarding the Parking Area Setback from Building. Subject to the conditions set forth below, an exception from ordinance section 16571A(7) is hereby granted to allow the parking area to be set back 6 feet from the proposed building where the required setback is 12 feet.

16. Grant of Exception with Regard to the Driveway Setback from Building. Subject to the conditions set forth below, an exception from ordinance section 165-71A(7) is hereby granted to allow the driveway to be set back 5 feet from the proposed building where the minimum required setback is 12 feet.

17. Grant of Retaining Wall Height Exception. Subject to the conditions set forth below, an exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) is hereby granted to allow the northerly retaining wall to be 7.67 feet high where the maximum retaining wall height permitted in the Route 3 1 North Highway Corridor District is 6 feet.

18. Grant of Exception with Regard to the Retaining Walls Setback from Driveway. Subject to the conditions set forth below, an exception from ordinance section 16575E(4)(a)[2] as referenced by ordinance section 165-751(4) is hereby granted to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall.

19. Grant of Tree Replacement Exception. Subject to the conditions set forth below, an exception from ordinance section 165-77D(5) is hereby granted to allow the applicant to plant the trees as proposed.

20. Grant of Preliminary and Final Site Plan Approval. Subject to the conditions set forth below, the Board hereby grants preliminary and final site plan approval to the site plans listed and referenced above to allow the construction of the proposed development

c. CONDITIONS

1. Revisions to the Plans. The applicant shall revise the site plans and other plans and documents referenced below by drawings and/or notes to the satisfaction of the Board engineer, Board planner and Board landscape architect to incorporate the following comments emanating in the memos and/or letters from the following Board experts, as modified and/or supplemented by the Board members during the hearing on the application, and the applicant shall have until May 1 8, 2024 (which is within 6 months from the date the within resolution is adopted on November 18, 2025) to revise the site plans and obtain sign-off on the plans. In the event that the applicant fails to revise the site plans within said time period, or extension thereof as granted by the Board, the within approval shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required

revisions, would result in denial of the application.) The required revisions to the site plans and other plans and documents referenced below are as follows:

a. Comments Emanating in the Memo to the Board from Thomas Behrens, Jr., P P, AICP (Board planning expert) dated July 19, 2024.

(only those numbered items that require revisions to the plans are set forth below):

2. Architectural Plans. A roof plan shall be added to the architectural plans to confirm the extent to which the proposed mansard roof will screen rooftop equipment.

3. Parking. Circulation and Loading. Based on the architectural plans, the building will have a gross floor area of 101 ,942 square feet which requires 102 parking spaces (1/1,000 sf) where the site plans indicate a gross floor area of 100,000 square feet requiring 100 spaces. This discrepancy shall be clarified with either the architectural plans or the site plans being revised accordingly.

7. Signage. Details for all proposed signs shall be provided on the site plans, including the size and illumination of all proposed signs.

9. Landscaping. The parking area shall be sufficiently screened as required in the Route 31 North Campus District and the site plans shall be revised accordingly.

10. Lighting. The lighting plan includes the installation of freestanding and wall mounted lights around the driveway area with compliant mounting heights of 16 feet. The color temperature of each lighting fixture shall be capped at 3,000 Kelvin. The applicant shall confirm the proposed hours of the exterior lighting as well as the interior lighting that illuminates the front storage units displayed in the windows. Section 165-74E(1) requires that all outdoor lighting not essential for safety and security purposes or to illustrate changes in grade or material shall be turned off during non-operating hours.

11. Equipment. The location of any proposed ground mounted equipment shall be confirmed and added to the site plans. Any such equipment shall be appropriately screened, and such screening shall be added to the site plans.

b. Comments Emanating in the Memo to the Board from Larry P levier, PE, CME (Board engineering expert) dated July 19, 2024.

(only those numbered items that require revisions to the plans are set forth below):

B. Policy Issues

2. Other:

g. A note shall be included on the site plans indicating: "The Stormwater Operations and Maintenance Manual shall be recorded as a deed restriction for the subject lot. Evidence of said recording shall be provided to the Township Engineer prior to any recommendation for the issuance of the final certificate of occupancy."

c. Technical Comments

1. Preliminary and Final Major Site Plan, prepared by Colliers, Inc., dated 2-21-24:

a. Cover — Sheet 1 of 16

1. A list of all outside agency approvals shall be added to sheet 1, including the Hunterdon County Soil Conservation District, Hunterdon County Health Department, Hunterdon County Planning Board, and the NJDOT.

b. Site Demolition Plan — Sheet 2 of 16

1. The existing site conditions appear to potentially have two (2) existing onsite wells. Sheet 2 shall be revised to indicate that any existing wells shall be properly decommissioned in accordance with the applicable NJDEP requirements by a licensed well driller.

2. The adjoining property to the north shall be revised to Lot 9.03, and the lot designation of 9.03 for the adjoining property shall be revised on all applicable drawing sheets.

3. Any existing monitoring wells which have been installed on the subject site shall be decommissioned if necessary for the proposed improvements. If the existing monitoring wells require decommissioning, sheet 2 shall be revised accordingly. As stated above, all wells to be decommissioned shall be done in accordance with the applicable NJDEP requirements by a licensed well driller.

c. Dimension Plan — Sheet 3 of 16

1. In accordance with section 165-71.A.(7) of the Clinton Township code, all parking spaces in the C-1 zone shall be located a minimum of 12 feet from the building. Revise sheet 3 accordingly.

2. The proposed stop bar shall be provided and shown on sheet 3.

3. The proposed three (3) striped islands, which are not the ADA access aisle, shall be identified on sheet 3, including the striping material, color, and line widths.

4. The proposed support columns and the second-floor overhang shall be shown on sheet 3 at the drive-thru location.

5. If the keypads have bollards for protection, the construction note with leaders shall be revised to identify the concrete filled bollards.

6. If the keypads have protective bollards, a construction detail shall be provided for the bollards.

7. The proposed fence color shall be provided on sheet 3 or on the Galvanized Steel Chain Link Fence Detail.

8. A 4' x 4' concrete exterior landing shall be provided at the egress door at the northwest corner of the building, and the landing shall be shown and identified on sheet 3.

9. Parking stalls with an 18' depth need to accommodate a two (2) foot vehicle overhang. Therefore, the sidewalk adjacent to the proposed 18' deep parking stalls shall be revised to a six (6) foot wide sidewalk.

10. The applicant shall verify that the existing overhead cable and telephone lines along Route 31 would not conflict with large vehicles, including rental trucks, that would be entering and exiting the site.

d. Grading Plan — Sheet 4 of 16

1. The proposed retaining wall near the southwest corner of adjoining Lot 9.03 exceeds seven (7) in height, and the proposed wall is five (5) feet from the property line. The applicant shall verify that the required geogrid reinforcement for the modular block wall will not encroach onto and/or construction will not undermine the adjoining property (Lot 9.03).

e. Utilities Plan— Sheet 5 of 16

1. Information for the proposed sanitary sewer lateral from the building to the septic tank shall be provided on sheet 5, including pipe size, material, slope, invert elevations, and length.

2. In accordance with Table 4.3 in N.J.A.C. 7:9A-4.3, the proposed stormwater infiltration BMPs, including the subsurface basin and porous pavement system, shall be fifty (50) feet from the proposed septic disposal field. Sheet 5 shall be revised accordingly.

3. For compliance with Table 4.3 in N.J.A.C. 7:9A-4.3, the applicant shall identify any existing potable wells and septic disposal fields on adjoining Lot 9.03 to ensure that the proposed stormwater infiltration BMP has a minimum separation of fifty (50) feet.

4. The 15" HDPE storm sewer from Inlet S-28 to Inlet S-27 passes under the proposed retaining wall. The top of pipe is just below the leveling pad for the retaining wall at a location with a wall height of approximately 7.5'. Therefore, the subject storm sewer pipe run shall be revised to a rigid pipe material of either RCP or DIP.

5. A note shall be added to sheet 5 indicating that a minimum horizontal separation of 10 feet shall be provided for any water service line and the septic disposal field.

6. The applicant shall verify that a single water line will be provided to the sprinkler room within the building for both fire suppression and potable service. If the project requires a separate dedicated fire suppression line, sheet 5 shall be revised to depict the separate water lines with any associated gate valves.

7. The gate valve symbol shall be rotated on sheet 5 to demarcate a new valve on the service branch.

8. The proposed driveway grades will create a cut of approximately four (4) feet above the existing water main within the NJDOT right-of-way. The applicant shall verify that the existing water main will have sufficient cover for the proposed driveway construction, or sheet 5 shall be revised to identify any required water main relocation.

9. The applicant shall also verify that the cut of approximately four (4) feet for the proposed driveway will not impact the existing subsurface tele-communication lines. If the existing duct bank or underground cables require relocation for the proposed driveway, sheet 5 shall be revised accordingly.

10. The proposed grading along the Route 31 embankment within the NJDOT right-of-way has a cut of approximately two (2) feet at the base of the existing utility poles just north of the new driveway. The applicant shall verify that the grading at the base of the poles are acceptable by the electric company, as the two (2) poles contain an utility platform with three (3) existing transformers.

11. Other than the gutter downspouts, the applicant shall identify the method for connecting the flat roof drainage area, which is the majority of the building roof, to the infiltration BMP.

12. The two (2) proposed manufactured treatment devices shall be identified on sheet 5 with the type, model, and manufacturer information.

f. Profiles — Sheet 6 of 16

1. A profile shall be provided for the proposed storm sewer pipe runs from the Basin A outlet structure to MH S-33 and then to the proposed interconnection with the NJDOT storm inlet.

2. The Profile of Undisturbed Stormwater shall be extended to fully depict the pipe run from MH S-24 to downstream MH S-33.

g. Construction Details — Sheet 14 of 16

1. A note shall be added to the Standard Asphalt Pavement (RSIS) Detail for performing and witnessing a proof roll as stated above in review comment B.2.e of this report.

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2. A note shall be added to the Typical Reinforced Wall Section (Near Vertical Setback) Detail indicating that the applicant or contractor shall procure a permit from the Clinton Township Construction Department prior to construction for any retaining wall 4ft or greater in height.

3. The toe drain and daylight pipe on the Typical Reinforced Wall Section (Near Vertical Setback) Detail shall be revised to use an impermeable backfill layer for the lower buried block courses, raise the toe drain, and daylight the drainage pipe at the face of the wall with a rodent screen.

4. A standard breakaway sign post detail shall be provided for all proposed signage not installed within a bollard.

5. The two (2) ADA parking details depict signage behind the curb, but the plan depicts a bollard mounted ADA sign within the parking stall. The discrepancy shall be addressed.

6. The Typical Accessible Parking Layout (With Sidewalk) Detail identifies a wheel stop in the ADA parking stall, but the plan depicts a bollard mounted sign within the ADA parking stall. The discrepancy shall be addressed.

7. The Typical Accessible Parking Layout (With Sidewalk) Detail identifies a five (5) foot wide sidewalk. As indicated in the above review comments, the sidewalk adjacent to the 18' deep parking stalls shall be six (6) feet wide to accommodate a two (2) foot vehicle overhang. The detail shall be revised accordingly.

8. The fence heights on the two (2) retaining wall details shall be revised to six (6) feet high to correspond with the plan and fence detail.

9. The barb wire note and the graphic depiction on the 6' High Lift Gate Detail shall both be removed from the detail.

10. Note 4 on the Galvanized Steel Chain Link Fence Detail references the plan for a color of the wire mesh, but the plan does not identify a mesh color for the fence. The discrepancy shall be addressed.

h. Construction Details — Sheet 15 of 16

1. The Bollard Mounted Sign Detail shall be revised to show and identify a domed or crowned concrete cap to slope the concrete away from the top of the bollard for drainage.

2. If the project requires bollards to protect the proposed keypads or any other improvements, a detail shall be provided for a standard protective bollard.

i. Construction Details — Sheet 16 of 16

1. The Porous Asphalt Pavement Detail shall be revised to identify a traffic rated access box for the inspection ports.

2. The Porous Asphalt Pavement Detail shall be revised to identify a slotted or perforated pvc inspection port.

3. The references to Appendix E: Soil Testing Criteria in the Permeability
Testing Requirements notes on the Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to indicate Chapter 12 — Soil Testing Criteria of the NJ Stormwater BMP Manual.

4. A Type A Inlet detail shall be provided for proposed storm structure S-27.

5. Construction details shall be provided for the two (2) proposed manufactured treatment devices (MTD).

6. The outlet structure discharge pipe is labeled as RCP on the Underground Infiltration & Detention Basin (Stormtrap System) Detail and labeled as HDPE pipe on the grading plan. The discrepancy shall be addressed.

7. The Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to provide information for the proposed storm sewer pipe connections to the storm chambers.

8. The Porous Asphalt Pavement Detail shall be revised to provide information for the proposed connection between the stone field for the porous pavement to the outlet control structure.

9. The Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to provide information for the proposed chambers, including manufacturer, model/type, joint sealant tape, splash pads, end panels, etc.

2. Stormwater Operations and Maintenance Manual, prepared by Colliers, Inc., dated 2-21-24:

a. A telephone number and email address shall be provided for the responsible party.

b. The Manual contains language, forms, and requirements for grass mowing, seeding, snow removal, etc. which are typically for surface detention basins. The Manual shall be revised to specifically address the maintenance and inspection measures for the stormwater BMPs proposed for the project, including the subsurface infiltration/storage basin.

c. If the proposed stormwater BMPs are revised based on review comments contained in this report or any other reports from the Board Professionals, the Manual shall also be revised and resubmitted, accordingly.

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3. Stormwater Management Report, prepared by Colliers, Inc., dated 2-21-24:

a. The size of all the subdrainage areas shall be provided on all three (3) of the drainage area maps in Appendix F of the Report.

b. A separate time of concentration (Tc) path shall be provided on the Existing Drainage Map in Appendix F for the DA I Disturbed drainage area, and the Tc path shall be the most hydraulically distance path to the point of study at the existing NJDOT inlet along Route 31.

c. The proposed stormwater management design has incorporated porous pavement and an infiltration subsurface basin for the project for compliance with N.J.A.C. 7:8. However, the Soils and Foundation Investigation Report for the project recommends the use of basin liners to eliminate the potential impacts from infiltration as the site is located within a karst landscape. The applicant shall provide testimony on the use of infiltration BMPs which contradicts the recommendations in the Soils and Foundation Investigation Report.

C. <u>Comments Emanating in the Memo to the Board from Jim Mazzucco, LLA (Board landscape architecture expert) dated July 19, 2024.</u>

(only those numbered items that require revisions to the plans are set forth below):

B. Site Plan Comments:

1. The Site Demolition Plan, sheet 2, indicates all trees within the limit of disturbance will be removed. The quantity of all trees greater than six (6) inches DBH to be

removed shall be noted on the plan listing each tree's size, species, and condition. The plan shall also include the calculation for tree replacements per ordinance section 165-77.D.(5). No replacement trees are currently proposed. There are areas to the rear of the property where some replacement trees shall be located to provide additional buffering from the neighboring properties to the North.

3. Three (3) additional Quercus palustris trees shall be added to the northeast corner of the building to soften the appearance of the building from Rt 31 South.

4. Sight triangles shall be added to the landscape plan.

5. The landscape plan indicates a single row of 51 Prunus laurocerasus 'Otto Luyken' across the entire frontage of the building. This long row of continuous planting shall be broken to create more diversity across the large front fagade of the building. A different and taller planting across the center of the building would create plant and height diversity.

6. Hydrangea quercifolia 'Snow Queen 'is susceptible to deer browsing and shall be substituted with a different plant species.

7. There is currently an extreme slope along the frontage of Rt. 31. The slope is proposed to remain and the area is indicated as lawn. Considering a slope of this severity is dangerous to maintain with conventional mowers, the area shall be planted with an alternative ground cover other than lawn,

8. There is a conflict between the plantings and the fence on the north side of the building. This conflict shall be resolved.

9. The lawn seeding specification on sheet 11 conflicts with the Soil Erosion & Sedimentation Control Notes permanent lawn seeding specifications on sheet 8. This shall be corrected.

10. Separate soil bed preparation specifications shall be provided for the Earnst seed mix area.

11. A drought-tolerant grass seed mix shall be specified for the grass paver area.

12. The plan does not indicate the location of any AC condensers, electrical transformers, or generators. A note shall be added to the plans that all utilities will be adequately screened if visible to the public or neighboring properties.

13. The applicant is requesting a design waiver from all the required buffers. The buffer calculation chart on sheet 11 incorrectly lists the

buffer depths. The correct depths are 50 feet for the front yard and 25 feet for the sides and rear yard depths. The chart and all associated calculations shall be updated.

14. The calculations for the length of the side property lines related to the buffer calculations appear to be inaccurate. Plans shall be clarified.

15. The plan proposes the installation of a six (6) feet tall, galvanized chain link fence. The fence shall be constructed of black vinyl-coated material.

16. The automated gate is proposed to be constructed of the same material and we offer the same suggestion for the material change (see item #15). The top portion of the automated gate is proposed to be barbed wire which is prohibited by Ord. 165-117.B.(3). Eliminate the barbed wire for this detail.

17. The automated gate detail does not provide a dimension for the overall height of the gate. There is a note indicating a five (5) foot-style gate but also indicates the height may vary. Clarification of the gate height shall be provided.

18. The planting details shall be replaced with the township planting specifications and details. These may be downloaded from the Township website at: https ://www.clintontwpnj.com/images/forms/planning/planting-details.pdf

C. Architectural Plan Comments:

1. A personal door is indicated in the northeast corner of the building on the elevation plan, but none on the floor plans. This shall be resolved.

2. On the front elevation, there are several false lime green doors indicated.

These doors have no function and are not in keeping with the Highway Zone Architectural Guidelines outlined in the Community Design Guidelines for Clinton Township. Although the proposed plan appears to be using traditional materials for the roof and siding, the lime green doors contradict the other materials. However, the false doors do create variation and a visual alteration breaking up a large fagade. This could also be achieved using false windows that are more architecturally consistent with the rural character of Clinton Township. Lime green colors shall be eliminated.

d. Comments Emanating in the Memo to the Board from Jason R. Harkings, LLA (Board lighting expert) dated July 22, 2024.

(only those numbered items that require revisions to the plans are set forth below):

1.1 The applicant has provided a lighting plan (Sheet 12 of 16) depicting photometric values for four (4) proposed wall mounted lighting fixtures and eight (8) pole mounted fixtures. All fixtures are indicated to have a mounting height of 16 ft. The photometric calculations provided depict maintained light levels, however statistics for the initial lighting levels have not been provided in accordance with Ordinance section 165- 74F(2). Applicant shall provide calculations depicting the initial lighting levels for the proposed fixtures on the plan.

1.3 Hours of operation/method of control: Note 11 (Sheet 12 of 16) indicates sensors, timers, or manufacturer's control system and specific fixtures may have extended operation hours. The applicant shall provide specific hours of operation for the proposed lighting and the specific manner(s) of control for the proposed fixtures in accordance with ordinance section 165-74F(2).

e.Comments Emanating in the Memo to the Board from Christopher Sorrentino of the Office of the Township Fire Marshal.

Accessibility for Fire Department:

Building Access e Fire Apparatus access roads/access ways shall be provided around the premises.

Provide an apparatus turn radius plan that meets the requirements for Annandale Hose Company's apparatus to gain access around the building. Plans shall be verified and certified.

Fire Department Personnel Access [Knox Box]

- Install in compliance with municipal code 133-15 Location. The rapid entry key lock box shall be located at or near the main entrance to the building or property. The key lock box shall be mounted at a minimum height of five feet and a maximum of six feet above final grade.

Fire Lanes

- Fire Lanes shall be established in accordance with the Municipal Ordinance signs and striping ordinance section 133-20. Install fire lanes around the building. Install Fire Lane signage and striping adjacent to parking spaces for apparatus access/staging through the office building complex.

Roof Access

- Revise the plans to provide the location of roof access.

Fire Protection Systems:

Fire Alarm System

- Provide Fire Alarm Plans

Fire Department Connection [FDC]

- Provide the location of where FDC will be located.
- FDC to be 5" Storz - 30-degree elbow with a blind cap.

Fire Hydrant

- Provide the location and information of hydrant(s)
- Will these be hydrants off the same feed as the sprinkler system o Ensure outlets are National Standard Thread

Fire Pump e Provide hydraulic data information for a pump if or if not needed.

Fire Sprinkler

- Provide Fire Sprinkler Plans

Fire Standpipe

- Provide Fire Standpipe Plans
- Ensure outlets are National Standard Thread

Water Supply

- An adequate water supply for fire suppression efforts shall be provided in accordance with NFPA 1142 and Municipal Ordinance 165-61 Water Supply. Underground water tanks shall be installed where city water cannot be brought

in. The location shall not exceed 400ft from the structure. The location is to be determined and shall be approved by the fire official. Provide fire suppression water details.

Fire Rating:

Material List o A separate copy shall be provided outside of the plans for integrity and future maintenance of fire- resistant-rated construction.

Occupancy:

Building Management o Provide a contact number for the designee responsible for maintenance in case of emergency and immediately submit updates upon change of designee. Fill out the registration form upon building completion/Certificate of Occupancy.

Occupancy Load of the Building

- Provide occupancy load number for the site.

Utilities:

Stairwell o Label Stairwell o Can be alphabetical or numerical [Confirm with Fire Marshall o Label the stairwell with roof access on the interior and exterior.

Utility Rooms

- All rooms shall be properly labeled to identify what they house, for example: o Fire Sprinkler Room o Water Supply Room o Fire Alarm Room

Outside

- Any and all gas or electric service to the buildings that faces a road, parking area, and/or vehicle access shall be protected with appropriate code compliance bollards.
- Will solar panels be installed on this site.

f. Comments Emanating in the Memo to the Board from Thomas W. Long (Township Fire Chief) dated July 24, 2024

Requests

- Large reflective and glow in the dark exit signs on the lower part of all interior exit doors.
- KNOX box location to be determined by the Division of Fire? o Grandmaster key in box for all doors and units. ▪ One key fits all doors and unit doors.

- Alarm system o System addressable
  - Identifiable by storage unit.
- Add two fire hydrants to plot, locations are to be approved by the Division of Fire.

e Entrance and exit overhead door control from inside and outside of the building.

Apparatus Highlights

- Driveway
  0 Width 25'
  - Apparatus 8' 5" wide o Add for 5" hose and operator- 6' = 14'. Need enough clearance for additional apparatus to pass by. o Turning radius Tower Ladder-
- 8' 5" wx46' 9" L
- Width with outrigger extended- 20' wide.
- Turning radiuso Inner- 29' 1" o Outer- 46' 11"
  - Vehicle clearance- 47'

f. Comments Emanating from Board Members During the Course of the Hearing.

1. Applicant shall relocate the power lines located at the entranceway at the sole cost and expense of the applicant if it is determined that the power lines need to be higher.
2. The color of the proposed building shall not be lime green and shall be an earthtone color.
3. The applicant shall work with the Board's Landscape Architect to create a buffer on all sides of the property.
4. The applicant shall work with the Board's Landscape Architect to add landscaping on the northeast corner of the property as well as to add evergreens to the plantings and to add additional plantings on the west side of the retaining wall.
5. The applicant shall work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building.
6. Add a note to the plan stating that the existing wooded area to the rear of the property shall be preserved in a conservation easement.

3. Design, Construction and location of Improvements. The applicant shall be required to design, construct and locate the proposed development to be substantially similar to the plans approved by the Board and signed off on by the Board Chair and Board Secretary.

4. Landscaping. All landscaping, as installed, shall be substantially similar to and in accordance with the landscaping plan approved by the Township Engineer and Township Planner after consultation with and approval by the Board landscape architectural expert, and

which landscape plan shall include any and all the landscaping changes required by condition #1 above. Prior to a permanent certificate of occupancy, completion or compliance (whichever is applicable), the landscaping shall be installed and a two (2) year maintenance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. If the applicant applies for a certificate of occupancy during a non-planting season, the applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the applicant posts a performance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance bond.

5. Lighting. Exterior lights shall turn on at dusk and turn off 30 minutes after closing.

6. Night-Light Test. There shall be a night-light test conducted by the Township Engineer prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable) and the applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the nightlight test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and the traveling public from glare, unnecessary brightness and glow.

7. Geolo gic Conditions. The following geologic conditions shall be complied with:

1. The Colliers Engineering & Design's February 21, 2024 site plans shall be reviewed by GZA with respect to the data and information from their prior site investigations to assess potential solution cavities beneath or in proximity to the planned infrastructure as it differs from the previous site plans. As necessary, GZA shall provide an update to their January 20, 2023 report indicating that the measures and recommendations provided in their January 20, 2023 report are sufficient for the newly proposed site plans and that their data/information are sufficient for evaluating potential solution cavities and/or sinkhole formation beneath infrastructure as depicted on the Colliers Engineering & Design's February 21, 2024 site plans.

2. Prior to commencement of construction, the contractor shall be thoroughly familiar with all geotechnical reports including but not limited to the GZA September 14, 2022 report entitled "Report, Phase 1 Geologic Checklist, Proposed Self-Storage Facility, Clinton Township, Hunterdon County, New Jersey, HT Capital Corporation" and the GZA January 20,
2023 report entitled "Soils and Foundation Investigation, Proposed Self-Storage Facility, Midwest Storage Developers, LLC, Clinton Township, Hunterdon County, New Jersey" and any additional reports prepared by GZA. The provisions and recommendations of these reports shall be followed in construction activities at the site.

3. Representatives of the Township including the engineer and geologist shall be invited to attend the pre-construction meeting with the contractor.

4. The construction measures included in GZA's January 20, 2023 report and any subsequent reports shall be implemented. It would be of great assistance to the contractor, applicant, and inspectors if GZA could compile the recommendations made in the narrative sections of the report into a list with appropriate details. Some of the recommendations may be lost such as the one on Page 17 indicating that structural support to span a 10-foot sinkhole shall be included in foundation designs to ensure the foundation remains supportive in the event a sinkhole forms beneath or near the building.

5. Plate 6 of the January 20, 2023 report GZA report shall be included in the final set of site plans used for construction.

6. The New Jersey State Plane Coordinates of all sinkholes or solution cavities encountered during construction must be determined and shown on final or as- built site plans and these plans and coordinates must be submitted to the Township construction official and Planning Board.

7. During construction and for a minimum of 2 years subsequent to construction, regular inspections of all facilities where water will be discharged including but not limited to septic system components; stormwater control measures including basins, pervious pavement, conveyance systems or other associated structures; and along the foundation of the building, should be conducted by a qualified geologist or engineer experienced with construction in areas underlain by carbonate bedrock. Indicators of potential sinkholes and/or subsurface erosion shall be identified during these inspections and the Township should be notified. The frequency of inspections are likely daily or weekly during construction and at least once per month after construction is complete.

8. Any sinkhole encountered during construction and/or during post construction monitoring shall be remediated as per the recommendations provided by GZA in their January 20, 2023 report or any subsequent report.

8. Proof Roll. A proof roll shall be performed and witnessed by the Township Engineering Department prior to any paving activities to verify and confirm structurally stable subgrades for areas of conventional or standard pavement areas.

9. Stormwater Operations and Maintenance. The applicant shall be required to submit any maintenance logs, repair logs, and/or inspection reports to the Township Engineer annually for the on-site stormwater facilities in accordance with the approved Stormwater Operations & Maintenance Manual for the project.

10. Easements, Dedications and Conveyances. Any and all easements dedications and/or conveyances running to and in favor of the Township which are proposed on the site plan and/or subdivision and/or required as a condition of the approval resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, be contained in a separate document to be prepared by the applicant and approved by both the Board of Adjustment Attorney and the Township Attorney after the metes and bounds description has been reviewed and approved by the Township Engineer. Said document shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. Any such document shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township.

11. Conservation Easement. A copy of the filed deed shall be provided to the Township for the proposed conservation easement.

12. Performance Guarantees. The applicant shall post any required performance guarantees as required by municipal ordinance and/or by the Municipal Land Use Law.

13. Shop Drawings and Asphalt Mixed Designs. Shop drawings and asphalt mixed designs, stamped approved by the engineer of record, shall be provided to the Township engineer for all proposed storm sewer structures, including the trash racks for the outlet control structures, and for the porous pavement.

14. Geological/Geotechnical Experts to Be On-Site. As stipulated in the Soils and Foundation Investigation Report, the Township's and applicant's geological/geotechnical experts shall be on site during certain construction activities to inspect the subsurface conditions, and the applicant shall address any potential sinkholes with the recommendations as outlined in the Soils and Foundation Investigation Report.

15. Escrow Fees. Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void.

16. Final As-Built Plan. A final as-built plan signed and sealed by a New Jersey professional licensed surveyor shall be required as a condition precedent to the issuance of a certificate of occupancy, which shall reflect the proposed building, the proposed improvements, final grading, water service and storm and sanitary sewer. The final as-built shall also be provided prior to recommendation for project completion and the release of any unspent escrow fees.

17. Conditions of Resolution No. 2023-03 Remain in Full Force and Effect. All conditions set forth in Resolution No. 2023-03 shall remain in full force and effect. See pages 10 through 12 of Resolution No. 2023-03.

18. Time Within Which to Commence and Complete Construction and Obtain Certificates of Occupancy or Completion. The applicant shall apply for and obtain a zoning permit and a construction permit for the proposed development by November 1 8, 2026 (which is within two (2) years of the date the within resolution is adopted). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within final approval shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy of the proposed development. If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the within final approval shall automatically expire and become null and void.

19. Subject to Outside Agency Approvals and Permits. The within approvals shall be conditioned upon the applicant obtaining permits and/or approvals from all applicable agencies and/or departments including but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

a. Township Board of Health approval of any aspect of the development within its jurisdiction,

b. Hunterdon County Department of Health approval of any aspect of the development within its jurisdiction,

c. Hunterdon County Soil Conservation Service approval of any aspect of the development within its jurisdiction,

d. Hunterdon County Planning Board approval to construct,

e. Clinton Township Construction Department building permit for the retaining walls,

f. NJDOT highway access permit and approval for the proposed direct storm sewer pipe connection to the existing NJDOT storm inlet within Route 3 1, and

g. NJDEP approval of any aspect of the proposed development within its jurisdiction.

20. Subiect to Other Laws, Regulations and Approvals. The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having

2024-1 1-18-v5

jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application

****

VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 26 2024:
THOSE IN FAVOR: BAYLY, LYTE, MCTIERNAN, NAYLOR, PFEFFER, RYAN & STEVENS.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on November 1 8, 2024 by the following vote of eligible Board members:

Member	Yes	Abstain	Absent
BAYLY	X		
LYTE			X
MCTIERNAN	X		
NAYLOR	X		
PFEFFER	X		
RYAN			X
STEVENS	X		

ATTEST: TAYLOR GRIBBIN

T LO GRIBBIN
Board Secretary

Appendix D

Dwg. Title	Project No.	Date	Drawn By
Aerial Map of Block 3 Lot 26	4134.08	01.16.25	TB

BURGIS ASSOCIATES, INC.
COMMUNITY PLANNING | LAND DEVELOPMENT AND DESIGN | LANDSCAPE ARCHITECTURE
25 Westwood Avenue
Westwood, New Jersey 07675
p: 201.666.1811
f: 201.666.2599

Project Title:
4th Round Land Capacity Factor Analysis
TOWNSHIP OF CLINTON | HUNTERDON COUNTY, NEW JERSEY

Scale: N.T.S.

Dwg. No.: 1

2025 COPYRIGHT BA - NOT TO BE REPRODUCED

Mediation Settlement Agreement w/ FSHC

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF CLINTON
DOCKET NO. HNT-L-000049-25

WHEREAS, on March 20, 2024, Governor Murphy signed P.L. 2024, c. 2 into law, which established a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine and the Fair Housing Act (the "Amended Act"); and

WHEREAS, the Amended Act required the Department of Community Affairs (the "DCA") to prepare a report with the calculation of the regional and municipal Prospective Need and the municipal Present Need for the Fourth Round in accordance with the formula required by the Amended Act; and

WHEREAS, the DCA released this report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round)" on October 18, 2024; and

WHEREAS, the DCA report concluded that Clinton Township's ("Clinton" or the "Township") fair share obligations for the Fourth Round included a Present Need of 0 units and a Prospective Need of 174 units; and

WHEREAS, the Township filed a resolution of participation before the Affordable Housing Dispute Resolution Program (the "Program") on January 23, 2025, in accordance with the requirements of N.J.S.A. 52:27D-301, *et seq*. and the timeframes set forth in Directive #14-24; and

WHEREAS, the Township's resolution proposed to set Clinton's affordable housing obligations for the Fourth Round to include a Present Need of 0 units and a Prospective Need of 109 units; and

WHEREAS, in accordance with the timeframes set forth in the Amended Act and the Directive, FSHC filed a timely objection to Clinton's resolution on February 28, 2025; and

WHEREAS, FSHC's objection contended that Clinton had improperly calculated its Prospective Need obligation and should be required to utilize the calculation prepared by FSHC in its February 28, 2025 report, setting the Prospective Need obligation at 214; and

WHEREAS, Clinton disputes the contentions raised in FSHC's objection; and

WHEREAS, within the Affordable Housing Dispute Resolution Program ("Program") established pursuant to N.J.S.A. 52:27D-313.2, the parties have engaged in the mediation process provided by the Program and conferred and reached an accord setting forth Clinton's Fourth Round Prospective Need obligation, without either party admitting the validity of the other's claims; and

WHEREAS, recognizing that this agreement has been reached prior to the adjudication of any challenges by the Program or any potential subsequent review in the judicial system, the parties agree that 150 units is within the range of possible outcomes for Clinton's Fourth Round Prospective Need; and

WHEREAS, resolving the Fourth Round Prospective Need at this juncture and allowing Clinton to move forward with preparing its Fourth Round Housing Element and Fair Share Plan ("HEFSP") is important to, and will further, the interests of lower-income households; and

WHEREAS, the Township and FSHC thus agree to present this mediation agreement to the Program and consent to the mediation agreement, upon the approval by the Program, setting forth Clinton's Fourth Round obligations and binding the Township to utilize these obligations and foreclosing FSHC from further challenge to said obligations.

NOW THEREFORE, the Township and FSHC agree that:

1. Clinton's Fourth Round fair share obligations shall be as follows:

- Present Need – 0 units
- Prospective Need – 150 units

2. A Fourth Round Fair Share Obligation of 150 units is within the range possible outcomes were the court to fully adjudicate the Township's Prospective Need.
3. A Fourth Round Fair Share Obligation of 150 units is fair to the interests of lower-income households.
4. The Township and FSHC will jointly present this mediation agreement to the Program and request approval of this Agreement from the Program, and if approved by the Program, from the vicinage Mount Laurel judge. If the Program, trial court, or any appellate court rejects approval of this Agreement, the Parties reserve their right to return to the *status quo ante*.
5. The Township shall prepare a Fourth Round Housing Element and Fair Share Plan ("HEFSP") utilizing these present and prospective need obligations and submit the HEFSP to the Program by the deadline in the Amended Act of June 30, 2025. FSHC reserves all rights as to its review of the HEFSP pursuant to the Amended Act.

[AGREEMENT CONTINUES ON NEXT PAGE]

The undersigned, on behalf of their respective clients, have consented to this Mediation Agreement and represent that they are authorized to execute it on their behalf. This Mediation Agreement shall not be further modified, amended or altered in any way except by a writing signed by both parties.

By: _____
Jonathan E. Drill, Esq.
Counsel for the Township of Clinton

Dated: 3/26/2025

By: _____
Joshua D. Bauers, Esq.
Counsel for Fair Share Housing Center

Dated: 3/27/25

Court order Fixing Fourth Round Obligation

HNT-L-000049-25 03/28/2025 Pg 1 of 5 Trans ID: LCV20251010537

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

	Superior Court of New Jersey Law Division, Civil Part
In the Matter of Clinton Township	Docket No. HNT-L- 49-25 **Program Settlement Recommendation** **Present Need and Prospective Need**

THIS MATTER, having come before the Affordable Housing Program, pursuant to the Complaint for Declaratory Judgment filed in this matter on January 23, 2025 ("DJ Complaint") by the Petitioner, Township of Clinton ("Petitioner" or "Municipality"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the Affordable Housing Dispute Resolution Program (the "Program"), seeking a certification of compliance with the FHA;

AND IT APPEARING that, on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs ("DCA") issued its report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round)", therein setting forth the "present need" and prospective need" obligations of all New

Jersey municipalities for the Fourth-Round housing cycle (the "DCA's Fourth Round Report");

AND IT APPEARING that pursuant to the DCA's Fourth Round Report, the "present need" obligation of the Petitioner has been calculated and reported as 0 affordable units, and its "prospective need" obligation of the Petitioner has been calculated and reported as 174 affordable units, and which calculations have been deemed "presumptively valid" for purposes of the FHA;

AND IT APPEARING that the Municipality represented by counsel adopted a resolution seeking deviation from DCA numbers based on their planner's recommendation for its prospective need obligation of 109 units.

AND IT APPEARING that challenges to the Municipal calculations were timely and properly filed by New Jersey Fair Share Housing represented by Counsel, and by the New Jersey Builders Association represented by Counsel, both challengers disputing the town proposed obligations for present and prospective need, and supporting DCA present and prospective need obligations, each challenge supported by their own expert reports;

AND IT APPEARING; The Program, assigned the case to program member Judge Thomas C. Miller, A.J.S.C. (Ret.) to handle the case in accordance with the statute and the AOC Directive, requiring the member to issue recommendations to the County Mount Laurel Judge, and appointed member of the program having

considered the submissions of counsel, the various planners report and the DCA report, and the program having conducted settlement conferences and sessions hosted by the assigned member in accordance with Directive and the statutory framework.

AND IT APPEARS THAT, the AOC appointed an independent special adjudicator affordable housing expert to work with and make recommendations to the program, and that John Maczuga was appointed special adjudicator in this case,

AND IT APPEARS THAT, that the Builders Association have notified the program in writing that by their counsel that they will not participate in the settlement negotiations, and that they will not object to any settlement reached between the municipality and Fair Share Housing,

AND IT APPEARS THAT, the program hosted a settlement conference on this case, and that all parties, local officials, attorneys, and planners appeared with the goal of reaching a resolution,

AND IT APPEARS THAT, the parties have engaged in extensive settlement negotiations before, during and after the settlement conferences, with the guidance and assistance of the program member assigned to the case and the special adjudicator,

AND IT APPEARS THAT the municipality and Fair Housing have reached a resolution, the settlement was place on the record, the parties circulated a settlement

agreement that will be uploaded to eCourts and that the municipal governing body has adopted or intends to adopt a resolution to accept the settlement,

AND IT APPEARING that the special adjudicator recommends accepting the settlement to the program,

AND it APPEARING THAT the terms of the settlement are as follows: The prospective need obligation for the Township shall be 150 units and that parties will now move on to the compliance phase to address the remaining issues,

For all those reasons, the program member hereby recommends an ORDER as follows:

That the proposed settlement is hereby directed to the vicinage Mount Laurel judge for review and the entry of an order as to the municipality's determination of its fair share obligation is accordance with the terms of the settlement agreement, that this settlement disposes of all the challenges filed, that the municipality retains all the protections of the law and retains immunity from exclusionary zoning litigation, and that the program retains jurisdiction for the compliance phase of accordance with the statutory frame work and the AOC directive.

Respectfully submitted by The Program:

By /s/ Thomas C. Miller

Thomas C. Miller, A.J.S.C. (Ret.),

HNT-L-000049-25 03/28/2025 Pg 5 of 5 Trans ID: LCV20251010537

Program Chair
Hon. Thomas C. Miller, A.J.S.C. (Ret.)

Dated: March 28, 2025

Mount Laurel Judge:

The Program's recommendation is ☒accepted for the reasons set forth by the Program, ☐accepted for the reasons set forth below, ☐rejected, ☐accepted/rejected in part.

Findings of fact and conclusions of law (Rule 1:7-4(a)):

Arms length settlement entered into by the parties was fair and equitable especially when balancing and considering the risks and costs and expense of litigation.

By:

Hon. William G. Mennen **, J.S.C.**

Dated: 4/8/25

November 1, 2024 Highlands Municipal Build-Out Update Criteria

Summary of Determination Process

To determine parcels eligible for development, the Highlands Council applied a series of conditional determination rules to each parcel within the 88 municipalities of the Highlands Region. These rules reflect the policies and resource standards in the *Highlands Affordable Housing RMP Amendment* (2024) and are described in the summary of the build-out update process below. This section provides a complete summary of the build-out process. See the Methodology section for details on how determination rules are applied and evaluated for a final determination. A complete list of datasets used in this analysis is listed in *Appendix B: Council Build- GIS Data Sources*. A complete list of determination rules can be found in *Appendix A: Determination Rule Definitions.*

The build-out update process begins with the inclusion of all parcels within the municipality, using the 2024 statewide parcel data layer. See the *Data Acquisition* section for a description of how the input datasets were obtained and prepared.

Step 1: Identify Missing Data

The first step is to apply rules that identify parcels with missing information or data. These parcels will need to be reviewed by the municipality and resolved by either inserting the missing data or, in the case where the missing data is not available, indicating if the parcel is developable or not developable. The reasoning behind any change must be included in the space provided in the data mapping portal.

The following parcels are identified as having missing data:

1. Parcels with MODIV property class code 15C or 15F missing building coverage or lot coverage (non-residential only); or
2. Parcels missing the MODIV property class code.

Step 2: Identify Developable Parcels

The following parcels are identified as being vacant, underdeveloped, and eligible for development (for MODIV Property class codes see Appendix D):

1. Parcels with MODIV property class code 1 and 3B; or
2. Parcels with a public or other MODIV property class code 15C or 15F where 0.83 acres or greater is available for development after the existing building footprint area (Microsoft, 2018) is subtracted from the maximum building coverage (based on the maximum building coverage percentage permitted by local zoning); or
3. Parcel with a public or other MODIV property class code 15C or 15F where 0.83 acres or greater is available for development after the existing impervious surface area is subtracted from the maximum impervious surface lot coverage (based on the impervious lot coverage percentage permitted by local zoning).

Step 3: Identify Non-Developable Parcels

Those parcels identified as developable in Step 2 are reviewed under the following steps to remove those identified as being non-vacant, developed, or otherwise ineligible for development:

1. Parcels with over 95% open water; or

2. Parcels over 0.83 acre in area which are 95% preserved; or
3. Parcels 95% in Preservation Area; or
4. Parcels with MODIV property class 2 or 3A and 3b combined (please note municipalities may wish to identify specific parcels of 3A and 3B that are available for development); or
5. Parcels with MODIV property class codes 4A, 4B, 4C, 15A, 15B, 15D, 15E; or
6. Parcels with a public or other MODIV property class code 15C or 15F where 0.83 acres or less is available for development after the existing building footprint area (Microsoft, 2018) is subtracted from the maximum building coverage (based on the maximum building coverage percentage permitted by local zoning); or
7. Parcel with a public or other MODIV property class code 15C or 15F where 0.83 acres or less is available for development after the existing impervious surface area is subtracted from the maximum impervious surface lot coverage (based on the impervious lot coverage percentage permitted by local zoning).

Step 4: Sewer Availability and Septic Density

The following determines if a property is assigned a septic density. Where developable lots are not assigned a septic density, they are assumed to be able to be serviced by public wastewater

1. Sewer: Where a parcel is more than 5% or has more than 2,500 sq. ft. in sewer service area, it is identified as being sewer eligible.
2. Septic: Where a parcel is outside a sewer service area (less than 5% or 2,500 sq. ft. in a sewer service) or the parcel contains any amount of Conservation and/or Protection Zone (based on the 2024 LUCZ).
3. Where a parcel is identified as septic, the septic density calculations detailed in the Methodology section are applied

Step 5: Apply Resource Constraints

The following resources are identified and their areas overlayed. Where the overlayed resources leave less than 0.83 acres developable area on a parcel, the parcel is considered not developable. The constraints used are based on the *Highlands Affordable Housing RMP Amendment* (2024) and include the following:

1. Highlands Open Water and associated Highlands Open Water Buffers
2. Prime Groundwater Recharge Areas (or Municipally Important Groundwater Recharge Areas, as adopted)
3. Severe Steep Slopes (20%+ slopes)
4. Critical Habitat
    a. Vernal Pools and associated 300-meter buffer
    b. Natural Heritage Priority Sites
5. Special Environmental Zone

Interpretation and Summary of Results

The final output of the build-out update includes a dataset of 2024 parcels (Parcels and MOD-IV Composite of NJ downloaded from NJ-OIT) with all the input information used by the Highlands Council to determine the eligibility for development, as well as a related table of the rules, constraints, and determinations used to identify the development status of each parcel. After the

municipality has reviewed the build-out analysis data, the Highlands Council will review the data for completeness and return a spreadsheet and GIS data to the town to aid them in the completion of their Build-out report.

1. At the completion of the above, the municipality will now have in its possession a dataset of parcels that can support development of 5 units or more and have a net developable acreage of 0.83 acres or greater.
2. The data will provide information on whether the property can be serviced by public wastewater or via on-site septic systems.
3. Where the parcels are identified as developable and to be serviced by on-site septic systems, a maximum residential unit septic density will be provided.
4. Where parcels are to be serviced by public wastewater, the municipality will need to determine the supportable density for each parcel.
    a. Information on the available developable acreage after the removal of all Highlands environmental resources will be provided in the table.
    b. A minimum presumptive density of 6 units per acre based on developable acreage is assumed, which may be adjusted based on surrounding land uses.
    c. The presumptive density shall not exceed the available net water availability for the HUC14 subwatershed in which the parcel is located or from which it receives its water.
5. Net Water Availability
    a. Municipalities first need to review any existing water allocation permit allocation and remaining capacities to determine the amount of water available to service potential development. Should sufficient capacities exist no further net water availability analysis should be necessary.
    b. It is advised that any adjustments based on net water availability limitations be discussed with the Highlands Municipal Liaison for the applicable municipality.
    c. Any need to increase water allocation for a municipality or provide new water service must comply with the net water availability provisions of the RMP.
        i. Any limitations on development applied through use of the net water availability provisions of the RMP (Goal 2B and associated Policies and Objectives) should be considered a durational adjustment, unless it can be clearly established by the municipality that no avenue for the provision of additional water capacity is feasible.
        ii. The net water availability capacity for the HUC14 subwatershed in which any developable parcel is located will be included with the dataset for each parcel.
        iii. Estimated water usage shall be based on N.J.A.C. 7:10-12.6. Water usage shall be considered to be 100% depletive unless otherwise specifically identified as a consumptive use through identification of a wastewater discharge located in the same HUC14 as the water source.
        iv. Where net water availability or conditional water availability is a limiting factor, affordable housing shall be given the highest priority for the use of said water capacity.

v. Development of a Water Use and Conservation Management Plan or site-specific mitigation may be identified as future mechanisms to address water availability issues. (RMP Objective 2B8b)
vi. No development in a municipality shall be determined by the Highlands Council as being consistent with the New Jersey Water Supply Management Act (N.J.S.A. 58:1A-15.1) until sufficient water supply has been planned to adequately supply the municipality's affordable housing obligation.

Highlands Centers, Highlands Redevelopment Areas, and Cluster Development

Sites may be specifically identified in the municipal Fair Share Plan as able to support 5 or more units due to compliance with the cluster provisions of the RMP (Chapter 4, Part 2) and are located immediately adjacent to existing public wastewater infrastructure, are included in and adopted Highlands Center Plan as certified by the Highlands Council, are located within a designated Highlands Redevelopment Areas, or have been granted a waiver for the development of 100% affordable housing development as defined herein (RMP Goals 2J, 2K, 6B). Any such sites must be in accordance with the Highlands Council's approval of the Highlands Center, Highlands Redevelopment Area, or approved municipal cluster provisions found in the municipality's land use ordinance as deemed consistent with the RMP by the Highlands Council. Where the municipalities adopted land development ordinance contains no provisions for Highlands cluster development then there shall be no need to consider cluster development as it related to the extension of public utilities.

2017 Third Round Settlement Agreement w/ FSHC

FAIR SHARE
HOUSING CENTER

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December 12, 2017

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571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15

Dear Mr. Drill:

This letter memorializes the terms of an agreement reached between the Township of Clinton (the Township or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

Clinton filed the above-captioned matter on July 2, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Clinton hereby agree that Clinton's affordable housing obligations are as follows:

Rehabilitation Obligation	10
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	335
Third Round (1999-2025) Prospective Need (per Kinsey Report[1], as adjusted through this Agreement to account for the municipality's decision to conform to the Highlands Regional Master Plan)	337

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

5. The Township conducted a structural conditions survey of the community's housing stock on November 3, 2017 through which 10 units were identified as "substandard housing" in accordance with N.J.A.C. 5:93-5.2. The Township's rehabilitation obligation is therefore reduced to no more than 10 units, subject to the Special Master's review at least 60 days prior to the compliance hearing on this matter. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied in accordance with applicable law.

6. As noted above, the Township has a Prior Round prospective need of 335 units, which is met through the following compliance mechanisms:

Site/Program	Units	Bonuses	
Prior Cycle Credits			
Existing Group Home, Block 4.03, Lot 40	5		Located at 4 Wayside Lane, this facility is operated by Venice Avenue Community Residence, Inc. It is a five bedroom group home for individuals with developmental disabilities who have no income. The non-profit organization receives funding from the State to operate the facility. During the compliance phase of the litigation, the Township agrees to provide the following for each of these credits: 1) A copy of the deed restriction on the project; 2) The Supportive and Special Needs Housing Survey Form used by the Council on Affordable Housing; 3) A copy of the facility license, if applicable
Credits Without Controls	13		Clinton Township initiated the Credits without Controls process in May 1999, in accordance with N.J.A.C. 5:93-3.2. 200 hundred surveys were submitted, 80 of which were returned to COAH. Ultimately, COAH found 28 units were found to represent income-eligible households. All surveys received were from the Beaver Brook (Block 79.02) and Oak Knoll (Block 82.13) developments. COAH calculated the affordability factors of these developments and granted the Township eligibility for 13 credits without controls units. See attached Exh. A.

[1] David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

RCA			
RCA with City of New Brunswick	108		The Township entered into an agreement with the City of New Brunswick to transfer funds for 108 affordable housing units. This agreement was approved by COAH. The Township's final payment toward this transfer was made on August 26, 2002. In total, the Township paid $2,265,000 towards the RCA with the city. During the compliance phase of this litigation, the Township will demonstrate that the City of New Brunswick created or rehabilitated 108 creditworthy units in accordance with applicable law and the agreement between the Township and the City.
Existing Rentals			
Village Green at Annandale, Block 49, Lot 25	4		Village Green at Annandale is a mixed use development consisting of 4 affordable housing units. The development received amended plan approval in February 2015 and is now developed and occupied.
The Mews (Senior Housing), Block 47, Lot 3	35	3	The Mews is an existing inclusionary development project consists of 35 low- and moderate-income rental housing units. The 43 acre property was developed as a 221 unit residential development approved in 2001. During the compliance phase of the litigation, the municipality will provide the deed restriction(s) for this development.
Planned Projects			
CRC Longview - Group Homes, Block 10, Lots 1, 9.01	4	4	CRC obtained preliminary subdivision approval from the Planning Board memorialized in Resolution No. 2009-17 to create a 15-lot major subdivision, and the resolution contains a condition which requires that the applicant purchase four (4) qualified group home bedrooms. The developer agreed to provide the group home bedrooms. The subdivision is thus far unbuilt by virtue of the downturn in the economy but the subdivision, including the proposed four (4) qualified group home bedrooms creates a realistic opportunity because it is effectively a 6-percent set-aside (one home with four bedrooms out of 16 total homes) . During the compliance phase of the litigation, the Township agrees to provide evidence of the approvals to date.
Fox/Seals, Block 53, Lot 3, family rental	1		The Fox/Seals (Old Municipal Building) site is located in the heart of historic Annandale Village within walking distance to the Annandale Train Station. It is developed with a large structure deemed to have some historic significance with associated paved areas. A redevelopment plan for the site was adopted in August 2016 which proposes to restore a portion of the historic structure for residential and commercial use with the development of a second structure for multifamily use for a site total of 12 units. Given the expense of the historic restoration and past difficulty of realizing a viable development plan for the site, the project will create only one (1) unit of affordable housing. The Township anticipates executing a developer's agreement for the redevelopment project by March 31, 2018. The Township agrees to enter into an agreement to transfer the property to a developer within one year of the date of this Agreement. Water and sewer capacity have been secured to accommodate the redevelopment plan. A realistic opportunity is provided as the Township has selected a developer and entered into a redevelopment agreement for the site on October 26, 2017. The Township anticipates the development of the site to begin in 2018.

100% Affordable Planned Projects			
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	66	66	Clinton Township adopted a redevelopment plan for the Beaver Brook Homestead site in January 2016 for a 100% affordable housing project, after which the Planning Board approved a preliminary site plan for the property as memorialized in Resolution No. 2016-08. In August 2017, the developer, Ingerman, was awarded the competitive NJHFMA 9% funding. Water and sewer capacity have been secured to accommodate the 66-unit development. An application for final site plan approval is pending before the Planning Board and it is anticipated that it will be heard in January, 2018. The receipt of funding for this development and pending final site plan application demonstrates that it provides a realistic opportunity for the development of affordable housing.
Marookian, Block 82, Lots 4, 4.03, family rental	26		The Marookian site, which will include 84 total affordable family rental units, is Township-owned property located at the southwest corner of the Route 31 and Regional Road intersection. The majority of the 139-acre site is not developable due to both environmental constraints and because it was purchased with open space funding. The Township maintains the rights to develop 6 acres of the property. Through site analysis a 19-acre area has been identified at the southeast corner of the site that abuts Route 31 as being appropriate for development. Within this area 6 acres may be selected for the development of the contemplated 100% affordable housing project at a density of approximately 13 units per acre. The Township currently envisions a flag lot configuration that sets the developable portion of the site in a cleared area behind an existing row of mature trees. Sewer capacity has been secured for the proposed development while the Town of Clinton has designated the required amount of water to accommodate the project. The Township intends to initiate an RFP process in selecting a developer for the site. During the compliance phase of this matter, the Township will provide a schedule for the development of this site in accordance with the terms in this agreement. Also, during the compliance phase of this matter, the municipality will provide all information necessary to demonstrate a realistic opportunity in accordance with the terms of this agreement.
Total	262	73	262+73=335

7. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 337 units:

Site – Block/Lot	**Units**	**Bonuses**	
Marookian, Block 82, Lots 4, 4.03, family rental	58	58	See Prior Round chart above. Bonuses are provided for this site because it has immediate access to water and sewer.
Windy Acres, Block 7, Lot 31.02, family	89		Windy Acres is a Township-owned site located at the southeast corner of Main Street and Corporate Drive less than 1 mile from the Lebanon Train Station. The

rental – Durational Adjustment Project			site is within a developed area of the community with close access to Routes 22 and 78. Of the site's 25 acres, 11 acres generally within the center of the lot have been determined appropriate for development. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township intends to initiate an RFP process in selecting a developer for the site. During the compliance phase of this matter, the Township will provide a schedule for the development of this site in accordance with the terms in this agreement. Also, during the compliance phase of this matter, the Township will provide all information necessary to demonstrate a realistic opportunity in accordance with the terms of this agreement.
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental – Durational Adjustment Project	104		The Headley Farm Estate is located immediately north of Annandale Village and the Annandale Train Station. The site was previously granted approval for a 21 lot subdivision for which the road infrastructure was developed. The developer of the site now proposes a mix of townhouses and multifamily development given changes in area residential market conditions. The portion of the site contemplated for development is cleared and is without environmental constraints. The New Jersey Highlands Council has indicated the site could be included in a Highlands Center to allow for the proposed density and required site improvements. The site totals 155.02 acres, of which 86.96 are unconstrained. 400 total units will be developed at a density of 4.6 units per acre, resulting in 400 units, which at a 26% set aside would be 104 units, all of which will be rented and available to lower-income families. This density is below the presumptive densities required by COAH rules, but the developer has agreed this density provides a sufficient compensatory benefit and has agreed to accept a higher than normal set-aside obligation. Based on its location relative to existing sewer service areas, required infrastructure improvements, substantial set-aside of 26%, developer support, and proximity to public transportation, the Township will prioritize this site over all other sites in the municipality when water and sewer access and capacity are available. However, the developer may choose to install, and the Township agrees to support applications for, a package sewer plant and private water system/new public well. The Township will use its best efforts to help the developer purchase the available sewer capacity. However, the developer is responsible for purchasing its sewer capacity. The Township is seeking a durational adjustment for the inclusion of this site in its

			fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township will agree to propose Headley Farms to be in a Highlands Center and to amend the sewer service area to include it in a SSA and to take all reasonable and necessary steps to obtain those designations. During the compliance phase of this litigation, the Township will provide a letter from the developer supporting the terms of this Agreement and otherwise demonstrate this site, with the exception of the availability of public utilities, presents a realistic opportunity for the development of affordable housing in accordance with applicable law.
Alton Place- Block 79.07, Lot 1, family rental – Durational Adjustment Project	28		This 16.17 acre site of which 13.84-acres are developable will be rezoned at a density of 10-units per acre with a 20% set-aside. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available.
Total	279	58	279+58=337

8. The Township intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Development/Compliance Mechanism	Units
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- 79.07/1, family rental	28

9. The Township will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Development/Compliance Mechanism	Units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26 (funding received in 2017)	66
Marookian, Block 82, Lots 4, 4.03, family rental	84
Windy Acres, Block 7, Lot 31.02, family rental	89

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding

available to the municipality and/or project sponsor, and any applications still pending. Subject to paragraph 10 below, in the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The Beaver Brook Homestead project has been fully funded and is expected to begin construction shortly. The schedule for construction of the Beaver Brook Homestead project shall nevertheless provide for construction to begin within two years of court approval of this settlement at the latest. The schedule shall provide for construction of the Marookian project and the Windy Acres project consistent with the terms of paragraph 10 below. The Township shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the court at least 60 days prior to the compliance hearing in this matter.

