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July 21, 2017  
**VIA E-MAIL ONLY**

File No. 17005-0001 RCM

The Honorable Mary C. Jacobson, A.J.S.C.  
Mercer County Superior Court  
400 South Warren Street  
Trenton, NJ 08650

**Re: IMO Application of the Township of Hopewell**  
**Docket No. MER-L-1557-15**

Dear Judge Jacobson:

As I explained in prior correspondence, Hopewell Township engaged in extensive settlement negotiations with Fair share Housing Center (“FSHC”) and its primary intended third round affordable housing producers in the Spring to attempt to agree upon a stipulated third round fair share number and thought that an agreement had been reached. The terms of the agreement were approved by the Hopewell Township Committee at its May 8, 2017 meeting but I found out from Messrs. Gordon and Walsh of FSHC shortly thereafter that FSHC was unwilling to continue with settlement discussions until the Phase II “expanded present need” trial was concluded.

In light of the foregoing, the Township decided to finalize the details of the affordable housing projects that were proposed by the following property owners and/or developers which are intervenors and/or interested parties in this proceeding: (a) CF Hopewell CC&L LLC, (b) Woodmont Properties, LLC and Federal City Road, LLC, and (c) Albert Enourato and U.S. Home Corporation d/b/a Lennar. As such, separate comprehensive Settlement Agreements were executed with each property owner/developer on or about June 12, 2017 which, *inter alia*, (a) stipulate to the same third round fair share number that was discussed with FSHC in the Spring, (b) attached and incorporated an identical third round Compliance Plan Summary which explains how the Township will address the Stipulated number, and (c) sets forth site specific zoning, planning and affordable production details.

However, the three Agreements were not submitted to the Court at that time for the

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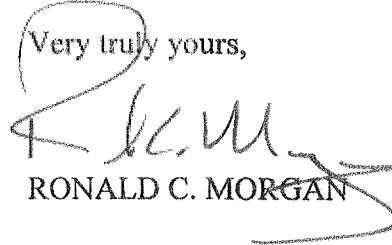
July 21, 2017  
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scheduling of Fairness hearings because the Township was hoping to resume settlement negotiations with FSHC after the Phase II methodology trial ended so that it could globally resolve all open issues concerning not only the third round number but (a) the Compliance Plan Summary that was prepared to address the number, and (b) any concerns that FSHC may have with the site specific details of the developers' projects.

FSHC graciously agreed to resume settlement negotiations after the Phase II trial ended and I am pleased to advise the Court that the Township and FSHC executed a separate Settlement Agreement on or about July 13, 2017 which, *inter alia*, (a) stipulates to the same third round number that was previously agreed to by the property owners/developers that executed the June 12, 2017 Agreements, (b) contains and incorporates a revised Compliance Plan Summary that explains how the number will be addressed which supersedes the Plan Summary that was attached to and incorporated in the three June 12, 2017 Agreements, and (c) attaches and incorporates an Addendum which has been executed by the property owners/developers that makes site specific changes to their inclusionary projects as requested by FSHC.

All four executed Settlement Agreements are attached which your secretary advises can be filed electronically. The original signed Agreements can be provided to the Court upon request. The Agreements are simultaneously being electronically forwarded to Court Master Maczuga and all parties and affordable housing advocacy groups on the Service List (including counsel for Pennington Hills, LLC which was denied intervention but is acknowledged to be an interested party). The Notice of the August 28, 2017 consolidated Fairness Hearing will be published in the *Trenton Times* on July 24, 2017 and again on July 27, 2017 in the *Hopewell Valley News* which is published weekly. These are the Township's two official newspapers. The Notice will also be posted on the Township's official Bulletin Board and the Township's website on August 24<sup>th</sup> and copies of the four Agreements will likewise be posted on the website for public inspection.

Thank you for your kind courtesies throughout and please have your law clerk call me should the Court have any questions or require any additional information.

Very truly yours,  
  
RONALD C. MORGAN

RCM/lkc  
Enclosure



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cc: All via e-mail only with attachments:  
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Chip Erickson  
Robert Geiger  
Laurie Gompf – Township Clerk  
Paul Pogorzelski, Township Administrator  
Frank Banisch, P.P.

**SERVICE LIST**  
**IMO Application of the Township of Hopewell**  
**Docket No. MER-L-1557-15**

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July 13, 2017

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**Re: In the Matter of the Application of the Township of Hopewell**  
Docket No. MER-L-1557-15

Dear Mr. Morgan:

This letter memorializes the terms of an agreement ("Agreement") reached between the Township of Hopewell (the "Township"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party 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 (the Township and FSHC may individually be referred to hereafter as a "Party" and collectively referred to hereafter as the "Parties"), in the lawsuit styled In the matter of the Application of the Township of Hopewell, which is currently pending in the Superior Court of the State of New Jersey, Mercer County, bearing Docket No. MER-L-1557-15 (the "Action").

#### **Background and Prior Agreements**

Hopewell filed the Action on July 7, 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. The Parties engaged in mediation in an attempt to resolve the Action. Through that process, the Parties agreed to settle the Action 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.

On June 12, 2017, Hopewell Township authorized the execution of settlement agreements with CF Hopewell CC&L LLC ("CF Hopewell"), Albert Enourato ("Enourato") and U.S. Home Corporation (d/b/a Lennar) ("Lennar"), and Woodmont Properties, LLC and Federal City Road, LLC (collectively "Woodmont"). Subsequent to the Township having reached those agreements, FSHC and the Township engaged in further settlement discussions to reach this settlement and an accompanying document, the Supplemental Agreement, executed by FSHC, the Township, CF Hopewell, Enourato, Lennar, and Woodmont. The Township and FSHC agree that the execution of the Supplemental Agreement, attached hereto as Exhibit B, by all parties is an integral component of this Agreement and that this Agreement will not become effective until this Agreement is executed by the Township and FSHC and the Supplemental Agreement is executed by all parties.

