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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 16 new units (1 AH)	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 12 new units (1 AH)	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 new units (66 AH)	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 new units (26 AH)	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 new units (58 AH)	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 89 new units (89 AH)		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			<p>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.</p> <p>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.</p>
<p>Headley Farm Estate – Block 46, Lot 33, 33.01, family rental – Durational Adjustment Project</p> <p>400 new units (104 AH)</p>	104		<p>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</p>

			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 138 new units - Cf. FAQ (28 AH)	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@sksdllaw.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

2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017
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** 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		
	Moderate	\$48,217	\$51,661	\$55,105	\$61,993	\$68,882	\$71,537	\$74,392	\$79,903	\$85,413	\$90,924	1.7%	\$166,493
	Low	\$30,136	\$32,288	\$34,441	\$38,746	\$43,051	\$44,773	\$46,495	\$49,939	\$53,383	\$56,827	1.99%	
Region 2	Median	\$55,953	\$70,663	\$75,374	\$84,796	\$94,218	\$97,987	\$101,755	\$109,293	\$116,830	\$124,368		
	Moderate	\$52,762	\$56,531	\$60,299	\$67,837	\$75,374	\$78,389	\$81,404	\$87,434	\$93,464	\$99,494	1.7%	\$180,756
	Low	\$32,976	\$35,332	\$37,687	\$42,398	\$47,109	\$48,993	\$50,878	\$54,646	\$58,415	\$62,184	3.25%	
Region 3	Median	\$73,788	\$79,050	\$84,320	\$94,850	\$105,400	\$109,616	\$113,832	\$122,264	\$130,696	\$139,128		
	Moderate	\$59,024	\$63,240	\$67,456	\$75,888	\$84,320	\$87,693	\$91,066	\$97,811	\$104,557	\$111,302	1.7%	\$200,698
	Low	\$36,890	\$39,525	\$42,160	\$47,430	\$52,700	\$54,808	\$56,916	\$61,132	\$65,348	\$69,564	0.38%	
Region 4	Median	\$66,022	\$70,738	\$75,454	\$84,885	\$94,317	\$98,090	\$101,862	\$109,408	\$116,953	\$124,498		
	Moderate	\$52,817	\$56,590	\$60,363	\$67,908	\$75,454	\$78,472	\$81,490	\$87,526	\$93,562	\$99,599	1.7%	\$177,413
	Low	\$33,011	\$35,369	\$37,727	\$42,443	\$47,158	\$49,045	\$50,931	\$54,704	\$58,476	\$62,249	1.53%	
Region 5	Median	\$58,240	\$62,400	\$66,560	\$74,880	\$83,200	\$86,528	\$89,856	\$96,512	\$103,168	\$109,824		
	Moderate	\$46,592	\$49,920	\$53,248	\$59,904	\$66,560	\$69,222	\$71,885	\$77,210	\$82,534	\$87,859	1.7%	\$154,194
	Low	\$29,120	\$31,200	\$33,280	\$37,440	\$41,600	\$43,264	\$44,928	\$48,256	\$51,584	\$54,912	2.09%	
Region 6	Median	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,898	\$78,817	\$84,655	\$90,494	\$96,332		
	Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	1.7%	\$136,680
	Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,489	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166	0.00%	
Region 7	Median	\$51,326	\$54,420	\$57,515	\$65,681	\$72,979	\$75,898	\$78,817	\$84,655	\$90,494	\$96,332		
	Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	1.7%	\$136,680
	Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,489	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166	0.00%	

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 administrative 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).