10. The parties recognize that the Marookian and Windy Acres developments may not be the subject of funding applications for the total number of units planned for each development in this settlement agreement; may not receive sufficient funding to develop at the number of units proposed in this settlement agreement; and may not receive funding enabling construction to begin within two years of court approval of this settlement. In view of these possibilities, the parties agree as follows:
    a. It is anticipated that the Marookian and Windy Acres sites will apply for Low Income Housing Tax Credits. In the event that the funding applications for these sites is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.

    b. In the event for any reason that the Marookian site is not under construction within two years of court approval of this settlement at a fairness hearing, as required by applicable law, the municipality shall, within 30 months of court approval of this settlement, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists

for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

c. The Township agrees to take all reasonable efforts, which may include litigation if needed, to obtain water and sewer access for the Windy Acres site within 2 years of the court's approval of this Agreement at a fairness hearing. In the event that water and sewer "will serve" letters have not been received and adequate water and sewer utilities are not available for the Windy Acres development within 2 years of the court's approval of this Agreement at a fairness hearing, the Township must provide a realistic opportunity through alternative means through the rezoning of parcels in the Township for inclusionary uses in accordance with applicable law at which adequate water and sewer utilities are available. In the event for any reason that the Windy Acres site is not under construction within eighteen months of the availability of sewer and water, as required by applicable law, the municipality shall, within 24 months of the availability of sewer and water, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Windy Acres site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Windy Acres site.

d. In the event that Windy Acres development either does not have access to water or sewer utilities or is not under construction within four years of the court's approval of this Agreement at a fairness hearing, and in the event the municipality has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the municipality would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.

11. The parties agree that the municipality may address its Third Round prospective need obligation in part through a durational adjustment.

a. As demonstrated by the following facts, the Township does not have sufficient capacity for water or sewer to support certain of its affordable housing projects and thus is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3:

i. The Township has secured 38,925 gallons of sewer capacity from the Town of Clinton Sewerage Authority ("CTSA") sufficient to accommodate the development of the Beaver Brook Homestead, Fox/Seals and Marookian projects in full. Country Club Drive Associates ("CCDA" – the Benbrook's are among its principals) has rights to the remaining available capacity of approximately 62,000 gallons. Based on third hand information, neither

Headley Farm nor 108 Alton Place has been able to negotiate the purchase of any of the CCDA sewer capacity. As such, there is presently not enough sewer capacity to accommodate the Headley Farms and 108 Alton Place developments as prescribed herein, requiring the support of a durational adjustment. Windy Acres is not in the sewer service area ("SSA") served by the CCDA sewer capacity and, while Windy Acres is in a SSA, there is no sewer capacity left in its SSA so the Windy Acres development also requires the support of a durational adjustment.

ii. The allocation of sewer capacity has been prioritized based on several factors, including anticipated time of project completion, number of affordable units generated, location relative to existing SSA's, and required infrastructure improvements, among other factors. The Beaver Brook Homestead and Fox/Seals sites are redevelopment projects within an existing SSA which are anticipated to begin sitework within the next year. The Marookian site, located along Route 31, is also within an existing SSA, the development of which requires the installation of a lift station and/or forced main to connect to the existing lift station approximately half-mile north of the property at North Hunterdon High School. Headley Farm Estate abuts the SSA serving the Village of Annandale with a readily available lift station and main to facilitate connectivity. Alternatively, the Headley site may install an advanced septic treatment plant which has been determined to be acceptable by the Highlands Council once the site has been included in a designated Highlands Center. The development of the Headley site remains a priority over the 108 Alton Place and Windy Acres sites as it will generate the most affordable housing units with the available sewer capacity. 108 Alton Place is located within an existing SSA requiring the installation of a forced main to convey discharge to the nearby lift station with connectivity available on two sides of the site. The Windy Acres site requires sewer capacity from the Readington-Lebanon Sewerage Authority from which there is currently no sewer capacity available. A lift station immediately adjacent to the Windy Acres site allows for connectivity into the existing system.

iii. With regard to water capacity, the Beaver Brook Homestead development has a water reservation agreement with the Town of Clinton. Fox/Seals and Marookian have 'will serve' letters from the Town of Clinton which are anticipated to be renewed. All three of these sites have the requisite infrastructure readily available. Once the Township obtains from the court approval of the Marookian site as part of a certified plan (similar to what the Township obtained for the Beaver Brook Homestead site), the Township will request a water reservation for the Marookian site from the Town of Clinton which it should be entitled to under the terms of the Town of Clinton ordinance governing water reservation agreements. Beyond this water capacity, there is presently not enough water to supply the development of the Headley Farm Estate, Windy Acres or 108 Alton Place sites. However, any remaining capacity will be requested from the Town of Clinton and allocated to the Headley site to be supplemented with the installation of an onsite well providing a community or production water supply which may be incorporated into the existing Town of Clinton system which abuts the property. The Headley site is being given priority with regard to water

capacity as its development will yield more affordable housing units than the 108 Alton Place and Windy Acres sites and water infrastructure has already been installed on site. Water infrastructure is adjacent to both the Marookian, Windy Acres and 108 Alton Place sites making water readily available once capacity becomes available.

b. In view of its request for a durational adjustment, the municipality agrees to comply with N.J.A.C. 5:93-4.3 as follows:

i. The Township will seek court approval for, and FSHC will support, a durational adjustment of 221 units and address the requirements of N.J.A.C. 5:93-4.3 through the following:

1. In accordance with N.J.A.C. 5:93-4.3(c), and the requirement to address Third Round prospective need obligation of 337 units, 221 units of which shall be deferred until adequate water and/or sewer are made available. The Township shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide water and/or sewer capacity for the sites set forth above and otherwise in accordance with paragraph 10d of this Agreement if the waiver provided by this paragraph no longer applies.

2. The Township has designated and will rezone the following sites as necessary for low and moderate income housing that lack adequate water and/or sewer as addressed more fully above:

	Units
Windy Acres, Block 7, Lot 31.02, family rental	89
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- Block 79.07, Lot 1, family rental	28
Total:	221

3. The basis for inclusion of the Windy Acres and 108 Alton Place sites as plan mechanisms to satisfy a portion of the Township's Third Round obligation, which require the support of a durational adjustment, are as follows:

a) Windy Acres: Windy Acres is a Township-owned site located at the southeast corner of Main Street and

Corporate Drive less than 1 mile from the Lebanon Train Station. The site is within a developed area of the community with close access to Routes 22 and 78. It is also buffered by a significant area of open space to the east and south mitigating any development impacts.

Of the site's total 25 acres, 11 acres generally within the center of the lot have been determined appropriate for development as this area is devoid of environmental constraints. The Township anticipates minimal impacts to local traffic from the development as proposed given the direct access to major regional roadways. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. As noted previously, this site is located within a developed area of the Township along the community's Main Street and is therefore appropriate to receive water and sewer accommodations when they become available.

b) 108 Alton Place: 108 Alton Place is located between two existing townhouse developments in the Township's Planned Unit Development Overlay District. The majority of the site is developable with areas of steep slopes and Highlands water protection buffers. The site is well positioned between Routes 78 and 22 to the north, Route 31 to the east and the Town of Clinton's commercial center to the west. It is anticipated that the proposed development of the site at the proposed density will result in minimal local traffic impacts. In addition, appropriate buffers and open space will be required of any future development of the site. The Township is seeking a durational adjustment for the inclusion of this site in the municipality's Fair Share Plan as there is not enough water and sewer capacity available at present to accommodate the development of the site.

4. All proposed plan mechanisms include sites within established neighborhoods of the Township with good regional access, some in close proximity to public transportation access mitigating traffic congestion and parking demand. The densities and development proposed at each site of ample size and shape take into consideration their unique property characteristics as well as surrounding development.

5. Sites identified herein are not impacted by environmental constraints to such a degree that would inhibit the proposed creation of affordable housing. Water and sewer capacity have been secured for some sites while there is not enough presently available to accommodate others. Hence, the Township is seeking a durational adjustment for sites which do not have adequate water

and/or sewer supplies, though they have determined to be in appropriate locations to receive such when capacity becomes available.

6. The requirements included in N.J.A.C. 5:93-4.3(c)3 and 4 related to inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element are hereby waived in accordance with N.J.A.C. 5:93-4.3(c)4, which permits waiver of such requirements when a municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

12. The Township agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Development/Compliance Mechanism	Very low income units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	9
Fox/Seals, Block 53, Lot 3, family rental	0
Marookian, Block 82, Lots 4, 4.03, family rental	11
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	14
Alton Place- Block 79.07, Lot 1, family rental	4
Total:	38

13. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

    a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d), provided that the municipality agrees to not use bonuses to reduce the actual number of units for which a realistic opportunity must be provided, even if subject to a durational adjustment, below 279 units.

    b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

    c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

    d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

    e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for

age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

14. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

15. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

    a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 3) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

    b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the Township updates the income

limits after HUD has published revised determinations of median income for the next fiscal year.

c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

16. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

17. As an essential term of this Agreement, within ninety (90) days of Court's approval of this Agreement after a Fairness Hearing, the Township shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement. As another essential term of this Agreement, within ninety (90) days of Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein.

18. The parties agree that if a decision of a court of competent jurisdiction in Hunterdon County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling fully the fair share obligations as established herein. In the event alternative sites are required in accordance with the terms of this Agreement, in no circumstance may the municipality provide less than 279 units of affordable housing, not including bonuses. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement, seeking leave to amend an order or judgment pursuant to R. 4:50-1, or seeking leave to provide less than 279 units of affordable housing, not including bonuses. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

19. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3,

with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Township, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Township agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

20. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

21. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this Agreement. The Township agrees to comply with those provisions as follows:
    a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
    b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

22. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order

declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.

23. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.

24. The Township agrees to make a $30,000 donation to FSHC to be used for the advancement of affordable housing. The payment shall be made within ten (10) days of the Court's approval of this Agreement after a Fairness Hearing.

25. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

26. This Agreement may be enforced by either party through a motion to enforce litigant's rights or a separate action filed in Superior Court, Hunterdon County. The prevailing party in such a motion or separate action shall be entitled to reasonable attorney's fees.

27. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

28. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

29. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

30. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

31. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

32. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

33. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

34. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

35. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

36. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

37. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833

Telecopier: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

Sincerely,

Kevin D. Walsh, Esq.
Counsel for Interested Party
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization of the governing body:

Mayor John Higgins

Dated: December 13, 2017

EXHIBIT B: 2017 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents**	Max Increase Sales***	Regional Asset Limit****
Region 1	Median	$60,271	$64,576	$68,882	$77,492	$86,102	$89,546	$92,990	$99,878	$106,766	$113,655	1.7%	1.99%	$166,493
Bergen, Hudson, Passaic and Sussex	Moderate	$48,217	$51,661	$55,105	$61,993	$68,882	$71,637	$74,392	$79,903	$85,413	$90,924			
	Low	$30,136	$32,288	$34,441	$38,746	$43,051	$44,773	$46,495	$49,939	$53,383	$56,827			
	Very Low	$18,081	$19,373	$20,664	$23,248	$25,831	$26,864	$27,897	$29,963	$32,030	$34,096			
Region 2	Median	$65,953	$70,663	$75,374	$84,796	$94,218	$97,987	$101,755	$109,293	$116,830	$124,368	1.7%	3.25%	$180,756
Essex, Morris, Union and Warren	Moderate	$52,762	$56,531	$60,299	$67,837	$75,374	$78,389	$81,404	$87,434	$93,464	$99,494			
	Low	$32,976	$35,332	$37,687	$42,398	$47,109	$48,993	$50,878	$54,646	$58,415	$62,184			
	Very Low	$19,786	$21,199	$22,612	$25,439	$28,265	$29,396	$30,527	$32,788	$35,049	$37,310			
Region 3	Median	$73,788	$79,050	$84,320	$94,860	$105,400	$109,616	$113,832	$122,264	$130,696	$139,128	1.7%	0.38%	$200,698
Hunterdon, Middlesex and Somerset	Moderate	$59,024	$63,240	$67,456	$75,888	$84,320	$87,693	$91,066	$97,811	$104,557	$111,302			
	Low	$36,890	$39,525	$42,160	$47,430	$52,700	$54,808	$56,916	$61,132	$65,348	$69,564			
	Very Low	$22,134	$23,715	$25,296	$28,458	$31,620	$32,885	$34,150	$36,679	$39,209	$41,738			
Region 4	Median	$66,022	$70,738	$75,454	$84,885	$94,317	$98,090	$101,862	$109,408	$116,953	$124,498	1.7%	1.53%	$177,413
Mercer, Monmouth and Ocean	Moderate	$52,817	$56,590	$60,363	$67,908	$75,454	$78,472	$81,490	$87,526	$93,562	$99,599			
	Low	$33,011	$35,369	$37,727	$42,443	$47,158	$49,045	$50,931	$54,704	$58,476	$62,249			
	Very Low	$19,807	$21,221	$22,636	$25,466	$28,295	$29,427	$30,559	$32,822	$35,086	$37,349			
Region 5	Median	$58,240	$62,400	$66,560	$74,880	$83,200	$86,528	$89,856	$96,512	$103,168	$109,824	1.7%	2.09%	$154,194
Burlington, Camden and Gloucester	Moderate	$46,592	$49,920	$53,248	$59,904	$66,560	$69,222	$71,885	$77,210	$82,534	$87,859			
	Low	$29,120	$31,200	$33,280	$37,440	$41,600	$43,264	$44,928	$48,256	$51,584	$54,912			
	Very Low	$17,472	$18,720	$19,968	$22,464	$24,960	$25,958	$26,957	$28,954	$30,950	$32,947			
Region 6	Median	$51,085	$54,734	$58,383	$65,681	$72,979	$75,898	$78,817	$84,655	$90,494	$96,332	1.7%	0.00%	$136,680
Atlantic, Cape May, Cumberland, and Salem	Moderate	$40,868	$43,787	$46,706	$52,545	$58,383	$60,718	$63,054	$67,724	$72,395	$77,066			
	Low	$25,543	$27,367	$29,192	$32,840	$36,489	$37,949	$39,409	$42,328	$45,247	$48,166			
	Very Low	$15,326	$16,420	$17,515	$19,704	$21,894	$22,769	$23,645	$25,397	$27,148	$28,900			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3,(b), The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administive agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).

2018 Third Round Amended Settlement Agreement w/ FSHC

FAIR SHARE
HOUSING CENTER

Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

February 5, 2018

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15

Dear Mr. Drill:

This letter memorializes the terms of an amended agreement reached between the Township of Clinton (the Township or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding. This amended agreement replaces in its entirety the agreement reached between the Township and FSHC dated December 12, 2017 (the "initial agreement"). The primary difference between the agreements is that the "Windy Acres" project that was included as a durational adjustment site in the initial agreement has been eliminated and replaced with the "LeCompte" project as a durational adjustment site in this amended agreement. The remaining differences between the agreements flow from the replacement of the Windy Acres project with the LeCompte project and address sewer and water capacity issues.

Background

Clinton filed the above-captioned matter on July 2, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding

a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Clinton hereby agree that Clinton's affordable housing obligations are as follows:

Rehabilitation Obligation	10
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	335
Third Round (1999-2025) Prospective Need (per Kinsey Report[1], as adjusted through this Agreement to account for the municipality's decision to conform to the Highlands Regional Master Plan)	337

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

5. The Township conducted a structural conditions survey of the community's housing stock on November 3, 2017 through which 10 units were identified as "substandard housing" in accordance with N.J.A.C. 5:93-5.2. The Township's rehabilitation obligation is therefore reduced to no more than 10 units, subject to the Special Master's review at least 60 days prior to the compliance hearing on this matter. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied in accordance with applicable law.

6. As noted above, the Township has a Prior Round prospective need of 335 units, which is met through the following compliance mechanisms:

Site/Program	Units	Bonuses	
Prior Cycle Credits			
Existing Group Home, Block 4.03, Lot 40	5		Located at 4 Wayside Lane, this facility is operated by Venice Avenue Community Residence, Inc. It is a five bedroom group home for individuals with developmental disabilities who have no income. The non-profit organization receives funding from the State to operate the facility. During the compliance phase of the litigation, the Township agrees to provide the following for each of these credits: 1) A copy of the deed restriction on the project; 2) The Supportive and Special Needs Housing Survey Form used by the Council on Affordable Housing; 3) A copy of the facility license, if applicable
Credits Without Controls	13		Clinton Township initiated the Credits without Controls process in May 1999, in accordance with N.J.A.C. 5:93-3.2. 200 hundred surveys were submitted, 80 of which were returned to COAH. Ultimately, COAH found 28 units were found to

[1] David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

			represent income-eligible households. All surveys received were from the Beaver Brook (Block 79.02) and Oak Knoll (Block 82.13) developments. COAH calculated the affordability factors of these developments and granted the Township eligibility for 13 credits without controls units. See attached Exh. A.

RCA			
RCA with City of New Brunswick	108		The Township entered into an agreement with the City of New Brunswick to transfer funds for 108 affordable housing units. This agreement was approved by COAH. The Township's final payment toward this transfer was made on August 26, 2002. In total, the Township paid $2,265,000 towards the RCA with the city. During the compliance phase of this litigation, the Township will demonstrate that the City of New Brunswick created or rehabilitated 108 creditworthy units in accordance with applicable law and the agreement between the Township and the City.
Existing Rentals			
Village Green at Annandale, Block 49, Lot 25	4		Village Green at Annandale is a mixed use development consisting of 4 affordable housing units. The development received amended plan approval in February 2015 and is now developed and occupied.
The Mews (Senior Housing), Block 47, Lot 3	35	3	The Mews is an existing inclusionary development project consists of 35 low- and moderate-income rental housing units. The 43 acre property was developed as a 221 unit residential development approved in 2001. During the compliance phase of the litigation, the municipality will provide the deed restriction(s) for this development.
Planned Projects			
CRC Longview - Group Homes, Block 10, Lots 1, 9.01	4	4	CRC obtained preliminary subdivision approval from the Planning Board memorialized in Resolution No. 2009-17 to create a 15-lot major subdivision, and the resolution contains a condition which requires that the applicant purchase four (4) qualified group home bedrooms. The developer agreed to provide the group home bedrooms. The subdivision is thus far unbuilt by virtue of the downturn in the economy but the subdivision, including the proposed four (4) qualified group home bedrooms creates a realistic opportunity because it is effectively a 6-percent set-aside (one home with four bedrooms out of 16 total homes) . During the compliance phase of the litigation, the Township agrees to provide evidence of the approvals to date.
Fox/Seals, Block 53, Lot 3, family rental	1		The Fox/Seals (Old Municipal Building) site is located in the heart of historic Annandale Village within walking distance to the Annandale Train Station. It is developed with a large structure deemed to have some historic significance with associated paved areas. A redevelopment plan for the site was adopted in August 2016 which proposes to restore a portion of the historic structure for residential and commercial use with the development of a second structure for multifamily use for a site total of 12 units. Given the expense of the historic restoration and past difficulty of realizing a viable development plan for the site, the project will create only one (1) unit of affordable housing. Water and sewer capacity have been secured to accommodate the redevelopment plan. A realistic opportunity is provided as the Township has selected a developer and entered into a redevelopment agreement for the site on October 26, 2017. The Township anticipates

			executing a developer's agreement for the redevelopment project by March 31, 2018. The Township agrees to enter into an agreement to transfer the property to a developer within one year of the date of this amended agreement. The Township anticipates the development of the site to begin in 2018.
100% Affordable Planned Projects			
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	66	66	Clinton Township adopted a redevelopment plan for the Beaver Brook Homestead site in January 2016 for a 100% affordable housing project, after which the Planning Board approved a preliminary site plan for the property as memorialized in Resolution No. 2016-08. In August 2017, the developer, Ingerman, was awarded the competitive NJHFMA 9% funding. Water and sewer capacity have been secured to accommodate the 66-unit development. An application for final site plan approval is pending before the Planning Board and it is anticipated that it will be heard in February, 2018. The receipt of funding for this development and pending final site plan application demonstrates that it provides a realistic opportunity for the development of affordable housing.
Marookian, Block 82, Lots 4, 4.03, family rental	26		The Marookian site, which will include 84 total affordable family rental units, is Township-owned property located at the southwest corner of the Route 31 and Regional Road intersection. The majority of the 139-acre site is not developable due to both environmental constraints and because it was purchased with open space funding. The Township maintains the rights to develop 6 acres of the property. Through site analysis, a 19-acre area has been identified at the southeast corner of the site that abuts Route 31 as being appropriate for development. Within this area 6 acres may be selected for the development of the contemplated 100% affordable housing project at a density of approximately 13 units per acre. The Township currently envisions a flag lot configuration that sets the developable portion of the site in a cleared area behind an existing row of mature trees. Sewer capacity has been secured for the proposed development. The Town of Clinton has designated the required amount of water to accommodate the project. The court entered an order on February 2, 2018 approving the Marookian project as part of the Township's compliance plan and the Township will apply for a water reservation from the Town of Clinton for the project within 30 days of the date of the within amended agreement. The Township intends to initiate an RFP process in selecting a developer for the site. During the compliance phase of this matter, the Township will provide a schedule for the development of this site in accordance with the terms in this agreement. Also, during the compliance phase of this matter, the municipality will provide all information necessary to demonstrate a realistic opportunity in accordance with the terms of this agreement.
Total	262	73	262+73=335

7. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 337 units:

Site – Block/Lot	Units	Bonuses	
Marookian, Block 82, Lots 4, 4.03, family rental	58	58	See Prior Round chart above. Bonuses are provided for this site because it has immediate access to water and sewer.
LeCompte, Block 29, Lot 4, family rental – Durational Adjustment Project	89		The LeCompte project would be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there currently is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental – Durational Adjustment Project	104		The Headley Farm Estate is located immediately north of Annandale Village and the Annandale Train Station. The site was previously granted approval for a 21 lot subdivision for which the road infrastructure was developed. The developer of the site now proposes a mix of townhouses and multifamily development given changes in area residential market conditions. The portion of the site contemplated for development is cleared and is without environmental constraints. The New Jersey Highlands Council has indicated the site could be included in a Highlands Center to allow for the proposed density and required site improvements. The site totals 155.02 acres, of which 86.96 are unconstrained. 400 total units will be developed at a density of 4.6 units per acre, resulting in 400 units, which at a 26% set aside would be 104 units, all of which will be rented and available to lower-income families. This density is below the presumptive densities required by COAH rules, but the developer has agreed this density provides a sufficient compensatory benefit and has agreed to accept a higher than normal set-aside obligation. Based on its location relative to existing sewer service areas, required infrastructure improvements, substantial set-aside of 26%, developer support, and proximity to public transportation, the Township will prioritize this

			site over all other inclusionary development sites in the municipality when water and sewer access and capacity are available. However, the developer may choose to install, and the Township agrees to support applications for, a package sewer plant and private water system/new public well. The Township will use its best efforts to help the developer purchase the available sewer capacity. However, the developer is responsible for purchasing its sewer capacity. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township will agree to propose Headley Farms to be in a Highlands Center and to amend the sewer service area to include it in a SSA and to take all reasonable and necessary steps to obtain those designations. During the compliance phase of this litigation, the Township will provide a letter from the developer supporting the terms of this Agreement and otherwise demonstrate this site, with the exception of the availability of public utilities, presents a realistic opportunity for the development of affordable housing in accordance with applicable law.
Alton Place- Block 79.07, Lot 1, family rental – Durational Adjustment Project	28		This 16.17 acre site of which 13.84-acres are developable will be rezoned at a density of 10-units per acre with a 20% set-aside. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available.
Total	279	58	279+58=337

8. The Township intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Development/Compliance Mechanism	**Units**
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- 79.07/1, family rental	28

9. The Township will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Development/Compliance Mechanism	Units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26 (funding received in 2017)	66
Marookian, Block 82, Lots 4, 4.03, family rental	84
LeCompte, Block 29, Lot 4, family rental	89

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. Subject to paragraph 10 below, in the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The Beaver Brook Homestead project has been fully funded and is expected to begin construction shortly. The schedule for construction of the Beaver Brook Homestead project shall nevertheless provide for construction to begin within two years of court approval of this settlement at the latest. The schedule shall provide for construction of the Marookian project and the LeCompte project consistent with the terms of paragraph 10 below. The Township shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the court at least 60 days prior to the compliance hearing in this matter.

10. The parties recognize that the Marookian and LeCompte developments may not be the subject of funding applications for the total number of units planned for each development in this settlement agreement; may not receive sufficient funding to develop at the number of units proposed in this settlement agreement; and may not receive funding enabling construction to begin within two years of court approval of this settlement. In view of these possibilities, the parties agree as follows:
    a. It is anticipated that the Marookian and LeCompte sites will apply for Low Income Housing Tax Credits. In the event that the funding applications for these sites is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site

within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.

b. In the event for any reason that the Marookian site is not under construction within two years of court approval of this settlement at a fairness hearing, as required by applicable law, the municipality shall, within 30 months of court approval of this settlement, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

c. The Township agrees to take all reasonable efforts to obtain water and sewer access for the LeCompte site as soon as possible. In the event for any reason that the LeCompte development is not under construction for any reason within 48 months of the of the court's approval of this Agreement at a fairness hearing, the municipality shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the LeCompte site.

d. In the event that the LeCompte project either does not have access to water or sewer utilities or is not under construction within four years of the court's approval of this Agreement at a fairness hearing, and in the event the municipality has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the municipality would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.

e. The Township and FSHC agree that Marookian and LeCompte developments present opportunities for shared amenities, including for persons with disabilities. The Township agrees that agrees that it will fund and/or obtain funding for a large

public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian and LeCompte sites to the site of the playground to allow pedestrian. The Township further agrees to require the developers of the Marookian and LeCompte sites to provide a minimum of 20% of all units as barrier free wheelchair accessible units. The Township further agrees to propose and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection between the two developments and to fund and construct the cross-walk within one year of approval of the cross-walk by the NJDOT.

11. The parties agree that the municipality may address its Third Round prospective need obligation in part through a durational adjustment.
    a. As demonstrated by the following facts, the Township does not have sufficient capacity for water or sewer to support certain of its affordable housing projects and thus is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3:

        i. The Township has secured 38,925 gallons of sewer capacity from the Town of Clinton Sewerage Authority ("CTSA") sufficient to accommodate the development of the Beaver Brook Homestead, Fox/Seals and Marookian projects in full. Private entities / individuals have rights to the remaining available capacity, but that capacity is not sufficient to accommodate all of the inclusionary and 100% affordable developments included in the settlement plan. As such, there is presently not enough sewer capacity to accommodate the LeCompte, Headley Farms, and 108 Alton Place developments as prescribed herein, requiring the support of a durational adjustment. The Township agrees to make all reasonable efforts to obtain sewer capacity from the Clinton Township Sewer Authority and/or the individuals who have rights to the remaining capacity. Robert and Kevin Benbrook along with Chuck Urban were the principals of Country Club Drive Associates (CCDA), the entity that has rights to the remaining sewer capacity but, on information and belief, it appears that there has been a reorganization of CCDA and the sewer capacity has been divided between CCDA and Robert and Kevin Benbrook. While there presently is no available sewer capacity for the LeCompte project, The Township, with the assistance of the special master, will make all reasonable efforts to obtain sewer capacity for the LeCompte project from the CTSA and/or the Benbrooks..

        ii. The allocation of sewer capacity has been prioritized based on several factors, including anticipated time of project completion, number of affordable units generated, location relative to existing SSA's, and required infrastructure improvements, among other factors. The Beaver Brook Homestead and Fox/Seals sites are redevelopment projects within an existing SSA which are anticipated to begin sitework within the next year. The Marookian site, located along Route 31, is also within an existing SSA, the development of which requires the installation of a lift station and/or forced main to connect to the existing lift station approximately half-mile

north of the property at North Hunterdon High School. Headley Farm Estate abuts the SSA serving the Village of Annandale with a readily available lift station and main to facilitate connectivity. Alternatively, the Headley site may install an advanced septic treatment plant which has been determined to be acceptable by the Highlands Council once the site has been included in a designated Highlands Center. The development of the Headley site remains a priority over the 108 Alton Place site as it will generate the most affordable housing units with the available sewer capacity. 108 Alton Place is located within an existing SSA requiring the installation of a forced main to convey discharge to the nearby lift station with connectivity available on two sides of the site. While the LeCompte site is a 100% affordable site and is located across Route 31 from the Marookian site and in the same SSA as the Marookian site, it is unlikely that it will be approved for tax credit financing in the same round as the Marookian site, so the Marookian site has priority over the LeCompte site.

iii. With regard to water capacity, the Beaver Brook Homestead development has a water reservation agreement with the Town of Clinton. Fox/Seals and Marookian have 'will serve' letters from the Town of Clinton which are anticipated to be renewed. All three of these sites have the requisite infrastructure readily available. The Township has obtained court approval of the Marookian project as part of its compliance plan (similar to what the Township obtained for the Beaver Brook Homestead site). As such, the Township will request prior to the Fairness Hearing a water reservation for the Marookian site from the Town of Clinton which it should be entitled to under the terms of the Town of Clinton ordinance governing water reservation agreements. Beyond this water capacity, there is presently not enough water to supply the development of the Headley Farm Estate, 108 Alton Place, and LeCompte sites. However, any remaining capacity will be requested from the Town of Clinton and allocated to the LeCompte project first and then to the Headley project to be supplemented with the installation of an onsite well providing a community or production water supply which may be incorporated into the existing Town of Clinton system which abuts the property. The Headley site is being given priority with regard to water capacity over the 108 Alton Place project as the Headley project will yield more affordable housing units than the 108 Alton Place and water infrastructure has already been installed on site. Water infrastructure is adjacent to both the Marookian, 108 Alton Place, and LeCompte sites making water readily available once capacity becomes available. The special master will assist the Township in attempting to obtain water for the affordable housing projects included in the settlement plan, with the LeCompte project having first priority, the Headley project having second priority, and the 108 Alton Place project having third priority.

b. In view of its request for a durational adjustment, the municipality agrees to comply with N.J.A.C. 5:93-4.3 as follows:

i. The Township will seek court approval for, and FSHC will support, a durational adjustment of 221 units and address the requirements of N.J.A.C. 5:93-4.3 through the following:

1. In accordance with N.J.A.C. 5:93-4.3(c), and the requirement to address Third Round prospective need obligation of 337 units, 221 units of which shall be deferred until adequate water and/or sewer are made available. The Township shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide water and/or sewer capacity for the sites set forth above and otherwise in accordance with paragraph 10d of this Agreement if the waiver provided by this paragraph no longer applies.

2. The Township has designated and will rezone the following sites as necessary for low and moderate income housing that lack adequate water and/or sewer as addressed more fully above:

	Units
LeCompte, Block 29, Lot 4, family rental	89
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- Block 79.07, Lot 1, family rental	28
Total:	221

3. The basis for inclusion of the LeCompte and 108 Alton Place sites as plan mechanisms to satisfy a portion of the Township's Third Round obligation, which require the support of a durational adjustment, are as follows:

   a) LeCompte: The LeCompte project will be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is currently not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-

acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.

b) 108 Alton Place: 108 Alton Place is located between two existing townhouse developments in the Township's Planned Unit Development Overlay District. The majority of the site is developable with areas of steep slopes and Highlands water protection buffers. The site is well positioned between Routes 78 and 22 to the north, Route 31 to the east and the Town of Clinton's commercial center to the west. It is anticipated that the proposed development of the site at the proposed density will result in minimal local traffic impacts. In addition, appropriate buffers and open space will be required of any future development of the site. The Township is seeking a durational adjustment for the inclusion of this site in the municipality's Fair Share Plan as there is not enough water and sewer capacity available at present to accommodate the development of the site.

4. All proposed plan mechanisms include sites within established neighborhoods of the Township with good regional access, some in close proximity to public transportation access mitigating traffic congestion and parking demand. The densities and development proposed at each site of ample size and shape take into consideration their unique property characteristics as well as surrounding development.

5. Sites identified herein are not impacted by environmental constraints to such a degree that would inhibit the proposed creation of affordable housing. Water and sewer capacity have been secured for some sites while there is not enough presently available to accommodate others. Hence, the Township is seeking a durational adjustment for sites which do not have adequate water and/or sewer supplies, though they have determined to be in appropriate locations to receive such when capacity becomes available.

6. The requirements included in N.J.A.C. 5:93-4.3(c)3 and 4 related to inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element are hereby waived in accordance with N.J.A.C. 5:93-4.3(c)4, which permits waiver of such requirements when a municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

12. The Township agrees to request that the Court continue the appointment of the Special Master in this matter for the purpose of assisting the municipality and advising the court

regarding the municipality's efforts to obtain approvals from state and local agencies required by this Agreement. The parties agree to recommend to the Court that the master, whose services shall be paid for by the Township, be directed to issue reports semi-annually to the court, with copies to the parties. The Township further agrees to respond to reasonable inquiries from the special master and FSHC regarding its efforts to obtain approvals required by this Agreement.

13. The Township agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Development/Compliance Mechanism	Very low income units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	9
Fox/Seals, Block 53, Lot 3, family rental	0
Marookian, Block 82, Lots 4, 4.03, family rental	11
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	14
Alton Place- Block 79.07, Lot 1, family rental	4
LeCompte, Block 29, Lot 4, family rental	12
Total:	50

14. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

    a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d), provided that the municipality agrees to not use bonuses to reduce the actual number of units for which a realistic opportunity must be provided, even if subject to a durational adjustment, below 279 units.

    b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

    c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

    d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

    e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

15. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network,

NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

16. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

    a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 3) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

    b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

    c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and

applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

17. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

18. As an essential term of this Agreement, within ninety (90) days of Court's approval of this Agreement after a Fairness Hearing, the Township shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement. As another essential term of this Agreement, within ninety (90) days of Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein.

19. The parties agree that if a decision of a court of competent jurisdiction in Hunterdon County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling fully the fair share obligations as established herein. In the event alternative sites are required in accordance with the terms of this Agreement, in no circumstance may the municipality provide less than 279 units of affordable housing, not including bonuses. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement, seeking leave to amend an order or judgment pursuant to R. 4:50-1, or seeking leave to provide less than 279 units of affordable housing, not including bonuses. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

20. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Township, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Township agrees to provide annual

reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

21. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

22. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this Agreement. The Township agrees to comply with those provisions as follows:
    a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
    b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.

24. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its

planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.

25. The Township agrees to make a $30,000 donation to FSHC to be used for the advancement of affordable housing. The payment shall be made within ten (10) days of the Court's approval of this Agreement after a Fairness Hearing.

26. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

27. This Agreement may be enforced by either party through a motion to enforce litigant's rights or a separate action filed in Superior Court, Hunterdon County. The prevailing party in such a motion or separate action shall be entitled to reasonable attorney's fees.

28. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

31. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

32. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

33. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

34. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

35. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

36. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

37. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

38. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833

Telecopier: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

Sincerely,

Kevin D. Walsh, Esq.
Counsel for Interested Party
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization of the governing body:

Mayor John Higgins

Dated: February 7, 2018

EXHIBIT B: 2017 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents**	Max Increase Sales***	Regional Asset Limit****
Region 1	Median	$60,271	$64,576	$68,882	$77,492	$86,102	$89,546	$92,990	$99,878	$106,766	$113,655	1.7%	1.99%	$166,493
Bergen, Hudson,	Moderate	$48,217	$51,661	$55,105	$61,993	$68,882	$71,637	$74,392	$79,903	$85,413	$90,924			
Passaic and Sussex	Low	$30,136	$32,288	$34,441	$38,746	$43,051	$44,773	$46,495	$49,939	$53,383	$56,827			
	Very Low	$18,081	$19,373	$20,664	$23,248	$25,831	$26,864	$27,897	$29,963	$32,030	$34,096			
Region 2	Median	$65,953	$70,663	$75,374	$84,796	$94,218	$97,987	$101,755	$109,293	$116,830	$124,368	1.7%	3.25%	$180,756
Essex, Morris,	Moderate	$52,762	$56,531	$60,299	$67,837	$75,374	$78,389	$81,404	$87,434	$93,464	$99,494			
Union and Warren	Low	$32,976	$35,332	$37,687	$42,398	$47,109	$48,993	$50,878	$54,646	$58,415	$62,184			
	Very Low	$19,786	$21,199	$22,612	$25,439	$28,265	$29,396	$30,527	$32,788	$35,049	$37,310			
Region 3	Median	$73,780	$79,050	$84,320	$94,860	$105,400	$109,616	$113,832	$122,264	$130,696	$139,128	1.7%	0.38%	$200,698
Hunterdon,	Moderate	$59,024	$63,240	$67,456	$75,888	$84,320	$87,693	$91,066	$97,811	$104,557	$111,302			
Middlesex and	Low	$36,890	$39,525	$42,160	$47,430	$52,700	$54,808	$56,916	$61,132	$65,348	$69,564			
Somerset	Very Low	$22,134	$23,715	$25,296	$28,458	$31,620	$32,885	$34,150	$36,679	$39,209	$41,738			
Region 4	Median	$66,022	$70,738	$75,454	$84,885	$94,317	$98,090	$101,862	$109,408	$116,953	$124,498	1.7%	1.53%	$177,413
Mercer,	Moderate	$52,817	$56,590	$60,363	$67,908	$75,454	$78,472	$81,490	$87,526	$93,562	$99,599			
Monmouth and	Low	$33,011	$35,369	$37,727	$42,443	$47,158	$49,045	$50,931	$54,704	$58,476	$62,249			
Ocean	Very Low	$19,807	$21,221	$22,636	$25,466	$28,295	$29,427	$30,559	$32,822	$35,086	$37,349			
Region 5	Median	$58,240	$62,400	$66,560	$74,880	$83,200	$86,528	$89,856	$96,512	$103,168	$109,824	1.7%	2.09%	$154,194
Burlington,	Moderate	$46,592	$49,920	$53,248	$59,904	$66,560	$69,222	$71,885	$77,210	$82,534	$87,859			
Camden and	Low	$29,120	$31,200	$33,280	$37,440	$41,600	$43,264	$44,928	$48,256	$51,584	$54,912			
Gloucester	Very Low	$17,472	$18,720	$19,968	$22,464	$24,960	$25,958	$26,957	$28,954	$30,950	$32,947			
Region 6	Median	$51,085	$54,734	$58,383	$65,681	$72,979	$75,898	$78,817	$84,655	$90,494	$96,332	1.7%	0.00%	$136,680
Atlantic, Cape	Moderate	$40,868	$43,787	$46,706	$52,545	$58,383	$60,718	$63,054	$67,724	$72,395	$77,066			
May, Cumberland,	Low	$25,543	$27,367	$29,192	$32,840	$36,489	$37,949	$39,409	$42,328	$45,247	$48,166			
and Salem	Very Low	$15,326	$16,420	$17,515	$19,704	$21,894	$22,769	$23,645	$25,397	$27,148	$28,900			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3,(b), The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administive agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).

Third Round Final Judgment of Compliance and Repose

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Clinton Township

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUNTERDON COUNTY
DOCKET No. HNT-L-315-15

IN RE: CLINTON TOWNSHIP COMPLIANCE WITH THIRD ROUND MOUNT LAUREL AFFORDABLE HOUSING OBLIGATION	Civil Action Mount Laurel Declaratory Judgment Action FINAL JUDGMENT OF COMPLIANCE AND REPOSE

This matter having come before the court by way of a declaratory judgment action which was filed by plaintiff Clinton Township (the "Township") on July 2, 2015 in accordance with In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) (Mount Laurel IV); and the Court having conducted a contested fairness hearing on a proposed settlement of the declaratory judgment action on March 19 and 20, 2018 and subsequently entering an amended order on April 3, 2018 approving the settlement, determining the Township's Third Round Mount Laurel affordable housing obligations, and preliminarily approving the Township's Mount

Laurel compliance plan; and the Court having subsequently conducted a contested compliance hearing on December 20, 2018 in accordance with East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311, 328-329 (App. Div. 1996) for the purpose of reviewing the Township's compliance with its Third Round Mount Laurel affordable housing obligations as approved and determined after the fairness hearing and as memorialized in the amended order entered by the Court on April 3, 2019 and in accordance with a subsequent order entered on September 19, 2018, which orders required the adoption / endorsement of various compliance documents to implement the Court approved Amended Settlement Agreement; and the compliance hearing having been conducted on December 20, 2018 in the presence of Jonathan E. Drill, Esq. (member of Stickel, Koenig, Sullivan & Drill, LLC, attorney for plaintiff Township), Adam Gordon, Esq. (staff attorney with intervening defendant Fair Share Housing Center ("FSHC"), a public interest organization representing the housing rights of New Jersey's poor), Jeffrey Kantowitz, Esq. (of counsel to Abe Rappaport, Attorney at law, attorney for intervening defendant and objector Clinton 94, LLC), and Court-appointed special master Michael P. Bolan, PP, AICP (the "special master"); and the Court having determined for the reasons set forth in the accompanying statement of reasons that the Township has complied with all of the conditions set forth in the amended order entered on April 3,

2018, as amended by the order entered on September 19, 2018, including all conditions requiring documentation proving such compliance; and the special master having submitted a letter to the Court dated December 17, 2018, finding that all submissions were complete (except for the submission of a Resolution of Intent to Fund, which Resolution of Intent to Fund was submitted prior to the entry of the within order), finding that all submissions are consistent with the terms and conditions of the Amended Settlement Agreement and the order approving the settlement, and presenting recommendations to the Court; and the Court, for good cause shown, having determined that the within Final Judgment of Compliance and Repose should be entered memorializing the Township's compliance with its Third Round Mount Laurel affordable housing obligations;

IT IS THEREFORE ON THIS 9th DAY OF JANUARY, 2019 HEREBY ADJUDGED, DECLARED AND ORDERED AS FOLLOWS:

1. Final Judgment of Compliance and Repose ("FJCR") is hereby entered in favor of the Township in the within declaratory judgment action. The particulars of the FJCR are set forth below.

2. It is hereby adjudged, declared and ordered that the 2018 Housing Element and Fair Share Plan (the "2018 HE&FSP") adopted by the Planning Board and endorsed by the Township, as well as the ordinances and other documents that were adopted by

the Township to implement the 2018 HE&FSP, satisfy the Township's Mount Laurel constitutional obligations under the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the "FHA") and under the Mount Laurel line of cases, specifically, Mount Laurel IV, 221 N.J. 1 (2015), and Mount Laurel V, 227 N.J. 508 (2017).

3. It is hereby adjudged, declared and ordered that the within FJCR shall remain in effect for 10 years, beginning on July 2, 2015 and ending on July 2, 2025, and during this 10-year period the Township, the Planning Board and the Clinton Township Zoning Board of Adjustment shall have repose and immunity from any and all exclusionary zoning lawsuits, including but not limited to "constitutional compliance" lawsuits and "builder's remedy" lawsuits.

4. It is adjudged, declared and ordered that the Township's Third Round Mount Laurel affordable housing obligations are as follows:

Rehabilitation Obligation	10
Prior Round Obligation	335
Third Round (1999-2025) Gap and Prospective Need Fair Share Obligation (as adjusted through the Amended Settlement Agreement to account for the Township's decision to conform to the Highlands Regional Master Plan)	337

5. It is adjudged, declared and ordered that the Township has satisfied its 10-unit Rehabilitation Obligation as

provided for in the 2018 HE&FSP.

6. It is adjudged, declared and ordered that the Township has satisfied its 335-unit Prior Round Obligation as provided for in the 2018 HE&FSP.

7. It is adjudged, declared and ordered that the Township has satisfied its Third Round Gap and Prospective Need Fair Share Obligation of 337-units as provided for in the 2018 HE&FSP, but that part of the Third Round Prospective Need Fair Share Obligation shall be addressed through a durational adjustment because the Township does not have sufficient capacity for water and/or sewer to support certain of its affordable housing projects and thus is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3.

8. With specific reference to the durational adjustment, it is adjudged, declared and ordered that 221 of the 337 units of the Township's Third Round Prospective Need Obligation shall be deferred until adequate water and/or sewer are made available in accordance with N.J.A.C. 5:93-4.3(c). In this regard, the Township shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing on a priority basis as set forth in paragraph 11 of the Amended Settlement Agreement. Further, Township officials shall endorse all applications to the New Jersey Department of Environmental Protection ("NJDEP") or its

agents to provide water and/or sewer capacity for the durational adjustment sites set forth in paragraph 7 of the Amended Settlement Agreement and otherwise in accordance with paragraph 10 of the Amended Settlement Agreement.

9. With specific reference to the Marookian site as set forth in paragraph 10 of the Amended Settlement Agreement, if the Marookian site is not under construction by April 3, 2020 (which is two-years from the Court's approval of the Amended Settlement Agreement), the Township shall make up the difference by October 3, 2020 (which is 30 months from the Court's approval of the Amended Settlement Agreement) using some combination of the following approaches, notwithstanding that the Township Council has adopted a resolution of intent to fund: funding the development using municipal funds; increasing the density of an inclusionary site identified in the Amended Settlement Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches.

10. With specific reference to the LeCompte site as set forth in paragraph 10 of the Amended Settlement Agreement, if the LeCompte site is not under construction by April 3, 2022 (which is four years from the Court's approval of the Amended Settlement Agreement), the Township shall make up the difference

using some combination of the following approaches, notwithstanding that the Township Council has adopted a resolution of intent to fund: funding the development using municipal funds; increasing the density of an inclusionary site identified in the Amended Settlement Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. Further, if the LeCompte site either does not have access to water and sewer utilities or is not under construction by April 3, 2022, and the Township has not provided a sufficient number of affordable units through other means, the Township shall comply with N.J.A.C. 5:93-4.3(c)3 and -4.3(c)4 concerning inclusion in a Fair Share Plan of a site where the NJDEP has approved a proposal to provide water and/or sewer.

11. Because the Township and FSHC further agreed in paragraph 10 of the Amended Settlement Agreement that the Marookian and LeCompte sites present opportunities for shared amenities, including for persons with disabilities, the Township also agreed in paragraph 10 of the Amended Settlement Agreement that it would provide funding for a large public playground that will accommodate disabled children. The Court therefore orders that the Township shall fund and/or obtain funding for a large public playground that will accommodate disabled children, which

playground will be sited either on the Marookian property or the adjacent Kaufelt property in accordance with the terms of paragraph 10 of the Amended Settlement Agreement.

12. It is hereby adjudged, declared and ordered that if a decision of the Superior Court of New Jersey having jurisdiction in Hunterdon County, the Appellate Division of the Superior Court of New Jersey, the New Jersey Supreme Court, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total Third Round Gap and Prospective Need Fair Share obligation set forth in the within FJCR, and if that calculation is memorialized in a final judgment that becomes non-appealable, the Township may seek to amend the within FJCR to reduce its Third Round Gap and Prospective Need Fair Share Obligation accordingly.

13. It is hereby further adjudged, declared and ordered that, notwithstanding any such reduction as provided for in the preceding paragraph of the within FJCR, the Township shall be obligated to: (a) implement the 2018 HE&FSP, including by leaving in place any site-specific zoning adopted or relied upon in connection with the 2018 HE&FSP; (b) taking all steps necessary to support the development of any 100% affordable

developments referenced in the 2018 HE&FSP; and (c) otherwise fulfilling fully the Third Round Gap and Prospective Need Fair Share Obligation as established herein.

14. It is hereby further adjudged, declared and ordered that, in the event that alternate sites are required in accordance with the terms of the Amended Settlement Agreement, in no circumstance may the Township provide less than 279 units of affordable housing, not including bonuses. Moreover, the reduction of the Township's obligation below that established in the Amended Settlement Agreement shall not provide a basis for seeking leave to amend the Amended Settlement Agreement and/or the within FJCR pursuant to R. 4:50-1, or seeking leave to provide less than 279 units of affordable housing, not including bonuses. Finally, if the Township prevails in reducing its Third Round Gap and Prospective Need Fair Share obligation, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

15. The Township's Spending Plan is hereby approved by the Court and it is further adjudged, declared and ordered that the Township is authorized to impose and collect development fees and to maintain those fees in the Township's Affordable Housing Trust Fund and to spend said collected fees in accordance with the Township's Spending Plan.

16. The Township's Affirmative Marketing Plan is

hereby approved by the Court.

17. While this order is a final judgment which resolves all issues raised in the litigation, the Court retains jurisdiction over this matter for the purpose of monitoring compliance and being in a position to assist the Township and FSHC in promptly resolving any issues that may arise.

18. In this regard, the Court hereby continues the appointment of Michael B. Bolan, PP, AICP, as special master in this matter for the purpose of assisting the Township and advising the Court regarding the Township's efforts to obtain approvals from state and local agencies required by the Amended Settlement Agreement. The special master shall issue reports semi-annually to the Court with copies to the parties to the litigation. The Township shall respond to reasonable inquiries from the special master and FSHC regarding its efforts to obtain approvals as required by the Amended Settlement Agreement. The special master's services shall be paid for by the Township.

19. Counsel for the Township shall provide all parties on the Supreme Court Service List and the Municipal Service List as well as all parties who participated in the fairness and compliance hearings with a copy of this Order within five (5) days of receipt by counsel for the Township of the within Order.

/S/ THOMAS C. MILLER, P.J.Cv.

HON. THOMAS C. MILLER, P.J.Civ.

See Attached Statement of Reasons

Compliance Hearing – Statement of Reasons

In the Matter of Clinton Township

Docket No. HNT-L-315-15

I. Introduction

This opinion is offered in response to the Township's application for a Judgment of Compliance and Repose.

At the Compliance Hearing for the Township of Clinton (Hunterdon County) Mt. Laurel case, the Court has considered the testimony presented at the hearing by the Court Appointed Special Master, Michael P. Bolan, AICP, PP as well as his report dated December 17, 2018 which was marked into evidence as C-1 by the Court.

The Court also considered the letter from Jeffrey Kantowitz, Esq., attorney for Intervenor Clinton 94, LLC dated December 4, 2018.

The Court also considered the Exhibits presented and argument of participating counsel.

II. Parties and Counsel

The Township of Clinton is represented by Jonathan E. Drill, Esq. of the firm of Stickel, Koenig, Sullivan and Drill.

Intervenor, Fair Share Housing Counsel ("FSHC") is represented by Adam Gordon, Esq.

Intervenor, Clinton 94, LLLC is represented by Jeffrey Kantowitz, Esq. of the Firm of Abe Rappaport.

III. The Fairness Hearing

On March 19 and 20, 2018 the Court conducted a Fairness Hearing and on April 3, 2018 issued an Amended Order that approved the Amended Settlement Agreement between the Township and Fair Share Housing Center (FSHC), and which identified the list of actions that the Township must undertake prior to the Court approving a Final Judgment of Compliance and Repose. On December 10, 2018 the Court's Special Master, Michael P. Bolan, AICP, PP, received a package of information from the Township's Attorney for affordable housing, Jonathan E. Drill, Esq., which was supplemented by additional information provided on December 11, 2018. On December 6, 2018 Jeffrey Kantowitz, Esq., representing intervener defendant Clinton 94 LLC, filed a letter with the Court objecting to the Township request for a Judgment of Compliance and Repose.

The following analysis compares the Township's submission for the action, items and conditions outlined in the Court's April 3, 2018 Order and the Special Master's report on the fairness of the Settlement Agreement, dated March 12, 2018.

IV. Comparison of the Township's Submission to Conditions of Settlement Agreement Approval

In the following analysis the conditions of the Amended Settlement Agreement approval are shown in *italics* and the Township's response in plain text:

1. Within 90 days of the Court's approval of the Agreement after a fairness hearing, the Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan (HEFSP) with any revisions required by or resulting from the Settlement Agreement and these Conditions. For proposed inclusionary development sites, the HEFSP specifically must include an analysis of the sites to demonstrate that they are approvable, available, developable and suitable in accordance with Council on Affordable Housing (COAH) Rules. The Fair Share Plan shall include any Zoning Ordinance amendments and agreements necessary to effectuate the terms of the Settlement Agreement.

On May 7, 2018 the Township Planning Board adopted a Resolution approving the Township's HEFSP and on May 9, 2018 the Mayor and Council adopted Resolution #75-18 endorsing the HEFSP. The HEFSP included an analysis of the Township's proposed inclusionary development sites and the municipally sponsored 100% affordable sites to demonstrate that they are available, approvable, developable and suitable in accordance with COAH rules. The Township also provided an implementation schedule for the sites. The Special Master has opined that this condition has been satisfied by the submission.

2. Within 90 days of the Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of the Settlement Agreement and the zoning contemplated in the Settlement Agreement. The Affordable Housing Ordinance shall incorporate all of the provisions of the Settlement Agreement, applicable provisions of the Uniform Housing Affordability Controls (UHAC) and COAH rules, and any other provisions that result from the adopted HEFSP.

The Township adopted the following ordinances to implement the terms of the Settlement Agreement and HEFSP:

- Ordinance No. 1114-18, adopted on May 9, 2018, and Ordinance No. 1122-18, adopted on September 12, 2018, establishing the AH-5 Affordable Housing District for the Marookian 100% affordable site
- Ordinance No. 1118-18, adopted on August 8, 2018, the Township's Affordable Housing Ordinance
- Ordinance No. 1120-18, adopted on September 12, 2018, establishing the AH-6 Affordable Housing District for the Alton Place inclusionary development site and the AH-7 Affordable Housing District for the LeCompte 100% affordable site
- Ordinance No. 1121-18, adopted on November 7, 2018, establishing the AH-8 Affordable Housing District for the Headley Farm inclusionary development

Ordinance No. 1118-18, Affordable Housing Ordinance, incorporated the applicable provisions of the UHAC and COAH rules and the Settlement Agreement. The other four ordinances provided the zoning contemplated by the Settlement Agreement for two inclusionary development developments (Alton Place and Headley Farm) and two municipally sponsored 100% affordable projects (Marookian and LeCompte). These ordinances included the densities, set-asides and number of affordable units to satisfy the terms of the Settlement Agreement. The Special Master has opined that this condition has been satisfied by the submission.

3. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall demonstrate compliance with the requirements of N.J.A.C. 5:93-5.5 for non-inclusionary developments. These requirements include evidence that the Township has adequate and stable funding; a pro forma of total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending; and, a construction or implementation schedule, or timetable, for each step of the development in the development process, with the schedule providing for construction to begin within two years of the Court's Order approving the Settlement Agreements.

The schedule shall provide for construction of the Marookian project and the LeCompte project consistent with the terms of Paragraph 10 in the Agreement. The Township shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the Court at least 60 days prior to the compliance hearing in this matter.

As part of the compliance package the Township submitted documentation from the developers of the Marookian and LeCompte sites. The information for the Marookian site was prepared and submitted by PIRHL in a report titled "Marookian Site Developer Qualifications", dated May 3, 2018, and the information for the LeCompte site was prepared and submitted by Community Investment Strategies (CIS) in a report titled "Compliance with N.J.A.C. 5:93-5.5. The Place at Clinton (LeCompte Site)", dated May 2018. Both of the reports include the schedule for the proposed development, a pro forma of development costs and revenues, the sources of funding, a construction and implementation schedule, and the identification of the entity responsible for the overall development activity. The Special Master has opined that this condition has been satisfied by the submission.

4. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall endorse a Spending Plan in conformance with the terms of the Agreement.

On July 11, 2018 the Mayor and Council adopted Resolution #103-18 adopting the Affordable Housing Trust Fund Spending Plan, dated June 27, 2018. The Spending Plan outlines anticipated revenues and expenditures from the Affordable Housing Trust Fund for the certification period through 2025. The Special Master has opined that this condition has been satisfied by the submission.

5. At least 60 days prior to the compliance hearing, the Township shall provide a structural conditions survey to identify substandard housing in accordance with N.J.A.C. 5:93-5.2. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied.

The adopted HEFSP includes Appendix A-5, the Structural Conditions Survey, dated March 2018, which was prepared by the Township's Construction Code Official in accordance with N.J.A.C. 5:93-5.2 to determine the Township's actual count of dwelling units in need of rehabilitation. The Survey determined that there were 10 units which met the COAH criteria. The Township anticipates partnering with an experienced organization to administer its rehabilitation program. The HEFSP and Spending Plan indicate that development fees will be utilized to fund the program, or if these funds are insufficient the Township will either appropriate funds from its operating budget or utilize its bonding authority to generate additional funds. The Special Master has opined that this condition has been satisfied by the submission.

6. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall provide documentation for the existing group home at Block 4.03, Lot 40, including the deed restriction, Supportive and Special Needs Housing Survey, and a copy of the facility license, if applicable.

According to the documentation provided by the Township, the existing group home at Block 4.03, Lot 40 was sold and is no longer eligible for credit as affordable housing. The Township is substituting the property at 142-144 West Main Street, which is an existing group home that received Prior Round certification from COAH. The property at 142-144 West Main Street consists of three rental units, yielding six affordable housing unit credits, rather than the four rental units, yielding eight credits, that existed at the Block 4.03, Lot 40 property. The two credits of affordable housing that are lost through this substitution are accounted for in the total number of rental bonus credits that the Township is utilizing to address the Prior Round obligation, as the Township has an excess of rental bonus credits. The Special Master has opined that this condition has been satisfied by the submission.

7. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall provide the deed restrictions for the Mews project.

Relative to the Mews project, the Township's compliance package includes the Deed, the Clinton Township Zoning Ordinance Section 165-146 permitting age-restricted affordable rental housing, and Planning Board Resolution #98-6 approving the project with age-restricted affordable housing units. The Deed indicates that the property is subject to all applicable restrictions, agreements of record, and governmental and zoning regulations. The Special Master has opined that this condition has been satisfied by the submission.

8. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall provide evidence of the approvals for the CRC Longview group home and the Fox/Seals redevelopment area.

The Township's compliance package includes four Resolutions relating to the CRC Longview group home and the Redevelopment Plan for the Fox/Seals Redevelopment Area (former site of Municipal Building). The CRC Longview Resolutions require the developer to provide a four bedroom group home as part of the subdivision approval in order to satisfy the affordable housing requirement. The Fox/Seals Redevelopment Plan was approved in 2015 and amended in 2017, and a redevelopment agreement with the selected developer of the site was entered into October 2017. The Special Master has opined that this condition has been satisfied by the submission.

9. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall provide a letter from the developer of the Headley Farm Estate agreeing to the density and set-aside for the proposed development and supporting the terms of the Agreement.

The Township's compliance package includes an October 3, 2018 letter from Guliet D. Hirsch, Esq., the attorney for CRC Communities at Headley Farm Estates, agreeing to the density and set-aside for the proposed development and other terms of the Agreement. The Special Master has opined that this condition has been satisfied by the submission.

10. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall adopt a Resolution appointing a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting, if it has not already done so.

On June 13, 2018 the Mayor and Council adopted Resolution #89-18, appointing the Township Administrator as the Municipal Housing Liaison. The Special Master has opined that this condition has been satisfied by the submsision.

11. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

On June 13, 2018 the Mayor and Council adopted Resolution #88-18, appointing Community Action Services as the Township's Administrative Agent. The Special Master has opined that this condition has been satisfied by the submission.

12. Within 90 days of the Court's Order approving the Settlement Agreement, the Township shall adopt a Resolution adopting the Township's Affirmative Marketing Plan, as modified by the terms of the Settlement Agreement.

On July 11, 2018 the Mayor and Council adopted Resolution #102-18, adopting the Township's Affirmative Marketing Plan. The Affirmative Marketing Plan was modified to address

the terms of the Settlement Agreement. The Special Master has opined that this condition has been satisfied by the submission.

V. Objection from Intervener, Clinton 94 LLC and the Court's Analysis of the Issues Raised

The attorney for the intervener Clinton 94 LLC, Jeffrey Kantowitz, Esq., submitted a letter of objection on December 6, 2018. The letter objects to the entry of a Judgment of Compliance and Repose for the following reasons: information concerning the 100% affordable projects was to be submitted to the Court 60 days prior to the compliance hearing; the letter from the developer of the Headley Farm Estate inclusionary development agreeing to the density and set aside of the proposed development was to be submitted 60 days prior to the compliance hearing; the Township cannot meet the burden of proving compliance; and, the Court should require the Township to over-zone for affordable housing.

The Court will address each of the issues raised by the Objector.

A. Has the Failure to Submit the Compliance Documents 60 Days Prior to the Compliance hearing Resulted in Prejudice and Should Bar the Entry of a Judgment of Compliance and Repose?

The first objection is that the Township failed to submit its compliance documents 60 days prior to the compliance hearing, as was required by the September 19, 2018 Order extending the dates for completing the compliance documents. While the compliance documents were completed within the time period provided, counsel for the Township inadvertently failed to submit them to the Court and the Special Master within the time period provided (for which he apologized). The fact is, however, that the late submission of the compliance documents has not resulted in prejudice to any party. As such, the late submission of the compliance documents will serve to bar the entry of a judgment of compliance and repose.

B. As the Township Presented a Prima Facie Case of Compliance, Has the Burden of Proof Shifted to the Objector to Prove that the Compliance Documents are Deficient and the Objector has Failed to Meet its Burden?

The second objection is that the Township cannot meet the burden of proving compliance in this case. First, the Court finds that the Township has presented a prima facia case of compliance so the burden of proof has shifted to the objector to prove that the compliance documents are deficient. Secondly, the objector has failed to meet it burden of proving that the compliance documents are deficient.

Where (as here) the municipality has settled a declaratory judgment action with Fair Share Housing Center ("FSHC"), that settlement has been approved by the Court, and the issue now before the Court is whether the Township's compliance documents are in proper form as required by the Court's order approving the settlement, the burden shifts to a party objecting to compliance once the municipality submits its compliance documents and makes a prima facia case of compliance.

The Fair Housing Act ("FHA"), specifically, N.J.S.A. 52:27D-314, provides that unless an objection is submitted, COAH (now the Mount Laurel trial courts under Mount Laurel IV, 221

N.J. 1, 6, 23-24, 29 (2015)) "shall" review a petition for substantive certification (now a declaratory judgment action) and "shall" approve it if it finds that (a) the municipality's fair share plan is consistent with the rules adopted by COAH, and (b) the ordinances and affirmative measures in the municipality's housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible. Under this statutory standard, the municipality has the initial burden of producing evidence but, once it satisfies that initial burden, the burden shifts to any objectors who come forward to challenge the municipal compliance plan.

This is consistent with long standing New Jersey law that the burden of proof initially is a burden of producing evidence to make a prima facie case to obtain the relief the party seeks but, once the party makes its prima facie case, the burden of proof shifts to any party challenging the relief sought. Hughes v. Atlantic City & S.R. Co., 85 N.J.L. 212, 216 (E&A 1914). As explained by the court in Kappish v. Lotsey, 76 N.J. Super. 215, 224-225 (Cty. Ct. 1962), burden of proof applies to the parties in litigation not by their party designation (i.e., plaintiff or defendant) but by "their actual relative position in the litigation as it proceeds."

Finally, where a party's case depends on proving a negative – the objector's case here depends on proving a negative, namely, that the Township compliance plan does not present a realistic opportunity to provide affordable housing – the burden of proofs falls on the party averring the negative. Chase Manhattan Bank v. O'Connor, 82 N.J. Super. 382, 387 (Chan. Div. 1964).

As such, the Court finds that the Township has put forth a prima facie case of compliance. The burden of proof has thus shifted to the objector. The objector has failed to meet its burden of proving that any of the compliance documents are deficient.

C. Is "Over-Zoning" unnecessary and Unwarranted and in Essence Would Award the Objector with a Builder's Remedy, which would be Undeserved, Unwarranted and Contrary to Mount Laurel IV?

The third objection contained in the objection letter is less an objection and more an argument. Specifically, the objector argues that "as a condition of any judgment of compliance and [repose] of the Township's compliance plan, the Court should require Clinton to over-zone." Not surprisingly, the objector argues that its site – the Clinton 94, LLC site – should be "over-zoned."

This court has once before considered this "over-zoning" argument of the objector – during the fairness hearing – and rejected it. As this Court ruled at that time, over-zoning to include the objector's site is "unnecessary and unwarranted under the circumstances." See, Court's opinion attached to the April 23, 2018 Order Approving Settlement Agreement, page 28. As the court explained: "Once it has been determined that a reasonable number of affordable units have been included in the Township's plan, it is within the Township's reasonable discretion as to whether it would or should include additional units or additional properties . . . . Said another way, the court will not include a requirement that the Township "over-zone**" to meet it fair share obligation."** Id. at 28-29.

As such, the Court finds that the condition to "over-zone" was considered, addressed and rejected in the Court's opinion issued after the Fairness Hearing on April 3, 2018. (See page 27 and 28 of the Court's opinion) The Court finds that the issue was adequately addressed at that time.

D. Regarding the Intervenor's "Request for Restraints"

The Intevenor also indicated (without any specific basis for his prediction or speculation) that he anticipates that the Township may remove certain properties from the sewer service area, including his client's property. No evidence was provided to support that proposition. The Intervenor asked the Court to preemptively prevent or restrain the Township from taking any such action.

The Township and FSHC properly point out that (1) the Intervenor is effectively requesting injunctive relief even though the Intervenor has not met the elements for entitlement of injunctive relief. Crowe v. DeGioia, 90 N.J. 126 (1982); (2) that the relief is unwarranted and inappropriate in the context of this "Compliance Hearing"; (3) the request should have been addressed at the Fairness Hearing stage or, at a minimum, in advance of this Hearing rather than extemporaneously during this Hearing; and (4) it is sewer capacity that is the "exhaustible resource" and not the entitlement of any particular property or property owner to remain in a designated sewer area.

For all of those valid reasons, the Court rejects the Intervenor's late request to condition the Township's Judgment as described in this section.

VI. Ongoing Conditions Noted in the Settlement Agreement which was Approved by the Court at the Fairness Hearing

Paragraph 10 of the FSHC Amended Settlement Agreement includes specific actions the Township is to undertake in the future to ensure that the affordable units identified for the Marookian and LeCompte sites are provided. As an ongoing condition of the Final Judgment, but not as a pre-condition for a Final Judgment, the following provisions apply:

- If the Marookian site is not under construction by April 3, 2020 (two years from the Court approval of the FSHC Amended Settlement Agreement), the Township will make up the difference using some combination of the following approaches: funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or, using some combination of these approaches.

- If the LeCompte site is not under construction by April 3, 2022 (four years from the Court approval of the FSHC Amended Settlement Agreement), the Township will make up the difference using some combination of the following approaches: funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or, using some combination of these approaches. If the LeCompte site either does not have access to water or sewer utilities or is not under construction within 4 years of the Court's approval of the Agreement, and the Township has not provided a sufficient number of affordable units through other means, the Township agrees to comply with N.J.A.C. 5:93-4.3(c)3 and 4 concerning inclusion in a Fair Share Plan a site where the DEP has approved a proposal to provide water and/or sewer.

- All parties to this action shall be provided with notice of any filings with the Court concerning this matter.

VII. Condition Precedent to Final Judgment as Recommended by the Special Master

The Special Master recommended that the Township submit a Resolution indicating that it intends to bond for or otherwise provide municipal funding for the projects and programs identified in the Settlement Agreement, including the Marookian and LeCompte 100% affordable projects. Township Counsel Drill indicated that the Township would pass such a Resolution at their January 2, 2019 meeting. At the Hearing, the Court indicated that it would permit the Township to submit a Resolution that satisfies the Special Master's recommended condition to the Special Master and the Court after its passage, but before the Judgment of Repose is executed by the Court in this matter, thereby obviating the need for the condition. The Court understood that all of the parties agreed to that proposed procedure.

On January 3, 2019 the Township submitted a package which included the remaining compliance document – the Township's Resolution of Intent to Fund. The Court's Special Master has reviewed and approved the document.

VIII. Summary of the Special Master's Recommendation

Upon the submission of a Resolution indicating the Township's intent to bond or otherwise provide municipal funding as noted above, the Township of Clinton will have satisfied all of the conditions of the Court's Order approving the Settlement Agreement, and the Special Master recommends that the Court issue a Final Judgment of Compliance and Repose to run through July 1, 2025 once the Resolution is received.

IX. Court's Conclusion

The Court adopts the thorough and credible testimony and report offered by the Court's Special Master, Michael P. Bolan. Mr. Bolan has addressed each and every action, item and condition that were established by the Court at the Fairness Hearing in this matter. The Court is satisfied that those conditions have been addressed so that the township will be granted a Judgment of Compliance and Repose, which shall contain the conditions recommended by the Special Master as specified in this opinion.

2020 Third Round Second Amendment to the Settlement Agreement w/ FSHC

FAIR SHARE
HOUSING CENTER

Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

June 15, 2020

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15

Dear Mr. Drill:

This letter ("Agreement") memorializes an amendment to the amended agreement dated February 5, 2018 ("Approved Settlement Agreement") reached between the Township of Clinton (the Township or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and a defendant in this proceeding. This amended agreement modifies only the timing requirements for the Marookian site in the Approved Settlement Agreement; all other provisions of the Approved Settlement Agreement, which was approved by the Hon. Thomas C. Miller, P.J.Cv. and affirmed on appeal by the Appellate Division, remain in effect.

Background

The Marookian 9% tax credit financing application was submitted to the New Jersey Housing and Mortgage Finance Agency for its 2019 round. It scored all but two points of the total available points for receiving 9% tax credits. The reason that the project lost those two points was because of lack of active bus service availability within a half mile of the project (the County had adopted a resolution stating that it would extend an existing bus line to include the project). The County has now agreed to not only extend the existing bus line to the site but to make the extended line active 60 days prior to the next tax credit round. As such, the parties anticipate that the Marookian project will have a perfect score in the upcoming tax credit round. Further, the Township in April 2020 approved a $75,000 design fee reimbursement to Pirhl to enable it to move forward at this time with all NJDOT and sewer and water infrastructure improvement engineering and permitting so that the construction of the project will not be significantly delayed by the loss of time due to the delay in obtaining the necessary financing. Based on these developments, the Township and FSHC agreed to modify the prior Approved Settlement Agreement to adjust the timing for construction of the Marookian project and allow it one more attempt to apply for 9% tax credit financing in the upcoming 2020 round, with the parties agreeing that if such financing is not provided at that point the requirements of paragraph 10(b) of the Approved Settlement Agreement to provide alternative funding or mechanisms to provide a realistic opportunity shall then be required.

Settlement terms

1. Paragraph 10(b) of the Approved Settlement Agreement is hereby replaced with the following new paragraph 10(b):

b. In the event for any reason that the Marookian site is not under construction by July 3, 2021, as required by applicable law, the municipality shall, no later than that date, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

2. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.

3. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

4. This Agreement may be enforced by either party through a motion to enforce litigant's rights or a separate action filed in Superior Court, Hunterdon County. The prevailing party in such a motion or separate action shall be entitled to reasonable attorney's fees.

5. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

6. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

7. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

8. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

9. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

10. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

11. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

12. This Agreement constitutes the entire Agreement between the Parties hereto as to this amendment and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein (including that all paragraphs other than paragraph 10(b) of the Approved Settlement Agreement remain in full force and effect).

13. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

14. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

15. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833

Telecopier: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Defendant/Intervenor
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization of the governing body:

Brian K. Mullay

~~Mayor John Higgins~~
Brian Mullay, Acting MAYOR

2021 Third Round Third Amendment to the Settlement Agreement w/ FSHC

FAIR SHARE
HOUSING CENTER

Peter J. O'Connor, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.
Bassam F. Gergi, Esq.

October 8 2021

Jonathan Drill, Esq.
Stickel, Koenig, Sullivan, and Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15
THIRD AMENDMENT TO THE SETTLEMENT AGREEMENT (Revised)

Dear Mr. Drill:

This letter memorializes the terms of a revised third amendment (the "third amendment") to the Settlement Agreement ("Agreement") reached between the Township of Clinton ("Township" or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this and earlier settlement agreements, a defendant in this proceeding. This third amendment to the Agreement, if and when approved by the court at a fairness hearing, will supersede the previous agreements dated December 12, 2017 (the "initial agreement") and February 5, 2018 (the "amended agreement") and previously approved by the Court, as to the terms specifically amended by this third amendment. This third amendment fully incorporates and supersedes the second amendment to the Agreement dated June 15, 2020 which was submitted to the court but has not been approved by the court, and this third amendment also replaces in its entirety the initial third amendment dated May 2, 2021 which was submitted to the court but has not been approved.

The primary difference between this third amendment and the Agreement is that the "LeCompte" project that was included as a durational adjustment site in the Agreement has been replaced with the "Ingerman" project and the "Grayrock" project as durational adjustment sites for the reasons further described in this third amendment. The remaining differences between the agreements flow from the replacement of the LeCompte site with the Ingerman and Grayrock sites and address sewer and water capacity issues. All other terms from both the initial agreement and the amended agreement not specifically modified by this third amendment will remain in full force and effect as previously approved by the Court.

The Township and FSHC have entered into this third amendment because the parties agree that it will result more quickly in additional affordable housing units being constructed in the Township of Clinton.

The Township and FSHC hereby agree to the following third amendment terms:

1. The Township's approach to addressing its Third Round obligation of 337 units as described in Paragraph 7, Paragraph 9, Paragraph 10, Paragraph 11, and Paragraph 13, of the Agreement is hereby amended for the purposes of identifying the new locations of the eighty-nine (89) affordable housing units that had been proposed for the LeCompte site in the Township's approved plan.

2. The Agreement identified Block 29 Lots 4, the LeCompte site, as the location of a 100% affordable housing development that would include 89 total family rental affordable housing units. The LeCompte site is removed from the plan in its entirety and the provisions relating to the LeCompte site are amended as described in the following paragraphs.

3. The chart in Paragraph 7 of the Agreement is amended to remove the 89-unit LeCompte project and replace it with the "Ingerman" municipally sponsored mixed-income development, the "Grayrock" inclusionary development, and a 2-bedroom special needs project:

   i. The Ingerman site located at Block 70 Lots 6 and 6.01, an 11.7-acre property with a physical address of 1726 and 1730 Route 31, Clinton Township, NJ which will contain a total of 146 units with a 55% set aside for affordable housing, which comes to 80 affordable units, including at least 11 very low income units as part of a total of 40 low income units, with very low income and low income units proportionally distributed across each bedroom size (the "Ingerman development"). The affordable and market rate units will be integrated within the same buildings. The Township has acquired sufficient sewer capacity to accommodate the 80 affordable housing units in the Ingerman development. It will sell 18,450 GPD of its capacity to Ingerman for the 80 affordable units at $35 per gallon. The Township will sell 2,070 GPD of its capacity to Ingerman for its market rate units at $65 per gallon. The parties acknowledge that Ingerman will need an additional 9,705 GPD for the remainder of its market rate units. As such, the Township requires a durational adjustment for the inclusion of this site in its fair share plan as to sewer. That said, the Township will use its best efforts to enable the purchase of 9,705 GPD by Ingerman from a private party. The Township anticipates that the purchase price of the additional sewer capacity from the private party will be for approximately $65 per gallon. The Township also requires a durational adjustment as to water. The Township obtained a water capacity reservation from the Town of Clinton for the LeCompte site for 17,542 GPD of water and the Township will use its best efforts to have that water capacity reservation transferred to the Ingerman site. The Ingerman site needs an additional 6,863 GPD of water and the Township will use its best efforts to assist Ingerman in obtaining that additional water capacity from the Town of Clinton. The Township has rezoned the 11.7-acre site for the inclusionary affordable housing development prior to the joint amended fairness and compliance hearing to be held in this matter and will include the site in a proposed Highlands Center to the extent necessary.

   ii. The Township will rezone Block 77.01, Lot 2 (.84 acres), Block 77.01, Lot 4 (.2 acres) and Block 77.01, Lot 3 (1.4 acres) (collectively, the "Grayrock site") for an inclusionary affordable housing development consisting of a total of 36 units on 2.44-acres, with a 20% set aside, which will yield 7 affordable units. FSHC agrees that the 7 affordable units provided herein sufficiently addresses the affordable housing requirements for this site and there will be no development fee or other monetary payment charged to the site. The Township will rezone the 2.44-acre site for the inclusionary affordable housing development prior to the joint amended fairness and

compliance hearing to be held in this matter. The 2.44-acre site will be a durational adjustment site by reason of a lack of sewer capacity and water capacity.

iii. The Township will fund two (2) municipally-sponsored special needs affordable housing bedrooms to be created in the Township on a site with access to water and sewer, with the location to be determined by December 31, 2021 and the units to be funded and the information required by N.J.A.C. 5:93-5.5 to be provided by June 30, 2022.

iv. As to the reference in the chart in paragraph 7 of the Agreement to the Headley site having first priority for sewer and water over all inclusionary sites, the developer of the Headley site (CRC) has agreed with the Township that the Ingerman site shall now have first priority for water and sewer over all inclusionary developments, the Grayrock Road site shall be the second priority for water and sewer over all inclusionary developments, the Headley site shall have third priority for water and sewer over all inclusionary developments, and the 108 Alton Place site shall have fourth priority for water and sewer. The Township agrees to pursue any available water and/or sewer resources which may be or may become available for the Headley site and for the 108 Alton Place site in accordance with the allocation priority described above. The Township acknowledges that sewer and water for the Headley site may be provided either through on-site well(s) or on-site groundwater disposal system, or it may be served from water and/or sewer capacity and service available from off-site sources. The Township agrees to continue to assist CRC by supporting any necessary applications to the NJDEP and by pursuing the Highlands Center designation.

v. The Town of Clinton will be notified in writing of the sewer and water priorities set forth herein and of any changes to such priorities.

4. Paragraph 9 of the Agreement is hereby amended such that any references to LeCompte and 89 affordable units shall be replaced with Ingerman and the 80 affordable units resulting from that site, the 2.44-acre Grayrock site and the 7 affordable units resulting from that site, and the 2 special needs affordable units that will be funded by the Township.

5. Paragraph 10 of the Agreement is replaced with the following amended Paragraph 10:

10. The parties agree as follows:

a. The parties recognize that the developer of the Ingerman site has applied for Low Income Housing Tax Credits. In the event that the decision on the funding application for this site provides for less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, make up the difference between the number of units in this Agreement and the number of units included in the decision by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or

exceeding 10 units per acre net density, or using some combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.

a. The Marookian development received a 9% Low Income Housing Tax Credit funds from New Jersey Housing and Mortgage Finance Agency in 2020 and the parties anticipate the beginning of construction soon. If for any reason despite that allocation the Marookian site is not under construction by July 31, 2022, as required by applicable law, the Township shall, no later than that date, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

b. The Township agrees to take all reasonable efforts to obtain water and sewer access for the Ingerman site as soon as possible. In the event for any reason that the Ingerman development does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but is not under construction by April 3, 2023 , the Township shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using a combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Ingerman site.

c. In the event that the Ingerman project does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but either does not have access to water or sewer utilities or is not under construction by April 3, 2023, and in the event the Township has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the Township would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.

d. The Township and FSHC agree that it is essential that the Marookian and Ingerman developments include public amenities, including for persons with disabilities. The Township agrees that it will fund and/or obtain funding for a large public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian site to the site of the playground to allow pedestrian access. The Township further agrees to require the Ingerman development to include appropriate on-site playground facilities for a 146-unit family development. The Township further agrees to require the developers of the Marookian and Ingerman sites to provide a minimum of 20% of all affordable units as barrier free wheelchair accessible units. The Township further agrees to propose, fund, and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection from the Ingerman site along Route 31 to the intersection with Halstead Street and to fund and construct a cross-walk and connections from that cross-walk to both the Ingerman development and the walking path along Spruce Run Reservoir within one year of approval of the cross-walk by the NJDOT.

6. Paragraph 11 of the Agreement shall be amended in the following ways:

a. The priorities for sewer and water capacity and service shall be revised so that Ingerman shall replace LeCompte as having first priority for any available sewer and water service, Grayrock Road shall have second priority, Headley shall have third priority and 108 Alton Place site shall have fourth priority for sewer and water service.

b. The basis for including the Ingerman and Grayrock Road sites as plan mechanisms to satisfy a portion of the Township's Third Round obligation, which requires the support of a durational adjustment, is as follows:

(1) It is likely that the acquisition of the LeCompte project land will require a taking which, while permitted pursuant to the Fair Housing Act, would jeopardize the Township's ability to meet the timelines in the current Agreement. The Ingerman project and the Grayrock Road site offer a much better opportunity to meet the requirements of the Agreement. In addition, the sites offer a better location for future residents. Ingerman will have a walkable path to amenities such as the North Branch of the County library and the center of the Town of Clinton. And, the Grayrock Road site offers a site for affordable housing in yet another area of the Township.

7. Paragraph 13 of the Agreement shall be amended to substitute 11 very low income family rental units at Ingerman and 1 very low income family rental unit at the Grayrock parcel for the 12 very low income units at LeCompte.

8. Within 45 days of the entry of an Order approving this Third Amended Settlement Agreement at a duly noticed Fairness Hearing, the Township shall pay to FSHC as a

donation for the advancement of affordable housing in the amount of $15,000 in addition to any sums previously provided.

9. No later than August 1, 2021, the Township shall amend its Housing Element and Fair Share Plan, zoning ordinance, Spending Plan, and provide all of the information required by N.J.A.C. 5:93-5.5 for the Ingerman and Grayrock sites to be consistent with the terms of this amendment. The parties agree to request the court schedule an amended fairness and final compliance hearing and make a good faith effort with appropriate notice no later than October 1, 2021.

10. All other terms of the February 5, 2018 amended settlement agreement between FSHC and the Township of Clinton that was approved by the court on April 3, 2018 shall remain in full force and effect. The parties agree that the terms of Paragraphs 26-37 of the February 5, 2018 amended settlement also apply to this amendment. Notices shall be provided as follows:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Jonathan Drill, Esq.
Stick, Sullivan, Koenig, and Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009
Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833
Fax: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Intervenor/Defendant
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization of the governing body:

Brian K. Mullen

Dated: October 14, 2021

Court Opinion Approving Third Amendment to the Settlement Agreement

Combined Fairness and Compliance Hearing Regarding the Third Amendment to the Settlement Agreement

In the Matter of Clinton Township

Docket No. HNT-L-315-15

Date of Hearing: November 29, 2021

I. Introduction

This opinion is offered in response to the Township's application to have the Court consider and approve the "fairness" of a Third Amendment to the Settlement Agreement between the Township of Clinton and the Fair Share Housing Center (FSHC) as well as to consider and determine if it should approve the conditions for compliance as set forth in the Court's Judgment Order. At a hearing on these subjects, which was held on November 29, 2021, at the request by the counsel for the Township of Clinton, Hunterdon County, the Court has considered the testimony presented at the hearing by the parties, the Exhibits marked into evidence and the Reports submitted to the Court by Court Appointed Master, John C. Maczuga, P.P., including as his reports of November 23, 2021 and December 8. 2021.

The purpose of the "fairness portion of the hearing" was to consider a third amendment to the settlement agreement reached between the Township of Clinton and the Fair Share Housing Center (FSHC), a Supreme Court designated interested party in this matter, in accordance with N.J.S.A. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mt. Laurel IV). The Township proposes that the Third Amendment to the Agreement would supersede the previous agreements dated December 12, 2017 (initial agreement) and the February 5, 2018 (amended agreement) which were previously approved by the Court and the Second Amendment to the Agreement dated June 15, 2020 (second amended agreement).

The purpose of the "Compliance Portion of the Hearing" was more mechanical in that the Court is called upon to determine whether the Township has taken the necessary steps to "abide by" and "comply with" the terms of the Township's Affordable Housing Plan as it is approved by the Court.

The Court will also analyze the objections filed to the Township's Plan. The analysis will include a review and determination of whether the objections are valid and what affect, if any, those objections have upon the Township's application to the Court.

II. Regarding the Amended Agreement Before the Court in this Hearing

The primary difference between the third amendment and the agreement is that the "Le Compte" project that was intended as a durational adjustment site in the initial agreements and the amendments to the agreements has been replaced with the "Ingerman" project and the "Grayrock" project as durational adjustment sites for the reasons fully described in the third amendment document. Apparently the Le Compte site is no longer available as the developer of that site was not able to come to terms with the owner of the site to purchase it. The remaining differences between the agreements flow from the replacement of the Le Compte site with the Ingerman and

Grayrock sites and addresses sewer and water capacity issues. According to the Township and FSHC, all other terms from both the initial agreement and the amended agreement not specifically modified by the third amendment will remain in full force and effect as previously approved by the Court.

As a result, the Township and FSHC agreed to the following terms which are proposed to the Court:

1. The Township's approach to addressing its Third Round obligation of 337 units as described in Paragraph 7, Paragraph 9, Paragraph 10, Paragraph 11, and Paragraph 13, of the Agreement is hereby amended for the purposes of identifying the new locations of the eighty-nine (89) affordable housing units that had been proposed for the LeCompte site in the Township's approved plan.

2. The Agreement identified Block 29 Lots 4, the LeCompte site, as the location of a 100% affordable housing development that would include 89 total family rental affordable housing units. The Le Compte site is removed from the plan in its entirety and the provisions relating to the LeCompte site are amended as described in the following paragraphs.

3. The chart in Paragraph 7 of the Agreement is amended to remove the 89-unit Le Compte project and replace it with the "Ingerman" municipally sponsored mixed-income development, the "Grayrock" inclusionary development, and a 3 bedroom special needs project:

i. The Ingerman site located at Block 70 Lots 6 and 6.01, an 11.7-acre property with a physical address of 1726 and 1730 Route 31, Clinton Township, NJ which will contain a total of 144 units with a 55% set aside for affordable housing, which comes to 80 affordable units, including at least 11 very low income units as part of a total of 40 low income units, with very low income and low income units proportionally distributed across each bedroom size (the "Ingerman development'). The affordable and marketable units will be integrated within the same buildings. The Township has acquired sufficient sewer capacity to accommodate the 80 affordable housing units in the Ingerman development. It will sell 18,450 GPD of its capacity to Ingerman for the 80 affordable units at $35 per gallon. The Township will sell 2,070 GPD of its capacity to Ingerman for its market rate units at $65 per gallon. The parties acknowledge that Ingerman will need an additional 9,705 GPD for the remainder of its market rate units. As such, the Township requires a durational adjustment for the inclusion of this site in its fair share plan as to sewer. That said, the Township will use its best efforts to enable the purchase of 9,705 GPD by Ingerman from a private party. The Township anticipates that the purchase price of the additional sewer capacity from the private party will be for approximately $65 per gallon. The Township also requires a durational adjustment as to water. The Township obtained a water capacity reservation from the Town of Clinton for the LeCompte site for 17,542 GPD of water and the Township will use its best efforts to have that water capacity reservation transferred to the Ingerman site. The Ingerman site needs an additional 6,863 GPD of water and the Township will use its best efforts to assist Ingerman in obtaining that additional water capacity from the Town of Clinton. The Township will rezone the 11.7-acre site for the inclusionary affordable housing development prior to the joint amended fairness and compliance hearing to be held in this matter and will include the site in a proposed Highlands Center to the extent necessary.

ii. The Township will rezone Block 77.01, Lot 2 (.84 acres), Block 77.01, Lot 4 (.2 acres) and Block 77.01, Lot 3 (1.4 acres) (collectively, the "Grayrock site") for an inclusionary affordable housing development consisting of a total of 30 units on 2.44-acres, with a 20% set aside, which will yield 6 affordable units. The Township will rezone the 2.44-acre site for the inclusionary affordable housing development prior to the joint amended fairness and compliance hearing to be held in this matter. The 2.44-acre site will be a durational adjustment site by reason of a lack of sewer capacity and water capacity.

iii. The Township will fund three (3) municipally-sponsored special needs affordable housing bedrooms to be created in the Township on a site with access to water and sewer, with the location to be determined by December 31, 2021 and the units to be funded and the information required by N.J.A.C. 5:93-5.5 to be provided by June 30, 2022.

iv. As to the reference in the chart in paragraph 7 of the Agreement to the Headley site having first priority for sewer and water over all inclusionary sites, the developer of the Headley site has advised the Township that it plans to provide the site with on-site water and septic system so it no longer requires first priority over all inclusionary developments. The Ingerman site shall now have first priority for water and sewer over all inclusionary developments because: it will be providing a 55% set aside for affordable housing (which is far greater than the 20% set side provided by the 108 Alton Place or Grayrock inclusionary developments); and it will be providing 80 affordable units which is far more affordable units than will be provided by the 108 Alton Place or Grayrock inclusionary developments (28 affordable units and 6 affordable units respectively).

4. Paragraph 9 of the Agreement is hereby amended such that any references to LeCompte and 89 affordable units shall be replaced with Ingerman and the 80 affordable units resulting from that site, the 2.44-acre Grayrock site and the 6 affordable units resulting from that site, and the 3 special needs affordable units that will be funded by the Township.

5. Paragraph 10 of the Agreement is replaced with the following amended Paragraph 10:

10. The parties agree as follows:

a. It is anticipated that the developer of the Ingerman site will apply for Low Income Housing Tax Credits. In the event that the funding application for this site is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach (es) employed to meet the difference.

a. The Marookian development received a 9% Low Income Housing Tax Credit funds from New Jersey Housing and Mortgage Finance Agency in 2020 and the parties anticipate the beginning of construction soon. If for any reason despite that allocation the Marookian site is not under construction by November 30, 2021, as

required by applicable law, the Township shall, no later than that date, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach (es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.

b. The Township agrees to take all reasonable efforts to obtain water and sewer access for the Ingerman site as soon as possible. In the event for any reason that the Ingerman development does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but is not under construction by April 3, 2023, the Township shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using a combination of these three approaches. The Township recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Ingerman site.

c. In the event that the Ingerman project does not receive funding from the 2021 low income housing tax credit round by NJ HMFA or does receive funding but either does not have access to water or sewer utilities or is not under construction by April 3, 023, and in the event the Township has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the Township would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.

d. The Township and FSHC agree that it is essential that the Marookian and Ingerman developments include public amenities, including for persons with disabilities. The Township agrees that it will fund and/or obtain funding for a large public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian site to the site of the playground to allow pedestrian access. The Township further agrees to require

the Ingerman development to include appropriate on-site playground facilities for a 144-unit family development. The Township further agrees to require the developers of the Marookian and Ingerman sites to provide a minimum of 20% of all units as barrier free wheelchair accessible units. The Township further agrees to propose, fund, and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection from the Ingerman site along Route 31 to the intersection with Halstead Street and to fund and construct a cross-walk and connections from that cross-walk to both the Ingerman development and the walking path along Spruce Run Reservoir within one year of approval or the cross-walk by the NJDOT.

6. Paragraph 11 of the Agreement shall be amended in the following ways:

e. Ingerman shall replace LeCompte as having first priority for any available sewer and water service.

f. The basis for including the Ingerman site as a plan mechanism to satisfy a portion of the Township's Third Round obligation, which requires the support of a durational adjustment, is as follows:

a. It is likely that the acquisition of the LeCompte project land will require a taking which, while permitted pursuant to the Fair Housing Act, would jeopardize the Township's ability to meet the timelines in the current Agreement. The Ingerman project offers a much better opportunity to meet the requirements of the Agreement. In addition, the site offers a better location for future residents as there will be a walkable path to amenities such as the North Branch of the County library and the center of the Town of Clinton.

7. Paragraph 13 of the Agreement shall be amended to substitute 11 very low income family rental units at Ingerman and 1 very low income family rental unit at the Grayrock parcel for the 12 very low income units at LeCompte.

8. Within 45 days of the entry of an Order approving this Third Amended Settlement Agreement at a duly noticed Fairness Hearing, the Township shall pay to FSHC as a donation for the advancement of affordable housing in the amount of $15,000 in addition to any sums previously provided.

9. No later than August 1, 2021, the Township shall amend its Housing Element and Fair Share Plan, zoning ordinance, Spending Plan, and provide all of the information required by N.JA.C 5:93-5.5 for the Ingerman and Grayrock sites to be consistent with the terms of this amendment. The parties agree to request the court schedule an amended fairness and final compliance hearing and make a good faith effort with appropriate notice no later than October 1, 2021.

10. All other terms of the February 5, 2018 amended settlement agreement between FSHC and the Township of Clinton that was approved by the court on April 3, 2018 shall remain in full force and effect. The parties agree that the terms of Paragraphs 26-37 of the February 5, 2018 amended settlement also apply to this amendment. Notices shall be provided as follows:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-Mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP: Jonathan Drill, Esq.
Stick, Sullivan, Koenig, and Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009
Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

WITH A COPY TO THE MUNICIPAL CLERK: Carla Conner, Municipal Clerk
1225 Route 31 South, Suite 411
Lebanon, New Jersey 08833
Fax: (908) 735-8156
Email: cconner@clintontwpnj.com

Please sign below if these terms are acceptable.

III. Parties and Counsel

The Township of Clinton is represented by Jonathan E. Drill, Esq. and Kathryn Razin, Esq. of the firm of Stickel, Koenig, Sullivan and Drill, LLC.

Intervenor, Fair Share Housing Counsel ("FSHC") is represented by Adam Gordon, Esq.

Intervenor, Clinton 94, LLLC is represented by Jeffrey Kantowitz, Esq. of the Firm of Abe Rappaport entered an appearance but did not appear at the November 29, 2021 hearing.

Objector, Headley Farm Estate ("Headley" or "CRC Headley") is represented by Guliet D. Hirsch, Esq. of Archer & Greiner, P.C.

Objector, Kerwin-Savage Partnership, a N.J. Partnership ("Partnership" or "K&S" or "Objector") is represented by Patrick J. Mullaney, Esq.

Intervenor Ingerman ("Ingerman") appeared through counsel, Katharine A. Coffey, Esq. of Day Pitney, L.P.

Town of Clinton ("Town") appeared through its counsel, Tara A. St. Angelo, Esq. of Gebhardt & Kiefer, P.C. by the filing of a position letter only as the Town did not appear at the Hearing.

Court Appointed Special Master, John C. Maczuga issued reports to the Court and he also appeared at and participated in the Hearing.

IV. Exhibits

The Court also considered the Exhibits presented and argument of participating counsel.

The Township has provided the following Exhibits in support of its position:

A-1 12/12/2017 Initial Settlement Agreement between the Township of Clinton and FSHC

A-2 Amended Settlement Agreement between Township of Clinton and FSHC

A-3 Second Amended Settlement Agreement between Township of Clinton and FSHC

A-4 Third Amended Settlement Agreement between Township of Clinton and FSHC

A-5 Proof of Publication and Proof of Service of Notices dated 9/3/2021

A-6 Resolution Adopting 2021 Periodic Reexamination Report

A-7 2021 Periodic Reexamination Report of the Master Plan and Development Regulations

A-8 Resolution adopting 2021 Amendment to the Third Round Housing Plan Element and Fair Share Plan Element

A-9 Amendment to the Housing Element and Fair Share Plan dated 5/7/2021

A-10 Resolution Adopting 2021 Amendment to the Land Use Plan Element

A-11 Amendment to the Land Use Plan Element dated 6/7/2021

A-12 Ordinance No. 1154-2021 adopted 6/9/2021

A-13 Resolution No. 2021-08 of the Clinton Township Planning Board adopted 8/16/2021

A-14 Resolution No. 2021-06 of the Clinton Township Planning Board adopted 8/16/2021

A-15 Resolution No. 107-2021 adopted 7/14/2021

A-16 Resolution No. 2021-0D adopted 7/26/2021

A-17 Revised Third Amendment to the Settlement Agreement dated 10/8/2021 and signed by the Township on 10/14/2021

A-18 Ordinance 1159-2021 adopted on 10/13/2021, re-zoning the Grayrock Road site

A-19 Resolution 159-2021 adopted on 10/13/2021, adopting an amended Spending Plan

A-20 Resolution 98-2021 adopted on 6/23/2021, endorsing the 2021 Amendment to the Third Round Housing Plan Element and Fair Share Plan

K&S has submitted the following Exhibits in support of its position as an objector in this Hearing which were marked at the inception of the matter for identification only[1]:

O-1 Bar Graph evidencing Clinton Township Sewer Capacity and Metered Flows (Q-1 2015 and Q-2 2021)

O-2 Sewer Flow Invoicing per Area Meters (Q-1 2015 and Q-2 2021)

O-3 Sewer Billings to Clinton Township from Town of Clinton Sewer Department:

Waters Edge	(Q-1 2015 and Q-2 2021)
Oak Knoll	(Q-1 2015 and Q-2 2021)
Deer Meadow	(Q-1 2015 and Q-2 2021)
Beaver Brook	(Q-1 2015 and Q-2 2021)
Annandale	(Q-1 2015 and Q-2 2021)

O-4 Estimated Sewer Needs/Availabilities of Township Affordable Sites

O-5 Contractual Allocated Sewer GPD to Clinton Township
See Exhibit 1 – Amended & Restated Service Agreements Clinton-High Bridge

O-6 Contracts Evidencing Allocation of Sewer from Clinton to Clinton Township & CTSA

O-7 Aggregate of Sewer Allocation Agreements

O-8 April 12, 2021 Correspondence Town of Clinton Evidencing 58% Allocation Use

O-9 Documents Evidencing Flow as Method of Historical Allocation of Sewer Capacity, pg. 4, November 9, 2000 Agreement and Pgs. 1, 3, 8/2/2005 Correspondence

O-10 Clinton Township Sewer Line Maps per OPRA Request

O-11 Clinton Sewer Treatment Plant Capacity

O-12 108 Alton Place Clinton Water Lines

O-13 Clinton Resolution 146-21 – LeCompte, Marookian, Alton Place Water Reservations

O-14 Clinton Resolution 147-21 – Ingerman North Water Reservations (including LeCompte Reallocation)

O-15 Clinton Water Department Deficient/Surplus Reports 2018, 2019, 2020

[1] K&S inadvertently failed to move its Exhibits into evidence at the Hearing. By letter to the Court dated December 1, 2021, K&S brought the matter to the Court's attention and asked that the documents be moved into evidence. It is undisputed that the various documents were authenticated and explained by the Objector's witnesses at the Hearing. K&S's counsel advised the Court by letter of December 3, 2021 that all of the parties to the matter consented to the admission of these documents into evidence. As summations had not yet occurred, the Court agreed with K&S and it admitted the documents into evidence.

O-16 Clinton Water Department Available Capacity for Affordable Sites (including Anticipated Headley Needs)

O-17 Town of Clinton Revision of Alton Place Water Needs

V. The Original Fairness Hearing

On March 19 and 20, 2018 the Court conducted a Fairness Hearing and on April 3, 2018 issued an Amended Order that approved the Amended Settlement Agreement between the Township and Fair Share Housing Center (FSHC), and which identified the list of actions that the Township must undertake prior to the Court approving a Final Judgment of Compliance and Repose.

VI. The Court's Prior Compliance Hearing and Grant of a Judgment of Compliance and Repose[2]

Subsequently, on December 20, 2018, the Court held a Compliance Hearing in this matter. At that time, the Court found, in a detailed opinion, that the Township had substantially complied with the conditions that the Court established at the Fairness Hearing. Ultimately the Court entered a Judgment of Compliance and Repose in favor of the Township on January 9, 2019.

VII. Objection of CRC Communities Filed in this Matter

A. *Basis of CRC's Objection*

CRC communities, the owner of the Headley Farm Estate property (Headley Property) initially filed an objection to the Township's compliance plan by letter of its counsel, Guliet Hirsch, Esq. dated September 3, 2021. The Headley property is improved with roads and other site improvements and designated for inclusionary housing pursuant to the Township of Clinton Housing Element and Fair Share Plan.

The Headley property is zoned to produce a total of 400 dwelling units, at a gross density of 2.58 units per acre and a net density of 4.6 units per acre, with a 26% set-aside of 104 low and moderate income rental units.

Headley objected to specific language contained in the May 2, 2021 Third Amendment to Settlement Agreement, which language concerns priorities for allocation of sewer and water capacity. Headley suggested replacement language that is satisfactory to CRC Communities, Inc.

Headley asserted that the Settlement Agreement language in the December 12, 2017 Settlement Agreement concerning the development on the Headley property and the first priority granted to that inclusionary development for sewer and water allocations is found in paragraph 7 at pages 5-6 of the December 12, 2017 Settlement Agreement:

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[2] This section is included in order to demonstrate that the Court previously analyzed whether the Township had compiled with the conditions that were set forth in the Court's "Fairness" determination. The Court found that the Township complied with each and every condition so that a Judgment of Compliance and Repose was issued to the Township on January 9, 2019.

> The Headley Farm Estate is located immediately north of Annandale Village and the Annandale Train Station. The site was previously granted approval for a 21 lot subdivision for which the road infrastructure was developed. The developer of the site now proposes a mix of townhouses and multifamily development given changes in area residential market conditions. The portion of the site contemplated for development is cleared and is without environmental constraints. The New Jersey Highlands Council has indicated the site could be included in a Highlands Center to allow for the proposed density and required site improvements. The site totals 155.02 acres, of which 86.96 are unconstrained. 400 total units will be developed at a density of 4.6 units per acre, resulting in 400 units, which at a 26% set aside would be 104 units, all of which will be rented and available to lower-income families. This density is below the presumptive densities required by COAH rules, but the developer has agreed this density provides a sufficient compensatory benefit and has agreed to accept a higher than normal set-aside obligation. Based on its location relative to existing sewer service areas, required infrastructure improvements, substantial set-aside of 26%,. developer support, and proximity to public transportation, the Township will prioritize this site over all other sites in the municipality when water and sewer access and capacity are available. However, the developer may choose to install, and the Township agrees to support applications for, a package sewer plant and private water system/new public well. The Township will use its best efforts to help the developer purchase the available sewer capacity. However, the developer is responsible for purchasing its sewer capacity. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township will agree to propose Headley Farms to be in a Highlands Center and to amend the sewer service area to include it in an SSA and to take all reasonable and necessary steps to obtain those designations. During the compliance phase of this litigation, the Township will provide a letter from the developer supporting the terms of this Agreement and otherwise demonstrate this site, with the exception of the availability of public utilities, presents a realistic opportunity for the development of affordable housing in accordance with applicable law. (emphasis added).

Headley complained that the May 2, 2021 Third Amendment to Settlement Agreement proposes to change the water and sewer priority so that the Ingerman site replaces the Headley property as first priority for sewer and water allocation, and does not state what priority the Headley inclusionary housing site should have:

> iv. As to the reference in the chart in paragraph 7 of the Agreement to the Headley site having first priority for sewer and water over all inclusionary sites, the developer of the Headley site has advised the Township that it plans to provide the site with on-site water and septic system so it no longer requires first priority over all inclusionary developments. The Ingerman site shall now have first priority for water and sewer over all inclusionary developments because: It will be providing a S5% set aside for affordable housing (which is far greater than the 20% set aside provided by the 108 Alton Place or Grayrock inclusionary developments); and it will be providing 80 affordable units which is far more affordable units than will be provided by the 108 Alton Place or Grayrock inclusionary developments (28 affordable units and 6 affordable units respectively).

Headley indicated that as a result of the regulatory risks involved in obtaining permits and approvals for any on-site well or on-site discharge to groundwater system on the Headley inclusionary site, it is essential that some priority be given to the Headley property for sewer and water capacity which become available. CRC Communities had agreed with Clinton Township's proposal that the Ingerman site should have first priority and the Grayrock site should have second priority, provided that the Headley property is given immediate third priority for sewer and water capacity as it becomes available. Therefore, Headley suggested that the following language replace the language in the May 2, 2021 Third Amendment to Settlement Agreement, paragraph 3(1v):

> As to the reference in the chart in paragraph 7 of the Agreement to the Headley site having first priority for sewer and water over all inclusionary sites, CRC has agreed with the Township proposal that the Ingerman site sewer and water allocation become the first priority over all other inclusionary sites. The six affordable housing units on the Grayrock site shall be the second priority for sewer/water allocations and the CRC Headley inclusionary site shall be the third priority for available sewer and water capacity after the Ingerman site and Grayrock site allocations. Clinton Township agrees to pursue any available sewer and/or water capacity which may become available for the Headley inclusionary site pursuant to the allocation priority described above. Clinton Township acknowledges that sewer and water service for the CRC Headley inclusionary site may be provided either through on-site well(s) and/or on-site groundwater disposal system, or it may be served from water and/or sewer capacity available from off-site sources. Clinton Township recognizes that all of these options must be under consideration at the present time due to the unresolved question of the feasibility and permit- ability of the proposed on-site wells and groundwater disposal system. Clinton Township agrees to continue to assist CRC by supporting any necessary applications to New Jersey DEP and by pursuing the Highlands Center designation required to allow the provision of sewer and water via wells and/or groundwater disposal system on the Headley inclusionary site.

CRC Communities (the owner of the Headley Farm Estate) also filed a second letter objection on September 21, 2021 which was considered by the Court. The property has been referred to as the Headley Property in this proceeding. The Headley Property is designated for inclusionary housing development consisting of 400 dwellings, including a 26% set aside of 104 low and moderate income units, by virtue of the December 12, 2017 Settlement Agreement between Clinton Township and the Fair Share Housing Center as well the implementing Court Orders and zoning.

CRC initially advised the Court that as a result of a recent discovery, it may need to take some legal action (the exact nature which was then undetermined), to deal with the violation of the described Settlement Agreement priority scheme.

According to counsel for Headley, Minutes of the July 28, 2021 Town of Clinton Council meeting showed that several water allocation reservations were granted a one year extension, including specifically a water capacity reservation for the Kerwin-Savage Partnership. (See Resolution No. 122-21) That Resolution recited that: the Town of Clinton had received a water reservation application on May 18, 2020 from the Kerwin-Savage Partnership for 108 Alton Place; that the requested reservation had been granted on August 12, 2020 and was scheduled to expire on August 12, 2021, that Mayor and Council had been requested to extend that water allocation for an additional twelve months; and that the extension was being granted. The Resolution notes

that the 108 Alton Place reservation is for residential development including one single family home, 96 three-bedroom townhomes and 43 one, two and three-bedroom apartments. Although 108 Alton Place is a designated inclusionary housing site in Clinton Township, CRC indicates that it is not entitled to a priority over the Headley Property in water or sewer allocations.

According to CRC, neither the 2020 Kerwin-Savage water reservation approval nor the 2021 one-year extension of same were brought to the attention of CRC Communities by any party. CRC contended that the grant of the reservation and extension of the reservation for 108 Alton Place is a clear violation of the 2017 Settlement Agreement and Court Order implementing same.

CRC therefore offered that since enforcement of the Clinton Township Settlement Agreement should be the responsibility of Clinton Township, if CRC is out of necessity, required to institute legal action to claw back the illegally granted water allocation to Kerwin/Savage, CRC will expect reimbursement of its legal costs and fees.

B. *The Resolution of the Issue Prior to the Court's Hearing*

The Court has included CRC's objections for completeness of the record, but the Court was advised prior to the hearing in this matter that the objection filed by CRC Communities, Inc. was amicably resolved between the parties prior to the hearing as those parties entered into a Revised Third Amendment to Settlement Agreement dated October 8, 2021 which was submitted to the Court under an October 21, 2021 cover letter. That Agreement resolved the issues raised by CRC in their letter of September 3, 2021.

At that point in time, the objections raised by CRC in their subsequent objection letter dated September 21, 2021 were not completely resolved however.

However, subsequently, on October 21, 2021, CRC advised the Court and the parties that the Revised Third Amendment to Settlement Agreement dated October 8, 2021 as submitted by cover letter dated October 18, 2021 to the Court fully resolved the objections raised by CRC Communities in its counsel's September 3, 2021 letter.

CRC did not raise any objections at the Hearing before the Court and instead it apparently supported the Township's application.

VIII. Objection of Kerwin-Savage Partnership, a New Jersey Partnership (the Partnership) Filed in this Matter

The Kerwin-Sage Partnership (hereinafter "Partnership", "K&S" or "Objector"), represented by Patrick J. Mullaney, Esq., filed a written objection to the agreement for the "avowed purpose" to assist the Court in its scrutiny of whether the mechanisms proposed by the Township are in fact constitutionally compliant in providing a realistic opportunity for affordable housing units proposed to be actually developed and occupied. See Oceanport Holdings, LLC v. Borough of Oceanport, 396 N.J. Super. 622 (App. Div. 2007). The Partnership urges the Court to find that the third amendment to the agreement does not comply with the constitutional standards as it does not result in a realistic opportunity for completion within the Round 3 timeframes and requirements.

The Partnership filed a written objection in advance of the hearing through its attorney dated September 9, 2021 which included a summary of the testimony that was anticipated to be proffered by them at the time of the hearing.

In that regard, the Partnership advised the Court that its anticipated witnesses will be Michael Savage and Walter Wilson, who comprised two of the three firm parties.[3] K&S offered that their testimonies at the Hearing were anticipated to include the following:

> 1. The Township has proffered in support of its position its Planning Board's Site Plan Approval which substitutes for what will be referred to as the "Ingerman Property" for the "LeCompte Property" as had previously been approved. [K&S believes] this approval itself to be constitutionally deficient according to the foregoing. Simply stated, development of the Ingerman Property requires actions not likely to timely occur. More specifically, and among other factors, conditions of Approval will require items that are very unlikely to occur in general, and certainly not within the timeframes required of Round 3. These matters include receipt of approvals from various State of New Jersey agencies not set forth in the Planning Board Resolution which must be taken into account by this Court, including NJDOT Major Access Permits, NJDEP approval of required amendments to water and sewer service areas, amendment to the Township's Wastewater Management Plan and resolution of all environmental constraint limitations. The Township has historically and intentionally proposed sites inadequate for its Mt. Laurel obligations, sites furthering the social isolation and lack of integration into the community of their proposed affordable housing developments; sites never before zoned for or assimilated with residential areas. The Ingerman Property is no exception.
>
> 2. Inaccuracies and inadequate statements concerning sewer and water availability to the Ingerman and other Sites by the Township Planner in various submissions and statements.
>
> 3. Incomplete and inaccurate labels and statements regarding water and sewer availability that result in labels of "Durational Adjustment" as a means of preventing development, construction and occupancy of alternative sites meeting all other requirements, such as 108 Alton Place, that will realistically aid in meeting the Township's constitutionally required affordable housing.
>
> 4. The Township's continued and intentional avoidance, as stated by municipal officials, of the development of affordable housing sites and the use of claimed utility unavailability to delay and avoid such realistic development, construction and occupancy of affordable housing units. For example, a Certification of the Clinton Township Engineer, Cathleen Marcelli, dated January 6, 2009, regarding one of the Township's 100% Affordable Development sites that is proposed to

[3] Both Savage and Wilson testified at the Hearing.

satisfy the Township's Constitutionally required affordable housing units for Round 2 will be offered.