#### **Settlement terms**

The Parties hereby agree to the following terms:

1. FSHC agrees that the Township, through the crediting described in this Agreement and the attached Exhibit A and through the adoption and implementation of a Housing Element and Fair Share Plan ("Plan") that is consistent with this Agreement and the attached Exhibit A 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 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 Hopewell Township hereby agree that Hopewell's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> )	520
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	1,141

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, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (Jan. 18, 2017).

4. Although the Township has a third round present need of 0 units, the Township also reserves the right to participate in the Mercer County Residential Home Improvement Program to facilitate the rehabilitation of any substandard units occupied by low and moderate income households that may be identified in the future.
5. As noted above, the Township has a Prior Round prospective need of 520 units, which is met through the compliance mechanisms specified on Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."
6. The Township has a Third Round Prospective Need of 1,141 units. That obligation will be satisfied using the mechanisms described in Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."

Additionally, within 120 days of the court's entry of an Order approving the fairness of this settlement, the Township additionally agrees to adopt an ordinance, subject to the review of FSHC and the Special Master, providing that if the Township permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, at a gross residential density of 6 units to the acre or more, the Township shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Agreement to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of six (6) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Township's Planning or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. Nothing in this paragraph precludes the

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<sup>1</sup> 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.

Township from imposing an affordable housing set-aside in a development not required to have a set- aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15 percent. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Settlement Agreement or Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The Township, within 120 days of the court's entry of an Order approving the fairness of this settlement, shall also adopt an ordinance, subject to the review of the Special Master and FSHC, amending the zoning of the RO-1 Zoning District (Bristol Myers Squibb site) so as to provide a realistic opportunity through inclusionary zoning with a 15 percent rental or 20 percent for-sale set-aside for a minimum of 50 affordable units on a portion of the site.

7. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
8. 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 Chart attached hereto as Exhibit A referred to in Paragraphs 5 and 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - 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.
9. 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, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch Branches of the NAACP, Shiloh Baptist Church, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this 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.

10. 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 (with the exception of the Enourato property which is not required to provide very low income units, and the Zaitz property for which very low income unit provision shall be governed by paragraph 11), and all other applicable law; provided that (a) the Township shall require a control period pursuant to N.J.A.C. 5:80-26.11 of not less than 50 years for all affordable units developed through the Township's town-wide set-aside ordinance established pursuant to paragraph 6 and for all affordable units developed at the Zaitz and Bristol Myers Squibb properties; (b) the Township shall require a control period pursuant to N.J.A.C. 5:80-26.11 of not less than 40 years for all affordable units developed at the Enourato, Klockner/Woodmont, and CF Hopewell properties, and that all such units will receive one credit toward Prospective Need and may receive up to one bonus credit in accordance with the other terms of this Agreement. 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. 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.
11. As an essential term of this settlement, within one hundred and twenty (120) days of the Court's approval of this Settlement Agreement, the Township shall introduce and adopt a revised Housing Element and Fair Share Plan in accordance with the terms of this settlement agreement and an ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning including redevelopment and overlay zoning for unmet need mechanisms contemplated herein. In addition, within one hundred and twenty (120) days of the Court's approval of this Settlement Agreement, the Township shall approve a Redevelopment Plan, designate a redeveloper, and approve a Redevelopment Agreement for the Zaitz property that requires an inclusionary development with a 20% set-aside and a minimum of 78 family rental units including a minimum of 12 very low income family rental units included among the 39 low income family rental units at the property. Prior to the transfer of the Zaitz property to the designated redeveloper, the Township shall record a deed restriction on the property requiring affordability controls of not less than 50 years pursuant to paragraph 10 of this agreement.
12. The Parties agree that if a decision of a court of competent jurisdiction in Mercer 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 the Action to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the compliance mechanisms described in Exhibit A attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the compliance mechanisms approved pursuant to this settlement agreement and otherwise fulfilling fully the fair share obligations as established herein by continuing to provide a realistic opportunity through 2025 and beyond (as needed) for all mechanisms described in this settlement agreement. 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 or seeking leave to amend an order or judgment pursuant to R. 4:50-1 other than an amendment to the fair share number specifically authorized by this paragraph. 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.

13. The Township will prepare a revised spending plan within 120 days of the Court's approval of this Settlement Agreement for submission to the Court for review and approval. The Township reserves the right to request the Court's approval that the expenditures of funds under the revised spending plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, and FSHC reserves the right to respond to such request and comment on the revised spending plan. The Parties agree that any funds deemed "committed" by the Court shall have the four-year time period for expenditure designated pursuant to N.J.S.A. 52:27D-329.2 and -329.3 begin 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, and every anniversary thereafter through the end of 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.
14. 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.
15. 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 its 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.

16. FSHC is hereby deemed to have party status in the Action and to have intervened in the Action as a defendant without the need to file a motion to intervene or an answer or other pleading. The Parties agree to request the Court to enter an order declaring that FSHC is an intervenor in the Action, but the absence of such an order shall not impact FSHC's rights under this Agreement.
17. Prior to becoming effective, this settlement 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), affd. o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough 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 not to challenge a fair share plan that conforms to the terms of this agreement, including Exhibit A, 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 the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
18. Hopewell agrees to pay \$50,000 to FSHC within 30 days after the approval of this Agreement by the Court at a Fairness Hearing. The Township may delegate this payment obligation to a third party, but if payment is not received by FSHC by the date set forth in this paragraph the Township shall make payment on such date.
19. If an appeal is filed of the Court's approval or rejection of the Settlement 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 the Settlement 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.
20. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Mercer County. A prevailing movant or plaintiff in such a motion or separate action may be entitled to reasonable attorney's fees.
21. 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.
22. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
23. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. No member, official or employee of the Township shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
30. 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.
31. 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](mailto:kevinwalsh@fairsharehousing.org)

**TO THE TOWNSHIP:**

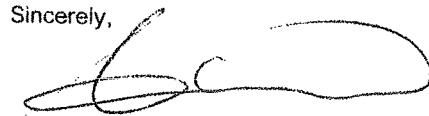
Ronald C. Morgan, Esq.  
Parker McCay P.A.  
9000 Midlantic Drive  
P.O. Box 5054  
Mount Laurel, NJ 08054-5054  
Phone: (856) 985-4010  
Telecopier: (856) 552-1427  
E-mail: rmorgan@parkermccay.com

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Laurie E. Gompf  
Hopewell Township Municipal Clerk  
201 Washington Crossing-Pennington Road  
Titusville, New Jersey 08560  
Telecopier: (609) 737-0605  
Email: lgompf@hopewelltwp.org

Please sign below if these terms are acceptable.

Sincerely,



Adam M. Gordon, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Township of Hopewell by agreement,  
with the unanimous authorization of the governing body:

---

\_\_\_\_\_  
Kevin D. Kuchinski, Mayor

Dated: \_\_\_\_\_

**TO THE TOWNSHIP:**

Ronald C. Morgan, Esq.  
Parker McCay P.A.  
9000 Midlantic Drive  
P.O. Box 5054  
Mount Laurel, NJ 08054-5054  
Phone: (856) 985-4010  
Telecopier: (856) 552-1427  
E-mail: rmorgan@parkermccay.com

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Laurie E. Gompf  
Hopewell Township Municipal Clerk  
201 Washington Crossing-Pennington Road  
Titusville, New Jersey 08560  
Telecopier: (609) 737-0605  
Email: lgompf@hopewellwp.org

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Township of Hopewell by agreement,  
with the unanimous authorization of the governing body:

Kevin D. Kuchinski  
Kevin D. Kuchinski, Mayor  
Dated: 7/13/17

Sworn to and subscribed  
before me this  
13<sup>th</sup> day of July, 2017

Laurie E. Gompf

LAURIE E. GOMPF  
NOTARY PUBLIC OF NEW JERSEY  
I.D. # 2298178  
My Commission Expires 3/20/2018

# EXHIBIT A

Hopewell Township  
Third Round Fair Share Plan Summary

**Fair Share Obligation (Kinsey May 2016)**

Present need	0
Prior round (1987-1999)	520
Gap need (1999-2015)	866
Prospective need (2015-2025)	890
Cumulative Third Round (1999-2025)	1,756
1999-2025 after 35% reduction	1,141

**Third Round Fair Share Plan**

Prior round surplus	149
Total 3 <sup>rd</sup> round credits and bonuses	1,018
Total 3 <sup>rd</sup> round credits	1,167

## HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 – 3

REVISED JULY 13, 2017

Program	Senior	Family	Special	Total Units	520-Unit Prior Round			1141-Unit Third Round		
		Rental	Needs		Credits	Bonus	Total	Credits	Bonus	Total
<b>Substantial Compliance</b>					46		46			
<b>Regional Contribution Agreement</b>										
Trenton				198	198		198			
<b>Alternative Living Arrangements</b>										
CIFA group home			4	4	4	4	8			
Community Options			4	4	4	4	8			
Homefront			3	3	3	3	6			
Wrick Avenue		1		1	1	1	2			
Minnietown Lane		2		2	2		2			
Project Freedom		72		72	72	72	144			
<b>Accessory Apartments</b>		1		1						
<b>100% Affordable Housing Developments</b>										
Hopewell Gardens	134 (Rental)		15	149	100	15	115	49		49
<b>Inclusionary Housing Developments - Constructed</b>										
Brandon Farms				135	135		135			
Pennington Pointe	5			5	5		5			
<b>Inclusionary Housing Developments - Proposed</b>										
Zaitz		78		78				78	78	156
CF Hopewell		185		430				430	185	615
CF Hopewell/Capital Health	35			35				35		35
Klockner		48		48				48	48	96
BMS				50				50		50
Enourato		12		12				12	5	17
<b>Extensions of Expiring Control</b>	NA									0
<b>Prior Round Surplus</b>										0
Surplus credits				149				149		149
<b>TOTAL</b>	174	399	26	1376	570	99	669	851	316	1167
<b>Minimum Rental Requirements</b>										
Prior Round 520 x .25 = 130					187					
Third Round 1141 x .25 = 285					315					
<b>Maximum Age-Restricted Requirements</b>										
Prior Round (520 - 198) x .25 = 80					80					
Third Round 285					94 <sup>1,2</sup>					
<b>Minimum Very Low-Income Requirements</b>										
Third Round since 2008 - 13% of 653 = 85					85					
<b>Third Round Minimum Family Requirements</b>										
50% of total units 428					639					
Maximum rental bonus potential both rounds	415									

<sup>1</sup> CF Hopewell - Based upon 35 Medicaid eligible age restricted units. Settlement agreement provides, however, for a maximum of 15 additional Medicaid eligible and/or a maximum of 65 additional age restricted affordable units at CF Hopewell, plus the original 35 Medicaid eligible age restricted units.