5. Inadequacies in the Township's amendments to its Master Plan Elements and policy positions.

K&S further supplemented and summarized its position by letter dated November 3, 2021 as follows[4]:

I. THE INGERMAN NORTH SITE

The Ingerman North Site (Block 70, Lots 6 and 6.01) is unsuitable as an inclusionary development for the following reasons:

1. It does not have proper physical infrastructure for either sewer or water service and the same cannot be obtained at reasonable economic expense and within required time frames;

2. It is not currently nor has it ever been in the Clinton Township Sewer Authority (CTSA") sewer service area ("SSA");

3. It is in violation of N.J.A.C. 5:93-5.3(b) which requires for a site to be an inclusionary site that it be at the time of final substantive certification included in the municipality's wastewater management plan ("WMP") or then be included in a filed amendment application thereto. In the instant matter, final substantive certification was entered by Judge Thomas C. Miller in January 2019, at which time the Ingerman North Site was neither within the Township's/CTSA's WMP or any filed application to amend said WMP. It is noted that an application for such an amendment (although containing no maps and making it currently impossible to determine whether the site is included in the Amendment) was filed in November 2019, subsequent to certification and excluding Ingerman North Site as a proper inclusionary site under the proposed Third Amendment given the Third Amendment ratifies the prior Amended Settlement Agreement;

4. The Ingerman North Site has only recently received development approvals from the Township which approval shall require extensive and time consuming regulatory, permitting. environmental and other compliance requirements, currently unknown. Please note Kerwin- Savage believes said requirements shall be substantially identical to those set forth below concerning the Marookian site; and

5. Taken as a whole, not only is Ingerman North Site without physical infrastructure, it is outside the current SSA not only making it ineligible for sewer availability, but also violating the requirements of N.J.A.C. 5:93-5.3(b). It is also only beginning a pre-construction compliance path which will undoubtedly take

[4] For completeness of the record, the Court has included K&S's position verbatim from counsel's letter of October 14, 2021.

many years to traverse. As such, not only is it specifically ineligible for inclusion, it also does not present a realistic opportunity to timely contribute to the Township's fair share housing obligations

II. THE MAROOKIAN SITE

The Marookian Site (Block 82, Lots 4, 4.03), for substantially the same reasons as concern Ingerman North, is also not proper as an inclusionary development and should not be certified as such by the Third Amendment's ratification of the Amended Settlement Agreement as proposed. Specifically:

1. Marookian does not have proper or feasibly available physical infrastructure for either water or sewer service

2. Marookian is not currently nor has it ever been within the Township's SSA and may not be properly allocated sewer service;

3. Not having been in the SSA at the time final substantive certification and a WMP application not having been filed at such time, the site is under the authority of N.J.C.A. 5:93- 5.3(b) not eligible as an inclusionary development;

A review of Marookian's pre-construction obligation demonstrates the following:

(a) Pirhl Developers Resolution of Prelim Site Plan for Application PB-2018-07 referencing required corrections to the submitted plans:

Title Sheet of 1 of 15-4 corrections

Existing Conditions Plan Sheet 2 of 15-1 correction

Subdivision Plan Sheet 3 of 15 - 6 corrections

Geometry, Striping and Signage Sheet 4 of 15- 10 corrections

Grading Plan Sheet 5 of 15- 5 corrections

Utility Plan Sheet 6 of 15-8 corrections

Offsite Utility Main Extension Plan Sheet 6A of 15 - 6 corrections

Boulevard Plan Sheet 7 of 15- 6 corrections

Profiles Sheet 8 of 15-1 correction

Landscaping and Lighting Plan Sheet 9 of 15-2 corrections plus EcolSciences recommendations as to lighting and endangered species; 22 corrections/ recommendations identified by Brian Rosenberg, LLA, ASLA and lighting deficiency identified by Jason Harkins, LLA.

Soil Erosion and Sediment Control Plan Sheet 11 of 15 - 1 correction

Construction Details Sheets 13, 14 and 15 of 15 (note no Sheet 12 is referenced in the resolution) 15 corrections

(b) In addition, the following items are required prior to construction:

Engineering Required in Support of the Application

Traffic Study, Boulevard to Rte 31 access

Stormwater Management Report showing 11 deficiencies

Environmental Impact Statement incorporating the 5 corrections noted by Jeff Keller, Ph.D.

Corrections to Building Plan addressing 7 deficiencies identified by the Fire Marshal.

Corrections to the plans to address 6 deficiencies in Planning.

Geotechnical Report addressing Karst Features, high ground water table and rock in the vicinity of proposed foundations and storm water basins, as required by Matthew Mulhall, PG referencing 2 corrections and calling for a full geotechnical investigation. This report should also address any mitigation required in relation to the earthquake fault line identified on the NJDEP's website and located in close proximity to the proposed affordable development.

Phase 1 Environmental Assessment of the Project

Supplemental 'HAP" (historically applied pesticides) Investigation for Area of Concern related to former agricultural use and potential pesticides.

Biologist Investigation of wildlife at the site including turtle migration patterns.

Identification of any and all Easement, Conveyances and Dedications required by the Site Plan Approval and files in conjunction with the Final Plat(s).

Required Outside Agency Permits Required

Clinton Township Sewer Authority

Town of Clinton Water Department

Hunterdon County Soil Conservation- Erosion and Sediment Control

Hunterdon County Planning Board

NJDOT Approvals of Rte 31 Access

NJDEP Letter of interpretation with Mapping – wetlands

NIDEO Endangered Species Approval

NJDEP Sewer Extension Permit

NIDEP Water Extension Permit

NJDEP Stormwater Discharge Permit into a C1 Stream corridor with endangered species

Final Site Plan and Subdivision Approval

Required Performance Bonds

Required Developer's Agreements

Any and All other required permits and approvals

(c) Based upon their experience, Kerwin-Savage notes other requirements are as follows:

NJDOT GIS Website and the NJDEP GIS Website both classify the Marookian parcel as 100% Open Space.

Highlands Council, Advanced Property Report for Lot 4.03 (42.13 acres) indicates the site has suitable habitat for the endangered wood turtle Great Blue Heron und Northern Myotis. Further, 97.3% of this site is identified as Critical Wildlife Habitat; mitigation plans will be required to minimize disturbance thereof. This site is identified as Conservations Zone (CZ- 53.8%) or Conservation- Environmental Constrained Sub Zone (CECSZ - 46.17%) totaling 100%; 100% is identified as preserved land and 100% in Agricultural Priority (59.47 as High, 40.53 as Moderate). Additionally, 28.25% is classified as Prime Groundwater Recharge and 40.54% is classified as within a Wellhead Protection Area -Tier 3.

The Clinton Township Sewer Authority (CTSA) identifies specific areas to be served by the sanitary sewer system. The CTSA's service map, prepared by Hatch McDonald, confirms that the Marookian Site lies outside the sewer service area identified as serving the Beaver Brook area.

5. Taken as a whole, as with Ingerman, for the foregoing reasons, Marookian cannot be set to provide a realistic opportunity to timely meet the Township's fair share obligations. A number of years have lapsed since final substantive certification, little or nothing has been done moving the project forward and numerous, possibly insurmountable, obstacles are presented. Marookian should be removed as an inclusionary site; and

6. At best, and assuming Marookian remains an inclusionary site, it must be subject to a durational adjustment as it is not in a sewer service area, the WMP as amended has not been approved by the DEP and, consequently, sewer service is not imminently available. This is despite representations made in the Amended Settlement Agreement that sewer had been secured.

III. THE HEADLEY SITE

The Headley Site (Block 46, Lot 33, 33.01) suffers from the same infirmities as do Ingerman and Marookian, only more so. Headley is further removed from physical infrastructure of sewer and water making it highly unlikely service will be available within the time frames allowable to the Township to commence construction and deliver units. Headley also fails to qualify as a proper site for inclusionary development under the authority of N.J.A.C. 5:93-5.3(6). As with Marookian, Headley is at best subject to a durational adjustment subordinating it to a properly granted priority site.

IV. THE 108 ALTON PLACE SITE[5]

The 108 Alton Place Site (Block 79.07, Lot 1) is the only site in the Amended Settlement Agreement and Third Amendment ratifying the same both suitable as an inclusionary development and properly not being subject to a durational adjustment. The following factors apply:

1. 108 Alton Place has immediate availability to physical infrastructure for sewer and water service

2. 108 Alton Place has received a water allocation from the Town of Clinton Water Company

3. 108 Alton Place is and was at the time of final substantive certification within the Township's SSA and has been included within its WMP for purposes of N.J.A.C. 5:93-5.3(6);

4. Infrastructure, regulatory qualifications and availability of sewer and water not only require 108 Alton Place not be subjected to a durational adjustment, under the authority of N.J.A.C. 5:93-5.3(b), 108 Alton Place must be given a priority over all other sites currently part of the Township's plan. Messrs. Savage and Wilson shall testify that they have made many efforts to obtain a sewer allocation from the CTSA and the Township for approximately 44,000 gpd. Kerwin-Savage has been uniformly denied in its efforts, the explanation being that all sewage capacity has previously been "allocated." This "allocation" is nothing more than a "book entry" to sites other than 108 Alton Place by the CTSA. Usage documentation shall be presented that the CTSA and the Township have and have had historically well over 200,000 gpd which are available given usage flows evidenced by billing information provided by the Town of Clinton Sewage Treatment Plant. Relegating sewer availability to administrative "allocations" opposed to actual usage, is simply an arbitrary imposition by the authorities of an unauthorized sewer moratorium. This will be presented as inconsistent with the Township's obligations.

[5] The K&S Site

> Finally, Messrs. Savage and Wilson shall testify that, the proposed substitution of the Ingerman North site for the LeCompte site is not mere coincidence. Without belaboring the point, not only was LeCompte suffering from the same infirmities as do the other sites described above, it was also not "available" for development as required by N.J.A.C. 3:93-5.3(6). Investigation has shown there has never been a contract signed by the LeCompte owner with either the Township or an acceptable third-party for development. Investigation shows only a non-binding letter of intent from a number of years ago which was never reduced to a formal contract making LeCompte "available." Kerwin-Savage finds itself in the unfortunate position of being forced to suggest to the Court that the Township is not taking its fair share obligations seriously, that the time frames necessary for delivery of units cannot be reasonably met, that sites which cannot be developed are chosen for inclusion while sites, such as 108 Alton Place are thwarted by arbitrary governmental actions.

Counsel for K&S also provided documents (Exhibits) O-1 through O-11 which purport to relate to sewer capacity demonstrated on a metered flow basis from Quarter 1 of 2015 through Quarter 2 of 2021. K&S indicates that they intend to demonstrate that 108 Alton Place, with regard to which K&S is a contract purchaser, has immediate sewer infrastructure so as to provide sewer service to its individual units. K&S also provided documents O-12 through O-17 which they offer to demonstrate that water capacity is also available for such sites so that it also has immediate availability for water infrastructure.

In sum, K&S has argued to the Court that 108 Alton Place should not be properly designated as a site subject to a durational adjustment as it is set forth in the proposed Third Amendment. Instead, K&S requests that the Third Amendment be amended in that regard and that given the sewer and water capacity, along with available infrastructure, that 108 Alton Place should be re-designated as a priority site, in fact the sole priority site, within the Township and within the meaning of N.J.A.C. 5:93-5.3(b).

IX. <u>Town of Clinton's Position</u>

The Non-Party Town of Clinton ("Town") offered a letter from the Town attorney which provided, in relevant part,

> While the Town is not a party to this action, please accept this letter as a representation that the Town will abide by any order entered by this Court regarding the transfer of the subject water allocation. The Town's ordinances and policies regarding water allocations permit the Township to hold the water allocation for affordable housing projects listed in its approved affordable housing plan.

X. <u>Regarding Ongoing Conditions Noted in the Settlement Agreement</u>

Paragraph 10 of the FSHC Amended Settlement Agreement includes specific actions the Township is to undertake in the future to ensure that the affordable units identified for

the Marookian and LeCompte sites are provided. As an ongoing condition of the Final Judgment, but not as a pre-condition for a Final Judgment, the following provisions apply:

- If the Marookian site is not under construction by April 3, 2020 (two years from the Court approval of the FSHC Amended Settlement Agreement), the Township will make up the difference using some combination of the following approaches: funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or, using some combination of these approaches.

- If the LeCompte site is not under construction by April 3, 2022 (four years from the Court approval of the FSHC Amended Settlement Agreement), the Township will make up the difference using some combination of the following approaches: funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or, using some combination of these approaches. If the LeCompte site either does not have access to water or sewer utilities or is not under construction within 4 years of the Court's approval of the Agreement, and the Township has not provided a sufficient number of affordable units through other means, the Township agrees to comply with N.J.A.C. 5:93-4.3(c)3 and 4 concerning inclusion in a Fair Share Plan a site where the DEP has approved a proposal to provide water and/or sewer.

- All parties to this action shall be provided with notice of any filings with the Court concerning this matter.

XI. Summary of Special Master's Recommendation

In advance of the Court Hearing in this matter, Special Master John D. Maczuga , P.P. of JDM Planning Associates, LLC provided a report and recommendation to the Court dated November 23, 2021 which was reviewed and considered by the Court. Mr. Maczuga's report is summarized below[6]:

> The Special Master submitted a report which purpose was two-fold. The first purpose was to render an opinion as to whether the Revised Third Amendment to the Settlement Agreement modifying the December 12, 2017 Settlement Agreement and February 5, 2018 Amended Settlement Agreement, which was previously determined by the Court to be fair and reasonable and adequately protecting the interests of the low- and moderate-income households, remain fair and reasonable, and continue to adequately protect the interests of low- and moderate-income households. The second purpose of his report was to render an opinion as to whether the modifications to the Township's compliance plan consistent with the amendments to the settlement agreement and the Court's prior approval continue to represent a realistic opportunity for the development of affordable housing.

[6] Again, the Special Master's Report is provided verbatim for completeness of the record.

The Master indicated that the key changes related to the Approved Settlement Agreement dated February 5, 2018, and the Township's approved compliance plan as set forth in the Revised Third Amendment dated October 8, 2021, include the following:

1. The LeCompte site, which was included in the Township's approved compliance plan as a municipally sponsored, 89-unit, 100-percent affordable, family rental project, is eliminated in its entirety.

2. In lieu of the affordable 89 units on the LeCompte site, the Revised Third Amendment substitutes the following:

   a. A new site (Ingerman — Block 70, Lots 6 and 6.01) consisting of 11.7 acres on NJ Route 31 is added to the compliance plan. The site is to include 146 units in total, of which 80 units (55 percent) are to be affordable units. The amendment includes steps for the Township to make sewer and water capacity available for purchase by Ingerman.

   b. A new site (Grayrock — Block 77.01, Lots 3 and 4) consisting of 2.44 acres is to be rezoned to permit 36 units in total, of which seven (7) units (20 percent) are to be affordable units.

   c. The Township will fund two (2) municipally sponsored specials needs units (bedrooms) at a location to be determined by December 31, 2021.

3. The water and sewer capacity order of priority for the LeCompte, Headley and 108 Alton Place affordable housing sites was modified as follows: Ingerman Site — first priority; Grayrock Site — second priority; Headley Site — third priority; and 108 Alton Place — fourth priority.

4. The developer of the Ingerman Site has applied for Low-Income Housing Tax Credit (LIHTC) funding. In the event any funding award decision is for less than 80 affordable units, the Township is required, within three (3) months of such funding decision, to fund and provide a realistic opportunity for the development of affordable units to offset any such shortfall.

5. In the event the Ingerman Site does not receive LIHTC funding in the 2021 funding round or does receive funding but is not under construction by April 3, 2023, the Township is required to demonstrate the provision of a realistic opportunity for the development of the 80 affordable units contemplated on the Ingerman Site.

6. In the event that the Ingerman Site does not receive 2021 LIHTC funding in the 2021 funding round or does receive funding but does not have access to adequate sewer and water service, or is not under construction by April 3, 2023, and the Township has not produced a realistic opportunity for the development of 80 affordable units (see Point 5 above) without a durational adjustment, the Township agrees that it will be required, without further order of the Court, to comply with N.J.A.C. 5:93-4.3(c)(3) and (4) regarding inclusion in its Housing Element and Fair Share Plan (HE&FSP) of sites approved for sewer and water facilities but not already designated for the development of affordable housing pursuant to the HE&FSP.

7. The Marookian Site received a 9-percent LIHTC in the 2020 funding round for a municipally sponsored, 84-unit, 100-percent affordable family rental project. In the event the project is not under construction by July 31, 2022, the Township will be required to

take all necessary steps to provide and demonstrate the provision of an alternative compliance mechanism that provides a realistic opportunity for the development of the 84 affordable units (and 58 rental bonus credits) currently anticipated at the Marookian Site.

8. The approved settlement agreement included a provision for the Township to construct a large public playground that would accommodate disabled children on the Marookian Site or adjacent Kaufelt Property. The Revised Third Amendment to the Settlement Agreement significantly expands the recreational, safety, and provisions in support of persons with disabilities for the residents of the proposed Ingerman and Marookian developments and the general public.

The Master noted that the Township has already effectively implemented the modifications to its compliance plan (HE&FSP) consistent with the Revised Third Amendment to the Settlement Agreement. The Planning Board adopted on June 7, 2021 an Amendment to the Housing Element and Fair Share Plan (HE&FSP) eliminating the LeCompte Site and, in lieu thereof, including the Ingerman, Grayrock and special needs units/ bedrooms consistent with the Revised Third Amendment to the Settlement Agreement. The Township has also adopted the necessary zoning changes for the Ingerman and Grayrock projects to proceed, and, in fact, the Ingerman site has received planning board approval for development as proposed.

The Master offered his opinion to the Court that the narrow "fairness" issue is raised is whether the amendments and compliance plan modifications to the Court-approved Settlement Agreement, set forth in the Revised Third Amendment to the Settlement Agreement and described above, may alter the Court's determination that the original settlement agreement, and the compliance plan therein, that were approved by the Court, remain constitutionally compliant and fair and, reasonable, and protects the interests of low- and moderate-income households.

The Master stated that the judicial standards for approval of Mount Laurel settlement agreements are set forth in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996; East/West). The overarching principle of East/West is whether or not "the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built." East/West further provides a five-pronged analysis in evaluating the fairness of a settlement agreement, which the Master provided his analysis to the modifications to the settlement agreement and compliance plan previously approved by the Court:

1. Consideration of the Number of Affordable Units Being Constructed: The Township's rehabilitation obligation, prior round obligation, and third round obligation (i.e., cumulative 1987–2025 obligation) and the number of affordable units to be constructed under the Township's compliance plan are unchanged in the Revised Third Amendment to the Settlement Agreement and amended HE&FSP.

2. The Methodology by which the Number of Affordable Units Provided is Derived: The methodology by which the Township's rehabilitation obligation, prior round

obligation, and third round obligation had been determined are not changed under the Revised Third Amendment to the Settlement Agreement and amended HE&FSP.

3. Other Contributions by the Plaintiff: In addition to the provisions that contribute to and protect the interests of low- and moderate-income households contained in the February 5, 2018 Court approved Settlement Agreement to be continued per the Revised Third Amendment to the Settlement Agreement, the Township (i.e., the plaintiff) has agreed to additional requirements that contribute to and protect the interests of low- and moderate-income households, including the significant expansion of the recreational, safety and provisions in support of children with disabilities for the residents of the proposed Ingerman and Marookian developments and the general public (see amendments to paragraph 10.d.).

4. Other Components of the Settlement that Contribute to the Satisfaction of the Constitutional Obligation: The Revised Third Amendment to the Settlement Agreement establishes more precise and measurable milestones, deadlines and remedies for failure to meet these milestones and deadlines related to the Marookian and Ingerman projects, as well as the 2 units/bedrooms of special needs housing compliance mechanism.

5. Other Factors that May Be Relevant to the Fairness of the Settlement: The Court, in its decision in Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super., determined that "… it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents." FSHC, as an affordable housing advocate and party to the Revised Third Amendment to the Settlement Agreement, has likewise concluded that the agreement is fair and reasonable to the interests of low- and moderate-income households.

This Court's February 9, 2019 Order granting Final Judgement of Repose and Compliance approved a 221-unit durational adjustment and required the Township to "…reserve and set aside new water and/or sewer capacity, when it becomes available, for low- and moderate-income housing on a priority basis as set forth in paragraph 11 of the Amended Settlement Agreement." Beyond Marookian, the order of priority established by paragraph 11 of the Amended Settlement Agreement is as follows: LeCompte; Headley Farms; and 108 Alton Place.

The Revised Third Amendment to the Settlement Agreement and the amendments to the Township's compliance plan to implement same include the elimination of the 89-unit, 100-percent affordable LeCompte Site and, in-lieu thereof, substitutes the 80-affordable unit Ingerman Site, seven (7) affordable unit Grayrock site, and a two-bedroom/unit special needs facility. The Ingerman and Grayrock sites (in same order) assume the sewer and water priority position of the LeCompte Site. Both the proposed Ingerman and Grayrock sites are inclusionary (i.e., have a market rate unit component). In addition to the 80 affordable units, the Ingerman Site is to include 46 market rate units, representing a 55-percent affordable housing set aside, and the Grayrock Site is to include 29 market rate units, representing a 20-percent affordable housing set aside. The substitution results in an increase of a total of 95 units combined on the sites and will necessitate additional sewer and water capacity as compared to the original LeCompte Site proposal.

> The Master opined that in his view, based upon the foregoing, the modifications set forth in the Revised Third Amendment to the February 8, 2018 Settlement Agreement approved by the Court are *de minimis* and continue to satisfy the standards prescribed in East/West Venture v. Borough of Fort Lee and are, therefore, fair and reasonable, and protect the interests of low- and moderate-income households.
>
> The Master also opined that the modifications of the Township's compliance plan (i.e., the elimination of the LeCompte site and the substitution of the Ingerman, Grayrock and special needs projects in lieu thereof), and the prioritization of the durational adjustment per the Revised Third Amendment to the Settlement Agreement and the Amendment to the Housing Element and Fair Share Plan adopted on June 7, 2021 (2021 HE&FSP), continues to represent a realistic opportunity for the development of affordable housing as proposed. According to the Master, the Township has sufficiently documented its claim that the compliance plan contained in the Revised Third Amendment to the Settlement Agreement and 2021 HE&FSP addresses, per COAH rules, its Rehabilitation Obligation, Prior Round Obligation and Third Round Obligation.
>
> As a result, the Master recommended that the Court approve the Revised Third Amendment to the Settlement Agreement and 2021 HE&FSP and grant a Judgment of Compliance and Repose, ending on July 2, 2025, conditioned upon compliance with the terms, milestones and remedies set forth in the Revised Third Amendment to the Settlement Agreement.

On December 8, 2021, the Master supplemented his report based upon his review, analysis and consideration of the testimony and evidence presented at trial. The Master found, in relevant part:

> The crux of the K&S objection appears to be a claim that there have been substantial changes in the underlying facts forming the basis of the Court's prior determination and grant of a durational adjustment pursuant to the COAH rules governing lack of sewer and water facilities found at N.J.A.C. 5:93-4.3. In my opinion no credible testimony or evidence has been presented by K&S that the Revised Third Amendment to the Settlement Agreement or the Township's compliance plan implementing same, is inconsistent with N.J.A.C.5:93-4.3 and thus not entitled to the continuance of the prior durational adjustment. Furthermore, in my opinion, no credible definitive testimony or evidence has been presented that any of the designated affordable housing sites in question (Ingerman, Grayrock, Headley Farm, and 108 Alton) cannot be practically connected to existing sewer and water collection/distribution facilities. Questions remain as to the availability at this time of adequate allocated capacity to accommodate all four sites and thus establishing the appropriateness of prioritizing the sites to maximize the production of affordable units given the limits on available allocation capacity.
>
> The water and sewer capacity order of priority for the LeCompte, Headley and 108 Alton Place affordable housing sites in the prior agreement is modified by the Revised Third Amendment as follows: Ingerman – first priority; Grayrock – second priority; Headley Farm – third priority; and 108 Alton Place – fourth priority. K&S objects to the fourth position ranking of the 108 Alton Site per the Revised Third Amendment to the Settlement Agreement. Notwithstanding K&S's claims to the contrary, the 108 Alton Site is a "priority

site" to receive water and sewer allocation capacity pursuant to the Revised Third Amendment to the Settlement Agreement and the Township's HE&FSP, just not the highest priority based upon reasonable ranking criteria to intended to protect the interests of low- and moderate-income households in the region.

While the rationale and basis for the objection to the fourth position ranking are not supported by testimony, evidence or COAH rule, there may be some merit to the objection as to fourth position priority ranking of the 108 Alton Site. The concept of substituting/ replacing affordable units on a one-for-one basis the Ingerman and Grayrock sites in the priority slot formerly occupied by LeCompte is logical. However, the stated basis for the priority ranking includes favoring sites municipally sponsored, producing more affordable units, or having a higher affordable set aside percentage. Both the 108 Alton and Grayrock sites are proposed as inclusionary 20% affordable set aside sites, producing 28 and 7 affordable units respectively. For the purposes of consistency, the Court may wish to require the Grayrock and 108 Alton Sites be placed on an equal priority footing behind the Ingerman and Headley Farm sites as part of any forthcoming order approving the Revise Third Amendment to the Settlement Agreement..

Based upon the foregoing, I reiterate my opinion, that the modifications set forth in the Revised Third Amendment to the February 8, 2018 Settlement Agreement approved by the Court are *de minimis* and continue to satisfy the standards prescribed in East/West Venture v. Borough of Fort Lee and are, therefore, fair and reasonable, and protect the interests of low- and moderate-income households.

I continue to be of the opinion that the Township has sufficiently documented its claim that the compliance plan contained in the Revised Third Amendment to the Settlement Agreement and 2021 HE&FSP addresses, per COAH rules, its Rehabilitation Obligation, Prior Round Obligation and Third Round Obligation and continues to represent a realistic opportunity for the development of affordable housing as proposed.

Notwithstanding the objection filed by K&S, I recommend the Court approve the Revised Third Amendment to the Settlement Agreement and 2021 HE&FSP and grant a Judgment of Compliance and Repose, ending on July 2, 2025, conditioned upon compliance with the terms, milestones and remedies set forth in the Revised Third Amendment to the Settlement Agreement and the recommendation related to the priority ranking contained herein.

XII. Court's Analysis and Conclusion

A. Standard of Review

The Agreement that the Township has asked the Court to consider will be evaluated by the Court according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). These cases require that agreements in Mount Laurel litigation to be subject to a "Fairness Hearing" subject to approval by

the Court. The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process that was conducted by then Bergen County Assignment Judge Peter Ciolino in East/West Venture v. Borough of Fort Lee. In its 1996 decision, the Appellate Court ruled that a settlement between a builder Plaintiff and municipal Defendant in a Mount Laurel case may be approved by the Trial Court after a hearing which establishes that the settlement "adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built" 286 N.J. Super.311, 329 (App. Div. 1996). In affirming the Trial Court's decision, the Appellate Court provided specific factors for Trial Courts to consider in making fairness determinations, including considerations of (1) the number of affordable units being constructed; (2) the methodology by which the number of affordable units provided is derived; (3) other contributions by the Plaintiff; (4) other components of the settlement that contribute to the satisfaction of constitutional obligation; and (5) other factors that may be relevant to the fairness of the settlement.

On March 10, 2015 the N.J. Supreme Court delivered its Mount Laurel IV. This decision acknowledged COAH's inability or unwillingness to adopt constitutional rules for the so-called "Third Round" of municipal affordable housing compliance. In the absence of regulatory guidance from COAH or Legislative action, the decision instructs the Trial Courts to once again evaluate the constitutionality of municipal Fair Share Plans, including the suitability of sites intended to produce affordable housing.

While the New Jersey Supreme Court has invalidated COAH's attempts to promulgate Third Round rules, the Court recognizes that the Second Round rules (*N.J.A.C.* 5:93) are still largely intact. In fact, these rules have been relied upon by the Trial Courts in numerous compliance and fairness hearings during the "gaps" in COAH's rule-making since the Second Round ended in 1999. Furthermore, in the Mount Laurel IV decision the NJ Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions.

B. Summary of the Issues Before the Court and the Court's Holding Regarding Those Issues

For all of the foregoing reasons set forth in this opinion, the Court has found that the following issues have been raised and considered by the Court in this opinion:

a. As to the first issue of fairness, based on the detailed, credible and persuasive testimony of Township planning expert Tom Behrens, PP, AICP in applying the 5-part analysis established in East/West Venture, 286 N.J. Super. at 328, the Court finds that: (1) the Third Amendment is fair and reasonable to, and adequately protects the interests of, low and moderate income households in the region; and (2) the Initial Amended Settlement Agreement continues to be fair and reasonable to, and adequately protects the interests of, low and moderate income households in the region.

b. As to the second issue of compliance, based on the detailed, credible and persuasive testimony of planning expert Behrens under the standards established in Allen-Deane, 205 N.J. Super. at 113-116, and under the standards subsequently adopted by COAH in its Second-Round rules, specifically, N.J.A.C. 5:93-5.3(b) and -5.6(b), the Court finds that the Township's Mount Laurel affordable housing compliance plan, after revision in accordance with the Revised Third Amendment, continues to represent a realistic opportunity to create affordable housing.

c. K&S raised other issues to the Court, including whether there have been substantial changes in the underlying facts that were presented at the original Fairness Hearing(s) so that the Court should make findings that would modify and abrogate the Agreement that has been presented to the Court for consideration by (1) eliminate the durational adjustment that affects the K&S site and the sites offered by the other affordable developers; (2) that the municipal protection afforded by a durational adjustment based upon lack of sewer and water be determined to be "unjustified"; and (3) that the K&S site be made a priority site in the Township's Plan. The Court has considered those issues and rejects these arguments for the various reasons stated in this opinion.

C. Court's Factual Findings

1. Introduction

This proceeding is a combined fairness and compliance hearing for the purpose of the Court determining: (a) Whether a Revised Third Amendment to the Settlement Agreement entered into in this Mount Laurel affordable housing declaratory judgment action is fair and reasonable to, and adequately protects the interests of, low and moderate income households in the region or, put another way, whether the initial Amended Settlement Agreement which the Court previously determined was fair and reasonable to, and adequately protected the interests of, such households, remains fair and reasonable and continues to protect the their interests; and (b) Whether the

Township has complied with its Mount Laurel obligations by implementing the Revised Third Amendment to the Settlement Agreement.

2. The Declaratory Judgment Action and Amended Settlement

On July 2, 2015, the Township filed the within affordable housing declaratory judgment action (the "DJ Action") pursuant to In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV").

In December, 2017, the Township and FSHC entered into a settlement agreement to settle the within DJ Action which was dated December 12, 2017, and last signed on December 13, 2017 (the "initial Settlement Agreement").

As is the case with all settlement agreements and amendments to settlement agreements regarding Mount Laurel affordable housing litigation, the initial Settlement Agreement was subject to approval by the court after a fairness hearing in accordance with Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996). The purpose of a fairness hearing is for the court to determine whether the settlement agreement is fair and reasonable to, and will adequately protect the interests of, low- and moderate-income households in the region. Morris County; East/West Venture.

Prior to the fairness hearing on the initial Settlement Agreement, the Township and FSHC entered into an Amended Settlement Agreement dated February 5, 2018, last signed on February 7, 2018 (the "Initial Amended Settlement Agreement").

The Initial Amended Settlement Agreement included the following sites/proposed developments as mechanisms to address the Township's Mount Laurel affordable housing obligation: (a) the "Beaver Brook Homestead site" (a municipally sponsored 100% affordable housing development consisting of 66 affordable units); (b) the "Marookian site" (a municipally sponsored 100% affordable housing development consisting of 84 affordable units); (c) the "LeCompte site" (a municipally sponsored 100% affordable housing development consisting of 89 affordable units); (d) the "Headley Farm site" (an inclusionary development to be developed by CRC Communities ("CRC"), which owns the site, with a 26% set aside yielding 104 affordable units out of a total of 400 units); and (e) the "108 Alton Place site" (an inclusionary development to be developed by Kerwin & Savage partnership ("K&S"), which has a contract to purchase the site, with a 20% set aside yielding 28 affordable units out of a total of 140 units). The

aforementioned sites / developments are summarized in charts found in paragraphs 8 and 9 of the Initial Amended Settlement Agreement.

The Initial Amended Settlement Agreement also addressed priority for sewer and water allocation among the sites and proposed developments. Paragraph 11.a.iii of the Initial Amended Settlement Agreement, found on page 10, provides in part as follows:

> The Township has obtained court approval of the Marookian project as part of its compliance plan (similar to what the Township obtained for the Beaver Brook Homestead site). As such, the Township will request prior to the Fairness Hearing a water reservation for the Marookian site from the Town of Clinton which it should be entitled to under the terms of the Town of Clinton ordinance governing water reservation agreements. Beyond this water capacity, there is presently not enough water to supply the development of the Headley Farm Estate, 108 Alton Place, and Lecompte sites. However, any remaining capacity will be requested from the Town of Clinton and allocated to the Lecompte project first and then to the Headley project to be supplemented with the installation of an onsite well providing a community or production water supply which may be incorporated into the existing Town of Clinton system which abuts the property. The Headley site is being given priority with regard to water capacity over the 108 Alton Place project as the Headley project will yield more affordable housing units than the 108 Alton Place and water infrastructure has already been installed on site. Water infrastructure is adjacent to both the Marookian, 108 Alton Place, and LeCompte sites making water readily available once capacity becomes available. The special master will assist the Township in attempting to obtain water for the affordable housing projects included in the settlement plan, with the Lecompte project having first priority, the Headley project having second priority, and the 108 Alton Place project having third priority.

On March 19 and 20, 2018, the Court conducted a contested fairness hearing on the Initial Amended Settlement Agreement and, on April 3, 2018, the Court entered an order (the "April 3, 2018 Order") approving the Initial Amended Settlement Agreement as fair and reasonable to, and adequately protecting the interests of, low- and moderate-income households in the region. The April 3, 2018 Order also preliminarily approved the Township's Mount Laurel affordable housing compliance plan.

On December 20, 2018, the Court conducted a contested compliance hearing to determine whether the Township's implementation of the Initial Amended Settlement Agreement was in compliance with the Township's Third Round Mount Laurel affordable housing obligations. On January 9, 2019, the Court entered a final judgment of compliance and repose (the "JOCR") in favor of the Township, memorializing the Township's compliance with its Third Round Mount Laurel affordable housing obligations. Ordering paragraph 2 of the JOCR approved the 2018 Housing Element and Fair Share Plan (the "2018 HE&FSP") adopted by the Clinton Township

Planning Board and endorsed by the Township and adjudged and declared that it satisfied the Township's Mount Laurel obligations.

The Initial Amended Settlement Agreement is incorporated by reference in the 2018 HE&FSP and, in fact, is included as Appendix A-1 in the 2018 HE&FSP.

On January 30, 2020, the Appellate Division affirmed the trial court's April 3, 2018 order approving the Initial Amended Settlement Agreement and the January 9, 2019 JOCR. See, In re: Township of Clinton Compliance with Third Round Mount Laurel Affordable Housing Obligations, 2020 WL 476888 (App. Div. 1/30/2020) (which was an appeal filed by intervening defendant Clinton 94, an objector at the fairness hearing and at the compliance that had a contract to purchase a site that was not included in the Initial Amended Settlement).

3. The Second Amendment to the Settlement Agreement

On June 15, 2020, the Township and FSHC entered into a second amendment to the settlement agreement (the "Second Amendment to the Settlement Agreement").

4. The Third Amendment to the Settlement Agreement

On May 6, 2021, before a fairness hearing was held on the Second Amendment to the Settlement Agreement, the Township and FSHC entered into third amendment to the settlement agreement (the "Third Amendment to the Settlement Agreement" or the "Third Amendment") dated May 2, 2021, last signed on May 6, 2021. The Third Amendment incorporates and supersedes the Second Amendment to the Settlement Agreement.

The Third Amendment removed the municipally sponsored LeCompte 100% affordable housing site (consisting of 89 affordable units) as a mechanism to address the Township's Mount Laurel affordable housing obligation) by reason of the site becoming no longer available due to the fact that CIS, the proposed 100% affordable housing developer of the site, was unable to reach an agreement to purchase the site from the owner. The Third Amendment replaced same with the following mechanisms: (a) the "Ingerman site" which is an inclusionary development with a 55% set aside yielding 80 affordable units out of a total of 146 units; (b) the "Grayrock Road site" which is an inclusionary development with a 20% set aside yielding 6 affordable units out of a total of 30 units; and (c) three municipally sponsored special needs affordable housing bedrooms to be created in the Township. The three mechanisms would produce 89 affordable housing units which are the number of units that would have been produced had the LeCompte site been developed.

The Third Amendment was submitted to the Court via eCourts on May 7, 2021 with a request that the Court find apparent merit in the Third Amendment and schedule a combined fairness and compliance hearing.

On May 13, 2021, the Court entered an order finding apparent merit in the Third Amendment and scheduling a combined fairness and compliance hearing (the "May 13, 2021 Order").

Paragraph 1 of the May 13, 2021 order scheduled a combined fairness and compliance hearing (the "hearing") for September 20, 2021 at 9 am. A notice from the court clerk re-scheduled the hearing for September 23, 2021 at 2 pm.

On September 23, 2021, the hearing was opened by the Court and the Court then carried the hearing without need for further notice to November 29, 2021 to allow the Township to attempt to settle an objection to the Third Amendment submitted by CRC, the developer of the 26% set aside inclusionary development known as "Headley Farms", regarding altering the water and sewer priority that had been established in the Court approved initial Amended Settlement Agreement.

5. <u>The Revised Third Amendment to the Settlement Agreement</u>

On October 11, 2021, the Township and FSHC entered into a revised third amendment to the settlement agreement (the "Revised Third Amendment to the Settlement Agreement" or the "Revised Third Amendment").

On October 18, 2021, the Revised Third Amendment was submitted to the Court via eCourts with a request that the Court approve the Revised Third Amendment as fair and reasonable to, and adequately protecting the interests of, low- and moderate-income households in the region at the upcoming and already scheduled hearing.

Although the Court's review was primarily focused on the modifications in specific portions of the Township's overall plan to provide a satisfactory course of fairness and compliance to satisfy its constitutional mandate to provide affordable housing, the Court has heard testimony and has considered whether mechanisms of satisfying the Township's Plan require modification for the Revised Third Amendment to remain fair and reasonable.

In May of this year, at the request of Plaintiff's counsel and Counsel for the FSHC, the Court entered an Order Finding Apparent Merit and Scheduling a Combined Fairness and Compliance Hearing in this matter.

The Hearing was conducted on November 29, 2021. Testimony in support of the Plaintiff's position on the Revised Third Amendment to Settlement Agreement was offered by Thomas Behrens, the Township's Professional Planner. No other witnesses were offered by the Plaintiff. The Objector, K&S, offered testimony from two of its partners, Michael Savage and Walter Wilson. Both offered testimony relating primarily to issues of public water and sewer availability within the Township and relating to existing infrastructure (water and sewer lines) that exist at the 108 Alton Place project site. The testimony of the Partnership's witnesses was supported by various documents marked into evidence as Exhibits O-1 through O-17.

The Revised Third Amendment replaces and supersedes the Third Amendment in its entirety but is identical to it with three exceptions: (a) the Revised Third Amendment restores the priority of the Headley Farms site for water and sewer ahead of the 108 Alton Place site; (b) the Revised Third Amendment increases the number of total units on the Grayrock Road site from 30 to 36 and increases the number of affordable units to be generated on that site from 6 to 7 units; and (c) the Revised Third Amendment decreases the number of special needs beds from 3 to 2 by reason of the increase in the number of affordable units that will be produced on the Grayrock Road site.

Various exhibits were submitted on behalf of the Plaintiff and Objector, K&S and accepted into evidence as recognized in Point IV of this opinion.

There was no testimony provided on behalf of any other party.

6. Summary of K&S Testimony and its Theory of the Case

K&S offered testimony at the most recent hearing demonstrated that the partners of K&S had performed an "investigation, discovered facts and received documents through OPRA requests and from generally available public records" after the entry of the Final Judgment of Compliance and Repose and had embarked upon considerable efforts to determine what the current status of public water and sewer capacity for affordable housing in Clinton Township looks like.

The K&S witnesses offered testimony to support their theory that the Township of Clinton (Township") and/or the Clinton Township Sewer Authority ("CTSA") have sufficient sewer capacity allocated from the Town of Clinton Sewer Plant to provide all or substantially all required sewer service to Alton Place and likely to every affordable site identified in the Settlement Agreement dated February 5, 2018 (the "2018 Agreement") and the Revised Third Amendment. K&S also alleged that there is substantial sewer capacity currently available in the Town of Clinton

Sewer Plan for additional allocation to the Township of Clinton for use in providing affordable housing.

K&S offered testimony to convince the Court that Alton Place possesses immediately available physical infrastructure allowing sewer service for construction of its proposed units, including affordable units. K&S contended that the Town of Clinton Water Department ("Water Department") has sufficient current capacity to provide all or substantially all water service as required by Alton Place and likely ever other affordable site identified in the revised Third Amendment and the 2018 Agreement, and has previously approved a water reservation to K&S. Alton Place also claims that it possesses immediate available physical infrastructure to allow for water service to service its proposed units, including any affordable units.

K&S theorizes that to the extent of any deficiencies in current allocations of either sewer or water from the Town of Clinton Sewer Department ("Treatment Plant") or Water Department necessary for construction of all affordable sites, both the Treatment Plant and the Water Department possess sufficient available capacities to provide sewer and/or water service to all such affordable sites, as made clear from the information contained in Exhibits O-1 through O-17.

K&S asserts that if the Court accepts its factual premise, then its property should not be subject to a durational adjustment as provided in the Third Amendment and the 2018 Agreement. Further, K&S posits that Alton Place should be designated as a "priority site" as set forth in N.J.A.C. 5:93-5.3(b), both as to its inclusion in the Township's Affordable Housing Plan and as to allocations of sewer and water capacity by the applicable authorities for use in K&S obtaining site plan approvals and construction of units.

K&S also asks the Court to find that not only must the Alton Place site not be subjected to a durational adjustment, it must be included in the Revised Third Amendment as a "priority site." In this regard, N.J.A.C.. 5:93-5.3(b) reads, in applicable part:

> "… [The Court] shall give *priority* to sites where infrastructure is currently or imminently available." (Emphasis Supplied)

D. <u>Court's Fairness Determination</u>

The combined fairness and compliance hearing was conducted by the Court to determine: (a) whether the Revised Third Amendment to the Settlement Agreement is fair and reasonable to, and adequately protects the interests of, low and moderate income households in the region or, put another way, whether the initial Amended Settlement Agreement which the Court previously

determined was fair and reasonable to, and adequately protected the interests of, such households, remains fair and reasonable and continues to protect the their interests; and (b) whether the Township has complied with its Mount Laurel obligations by implementing the Revised Third Amendment to the Settlement Agreement.

As to determining the fairness of the Revised Third Amendment and whether the initial Amended Settlement Agreement which the Court previously determined was fair and reasonable to, and adequately protected the interests of, such households, remains fair and reasonable and continues to protect their interests, the Court engaged in the 5-part analysis required by East/ West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996). The Court was guided in that process by the report of the independent expert Court Master who also analyzed the evidence, listened to the testimony, and offered opinion and guidance to the Court concerning the issues before the Court.

The Court agrees with the master's finding set forth in his November 23, 2021 Master's report that that the modifications to the Initial Amended Settlement Agreement provided for in the Revised Third Amendment do not detract from the Initial Amended Settlement Agreement. In fact, the Court finds that the Initial Amended Settlement Agreement, and as modified in the Revised Third Amendment, continues to be fair and reasonable to, and adequately protects the interests of, low and moderate income households in the region. The Court also agrees with the Master's application of the East/West Venture 5-part analysis as set forth in the November 23, 2021 Master's report and it adopts it as well as its own findings and analysis as follows:

a. Consideration of the Number of Affordable Units Being Constructed: The Township's rehabilitation obligation, prior round obligation, and third round obligation (i.e., cumulative 1987-–2025 obligation) and the number of affordable units to be constructed under the Township's compliance plan are unchanged in the Revised Third Amendment and amended HE&FSP.

b. The Methodology by which the Number of Affordable Units Provided is Derived: The methodology by which the Township's rehabilitation obligation, prior round obligation, and third round obligation had been determined are not changed under the Revised Third Amendment and amended HE&FSP.

c. Other Contributions to Affordable Housing: In addition to the provisions that contribute to and protect the interests of low- and moderate-income households contained in

the February 5, 2018 Court approved Initial Amended Settlement Agreement to be continued per the Revised Third Amendment, the Township has agreed to additional requirements that contribute to and protect the interests of low- and moderate-income households, including the significant expansion of the recreational, safety and provisions in support of children with disabilities for the residents of the proposed Ingerman and Marookian developments and the general public (see amendments to paragraph 10.d in the Revised Third Amendment).

d. Other Components of the Settlement that Contribute to the Satisfaction of the Constitutional Obligation: The Revised Third Amendment establishes more precise and measurable milestones, deadlines and remedies for failure to meet these milestones and deadlines related to the Pirhl Marookian development and the Ingerman Route 31 development, as well as the 2 bedrooms of special needs housing compliance mechanism.

e. Other Factors that May Be Relevant to the Fairness of the Settlement: Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 367-368 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), explained that "… it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents." The Court notes that FSHC, which is the premier affordable housing advocate in that State and is an intervening party defendant in this case, has concluded that the Revised Third Amendment is fair and reasonable to, and protects the interests of, low and moderate income households in the region. The Court has exercised its independent duty to review the Revised Third Amendment and is satisfied with it but also assigns weight to the fact that FSHC is a party to it and supports it. Conversely, the Court is left generally unconvinced with the objections that the Kerwin–Savage partnership ("K&S") has lodged against the Third Amendment for the reasons set forth below. The Court is also mindful that the K&S witnesses' testimony and the theory of their case may be influenced by self-interest, but in any event, it contains flaws and fallacies which the Court will identify in this opinion.

The Court notes that it has already reviewed the Amended Settlement Agreement dated February 5, 2018 at a Fairness Hearing. In fact, the Township has previously been granted a final judgment of compliance and repose pursuant to that earlier agreement which final judgment was upheld by the Superior Court, Appellate Division in 2020 over the objection of another objector, Clinton 94.

In the Court's view, the record before the Court demonstrates that the 2021 Agreement is an amendment to and, in fact, it substantially improves upon the terms of the 2018 Agreement. That is, it removes a site that all parties agree no longer creates a realistic opportunity for the construction of affordable housing and replaces it with sites that unquestionably do create the required realistic opportunity. This fact alone should be the crux of the Court's review of the 2021 Agreement.

The 2018 Agreement included credit for an eighty-nine (89) unit development on a site called the "LeCompte site" which was proposed to be developed as a municipally-sponsored, 100% affordable housing development. This development was proposed to be developed by Community Investment Strategies (CIS) as part of a Highlands Center designation. CIS was ultimately unable to close on the property and thus the development did not move forward.

The 2021 Agreement removes the LeCompte site from the compliance plan and replaces it with three new mechanisms to make up for the difference. They are briefly stated as follows:

First, the Ingerman site, located at Block 70 Lots 6 and 6.01 which is proposed to be developed as a mixed-income tax-credit development with 144 total units of which 80 (55 percent) are to be reserved as affordable housing. The Ingerman site unquestionably creates a realistic opportunity for the construction of affordable housing under N.J.A.C. 5:93-5.3. The site meets the site suitability criteria – aka, the four "ables" – and notably has not only received site plan approval, but has applied for Low-Income Housing Tax Credits. When compared to the LeCompte site, which this site replaces 80 of the 89 units, the Court finds that it far and away exceeds it in realistic opportunity.

Second, the Grayrock site located at Block 77.01 Lots 3 and 4 is proposed as an inclusionary development with thirty-six (36) total units and a 20% set-aside of 7 affordable housing units. This site also meets the site suitability criteria outlined in N.J.A.C. 5:93-5.3.

Third, the Township has agreed to sponsor two (2) group home/special needs bedrooms in the Township.

In the Court's view, these three replacement mechanisms clearly create a realistic opportunity for the construction of affordable housing and represent a better and higher likelihood option than the LeCompte site, which was previously approved by the Court.

Additionally, the Court notes the following which is set forth in the Master's November 23, 2021 report, all of which the Court finds are other factors that are relevant, and lend support, to the finding of fairness of the Revised Third Amendment:

a. The developer of the Ingerman Route 31 site has applied to the Housing and Mortgage Finance Agency (the "HMFA") for Low-Income Housing Tax Credit ("LIHTC") funding. In accordance with the Third Amendment, in the event any funding award decision is for less than 80 affordable units, the Township is required, within three (3) months of such funding decision, to fund and provide a realistic opportunity for the development of affordable units to offset any such shortfall.

b. In accordance with the Third Amendment, in the event the Ingerman Route 31 site does not receive LIHTC funding in the 2021 funding round or does receive funding but is not under construction by April 3, 2023, the Township is required to demonstrate the provision of a realistic opportunity for the development of the 80 affordable units contemplated on the Ingerman Route 31 site.

c. In accordance with the Third Amendment, in the event that the Ingerman Route 31 site does not receive 2021 LIHTC funding in the 2021 funding round or does receive funding but does not have access to adequate sewer and water service, or is not under construction by April 3, 2023, and the Township has not produced a realistic opportunity for the development of 80 affordable units (per above) without a durational adjustment, the Township agrees that it will be required, without further order of the Court, to comply with N.J.A.C. 5:93-4.3(c)3 and 4 regarding inclusion in its HPE&FSP of sites approved for sewer and water facilities but not already designated for the development of affordable housing pursuant to the HPE&FSP.

d. Pirhl's Marookian site was awarded 9% LIHTC by the HMFA in the 2020 funding round for a municipally sponsored, 84-unit, 100% affordable family rental development. In accordance with the Revised Third Amendment, in the event the project is not under construction by July 31, 2022, the Township will be required to take all necessary steps to provide and demonstrate the provision of an alternative compliance mechanism that provides a realistic opportunity for the development of the 84 affordable units (and 58 rental bonus credits) currently anticipated at the Marookian Site.

Further, the Court finds that under the standards established in Allen-Deane v Bedminster, 205 N.J. Super. 87, 113-116 (Law Div. 1985), and as subsequently adopted by the Council on

Affordable Housing ("COAH") in its Second-Round rules, specifically, N.J.A.C. 5:93-5.3(b) and -5.6(b), and for reasons set forth in this opinion, the Court finds that Township's Mount Laurel affordable housing compliance plan, after revision in accordance with the Revised Third Amendment, continues to represent a realistic opportunity to create affordable housing.

The Court agrees with the opinion of the Master as set forth in his November 23, 2021 Master report that (a) the modifications to the Township's compliance plan by the Revised Third Amendment (i.e., the elimination of the LeCompte site and the substitution of the Ingerman Route 31 and Grayrock Road and the two special needs beds in lieu thereof), (b) the prioritization of the durational adjustment sites per the Revised Third Amendment, and (c) the 2021 Amendment to the HPE&FSP, continue to provide a realistic opportunity for the development of affordable housing as proposed. The Court also agrees with the Master's opinion set forth in his November 23, 2021 Master report that the Township has sufficiently documented its claim that its compliance plan, as amended by the Revised Third Amendment and the 2021 HPE&FSP addresses in accordance with COAH Second-Round rules, its Rehabilitation Obligation, Prior Round Obligation and Third Round Obligation.

The Court notes the holding of the Allen-Deane opinion that, "[a]bsent a builder's remedy, a municipality should be given palpable deference under Mount Laurel to choose any reasonable combination of realistic sites or realistic mechanisms that will produce the required result – the likelihood" of creating affordable housing. 205 N.J. Super. at 114. As Allen-Deane further held, a municipality "should not be forced to decide which course is most realistic and then be forced to select that course." Id. "Rather, the court should focus upon the compliance package that the [municipality] presents by examining each of its parts and its overall effect to determine whether the package is realistic." Id. The Court has reviewed the Township's amended compliance plan in this vein and, for the reasons set forth in this opinion, rejects objector K&S' attempts to force the Township to treat the 108 Alton Place site more favorably than provided for in the Initial Amended Settlement Agreement and in the Revised Third Amendment. In fact, although the Special Master has recommended that the Court consider ordering a variant to the priority order for utility (sewer and water) availability, the Court, in deference to the Township, will adopt the priority order proposed in the Township Plan and as reflected in its agreement with the FSHC.

With respect to COAH's Second-Round rules, N.J.A.C. 5:93-5.3(b) and -5.6(b) provide that all sites in a compliance plan must be "available, suitable, approvable and developable." In

this regard, the Court agrees with the opinions rendered by Township planning expert Tom Behrens in this testimony during the hearing and finds that the Ingerman Route 31 site and the Grayrock Road site, which together will replace the LeCompte site per the Revised Third Amendment, are available, approvable, developable and suitable for the following reasons:

a. Ingerman Route 31 site:

(1) Available - The site is available as it is under contract by 100% affordable housing developer Ingerman Route 31 site, with no known recorded encumbrances which would prevent the proposed development which is a 146-unit multi-family development with a 55% set aside so that 80 affordable units would be provided.

(2) Approvable – The site is approvable as it was rezoned as the AH-9 Affordable Housing District via Ordinance No. 1154-2021 adopted on June 9, 2021 and, in fact, the 146-unit inclusionary development was granted preliminary site plan approval by the Planning Board on August 12, 2021 via Resolution No. 2021-08. The Township anticipates that the development will receive all other necessary approvals including final site plan approval from the Planning Board.

(3) Developable - The site is developable as the westerly portion of the property is relatively flat and unimpacted by environmental constraints, the site has access to water and sewer infrastructure and other necessary utilities due to its location along a developed portion of Route 31, and the site received a water allocation from the Town of Clinton and has some of the necessary sewerage capacity it needs from the Clinton Township Sewerage Authority (the "CTSA"), and the remainder of which will be purchased from private entities if the developer is not able to obtain the remainder from the CTSA.

(4) Suitable - The site is suitable as it is located in a developed portion of the community situated on Route 31 with prime regional access. The developable portion of the site lacks environmental constraints. The development will have minimal negative impacts to surrounding development and features a significant buffer from existing single-family development to the southeast.

b. Grayrock Road site:

(1) Available – The Grayrock Road site consists of three lots and is available, with Block 77.01, Lots 2 and 4 (tract 1) being owned by the same entity, and Lot 3 (tract 2) being owned by a separate entity, with no known recorded encumbrances which would prevent

the proposed development which is a 36-unit multi-family development with a 20% set aside so that 7 affordable units would be provided. Due to the separate ownership of tract 2, the recently adopted AH-10 Zoning for the site permits independent development of the two tracts, with 3 affordable units on tract 1 and 4 affordable units on tract 2 (as tract 2 is larger than tract 1).

(2) Approvable – The Grayrock Road site is approvable as it was rezoned as the AH-10 Affordable Housing District via Ordinance No. 1159-2021 adopted October 13, 2021 to facilitate the inclusionary development of the site. No site plan application has yet been submitted to the Planning Board for either tract.