<sup>2</sup> BMS - Township reserves right to designate all or some of the 50 affordable units at BMS to be age restricted

# **EXHIBIT B**

SUPPLEMENTAL AGREEMENT IN  
IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF HOPEWELL,  
DOCKET NO. MER-L-1557-15

WHEREAS, The Township of Hopewell ("Township") reached agreements dated June 12, 2017 with CF Hopewell CC&L LLC ("CF Hopewell"), Albert Enourato ("Enourato") and U.S. Home Corporation (d/b/a Lennar) ("Lennar"), and Woodmont Properties, LLC and Federal City Road, LLC ("Woodmont"), each an "Agreement" and, collectively the "Agreements"; and

WHEREAS, as part of Township reaching an agreement with Fair Share Housing Center ("FSHC") to settle its claims in the above-captioned litigation (the "FSHC Agreement"), FSHC, Township, CF Hopewell, Enourato, Lennar, and Woodmont ("the Parties") have agreed to modify the Agreements through the execution of this Supplemental Agreement (this "Supplemental Agreement").

1. Each of the Agreements has, as Exhibit A, a two-page composite Fair Share Plan Rounds 1-3 summary. Exhibit A in each of the Agreements is replaced by Exhibit A to this Supplemental Agreement which reflects changes to Exhibit A negotiated by the Parties as part of reaching an agreement with FSHC.
2. The Township, CF Hopewell, and FSHC agree that:
  - a. The Agreement with CF Hopewell has, as Exhibit B, a seven-page Addendum. That Exhibit B in the CF Hopewell Agreements is modified to the extent set forth below, such changes to Exhibit B having been negotiated by Township, FSHC and CF Hopewell.
    - (i). Paragraph 5 of the CF Hopewell Addendum is deleted and shall be replaced by the following:

"5. The parties agree that at least 465 affordable housing units, as described in this paragraph, shall ultimately be located on the Modified CF Hopewell Land. 20% of the units in the Residential Component shall be affordable units, up to a maximum of 430 such units. CF Hopewell shall have the ultimate discretion as to the unit types and location of the affordable units provided that at least 185 of the affordable units must be family rental units, and that no more than 15 percent of the affordable units in the Residential Component shall be age-restricted units, which units shall be integrated into market-rate age-restricted development. All other affordable units shall be family affordable units for rent or for sale, at CF Hopewell's discretion, and shall be integrated within each phase in compliance with N.J.A.C. 5:93-5.6(f), recognizing that enforcement would be through the courts and not through COAH. The development of the low and moderate income units of the Residential Component shall be accomplished such that, within the Residential Component, a minimum of 20% of the cumulative total of units receiving certificates of occupancy on the site to that point in time shall be affordable units. Township shall enforce this phasing requirement before issuing COs for market rate units.

Notwithstanding the foregoing, if Medicaid beds in the CCRC exceed the 35 beds referred to in Paragraph 7, below, such units (up to a maximum of 15 additional

beds) shall be subtracted from the 430 affordable unit requirement of the Residential Component, such that the overall percentage of affordable units in the Residential Component could be slightly less than 20%. In such a situation, the phasing requirement for certificates of occupancy described above shall be modified from 20% of the total units to the slightly lower percentage resulting from the additional Medicaid beds in the CCRC."

(ii). Paragraph 9 of the CF Hopewell Addendum shall be amended by adding the following sentence to it:

"In the event that Township is not successful in such modification of the SSA, then CF Hopewell shall inform the Township in writing as to how many market and affordable units would have been developed within the Yellow Area and the Blue Area, and the units shall be relocated onto such other property owned or controlled by CF Hopewell as CF Hopewell designates but excluding the Green Area, or, should CF Hopewell determine such units cannot be so relocated, shall be relocated onto the "Zaitz Tract" or such other location as the Township chooses."

(iii). Paragraph 15 of the CF Hopewell Addendum shall be amended by replacing the phrase "...of N.J.A.C. 5:93-1, et seq." last sentence of it with the following:

"... set forth in Paragraph 5, above."

(iv). Paragraph 30 of the CF Hopewell Agreement and Paragraph 21 of the CF Hopewell Addendum shall be modified by adding the following sentence to them:

"For the avoidance of doubt, all parties shall specifically request that the Court's Order confirm that the Settlement Agreement supersede and replace any contrary provisions of the 2004 Settlement Agreement or any documents supplemental to it."

(v). The following provision shall be added to the CF Hopewell Addendum:

"22. All affordable units with the CF Hopewell Land or the Modified CF Hopewell Land, as the case may be, shall be subject to a control period pursuant to N.J.A.C. 5:80-26.11 of not less than forty (40) years."

3. The Township, Woodmont, and FSHC agree that:

a. The Agreement with Woodmont has, as Exhibit B, a four-page Addendum. That Exhibit B in the Woodmont Agreement is modified to the extent set forth below, such changes to Exhibit B having been negotiated by Township, FSHC and Woodmont:

(i) The following provision shall be added to the Woodmont Addendum:

"14. The Township, Woodmont, and FSHC agree that all affordable units within the Woodmont development shall be subject to a control period pursuant to N.J.A.C. 5:80-26.11 of not less than forty (40) years."

4. The Township, Enourato, Lennar, and FSHC agree that:
  - a. The terms and conditions of the six (6) page Addendum to the Supplemental Agreement by and between the Township of Hopewell and Albert Enourato and U.S. Home Corporation d/b/a Lennar (Albert Enourato and Lennar therein collectively referred to as "Enourato") fully executed as of June 19, 2017 remain in full force and effect except as expressly modified below:
    - (i.) In paragraph (a)(v), page 3, the phrase "family units" is replaced by "family rental units."
    - (ii) In paragraph (b), page 3, the phrase "fifty (50) year period" is replaced by "forty (40) year period."
    - (iii) At the end of paragraph (b), page 3, the following provision is added: "The affordable component shall not include any very-low-income units. The Township shall instead address the very-low-income requirement arising from the 12 affordable units pursuant to N.J.S.A. 52:27D-329.1 on the Zaitz tract."
5. Prior to becoming effective, the Agreements as modified by this Supplemental Agreement and the FSHC 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. Borough 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 not to challenge a fair share plan that conforms to the terms of this agreement, including Exhibit A, 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 the Agreements as modified by this Supplemental Agreement and/or the FSHC Agreement is rejected by the Court at a fairness hearing, the Parties may nevertheless agree to continue the effectiveness of the Agreements as modified by this Supplemental Agreement and/or the FSHC Agreement thereafter, which continuation shall be documented by the exchange of letters signed by the Parties or other assignees.
6. If an appeal is filed of the Court's approval or rejection of the Agreements as modified by this Supplemental Agreement and/or the FSHC Agreement, the Parties agree to defend the Agreements as modified by this Supplemental Agreement and/or the FSHC 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 the Agreements as modified by this Supplemental Agreement and/or the FSHC Agreement if the Agreements as modified by this Supplemental Agreement and/or the FSHC Agreement are 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.

7. The terms of the Agreements as modified by this Supplemental Agreement may be enforced by the Parties through a motion to enforce litigant's rights or a separate action filed in Superior Court, Mercer County. A prevailing movant or plaintiff in such a motion or separate action may be entitled to reasonable attorney's fees.
8. Unless otherwise specified, it is intended that the provisions of this Supplemental Agreement are to be severable. The validity of any article, section, clause or provision of this Supplemental Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Supplemental Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
9. This Supplemental Agreement shall be governed by and construed by the laws of the State of New Jersey.
10. This Supplemental Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
11. This Supplemental 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.
12. The Parties acknowledge that each has entered into this Supplemental 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 Supplemental Agreement, that this Supplemental 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.
13. Each of the Parties hereto acknowledges that this Supplemental 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 Supplemental Agreement; and (ii) it has conferred due authority for execution of this Supplemental Agreement upon the persons executing it.
14. Any and all Exhibits and Schedules annexed to this Supplemental Agreement are hereby made a part of this Supplemental 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 Supplemental Agreement with prior written approval of both Parties.
15. Any conflict between the provisions of this Supplemental Agreement and the Agreements, including any addenda to those Agreements, shall be determined in favor of this Supplemental Agreement.
16. No member, official or employee of the Township shall have any direct or indirect interest in this Supplemental Agreement, nor participate in any decision relating to the Supplemental Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

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

18. All notices required under this Supplemental 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 to the persons specified as receiving notices under the Agreements and/or FSHC Agreement. 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.

Please sign below if these terms are acceptable.

**ALBERT ENOURATO**

By: \_\_\_\_\_  
Name: Albert M. Enourato

Date: July 12, 2017

**U.S. HOME CORPORATION  
d/b/a LENNAR**

By: \_\_\_\_\_  
Name: Mitchell Newman, Esq.  
Title: Director of Land Acquisition and  
Entitlements  
Date: July 12, 2017

**CF HOPEWELL CC&L, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

**WOODMONT PROPERTIES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

**FEDERAL CITY ROAD, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

**FAIR SHARE HOUSING CENTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

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Please sign below if these terms are acceptable.

**ALBERT ENOURATO**

**U.S. HOME CORPORATION**  
d/b/a **LENNAR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: July \_\_, 2017

By: \_\_\_\_\_

Name: Mitchell Newman, Esq.

Title: Director of Land Acquisition and Entitlements

Date: July \_\_, 2017

**CF HOPEWELL CC&L, LLC**

By: \_\_\_\_\_

Name: Joshua Pack

Title: Vice President

Date: July 17, 2017

**WOODMONT PROPERTIES, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_, 2017

**FEDERAL CITY ROAD, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_, 2017

**FAIR SHARE HOUSING CENTER**

By: \_\_\_\_\_

Name: ADAM LINDON

Title: ASSOCIATE DIRECTOR

Date: July 13 2017

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Please sign below if these terms are acceptable.

**ALBERT ENOURATO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: July \_\_\_, 2017

**U.S. HOME CORPORATION**

d/b/a LENNAR

By: \_\_\_\_\_

Name: Mitchell Newman, Esq.

Title: Director of Land Acquisition and Entitlements

Date: July \_\_\_, 2017

**CF HOPEWELL CC&L, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

**WOODMONT PROPERTIES, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

**FEDERAL CITY ROAD, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

**FAIR SHARE HOUSING CENTER**

By: \_\_\_\_\_

Name: Adam Gordon

Title: Associate Director

Date: July 13, 2017

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Please sign below if these terms are acceptable.

**ALBERT ENOURATO**

**U.S. HOME CORPORATION**

d/b/a LENNAR

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Date: July \_\_\_, 2017

By: \_\_\_\_\_  
Name: Mitchell Newman, Esq.