(3) Developable - The site is developable as the majority of the site has already been disturbed and developed with several principal buildings and paved areas, and the site lacks environmental constraints. The site is centrally located in the community at the crossroads of Routes 22, 31 and 78 with access to water and sewer infrastructure. The Grayrock Road site is a durational adjustment site as it requires water and sewer capacity which currently appears to not be available.

(4) Suitable – The site is suitable as, again, the site is centrally located in a developed portion of the community. The site serves as a transitional area between single-family residential neighborhoods to the west and the Township's C-1 Commercial Zone. The proposed inclusionary development is compatible with surrounding land uses. The site lacks environmental constraints and has access to the necessary utilities. The site is located within walking distance to the Township's public bus park and ride facility located to the east on Center Street. Finally, the site is well buffered from surrounding land uses.

E. <u>Court's Analysis of Various Other Legal Issues Raised in this Proceeding</u>

As a result of the Court's Factual Findings and Issues presented, the Court must address various legal issues that were raised directly and tangentially by the parties. The Court will address those issues below.

1. Applicability of Doctrines and Concepts of Res Judicata and Collateral Estoppel to this Matter

One interesting "piece" of testimony that was elicited during this Hearing was when one of the Objector witnesses testified that the Objector was fully aware of the issues and defenses that it has raised in this Hearing at the time of the original Fairness Hearing.[7] In addition, the witnesses

[7] And during the Hearings on the Amendments to the Agreement.

testified that despite its knowledge of the basic facts, circumstances and legal issues when it was raised in those prior hearings, it elected not to raise the issue at that time.

The testimony offered by the Objector, in the manner that it was presented, raises an issue as to whether the Objector should be barred from raising the issues that it has raised here by virtue of the application of either the Doctrines of Res Judicata or Collateral Estoppel.

K&S and their counsel appeared on behalf of K&S during the 2018 fairness hearing on the initial Settlement Agreement. In fact, K&S submitted a January 29, 2018 letter with a summary of anticipated testimony to the Court objecting to the initial Settlement Agreement on behalf of K&S, alleging that there was excess sewerage capacity in the Town of Clinton sewage treatment plant so that none of the sites in the Township's compliance plan should be designated as durational adjustment sites. K&S, however, submitted no objections to the initial Amended Settlement Agreement which designated the 108 Alton Place site as a durational adjustment site and gave the site last priority for sewer and water capacity among the affordable housing sites that were approved. Further, K&S's counsel appeared on behalf of K&S at the 2018 compliance hearing and again he raised no objections. In other words, not only did K&S fail to object during the two prior hearings but it also failed to appeal from the entry of the Final Judgment.

Those facts raise an issue as to whether the legal doctrines of *res judicata* and/or collateral estoppel should be applied so that K&S be precluded from raising its new theories and issues at this late stage in the matter. *Res judicata*, or claim preclusion, "'refers broadly to the common-law doctrine barring relitigation of claims or issues that have already been adjudicated.'" Tarus v. Borough of Pine Hill, 189 N.J. 497, 520 (2007) (quoting Velasquez v. Franz, 123 N.J. 498, 505 (1991)). *Res judicata* bars repetitive litigation when there has been a final judgment by a Court of competent jurisdiction and the causes of action, issues, parties, and relief sought are substantially similar. Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989). Under both federal and state law, claim preclusion requires its proponent to show:

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
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> McNeil v. Legislative Apportionment Comm'n of N.J., 177 N.J. 364, 395 (2003) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991)), cert. denied, 540 U.S. 1107 (2004)).

"Claim preclusion applies not only to matters actually determined in an earlier action, but to all relevant matters that could have been so determined." Watkins, 124 N.J. at 412. "[C]auses of action are deemed part of a single 'claim' if they arise out of the same transaction or occurrence. If, under various theories, a litigant seeks to remedy a single wrong, then that litigant should present all theories in the first action. Otherwise, theories not raised will be precluded in a later action." Id. at 413. "Where the second action is no more than a repetition of the first, the first lawsuit stands as a barrier to the second. 'The rule precludes parties from relitigating substantially the same cause of action.'" Culver, 115 N.J. at 460 citing Kram v. Kram, 94 N.J. Super. 539, 551 (Ch.Div.), rev'd on other grounds, 98 N.J. Super. 274 (App.Div.1967), aff'd, 52 N.J. 545 (1968).

Collateral estoppel, or issue preclusion, "represents the 'branch of the broader law of *res judicata* which bars re-litigation of any issue which was already actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.'" Tarus, 189 N.J. at 520 (quoting Sacharow v. Sacharow, 177 N.J. 62, 76 (2003)). If an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. See State v. Redinger, 64 N.J. 41, 45 (1973). To foreclose re-litigation of an issue, the party asserting the collateral estoppel bar must show:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to a prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
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> First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (quoting Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005)).

Although collateral estoppel and *res judicata* ostensibly are separate constellations in the judicial firmament, our Supreme Court has observed that both doctrines serve the "important policy goals" of "'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness.'" Hennessey, 183 N.J. at 599 (quoting City of Hackensack v. Winner, 82 N.J. 1, 31-33 (1980)).

In order to apply the *res judicata* doctrine, there must be "[…] substantially similar or identical causes of action and issues, parties, and relief sought. Culver v. Insurance Co. of North America, 115 N.J. 451, 460 (1989) (citing Eatough v. Board of Medical Examiners, 191 N.J. Super. 166, 173 (App. Div. 1983); Constant v. Pacific Nat'l Ins. Co., 84 N.J. Super. 211, 216 (App. Div.

1964). Thus, *res judicata* is still applicable unless the causes of actions and issues are not substantially the same. Culver, 115 N.J. 451, 461 (1989). "The doctrine of res judicata bars not only claims that were brought in previous actions, but also claims that could have been brought." In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008) (citation omitted).

Both federal and New Jersey courts have held that in order to apply *res judicata* or claim preclusion, the following three circumstances must be present: (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." Id. at 225 (citation omitted). Further, in determining whether the two causes of actions are the same, the court must decide:

> (1) whether the acts complained of and the demand for relief are the same (that is whether the wrong for which redress is sought is the same in both actions); (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and (4) whether the material facts alleged are the same.

Id. 461-62, 405. (citations omitted).

New Jersey's long-standing "entire controversy doctrine" requires joinder in one action of all legal and equitable claims related to a single underlying transaction; this tenet encompasses virtually all causes, claims, and defenses relating to a controversy, including counterclaims and cross-claims and it is not necessary that the claims share any commonality of legal issues, as long as the distinct claims are aspects of a single larger controversy because they arise from interrelated facts. See Manhattan Woods Golf Club v. Arai, 312 N.J. Super. 573 (App. Div.), cert. den. 156 N.J. 411 (1998); see also R. 4:30A.

The entire controversy doctrine embodies the principle that "adjudication of a legal controversy should occur in one litigation in only one court." Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591 (2015). The entire controversy doctrine encompasses not just claims within the scope of the prior judgment, but all claims and parties that a party could have joined in a prior case based on the same transaction or occurrence. Cuilver v. Insurance Co. of North America, 115 N.J. 451, 463 (1989). The purposes of the entire controversy doctrine are: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay. In re Estate of Gabrellian, 372 NJ. Super. 432 (App. Div. 2004).

In determining whether a subsequent claim should be barred under this doctrine, "the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transactions." Wadeer, supra, 220 N.J. at 595. "It is the core set of facts that provides the link between distinct claims against the same parties and triggers the requirement that they be determined in one proceeding." Id. at 605. A court considering application of the entire controversy doctrine must be sensitive to the possibility that a party has purposely withheld claims from an earlier suit for strategic reasons or to obtain "two bites at the apple" and should not permit itself to be made a party to such strategic choices that wreak unfair results upon others. Hobart Bros. Co. v. National Union Fire Ins. Co., 354 N.J. Super. 229 (App. Div. 2002).

The Objectors argue that even though they were cognizant of the issues that they have raised in this Hearing at the time of the original Hearings, issues concerning whether the Township's Affordable Housing Plan is realistic and achievable should always be considered open issues during the course of the Plan unless and until the affordable housing that is slated to be constructed is actually constructed. Further, K&S claims that there have been substantial changes in the "underlying facts" that should cause the Court to reevaluate whether the original Fairness analysis that was offered by the Township and adopted by the Court is still viable. In that regard, K&S questions the "availability, approvability, developability and sustainability" of the other affordable housing sites while touting the attributes of its own project when analyzed by those criteria.

The Court finds that in this case it is clear that the issues raised by the Objector involve "the same parties or their privies" and that this Fairness Hearing is a suit or matter based upon the same cause of action. In that regard, two of the three prongs of the *Res Judicata* and Collateral Estoppel Doctrines have been met.

The remaining prong involves whether a final judgment on the merits on the issue in the prior suit was rendered by the Court. In the Court's view, that "prong" of the test has not been met for the reasons set forth below.

In the original Fairness Hearing the Court ultimately found that the Clinton Township Plan was fair and reasonable and in the interests of the affordable housing community. The Court's ruling ultimately did include the issuance of a Judgment of Compliance and Repose in favor of the Township. In this Hearing, however, the Township seeks to modify its Affordable Housing Plan and, in so doing, modify the Judgment of Compliance and Repose.

Additionally, the nature of a "fairness" finding by the Court may be subject to review by the Court under certain circumstances, including in such instances where there are changed circumstances. If it were determined that there was newly discovered availability of utilities (sewer, water, etc.), those circumstances may constitute a change that would warrant the introduction of testimony and evidence on the subject.

The Court cannot lose sight of the ultimate goal behind the process. The laudable public policy that is served in these cases is to promote and facilitate the construction of affordable housing in accordance with the principles espoused in the cases that comprise the Mt. Laurel Doctrine. The Court has an interest in making sure that each municipality provides a plan that complies with its constitutional obligation to provide its fair share of affordable housing. In so doing, the Court must make sure that the Municipal Plan is realistic and reasonably achievable. That determination has been shown to be a fluid concept in that a number of circumstances may change over time that makes a particular development, project or a particular aspect of a municipality's approved "Fair Share Plan" that was once realistic to become unrealistic. Those charges may cause a municipality's Plan to be no longer realistic and reasonably achievable. A municipality that is provided a Judgment of Repose is generally given immunity from suit in this Third Round until July, 2025. Surely a municipality which has been awarded repose but then learns that circumstances change that demonstrate their Plan to become in a need for change in order to remain realistic and viable shouldn't be able to sit back and retard the production of affordable housing simply because they have been awarded such immunity. While the Judgment of Repose may shield it from "builders remedy suits" it does not immunize them challenges that allege that their Plan or aspects of their Plan have changed so substantially that it is no longer viable.

When those circumstances arise, it is this Court's obligation to consider the circumstances to determine if changes to the "Fair Share Plan" are warranted or required in order for the municipality to meet its Constitutional obligations.

In the Court's view, the issues raised here by the Objectors fall into that category. The Objector should be able to present its case if it can demonstrate those circumstances. While it is certainly unfortunate and ill-advised that the Objector failed to raise the issue at the original Fairness Hearings, in the Court's view, the Objector should not be precluded from raising this issue now.

2. Did K&S Sustain its Burden for the Court to Order the Relief Requested?

The primary substantive issue that is before the Court in this matter is whether the Objectors have come forward with evidence to sustain their burden of proof with regards to the issues that they have raised. Specifically, the Objectors ask that the Court find that (1) there are sufficient quantities of available sewer capacity and water availability so that the Court should relieve the various affordable housing developers from their durational adjustment classification, and by so finding, declare that with the availability of those utilities that the Objectors' projects can move forward; and (2) that the Court find that other affordable housing projects in the Township's Affordable Housing Plan, namely Ingerman, Grayrock and CRC Headley be determined to be unrealistic and unachievable in the short term so that the priority of affordable housing projects that is contained within the Township's Plan be adjusted so that the Objector's Project, known as the 108 Alton Place Project, can move forward as a top or high priority site.

Also, in that regard, at the Fairness Hearing previously held by this Court, it was determined that the Agreement entered into between the FSHC and the Township which memorialized the Township's Affordable Housing Plan was fair, reasonable and in the best interests of the community in need of affordable housing. Further, the Court determined that the Township's Affordable Housing Plan, as reflected in the agreement with FSHC, met the Township's constitutional obligation to provide affordable housing subject, of course, to compliance with the terms and conditions of the agreement.

The modifications that are proposed by the Township in its Third Amended Agreement with the FSHC are, in the Court's view, relatively straight forward and, for reasons previously discussed, should be approved. Notwithstanding that finding, K&S has raised "colorable arguments" that must be addressed. As a result of those circumstances, in the Court's view, it was the Objector's burden to rebut and refute the Township's Affordable Housing Plan as it is now constituted.

First, notwithstanding a statement made by a K&S witness to the contrary, the Township does not bear the burden of proving beyond a reasonable doubt that its compliance plan will produce the number of affordable housing units proposed. Instead, the Mount Laurel cases require only that the Township show a "likelihood" that its compliance plan will produce the affordable housing. Allen-Deane, 205 N.J. Super. at 114.

Moreover, it is long standing New Jersey law that the burden of proof initially is a burden of producing evidence to make a prima facie case to obtain the relief the party seeks but, once the party makes its prima facie case, the burden of proof shifts to any party challenging the relief sought. Hughes v. Atlantic City & S.R. Co., 85 N.J.L. 212, 216 (E&A 1914). As explained by the court in Kappish v. Lotsey, 76 N.J. Super. 215, 224-225 (Cty. Ct. 1962), burden of proof applies to the parties in litigation not by their party designation (i.e., plaintiff or defendant) but by "their actual relative position in the litigation as it proceeds." Further, where a party's case depends on proving a negative – K&S's case here depends on proving a negative, namely, that the Third Amendment is not fair and reasonable and that the Township's amended compliance plan does not continue to present a realistic opportunity to provide affordable housing – the burden of proofs falls on the party averring the negative. Chase Manhattan Bank v. O'Connor, 82 N.J. Super. 382, 387 (Chan. Div. 1964). Again, the Court's ruling on the burden of proof is consistent with long standing New Jersey law that the burden of proof initially is a burden of producing evidence to make a prima facie case to obtain the relief the party seeks but, once the party makes its prima facie case, the burden of proof shifts to any party challenging the relief sought. Hughes v. Atlantic City & S.R. Co., 85 N.J.L. 212, 216 (E&A 1914).

As the Appellate Division ruled in the last sentence of the second to last paragraph in its opinion affirming this Court's approval of the initial Amended Settlement Agreement and entry of the Final Judgment, this Court "correctly found that the Township established a prima facie case of compliance, and the burden then shifted to [the objector] to establish that it failed to do so." In re Clinton Township Compliance with Third Round Mount Laurel Affordable Housing Obligation, 2020 WL 476888 (App. Div. 1/30/2020). The Court finds that upon the conclusion of Mr. Behren's expert planning testimony, the Township established a prima facie case of fairness of the Third Amendment and continued compliance, and the burden then shifted to K&S to prove the contrary.

As such, the Court finds that the Township has put forth a prima facie case demonstrating that the modest modification to the Agreement with FSHC is "fair" and reasonable. It also has demonstrated compliance with the conditions of its Affordable Housing Plan as previously approved and as now constituted.

Instead of presenting evidence of why the Third Amendment is not fair to low and moderate income households in the region, K&S objected to the Third Amendments continuing to designate its 108 Alton Place site as a durational adjustment site in the settlement agreement. K&S objected

to the Third Amendment unless K&S' 108 Alton Place site was moved in front of the Township's the Township's other affordable housing on the priority list for sewer and water capacity.

The essence of the K&S objections was that the Third Amendment and the amended compliance plan were unfair to K&S. That is not the purpose of the inquiry, however. The correct inquiry is whether the Third Amendment is fair and reasonable to low and moderate income households in the region and whether the amended compliance plan continues to represent a realistic opportunity to create affordable housing.

The Court finds, however, that the facts, circumstances and arguments offered by K&S fail to meet its burden regarding the issues that it has raised for several reasons which will be enumerated and explained in this opinion. For the reasons set forth below in this opinion, the Court finds that the Objector has not met its burden of proof so as to support K&S's claim that this Court should enter the relief it has requested. Additionally, the Court finds that K&S has not met its burden of proving that the "Fairness Determination" made by the Court in past Hearings and in this Hearing should be overturned or rejected.

3. Regarding Sewer and Water Availability

K&S presented a theory regarding its contention that notwithstanding the positions of the Township and Non-Party Clinton Township Sewer Authority (CTSA), there is "plenty" of excess available sewer capacity so that all of the proposed affordable housing projects will have access to available sewer capacity. K&S presented testimony and evidence to support their theory of the case.

K&S also postulated that there is excess water capacity in the municipal well that is owned and operated by the contiguous but separate municipality, the Town of Clinton.

First, the Court was not entirely clear as to the relief sought by K&S as the relief that it sought in its papers and through various witnesses appear to be "fluid." At various times it appeared to advocate for various types of relief, including:

(1) An Order that would determine that sewer and water capacity was available to it and other affordable housing projects so that it could not proceed, unimpeded with its project; and/or

(2) That the durational adjustment component of the Township Plan that pertained to K&S, and perhaps the other affordable developers, be eliminated; or

(3) That the priority of affordable housing projects as outlined in the Township's Plan be adjusted so that K&S be given top priority over all of the other affordable projects contained in the Township's Plan; and

(4) That the Township be required to take steps to acquire available sewer and/or water capacity[8] and/or "claw back" unused capacity for use by K&S and the other affordable housing developers.

Again, for reasons outlined below, the Court finds that K&S is either not entitled to the requested relief or it has not demonstrated that it is entitled to the relief.

(a) Are All Interested Parties Before the Court so that the Court Can or Should Adjudicate the Sewer and/or Water Capacity Issues?

With regards to the assessment of the sewer capacity issue, K&S has asked for relief that is very likely to affect the rights of other users or owners of sewer capacity at the CTSA facility who may have vested or acquired rights to sewer capacity. Yet K&S asks the Court to adjudicate issues that certainly would be likely to affect those parties' rights, even though they are not a party to this proceeding.

Even more importantly, K&S asks the Court to enter an Order that affects and determines the availability of sewer capacity that exists at the CTSA. Yet the CTSA is the owner and distributor of that sewer capacity for a large portion of Clinton Township, including the areas in which all of the affordable projects in issue are located. However, the CTSA, which clearly has an interest on the outcome of this issue, is not a party to this proceeding.

K&S's theory of the case is that the determination of the amount of available capacity is either intentionally overreported in order to purposely retard development in the Township or, giving the CTSA the benefit of the doubt, the capacity numbers are being estimated on an overly conservative basis so that, in reality, there is ample additional sewer capacity in order to service K&S and probably all of the other proposed affordable housing developers.

The CTSA compiles and reports its sewerage capacity, usage and available capacity to both the NJDEP and the Township. In fact, the Township claims that it has reasonably relied upon the report provided by the CTSA in order to guide its policies regarding affordable housing projects and the projects depending upon available sewer or other means of handling sewerage waste. Afterall, in theory, the CTSA is the agency that is expert in this area so it would be improper for

[8] Apparently at the Township's expense.

the Court to simply disregard or not hear the CTSA's view on the subject or, as K&S insinuates, that the Court simply assume that the CTSA has an improper, unsubstantiated or arbitrary basis for its positions.

The issue involving the water utility and its availability, capacity and accessibility also should be considered with all necessary parties. Clearly, a necessary and integral party in that process is the Town of Clinton as the owner and operator of the water utility.

In the Court's view, the CTSA and the Town of Clinton are an integral parties to this process. Without the CTSA and the Town of Clinton being able to provide its expertise and espouse its position on the issue, the matter cannot be addressed in the intelligent and comprehensive manner which it deserves. Said another way, the CTSA and the Town of Clinton are a necessary parties for any decision on the issues prescribed. Without them, the relief requested by K&S should not and cannot be ordered.

In this Court's experience, the determination of the available sewer and water capacity is likely not as simple as the theory and mathematical analysis that K&S provided through its presentation of its case. It would not be surprising to the Court if there was another side, in fact perhaps many other sides, to the issue. As such, in order to address the matter, if it is to be addressed at all, the issue is likely one that should be litigated fully with all interested parties involved before the Court is asked to adjudicate it.

There is no impediment to K&S to bring an appropriate action against the CTSA and/or the Town and any and all other necessary parties in which it can request relief that it deems appropriate and provable. In other words, it is too late for the CTSA and the Town to be simply brought into this case for that purpose. That being said, it is, of course, up to K&S if it decides to separately litigate that matter and, if so, how it will litigate it.

In any event, for those reasons, the Court finds that all necessary parties are not before the Court and K&S's request must be rejected for that reason.

(b) Should the Township be Required to Obtain Sewer Capacity for K&S, and Presumably the Other Affordable Housing Developers?

During the Hearing, K&S's witnesses offered an unsubstantiated (and unauthorized)[9] opinion that the Township should be required to obtain or acquire the necessary sewer capacity for K&S and presumably the other affordable projects.

As a starting point, the Court can find no precedent to support the proposition that was offered by K&S's witness, particularly if he meant that the Township be required to purchase the gallonage at its own cost and expense for K&S.

The Court does note that there is authority which supports the proposition that a municipality, or a local authority, may have an obligation in certain circumstances to recover unused sewer capacity that is allocated to, but underutilized by, other private owners of the capacity. Thirty-five years ago, the New Jersey Supreme Court established the principles by which municipalities must abide when they allocate sewer capacity to private landowners. Recognizing that public sewer is a scarce resource and that virtually no development can proceed without an allocation of sewer, the Court, in First People's Bank v. Township of Medford, 126 N.J. 413 (1991), set the following rules:

> (1) A municipality has an obligation to assure that sewer permits are either used or repurchased by the municipality so that others may use them;
>
> (2) A municipality cannot use the absence of adequate sewer capacity (when there are unused sewer permits) as a means of preventing otherwise-permissible land use development; and
>
> (3) A municipality cannot, by allocation of sewer permits, delegate the decision to allow access to a municipal sewer system to private landowners who could prevent other landowners from developing their land. Id. at 420.

In fact, the First People case was applied in a case involving a municipality that is contiguous to the Township which ultimately found its was to the New Jersey Supreme Court. In 388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, et al, 221 N.J. 318 (2015), our Supreme Court upheld the trial court's (Judge Buchsbaum's) determination that the Township's policy (1) unlawfully delegated land use authority to private parties and (2) functioned as a *de facto* illegal moratorium on development. Id. at 345-47.

[9] Unauthorized in that the witness did not submit an expert report in advance of the Hearing that contained such an opinion and has not qualified as an expert witness.

The Supreme Court further ruled that the Township failed, pursuant to the Law Division's prior remand, to exercise the discretion required by its own ordinance. Id. at 346-47.

The Supreme Court held:

> One of the objectives of the sewer allocation ordinance was to ensure that the Township exercised discretion, when appropriate, to recapture unused capacity and avoid "the improper delegation of access to the sewer system to private landowners who, by purchasing permits, could prevent other owners from developing their land." See *First People's, supra*, 126 *N.J.* at 420-21, 599 *A*.2d 1248. The MLUL requires that townships exercise their authority to develop lands "in a manner which will promote the ... general welfare," *N.J.S.A.* 40:55D-2(a), and the repurchase provision of the sewer allocation ordinance was a means to that end. We concur with the trial court that the Township's obligation to terminate agreements, when appropriate, was not dependent on whether plaintiff could "beg, borrow or cadge capacity from others." The Township's no-buy-back policy has rendered the ordinance toothless, and, as the trial court determined, "functioned as a *de facto* moratorium on any development which requires sewerage."
>
> We substantially agree with the conclusions that Judge Buchsbaum reached from the summary-judgment record. In declining to recapture unused sewer capacity for plaintiff's project, the Township in its resolution incorporated by reference, wholesale and uncritically, the arguments of the developer defendants. That approach suggests that the Township had effectively delegated its land-use authority to private entities. The resolution failed to analyze development by development why none of the unused capacity – – after years of lying idle – – could be recaptured ...
>
> We adopt the thoughtful approach taken by Judge Buchsbaum. We order the Township Committee, within ninety days, to undertake a critical review of the unused capacity identified by plaintiff and to determine whether any such capacity can be recaptured from defendants to satisfy plaintiff's development needs. The Committee should consider the factors outlined earlier to guide the exercise of its discretion. Id. at 345-47. (emphasis added).

After providing guidelines for the Township's analysis for recapturing unused gallonage, the Supreme Court remanded the case back to Judge Buchsbaum. Id. at 348**.**

In that case, the Supreme Court listed the following factors which need to be taken into account by the Township Committee: (1) the length of time a landowner has possessed unused sewer capacity, (2) the development plans of the landowner to tap some of or all of the unused capacity and the imminence of that happening, (3) the complexity of the development project and the importance of the project to the community, (4) whether the economy has retarded the economic development, (5) proposed development projects by others that cannot proceed because of unavailability of sewer capacity and the importance of those projects to the community, and (6) any other relevant factors. Id. at 343.

As such, although the Court has recognized that there is precedent for requiring a municipality or a local sewer authority to seek out and make sewer capacity available in certain circumstances or, in the context of case, to take steps to assure that sewer capacity is not being manipulated or used in a fashion to stifle development, including the development of affordable housing.[10]

However, the superficial testimony and evidence offered by K&S, and the meager record before the Court, do not constitute a showing that the facts and circumstances in this matter are analogous to the circumstance in First Peoples or in 388 Route 22. Nor has K&S demonstrated that the relief ordered in those cases are warranted here. In First Peoples and 388 Route 22, the cases were fully litigated so that the Court had a full record before it upon which it could base its ruling. There is no such record in this case. The Court only cites to those precedents to indicate that while there may be circumstances where a municipality is required to recapture sewer and/or make sewer capacity available, in the Court's view (1) the record before the Court is insufficient for that purpose; and (2) the Objector has not met its burden to demonstrate that such a finding is warranted.

In addition, the Court notes that there has been no evidence offered to show that the CTSA is not the alter ago of the Township. The CTSA is an independent entity. While the CTSA may have an obligation to recapture unused sewer capacity under the Readington Realty, there has yet to be a showing that any such obligation applies to the Township. Also, K&S has not demonstrated that it is entitled to the sewer capacity which the Township itself obtained from the CTSA for use for the Township's municipally sponsored affordable housing developments. Compare, N.J.A.C. 5:93-5.5, which allows municipalities to provide municipally sponsored affordable housing developments where the municipality is financially responsible for the development, and N.J.A.C. 5:93-5.6, which allows municipalities to provide through zoning inclusionary affordable housing developments where the municipality is not financially responsible for the development. The capacity that the Township obtained for use for the Township's municipally sponsored affordable housing developments is not "unused" capacity and the municipally sponsored affordable housing developments have the highest priority for sewer capacity under the settlement agreement.

[10] Presumably the precedent could be applied to water as a scarce resource in the proper case.

Additionally, assuming for arguments sake that the Township decided to voluntarily repurchase the Benbook or Urban sewer capacity[11] for the purpose of selling it to any of the affordable housing developers, there is no authority supporting K&S' request that the Township be ordered to re-sell it to K&S for $10 per gallon[12], at a loss to the Township of $55 per gallon ($65 per gallon purchase price less the $10 per gallon sales price). When asked on cross examination for the source of the authority to support such an order, Mr. Savage responded it would be "cost generative" if K&S had to pay $65 per gallon. The Court cannot find any authority in the Fair Housing Act (N.J.S.A. 52:27D-301 et seq. (the "FHA")), COAH rules, or case law of which the Township is aware that provides that a municipality would be imposing a cost generative feature under this set of facts.

The Supreme Court in Mount Laurel II, 92 N.J. 158, 258-259 (1983), held that "municipalities must remove zoning and subdivision restrictions and exactions that are not necessary to protect health and safety." Since the Township has not required that K&S purchase any sewer capacity, the $65 per gallon price that the Benbrooks are charging for their sewer capacity cannot be said to be a municipal restriction or exaction. Further, COAH's Second-Round, specifically, N.J.A.C. 5:93-10.2, provides a list of municipal "requirements" that are cost generative and cannot be imposed on a developer unless the municipality "shall bear the burden of justifying the need for such standards." As to sewer and water, the rule specifies that a municipality that wishes to impose "requirements to provide oversize water and sewer lines to accommodate future development" as well as "excessive . . . pumping station requirements" shall "bear the burden of justifying the need for such standards." The price that a developer would have to pay for sewer capacity is not on the list. And, even if it was on the list, the price a developer would have to pay from a source other than the municipality is not referenced in the rule.

For those reasons, the Court rejects K&S's position in this matter.

As for K&S's proposition that the Township should be required to pay for its sewer capacity, whether in part or in full, K&S has provided no precedent or basis for such a finding.

[11] Which was referenced during the Hearing.
[12] Which K&S advocated during the Hearing.

(c) Did K&S Offer Sufficient Proof to Support the Proposition that the Court Should Order that Sewer Capacity is Available for its Project?

K&S offered testimony and documentary evidence to support its claim that the Court should order that adequate sewer and/or water capacity is already "available" and, as such, the Court's Order should provide that sewer and/or water capacity be made available for the K&S project as well as the other projects for affordable housing in Clinton Township.

While the Court has already determined that all necessary parties are not available for the Court to properly consider the relief requested by K&S, the Court will address the merits of K&S's claims as presented as well.

In its most recent Plan, which is memorialized in its Agreement with FSHC, the Township eliminated the LeCompte site from its Affordable Housing Plan since that site is no longer available to the proposed developer of the site.[13] In lieu of the Affordable 89 units proposed in the Le Compte Project, the Court named Ingerman (80 affordable units), Grayrock (7 affordable units) and CRC Headley (104 affordable units) as the top three priority sites in its Plan.

The following is a chart of the Projects in the order of priority along with information concerning the number of affordable units to be produced by each:

RANK	NAME	ACREAGE	TOTAL UNITS	AFFORDABLE UNITS	% OF AFFORDABLE UNITS
1	Ingerman	11.7	146	80	80%
2	Grayrock	2.44	36	7	20%
3	CRC Headley	155.02	400	104	26%
4	108 Alton Place	16.17	140	28	20%

The Township has indicated that it developed its priority system for affordable projects in order to facilitate the most effective and efficient use of the limited sewer capacity and water capacity in the Township. The Township indicates that without access to those public utilities, the development of the potential sites must be permitted to provide sufficient density to make affordable housing realistic. Accordingly, the Township, apparently in conjunction with or, at least with the acquiescence of the FSHC, formulated a plan whereby the projects that could produce the

[13] The Township's recognition that the LeCompte site is no longer viable and realistic for affordable housing development, and its efforts to adjust its plan to create realistic opportunities certainly is worthy of plaudits as a general proposition.

greatest number of affordable units would be give n the first priority rights to the available sewer and water.

It is apparent that the FSHC, the Court's Master, and all of the other prospective affordable housing developers agree that the Township's Plan is fair and reasonable, except K&S as regards to its 108 Alton Place Project.

The Court finds that the objections submitted by Kerwin & Savage partnership ("K&S") to the Third Amendment, K&S failed to meet its burden to show any evidence that the Third Amendment was not fair or reasonable to low and moderate income households in the region or that the compliance plan as amended by the Third Amendment does not represent a realistic opportunity to create affordable housing.

Instead of presenting evidence of why the Third Amendment is not fair to low and moderate income households in the region, K&S objected to the Third Amendment continuing to designate its 108 Alton Place site as a durational adjustment site in the settlement agreement, and objected to approval of the Third Amendment unless K&S' 108 Alton Place site was moved in front of the sites identified by the other affordable developers on the priority list for sewer and water capacity. The essence of the K&S objections was that the Third Amendment and the amended compliance plan were unfair to K&S. That is not the purpose of the inquiry, however. The proper purpose of the inquiry is to determine whether the Third Amendment is fair and reasonable to low and moderate income households in the region and whether the amended compliance plan continues to represent a realistic opportunity to create affordable housing.

The first reason that the K&S objections is rejected because fairness is judged from the standpoint of low and moderate income households in the region, not from the standpoint of K&S' interests as a developer. The Township recognizes that K&S claims that it is representing low and moderate income persons as an objector here but, FSHC was not a party in this case. The fact is, however, that FSHC is an intervening defendant in this case and represents the interests of low and moderate income persons. It is much more likely that K&S may be looking out for its interests as a developer and not the interests of low and moderate income persons.

As the court explained in Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 367-368 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), the "risks of improvidently approving a settlement . . . are most acute" where a municipality settles with a developer, rather than with a public interest organization. As the court further explained, a

"municipality's objective is to be assigned a small fair share of lower income housing" and a "developer's objective is to secure approval of [its] project." Id. The court concluded: "The danger of entering into a judgment of compliance which does not adequately protect the interests of lower income persons is substantially reduced" when the settlement is with a public interest organization "since it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interests of the people it represents." Id.

Second, K&S's objections do not, in the Court's view, have support in the law or facts. As to the facts, the testimony of both Michael Savage and Walter Wilson was influenced by self-interest so that the Court gives the testimony little credence. Both witnesses have ownership interest in K&S meaning, of course, that these two witnesses were not independent individuals who researched the sewer and water capacity issues they raised during the hearing. Rather, both of these witnesses had a financial interest in the outcome of the proceeding. Moreover, there were inconsistencies or omissions from their testimony that causes the Court to question the accuracy of the information presented.

For instance, the issue of the "Benbrook" and the Country Club Drive Associates ("CCDA") or "Urban" sewer capacity was also puzzling. Under cross examination, both witnesses admitted having knowledge that Chuck Urban had filed a lawsuit against the Clinton Township Sewerage Authority (the "CTSA") claiming that CCDA had more sewer capacity than the CTSA would acknowledge. While Mr. Savage testified that he did not know how many additional gallons per day of capacity Mr. Urban was claiming, Mr. Wilson testified that Mr. Urban was claiming approximately 40,000 gallons per day of additional capacity. Yet, neither Mr. Savage nor Mr. Wilson acknowledged that information during their direct testimony when they were advocating their theory of the case.

Third, despite the fact that the Clinton Township Sewerage Authority (the "CTSA") advised K&S that it has insufficient sewage capacity to offer for the Township's durational adjustment affordable housing sites, and despite the fact that the Town of Clinton advised K&S it has insufficient available water capacity to offer for the Township's durational adjustment affordable housing sites, Mr. Savage and Mr. Wilson were attempting to show from using sewer flow and water flow data that additional capacity was available. While they both included the total capacity available to each utility and the actual flows in the calculations, they both left out and failed to account for the calculations contractual reserved allocations for undeveloped properties

generating no flow, other outstanding allocations, and the amount of capacity assigned to buildings that are currently vacant so are currently generating no flows. As such, at best, their analysis is incomplete.

Besides being factually wrong and legally insufficient, K & S's objections also belie common sense. It's objection, in essence, claims that the Township does have access to sufficient sewer capacity, but is intentionally withholding it to prevent the construction of the developments in its HEFSP. The 2021 Agreement at Paragraph 3(i) demonstrates, in part, that this is unlikely. In the 2021 Agreement the Township has committed to securing sufficient sewer capacity for the development of the Ingerman site at prices of $35 and $65 per gallon, presumably from the Benbrooks or some other private source. K & S's own witnesses admitted that the typical going rate for sewer capacity is approximately $10 per gallon. Thus, the K & S objection requires the Court find credibility in the notion that the Township and Ingerman would agree to spend between three and a half and six and a half times the going rate for sewer capacity out of its own funds, instead of just utilizing sewer capacity already allocated to it.

Fourth, K&S effectively presented no credible evidence to support the notion that the Township has sufficient sewer and water capacity despite reports from the Clinton Township Sewerage Authority (CTSA) and the Town of Clinton that there is insufficient sewer and water service. K&S offered only the markedly non-expert testimony of two of its principals. Mr. Savage and Mr. Wilson who both testified on behalf of K & S attempted to show that there is sufficient sewer and water capacity that has been allocated to the Township. To do so the lay witnesses demonstrated that there is a delta between the amount of sewer and water that has been allocated to the Township via the Clinton Township Sewerage Authority (CTSA) and the Town of Clinton, respectively, and the amount of sewer and water actually being utilized within the Township. Both witnesses admitted that they had not accounted for any amounts of sewer and water that had already been allocated to other entities, yet remain unused. In order to have a complete view of the Township's sewer and water situation one must analyzed not only the existing flow, but also how sewer and water has already been allocated to other entities.

Fifth, K&S demands that even if the Court does not accept its arguments on sewer capacity in the Township that the Court should nonetheless condition the approval of the 2021 Agreement on moving K & S higher on the Township's sewer priority list. The Township's priority list for sewer and water is that Ingerman receives first priority, Gray Rock receives second, CRC Headley

receives third, and K&S's development, 108 Alton Place, receives fourth. In other words, 108 Alton Place is the last on the priority list.

In the Court's view, the priority list was established in a reasonable way and in a way that is fair to lower-income households. It must be noted that K&S/108 Alton Place was last in priority in the 2018 Agreement and yet it did not object to that designation when that agreement was reviewed and approved by the Court.

In their testimony, the witnesses for K&S incredibly argue that the regulations of the Council on Affordable Housing (COAH) demand K&S should be listed higher. To make this argument they attempt to bootstrap different very parts of the COAH regulations in order to support their novel theory.

The COAH Prior Round regulations permit a municipality to receive what is known as a "durational adjustment" where there is a lack of sewer and water available. N.J.A.C. 5:93-4.3. Where a durational adjustment is sought the municipality is required to do the same types of planning analyses on affordable housing sites as if it were not seeking a durational adjustment, the municipality is required to place extra emphasis on sites that could receive the required water or sewer during the compliance period. The municipality is required to rezone these sites just as if it were not taking an adjustment. The municipality is then required to take various steps to facilitate sewer and water availability and to reserve any new sewer and water capacity for affordable housing purposes. N.J.A.C. 5:93-4.3(c).

In this case, it appears that the Township has complied with those regulations. It has identified sufficient sites and mechanisms to address its fair share obligations, and it has identified the steps that will be taken to facilitate water and sewer availability to each of the sites. For instance, the Township has agreed to assist Ingerman in purchasing sufficient sewer capacity. The Township has also agreed to assist CRC Headley in obtaining water and sewer for its site and has agreed to support on-site package wastewater disposal and on-site private water system.

The Township has also made efforts to obtain additional public sewer capacity and has set a priority schedule for which sites receive the necessary sewer in the event the Township does not receive sufficient sewer for all of the sites at once.

The Township's priority list is also logical. It prioritizes sites that will produce the most affordable housing, those receiving public funds, and sites which are further along in the development process. The Ingerman site is listed first. This site is providing a 55% set-aside and

80 affordable housing units, it currently has an application pending for an allotment of Low-Income Housing Tax Credits which should be announced very shortly, and has already received preliminary site plan approval. The CRC Headley site is providing a 26% set-aside of 104 affordable units and is actively taking steps to secure water and sewer including through potentially utilizing an on-site system. The 108 Alton Place site provides only a 20% set-aside of 28 affordable units. It has not sought or received site plan approval yet, is not proposing to utilize public funds, and has not taken any other independent steps to secure sewer (aside from making demands of the Township).

A contrast of the Ingerman site and the 108 Alton Place site which both have nearly identical total unit yields (144 and 140 respectively) and presumably will utilize similar amounts of the scarce water and sewer. The Ingerman site will provide 80 of those 144 units as affordable housing while K & S will provide 28 of its 140 units as affordable housing. It is self-evident that the site providing nearly three times as many affordable housing units is more worthy of the necessary infrastructure and would result in an agreement that better protects the interests of lower-income households.

Lastly, a plethora of Mount Laurel case law supports the agreement's preference for sites that produce a substantial amount of affordable housing. See J.W. Field Co. v. Township of Franklin, 204 N.J. Super. 445 (Law Div. 1985)(Prioritizing builder's remedies, in part, by the amount of affordable housing produced.); Bi-County Dev. of Clinton v. Borough of High Bridge, 174 N.J. 301, 324 (2002)(Rejecting request to demand access to sewer service system where no on-site affordable housing units were to be produced.); East/West Venture, supra, 286 N.J. Super. 311. (Emphasizing the amount of affordable housing to be produced in determining whether an agreement is fair to lower-income households.)

F. Regarding the Township's Compliance and the Issuance of a Judgment of Compliance and Repose

In the Court's view, the modifications made to the Township's Compliance Plan (i.e., the elimination of the LeCompte site and the substitution of Ingerman, Grayrock and special needs project in lieu thereof) and the prioritization of the durational adjustment per the Revised Third Amendment to the Settlement Agreement and the Amendment to the Housing Element and Fair Share Plan adopted on June 7, 2021 (2021 HE&FSP) not only continues to represent a realistic opportunity for development of affordable housing as proposed, but the Township has also

sufficiently documented its claim of compliance. In fact, the Special Master has reviewed the Compliance Plan and recommended "Compliance Approval" to the Court. The Court concurs.

None of the Objectors criticized or commented upon or objected to any aspect of the "Compliance Documents" proofs. In the Court's view, the Township has demonstrated compliance with the terms and conditions of the settlement agreements.

The Court finds that all of the conditions requiring documentation proving compliance has been provided and shown. Also, the Special Master had submitted a letter to the Court dated November 30, 2021 finding that all submissions were complete. The Court finds that all submissions are consistent with the terms and conditions of the Third Amended Settlement Agreement so that the Court determines a Final Judgment of Compliance and Repose should be entered memorializing the Township's compliance with its Third Round Mount Laurel affordable housing obligations.

CONCLUSION

For the reasons set forth in the Court's opinion, the Court will GRANT the Township's application for a Final Judgment of Compliance and Repose.

2021 Fairness Order and Amended Final Judgment of Compliance and Repose

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-HUNTERDON COUNTY
DOCKET No. HNT-L-315-15

IN RE: TOWNSHIP OF CLINTON COMPLIANCE WITH THIRD ROUND MOUNT LAUREL AFFORDABLE HOUSING OBLIGATION	Civil Action Mount Laurel ORDER APPROVING REVISED THIRD AMENDMENT TO SETTLEMENT AGREEMENT AS FAIR AND REASONABLE AND GRANTING AMENDED FINAL JUDGMENT OF COMPLIANCE AND REPOSE

This matter having been initiated by the filing of a declaratory judgment action pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), and having been opened to the Court in accordance with East/West Venture v. Bor. of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), by the application of Stickel, Koenig, Sullivan & Drill, LLC (Jonathan E. Drill, Esq., appearing), attorney for plaintiff Township of Clinton (the "Township"); and the Township having been previously granted a

final judgment of compliance and repose in favor of the Township which memorialized the Township's compliance with its Third Round Mount Laurel affordable housing obligations relative to an amended settlement agreement entered on February 15, 2018 (the "Amended Settlement Agreement")[1] with Fair Share Housing Center ("FSHC"), a public interest organization representing the housing rights of New Jersey's poor, which Amended Settlement Agreement modified an initial settlement agreement entered into on December 12, 2017 (the "initial settlement"); and the Township having entered into subsequent amendments to the Amended Settlement Agreement with FSHC, including a third amendment dated May 2, 2021 (the "Third Amendment to the Settlement Agreement"); and a joint application having been made to the Court by the Township and FSHC for the court to conduct a combined fairness and compliance hearing to determine whether the terms of the Third Amendment to the Settlement Agreement are fair and reasonable to the interests of low and moderate income households in the region and whether the Township's compliance plan as modified by the Third Amendment to

[1] The Court reviewed the Amended Settlement Agreement and approved it as fair and reasonable to low and moderate income households by order entered on April 3, 2018 (the "Fairness Order"). The Court subsequently entered a final judgment of compliance and repose in favor of the Township on January 9, 2019, declaring that the Township was in compliance with its Third Round Mount Laurel obligations (the "JOCR"). The Appellate Division affirmed the Fairness Order and the JOCR by a decision filed on January 3, 2020 (the "Appellate Affirmance"). The Township and FSHC thereafter entered into a Second Amendment to the Settlement Agreement dated June 15, 2020, followed by a Third Amendment to the Settlement Agreement dated May 2, 2021, and a Revised Third Amendment to the Settlement Agreement dated October 8, 2021.

the Settlement Agreement remains constitutionally compliant with the Mount Laurel doctrine as codified in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the "FHA"), as provided in Mount Laurel IV and In re Declaratory Judgment Actions filed by various Municipalities, 227 N.J. 508 (2017) (Mount Laurel V); and the Court commencing the combined fairness and compliance hearing (the "hearing") on September 23, 2021; and the hearing being continued to November 29, 2021 in order to allow settlement negotiations to continue in an effort to settle certain objections which had been filed against the Third Amendment to the Settlement Agreement; and the Township and FSHC having subsequently entered into a revised third amendment dated October 8, 2021 (the "Revised Third Amendment to the Settlement Agreement") which resolved certain of the objections filed with the Court; and the Court then conducting the continued hearing on the Revised Third Amendment to the Settlement Agreement on November 29, 2021 in the presence of: Mr. Drill and Kathryn J. Razin, Esq. on behalf of the Township; Joshua Bauers, Esq. on behalf of FSHC; Guliet Hirsch, Esq. on behalf of developer CRC Communities, Inc.; Patrick Mullaney, Esq. on behalf of objector Kerwin-Savage Partnership (K&S); Katharine Coffey, Esq. on behalf of developers Clinton LIHTC Urban Renewal, LLC (Pirhl) and Ingerman Development Company, LLC (Ingerman); and the Court determining that proper notice of the hearing was provided as reflected in the Proof of Service and Publication of Notice of Fairness and Compliance

Hearing which was entered into evidence as Exhibit A-5 during the hearing; and the Court having heard and considered the testimony of the Township's planning expert, Thomas Behrens, PP, AICP, as well as the Township's exhibits A-1 through A-20, and also the testimony of two of K&S' lay witness partners, Michael Savage and Walter Wilson, as well as K&S's exhibits O-1 through O-17; and the Court also reviewing and considering the report dated November 23, 2021 submitted by the master (the "master's report") as well as the updated master's report dated December 8, 2021 (the "master's update"); and the Court determining for the reasons set forth in the Court's amended opinion filed on December 13, 2021 that: (a) the Revised Third Amendment to the Settlement Agreement (which was entered into evidence as Exhibit A-17 during the hearing) is fair and reasonable to, and adequately protects the interests of, low- and moderate-income households in the region, (b) the Amendment to the Housing Element and Fair Share Plan dated May 27, 2021 (the "2021 HE&FSP" which was entered into evidence as Exhibit A-9) as well as all implementing resolutions and ordinances (all of which were submitted to the Court via eCourts and were entered into evidence during the hearing) are constitutionally compliant, and (c) the Township's compliance plan as modified by the Revised Third Amendment to the Settlement Agreement remains constitutionally compliant; and the Court therefore determining that the within order should be entered approving the Revised Third Amendment to

the Settlement Agreement as fair and reasonable and granting the Township an Amended Final Judgment of Compliance and Repose; and for good cause otherwise shown;

IT IS ON THIS 21st DAY OF DECEMBER, 2021, DECLARED, ORDERED AND ADJUDGED AS FOLLOWS:

1. Approval of Revised Third Amendment to the Settlement Agreement. The Revised Third Amendment to the Settlement Agreement is hereby approved as fair and reasonable to, and adequately protecting the interests of, low- and moderate-income households in the region.

2. Grant of Amended Final Judgment of Compliance and Repose. An Amended Final Judgment of Compliance and Repose ("AFJCR") is hereby entered in favor of the Township in the within declaratory judgment action.

3. The Township Remains Constitutionally Compliant with its Mount Laurel Affordable Housing Obligations. It is hereby declared, adjudged and ordered that the 2021 HE&FSP, as well as all resolutions, ordinances and other documents that were adopted by the Planning Board and the Township to implement the 2021 HE&FSP, satisfy the Township's Mount Laurel constitutional obligations under the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the "FHA") and under the Mount Laurel doctrine and line of cases, specifically as set forth in Mount Laurel IV, 221 N.J. 1 (2015), and Mount Laurel V, 227 N.J. 508 (2017).

4. Term of Repose. It is hereby declared, adjudged and ordered that the within AFJCR shall remain in effect for the remaining period of the initial final judgment of compliance and repose, ending on July 2, 2025, and during this 10-year period which began on July 2, 2015 the Township, and the Township Planning Board and Zoning Board shall have repose and immunity from any and all exclusionary zoning lawsuits, including but not limited to "constitutional compliance" lawsuits and "builder's remedy" lawsuits. The grant of repose shall not prohibit action(s) brought by FSHC to enforce the terms of the amended settlement or the Revised Third Amendment to the Settlement or the court's orders.

5. Continuation of Special Master. The Court continues the appointment of John D. Maczuga, PP as special master in this matter for the purpose of assisting the Township and advising the Court regarding the Township's compliance efforts. The special master shall issue reports annually to the Court with copies to the Township and FSHC. The special master's services shall be paid for by the Township.

6. Effect on Final Judgment of Compliance and Repose. All provisions of the final judgment of compliance and repose which was entered on January 9, 2019 and which have not been amended by the provisions of the within order shall remain in full force and effect.

7. Service of Order. The within order shall be served on all counsel via the Court filing it via eCourts. Counsel for the

Township shall provide all parties on the Supreme Court Service List and the Municipal Service List with a copy of this Order within five (5) days of receipt by counsel for the Township of the within Order.

/S/ THOMAS C. MILLER, A.J.S.C.
HON. THOMAS C. MILLER, A.J.S.C.

2023 Consent Order

JONATHAN E. DRILL - Attorney ID 01991-1983
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Attorney for Plaintiff Township of Clinton

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-HUNTERDON COUNTY
DOCKET No. HNT-L-315-15

IN RE: TOWNSHIP OF CLINTON COMPLIANCE WITH THIRD ROUND MOUNT LAUREL AFFORDABLE HOUSING OBLIGATION	Civil Action Mount Laurel POST JUDGMENT CONSENT ORDER #2

This matter having come before the court on the joint application of Jonathan E. Drill, Esq. of Stickel, Koenig, Sullivan & Drill, LLC, attorney for Clinton Township (the "Township"), and Adam M. Gordon, Esq., attorney for, and Executive Director of, Fair Share Housing Center ("FSHC");

WHEREAS, the court having entered an amended final judgment of compliance and repose on December 21, 2021 (the "2021 final judgment") which memorialized the Township's compliance with its Third Round Mount Laurel affordable housing obligation to provide a realistic opportunity for the construction of affordable housing in accordance with the New

Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), and In re Declaratory Judgment Actions filed by various Municipalities, 227 N.J. 508 (2017) (Mount Laurel V), as set forth in a Revised Third Amendment to the Settlement Agreement between the Township and FSHC dated October 8, 2021 (the "Third Amendment to the Settlement Agreement");

WHEREAS, the Township's Housing Plan Element and Fair Share Plan Element of the Master Plan adopted prior to and approved in the 2021 final judgment, as well as the Third Amendment to the Settlement Agreement entered into prior to and approved in the 2021 final judgment, includes development of a 146-unit inclusionary development, consisting of 66 market-rate units and 80 affordable units (the "inclusionary development") to be constructed and operated by Ingerman Development Company, LLC or an Ingerman Development Company, LLC related entity ("Ingerman");

WHEREAS, the Township's Planning Board granted preliminary site plan approval to Ingerman for the development of the inclusionary development, and Ingerman obtained an award of 9% tax credit financing from the New Jersey Housing and Mortgage Finance Agency (the "HMFA") for the inclusionary development but, since that time, Ingerman has indicated its desire to change the inclusionary development into a 100%

affordable housing development, consisting of a total of 96 affordable units (the "100% affordable housing development"), which will have the effect of decreasing the total number of units on the property at issue from 146 to 96 units but increasing the number of affordable units on the property at issue from 80 to 96 units;

WHEREAS, on June 29, 2023, a post-judgment consent order was entered in the action, approving said decrease in the total number of units and increase in the number of affordable units on the property;

WHEREAS, Ingerman is proposing to construct the 100% affordable housing development in two phases, with each phase to consist of 48 units, to be constructed simultaneously;

WHEREAS, the Township and FSHC have agreed that such phasing is to the benefit of both the Township and low-and moderate-income households and the court appointed special master, John Maczuga, PP, AICP, has endorsed the change;

WHEREAS, in order to apply for and obtain from the HMFA financing for the construction of the 100% affordable housing development from the Affordable Housing Production Fund administered by the HMFA, Ingerman must obtain a court order showing that the 100% affordable housing development is proposed to be constructed in two phases, with each phase consisting of 48 units;

WHEREAS, the Township and FSHC now seek an order from the court determining that the construction phasing proposed for the 100% affordable housing development is consistent with and shall be deemed to be part of the 2021 final judgment;

IT IS THEREFORE DECLARED, ORDERED AND ADJUDGED ON THIS 12th DAY OF OCTOBER, 2023, AS FOLLOWS:

1. The 100% affordable housing development with 96 affordable housing units, to be constructed in two phases each consisting of 48 units, is consistent with the amended Housing Plan Element and Fair Share Plan Element of the Master Plan.

2. The change to permit the phased construction of the 100% affordable housing development in two phases each consisting of 48 units is consistent with and shall be deemed to be part of the 2021 final judgment.

3. Other than the post-judgment changes ordered above, the remaining terms and conditions of the 2021 final judgment remain unchanged and the 2021 final judgment remains in full force and effect.

4. The within order shall be served on all counsel via the Court filing it via eCourts. Counsel for the Township shall provide all parties on the Supreme Court Service List and the Municipal Service List with a copy of this Order within five (5) days of receipt by counsel for the Township of the within Order.

/s/ Kevin M. Shanahan, A.J.S.C.

HON. KEVIN M. SHANAHAN, A.J.S.C.

(X) BY CONSENT

The undersigned hereby consent to the form and entry of the within order.

Stickel, Koenig, Sullivan & Drill, LLC
Attorney for Plaintiff Township of Clinton

By: Jonathan E. Drill
Jonathan E. Drill, Esq.

FAIR SHARE HOUSING CENTER

By: Joshus D. Bauers
Joshus D. Bauers, Esq.
Staff Attorney for Intervening Defendant

NJHMFA 2025 Income Limits

Last updated May 5, 2025, by New Jersey Housing and Mortgage Finance Agency (NJHMFA). Effective May 16, 2025.