Title: Director of Land Acquisition and Entitlements

Date: July \_\_\_, 2017

**CF HOPEWELL CC&L, LLC**

**WOODMONT PROPERTIES, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

**FEDERAL CITY ROAD, LLC**

**FAIR SHARE HOUSING CENTER**

By: \_\_\_\_\_  
Name: Jeffrey Daborzynski  
Title: President  
Date: July 24, 2017

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: July \_\_\_, 2017

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

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Please sign below if these terms are acceptable.

**ALBERT ENOURATO**

**U.S. HOME CORPORATION**  
**d/b/a LENNAR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: July \_\_\_, 2017

By: \_\_\_\_\_

Name: Mitchell Newman, Esq.

Title: Director of Land Acquisition and Entitlements

Date: July \_\_\_, 2017

**CF HOPEWELL CC&L, LLC**

**WOODMONT PROPERTIES, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

**FEDERAL CITY ROAD, LLC**

**FAIR SHARE HOUSING CENTER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_\_, 2017

By: \_\_\_\_\_

Name: Adam Gordon

Title: Associate Director

Date: July 13 2017

**TOWNSHIP OF HOPEWELL,  
MERCER COUNTY**

ATTEST:

By: Kevin D. Kuchinski

Name: Kevin D. Kuchinski

Title: Mayor

Date: July 13, 2017

Laurie E. Gompf

Name: Laurie E. Gompf

Title: Municipal Clerk

Date: July 13 2017

**LAURIE E. GOMPF  
NOTARY PUBLIC OF NEW JERSEY  
I.D. # 2298178  
My Commission Expires 3/20/2018**



Parker McCay P.A.  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900  
F: 856.596.9631  
www.parkerccay.com

Ronald C. Morgan, Esquire  
P: 856-985-4010  
F: 856-552-1427

June 12, 2017

File No. 17005-0001 RCM

Ryan Kennedy, Esquire  
Stevens & Lee, PA/PC  
100 Lennox Drive, Suite 200  
Lawrenceville, NJ 08648  
Attorneys for Intervenor,  
CF Hopewell CC&L LLC

**Re: In the Matter of the Application of the Township of Hopewell  
Docket No. MER-L-1557-15 (Mount Laurel)**

Dear Mr. Kennedy:

This letter memorializes the terms of an agreement (“Agreement”) reached between the Township of Hopewell (the “Township”), the declaratory judgment plaintiff, and CF Hopewell CC&L LLC (“CF Hopewell”), an intervenor and interested party (collectively, the “Parties”<sup>1</sup>), in the lawsuit styled In the matter of the Application of the Township of Hopewell, which is currently pending in the Superior Court of the State of New Jersey, Mercer County, bearing Docket No. MER-L-1557-15 (the “Action”).

#### **Background**

Hopewell filed the Action on July 7, 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. The Parties engaged in mediation in an attempt to resolve the Action. Through that process, the Parties agreed to settle the Action 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.

<sup>1</sup> Fair Share Housing Center (“FSHC”) is not an intervenor in the pending proceedings or a signator to this Agreement. However, FSHC is identified in this Agreement for notice and monitoring purposes consistent with the Supreme Court’s directives in its March 10, 2015 Mount Laurel IV decision.

COUNSEL WHEN IT MATTERS.<sup>SM</sup>

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

### Settlement terms

The Parties hereby agree to the following terms:

1. Through the crediting described in this Agreement and the attached Exhibit A and through the adoption and implementation of a Housing Element and Fair Share Plan ("Plan") that is consistent with this Agreement and the attached Exhibit A, the Township 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 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. The Parties agree that Hopewell's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>2</sup> )	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> )	520
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Settlement Agreement)	1,141

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, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (Jan. 18, 2017).

4. Although the Township has a third round present need of 0 units, the Township also reserves the right to participate in the Mercer County Residential Home Improvement

<sup>2</sup> 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, as revised on April 12, 2017 as to gap present need. The 1,141 unit third round number represents a 35% reduction of Dr. Kinsey's 2016 uncapped number of 1,756 units which, when annualized over a 26-year third round, is consistent with the annualized housing obligation assigned to Hopewell by COAH for the 12-year cumulative prior rounds from 1987 to 1999. The parties agree that this reduction is fair and reasonable such that the annualized housing obligation from 1987 to 2025 is consistent because the Supreme Court directed that the third round numbers are to be calculated using COAH's prior round methodologies.

Program to facilitate the rehabilitation of any substandard units occupied by low and moderate income households that may be identified in the future.

5. As noted above, the Township has a Prior Round prospective need of 520 units, which is met through the compliance mechanisms specified on Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."
6. The Township has a stipulated and agreed Third Round housing obligation of 1,141 units. That obligation will be satisfied using the mechanisms described in Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."

Additionally, within 120 days of the court's entry of an Order approving the fairness of this Agreement, the Township agrees to adopt an ordinance, subject to the review of the Special Master (and FSHC if it elects to review the Ordinance), providing that if the Township permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, at a gross residential density of 6 units to the acre or more, the Township shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Agreement to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of six (6) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Township's Planning or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. Nothing in this paragraph precludes the Township from imposing an affordable housing set-aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15 percent. Except to the extent provided in the Addendum attached to and made a part of this Agreement, this requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in this Agreement or Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. In the event the Addendum contemplates sooner action than specified herein, the Addendum shall control.



7. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
8. 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 Chart attached hereto as Exhibit A referred to in Paragraphs 5 and 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - 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.
9. 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), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch Branches of the NAACP, Shiloh Baptist Church, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this 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.
10. 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. 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.