UHAC 2025 Affordable Housing Regional Income Limits by Household Size

Regional Income Limits		Household Size										
		1 Person	1.5 Persons	2 Persons	2.5 Persons	3 Persons	4 Persons	4.5 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Region 1	Median	$89,100	$95,450	$101,800	$108,150	$114,500	$127,200	$132,300	$137,400	$147,600	$157,800	$168,000
Bergen, Hudson,	Moderate (80%)	$71,280	$76,360	$81,440	$86,520	$91,600	$101,760	$105,840	$109,920	$118,080	$126,240	$134,400
Passaic, Sussex	Low (50%)	$44,550	$47,725	$50,900	$54,075	$57,250	$63,600	$66,150	$68,700	$73,800	$78,900	$84,000
	Very Low (30%)	$26,730	$28,635	$30,540	$32,445	$34,350	$38,160	$39,690	$41,220	$44,280	$47,340	$50,400
Region 2	Median	$94,800	$101,550	$108,300	$115,050	$121,800	$135,300	$140,750	$146,200	$157,000	$167,800	$178,600
Essex, Morris,	Moderate (80%)	$75,840	$81,240	$86,640	$92,040	$97,440	$108,240	$112,600	$116,960	$125,600	$134,240	$142,880
Union, Warren	Low (50%)	$47,400	$50,775	$54,150	$57,525	$60,900	$67,650	$70,375	$73,100	$78,500	$83,900	$89,300
	Very Low (30%)	$28,440	$30,465	$32,490	$34,515	$36,540	$40,590	$42,225	$43,860	$47,100	$50,340	$53,580
Region 3	Median	$107,400	$115,100	$122,800	$130,450	$138,100	$153,400	$159,550	$165,700	$178,000	$190,300	$202,500
Hunterdon, Middlesex,	Moderate (80%)	$85,920	$92,080	$98,240	$104,360	$110,480	$122,720	$127,640	$132,560	$142,400	$152,240	$162,000
Somerset	Low (50%)	$53,700	$57,550	$61,400	$65,225	$69,050	$76,700	$79,775	$82,850	$89,000	$95,150	$101,250
	Very Low (30%)	$32,220	$34,530	$36,840	$39,135	$41,430	$46,020	$47,865	$49,710	$53,400	$57,090	$60,750
Region 4	Median	$94,300	$101,000	$107,700	$114,450	$121,200	$134,600	$140,000	$145,400	$156,200	$167,000	$177,700
Mercer, Monmouth,	Moderate (80%)	$75,440	$80,800	$86,160	$91,560	$96,960	$107,680	$112,000	$116,320	$124,960	$133,600	$142,160
Ocean	Low (50%)	$47,150	$50,500	$53,850	$57,225	$60,600	$67,300	$70,000	$72,700	$78,100	$83,500	$88,850
	Very Low (30%)	$28,290	$30,300	$32,310	$34,335	$36,360	$40,380	$42,000	$43,620	$46,860	$50,100	$53,310
Region 5	Median	$83,600	$89,600	$95,600	$101,550	$107,500	$119,400	$124,200	$129,000	$138,600	$148,100	$157,700
Burlington, Camden,	Moderate (80%)	$66,880	$71,680	$76,480	$81,240	$86,000	$95,520	$99,360	$103,200	$110,880	$118,480	$126,160
Gloucester	Low (50%)	$41,800	$44,800	$47,800	$50,775	$53,750	$59,700	$62,100	$64,500	$69,300	$74,050	$78,850
	Very Low (30%)	$25,080	$26,880	$28,680	$30,465	$32,250	$35,820	$37,260	$38,700	$41,580	$44,430	$47,310
Region 6	Median	$71,900	$77,050	$82,200	$87,350	$92,500	$102,700	$106,850	$111,000	$119,200	$127,400	$135,600
Atlantic, Cape May,	Moderate (80%)	$57,520	$61,640	$65,760	$69,880	$74,000	$82,160	$85,480	$88,800	$95,360	$101,920	$108,480
Cumberland, Salem	Low (50%)	$35,950	$38,525	$41,100	$43,675	$46,250	$51,350	$53,425	$55,500	$59,600	$63,700	$67,800
	Very Low (30%)	$21,570	$23,115	$24,660	$26,205	$27,750	$30,810	$32,055	$33,300	$35,760	$38,220	$40,680

Bedroom Count	Household Size (Family)*	Household Size (Senior)**
0BR	1 Person	1 Person
1BR	1.5 Persons	1.5 Persons
2BR	3 Persons	2 Persons
3BR	4.5 Persons	2.5 Persons
4BR	6 Persons	N/A

Maximum Sale Price Increase***	
Region 1	5.64%
Region 2	4.55%
Region 3	4.92%
Region 4	3.50%
Region 5	4.10%
Region 6	4.41%

Maximum Rent Increase****	
Statewide	5.0%

Net Asset Limit*****	
Statewide	$300,000

* N.J.A.C. 5:80-26.4(i).
** N.J.A.C. 5:80-26.4(j).
*** N.J.A.C. 5:80-26.7(c).
**** N.J.A.C. 5:80-26.13(b).
***** N.J.A.C. 5:80-26.17(b)3.

Approved Spending Plan

TOWNSHIP OF CLINTON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

RESOLUTION
2026 – 57

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLINTON ADOPTING AN UPDATED AFFORDABLE HOUSING SPENDING PLAN FOR THE TOWNSHIP OF CLINTON

WHEREAS, Clinton Township has adopted an affordable housing compliance plan, including a fair share plan ("plan" or "fair share plan"), that promotes an affordable housing program pursuant to *In re Adoption of N.J.A.C. 5:96 & 5:97*, 221 N.J. 1 (2015)("Mount Laurel IV"), the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 *et seq.*, and the New Jersey Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 *et seq.*; and

WHEREAS, the Township is required to take various actions and adopt various documents relative to the Township's implementation of its affordable housing plan and overall compliance with its affordable housing obligations; and

WHEREAS, the FHA requires the Township among other things to adopt a spending plan, which plan shall set forth the funds and expenditures relative to the Township's implementation of and overall compliance with its affordable housing obligations;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey, as follows:

1. The preamble to this resolution is hereby incorporated as if restated in full herein.

2. The spending plan prepared by Burgis Associates, Inc. dated February 11, 2026 setting forth the explanation of funds and expenditures to implement the Township's affordable housing plan, a copy of which is on file in the Office of the Township Clerk and is attached to this resolution as Exhibit A, is hereby adopted.

3. This resolution shall take effect immediately.

ATTEST:

Jeffrey J. Jotz, RMC
Acting Township Clerk

Hon. Brian K. Mullay
Mayor

Adopted: February 11, 2026

CERTIFICATION

I, Jeffrey J. Jotz, Acting Clerk of the Township of Clinton in Hunterdon County, New Jersey, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Mayor and Council of the Township of Clinton at its regular meeting held on February 11, 2026.

Jeffrey J. Jotz, RMC, Acting Township Clerk

EXHIBIT A

Clinton Township, Hunterdon County, New Jersey
Affordable Housing Trust Fund Spending Plan
February 11, 2026

INTRODUCTION

The Township of Clinton (hereinafter the "Township"), Hunterdon County, has prepared a Fourth Round Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act as amended in March 2024 (N.J.S.A. 52:27D-301), and the new Fair Housing Act Rules adopted by the New Jersey Department of Community Affairs ("DCA") (N.J.A.C. 5:99). A development fee ordinance creating a dedicated revenue source for affordable housing and establishing the Clinton Township affordable housing trust fund was adopted by the Township on March 11, 1993.

As of December 31, 2025, the Township's Affordable Housing Trust Fund has a balance of $762,883.26. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund account for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:99 as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD

It is anticipated that during the period of January 1, 2026 through June 30, 2035, which encompasses the remaining period that the township will have a Fourth Round Judgment of compliance and Repose ("Fourth Round JOR"), the Township will add an additional $229,872 to its Affordable Housing Trust Fund as detailed below.

(a) Development fees: The Township anticipates collection of development fees to be generated between January 1, 2026 through June 30, 2035. This figure is based on the following assumptions:

1. *Residential Development Fees:* Based on development fee collection trends in the Township, it is anticipated that approximately $71,459 in residential development fees will be generated between January 1, 2026 through June 30, 2035. This figure assumes that, on average, the Township will collect approximately $7,522 in residential development fees per year during the Fourth Round.

2. *Non-Residential Development Fees:* Based on development fee collection trends in Clinton Township, it is anticipated that approximately $148,675 in non-residential development fees will be generated between January 1, 2026 through June 30, 2035. This figure assumes that, on average, the Township will collect approximately $15,650 in non-residential development fees per year during the Fourth Round.

(b) Payment in lieu (PIL): Clinton Township does not currently anticipate the contribution of any payments in lieu toward the municipal Affordable Housing Trust Fund during the Fourth Round. If any such payments should be made to the Township during the Fourth Round, such payments will be deposited into the Township's Affordable Housing Trust Fund.

(c) Other funds: The Township does not currently anticipate the contribution of any other funds toward the municipal Affordable Housing Trust Fund during the Fourth Round. However, if any such funds are collected during the Fourth Round, said funds will be deposited in the Township's Affordable Housing Trust Fund.

(d) Projected interest: It is estimated that Clinton Township will collect approximately $9,738 in interest between January 1, 2026 through June 30, 2035. This figure assumes that, on average, the Township will collect approximately $1,025 in interest per year during the Fourth Round.

SOURCE OF FUNDS	PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND JANUARY 1, 2026 THROUGH JUNE 30, 2035										
	2026	2027	2028	2029	2030	2031	2032	2033	2034	1/1/26 to 6/30/35	Total
(a) Development Fees	$23,172	$23,172	$23,172	$23,172	$23,172	$23,172	$23,172	$23,172	$23,172	$11,586	**$220,134**
(b) Payments in Lieu of Construction	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
(c) Other Funds	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
(d) Interest	$1,025	$1,025	$1,025	$1,025	$1,025	$1,025	$1,025	$1,025	$1,025	$513	**$9,738**
Total	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$24,197**	**$12,099**	**$229,872**
Total Available	$787,080 (1)	$811,277	$835,474	$859,671	$883,868	$908,065	$932,262	$956,459	$980,656	$992,755	-

(1) Figure based on existing trust fund balance as of December 31, 2025 plus 2026 estimated revenues.

Clinton Township projects a total of $229,872 in revenue to be collected between January 1, 2026 and June 30, 2035. This projected amount, when added to the Township's current trust fund balance of $762,883, results in a total anticipated trust fund balance of $992,755 available to fund and administer the Township's affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Township:

(a) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Township's Development Fee Ordinance ("DFO") for both residential and non-residential developments in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act as amended in March 2024 (N.J.S.A. 52:27D-301) and the new Fair Housing Act Rules promulgated by the New Jersey Department of Community Affairs (DCA) (N.J.A.C. 5:99).

(b) Distribution of development fee revenues: The Planning Board adopts and forwards a resolution to the Township Council recommending the expenditure of development fee revenues as set forth in this spending plan. The Township Council reviews the request for consistency with the spending plan and adopts the recommendation by resolution. The release of funds requires adoption of the governing body resolution in accordance with the spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the Township's Affordable Housing Trust Fund for the specific use approved in the Township Council's resolution.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Affordability Assistance. Pursuant to N.J.A.C. 5:99-2.5, the Township is required to set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to very low-, low- and moderate-income households in affordable units included in the Township's Fourth Round Housing Element and Fair Share Plan. Affordability assistance means the use of funds to render housing units more affordable to very low-, low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5. This may also include offering a subsidy to developers of inclusionary or one hundred percent (100%) affordable housing developments or buying down the cost of low- or moderate-income units in the Township's fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities. The Township will set aside $99,280 from the Affordable Housing Trust Fund for this purpose through June 30, 2035.

(b) Per N.J.A.C. 5:99-2.4(a), no more than twenty percent (20%) of all affordable housing trust funds shall be expended on administration. The Township projects that a maximum of $198,550 will be available from the affordable housing trust fund to be used for administrative purposes through June 30, 2035. Projected administrative expenditures, subject to the twenty percent (20%) cap, include payment for the salaries and benefits for municipal employees and consultant fees related to costs as set forth at N.J.A.C. 5:99-2.4(b), (c) and (d).

(c) Rehabilitation. The Township will allocate a total of $0 of its affordable housing trust fund to satisfy its Fourth Round Present Need obligation of 0 units.

(d) Extension of Affordability Controls. The Township will allocate $80,000 of its affordable housing trust fund to support the extension of expiring affordability deed restrictions.

(e) 3 Grayrock Road. The Township will allocate $605,255 to assist Ingerman in the development the 25-unit 100% affordable housing project located at 3 Grayrock Road identified in the Township's Housing Element and Fair Share Plan. These costs include approximately $3,500 for the appraisal, $15,000 for the option on the property, $,1750 for the water allocation, $575,000 for site acquisition and $10,000 for title work.

(f) Other Emerging Housing Opportunities. The Township will reserve the remaining trust fund balance, projected at $9,670, for other emerging opportunities to create affordable housing opportunities that may arise during the Fourth Round. The Township also reserves the right to apply any surplus funds toward the Fifth Round as may be available.

Trust fund balance as of 12/31/2025		$762,883
Development fees + interest projected 2026-2035	+	$229,872
Total	=	**$992,755**
10 percent affordability assistance	x 0.10 =	$99,280
20 percent administrative expenses	X 0.20 =	$198,550
PROJECTED surplus for other expenses 1/1/26 – 6/30/35	=	**$694,925**

4. EXPENDITURE SCHEDULE

Clinton Township intends to use affordable housing trust fund revenues for projects set forth in the Township's Fourth Round Housing Element and Fair Share Plan, including affordability assistance, administration, extension of affordability controls, funding for 100% affordable development at 3 Grayrock Road and any emerging affordable housing opportunities that may arise during the Fourth Round. Where applicable, the funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTS/ PROGRAMS	PROJECTED EXPENDITURES – AFFORDABLE HOUSING TRUST FUND JANUARY 1, 2026 THROUGH JUNE 30, 2035										
	2026	2027	2028	2029	2030	2031	2032	2033	2034	1/1/26 to 6/30/35	Total
Affordability Assistance	$9,928	$9,928	$9,928	$9,928	$9,928	$9,928	$9,928	$9,928	$9,928	$9,928	**$99,280**
Rehabilitation	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Administration	$19,855	$19,855	$19,855	$19,855	$19,855	$19,855	$19,855	$19,855	$19,855	$19,855	**$198,550**
Deed Extensions	$80,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	**$80,000**
3 Grayrock Road	$605,255	$0	$0	$0	$0	$0	$0	$0	$0	$0	**$605,255**
Other Emerging Opportunities	$967	$967	$967	$967	$967	$967	$967	$967	$967	$967	**$9,670**
Total	$716,005	$30,750	$30,750	$30,750	$30,750	$30,750	$30,750	$30,750	$30,750	$30,750	**$992,755**

5. EXCESS OR SHORTFALL OF FUNDS

In the event of any expected or unexpected shortfall of funds necessary to implement the Fair Share Plan, Clinton Township will handle the shortfall of funds through an alternative funding source to be identified by the Township and/or by adopting a resolution with an intent to bond. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be dedicated toward additional affordability assistance and/or any other emerging affordable housing opportunities that may arise during the Fourth Round.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with the Township's Affordable Housing Ordinance and in accordance with applicable regulations. A process describing the collection and distribution procedures for barrier free escrow is detailed within the Township's Affordable Housing Ordinance.

7. SUMMARY

Clinton Township intends to spend Affordable Housing Trust Fund revenues pursuant to N.J.A.C. 5:99 and consistent with the housing programs outlined in the Township's Housing Element and Fair Share Plan.

Clinton Township has a balance of $762,883 as of December 31, 2025 and anticipates an additional $229,872 in revenues through June 30, 2035 for a total of $992,755. During the period of the Township's Fourth Round JOR through June 30, 2035, the Township agrees to fund $99,280 for affordability assistance, $198,550 towards administrative expenses, $80,000 for the extension of expiring affordability deed controls, $605,255 for the 100% affordable development at 3 Grayrock Road and $9,670 towards other emerging affordable housing opportunities that may arise during the Fourth Round, totaling $992,755 in anticipated expenditures.

Any shortfall of funds will be offset by an alternative funding source to be identified by the Township and/or, the Township will bond to provide the necessary funding. The Township will dedicate any excess funds or balance toward additional affordability assistance, and/or any other emerging affordable housing opportunities that may arise during the Fourth Round, or toward Round 5 planning and projects.

SPENDING PLAN SUMMARY		
Balance as of December 31, 2025		**$762,883**
PROJECTED REVENUE THROUGH 6/30/35		
Development fees	+	$220,134
Payments in lieu of construction	+	$0
Other funds	+	$0
Interest	+	$9,738
SUBTOTAL REVENUE	=	$229,872
TOTAL REVENUE	=	**$992,755**
EXPENDITURES		
Affordability Assistance	-	$99,280
Rehabilitation	-	$0
Administration	-	$198,550
Deed Extensions	-	$80,000
3 Grayrock Road	-	$605,255
Other Emerging Opportunities	-	$9,670
TOTAL PROJECTED EXPENDITURES	=	**$992,755**
REMAINING BALANCE	=	**$0**

9 Main Street/AH-11 Zone Ordinance

February 13, 2026

To: Clerks of Clinton Town, Glen Gardner Borough, High Bridge Borough, Lebanon Borough, Raritan Township, Readington Township, Tewksbury Township, Union Township, Hunterdon County Planning Board, New Jersey State Office of Planning Advocacy

PLEASE TAKE NOTICE that on February 11, 2026, the Mayor and Council of the Township of Clinton introduced on first reading the following ordinance:

> Ordinance #1224-2026: AN ORDINANCE OF THE TOWNSHIP OF CLINTON IN HUNTERDON COUNTY, NEW JERSEY CREATING A NEW ZONING DISTRICT TO BE KNOWN AS THE "AH-11 AFFORDABLE HOUSING DISTRICT" AND ESTABLISH DEVELOPMENT REGULATIONS APPLICABLE THERETO, TO FACILITATE THE CONVERSION OF EXISTING COMMERCIAL SPACE INTO MULTI-FAMILY RESIDENTIAL UNITS, INCLUDING AFFORDABLE UNITS, ON PROPERTY LOCATED AT 9 WEST MAIN STREET AND DESIGNATED ON THE CLINTON TOWNSHIP TAX MAPS AS BLOCK 49, LOT 25, IN ACCORDANCE WITH THE TOWNSHIP'S FOURTH ROUND AFFORDABLE HOUSING ELEMENT AND FAIR SHARE PLAN, AND AMENDING CHAPTER 165, "LAND USE REGULATIONS" OF THE "CODE OF THE TOWNSHIP OF CLINTON" ACCORDINGLY

The ordinance will be further considered for final passage following a public hearing thereon to be held on **March 11, 2026 at 7:00 p.m**. or as soon thereafter as the matter may be reached, on the third floor of the Clinton Township Public Safety Building, 1370 Route 31 North, Annandale, NJ 08801, at which time and place anyone wishing to ask questions or make comments will be heard.

The purpose of the ordinance is to create a new affordable housing district—the AH-11 District—to facilitate the conversion of existing commercial space into multi-family residential units, including affordable units, on property located at 9 West Main Street and designated on the Clinton Township tax maps as Block 49, Lot 25, in accordance with the Township's Fourth Round Affordable Housing Element and Fair Share Plan.

A copy of Ordinance #1224-2026 is enclosed herewith and is also available for download free of charge on the Township's website (www.clintontwpnj.gov).

This notice is being provided in accordance with the requirements of N.J.S.A. 40:55D-15b and N.J.S.A. 40:55D-62.1. Should you have any questions, please contact the Clerk's Office at (908) 735-8800 ext. 204.

Sincerely,

Jeffrey J. Jotz, RMC
Acting Township Clerk

Enclosure: Ordinance #1224-2026

TOWNSHIP OF CLINTON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

ORDINANCE
#1224-2026

AN ORDINANCE OF THE TOWNSHIP OF CLINTON IN HUNTERDON COUNTY, NEW JERSEY CREATING A NEW ZONING DISTRICT TO BE KNOWN AS THE "AH-11 AFFORDABLE HOUSING DISTRICT" AND ESTABLISH DEVELOPMENT REGULATIONS APPLICABLE THERETO, TO FACILITATE THE CONVERSION OF EXISTING COMMERCIAL SPACE INTO MULTI-FAMILY RESIDENTIAL UNITS, INCLUDING AFFORDABLE UNITS, ON PROPERTY LOCATED AT 9 WEST MAIN STREET AND DESIGNATED ON THE CLINTON TOWNSHIP TAX MAPS AS BLOCK 49, LOT 25, IN ACCORDANCE WITH THE TOWNSHIP'S FOURTH ROUND AFFORDABLE HOUSING ELEMENT AND FAIR SHARE PLAN, AND AMENDING CHAPTER 165, "LAND USE REGULATIONS" OF THE "CODE OF THE TOWNSHIP OF CLINTON" ACCORDINGLY

WHEREAS, in accordance with the New Jersey Supreme Court's "Mount Laurel I" decision (*South Burlington County NAACP v. Mount Laurel,* 67 N.J. 151 (1975)) and progeny, as well as the 1985 New Jersey Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 *et seq*., the Township of Clinton ("Township") has a constitutional obligation to provide for its fair share of its region's need for low- and moderate-income housing; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act ("Amended FHA"); and

WHEREAS, in accordance with the requirements of the Amended FHA, Clinton Township's affordable housing planning consultant, Tom Behrens, PP/AICP, of the firm of Burgis Associates, Inc., prepared a fourth round housing element and fair share plan ("2025 HEFSP") entitled "Housing Element & Fair Share Plan, Township of Clinton, Hunterdon County, New Jersey, June 19, 2025"; and

WHEREAS, on June 30, 2025 the Clinton Township Planning Board adopted, and the Clinton Township Mayor and Council endorsed, the 2025 HEFSP, finding that it will guide the use of lands in the Township in a manner that protects public health and safety and promotes the general welfare in accordance with N.J.S.A. 40:55D-28, is designed to achieve access to affordable housing to meet the Township's Fourth Round Mount Laurel constitutional affordable housing obligations, and considers the lands that are most appropriate for construction of low and moderate income housing in accordance with N.J.S.A. 52:27D-310; and

WHEREAS, the 2025 HEFSP includes among its compliance mechanisms rezoning a ±1.93-acre parcel located at 9 West Main Street (Block 49, Lot 25 on the Clinton Township tax maps) in order to facilitate the conversion of existing commercial space into several new

residential apartment units, including two low- and moderate-income units (see pp. 5, 37 and 50 of the 2025 HEFSP); and

WHEREAS, the Mayor and Council wish to create a new zoning district comprising the above-described parcel and establish regulations for said district, consistent with the 2025 HEFSP;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey as follows:

SECTION 1. **Preamble.** The preamble to this ordinance is hereby incorporated as if fully restated herein.

SECTION 2. **AH-11 Affordable Housing District created**. Section 165-85, "Establishment of districts" of the "Code of the Township of Clinton" ("Township Code") is hereby amended and supplemented to add thereto a new zoning district entitled the "AH-10 Affordable Housing District," and shall read as follows (additions are underlined thus; deletions are in brackets [thus]):

§ 165-85. Establishment of Districts.

For the purpose of this chapter, the Township of Clinton is hereby subdivided into [24]25 zone districts, known as:

RC	Rural Conservation District
RR-4	Rural Residential 4 District
RR-4S	Rural Residential District 4S
SR	Suburban Residential District
VR	Village Residential District
AH-1	Affordable Housing District
AH-2	Affordable Housing District
AH-3	Affordable Housing District
AH-4	Affordable Housing Redevelopment District
AH-5	Affordable Housing District
AH-6	Affordable Housing District
AH-8	Affordable Housing District
AH-9	Affordable Housing District
AH-10	Affordable Housing District
AH-11	Affordable Housing District
C-1	Commercial District
C-ROM	Commercial – Research, Office and Manufacturing District
HC	Highway Commercial District
OB-1	Office Building District
OB-2	Office Building District
ROM-1	Research, Office and Manufacturing District

ROM-2	Research, Office and Manufacturing District
ROM-3	Research, Office and Manufacturing District
PUD	Planned Unit Development Overlay
PDO	Planned Development Overlay

SECTION 3. AH-11 zoning regulations established and new article created. Part 7, "Zoning Regulations" in Chapter 165, "Land Use Regulations" of the Township Code is hereby amended by adding thereto new Article XXIIH, entitled "AH-11 Affordable Housing District," which shall read as follows:

Article XXIIH
AH-11 Affordable Housing District

§165-155.79 Purpose.

The purpose of the AH-11 Zone is to establish development regulations to facilitate the conversion of several commercial spaces into multifamily units in an existing mixed-use development that is the subject of approvals granted by the Clinton Township Zoning Board of Adjustment in 2015. Twenty-six existing multifamily residential units, including four units that are affordable to low- and moderate-income households, will be retained, and up to eight new multifamily units, including two new units affordable to low- and moderate-income households, will be created, resulting in a maximum of thirty-four residential units, including a minimum of six affordable units. These affordable units will address a portion of the Township's affordable housing obligation in accordance with the Township's Fourth Round Housing Element and Fair Share Plan. All affordable units shall comply with applicable requirements of the New Jersey Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 *et seq.*, the New Jersey Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 *et seq.*, and all Township regulations pertaining to affordable housing. A maximum of two commercial spaces will be permitted to remain in accordance with the terms of this Article.

§165-155.80 Permitted principal uses.

A. Up to two retail sales or service establishments as permitted in the C-1 Commercial District, not to exceed 1,750 square feet of gross floor area in the aggregate.

B. Multifamily residential units.

§165-155.81 Permitted accessory uses.

A. Private garages.

B. Storage and maintenance sheds.

C. Off-street parking as hereinafter regulated.

D. Signs in accordance with the requirements of § 165-109.

E. Private recreation buildings and facilities, including ancillary indoor and outdoor private recreational amenities, primarily intended for use by residents of the development.

F. Community center/room serving the residents of the development.

G. Gazebos, pergolas and similar outdoor landscape structures.

H. Uses which are customarily incidental to the principal permitted uses in the zone, including, but not limited to, leasing, management, maintenance, and operations offices.

I. Employee/superintendent occupied dwelling unit.

J. Dumpster enclosures.

K. Green infrastructure and stormwater infrastructure.

L. Other accessory uses customarily incidental to the permitted principal uses set forth in this Article.

§165-155.82 Area and bulk requirements.

All development in the AH-11 District shall comply with the following bulk requirements:

Requirement	**AH-11**
Min. Lot Area	75,000 sf
Max. Density	34 units
Min. Number of Affordable Housing Units	6
Min. Lot Width at East Street	200 ft
Min. Lot Width at Main Street	46 ft

Min. Front Yard Setback	2 ft
Min. Side Yard Setback	0 ft
Min. Rear Yard Setback	N/A
Max. Impervious Coverage	90%
Max. Building Coverage	25%
Max. Building Height	2 sty/35 ft

§165-155.83 Supplemental regulations.

A. Surface parking areas shall have a minimum front yard setback of twenty-five feet, a minimum side yard setback of five feet and a minimum setback of zero feet from buildings walls.

B. Driveways shall be allowed in the front yard to the extent they provide access from a public road to a permitted parking area in the side or rear yard. Driveways shall be set back at least one foot from building walls and five feet from side lot lines.

C. The two new affordable units created for the Fourth Round will consist of one 1-bedroom low income unit and one 3-bedroom moderate income unit. Provided the unit complies with UHAC, the 3-bedroom unit may be a conversion of an existing market rate unit, and is not required to be a newly constructed unit.

D. To ensure efficient and timely production of affordable housing, no more than fifty percent of the new market rate units can receive a temporary or permanent certificate of occupancy until at least fifty percent of the new low- or moderate-income units have received their temporary or permanent certificate of occupancy.

SECTION 4. Zoning map amended. The map entitled "Zoning Map, Clinton Township, Hunterdon County, NJ," as most recently amended pursuant to Ordinance No. 1215-2025 adopted on August 13, 2025, is hereby further amended by removing Block 49, Lot 25 from the OB-2 Office Business District and placing it in the new AH-11 Affordable Housing District created by this ordinance, as shown on Exhibit A attached hereto.

SECTION 5. Reference to zoning map and schedule of zoning requirements in Code section 165-86 amended; schedule of zoning requirements updated. Section 165-86 of the Township Code, entitled "Zoning Map and Schedule of Zoning Requirements," is hereby amended and supplemented to read as below (new text is underlined thus; deleted text is in brackets [thus]), and the "Schedule of Zoning Requirements" referenced in said section is

hereby updated consistent with the provisions of this ordinance, as shown on Exhibit B attached hereto:

> **§ 165-86. Zoning Map and Schedule of Zoning Requirements.**
>
> The map entitled, "Zoning Map, Clinton Township, Hunterdon County, N.J.," dated [June 26, 2024]February 11, 2026, and the Schedule of Zoning Requirements, revised through [June 26, 2024]February 11, 2026 (Chapter 165, Attachment 3), which accompany and are referenced in this Part 7 are hereby declared to be a part hereof.

SECTION 6. **Repealer.** All ordinances and resolutions or parts thereof inconsistent with this ordinance are hereby repealed as to such inconsistencies only.

SECTION 7. **Severability.** If any paragraph, section, subsection, sentence, sentence clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of such holding shall not affect the validity of the remaining paragraphs or sections hereof.

SECTION 8. **Referral to Planning Board.** Following introduction and prior to adoption, the Clerk shall cause a copy of this ordinance to be referred to the Clinton Township Planning Board for review pursuant to N.J.S.A. 40:55D-26.

SECTION 9. **Effective date.** This ordinance shall take effect 20 days after its final passage in accordance with N.J.S.A. 40:69A-181 and upon filing with the Hunterdon County Planning Board.

3 Grayrock Road Preliminary Site Plan Approval

CLINTON TOWNSHIP PLANNING BOARD

INGERMAN DEVELOPMENT COMPANY, LLC
BLOCK 74, LOT 19
3 GRAYROCK ROAD

APPLICATION NO. PB-2025-07

PRELIMINARY MAJOR SITE PLAN APPROVAL, A "C(2)" VARIANCE FOR FENCE TYPE AND "C(1)" VARIANCE FOR FENCE LOCATION AND SITE PLAN EXCEPTIONS FOR BUFFER PLANTING, TO ALLOW CONSTRUCTION OF A 100% AFFORDABLE MULTIFAMILY DEVELOPMENT

RESOLUTION NO. 2025-06

WHEREAS, Ingerman Development Company, LLC (the "**Applicant**"), is the contract purchaser of an approximately 1.44-acre lot located at 3 Grayrock Road in the Township of Clinton (the "**Township**") which is designated on the Township tax maps as Block 74, Lot 19 (the "**Property**"), and is currently owned by Zinn Realty, LLC which commenced construction of a medical office building on the Property at the time the Property was situated in the OB-2 office business zoning district and had been approved by a "d(1)" use variance, "c" variances, exceptions, and preliminary and final site plan approval (the "**prior approvals**") granted by the Clinton Township Board of Adjustment (the "**BOA**") but the construction was stopped after installation of some limited improvements;

WHEREAS, and the Property was re-zoned to the AH-12 Affordable Housing Redevelopment District (the "**AH-12 zone**") and the prior approvals granted by the BOA were subject to various conditions, one of which required the medical office building and all related site improvements to be constructed and obtain a certificate of occupancy within a certain time period which time period was extended a number of times with the final extension providing that the medical office building and all related site improvements had to be constructed and obtain a certificate of occupancy by December 4, 2021, and the owner of the property was given notice that the BOA would list the matter on its September 23, 2024 agenda for adoption of a resolution memorializing a determination that the prior approvals had expired and became null and void because construction of the prior development has stopped and no further extension of the time period to complete the development and obtain a certificate of occupancy has been sought, and the BOA adopted Resolution No. 2024-07 on September 23, 2024 declaring that the prior approvals had expired and became null and void;

WHEREAS, with the consent of the owner, the Applicant submitted an application dated August 4, 2025 to the Township of Clinton Planning Board (the "**Board**"), which application seeks preliminary site plan approval, a "c(1)" variance as to fence location, a "c(2)" variance as to fence type, and site plan exceptions for buffer planting requirements (all relief together referred to as the "**Application**") to allow the Applicant to construct a 25 unit 100% affordable residential multifamily development consisting of two residential buildings (the "**affordable housing project**"), together with parking spaces, stormwater management

improvements, trash enclosure, tot lot and other related site improvements (together referred to as the "**proposed development**", which will be known as "Willows at Grayrock";

WHEREAS, the affordable housing project is a principal permitted use in the AH-12 zone and the Board has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-46, 51, 60 and 70c;

WHEREAS, a number of documents were submitted by the Applicant with regard to the Application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Site plan set consisting of 14 sheets titled "Preliminary Major Site Plan for The Willows at Grayrock" prepared by Robert Martucci, PE of Martucci Engineering, LLC, dated July 30, 2025 (the "**preliminary site plans**"),

2. Boundary and Topographic Survey, Tax Lot 19, Block 74, prepared by James J. Heiser, Professional Land Surveyor of DPK Consulting, dated July 24, 2025 (the "**survey**"),

3. Architectural plan set consisting of 9 sheets, prepared by Michael Donovan, RA, of Donovan Architects, dated June 30, 2025, last revised July 31, 2025 (the "**preliminary architectural plans**"),

4. Stormwater Management Report prepared by Robert Martucci, PE of Martucci Engineering LLC, dated July 30, 2025 (the "**Stormwater Management Report**"),

5. Environmental Impact Statement prepared by Robert Martucci, PE of Martucci Engineering LLC, dated July 30, 2025 (the "**EIS**"), and

6. Report of Critical Geotechnical Formation & Geotechnical Investigation, Gray Rock Road, Block 74 Lots 16, 18 and 19, Township of Clinton, Hunterdon County, New Jersey, prepared by East Engineering Incorporated, dated April 16, 2012, last revised June 7, 2012 (the "**Geotech Investigation**");

WHEREAS, a duly noticed public hearing was held on the Application by the Board on August 18, 2025, with proof of service and publication of notices of the hearing being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the Applicant was represented by Nicole M. Magdziak, Esq., and the Board was represented by Jonathan E. Drill, Esq.;

WHEREAS, the following witnesses testified during the hearing on the Application, were subject to cross examination and questions, and their testimony is part of the record in this matter:

1. Christopher Nusser, PE, PP (Applicant's civil engineering and planning expert),
2. Michael Donovan, RA (Applicant's architectural expert),
3. Geoffrey Long (Applicant's representative),
4. Thomas Behrens, PP, AICP (Board planning expert),
5. Jim Mazzucco, LLA (Board landscape architectural expert), and
6. Stanley Schrek, PE (Board engineering expert);

WHEREAS, the following exhibits were admitted into evidence during the hearing, are on file with the Board, and are part of the record in this matter:

A-1 Color rendered Site Plan Exhibit dated 8/18/2025, with a scale of 1 in = 30 feet,

A-2 Color rendered Site Plan Exhibit dated 8/18/2025, with a scale of 1 in = 20 feet, and

A-3 Architectural Sketch prepared by Michael Donovan, RA, dated 8/18/2025;

WHEREAS, the following members of the public asked questions and/or made comments on the Application:

1. Cheryl Lorcheim (interested party within 200 feet of the property), and
2. Paul Lorcheim (interested party within 200 feet of the property);

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO ALL OF THE SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS

1. **The Property, Zoning, and Surrounding Area .** As set forth above, the Property is approximately 1.44 acres in size and is located at 3 Grayrock Road. The property has frontage on Grayrock Road, Fairview Avenue and Center Street. The Property was cleared and improved in certain areas with retaining walls, gravel areas and subsurface infrastructure to accommodate an approved site plan for a medical office building which was a principal permitted use on the property at the time the Property was zoned OB-2. As set forth above, the approval for the medical office building expired and was declared by the BOA to be null and void by Resolution No. 2024-07 adopted on September 23, 2024. There are man-made steep slopes present that are the result of prior grading for the medical office building, and there is existing vegetation along the northern periphery of the lot. Multifamily housing is a permitted use in the AH-12 zone pursuant to the AH-12 Affordable Housing Redevelopment District Redevelopment Plan (the "**redevelopment plan**"), which was adopted by Township Council by Ordinance 1215-2025 on

August 13, 2025. The proposed development is included as a component of the Township's Fourth Round Housing Element and Fair Share Plan (the "**HEFSP**") as an affordable housing site to meet the Township's Fourth Round Mount Laurel affordable housing obligation. The area surrounding the Property consists of a credit union, a day care facility, single-family residential dwellings, vacant parcels and an approved multifamily development site.

2. **The Application, Proposed Development and Requested Relief.** The Applicant is proposing to demolish the existing structures on the Property and, as set forth above, the Application seeks preliminary site plan approval to allow construction of the proposed development, consisting of the affordable housing project, a 25 unit 100% affordable residential multifamily housing development consisting of two residential buildings. The proposed development also includes certain associated site improvements such as parking stalls, sidewalks, tot-lot, site lighting, stormwater management best management practices, utility infrastructure trash enclosure and landscaping. In addition to the requested preliminary site plan approval, the Applicant seeks the following relief to allow construction of the proposed development. First, the Applicant seeks a "c(2)" variance from redevelopment plan section 4.7.9.3, which requires an aluminum picket or split rail fencing, to permit a solid fence. Second, the Applicant seeks a "c(1)" variance from ordinance section 165-117.1.(C).(1), which prohibits fences in excess of 4 feet from being located in the front yard and requires a minimum setback of 2 feet, to permit a 6-foot high fence to be located in the front yard with a setback of less than 2 feet for screening purposes. Third, the Applicant seeks site plan exceptions from ordinance section 165-77.G.(3) and ordinance section 165-77.G.(3).(a) as to parking lot landscaping because there is not enough physical room on the Property for the Applicant to comply with the requirements that 10% of the parking area be landscaped and that one tree be planted for every 3 parking spaces.

3. **Findings and Conclusions as to "C(1)" Variance for Fence Location.** The Applicant seeks a "c(1)" variance from ordinance 165-117.1.(C).(1), which prohibits fences in excess of 4 feet from being located in the front yard and requires a minimum setback of 2 feet, to permit a 6-foot high fence to be located in the front yard with a setback of less than 2 feet for screening purposes. The Board's findings and conclusions as to the positive and negative criteria of the "c(1)" variance to allow the proposed deviation are as follows:

a. **Positive Criteria of the "C(1)" Variance.** As to the positive criteria of the "c(1)" variance, the Board finds that the Applicant will experience peculiar and exceptional practical difficulties unless a variance is granted to allow the proposed deviation from the fence location requirement. Specifically, the Board finds that due to the topography of the Property, which includes a 15-foot grade change requiring a retaining wall with a solid fence on top, there is not sufficient room on the Property to locate the fence as required. Additionally, the Property is unique in that it fronts on three public streets, resulting in three front yards. More specifically, due to the nature of the proposed development, the ordinance and HEFSP requirement for the number of affordable units that must be constructed, and the existing conditions of the Property, the Board finds that strict application of the fence location requirement at issue in this application will result in peculiar and exceptional difficulties in terms of impacting the extent to which the Property may be used. The Board therefore finds and concludes that "c(1)" variance relief to allow the buffer planting deviation at issue is necessary to relieve the hardship that will otherwise ensure to allow for the construction of the proposed development.

b. **Negative Criteria of the "C(1)" Variance.** As to the negative

criteria of the "c(1)" variance, the Board finds as follows. First, as to the first prong of the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds and notes that the fence location will not create any significant negative impacts, including as to any visual, noise, or operational impacts because a solid fence is proposed for screening to neighboring properties and there is no interference with sight triangles for the traveling public and residents. As such, the Board finds and concludes that the "c(1)" variance can be granted to allow the deviation without substantial detriment to the public good. Second, as to the second prong of the negative criteria, provided again that the conditions set forth below are imposed and complied with, the Board finds that the "c(1)" variance can be granted without substantial impairment of the intent and purpose of the master plan and zoning ordinance because the overriding intent and purpose of both the AH-12 zoning ordinance and the newly adopted Master Plan elements is to provide for the construction of the affordable housing development as proposed. Further, in this particular case, because of the conditions imposed below, the variance can be granted without creating any negative safety or aesthetic impacts. As such, the Board further finds and concludes that the variance can be granted without substantial impairment to the safety and aesthetic purposes and intents of the master plan and zoning ordinance. As such, the Board finds and concludes that the requested "c(1)" variance can and should be granted subject to the conditions set forth below being imposed and complied with.

4. **Findings and Conclusions as to "C(2)" Variance for Fence Type**. The Applicant seeks a "c(2)" variance from redevelopment plan section 4.7.9.3, which requires an aluminum picket or split rail fencing, to permit the installation of solid fence. The solid fence is proposed along the rear/western property line to provide screening for neighboring property owners given the limited area to plant a landscape buffer due to Property constraints. The Board's findings and conclusions as to the positive and negative criteria of the "c(2)" variance to allow the proposed deviation are as follows:

a. **Positive Criteria of the "C(2)" Variance.** As to the positive criteria of the "c(2)" variance, the Board finds and concludes that the construction of the proposed development will provide for the housing needs of low and moderate income families, thereby promoting the general welfare which is a purpose of the MLUL as enumerated in N.J.S.A. 40:55D-2a, -2g and -2m. The Board further finds that granting a "c(2)" variance to allow the solid fence will, in turn, allow the proposed development to be constructed, thereby promoting the above referenced general welfare purposes of the MLUL. Additionally, the solid fence provides an appropriate screen to assist in buffering neighboring residential property owners from the proposed development. Provided that the conditions set forth below are imposed and complied with, and subject to satisfaction of the negative criteria, the Board finds and concludes that the zoning benefits resulting from the grant of the "c(2)" variances will substantially outweigh any resulting detriment.

b. **Negative Criteria of the "C(2)" Variance.** Provided that the conditions set forth below are imposed and complied with, the Board finds and concludes that the "c(2)" variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the proposed development will be effectively screened with the proposed solid fencing and landscaping to the extent practicable given the Property's constraints, which result in a limited area to provide a buffer. Second, if the fence was split rail and/or open, it would not provide additional buffering to the neighboring properties. Finally, the Board finds and

concludes that granting the "c(2)" variance will not impair the intent or purpose of the master plan and zoning ordinance to provide adequate light, air, open spaces and an aesthetically pleasing environment. As such, the Board finds and concludes that the requested "c(2)" variance can and should be granted subject to the conditions set forth below being imposed and complied with.

5. **Findings and Conclusions as to Exceptions from the Parking Lot Landscaping Requirements**. As set forth above, the Applicant seeks exceptions from the requirements in ordinance section 165-77.G.(3) and ordinance section 165-77.G.(3).(a) as to parking lot landscaping because there is not enough physical room on the Property for the Applicant to comply with the requirements that 10% of the parking area be landscaped and that one (1) tree be planted for every three (3) parking spaces. The Applicant is proposing approximately 3% of the parking area to be landscaped and to install eight (8) trees in the parking lot, where fourteen (14) trees are required. During testimony at the public hearing, the Applicant agreed to work with the Board landscape architectural expert to try to locate 1 or 2 additional trees in the parking lot area, if practicable. The Board's findings as to these requested exceptions are as follows. First, the Board finds that the literal enforcement of the ordinance requirements at issue will exact undue hardship because of certain peculiar conditions of the Property. The Applicant is providing landscaping to the extent practicable given the Property's constraints, which result in a limited area to provide landscaping given the parking requirements to support the Project. Specifically, the Board notes and finds that the Applicant must construct a particular number of affordable housing units as part of the proposed development in order for the Township to satisfy its Fourth Round Mount Laurel affordable housing obligations and, as a result, there is insufficient space to plant the number of trees required per the ordinance. The Board finds that the unique shape of the Property, in conjunction with the nature, size and scope of the proposed development will result in undue hardship if the literal requirements of the ordinance were strictly enforced because it would inhibit the extent to which the Property can be used. Finally, the Board finds that granting the exceptions will be reasonable and within the general intent and purpose of the provisions for site plan review under the circumstances because the Applicant has stipulated to planting trees to the extent feasible and subject to the satisfaction of the Board landscape architectural expert. As such, the Board finds and concludes that the requested exceptions can and should be granted subject to the conditions set forth below being imposed and complied with.

6. **Difference Between Preliminary and Final Site Plan Review and Approval, and Finding that the Preliminary Plans and Documents are Sufficient for Purposes of Preliminary Site Plan Approval.** Ordinance section 165-36 provides that prior to the issuance of a construction permit or certificate of occupancy for any development, an application for subdivision, site plan or planned development review, as the case may be, shall be submitted to and approved by the Planning Board in accordance with the requirements of the Township ordinances. The only exceptions are subdivision or individual lot applications for detached one- or two-family dwelling unit buildings, replacement of previously approved site lighting, replacement of previously approved outdoor mechanical equipment and replacement of previously approved fencing. Further, under ordinance section 165-50.I, final site plan review and approval is required prior to construction of a proposed development. The Applicant has applied for preliminary site plan approval only at this time and has indicated that, if it obtains preliminary approval, it will subsequently apply for final approval. As set forth in the legal conclusions below, the MLUL provides that the plans submitted for preliminary approval need only be in "tentative form" for "discussion purposes", whereas the plans submitted for final approval need to be "detailed." The Board finds that the preliminary site plans, the preliminary architectural plans, and the other

documents listed above for which approval is sought, are sufficient for purposes of preliminary site plan review and approval.

6. **Findings and Conclusions as to Preliminary Site Plan Review.** The Board's findings and conclusions as to preliminary site plan review are as follows:

a. **Ordinance Compliance in General.** With the exception of the variances from the zoning ordinance regulations and the exception from the site plan ordinance requirements set forth above from which the Applicant seeks relief, the Board finds that the preliminary site plans, preliminary architectural plans, and the other documents listed above for which approval is sought, will comply with all other applicable zoning ordinance regulations and site plan ordinance requirements, provided, however, that the conditions set forth below are imposed and complied with.

b. **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development.

c. **Ultimate Finding and Conclusion.** For all of the foregoing reasons, the Board's ultimate finding and conclusion is that preliminary site plan approval is warranted provided that the conditions set forth below are imposed and complied with.

B. LEGAL CONCLUSIONS

1. **"C(2)" Variance.** The Board's conclusions as to the "c(2)" variance requested from the zoning ordinance regulation relative to the solid fence are as follows:

a. **Standards for Considering "C(2)" Variances from Zoning Ordinance Regulations.** The Board has the power to grant "c(2)" or so-called "benefits v. burdens" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(2) where "in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment." The zoning benefits resulting from permitting the deviation must be for the community ("improved zoning and planning that will benefit the community") and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). Finally, the Board may not exercise its power to grant a "c(2)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions as to Grant of the "C(2)" Variance.** As set forth in the factual findings above, the Board found that the construction of the affordable housing project will provide for the housing needs of low and moderate income families, thereby promoting the

general welfare which is a purpose of the MLUL as enumerated in N.J.S.A. 40:55D-2a, -2g and -2m, and the Board further found that granting "c(2)" variances to allow the solid fence will, in turn, assist in advancing the affordable housing project, and provide sufficient screening to neighboring property owners thereby promoting the above referenced general welfare purposes of the MLUL. The Board concludes that promotion of the general welfare purposes of the MLUL, by definition, constitutes "improved zoning and planning that will benefit the community." Provided that the conditions set forth below are imposed and complied with, and subject to satisfaction of the negative criteria, the Board also found that the zoning benefits resulting from the grant of the "c(2)" variances will substantially outweigh any resulting detriment. As also set forth in the factual findings set forth above, the Board found that the "c(2)" variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance, provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that it can and should grant the "c(2)" variances subject to the conditions set forth below.

2. **"C(1)" Variance.** The Board's conclusions as to the "c(1)" variance requested from the zoning ordinance regulation relative to the location of the fence in the front yard are as follows:

a. **Standards for Considering "C(1)" Variances from Zoning Ordinance Regulations.** The Board has the power to grant "c(1)" or so-called "hardship" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(1) where: "(a) by reason of exceptional narrowness, shallowness or shape of a specific piece property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon; (2) the strict application of any regulation . . . would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." This is the so-called positive criteria of a "c(1)" variance. Our courts have held that the "hardship" standard does not require that the applicant prove that without the variance the property would be zoned into inutility. While the creation of "inutility" by the zoning classification of the lot would require a variance to avoid an unconstitutional taking of property, the Board may (but is not required to) grant a variance where the "hardship" may inhibit "the extent" to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). Notwithstanding that the Board may find that the applicant has proved the positive criteria of a "c(1)" variance, the Board may not exercise its power to grant such a variance unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions as to Grant of the "C(1)" Variance.** As set forth above in the factual findings, the Board found that the strict application of the bulk regulation relative to front yard fence encroachments in this particular case will result in exceptional and undue hardship in terms of impacting the extent to which the Property may be used and that "c(1)" variance relief to allow the proposed fence encroachment into the front yard would relieve the hardship. Finally, the Board found that the "c(1)" variance relief could be granted without

substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance provided that the conditions set forth below are imposed and complied with. The Board thus concludes that the Applicant proved all elements required for the "c(1)" variance sought in this case in accordance with the standards established in Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). As such, the Board thus concludes that the "c(1) variance relief can and should be granted but subject to the conditions set forth below.

3. **Exceptions.** The Board's conclusions as to the exceptions requested from the site plan ordinance requirements relative to parking lot landscaping are as follows:

a. **Standards Applicable to Review of Exceptions from Site Plan Ordinance Requirements.** N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for preliminary . . . site plan approval, shall have the power to grant such exceptions from the requirements for . . . site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As is the case for "c(1)" variance relief, the "hardship" at issue does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, our courts have held that "hardship" to warrant a "c(1)" variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board concludes that this definition of undue hardship applies to consideration of an exception under N.J.S.A. 40:55D-51b. Unlike "hardship," however, "impracticable" has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that "impracticability" is derived from the root word "impractical," which is defined as "not wise to put into or keep in practice or effect"; an inability to deal "sensibly or prudently with practical matters." See, Merriam-Webster's Collegiate Dictionary (11th Ed. 2004). The Board concludes that this definition of impracticable applies to consideration of an exception under N.J.S.A. 40:55D-51b.

b. **Conclusions as to Grant of the Exception**. As set forth in the factual findings above, the Board found that granting the requested exceptions as to parking lot planting is reasonable and within the general intent and purpose of the provisions for site plan review and approval. The Board also found that the literal enforcement of the site plan ordinance requirements in this particular case would create undue hardship. As such, the Board concludes that it can and should grant the exceptions subject to the conditions set forth below.

4. **Preliminary Site Plan Review.** The Board's conclusions as to preliminary site plan review are as follows:

a. **Standards Applicable to Preliminary Site Plan Review.** N.J.S.A. 40:55D-46b, which contains the standard the Board must utilize in reviewing the application for preliminary site plan approval, provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. As such,

if the application complies with all ordinance provisions, the Board must grant approval. However, there are two exceptions:

(1) The first exception is where an application does not comply with all ordinance provisions but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance provisions and grant approval if the application complies with all such remaining provisions.

(2) The second exception is where an application does not comply with all ordinance provisions but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application is revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance provisions prior to the Board granting approval.

b. **While Preliminary Site Plans are Allowed to be in Tentative Form, They Must Sufficiently Address Matters Vital to the Public Health and Welfare.** Another issue that must be addressed is the level of detail required for preliminary plans versus final plans. N.J.S.A. 40:55D-46a allows the site plans and engineering documents required to be submitted for preliminary site plan review to be in "tentative form for discussion purposes for preliminary approval." N.J.S.A. 40:55D-46b also provides that, if any architectural plans are required to be submitted in the preliminary site plan review process, "preliminary plans and elevations shall be sufficient." For preliminary site plan review, neither the site plans, engineering plans or architectural plans need to be "detailed" or in "final" form as is required for final site plan review and approval pursuant to N.J.S.A. 40:55D-50a. All that said, the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan. The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D'Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the preliminary site plan review process, preliminary approval must be denied. Id.

c. **Conclusions to Grant Preliminary Site Plan Approval.** As set forth above in the factual findings, the Board found that the preliminary site plans, the preliminary architectural plans, and the other documents listed above for which approval is sought, are sufficient for purposes of preliminary site plan review and approval. As also set forth in the factual findings above, with the exception of the variances granted by the Board from the zoning ordinance regulations at issue and the exception granted by the Board from the site plan ordinance requirements at issue, the Board found that the preliminary plans, preliminary architectural plans, and the other documents listed above for which approval is sought, will comply with all other applicable zoning ordinance regulations and site plan ordinance requirements, provided, however, that the conditions set forth below are imposed and complied with. Finally, as further set forth above in the factual findings, provided that the conditions set forth below are imposed and complied with, the Board found that matters vital to public health and welfare (stormwater management and

drainage, sewage disposal, water supply, and traffic circulation safety) have been adequately provided for. The Board's ultimate finding was that preliminary site plan approval is warranted, but subject to the conditions set forth below being imposed and complied with. As such, the Board concludes that preliminary site plan approval can and should be granted subject to the conditions set forth below.

4. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). *See also*, Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J 418, 438-439 (2000) (explaining that site plan review "typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. *See*, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan approval on review and approval of changes to the plans by board experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The conditions set forth below have been imposed on all of the foregoing bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON AUGUST 18, 2025 AS FOLLOWS:

C. RELIEF GRANTED

1. **"C(1)" Variance from Ordinance Requirement for Fence Location.** Subject to the conditions set forth below, a "c(1)" variance is granted from ordinance section 165-117.1.(C), which prohibits fences in excess of 4 feet from being located in the front yard and

requires a minimum setback of 2 feet, to permit a 6-foot high fence to be located in the front yard with a setback of less than 2 feet.

2. **"C(2)" Variance from Redevelopment Plan Requirement for Fence Style Variance**. Subject to the conditions set forth below, a "c(2)" variance is granted from redevelopment plan section 4.7.9.3, which requires an aluminum picket or split rail fencing, to permit a 6-foot high solid fence to be located along the westerly (rear) property line.

3. **Exceptions from Ordinance Requirement of Parking Lot Plantings**. Subject to the conditions set forth below, exceptions are granted from ordinance section 165-77.G.(3) and ordinance section 165-77.G.(3).(a) as to parking lot landscaping to allow approximately 3% of the parking area be landscaped, where a minimum of 10% is required, and to allow eight to ten trees to be planted in the parking area, where 14 trees are required.

4. **Preliminary Site Plan Approval.** Subject to the conditions set forth below, preliminary site plan approval is granted to the preliminary site plans, preliminary architectural plans and related documents referenced above.

D. CONDITIONS

1. **Revisions to Preliminary Site plans, Preliminary Architectural Plans, Stormwater Management Report and Related Documents.** Revisions to the preliminary site plans, preliminary architectural plans, Stormwater Management Report and related documents shall be made to incorporate the following comments emanating in the following letters and/or memos prepared by the following Board professionals and/or as discussed by the Board on the record during the hearing on the Application, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Board Engineer and Township Planner, with the revisions being made to all of the documents and the Site Plans being signed no later than October 6, 2026 (which is one (1) year from the date the within resolution is adopted on October 6, 2025), and only after the revisions have been made to all of the documents. In the event that the Applicant fails to revise the documents as required and/or fails to obtain signatures on the site plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a one year period to provide the Applicant with the opportunity to revise the site plans and documents and, failure by the Applicant to resubmit same to the Board within that period or submission within that period but failure of the Applicant to make all the required revisions, would result in denial of the application.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the site plans, plats and documents may be brought to the Board for resolution by written letter application submitted by the Applicant without the necessity for public notice but on written notice to the Board Engineer and Township Planner. The required revisions are as follows:

a. **Following Comments Emanating in the Memo to the Board from Stanley J. Schrek, PE, AIA, PP, CME, LEED AP (Board's engineering expert) dated August 11, 2025:**

(All comments intentionally omitted unless set forth below)

2. Site Plan Comments

a. Applicant shall revise the site plans to include a bicycle rack be installed in the rear yard, adjacent to the children's playground. Other locations may be considered by the Applicant as well.

b. Applicant shall revise the site plans to include a solid fence on top of the proposed retaining wall in the southwest corner of the tract.

c. Applicant shall revise the site plans to include the installation of an ADA compliant curb ramp in line with the existing curb ramp on the northern side of Fairview Avenue and the proper striping where applicable.

d. Applicant shall revise the site plans to provide an ADA compliant curb ramp in the location of the concrete sidewalk leading up to the children's playground and a curb ramp directly across from this location, connecting the sidewalk network fronting proposed Building B to the playground. The proper crosswalk striping shall be included on the site plans in this location.

e. Applicant shall revise the site plans as to the trash enclosure detail on Sheet 10 to contain an ADA accessible latch.

f. Applicant shall revise the site plans to add a note to the modular block wall construction detail stating that the 4" diameter drainage pipe installed behind the wall shall be encased in a drainage sleeve in order to prevent the infiltration of sediments.

g. Applicant shall revise the site plans to propose fencing on top of the retaining wall proposed along the property line of the rear yard in the southwest corner. This fence shall be area solid fence in accordance with the "c(2)" fence variance granted above..

h. Applicant shall revise the site plans to provide the sight triangle for the street and driveway entrance to the tract located off of Fairview Avenue.

i. Applicant shall revise the site plans to provide contours extending onto Center Street and Fairview Avenue in order to ensure that the proposed entry/exit drives can effectively meet the grade of the existing roadways.

j. Applicant shall revise the site plans to include the appropriate signage to be installed where the Applicant is identifying the fire lane. Signage shall be accompanied by the appropriate striping as per the Township of Clinton Municipal Code §133-20 "Striping. The owner of any property upon which fire lanes are designated in accordance with the requirements of this article shall install striping as described herein for all fire lanes on improved areas provided as any portion of a fire lane. Fire lanes shall be provided with yellow lines four inches in width along their entire circumference. The fire lane shall further be provided with diagonal striping, yellow in color and having a minimum width of four inches, spaced at intervals of five feet."

k. Applicant shall revise the site plans to provide the applicable striping for the curb ramp fronting Center Street, as well as in the entry/exit drive onto Center Street.

l. Applicant shall coordinate with the applicable electric and cable companies prior to relocation of the utility poles fronting Grayrock Road.