11. Except as qualified in Paragraph 16 hereof, as an essential term of this settlement, within one hundred and twenty (120) days of the Court's consideration of this Settlement Agreement, the Township shall introduce and adopt a revised Housing Element and Fair Share Plan in accordance with the terms of this Agreement and an Ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning including redevelopment and overlay zoning for unmet need mechanisms contemplated herein. In the event that the Addendum contemplates action sooner than specified herein, the terms of the Addendum shall control.
12. The Parties agree that if a decision of a court of competent jurisdiction in Mercer 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 the Action to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the compliance mechanisms described in Exhibit A attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the compliance mechanisms approved pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. 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 or seeking leave to amend an order or judgment pursuant to R. 4:50-1 other than an amendment to the fair share number specifically authorized by this paragraph. 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.
13. The Township will prepare a revised Affordable Housing Trust Account Spending Plan within 120 days of the Court's approval of this Agreement for submission to the Court for review and approval. The Township reserves the right to request the Court's approval that the expenditures of funds under the revised Spending Plan constitute "commitment"

for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, and FSHC shall have the right to respond to such request and comment on the revised Spending Plan. The Parties agree that any funds deemed "committed" by the Court shall have the four-year time period for expenditure designated pursuant to N.J.S.A. 52:27D-329.2 and -329.3 begin 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, and every anniversary thereafter through the end of 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 FSHC 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.

14. 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
15. 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 FSHC, a status report as to its implementation of its 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 FSHC, 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 FSHC, 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.

16. 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), affd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough 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. In the event that 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 the Settlement Agreement is rejected by the Court at such a Fairness Hearing, the Parties may nevertheless agree to continue the effectiveness of this Agreement thereafter, which continuation shall be documented by the exchange of letters signed by the Parties or other assignees.
17. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend this 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.
18. This Agreement and Addendum may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Mercer County. A prevailing movant or plaintiff in such a motion or separate action may be entitled to reasonable attorney's fees.
19. 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.

20. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
21. This Agreement may not be modified, amended or altered in any way except by a writing signed by the Parties or their respective assignees.
22. 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.
23. 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. The rights and obligations of any party to this Agreement may be assigned without the consent of the Township.
24. 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.
25. Any and all Exhibits, Addenda and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits, Addenda 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 the Parties.
26. 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.
27. 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.
28. 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.



29. 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 THE COURT MASTER:**

John D. Maczuga, P.P.  
JDM Planning Associates, LLC  
614 Harbor Road  
Brick, NJ 08724  
Phone: (732) 864-6369  
Telecopier:  
E-mail: [jmacguza@jdmplanning.com](mailto:jmacguza@jdmplanning.com)

**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](mailto:kevinwalsh@fairsharehousing.org)

**TO THE TOWNSHIP:**

Ronald C. Morgan, Esq.  
Parker McCay P.A.  
9000 Midlantic Drive  
P.O. Box 5054  
Mount Laurel, NJ 08054-5054  
Phone: 856-985-4010  
Telecopier: 856-552-1427  
E-mail: [rmorgan@parkermccay.com](mailto:rmorgan@parkermccay.com)

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Laurie E. Gompf  
Hopewell Township Municipal Clerk  
201 Washington Crossing-Pennington Road  
Titusville, New Jersey 08560  
Telecopier: 609-737-0605  
Email: [lgompf@hopewelltwp.org](mailto:lgompf@hopewelltwp.org)

**TO CF HOPEWELL:**

Ryan P. Kennedy, Esq.  
Stevens & Lee  
100 Lenox Drive, Suite 200  
Lawrenceville, NJ 08648  
Phone: 609-243-9111  
Telecopier: 609-243-9333  
Email: [rpke@stevenslee.com](mailto:rpke@stevenslee.com)

30. The specific agreements, undertakings and obligations by and between the Township and CF Hopewell to facilitate affordable housing production within the Scotch Road inclusionary parcels identified in Exhibits A and B are set forth in the Addendum to this Agreement that is incorporated by reference herein as if set forth herein at length. CF Hopewell's authorized representative has agreed to sign this Agreement and the Addendum to confirm that the terms of same are acceptable to CF Hopewell. The terms of the Addendum with respect to the construction of inclusionary residential housing on the Scotch Road parcels that are now owned and/or controlled by CF Hopewell supersedes the provisions in the Court-approved Settlement Agreement for the properties that was executed on October 25, 2004 in the matter captioned Merrill Lynch Hopewell, LLC and Garden Property, LLC v. Hopewell Township, et al., Docket Nos. MER-L-1582-01 and L-3456-01. CF Hopewell and the Township jointly agree to petition the Court in the within Action for an Order amending the 2004 Settlement Agreement incorporating the terms of the Addendum to this Agreement to the extent of inconsistency to facilitate the production of affordable housing.

Please sign below if these terms are acceptable.