3. Environmental Impact Statement

a. Applicant shall submit a signed copy of the environmental impact statement prior to final site plan approval being granted.

4. Geotechnical Report

a. Applicant shall submit a new geotechnical report to assess the current geological conditions within the site, utilizing updated Karst Mapping to confirm if groundwater recharge is acceptable. Based upon the results, Applicant may have to explore alternative stormwater management BMPs that do not implement ground water recharge.

b. Applicant shall provide further information as to the subsurface conditions within the tract, and methods that will be taken during construction to prevent sinkhole development due to the risks of the Property being underlain by karst topography.

c. Applicant shall perform excavation and subsurface construction in the presence of an on-site geotechnical engineer with experience in karst conditions. Any loose material uncovered during construction shall be evaluated for possible sinkhole conditions by the geotechnical engineer.

d. During the installation of utility and stormwater pipes within the tract, Applicant shall conform to the backfilling methods outlined in the provided geotechnical report. Low permeability backfills shall be utilized such as clay. All other measures outlined within the report to control sinkhole formation shall be abided by Applicant throughout the construction process.

5. Architectural Renderings

a. No additional bedrooms are permitted beyond what is represented in the proposed floorplan layouts.

6. Stormwater Management

a. Applicant shall revise the site plans to provide additional elevation and invert information and detail sheets to address the connection of the stormwater conveyance system between Basin 1A and the EMC Up-Flo Filter MTD.

b. Applicant shall verify that groundwater recharge for this site is acceptable and in good design standing given the potential for Karst Topography.

e. In conformance with N.J.A.C 7:8-5.6 "Stormwater Runoff Quantity Standards", the Applicant shall demonstrate the proposed stormwater improvements effectively control stormwater runoff quantity impacts. Upon review of the provided calculations and hydrographs, our office offers the following comments:

(i) Appendix G appears to be missing from the report or similarly not provided to our office. This appendix should include the drainage area maps that would explain the extent of "EXDA-Offsite" which is shown for both the current and future rainfalls as a by-pass that is not included into the final calculation. Applicant shall provide, or similarly revise the report to include, the by-pass flows that are not included in the final runoff rates.

(ii) It is noted that the basins have a reported exfiltration rate of 0.5 inches/hour over the surface area. It is further noted that the stormwater management report does show any results from soil testing within the area of each basin. Applicant shall provide suitable backup to support the exfiltration rate.

(iii) Applicant shall modify all calculations associated with exfiltration and basin modeling should any Karst Topography be located within the subject site, as exfiltration in these areas may encourage sinkhole formation.

f. General Stormwater Comments

(i) It is noted that within the body of the stormwater management report, the basin heights in the tables under the "Basin Water Surface Elevation (Current Rainfall)" appear to be mislabeled in the elevation range of 407 to 409, whereas the rest of the site datum is closer to elevation 230. Applicant shall revise all tables to be consistent with the outputs of the hydrologic analysis.

(ii) As noted above, Applicant shall add additional information to both the detail sheet and plan sheet regarding Basin 1A and EMC Up-Flo Filter, as it is unclear how water flows between the BMPs and compliance with the regulations is highly contingent on the correct flow from the conveyance system, into the EMC Up-Flo Filter, then to Basin 1A.

7. Misc. Technical Comments

b. Applicant should provide accurate cost breakdown for bonding purposes should approval be granted.

b. **Following comments emanating in the memo to the Board from Jim Mazzucco, LLA (Board's landscape architectural expert) dated August 12, 2025:**

(All comments intentionally omitted unless set forth below).

B. Site Plan Comments:

1. Applicant shall revise the site plans to provide a north arrow on the Landscape Plan.

2. Applicant shall revise the site plans to correct building labels.

3. Applicant shall revise the site plans to make the two (2) trees on either side of the accessible parking area the same species.

4. Applicant shall revise the site plans to include one (1) additional tree species in the planting schedule for a total of three (3) different tree species.

5. Applicant shall revise the site plans to incorporate passive recreation in the courtyard between the two (2) buildings.

6. Applicant shall revise the site plans to add striping across the drive aisle connecting the play area to the main building sidewalk.

7. Applicant shall revise the site plans to provide buffer planting behind the play equipment area to buffer it from the adjacent residential property.

8. Applicant shall review the site plans to include plantings in the highlighted areas below. See Figures 1.1 and 1.2.

Figure 1.1

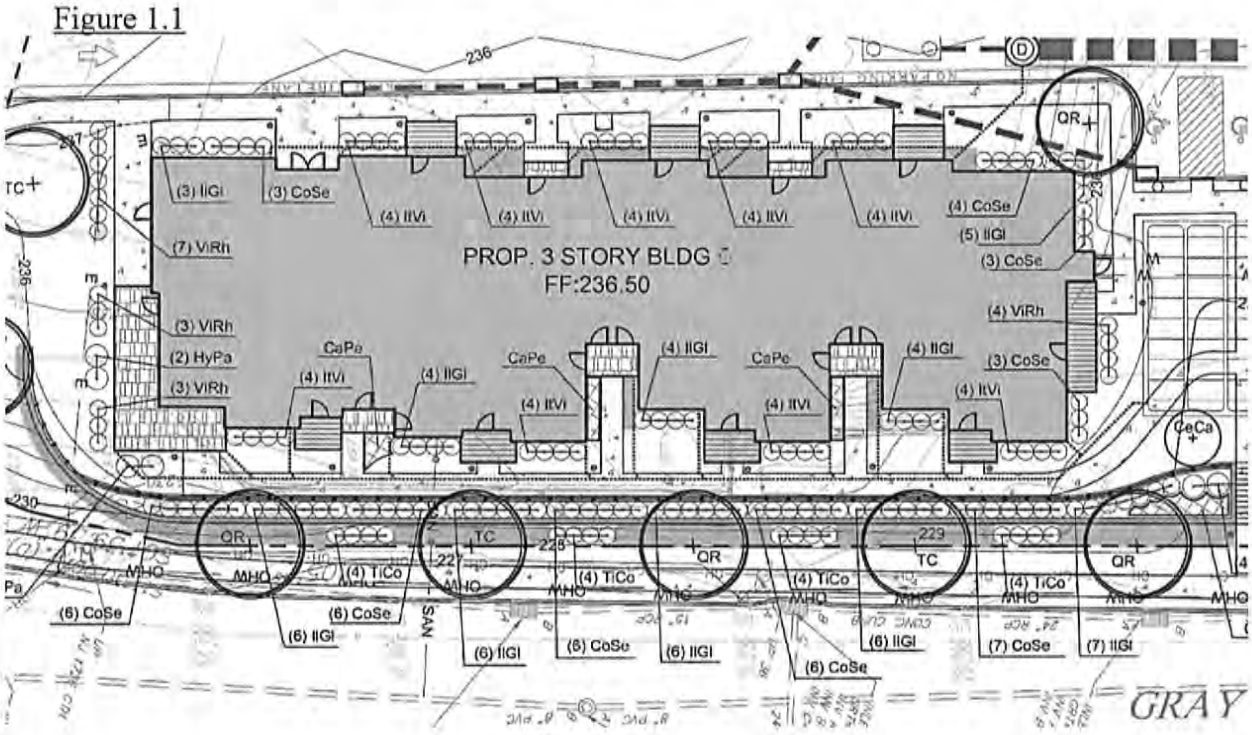
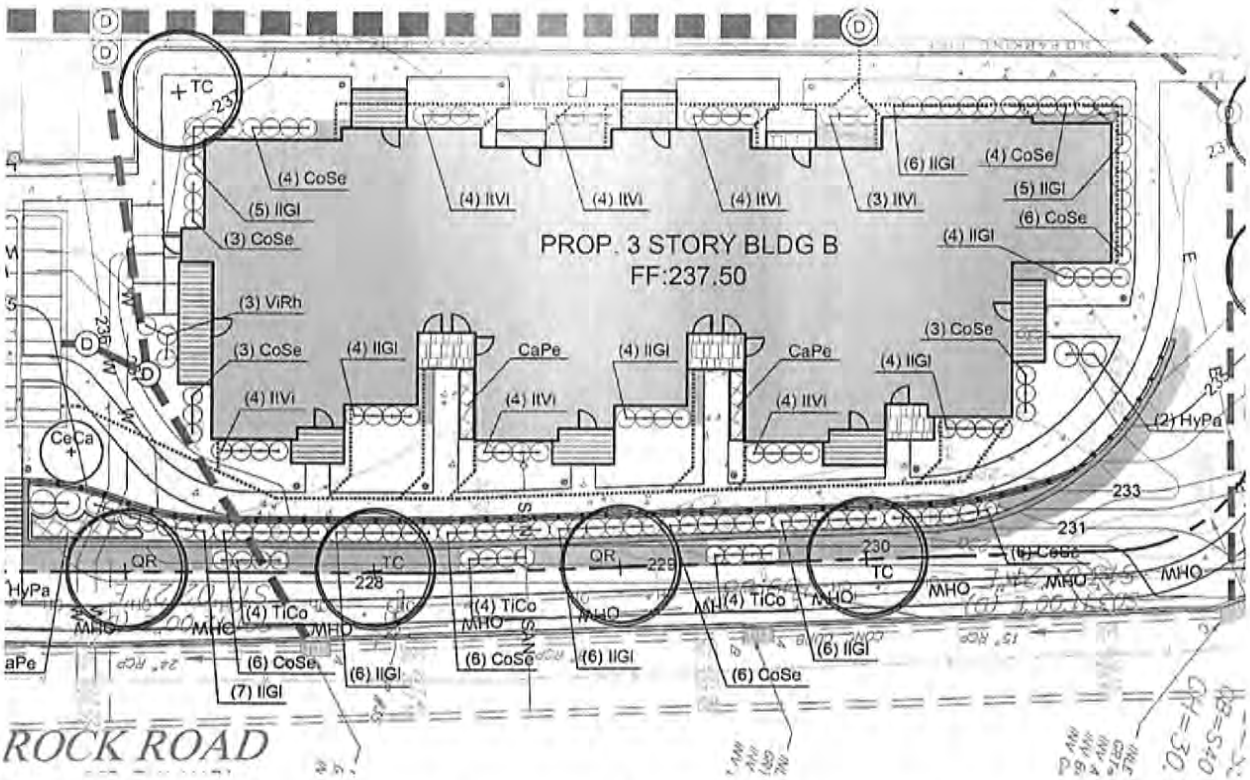


Figure 1.2



9. Applicant shall coordinate the location of utility wires along Grayrock Road with utility companies.

10. If the overhead wires on Grayrock Road are to remain, Applicant shall revise the site plans to provide a columnar street tree like Acer rubrum 'Armstrong,' Armstrong Red Maple, as a substitute.

11. Applicant shall revise the site plans to provide a single species of street tree at the proper spacing required by Ordinance.

12. Applicant shall revise the site plans to include street trees and general tree plantings that are 3"-3.5" caliper per Ord. 165-77.M.(16).

13. Applicant shall revise the site plans to include Thuja occidentalis 'Green Giant', Green Giant Arborvitae, that are 7'-8' tall per Ord.165-77.M.(16).

14. Applicant shall revise the site plans to correct the spacing of the proposed Hydrangea paniculata, Panicle Hydrangea.

15. Applicant shall revise the site plans to correct the spacing of the proposed Thuja occidentalis 'Green Giant', Green Giant Arborvitae.

16. Applicant shall revise the site plans to extend the Thuja occidentalis 'Green Giant', Green Giant Arborvitae, along the rear of the trash enclosure.

17. Applicant shall revise the site plans to adjust the spacing of the proposed Viburnum rhytidophyllum, Leatherleaf Viburnum.

18. Applicant shall revise the site plans to indicate the ground plain treatment for the two (2) parking lot islands.

19. Applicant shall revise the site plans to indicate the ground plain treatment for the area between the base of the retaining wall and the curbing at the southwest corner of the parking lot.

20. Applicant shall revise the site plans to indicate the existing several mature trees along the western property line.

21. Applicant shall revise the site plans to remove Landscaping Note 7.

22. Applicant shall revise the site plans to relocate the light fixtures proposed to be installed behind the trees located in the parking lot islands.

23. Applicant shall revise the site plans to provide that all areas not designated for structures or hardscaping shall receive a minimum of six (6) inches of topsoil in lawn areas and twelve (12) inches in planting beds.

24. Applicant shall revise the architectural rendering to reflect the location and height of the two (2) proposed retaining walls along Grayrock Road.

c. **Following comments emanating in the memo to the Board from Tom Behrens, Jr., PP, AICP (Board planning expert) dated August 14, 2025:**

(All comments intentionally omitted unless set forth below).

1. Deed Restriction. The Applicant shall provide a deed restriction for the affordability controls of the units for a minimum of 40 years.

2. Highlands Requirements. The development shall comply with the applicable Highlands regulations.

3. Amenities. Tot lot details shall be provided in the final site plan application.

4. Parking & Circulation. Applicant shall revise the site plans to include bicycle parking.

5. Lighting. Applicant shall revise the site plans to include a note that all exterior lighting will be capped at a color temperature of 3,000K.

6. Signage. Applicant shall revise the site plans to include sign details.

7. Equipment. Applicant shall revise the site plans and/or architectural plans to identify the location of any exterior equipment and provide appropriate screening to the extent practicable.

2. **Retaining Wall Along Rear Property Line.** Applicant shall revise the site plans to includes a retaining wall not to exceed 10 feet in height behind the proposed tot lot. The retaining wall shall include a solid fence on top.

3. **Crosswalk**. Applicant shall revise the site plans to include a crosswalk at the southeast corner of the Property.

4. **Discussion with Neighboring Property Owner (Lot 16)**. Applicant shall work with the neighboring property owner of Lot 16 to address access issues on the east side of the neighboring house.

5. **Architectural Design**. The architectural design shall be substantially similar to the architectural plans on file with the Board.

6. **Utilities**. The Applicant shall confirm the extent to which sufficient water and sewerage capacity have been secured to accommodate the proposed development, as well as the proposed means of connection to same.

7. **As Built Plan**. The Applicant shall provide a signed and sealed as-built survey, prepared by a licensed surveyor, for the proposed development including the parking areas, private driveway aisles, sidewalks, site lighting, storm sewer infrastructure, sanitary sewer pump station and collection system, retaining walls, ADA curb ramps, and signage prior to recommendation for project completion and the release of any unspent escrow fees.

8. **Engineering Escrow**. The Applicant shall post the required engineering inspection escrow fees in accordance with N.J.S.A. 40:55D-53.h.

9. **Sanitary Sewer Improvements**. All new public sanitary sewer improvements shall be subject to the design standards of the Clinton Township Sewerage Authority, including any and all testing, as-built mapping and inspection requirements as may be applicable to the project.

10. **Maintenance Logs/Inspection Reports**. The Applicant shall be required to submit any maintenance logs, repair logs and/or inspection reports to the Township Engineer annually for the on-site stormwater facilities in accordance with the maintenance plan for the project.

11. **Shop Drawings**. Shop drawings for the storm sewer structures, stamped approved by the engineer of record shall be submitted to the Township engineer and Planning Board secretary for records and for any applicable on-site inspection.

12. **Filing of Deed Notice**. In accordance with the New Jersey Stormwater Best Management Practices (BMP) Manual, a deed notice shall be filed with the county Clerk's office for the areas of the proposed pervious pavement BMP's to prevent alteration or removal.

13. **Will-Serve Letters**. Updated will-serve letters for sanitary sewer service from Clinton Township Sewerage Authority and for the public water service shall be provided for final site plan.

14. **Highlands Consistency Determination**. NJ Highlands Consistency Determination in accordance with Section 165-41.1 of the municipal code shall be provided as part of the final site plan application which shall be reviewed and approved by the Board prior to the grant of final site plan approval.

15. **Further Technical Review**. At the time of final site plan application for the subject project, a further detailed technical review will be performed by the Board engineering expert which may generate additional comments which will have to be complied with prior to the grant of final site plan approval.

16. **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Township which are proposed on the Site Plans shall, in addition to being identified on said plans, be contained in separate documents to be prepared by the Applicant and reviewed and approved by the Township Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Board Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township.

17. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to review of any and all compliance documents by any of the Board or Township professionals, and prior to signing the Site Plans. Failure to abide by this condition shall result in the within approvals automatically terminating and becoming null and void.

18. **Outside Agency Approvals and Permits.** The within approvals shall be conditioned upon the Applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

a. Clinton Town Sewerage Authority;

b. Town of Clinton Water Department;

c. Hunterdon County Planning Board;

d. Hunterdon County Soil Conservation Service certification / approval of the soil erosion and sediment control plan;

e. NJDEP approval of any and all aspects of the proposed improvements within its jurisdiction;

f. NJDOT (subject to NJDOT major access permit); and

19. **Subject to Other Approvals and Laws.** The within approvals and the use of the Property are conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the Property and/or use of the Property. The within approval and the use of the Property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the Property and/or use of the Property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

****

VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 18, 2025:

THOSE IN FAVOR: AVERSA, CIMEI, KLEINHANS, MULLAY & MCCAFFREY.
THOSE AGAINST: NONE.

****

The within resolution memorializing the Board action in granting the approvals set forth above was adopted on October 6, 2025 by the following vote of eligible Board members:

Member	Yes	No	Abstain	Absent
AVERSA	X			
CIMEI	X			
KLEINHANS	X			
MULLAY	X			
MCCAFFREY	X			

ATTEST: Candace DeJianne
CANDACE DEJIANNE
Board Secretary

Program Judge Recommendation January 2026

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

	Superior Court of New Jersey Law Division, Civil Part
In the Matter of Township of Clinton, County of Hunterdon	Docket No. HNT-L-49-25
	Program Decision Recommendation - Housing Element and Fair Share Plan

THIS MATTER, having come before the Affordable Housing Dispute Resolution Program (Program), pursuant to the Complaint for Declaratory Judgment filed in this matter on January 23, 2025 (DJ Complaint) by the Petitioner, Township of Clinton (Township), pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (FHA), and in accordance with Administrative Directive #14-24 and its Addenda, seeking a certification of compliance with the FHA;

AND IT APPEARS that on April 8, 2025, the Hon. William G. Mennen, J.S.C. entered an Order as follows:

(a) Establishing the Township's Fourth Round "present need" at zero;

(b) Establishing the Township's Fourth Round "prospective need" at 150;

(c) Directing the Township to prepare and adopt a Housing Element and Fair Share Plan on or before June 30, 2025; and

(d) Granting the Township immunity from exclusionary zoning litigation; and

AND the Township having timely adopted and filed its Proposed Fourth Round Housing Element and Fair Share Plan (HEFSP);

AND challenges to the Township's Fourth Round HEFSP having been timely filed by interested parties: Fair Share Housing Center ("FSHC"), CNC Ventures LLC ("CNC"), and ExxonMobil Technology and Engineering Company ("ExxonMobil"), alleging that the HEFSP failed to comply with the FHA and/or Mount Laurel doctrine;

AND CRC Communities at Headley Farms Estates, Inc. ("CRC") filed a conditional challenge not to object to the Township's Fourth Round HEFSP but as an interested party that has a right to participate in the challenges to the HEFSP;

AND the Program having appointed Special Adjudicator Sanyogita S. Chavan, AICP, PP, to the matter;

AND the Program Member having conducted a settlement conferences on November 14, 2025, and December 19, 2025, during which no settlement agreement was reached;

AND the essential components of the Township's HEFSP include, but are not limited to, the following:

(a) The Township's Present Need (Rehabilitation) Obligation is zero (0);

(b) The Township's Prospective Need Obligation (2025-2035) is 150;

(c) The Township's First and Second Rounds Obligations (1987-1999) is 335;

(d) The Township's Third Round Obligation (1999-2025) is 337;

(e) The Township shall satisfy its Prior Round and Fourth Round Obligations as follows:

Prior Round Obligations

The Township's Prior Round Obligation is 335 and has been met with the mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Prior Cycle Credits (Pre-1986)		13			Completed
RCA with New Brunswick	RCA	108		RCA	Completed
Village Green at Annandale	Inclusionary	4		Family Rental	Completed
The Mews	Inclusionary	35	3	Senior Housing	Completed
CRC Longview	Group Home	4	4	Special Needs	Pending Site Plan Approval*
142-144 West Main Street	Gut Rehabilitation	3	2	Family Rental	Completed
Willows at Annandale	100% Affordable	66	66	Family Rental	Completed

Annandale Village, LLC	Inclusionary	1		Family Rental	Site Plan Approval
Clinton Woods	100% Affordable (Municipally sponsored)	26		Family Rental	Completed
Total (335)		260	75**		

*Was scheduled for July 2025 as per the June 2025 HEFSP
**Bonus credits capped at 25% of the total obligation

Third Round Obligations

The Township's Third Round Obligation is 337. The Obligation shall be met with the following mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Headley Farm Estate	Inclusionary	104		Family Rental	Has secured water and sewer.*
108 Alton Place	Inclusionary	28		Family Rental	Has secured water and sewer.*
Grayrock Road (AH-10 Zone)	Inclusionary	7		Family Rental	Approved (3 units) (4 units are durational adjustment)
Clinton Woods	100% Affordable (Municipally sponsored)	58	58	Family Rental	Completed
Willows at Spruce Run	100% Affordable (Municipally sponsored)	80		Family Rental	Under construction
Willows at Spruce Run	Municipally sponsored Group Home	2		Special Needs	Under construction

Total (337)	279	58		

*It was originally slated as a durational adjustment site, but the Township has noted that they have secured water and sewer disposal capacity.

Fourth Round Obligations

The Township's Fourth Round Obligation is 150. The Township conducted a VLA resulting in a RDP of 22 units and an unmet need of 128 (25% of the unmet need = 32). The Township intends to satisfy the 54 units of RDP (22) and 25% of the unmet need (32) through the following mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
9 Main St./Village Green	Inclusionary	2	1	Family rentals	To be rezoned.
Willows at Spruce Run	100% Affordable (Municipally sponsored)	6		Family Rental	Under construction
Willows at Spruce Run	100% Affordable (Municipally sponsored)	8	8	Special Needs	Under construction
3 Grayrock Road	100% Affordable (Municipally sponsored)	25	4	Family Rental	Approved
Total (51)		41	13 (capped at 25%)		

AND the Program Member having conducted a session on December 19, 2025, during which oral argument was heard on the challenges to the Township's HEFSP of the interested parties;

AND the Program Member having considered the filings by the parties, the written recommendation of the Special Adjudicator (attached hereto as Exhibit A) and oral argument and for the reasons more fully set forth in the Statement of Reasons (attached hereto as Exhibit B) hereby recommends an ORDER directing that:

(a) The HEFSP of the Township **has not been determined to be compliant** with the FHA and the Mount Laurel doctrine;

(b) The challenges of the interested parties will remain as active challenges to be addressed by the Court;

(c) Notwithstanding any remaining dispute with any interested party, the Township shall follow the procedure set forth in N.J.S.A. §52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 15, 2026, the Municipality shall adopt and file its proposed amended HEFSP as well as the implementing ordinances and resolutions proposed within the amended HEFSP, which adoptions shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date or, in the alternative, adopt a binding resolution by March 15, 2026, to commit to adopting the implementing ordinances and resolutions following settlement of the dispute, with necessary adjustments to reflect the settlement terms;

(d) Thereafter, the court shall schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Township's amended HEFSP and the issuance of a Certification of Compliance and Repose; and

(e) Grant the Township continued immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Township's compliance with its order and good faith implementation of the HEFSP and good faith participation in the compliance process.

Respectfully Submitted by the Program:

By:

/s/_____*Thomas C. Miller*_____

Hon. Thomas C. Miller, A. J.S.C. (Ret.)

Dated: January 29, 2026

H2M architects + engineers
119 Cherry Hill Road, Ste 110
Parsippany, NJ 07054 | tel 862.207.5900 | ENGINEERING NJ #24GA28019100

Via eCourts and Electronic Mail
Hon. Thomas C. Miller, J.S.C., Ret.
Affordable Housing Dispute Resolution Program
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

Re: *In the Matter of the Application of the Township of Clinton, County of Hunterdon*
Docket No. HNT-L-49-25

Your Honor:

I submit this correspondence in my capacity as Special Adjudicator for the purpose of advising the Court and setting forth my recommendations with respect to the Township of Clinton ("Township") housing plan and the challenges filed by CNC Ventures, LLC, ExxonMobil Technology and Engineering Company, and Fair Share Housing Center under the Affordable Housing Dispute Resolution Program. A settlement was not reached between the three parties. In addition, CRC Communities at Headley Farms Estates, Inc. ("CRC") filed a conditional challenge, not as an objection to the Township's housing plan but as an interested party that has a right to participate in the challenges filed by the above referenced parties. The following report sets forth the Statement of Reasons to support my recommendations for granting ***conditional compliance***.

The Township's Housing Plan Element and Fair Share Plan ("HEFSP") received three objections from the parties referenced above.

- The objection filed by Joshua D. Bauers, Esq. on behalf of Fair Share Housing Center ("FSHC"), dated August 31, 2025.
- The objection filed by Richard J. Hoff, Esq., of Brisgaier Hoff, LLC, on behalf of CNC Ventures, LLC ("CNC"), dated August 28, 2025.
- The objection filed by Thomas P. Scrivo, Esq. of O'Toole Scrivo, LLC, on behalf of ExxonMobil Technology and Engineering Company ("ExxonMobil") dated August 29, 2025.

The following summarizes Clinton's participation in the Program. In addition to the formal settlement conferences listed below, there were several other discussions that I had with the parties and between the parties to try to reach settlement.

- January 23, 2025: Declaratory judgement filed by the Township
- April 8, 2025: Order on the Municipal Obligations for "Present Need" and "Prospective Need" for the Fourth Round Housing Cycle issued by the Honorable William G. Mennen, J.S.C.
- June 30, 2025: Submission of adopted HEFSP to the Program.
- June 30, 2025: Planning Board Resolution adopting the HEFSP
- June 30, 2025: Municipal Resolution endorsing the HEFSP adopted by the Planning Board.
- August 29, 2025: Objection to Clinton's HEFSP filed by CNC.
- August 29, 2025: Objection to Clinton's HEFSP filed by ExxonMobil.
- September 2, 2025: Objection to Clinton's HEFSP filed by FSHC.

- September 2, 2025: Objection filed by CRC, not to object to the Township's Fourth Round HEFSP, but as an interested party.
- November 14, 2025: Settlement Conference between all parties.
- December 19, 2025: Session

Background

This report reviewed the HEFSP and the supplemental submissions provided by all the parties against the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq) ("FHA"), the adopted rules by the Council on Affordable Housing ("COAH") (N.J.A.C. 5:93, N.J.A.C. 5:97), to the extent applicable, relevant case law, the Uniform Housing Affordability Control Rules, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), Division of Local Planning Service Fair Housing Act Rules (N.J.A.C. 5:99), and the Administrative Directives issued by the Program (#14-24, Addendum to #14-24).

- FSHC in its August 31, 2025, correspondence expressed concerns about the VLA and RDP calculations and that more sites should be included in the RDP than what the Township is proposing. As per FSHC, the issue is not lack of land, but lack of sewer based on their involvement in the prior round. The Township took a durational adjustment in the prior round but opted for a VLA route in the fourth round. Their main concern was whether the VLA calculations were in accordance with the statutes.
- CNC, which is also the Beaver Brook Country Club (BBCC), questioned the feasibility of the prior round sites. Their concern was that the VLA underestimated the Township's land capacity and low-balls the assigned density.
- ExxonMobil asserted that their site should have been included in the RDP calculations, the VLA methodology is flawed.

As mentioned earlier, CRC was not objecting to the Township's HEFSP but as their project is included in the Third Round Plan, and that they were an interested party in the challenges. CRC asserts that they have made significant progress in terms of getting water allocation, worked with the Highlands, and provided all the documentation to the DEP.

Prior Round, Third Round, and Fourth Round Obligation and mechanisms

As mentioned earlier, there was one settlement conference and a session. I have reviewed the factual recitals, the delineation of the Township's Fourth Round obligations, the mechanisms proposed to satisfy those obligations, and the procedural and monitoring provisions governing implementation.

Prior Round

The Township's prior round obligation of 335 units was satisfied through prior cycle credits, RCA with New Brunswick, inclusionary development, a group home, 100% affordable housing, and gut rehabilitation to provide 3-units. All but the group home has been completed.

Findings

The Township has fully satisfied the prior round obligation. The June 2025 HEFSP noted that a site plan was pending. The status should be updated and necessary documents must be submitted by the Township.

Third Round

The Township's Third Round Obligation is 337 units. The Township is proposing to satisfy this through inclusionary development, 100% affordable housing, a group home. Out of all the sites, two inclusionary projects, namely the Headley Farm Estate and 108 Alton Place, were identified as durational adjustment sites. However, the Township informed the Program that these projects have secured water and sewer. Clinton Woods, a 100% affordable housing project, providing 116 credits and bonus credits is complete while Willows at Spruce Run is under construction.

Findings

The Township has fully satisfied the third-round obligation. The sites that were identified as durational adjustment sites are no longer so and can realistically produce affordable housing:

- CRC, on behalf of Headley Farm Estate, has submitted a resolution authorizing the execution of the settlement agreement and water agreement in which the Town of Clinton will be supplying 113,160 gallons of water per day. Additionally, CRC has submitted a letter from the Highlands Council confirming that the entire site is within the Highlands Designated Center (with portions in the Highlands Resource Zone (HERZ) and that areas outside of the HERZ are eligible for sewer service with a package treatment plant in accordance with the pertinent NJDEP regulations.
- The 108 Alton Place has a "will-serve" sewer letter from the Clinton Township Sewerage Authority dated November 7, 2025, and the Township was advised that water reservation was granted to 108 Alton Place. The Township shall provide the water reservation agreement and resolution, once available.

Conditionally compliant

The Township is required to provide the water reservation agreement and resolution for 108 Alton Place project, once available.

Present Need (Rehabilitation) Obligation

The Township has a present need obligation of zero (0) units; therefore, Clinton Township does not have an obligation to address this obligation in the Fourth Round.

Fourth Round Prospective Need Obligation

The Township has a fourth-round obligation of 150 units. The Township conducted a VLA which resulted in an RDP of 22 units and an unmet need of 128, 25% of which is 32. The Township intends to satisfy the

54-unit obligation through surplus units from the Third Round Willows at Spruce Run, which is under construction, and through 3 Grayrock Road, which is a 25-unit 100% Affordable Municipally sponsored project. This project was approved by the Planning Board on August 18, 2025, and memorialized on October 6, 2025.

Findings

- The Township of Clinton is in the New Jersey Highlands region where 97% of its land area is located in the Highlands Planning Area and remaining 3% in the Preservation Area. Most importantly, as per the requirements of the Highlands Act, the Land Use Capability Zone divides the area into three distinct zones. In that the Existing Community Zone consists of areas of existing development patterns and tends to have limited environmental constraints. The remaining two are Protection Zone and Conservation Zone. Out of the total area, 16.7% are road right-of-way. Of the remaining approximately 83.3%, 22.7% of the area is within the Existing Community Zone while the remaining 60.6% are areas with environmental constraints.

- The Township has been a fully conforming municipality since May 2016. Plans prepared during the third round relied on the second-round regulations (N.J.A.C. 5:93-1 et. seq.), which predates the Highlands Act and therefore does not include standards or language as related to Highlands conforming municipalities. Therefore, the Township using durational adjustment at that time was proper.

- As a Highlands confirming municipality, the Township has limited ability to extend sewer and water outside the existing community zone. Therefore, VLA was a correct approach adopted by the Township. Any HEFSP must be approved by the Highlands Council and in this instance, the Township has provided a letter of approval from the Highlands Council. NJAC 52:27D-310.h requires that the HEFSP provide an analysis of compliance with the Highlands Regional Master Plan for Highlands conforming municipalities such as Clinton Township. The Township has provided correspondence from Highlands dated July 29, 2025, that the HEFSP is compliant with the RMP, 2024 Affordable Housing RMP Amendment, and the built-out update tool provided by Highlands to guide municipalities within the Highlands area to conduct the build out analysis.

Compliance

The HEFSP with the VLA and proposed mechanisms to address the RDP and unmet need is compliant with the Fair Housing Act.

<u>Analysis of the Challenges</u>

- The main objection to Clinton's HEFSP from FSHC, ExxonMobil, and CNC was utilizing the VLA vis-à-vis the durational adjustment.
- Both ExxonMobil and CNC assert that the HEFSP does not include sites such as theirs that can redevelop. CNC recommends that their site should be identified as a durational adjustment site.
- ExxonMobil states that their site should replace CRC Headley Farm site that was included in the Third Round.

- The statutes are clear that an objection should be whether the proposed HEFSP is compliant with the FHA and Mount Laurel doctrine.
- The Township has provided documentation that the proposed projects provide a realistic opportunity for affordable housing.

Findings and Recommendations

- In conclusion, the Township's HEFSP is conditionally complaint, in that the Township should provide the documentation as requested earlier in this report. Accordingly, I recommend that the Court dismiss the challenges.
- The Township should revise the administrative documents to reflect the newly adopted regulations from HMFA and DCA including, but not limited to, affordable housing ordinance, affirmative marketing plan, and spending plan.

Respectfully Submitted,

Sanyogita S. Chavan, AICP, PP
Special Adjudicator

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

	Superior Court of New Jersey Law Division, Civil Part
In the Matter of Clinton Township	Docket No. HNT-L-49-25

Program Recommendation and Statement of Reasons

I. IN GENERAL

Clinton Township adopted its Fourth Round Housing Element and Fair Share Plan ("HE & FSP") on June 30, 2025, and filed the same on June 30, 2025. The Township's Fourth Round obligations are as follows:

Present Need: 0

Prospective Need: 150

The Program's Special Adjudicator in this matter is Sanyogita Chavan, A.I.C.P., P.P.

I. CHALLENGES FILED TO THE TOWNSHIP'S PLAN

Four Challenges were filed to the Township's plan including by CNC Ventures, LLC ("CNC"), Exxon-Mobil Tech (Exxon Mobil), CRC Communities as Headly ("CRC" OR "CRC-Headley"), and the Fair Share Housing Center ("FSHC").

The FSHC challenged the Township HE&FSP by arguing that the Township must (1) revise its plan to include a properly conducted Vacant Land Adjustment instead of just relying on the Highlands Build-Out, (2) identify realistic sites including sites for redevelopment, (3) revise its documentation to be in conformance with its to-be-updated plan, (4) the Township should be required to address its durational adjustment including its lack of sewer capacity and (5) to the extent that the Township takes a VLA it must address its unmet need and the " 25% requirement".

CNC through the report of its planning expert Creigh Rahenkamp, A.I.C.P, PP., raises many of the same deficiencies noted by the FSHC. CNC also indicates that the Township's plan has not provided a fair and reasonable consideration of sites offered for development for affordable housing by willing developers. CNC, which does business at Beaver Brook Country Club, has made its surplus property located at block 79.01 Lot 4 and Block 79.02 Lot 10 available for development for affordable housing. CNC claims to have water and sanitary sewer availability in order to develop the site in the manner it proposes. Notably, the Township has taken the position that the CNC project is not realistic in that its property has various restrictions that would impede or prevent development of the site and that its claims about sewer availability are at worst fallacious and at best contested and unclear. CNC disputes those claims.

Exxon-Mobil challenged the Township's plan by submitting a planning report from Kate Keller, AICP, PP. Exxon-Mobil is the owner of a 75.7 acre tract in the Township. A portion of the site is developed with the Exxon Mobil research facility. The remainder is mostly agricultural lands. Exxon-Mobil has offered a portion of the vacant tract, namely Lot 17 and/or 30 for inclusionary development. Exxon-Mobil has challenged the Township's plan by arguing that (1) it has miscategorized Lots 17 and 30 in its VLA, (2) many of the Township's Third Round compliance mechanisms are no longer realistic (Headley Farm and 108 Alton Place), (3) the Township has mischaracterized its discussions with Exxon-Mobil regarding the tracts in issue and (4) the Exxon-Mobil tracts should be included in the Township's Fourth Round plan. The specifics of the challenge are more particularly set forth in the report of its expert planner, Ms. Keller.

Also, Exxon-Mobil has presented several concept iterations to the Township which are also described in Ms. Keller's report. Exxon-Mobil asserts that it can assist the Township in realizing its unrealized Third and Fourth Round obligations (128 unit Fourth Round "unmet need" and 132 "infeasible" Third Round units).

Notably, the Township contends that the Exxon-Mobil plan is unrealistic as it will be severely restricted by applicable Highlands restrictions and the availability of sewer infrastructure and capacity.

CRC filed a conditional challenge, not to object to the Township's Fourth Round HE & FSP, but rather as an interested party as CRC's interests are challenged by the CNC and Exxon- Mobil challengers. CRC is the owner of the "Headley Farm" which is a project that was included in the Township's Third Round plan for a 400 total unit development with a 26% set aside (104 affordable units). In fact, the Headley Farm was included in the Third Round plan as part of the settlement with the FSHC and approved as part of the Judgment of Compliance and Repose issued by the Court. It is and was the subject of a durational adjustment for sewer and water.

At the mediation session held by the Program Member on November 14, 2025, CRC advised that it would be submitting documentation to support its claim that its project was moving forward and is realistic. For instance, CRC indicates that it has secured a commitment from the local water utility to provide public water; it has received a favorable consistency determination from the Highlands Commission; it has or is about to apply to the NJDEP for a WQMP amendment which will allow for on-site sewer on the property and it is on the verge of applying for site plan approval from the Township.

II. THE HEARING IN THIS MATTER AND THE PROGRAM RECOMMENDATION

The Program conducted a "hearing" or "session" in this matter on December 19, 2025. At that time the parties were able to present their final arguments "on the

record" to complete the record before the program prior to the Program's recommendation to the Court.

The hearing was disadvantaged by the late filings of reports and amendments to the HE&FSP by the Township. Those late submissions caused a situation whereby the Challengers were not able to properly respond to the Township's positions. This Program Member will address that situation, as part of the Program's analysis and recommendation.

Preliminarily, certain aspects of the Township's plan can be addressed and, in this Program Member's view, be resolved. The Township's prior round obligation of 335 units was satisfied through prior cycle credits, an RCA with New Brunswick, inclusionary development, a group home, 100% affordable housing project and rehabilitation. All but the group home are completed. (See Special Adjudicator report of Sanyogita Chavan dated January 24, 2026 attached to the Program Decision Recommendation at Exhibit A). This Member concurs with the Special Adjudicator's opinion that the Township should be determined to have satisfied prior round obligations subject to the Township's continuing obligation to update its plan and submit necessary documentation.

With regards to the Township's Third-round, its obligation is for 337 units. The Township is proposing to satisfy its obligation through inclusionary development, 100% affordable housing and a group home. Two sites were identified

as durational adjustment sites, namely CRC Headley Farms and 108 Alton Place. The Township advised the Program that Clinton Woods, a 100% affordable project that provides 116 credits and bonus credits is complete and that the Willows at Spruce Run project is under construction.

The CRC Headley Farms Project involves a development on the property located at block 46 Lots 33 and 33.01. The proposed project includes 400 total units and a 26% set aside that will yield 104 low and moderate income units. The project was included in the Township's Third Round plan. Since there was not enough water and sewer capacity available to accommodate the project, the property was included in the plan subject to a durational adjustment.

"Exxon" has challenged the inclusion of the CRC project by claiming it is not a realistic opportunity. "Exxon" asserts that the project should have been replaced in the Township's plan as the Township has failed to demonstrate meaningful progress to produce affordable housing units due to various issues.

In this Program Member's view, however, the CRC Headley Project has demonstrated significant progress and it deserves to remain in the plan. The project has (1) obtained full allocation of water for the project; (2) received affirmative consistency determination from the Highlands Counsel for its WQMP amendment; (3) it has submitted its Preliminary Submission and Site Plan approval and its submission has been deemed complete by the Clinton Township Planning Board and

(4) it has elected to proceed with an on-site waste water disposal system, thereby circumventing the issue of sewer availability.

This Program Member finds that the CRC Headley Project has made impressive and real progress towards bringing the project to fruition. In fact, removal of the project would be counter to the goal of actually providing low and moderate income units within the Township. As such this Program Member recommends that the portion of Exxon's challenge that requests that the CRC Headley Project be removed from the plan be rejected. Further it is recommended that the CRC Headley Project be maintained in the Township's plan. With regards to 108 Alton Place, the proposed project now has a "will serve" letter from the Clinton Township Sewerage Authority dated November 7, 2025. Also, the Township has advised that water reservation was granted to the project. The water reservation agreement has yet to be provided. Subject to receipt of that document this Member concurs with Special Adjudicator Chavan that the Township's continued inclusion of 108 Alton Place in its plan be determined to be conditionally compliant subject to provision of the required documentation.

The remainder of the Township's plan presents a dilemma for the Program, however. First, from a due process standpoint, the Township's late filing results in a situation that simply makes it unfair for the Program to make a recommendation to the court. The challengers were simply not provided with a fair opportunity to address

the complex issues that this case presents. Additionally, in this Program Member's view, there is simply not a sufficient factual record in order for the complex issues in the case to be given the analysis and consideration that is warranted.

The primary issue that is presented here is whether the Township's reliance upon the Highlands Vacant Land Analysis (HVLA) is compliant with applicable law. The Challengers urge that the Township should be required to (1) revise its HE&FSP to include a properly conducted Vacant Land Analysis (VLA); (2) that the Township must further identify realistic sites, including sites appropriate for redevelopment; and (3) commit to revise its HE&FSP and supporting documents accordingly.

The Township[1] counters that it is already subject to the land use rules and regulations of the Highlands Council and the Highlands Regional Master Plan (RMP). As a result, the Township offers that it must update and adopt a "housing element, fair share plan and implementing ordinances to reflect current conditions and resource protection requirements of the RMP".

Further, as a fully confirming Highlands municipality, the Township acknowledges that it must perform a "HVLA" to ensure that its HE&FSP complies with a RMP. The Township contends that the HVLA effectively and even

[1] Through Counsel and its Planner's report

conservatively is a substitute for a VLA performed pursuant to the Fair Housing Act and any regulations promulgated thereto.

The FSHC and the other Challengers contend that the HVLA is overly broad, and incomplete so that it cannot serve as a viable substitute for a properly prepared VLA. The FSHC, through its expert planner, the renowned Dr. David Kinsey, contends that the Highlands Council build-out analysis does not account for and does not properly analyze other possibilities including redevelopment and the appropriate density increases that redevelopment possibilities may require. Dr. Kinsey buttresses his argument with actual case studies from High Bridge and Parsippany to demonstrate how the HVLA may "miss" certain real opportunities for the creation of affordable housing.

In this matter each of the competing parties offer arguments as to the reasons which make their particular approach more compelling. In this Program Member's view, these competing positions cannot be fairly and justly analyzed with the inadequate "paper" record before it. The Program is simply not equipped or designed to elicit and develop the factual record in order to properly address this issue. At least on its face it appears that the Dr. Kinsey opinions appear to be soundly based in that in certain circumstances affordable housing opportunities may be missed when the HVLA is solely relied upon. In fact, that circumstance has been borne out in the specific references pointed out by Dr. Kinsey. Without having a

properly prepared VLA, and a "Venn" analysis, it is uncertain whether those redevelopment opportunities remain undiscovered in Clinton Township. Further, it seems counter-intuitive that a municipality like Clinton Township would not have sufficient vacant land to meet its constitutional obligations so that a more rigorous vetting of the facts and circumstances should be required.

This Program Member recommends that the Court continue these proceedings in a manner deemed appropriate by the court to create the necessary record in order to evaluate the competing and seemingly irreconcilable circumstances offered by the parties.

The same procedure is recommended to be employed regarding the issues involved with the CNC challenge. In their challenge CNC claims that there are no impediments to its development of affordable housing. The Township disputes that claim by raising issues about water and sewer availability and deed (or filed map) restrictions that would inhibit or prohibit the development of the site. As a result, the Township contends that further development of that site is not feasible or even possible. CNC denies and disputes those claims.

This Program Member finds that the factual disputes regarding those issues require a more in-depth inquiry and analysis then is permitted here.

In the meantime, this Program Member recommends that the Court extend the Township's immunity from exclusionary zoning suits pending resolution of the

issues before the Court so long as the Township continues to participate in good faith. It is also recommended that the Court require the Township to explore alternatives to its plan in the event it does not succeed on the legal arguments that it has offered in support of its plan. This finding and recommendation is subject to further judicial review in accordance with applicable law and Administrative Directive #14-24, Civil-Affordable Housing Dispute Resolution Program-Implementation of L.2024,c.1. (Dec.13, 2024) #14-24. Such review may include the scheduling of a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Township's Amended HEFSP and issuance of a Certificate of Compliance and Repose.

Respectfully Submitted by the Program:

By:

/s/_____*Thomas C. Miller*_____
Hon. Thomas C. Miller, A.J.S.C. (Ret.)

Dated: January 29, 2026

Vicinage Judge Order February 2026

FILED

February 9, 2026

SOMERSET COUNTY SUPERIOR COURT

WILLIAM G. MENNEN, J.S.C.

ORDER PREPARED BY THE COURT

IN THE MATTER OF THE DECLARATORY JUDGMENT ACTION OF THE TOWNSHIP OF CLINTON, HUNTERDON COUNTY PURSUANT TO P.L. 2024, CHAPTER 2 (N.J.S.A. 52:27D-304.1, et seq.), Petitioner.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CIVIL PART HUNTERDON COUNTY DOCKET NO. HNT-L-49-25 Civil Action *Mt. Laurel Program* ***AMENDED* DECISION AND ORDER FINDING THE MUNICIPAL HOUSING ELEMENT AND FAIR SHARE PLAN ("HEFSP") FOR THE FOURTH ROUND HOUSING CYCLE *NOT* CURRENTLYCOMPLIANT, TRANSFERRING THE MATTER TO SUPERIOR COURT, AND EXTENDING IMMUNITY PER N.J.S.A. 52:27D-304.1(f)(2)(d)**

***** THIS AMENDED ORDER IS ISSUED FOR THE SOLE PURPOSE OF AMENDING THE APPOINTMENT OF THE SPECIAL ADJUDICATOR *****

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program ("Program"), pursuant to the Complaint for Declaratory Judgment filed on January 29, 2025 ("DJ Complaint") by the Petitioner, **TOWNSHIP OF CLINTON** ("Petitioner" or "Municipality" or "Township"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the "Program", seeking a certification of compliance with the FHA; and

WHEREAS, the Court entered its Decision and Order Fixing Municipal Obligations for "present need" and "prospective need" for the Fourth Round Housing Cycle on April 8, 2025 for the Municipality – specifically, a "present need" obligation of 0 affordable housing units, and a "prospective need" obligation of 150 affordable housing units (collectively, the "Fourth Round Affordable Housing Obligation"); and

WHEREAS, the Planning Board of the Municipality adopted its proposed Housing Element and Fair Share Plan ("HEFSP") for the implementation of its Fourth Round Affordable Obligation on June 30, 2025, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended); and

WHEREAS, the governing body of the Municipality adopted Resolution #2025-134 on June 30, 2025 thereby endorsing the HEFSP for the implementation of its Fourth Round Affordable Obligation, thus complying with the June 30, 2025 deadline, as provided for and in accordance with the FHA and Section III.A of Directive #14-24 (as amended), and which plan contained the elements set forth in the "Addendum" attached to Directive #14-24 (as amended); and

WHEREAS, challenges to the Municipality's HEFSP ("Challenges") were timely and properly filed by Fair Share Housing Center ("FSHC"), CNC Ventures , LLC ("CNC"), ExxonMobil Technology and Engineering Company ("ExxonMobil"), and CRC Communities at Headley Farms Estates, Inc. ("CRC")[1] (each a "Challenger", and collectively the "Challengers") by and through their respective counsel, in accordance with the FHA and Section III.B of Directive #14-24, wherein the Challengers disputed, in whole or in part, certain compliance mechanisms and/or other aspects of the Municipality's proposed HEFSP, as set forth in each Challenge; and

[1] CRC's challenge was a conditional challenge as an interested party not objecting to the HEFSP, but permitting it to participate in the Challenges

WHEREAS, pursuant to the Program, the Administrative Office of the Courts ("AOC") appointed and assigned the case to Program member, the Hon. Thomas C. Miller, A.J.S.C. (Ret.) ("Program Member") to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC's Directive #14-24, and that the Program Member appointed Sanyogita S. Chavan, PP, AICP, an independent affordable housing expert, as special adjudicator ("Special Adjudicator") in this case to work with, make recommendations to and assist the Program, and who worked closely with the Program Member; and

WHEREAS, on November 14, 2025 and December 19, 2025, the Program Member conducted settlement conferences on notice to and with the participation of all parties in accordance with the statutory framework and Directive #14-24 with the goal of reaching a resolution; and

WHEREAS, the parties engaged in extensive settlement negotiations before and during the settlement conferences, with the guidance and assistance of the Program Member and the Special Adjudicator; and

WHEREAS, the settlement conferences were ultimately unsuccessful at reaching a resolution in any of the Challenges; and

WHEREAS, a session was conducted by the Program Member on December 19, 2025, at which session the Program Member heard oral argument from the Challengers, concerning their objections to the Municipality's adopted HEFSP, and

WHEREAS, the Program Member considered the written recommendation and report of the Special Adjudicator, specifically agreeing with many of the conclusions and opinions set forth therein; and

WHEREAS, the Court received and reviewed the Program Member's Report and Decision Recommendation and accompanying detailed Statement of Reasons contained therein, dated January 29, 2026, since posted to the eCourts jacket for this matter at Trans. ID: LCV2026234376, the findings, terms, and recommendations of which are incorporated by reference as though set forth more fully herein (the "Report"); and

WHEREAS, the Program Member has recommended a finding that the Township's proposed amended HEFSP, in its current state, is *not in compliance* with the FHA and the Mount Laurel doctrine largely due to "complex issues" that remain unresolved due to an "[in]sufficient factual record…[precluding those] complex issues…[from] be[ing] given the analysis and consideration that is warranted." The Program Member further cited "the Township's late filing [which] results in a situation that simply makes it unfair for the Program to make a recommendation to the Court." The Program Member concluded that "the Program is simply not equipped or designed to elicit and develop the factual record in order to properly address [the competing arguments offered]."; and

WHEREAS, the Program Member has further recommended that the Superior Court continue the proceedings "in a manner deemed appropriate by the Court to create the necessary record in order to evaluate the competing and seemingly irreconcilable circumstances offered by the parties"; and

WHEREAS, the Program Member has further recommended that the Challenges filed by the Challengers should continue; and

WHEREAS, the Program Member has further recommended that notwithstanding any remaining dispute(s) with any interested party, the Municipality should follow the procedure set forth in N.J.S.A. 52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 15, 2026, the Municipality shall adopt and file its proposed amended HEFSP as well as the implementing

ordinances and resolutions proposed within the amended HEFSP, which adoptions shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date or, *in the alternative*, adopt a binding resolution by March 15, 2026, to commit to adopting the implementing ordinances and resolutions following resolution of the dispute(s), with necessary adjustments to reflect the terms of said resolution; and

WHEREAS, the Program Member has further recommended that thereafter, the Court should schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by this Court, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's Amended HEFSP and the issuance of a Certification of Compliance and Repose; and

WHEREAS, the Program Member has further recommended that the Court grant the Municipality continued temporary immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Municipality's compliance with the Court's order, good faith implementation of the amended HEFSP, and good faith participation in continued settlement negotiations; and

WHEREAS, the Court has reviewed and considered the Program Member's Report and Recommendations; and

WHEREAS, the Court concurs with the Program Member's suggestion to continue the proceedings, finding that at this juncture such a process best embodies the goals, spirit, and intent of the FHA, particularly in light of the FHA's preference for mediation as opposed to litigation (see NJSA 52:27D-303); and

WHEREAS, the Court is fully cognizant of the time limitations imposed upon the Program and Program participants and finds that those limitations have, at least in part, interrupted the deliberative process and continuing and evolving efforts of the Municipality and Challengers; and

WHEREAS, based upon the Program Member's informed recognition and description of the Program's limitations and their impact on the instant matter, the Court finds that while the Municipality has been unable to resolve the remaining disputes and Challenges described herein, the Municipality has demonstrated a requisite level of determination to come into constitutional compliance.

IT IS, **THEREFORE**, on and as of this 9th day of February 2026 **ADJUDGED AND ORDERED**, that the Program Member's Report and Recommendations for a finding that the HEFSP of the Municipality as same currently exists is ***not presently compliant*** with the Fair Housing Act and the Mount Laurel doctrine is **ACCEPTED** and **ADOPTED** in its entirety, subject to and including the recommendation that the Court continue the proceedings under the jurisdiction of the Court, pursuant to the terms and conditions set forth herein, so as to enable the Court's issuance of a compliance certification; and to that end, it is further

ORDERED AND ADJUDGED, as follows:

1. The Challenges shall remain active pending further proceedings in this Court, except that any of the remaining Challengers shall be allowed to withdraw from further proceedings upon notification to this Court.

2. This Court shall direct and oversee (with the assistance of the Special Adjudicator described more fully below) continued settlement negotiations between the Municipality and the Challengers, especially with representatives of the Fair Share Housing Center, in accordance with the Program's recommendations.

3. The Court hereby appoints Francis J. Banisch, III, PP, AICP, as the Special Adjudicator in this matter. Any fees incurred by the Special Adjudicator shall be divided equally between the Municipality and all remaining Challengers, except that FSHC shall not be required

to pay a share of such fees. The specifics of said appointment shall be clarified in a separate Order of Appointment.

4. Notwithstanding any remaining dispute(s) with any remaining Challenger(s), the Municipality shall follow the procedure set forth in N.J.S.A. 52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 16, 2026,[2] the Municipality shall (i) adopt and file its proposed amended HEFSP as well as the implementing ordinances and resolutions proposed within the amended HEFSP, which adoption shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date ***or, in the alternative***, (ii) adopt a binding resolution by March 16, 2026 to commit to adopting the implementing ordinances and resolutions required following resolution of the dispute(s), with necessary adjustments to reflect the terms of said resolution.

5. Failure to meet the March 16, 2026 deadline described above shall result in a dismissal without prejudice of the Municipality's Declaratory Judgment Complaint. Assuming, however, the Municipality's timely satisfaction of the requirements of paragraph 4(ii) above, the Court shall issue a conditional compliance certification ***expressly subject to*** the following, and which conditions shall be deemed to apply.

6. By no later than **July 15, 2026**, the Court shall schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by this Court, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's Amended HEFSP and the

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[2] **Note**: The statutory deadline for municipalities to adopt all necessary implementing ordinances and resolutions for non-challenged and challenged HEFSPs, or alternatively, a binding resolution to commit to adopting the implementing ordinances and resolutions following settlement and/or resolution of a Program-submitted dispute (with necessary adjustments) was March 15, 2026. Because the deadline falls on a Sunday, the deadline became Monday, **March 16. 2026**, as the next day that was neither a Saturday, Sunday, or a legal holiday, and thus adoptions made and confirmed on and as of March 16, 2026, are deemed compliant. *See* R. 1:3-1.

issuance of an unconditional Certification of Compliance and Repose. If agreements are not reached with the Challengers, the Court will conduct a hearing concerning the Town's plan and whether it complies with the Town's obligations under the FHA and Mount Laurel doctrine. If it is determined that the plan continues to be noncompliant, the Town's immunity will be stripped so that the Challengers or any other putative developers may seek alternate relief.

8. The Municipality is granted continued temporary immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Municipality's compliance with this the terms of this Order, good faith implementation of its amended HEFSP, and good faith participation in continued settlement negotiations as contemplated herein.

9. The Municipality, remaining Challengers, and Special Adjudicator shall appear before the undersigned for a Case Management Conference on **March 24, 2026, at 3:00 p.m.** at the Somerset County Courthouse, Courtroom 304, to provide the Court with an update on the continued settlement negotiations as ordered herein. At the March 24, 2026 Case Management Conference, the Court shall schedule a subsequent Case Management Conference roughly forty-five (45) days thereafter.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Petitioner, Petitioner's counsel, and counsel for all Challengers upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:

HON. WILLIAM G. MENNEN, J.S.C.
Designated Mt. Laurel Judge –Vicinage XIII

(X) By the Court.

STATEMENT OF REASONS

[R. 1:7-4(a) – Directive #14-24, Section III.F]

Having reviewed and considered the Program Member's Report and Recommendations dated January 29, 2026 (inclusive of the detailed report and recommendation of the Special Adjudicator referenced in the Program Member's Decision Recommendation), and having determined there is no need to take testimony to resolve any relevant factual issue, the Court is satisfied, finds and concludes, as follows:

(i) As suggested by the Program Member, the Municipality has attempted to address and respond to concerns, objections, and challenges raised. The issues raised have been classified by the Program Member as "complex". While recognizing the Township's engagement and responsiveness, the Program Member laments their late filings which "makes it unfair for the Program to make a recommendation" and robs the Challengers of their opportunity properly address the issues raised. The result was an incomplete record at this stage of the proceedings which left no realistic opportunity for the Program Member to make a fair and informed decision. Thus, the Program Member was left without the ability to make a positive recommendation to the Court regarding the Town's plan. This inability was only exacerbated by "competing… arguments as to the reasons which make [each competing party's] approach more compelling", particularly as it relates to Highlands conformance. While "pulling no punches" in singling out the Township's late filings as a significant contributing factor to having run out of time, the Program Member hasn't suggested the Court view those delays punitively. The Court concludes, then, that the efforts of the Township (such as they were) and the Challengers ran into statutory time constraints. The parties' efforts, when coupled with the realities of the statutory timelines, gives this Court comfort in finding that while the Municipality has been unable to resolve all of the disputed issues which form the bases for the various Challenges, it has nonetheless demonstrated a "determin[ation] to come into constitutional compliance." N.J.S.A. 52:27D-304.1(f)(2)(d).

(ii) that the Court cannot issue a determination that the current HEFSP is compliant with the Fair Housing Act and the Mount Laurel doctrine in light of the continuing efforts described and ordered herein. Rather, the Court specifically accepts and adopts the recommendation of the Program Member to continue the proceedings process with the goal of consensually resolving the disputes and Challenges this case presents, or at the very least, create the necessary record to permit evaluation of the competing arguments offered by the parties. Attainment of that goal merits continuation of the mediation process.

(iii) that the appointment of the Special Adjudicator is advisable to assist the Court in resolving the issues presented. Having the assistance of the Specia Adjudicator, greatly increases the likelihood of a consensual resolution in the formulation of the Township's HEFSP. Likewise, the Special Adjudicator's advice to the Court regarding the Township's planning and compliance with the Mt. Laurel doctrine will assist in the formulation and adoption of the Township's Fourth Round HEFSP within the limited time period established herein.

Accordingly, the Court hereby adopts in full the Report and Recommendations of the Program Member and accepts the same for the detailed findings and reasons set forth therein. As a result, the Municipality retains all the protections of the above-referenced amendments to the FHA, continues to retain immunity from exclusionary zoning litigation, and that the Court retains jurisdiction so as to permit the parties to continue mediation with the guidance and assistance of the Special Adjudicator, under the auspices and supervision of the Court, so long as the Municipality timely complies with (amongst other things) its obligations under N.J.S.A. 52:27D-304.1(f)(2)(c) and/or (d).

An appropriate form of Order implementing the Program Member's Report and Recommendations accompanies this Statement of Reasons.

SO ORDERED.

Resolution No. 2026-58 Intent to Bond

TOWNSHIP OF CLINTON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

RESOLUTION
2026 – 58

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLINTON AUTHORIZING INTENT TO FUND AFFORDABLE HOUSING PROGRAMS IN CLINTON TOWNSHIP'S FOURTH ROUND HOUSING ELEMENT & FAIR SHARE PLAN IN THE EVENT OF A SPENDING PLAN SHORTFALL

WHEREAS, certain portions of the Township's Fourth Round Housing Element and Fair Share Plan adopted by the Clinton Township Planning Board and endorsed by the Clinton Township Mayor and Council on June 30, 2025 includes the development of one or more municipally-sponsored affordable housing projects that may require a financial commitment by the Township; and

WHEREAS, the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 *et seq.* and applicable regulations require a municipality to resolve to address any shortfall in the funding of its affordable housing programs as set forth in its Spending Plan and the Fair Share Plan, including its willingness to incur bonded indebtedness, if necessary, to provide the funds required for the timely implementation of the Fair Share Plan;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey as follows:

1. The preamble of this resolution is hereby incorporated as if fully restated herein.

2. To the degree that the funds required for the implementation of the Township's Fourth Round Housing Element & Fair Share Plan, as will be more particularly set forth in the Township's approved Spending Plan, are not available at the time they are needed from all available affordable housing funding sources, the Township will provide the funding needed to cover any shortfall through appropriations in the Township's annual budget, bonding, or any other legal means, with the understanding that any future affordable housing funding which becomes available may be used to reimburse the Township for the costs incurred.

3. This resolution shall take effect upon the entry of a final Certification of Compliance and Repose pursuant to N.J.S.A. 52:27D-304.1.

ATTEST:

Jeffrey J. Jotz, RMC, Acting Clerk

Hon. Brian K. Mullay, Mayor

Adopted: February 11, 2026

CERTIFICATION

I, Jeffrey J. Jotz, Acting Clerk of the Township of Clinton in Hunterdon County, New Jersey, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Mayor and Council of the Township of Clinton at its regular meeting held on February 11, 2026.

Jeffrey J. Jotz, RMC, Acting Township Clerk

Resolution No. 2026-59 Commitment to Amend HE&FSP

TOWNSHIP OF CLINTON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY

RESOLUTION
2026 – 59

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLINTON COMMITTING TO ADOPT AN AMENDED FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN ("HEFSP") AND ANY AMENDMENTS TO THE TOWNSHIP'S IMPLEMENTING ORDINANCES AND RESOLUTIONS AS MAY BE NEEDED UPON CONCLUSION OF THE COURT'S DISPOSITION OF THE PENDING DISPUTES OVER THE TOWNSHIP'S HEFSP

WHEREAS, on March 20, 2024, Governor Murphy signed into law amendments to the Fair Housing Act ("FHA") that govern the Fourth Round (2025-2035) of affordable housing obligations of all municipalities in New Jersey (the "Fourth Round") , which amendments are codified at N.J.S.A. 52:27D-301 *et seq.* (hereinafter the "Amended FHA"); and

WHEREAS, on January 23, 2025, the Township of Clinton ("Township") timely filed a complaint for declaratory judgment pursuant to N.J.S.A. 52:27D-304.1 seeking a certification of compliance with its Fourth Round obligations (the "DJ Action"); and

WHEREAS, on June 30, 2025 the Clinton Township Planning Board adopted, and the Clinton Township Maor and Council endorsed, Fourth Round Housing Element and Fair Share Plan ("HEFSP") in accordance with N.J.S.A. 52:27D-304.1(f)(2)(a), which the Township thereafter filed with the Affordable Housing Dispute Resolution Program (the "Program") established by the Amended FHA; and

WHEREAS, the following three interested parties subsequently filed challenges to the HEFSP in accordance with N.J.S.A. 52:27D-304.1(f)(2)(b), alleging that the HEFSP was not in compliance with the Amended FHA: Fair Share Housing Center ("FSHC"), ExxonMobil Research Technology and Engineering Company ("ExxonMobil"), and CNC Ventures, LLC, d/b/a Beaver Brook Country Club ("CNC"); and

WHEREAS, the challenges fell into two categories: (1) "look back" challenges to two of the Township's Third Round inclusionary development projects, and (2) challenges to the Township's use of the Highlands Council "Build-out" analysis as a basis of a Vacant Land Adjustment; and

WHEREAS, the Township disputed the validity of the challenges and, in accordance with Administrative Office of the Courts ("AOC") Directive #14-24, the Township participated in settlement conferences with the challengers but was unable to settle the disputes; and

WHEREAS, the Township and interested parties thereafter participated in a session on December 19, 2025 during which oral argument was heard by the Program Judge on the challenges by the attorneys for the challengers and the attorney for the Township; and

WHEREAS, on January 29, 2026, the Program Judge issued his recommendations on the challenges; and

WHEREAS, the Program Judge recommended that the challenges to the Township's Third Round affordable housing projects be rejected; and

WHEREAS, the Program Judge found that the Township's late filings resulted in a situation that made it unfair for the Program to make a recommendation to the County Mount Laurel Judge with respect to the challenges to the Township's Fourth Round plan, and that there was not a sufficient factual record in order for the complex issues involved to be analyzed and considered; and

WHEREAS, accordingly, the Program Judge recommended to the County Mount Laurel Judge that the proceedings be continued in a manner deemed appropriate by the County Mount Laurel Judge to create the necessary record in order to evaluate the competing and seemingly irreconcilable circumstances offered by the parties; and

WHEREAS, the Program Judge further recommended that the County Mount Laurel Judge extend the Township's immunity from exclusionary zoning suits pending resolution of the disputes provided the Township continued to participate in good faith, and he also recommended that the Township explore alternatives to its plan in the event that its legal arguments in defense of the HEFSP ultimately proved unsuccessful; and

WHEREAS, on February 4, 2026, the County Mount Laurel Judge filed a decision and order finding that the HEFSP was not currently compliant with the Amended FHA and transferring the matter to the Superior Court for further proceedings, and extending immunity from exclusionary zoning suits pursuant to N.J.A.C. 52:27D-304.1(f)(2)(d); and

WHEREAS, the February 4, 2026 decision and order direct the Township to: (1) adopt and file its proposed amended HEFSP (as was recommended by the Special Adjudicator appointed by the Program who assisted the Program Judge) and to adopt and file all implementing ordinances and resolutions by March 16, 2026 (which is a Monday as the March 15, 2026 deadline established in N.J.S.A. 52:27D-304.1(f)(2)(c) and (d) is a Sunday) or, in the alternative, (2) adopt and file a binding resolution to commit to adopting the implementing ordinance and resolutions required following resolution of the disputes, with necessary adjustments to reflect the terms of the resolution of the disputes; and

WHEREAS, the Township intends to adopt and file by March 16, 2026 its proposed amended HEFSP (as was recommended by the Special Adjudicator appointed by the Program who assisted the Program Judge) and all implementing ordinances and resolutions but, in

addition, the Township wishes to also adopt the within resolution committing to adopt an amended HEFSP and implementing ordinances and resolutions following resolution of the disputes over the HEFSP, with necessary adjustments to the HEFSP, ordinance and resolutions to reflect the terms of the resolution of the disputes;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey as follows:

1. The preamble to this resolution is hereby incorporated as if fully restated herein.

2. Notwithstanding the Township's intent to adopt and file by March 16, 2026 its proposed amended HEFSP (as was recommended by the Special Adjudicator appointed by the Program who assisted the Program Judge) and all implementing ordinances and resolutions, in the event that the Township misses that deadline, the Township hereby commits to adopt an amended HEFSP and implementing ordinances and resolutions following resolution of the disputes over the HEFSP, with necessary adjustments to the HEFSP, ordinance and resolutions to reflect the terms of the resolution of the disputes.

3. The Township authorizes and directs its affordable housing counsel to submit and/or file this resolution with eCourts in the Township's DJ Action.

4. This resolution shall take effect immediately.

ATTEST:

Jeffrey J. Jotz, RMC, Acting Clerk

Hon. Brian K. Mullay, Mayor

Adopted: February 11, 2026

CERTIFICATION

I, Jeffrey J. Jotz, Acting Clerk of the Township of Clinton in Hunterdon County, New Jersey, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Mayor and Council of the Township of Clinton at its regular meeting held on February 11, 2026.

Jeffrey J. Jotz, RMC, Acting Township Clerk

CRC Completeness Determination

TOWNSHIP OF CLINTON

CERTIFICATION OF COMPLETE APPLICATION

March 18, 2025

TO: Mr. Steven Gruenberg, Esq.
151 Main Street
Flemington, New Jersey 08822
Stevenpgruenberg@gruenberglegal.com

Mr. James J. Mantz, PE & LS
150 Brahma Avenue
Bridgewater, New Jersey 08807
mantzengineering@yahoo.com

RE: CRC Communities at Longview Manor
191 & 211 Cokesbury Road
Block 10, Lot(s) 1 & 9.01

Please take notice that on the 18th day of March 2025, your application to the:

(X) Planning Board

( ) Zoning Board of Adjustment

was reviewed in accordance with the rules of said Board and the applicable ordinances of the Township, and it was thereupon determined that all checklist items are in order, and said application is complete. The time within which said Board must act on said application pursuant to N.J.S. 40:55D-1 et seq., has commenced to run from said date. This matter is scheduled for a Public Hearing on April 7th, 2025, at 7:00PM in the Public Safety Building, 1370 Rt. 31, Annandale, NJ, on the third floor.

Taylor Gribbin

Taylor Gribbin
Board Administrator

CRC Settlement Agreement with Town of Clinton Re: Water Allocation

TOWN OF CLINTON
HUNTERDON COUNTY

RESOLUTION #160-2025

AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, the Town operates a water company which serves customers within and without its jurisdictional limits; and

WHEREAS, CRC Communities at Headley Farm Estates, Inc. ("CRC") is the owner of certain property that is known and designated as Block 46, Lots 33 and 33.01 on the Tax Maps of the Township of Clinton, more commonly known as 106 Annandale- High Bridge Road (the "Property"); and

WHEREAS, CRC has proposed a residential inclusionary project on the Property consisting of 400 total dwelling units (the "Project"), which is included as a mechanism in the Township of Clinton's Fourth Round Housing Element and Fair Share Plan, adopted on June 30, 2025, to address the Township of Clinton's Third Round affordable housing obligations; and

WHEREAS, the Property is within the service area of the Town of Clinton Water Department; and

WHEREAS, the total water demand for the Project is 113,160 gpd; and

WHEREAS, the Town approved the following Water Reservation Applications for Phases 1 and 2 of the Project:

Water Reservation #	Amount	Date Granted
L21-08	19,670 gpd	January 26, 2022
L23-09 (formerly L-20-04)	26,720 gpd	December 13, 2023

WHEREAS, Water Reservation #L21-08 has expired and Water Reservation #L23-09 is set to expire on December 13, 2026; and

WHEREAS, CRC filed an Order to Show Cause with Verified Complaint, captioned *CRC Communities at Headley Farms Estates, Inc. v. Town of Clinton and Township of Clinton*, HNT-L-52-25, in the Superior Court of New Jersey, Law Division, Hunterdon County, seeking an order declaring the Town of Clinton (the "Town") has an obligation and/or compelling the Town to waive the one year waiting period set forth in Town Code Section 142-11(E)(5) and renew Water Reservation #L21-08 (the "Lawsuit"); and

WHEREAS, by Order dated January 24, 2025, the Court entered an Order to Show Cause with Temporary Restraints, granting temporary restraints to extend Water Reservation #L21-08 to the Project pending a decision on CRC's request for Preliminary Injunction; and

WHEREAS, a settlement of the Lawsuit has been reached amongst the Town, Township, and CRC; and

WHEREAS, such settlement also addresses additional water reservations that CRC requires for the Project in order to avoid future litigation; and

WHEREAS, the Town Council supports the settlement of the afore-mentioned litigation and authorizes the execution of any documents required to effectuate the settlement, including, but not limited to the Settlement Agreement in substantially the same form attached hereto.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Clinton, Hunterdon County, New Jersey, as follows:

1. The Mayor and Clerk are authorized and directed to execute the Settlement Agreement in substantially the same form as attached hereto.

2. This Resolution shall take effect immediately.

Janice Kovach, Mayor

Adopted: October 22, 2025

Attest:

Suzannah Givone, RMC, CMR
Town Clerk

SETTLEMENT AGREEMENT AND WATER AGREEMENT

by and between

TOWN OF CLINTON

And

CRC COMMUNITIES AT HEADLEY FARMS ESTATE, INC.

Dated: October 22, 2025

00434287

THIS AGREEMENT, made on October 27, 2025, (hereinafter referred to as the "Agreement") by and between the **TOWN OF CLINTON**, a municipality of the State of New Jersey with offices located at Municipal Building, 43 Leigh Street, Clinton, New Jersey 08809, together with any successor public body hereinafter designated by or pursuant to law (hereinafter referred to as the "Town"), and **CRC COMMUNITIES AT HEADLEY FARM ESTATES, INC.**, a corporation formed and operated pursuant to the laws of the State of New Jersey with offices located at 326 Route 22 West, #16B, Green Brook, NJ 08812 (hereinafter referred to as "CRC" or the "Developer") (the Town and the Developer are hereinafter collectively referred to as "Parties").

CLINTON TOWNSHIP, a municipality of the State of New Jersey with offices located at 1225 Route 31 South, Lebanon, NJ, 08833 (the "Township", which is only made a party hereto to for the limited purpose of acknowledging this Agreement and consenting to Paragraph 19 herein).

WITNESSETH:

WHEREAS, the Town operates a water company which serves customers within and without its jurisdictional limits; and

WHEREAS, Developer is the owner of certain property that is known and designated as Block 46, Lots 33 and 33.01 on the Tax Maps of the Township of Clinton, more commonly known as 106 Annandale- High Bridge Road (the "Property"); and

WHEREAS, Developer has proposed a residential inclusionary project on the Property consisting of 400 total dwelling units (the "Project"); and

WHEREAS, the Project is included in the Township's Third Round Housing Element and Fair Share Plan pursuant to a Settlement Agreement with Fair Share Housing Center approved by a Judgment of Compliance and Repose entered by the Superior Court of New Jersey subject to a durational adjustment for water and sewer availability. Pursuant to the Settlement Agreement, the Project was given priority over all other inclusionary development sites in the Township because it offers both the highest percentage set-aside for affordable housing and the most units of affordable housing of any project; and

WHEREAS, the Project is included as a mechanism in the Township of Clinton's Fourth Round Housing Element and Fair Share Plan, adopted on June 30, 2025, to address the Township of Clinton's Third Round affordable housing obligations; and

WHEREAS, Chapter 142 of the General Ordinances of the Town of Clinton sets forth procedures for applying for and receiving approval for water reservations; and

WHEREAS, pursuant to Section 142-11(E)(1) of the Town Code, water reservations are valid for one year and may be renewed for two one-year periods, for a maximum validity period of three (3) years; and

WHEREAS, pursuant to Section 142-11(E)(5) of the Town Code, a water reservation applicant "must wait a minimum of one year after a water reservation has expired to apply for a new water reservation for a particular property;" and

WHEREAS, pursuant to Town Code Section 142-11(F), applicants granted water reservations for affordable housing projects must pay a quarterly reservation fee in the amount of 12.5% of the prevailing estimated water charges for such project; and

WHEREAS, the total water demand for the Project is 113,160 gpd, which is currently calculated as per Exhibit A attached hereto.

WHEREAS, the Town approved the following Water Reservation Applications for Phases 1 and 2 of the Project:

Water Reservation #	Amount	Date Granted
L21-08	19,670 gpd	January 26, 2022
L23-09 (formerly L-20-04)	26,720 gpd	December 13, 2023

WHEREAS, Water Reservation #21-08 was extended for two one-year terms, with the final extension set to expire on January 26, 2025; and

WHEREAS, as a result, pursuant to Town Code Section 142-11(E)(5), CRC was prohibited from extending Water Reservation #L21-08 further and was required to wait until January 22, 2026 to reapply for such water allocation; and

WHEREAS, CRC submitted Water Reservation Application # L24-10 for Phase 3 of the Project in the amount of 6,005 gpd on or about November 4, 2024 and supplemented said Application on or about January 6, 2025, which remains pending ; and

WHEREAS, pursuant to Section 142-11(E)(5) of the Town Code, "[a]n applicant must wait a minimum of one year after a water reservation has expired to apply for a new water reservation for a particular property"; and

WHEREAS, on or about January 7, 2025, CRC requested a waiver from the one year waiting period under Section 142-11(E)(5) of the Town Code; and

WHEREAS, on or about January 23, 2025, CRC supplemented its waiver request and requested reconsideration of the waiver, which request remains pending as a result of the Lawsuit; and

WHEREAS, also on or about January 23, 2025, CRC submitted a Water Reservation Application for 19,670 gpd for Phase 1 of the Project, which application remains pending;

WHEREAS, on or about January 23, 2025, CRC filed an Order to Show Cause with Verified Complaint, captioned *CRC Communities at Headley Farms Estates, Inc. v. Town of Clinton and Township of Clinton, HNT-L-52-25*, pending in the Superior Court of New Jersey, Law Division, Hunterdon County, seeking an order declaring the Town has an obligation and/or compelling the Town to waive the one year waiting period set forth in Town Code Section 142-11(E)(5) and renew Water Reservation #L21-08 (the "Lawsuit"); and

WHEREAS, by Order dated January 24, 2025, the Court entered an Order to Show Cause with Temporary Restraints, granting temporary restraints to extend Water Reservation #L21-08 to the Project pending a decision on CRC's request for Preliminary Injunction; and

WHEREAS, by Consent Order dated February 26, 2025, said temporary restraints were ordered to continue pending a decision on CRC's request for Preliminary Injunction in order to allow the parties to continue settlement discussions; and

WHEREAS, on or about June 17, 2025, CRC submitted a Water Reservation Application in the amount of 80,339 gpd representing the remainder of the water necessary to serve the Project, which Water Reservation Application remains pending; and

WHEREAS, Water Reservation #23-09 was extended for two one-year terms, with the final extension set to expire on August 12, 2026; and

WHEREAS, CRC has not paid any quarterly reservation fees for any of its water reservations; and

WHEREAS, Developer has requested that the Town supply potable water to the Project in the amounts and quantities described in this Agreement; and

WHEREAS, Developer has requested that the Town endorse a New Jersey Department of Environmental Protection (NJDEP) Bureau of Water System Engineering (BWSE) permit application; and

WHEREAS, the Town is willing to supply potable water to the Project in accordance with the terms of this Agreement; and

WHEREAS, Developer is willing to install certain water system improvements subject to the terms of this Agreement because it recognizes that upgrades to the infrastructure servicing the Property are required to meet the New Jersey Administrative Code (N.J.A.C.) Residential Site Improvement Standards, (N.J.A.C. 5:21-5.3), Safe Drinking Water Act (N.J.A.C. 7:10-11.10), and Insurance Services Office (ISO) Standards regarding fire protection; and

WHEREAS, New Jersey Courts have held that municipalities have a duty to facilitate affordable housing developments in neighboring municipalities. *See, e.g.*, Bi-County Dev. of Clinton, Inc. v. Borough of High Bridge, 174 N.J. 301 (2002) Dynasty Bldg. Corp. v. Upper Saddle River, 267 N.J. Super. 611, 616 (App. Div. 1993); Samaritan Cntr., Inc. v. Borough of Englishtown, 294 N.J. Super. 437, 455 (Law Div. 1996); and

WHEREAS, the parties hereto wish to set forth their agreement in writing; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

1. **Water Supply.**

a. Town agrees to supply up to 113,160 gallons of water per day (the "Water Allocation") to the Property in accordance with the terms and conditions of any tariff, then in effect, filed by the Town with the Board of Public Utilities ("BPU") and in accordance with any ordinance, then in effect, of the Town, subject to the terms hereof. Developer or any of its assigns shall be billed for said water in accordance with tariffs of the Town filed with the BPU, subject to the terms hereof.

b. The Water Allocation shall be reduced in the following circumstances:

i. To be consistent with final approvals from the New Jersey Highlands Council, New Jersey Department of Environmental Protection ("NJDEP"), and/or Clinton Township.

ii. Residential Water Demand established by the Residential Site Improvement Standards ("RSIS") (N.J.A.C. 5:21-1.1 *et seq.*) is amended during the term of this Agreement to require a decreased reservation.

c. In the event CRC requires a water allocation in an amount greater than that in the Water Allocation (whether it is a result of amendments to Residential Water Demand established by RSIS, amendments to the Project, or any other changed circumstances), the Town does not guarantee the availability of water capacity. If CRC requires additional water capacity in an amount greater than that in the Water Allocation, CRC shall make the proper application to the Town and be subject to all appropriate procedures and charges under Town ordinances, subject to any priority with regard to water capacity established by the Clinton Township's Affordable Housing Element and Fair Share Plan and/or Settlement Agreement between Clinton Township and Fair Share Housing Center dated December 12, 2018.

d. In the event the Project is modified as to the type of residential product and the number of units of any residential product and any amenities offered in connection with the Project and such does not necessitate an increase in the Water Allocation, CRC shall request in writing to the Town and Township that this Agreement be amended accordingly. The Town and Township shall not withhold approval of such amendment unreasonably.

2. **Term.**

a. This Agreement shall be for a maximum term of ten (10) years, terminating on October 22, 2035, subject to tolling pursuant to Section 3 of this Agreement.

b. This Agreement shall terminate upon the earlier of:

i. October 22, 2035 (or such date due to tolling of the Term pursuant to Section 3 of this Agreement).

ii. The date by which a physical connection of the entire Project to the Town's water system pursuant to Chapter 142 of the Town Code and Section 4 of this Agreement, as evidenced by the issuance of water connection permits by the Town.

iii. The date by which Developer voluntarily abandons the Project and/or the entirety or remainder of the Water Allocation by written notice to Town provided in accordance with Section 16 of this Agreement.

iv. Uncured default regarding payment of water reservation fees by Developer pursuant to Section 8(d) of this Agreement.

v. Uncured default regarding payment of connection fees or water tap installation fees, as applicable, pursuant to Sections 6 and 7 of this Agreement.

c. If by October 22, 2035 (or such date due to tolling of the Term pursuant to Section 3 of this Agreement), less than 250 units (or 75% of any reduced number of approved units, whichever is less) are *not* connected to the Town's system and water meters installed, the Water Allocation, or portion thereof intended to serve units not yet connected to the Town system, shall terminate; however, the Town shall be obligated to serve those units that are connected to the Town system as of the end of the 10-year term. If the Water Allocation, or portion thereof intended to serve units not yet connected to the Town system, terminates in accordance with this subparagraph, Developer shall be subject to all procedures and regulations applicable to water reservations set forth in Chapter 142 of the Town Code, including, but not limited to the one-year waiting period prior to applying for a new water reservation.

d. If at the end of the 10-year term (or such date due to tolling of the Term pursuant to Section 3 of this Agreement), more than 250 (or 75% of any reduced number of approved units, whichever is less) are connected to the Town's system, the Water Allocation shall remain in effect for an additional 3 years, subject to tolling pursuant to Section 3 of this Agreement, without the need for CRC to pay an annual reservation fee. However, in no event shall water capacity be allocated under this Agreement for longer than thirteen (13) years, subject to tolling pursuant to Section 3 of this Agreement.

3. **Tolling.** Notwithstanding anything herein to the contrary, the Term and deadlines set forth herein set forth herein shall be tolled and extended if Developer is barred or prevented *directly* from proceeding with the Project: (i) due to a stay or other order entered in any legal action instituted by a State agency, political subdivision, or other party; or (ii) by a directive or order issued by any State agency, political subdivision or any court of competent jurisdiction.

The Term shall not be tolled in the event Developer is denied a permit or approval and files an administrative appeal or an appeal to a court of competent jurisdiction.

4. **Connection to the Town's System.**

a. Based upon representations of the Developer, the Property will be subdivided and individual meters will be installed on the proposed single-family homes, townhomes, and apartment buildings;. however, nothing herein shall prevent Developer from developing the Property in a different manner, subject to any applicable approvals of agencies having jurisdiction.

b. Units are considered "connected" to the Town's system when all of the following conditions have been met in accordance with Town Code Section 142-11:

i. A water main is run to the property line of each individual unit(s) or apartment building to be connected and a meter is installed; and

ii. A complete application for a water service connection is made and approved, which approval shall not be unreasonably withheld; and

iii. The connection fee applicable to such unit(s) are paid in full, as required by law.

c. Once 250 units (or 75% of any reduced number of approved units, whichever is less) are connected to the Town's water system in compliance with subsection (a) above, the obligation to pay annual reservation fees shall cease. However, Developer shall remain obligated to make application for water service connections and water tap installation and pay connection and tap installation fees for the remaining approved units, as required by law.

5. **The Plans.**

a. Developer shall submit design drawings for the offsite and onsite water infrastructure necessary to distribute water to the Project (the "Plans") for review by the Town's water consulting engineer and comply with any Technical Review Letters issued by the Town's

water consulting engineer before any plans and applications are submitted to the appropriate regulatory agencies having jurisdiction for approval of the connection to the system, in accordance with the Town's Code and as required by law.

b. Nothing herein shall relieve Developer of the need to enter into a Developer's Agreement and establish an escrow account related to the Town's review of water infrastructure plans and installation of such improvements as required by law. Such escrow account shall be administered in accordance with applicable ordinances and statutes as required by law. Developer shall pay for the cost of review of the Plans by Town professionals. Such review costs shall be paid out of an escrow account held by the Town and established by Developer at a later date.

6. **Connection Fees.** Developer will pay to the Town all applicable charges including water main connection fees (hereinafter "connection fees") pursuant to Chapters 73 and 142 of the Code of the Town of Clinton based on the Water Allocation (or such other amount as amended pursuant to this Agreement), as required by law. Such fee shall be calculated based upon the connection rate in place at the time of the connection. Failure to timely pay such connection fees shall be considered a default of this Agreement and grounds to terminate this Agreement, only if such connections fees are not paid within thirty (30) days after the Developer has received written notice to cure said default within such time or be in default.

7. **Water Service Tap Installation Fee.** Pursuant to Chapter 73 of the Town Code, Developer shall install the water service tap and pay all costs and expenses associated therewith, as required by law. Additionally, Developer shall pay for the cost of inspections performed by the Town Water Department or its agent, as required by law. Such inspection costs shall be paid out of an escrow account held by the Town and established by Developer. The escrow shall be established a later date in an amount pursuant to Chapter 73 of the Town Code and it shall be replenished as necessary/as advised by the Water Department. Failure to timely pay such tap installation fees and replenish such escrow shall be considered a default of this Agreement and grounds to terminate this Agreement, only if such water tap installation fee is not paid within thirty (30) days after the Developer has received written notice to cure said default within such time or be in default.

8. **Water Reservation Fees.**

a. Subject to the terms herein, Developer shall pay annual water reservation fees as follows, which shall be due and payable in equal quarterly installments:

i. 2026 - $45,000

ii. 2027 - $50,000

iii. 2028 - $50,000

iv. 2029 - $55,000

v. 2030 - $55,000

vi. 2031 - $55,000

vii. 2032 - 12.5% of the estimated water fees

viii. 2033 -15% of the estimated water fees

ix. 2034 - 17.5% of the estimated water fees

x. 2035 – 20% of the estimated water fees

b. The Annual Reservation Fee shall be proportionally reduced, upon the request of the Developer in writing, as units are connected to the Town's system or the Developer releases capacity.

c. *Termination of the Annual Reservation Fee.* The Annual Reservation Fee and the obligation to pay the same shall terminate upon the earlier of each and any of the following:

i. the Developer releasing the entirety or the remainder of the Water Allocation;

ii. water connection in compliance with Section 4 of this Agreement being made to at least 250 units (or 75% of any reduced number of approved units, whichever is less) in the Project;

d. This Agreement shall terminate upon the failure of the Developer to timely pay the Annual Reservation Fee, only if such Annual Reservation Fee is not paid within thirty (30) days after the Developer has received written notice to cure such default within such time or be in default.

9. **Other Charges.** Developer is also liable to pay other applicable charges called for in the Town's ordinances and tariffs such as fire service charges, private hydrant charges, and any other charges common to water customers, as required by law.

10. **Fees Non-refundable.** All fees set forth in Paragraphs 6, 7, and 8 above that are paid are not refundable regardless of any actual water usage.

11. **Improvement Costs.** In addition to the payments called for in Paragraphs 6, 7, and 8 of this Agreement, Developer is obligated to pay for and construct the improvements to the water main infrastructure necessary to serve the water needs of the Property in and compliance with the governing regulations, as required by law.

Developer shall hire and pay a contractor to construct the proposed off-tract improvements.

12. **Outside Agency Permits.**

a. Developer agrees to submit, at its own cost, all necessary documentation and application fees for the NJDEP permits. The Town shall endorse such permit applications provided that all applicable fees and escrow charges are paid and Developer is not in default of this Agreement.

b. Nothing herein shall obviate the need for the Town to endorse and sign off on any water main extensions as required per any statute, ordinance, code, and/or regulation.

13. **Testing.** Developer shall perform all necessary pressure, leakage and bacteria tests and shall disinfect all new lines, at its expense, in the presence of an authorized Town agent and in accordance with Town and American Water Works Association standards.

14. **Performance Bonds.** Prior to the commencement of any construction of the water infrastructure improvements, the Developer shall post with the Town a performance bond with corporate surety authorized to do business in the State of New Jersey, in the amount of One Hundred Twenty Percent (120%) of the estimated cost of the water infrastructure improvements to be constructed under the terms of this Agreement in a form acceptable to the Town. Ten

percent (10%) of the amount shall be in cash. The estimated cost shall be prepared by the Town's engineering consultant according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 . Performance bonds shall be posted for the water infrastructure improvements unless approval is given by the Town to post by sections or phases.

15. **Approval Not Unreasonably Withheld.** In all instances where the Town's approval or consent is required, the Town shall not unreasonably withhold or delay such approval or consent.

16. **Acceptance by Town.** The onsite and offsite water infrastructure improvements approved by the Plans shall be offered for dedication to the Town and the Town shall accept dedication of the same, provided that such are installed in accordance with the Plans. Nothing herein shall obligate the Town to accept dedication of water infrastructure improvements on private property or outside the public right-of-way. Additionally, nothing herein shall obligate the Town to accept the dedication of infrastructure until all units within the Project are connected to the Town's system and certificates of occupancy are issued. Prior to the acceptance of any water infrastructure improvements by the Town, Developer shall submit the following:

a. Deeds for all necessary titles or easements to lands necessary for the maintenance or operation of the water system and facilities.

b. A two-year maintenance bond in a form acceptable to the Town in the amount of fifteen percent (15%) of the original performance bond amount as determined by the Town to cover costs of repair for any latent defects discovered during the two-year period.

c. As-built drawings of the water system and facilities shall be provided to accurately locate and identify all structures, mains, valves, hydrants, etc., and associated material, size and location for future reference.

The Town shall determine whether said systems are constructed in accordance with the approved plans and all required rules, regulations, and specifications. If all construction and submissions are approved, the Town shall adopt a Resolution accepting the systems and facilities as constructed. All dedications, deeds, easements, bonds and as-built drawings shall be formally recorded or processed as required. All costs shall be paid by the Developer.

17. **Notices.** All notices sent pursuant to this Agreement shall be in writing and directed to the party at the address set forth at the beginning of this Agreement, unless prior to the notice being sent the party has delivered a substitute address to the other party by certified mail, return receipt requested, in which case the notice shall be sent to that address.

Copies of all notices to CRC shall also be sent to: Attn.: Derrick R. Freijomil, Esq., Riker Danzig, LLP, 7 Giralda Farms, Suite 250, Madison, NJ 07940-1051 (dfreijomil@riker.com). Copies of all notices to the Town shall be sent to: Tara St. Angelo, Esq., Gebhardt & Kiefer, LLC, 1318 Route 31, Annandale, New Jersey 08801.

18. **No Waiver.** Nothing contained in this Agreement shall be deemed a waiver by any party of its rights under any ordinance or state statute or other law, or be construed as an abridgment, preemption or waiver of the powers of the Town, approving authority, or any other agency or public body.

19. **Cooperation.** Each Party agrees to cooperate fully with the other(s) in the performance of this Agreement and to undertake such actions and provide such information as necessary to fulfill the terms of this Agreement.

20. Amendments in Writing. This Agreement may be changed, modified, or amended only by a written instrument signed by the parties hereto or their successors.

IN WITNESS WHEREOF, the Town has caused this Agreement to be duly executed in its name of and by the Mayor of the Town on behalf of the Town, and its seal to be hereunto duly affixed and attested by the Town Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by the managing member, on or as of the day first above written.

[SIGNATURE PAGES FOLLOW]

Attest:
Town of Clinton

Suzannah Givone, Clerk

Date: 10/22/25

By: _____
Janice Kovach, Mayor

Attest:

CRC Communities at Headley Farms, LLC

By: _____
Name: Carl Checchio
Title: Managing Member

Date: 10/17/25

Attest:
Township of Clinton

_____
, Clerk

By: _____
Brian Mullay, Mayor

Date: _____

4919-2199-3582, v. 2

Attest:
Town of Clinton

Suzannah Givone, Clerk

Date: 10/22/25

By: Janice Kovach, Mayor

Attest:

CRC Communities at Headley Farms, LLC

_____

By: _____
Name:
Title: Managing Member

Date:_____

Attest: **Township of Clinton**

Lindsay Heller
Acting Township Clerk

Date: 10/16/2025

By: Brian Mullay
Mayor

4919-2199-3582, v. 2

Highlands Consistency Determination Re: CRC WQMP Amendment

State of New Jersey

HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.nj.gov/njhighlands

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

CARL J. RICHKO
Chairman

BENJAMIN L. SPINELLI, ESQ.
Executive Director

September 11, 2025

VIA EMAIL ONLY:
Jason Kane, Assistant Director
New Jersey Department of Environmental Protection
401 East State Street, P.O. Box 420
Mail Code 401-02A
Trenton, NJ 08625-0420

Subject: **Headley Farm**
106 Annandale-High Bridge Road
Block 46, Lots 33 and 33.01
Clinton Township, Hunterdon County
Proposed Amendment to the Upper Raritan Water Quality Management Plan (WQMP)
Finding: Consistent with Conditions

Dear Mr. Kane,

The New Jersey Department of Environmental Protection (NJDEP) notified the New Jersey Highlands Water Protection and Planning Council (Highlands Council) of the above-referenced application for a site-specific amendment to the Upper Raritan Water Quality Management Plan (WQMP) on December 8, 2022. Clinton Township is a fully conforming municipality for both their Planning and Preservation Area. They have also adopted resolution #1184-2023 on May 10, 2023 establishing two Highlands centers and creating Highlands Environmental Resource Zones (HERZ).

The NJDEP supports implementation of comprehensive regional plans and coordinates and integrates water quality planning actions with the Highlands Regional Master Plan (RMP) (N.J.A.C. 7:15-2.9(a)). For all decisions in or affecting the Planning Area or the Preservation Area, the NJDEP gives great consideration and weight to the RMP (N.J.A.C. 7:15-2.9(a)). The NJDEP shall also review the RMP and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the RMP (N.J.A.C. 7:38-1.1(k)). In addition, Executive Order (EO) 114 (2008) requires that the Highlands Council review and provide comments on WQMP amendments regarding consistency with the Net Water Availability (NWA) provisions of the RMP.

The proposed project consists of the construction of 400 residential units, of which 104 (20 one-bedrooms, 63 two-bedrooms and 21 three-bedrooms) are designated affordable housing, 102 (three-bedroom) Townhomes, and 194 four-bedroom single family residences. The clubhouse will be 4,000 square feet. The

155-acre site is currently undeveloped farm fields with forests along the edges of the parcels and zoned AH-8 (Affordable Housing). Two existing cul-de-sacs run through the center of the large parcel and Jersey Central Power and Light (JCP&L) transmission line right-of-way transverses in an east-west direction across the site. Two stormwater management basins exist along the southern end of the property.

The entire parcel is within a Highlands Designated Center while portions are delineated as Highlands Environmental Resource Zone (HERZ). The areas outside of the HERZ are eligible to be placed into a sewer service pursuant to N.J.A.C. 7:15-4.4(c)2; the proposed development footprint does not disturb the HERZ.

The estimated 0.114 Million Gallons per Day (MGD) of wastewater will be treated by a new onsite tertiary treatment facility with discharge to groundwater. Please note that NJDEP regulations require that discharge to ground water limits in conforming Planning Area municipalities comply with the nitrate limits of the RMP. The nitrate limit is 2 mg/l for the Highlands Designated Center, which is the same standard set for the Existing Community Zone of the Highlands Land Use Capability Zone in the RMP.

The proposed project will be supplied potable water by the Town of Clinton Water Department (PWSID 1005001). Clinton Water Department confirmed via letter dated September 9, 2025 that they that they have capacity to serve this proposed project without any new or modified water allocation permit. The Clinton Water Department has three (3) wells located within the same HUC 14 subwatershed as the proposed project and onsite discharge to groundwater; therefore, the water use for this proposed project is considered a consumptive use. The NWA for the project site and source wells is -0.491 MGD. Due to the severity of the deficit and the amount of consumptive use, the applicant submitted a Site-Specific Water Mitigation Plan (Mitigation Plan) dated December 2024.

The Mitigation Plan identified the following implementation measures:

- Low-flow faucets, showers, toilets, washing machines, and dishwashers;
- Planting of native landscaping species that do not require supplemental irrigation beyond the plant establishment period;
- No outdoor water use;
- Limiting hose bibs and restrictions on vehicle washing; and
- Construction of bioretention basins to infiltrate and recharge groundwater.

In addition, Clinton Township signed a tri-party agreement and had a kick-off meeting on August 19, 2025, to develop a municipal-wide Water Use and Conservation Management Plan (WUCMP). In accordance with RMP Objective 2B8f (2024) and EO114 (2008), the WUCMP is required to have been prepared, adopted and implemented prior to the approval of any Water Quality Management Plan Amendment. In this case, the project is located in the Clinton Water Department franchise area. In 2013, Clinton Town developed a pilot WUCMP. Specific mitigation items were implemented including ordinance updates, meter replacement program, large meter testing and replacement, implementation of a tiered rating structure, and various infrastructure improvements. As this pilot WUCMP area includes the Clinton Water franchise area, this condition is considered to be met for the purposes of this WQMP consent. However, Clinton Township is required to continue to develop, adopt and implement their own WUCMP.

Therefore, based on the above, the proposed project is **consistent with the Highlands Act and RMP, subject to the preparation, adoption and implementation of the WUCMP**. This determination by the Highlands Council is in accordance with State of New Jersey Regulations, NJDEP Highlands Rules and EO 114 (2008) regarding consistency with the RMP. The determination is specific to the requirement for a WQMP Amendment based on the proposed project details and does not eliminate the need for any permits,

approvals, or certifications required by the NJDEP or any federal, State, county, or municipal review agency with jurisdiction over this project/activity. Should you have any questions regarding this WQMP Amendment review, or any information contained in this letter, please do not hesitate to contact me by telephone at (908) 879-6737 (ext. 101), or by email at Ben.Spinelli@highlands.nj.gov.

Sincerely,

Benjamin L. Spinelli, Esq.
Executive Director

c:

Rob Checchio, CRC Communities at Headley Farm Estates, Inc.
Jens Riedel, Natural Systems Utilities
Scott Sullivan, NJDEP Water Quality Management Planning Program
William Close, Township Administrator
Guliet D. Hirsch, Esq., Archer & Greiner P.C.

108 Alton Place CTSA Will Serve Letter

Clinton Township Sewerage Authority

79 Beaver Avenue, Suite 3
Clinton, NJ 08809
908-735-5026

November 7, 2025

Michael F. Savage, Manager
Kerwin Savage LLC
86 Mt Airy Road
Bernardsville, NJ 07924

Re: **Clinton Township Sewerage Authority**
Will Serve Capacity Letter
With Respect To:
108 Alton Place, Clinton Township
Block 79.07, Lot 1
Round 3 Inclusionary Affordable Housing Development with Priority

Dear Mr. Savage:

On behalf of the Clinton Township Sewerage Authority ("Authority"), we are in receipt of a request from both the Township of Clinton ("Township") and Kerwin Savage, LLC ("Kerwin"), for a "Will Serve" confirmation from the Authority for the above noted project. As noted, the project is a Round 3 Inclusionary affordable Housing Development, with prior within the Township's Third Round Housing Element and Fair Share Plan. We understand that the needed flow for this project is 39,975 gpd.

The Authority does have capacity to meet this need, given the sewer capacity priority accorded to a series of specific, affordable housing designated projects as set forth both within the Township's Third Round Plan as aforesaid, and within the existing 2016 Agreement between the Authority and the Township for allocation for affordable housing purposes.

The Authority will serve this project based upon the foregoing, and contingent upon the receipt, review and approval by the Authority of (a) sufficient conveyance capabilities; and, (b) all appropriate documentation satisfactory to confirm the termination and release of the March 16, 2023 Memorandum of Sewer Capacity Transfer Agreement which both Clinton Sewer Acquisition, LLC ("CSA") and RAS Project Consulting, LLC ("RAS") signed conveying purported "excess capacity" from RAS to CSA, as the same is no longer necessary given the availability of capacity for this priority affordable housing project. A formal submission to the Authority, along with a NJDEP Treatment Works approval application, is also necessary for the official reservation of capacity.

In summary, based on current flows, available allocation and available reservation for the project as discussed above, the Authority is in a position to reserve capacity for the same as set forth and conditioned above.

Please let us know should you have any questions. Thank you.

Very truly yours,

Meliss Paulus

Meliss Paulus,
Administrator

MP/

cc: John Kerwin
Walter Wilson
Patrick J. Mullaney, Esq.
Jonathan E. Drill, Esq.
Christopher Langhart – CTSA Attorney
Brian Mullay – Clinton Township Mayor
William Glaser – Clinton Township Council President
Trishka Waterbury – Clinton Township Municipal Attorney

108 Alton Place Resolution Approving Water Reservation

TOWN OF CLINTON
HUNTERDON COUNTY, NEW JERSEY

RESOLUTION # 46-26

RESOLUTION APPROVING WATER CAPACITY RESERVATION APPLICATION #L25-09

WHEREAS, Section 142-11 of the General Ordinances of the Town of Clinton sets forth the procedures for applying for and receiving approval for water reservations; and

WHEREAS, Kerwin Savage, LLC ("Kerwin Savage") is the developer of property designated as Block 79.07, Lot 1 on the Tax Maps of the Township of Clinton (the "Property"); and

WHEREAS, Kerwin Savage has proposed an 140-unit inclusionary development on the Property (the "Project"), which is included in the Township of Clinton's Affordable Housing and Fair Share Plan as a compliance mechanism; and

WHEREAS, Kerwin Savage submitted a water reservation application on or about October 31, 2025 for a water reservation for the Project; and

WHEREAS, on December 10, 2025 the Town's Water Committee held their monthly meeting in which they have reviewed and approved the above-referenced water reservation application.

NOW, THEREFORE BE IT RESOLVED, as follows:

1. In accordance with Chapter 142, Section 1, Sub-section J(3) of the Town's Ordinances, the Mayor and Council hereby approve Water Reservation Application # L25-09 in the amount of 26,740 GPD through December 10, 2026.

2. In accordance with Chapter 142, Section E, the water reservation under Application L24-09 may be renewed for two one-year periods. (i.e. with extensions, a water reservation may be valid for up to three years).

3. Certified copies of this resolution be provided to the Applicant, Suburban Consulting Engineers, and the Town of Clinton Superintendent of Water.

4. The Mayor and Clerk are hereby authorized to execute the Water Agreement between the Town of Clinton and Kerwin Savage in a form substantially similar as attached hereto as Exhibit A.

5. This Resolution shall take effect immediately.

Janice Kovach

Janice Kovach, Mayor

Adopted: January 14, 2026

ATTEST:

Suzannah Givone

Suzannah Givone, RMC, CMR
Town Clerk

WATER AGREEMENT

by and between

TOWN OF CLINTON

And

KERWIN SAVAGE, LLC

Dated: ____, 2026

THIS AGREEMENT, made on _____, 2026, (hereinafter referred to as the "Agreement") by and between the **TOWN OF CLINTON**, a municipality of the State of New Jersey with offices located at Municipal Building, 43 Leigh Street, Clinton, New Jersey 08809, together with any successor public body hereinafter designated by or pursuant to law (hereinafter referred to as the "Town"), and **KERWIN SAVAGE, LLC,** a Limited Liability Company formed and operated pursuant to the laws of the State of New Jersey with offices located at 86 Mt. Airy Rd., Bernardsville, New Jersey 07924 (hereinafter collectively referred to as the "Developer") (the Town and the Developer are hereinafter collectively referred to as "Parties").

WITNESSETH:

WHEREAS, the Town operates a water company which serves customers within and without its jurisdictional limits; and

WHEREAS, Developer is the developer of certain property that is known and designated as Block 79.07, Lot 1 on the Tax Maps of the Township of Clinton (the "Property"); and

WHEREAS, the Developer received approval from the Township of Clinton Planning Board to develop the Property with one hundred forty (140) residential dwelling units; and

WHEREAS, on January 14, 2026, pursuant to Resolution #_____ the Town approved Water Reservation Application #L25-09, submitted by the Developer, to supply 26,740 GPD; and

WHEREAS, Developer has requested that the Town supply potable water to the property in the amounts and quantities described in this AGREEMENT; and

WHEREAS, the Town is willing to supply potable water to the property in accordance with the terms of this AGREEMENT, subject to available capacity; and

WHEREAS, Developer may be required to install certain water system improvements subject to the terms of this AGREEMENT in order to meet the New Jersey Administrative Code (N.J.A.C.) Residential Site Improvement Standards, (N.J.A.C. 5:21-5.3), Safe Drinking Water Act (N.J.A.C. 7:10-11.10), and Insurance Services Office (ISO) Standards regarding fire protection;

WHEREAS, the parties hereto wish to set forth their agreement in writing;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

1. **Water Supply.** Town agrees to supply up to 26,740 gallons of water per day to the Property in accordance with the terms and conditions of any tariff, then in effect, filed by the Town with the Board of Public Utilities ("BPU") and in accordance with any ordinance, then in effect, of the Town. Developer or any of its assigns shall be billed for said water in accordance with tariffs of the Town filed with the BPU.

2. **The Plans.** It is agreed that the Developer will prepare design drawings (the "PLANS") for the off-tract and on-site improvements necessary for the distribution of water to the proposed uses on site and furnish said plans for review by the Town's water consulting engineer for review and approval, before any plans and applications are submitted to the appropriate regulatory agencies having jurisdiction for approval of the connection to the system.

3. **Connection Fees.** Developer will pay to the Town all applicable charges including water main connection fees (hereinafter "connection fees") pursuant to Chapters 73 and 142 of the Code of the Town of Clinton based on 26,740 gallons per day. Such fee shall be calculated based upon the connection rate in place at the time of signing this Agreement, provided that the physical connection is made to the system within two (2) years of signing of this Agreement. Upon signing of this Agreement, Developer shall pay to the Town twenty-five percent (25%) of the connection fee due. This sum will be placed in escrow with the Town upon full and final execution of this AGREEMENT to be released to the Town once a physical connection is made pursuant to Chapter 142 of the Town Code.

4. **Water Service Tap Installation Fee.** Pursuant to Chapter 73 of the Town Code, Developer shall install the water service tap and pay all costs and expenses associated therewith. Additionally, Developer shall pay for the cost of inspections performed by the Town Water Department or its agent. Such inspection costs shall be paid out of an escrow account held by the Town and established by Developer. Pursuant to Chapter 73 of the Town Code the initial deposit by Developer into such escrow shall be $10,000 and it shall be replenished as necessary/as advised by the Water Department). Such deposit shall be made upon the submission of the Plans to the Town.

5. **Water Reservation Fees.** Developer shall pay the quarterly water reservation fee and any extension fees required by Section 142-11 of the Town Code when due. Pursuant to Section 142-11(F) such fee is "12.5% of the prevailing estimated water usage charge..." based on 26,740 gallons per day and the water rates in effect at the time. For example, said payments are due as follows:

a. April 15, 2026 (covering January 1, 2026 to March 31, 2026). This payment will be prorated to include the period to December 11, 2025.
b. June 15, 2026 (covering April 1, 2026 to May 31, 2026)
c. September 15, 2026 (covering June 1, 2026 to August 31, 2026)
d. January 15, 2027 (covering September 1, 2026 to December 31, 2026)

Nothing herein shall guarantee an extension of Developer's water reservation. Developer shall be subject to the requirements of Section 142-11 of the Town Code for an extension of its water reservation.

6. **Other Charges.** Developer is also liable to pay other charges called for in the Town's ordinances and tariffs such as fire service charges, private hydrant charges, and any other charges common to water customers.

7. **Fees Non-refundable.** All fees set forth in Paragraphs 3, 4, 5, and 6 above are not refundable regardless of any actual water usage.

8. **Improvement Costs.** In addition to the payments called for in Paragraphs 3, 4, 5, and 6 of this AGREEMENT, Developer is obligated to pay for and construct its share of the improvements to the water main infrastructure necessary to serve the water needs of the Property in and compliance with the governing regulations. Developer shall hire and pay a contractor to construct any proposed off-tract improvements.

9. **Outside Agency Permits.** Developer agrees to submit, at its own cost, all necessary documentation and application fees for any required permits from the New Jersey Department of Environmental Protection (NJDEP) and/or the New Jersey Department of Transportation. Suburban Consulting Engineers, Inc. will prepare and provide the necessary PLANS for off-tract improvements to accompany the permit application packages.

10. **Testing.** Developer shall perform all necessary pressure, leakage and bacteria tests and shall disinfect all new lines, at its expense, in the presence of an authorized Town agent and in accordance with Town and American Water Works Association standards.

11. **Performance Bonds.** Prior to the commencement of any construction, the Developer shall post with the Town a performance bond with corporate surety authorized to do business in the State of New Jersey, in the amount of One Hundred Twenty Percent (120%) of the estimated cost of the systems and facilities to be constructed under the terms of this Agreement in a form acceptable to the Town. Ten percent (10%) of the amount shall be in cash. The estimated cost shall be determined by the Town, upon the advice of its consulting engineer. Performance bonds shall be posted for the entire project unless approval is given by the Town to post by sections or phases.

12. **Acceptance by Town.** Prior to the acceptance of any water infrastructure improvements by the Town, Developer shall submit the following:

- Deeds for all necessary titles or easements to lands necessary for the maintenance or operation of the water system and facilities including easements for extensions of mains to adjacent properties.
- A two-year maintenance bond in a form acceptable to the Town in the amount of fifteen percent (15%) of the original performance bond amount as determined by the Town to cover costs of repair for any latent defects discovered during the two-year period.
- As-built drawings of the water system and facilities shall be provided to accurately locate and identify all structures, mains, valves, hydrants, etc., and associated material, size and location for future reference.

The Town shall determine whether said systems are constructed in accordance with the approved plans and all required rules, regulations, and specifications. If all construction and submissions are approved, the Town shall adopt a Resolution accepting the systems and facilities as constructed. All dedications, deeds, easements, bonds and as-built drawings shall be formally recorded or processed as required. All costs shall be paid by the Developer.

IN WITNESS WHEREOF, the Town has caused this Agreement to be duly executed in its name of and by the Mayor of the Town on behalf of the Town, and its seal to be hereunto duly affixed and attested by the Town Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by the managing member, on or as of the day first above written.

[SIGNATURE PAGES FOLLOW]

Attest:
Town of Clinton

Suzannah Givone, Clerk

Date: 1-14-2026

By: Janice Kovach
Janice Kovach, Mayor

Attest:

Kerwin Savage, LLC

_____

By: _____
Name:
Title:

Date:_____