Sincerely,



RONALD C. MORGAN, ESQ.  
Affordable Housing Counsel for  
Petitioner, Township of Hopewell



PARKER McCAY

June 12, 2017  
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On behalf of the Township of Hopewell,  
with the authorization of the governing body:

Karen D. Kunkel

Dated: 6/13/2017

On behalf of CF Hopewell CCdbL LLC

Dated: 6/14/2017



June 12, 2017  
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On behalf of the Township of Hopewell,  
with the authorization of the governing body:

Karen D. Kudlinski

Dated: 6/13/2017

On behalf of Woodmont Properties, LLC:

Dated: \_\_\_\_\_

# **EXHIBIT A**

Hopewell Township  
Third Round Fair Share Plan Summary

**Fair Share Obligation (Kinsey May 2016)**

Present need	0
Prior round (1987-1999)	520
Gap Present Need (1999-2015)	866
Prospective need (2015-2025)	890
Cumulative Third Round (1999-2025)	1,756
1999-2025 after 35% reduction	1,141

**Third Round Fair Share Plan**

Prior round surplus	149
Total 3 <sup>rd</sup> round credits and bonuses	1,018
Total 3 <sup>rd</sup> round credits	1,167

HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 – 3      REVISED JUNE 12, 2017

Program	Senior	Rental	Total Units	520-Unit Prior Round			1141-Unit Third Round		
				Credits	Bonus	Total	Credits	Bonus	Total
<b>Substantial Compliance</b>				46		46			
<b>Regional Contribution Agreement</b>									
	Trenton		198	198			198		
<b>Alternative Living Arrangements</b>									
CIFA group home		4	4	4	4	8			
Community Options		4	4	4	4	8			
Homefront		3	3	3	3	6			
Wrick Avenue		1	1	1		1			
Minnetown Lane		2	2	2		2			
Project Freedom		72	72	72	72	144			
<b>Accessory Apartments</b>				1		1	1		
<b>100% Affordable Housing Developments</b>									
	Hopewell Gardens	85 (Rental)	15	100	100	15	115	49	16
									65
<b>Inclusionary Housing Developments - Constructed</b>									
	Brandon Farms		135	135			135		
	Pennington Pointe	5		5	5		5		
<b>Inclusionary Housing Developments - Proposed</b>									
	Zaitz		78				78		78
	CF Hopewell		185	430			430	185	615
	CF Hopewell/Capital Health		35	35			35	35	70
	Klockner		48	48			48	48	96
	BMS		50	50			50	32	82
	Enourato						12		12
<b>Extensions of Expiring Control</b>		NA							
<b>Prior Round Surplus</b>									
Surplus credits				149			149		149
<b>Total</b>	90	419	1297	570	99	669	821	316	1167
<b>Minimum Rental Requirements</b>									
Prior Round 520 x .25 = 130					99				
Third Round 1141 x .25 = 285					316				
<b>Maximum Age-Restricted Requirements</b>									
Prior Round 130					85				
Third Round 285					15				
<b>Minimum Very Low-Income Requirements</b>									
Third Round since 2008									
<b>Third Round Minimum Family Requirements</b>									
Maximum rental bonus potential both rounds		415							

# **EXHIBIT B**

**Addendum to Settlement Agreement Letter between  
Hopewell Township and CF Hopewell CC&L LLC, Dated June 13, 2017**

1. CF Hopewell CC&L LLC (“CF Hopewell”) is an intervenor in the litigation captioned In the Matter of Hopewell Township, County of Mercer, Docket No. MER-L-1557-15, by which the Township of Hopewell (the “Township”) seeks a declaration of its compliance with the Mt. Laurel doctrine, etc. Fair Share Housing Center (“Fair Share”) is a Court-designated interested party and there are other intervenor-property owners.
2. Simultaneously with their execution of this Addendum, CF Hopewell and the Township shall execute the Settlement Agreement Letter to which this Addendum is attached as Exhibit B. By signing this Addendum, each of the parties acknowledges that this Addendum is intended to be an integral part of the Settlement Agreement Letter and that the rights and responsibilities expressed therein and in this Addendum shall apply to the parties to the extent applicable. Any conflict between the provisions of the Settlement Agreement Letter and this Addendum shall be determined in favor of this Addendum.
3. CF Hopewell owns the parcels referred to as Tracts F, H, J and L on the chart attached to the Settlement Agreement Letter as Exhibit A (the “Existing CF Hopewell Land”) which Tracts contain approximately 350.6 acres, much of which is undeveloped but portions of which are environmentally constrained.
4. CF Hopewell intends to develop the Existing CF Hopewell Land, as modified by the lot line changes in Paragraph 8, below, and including Tract I, owned by Capital Health Systems (“CHS”), and also so much of Tract K, also owned by CHS, as CF Hopewell identifies in writing (collectively, the “Modified CF Hopewell Land”). Such development shall be a phased, mixed-use, inclusionary project containing approximately 2,150 units, but not more than 2,200 units (including apartments, townhomes and single-family homes, as well as amenity buildings, collectively being the “Residential Component”), as well as approximately 100,000 square feet of retail and retail/office uses (the “Commercial Component”), and a continuing care retirement community with up to 400 assisted living beds (of which not less than 10% shall be reserved for Medicaid recipients, consistent with N.J.S.A. 26:2H 12.16, et seq. and N.J.A.C. 8:36 5.1, et seq.) and up to 150 independent senior living units, but not greater than 500 beds and units in total (the “CCRC”).
5. It is the intention of the parties that at least 465 affordable housing units or their equivalent ultimately be located on the Modified CF Hopewell Land. 20% of the units in the Residential Component shall be affordable units, up to a maximum of 430 such units. CF Hopewell shall have the ultimate discretion as to the unit types, and location of the affordable units, provided that at least 185 of the affordable units must be family rental units, and further provided that development of the low and moderate income units of the Residential Component shall adhere to the phasing requirements of N.J.A.C. 5:93-5.6(d).

Notwithstanding the foregoing, if Medicaid beds in the CCRC exceed the 35 beds referred to in Paragraph 7, below, such units shall be subtracted from the 430 affordable

unit requirement of the Residential Component, such that the overall percentage of affordable units in the Residential Component could be slightly less than 20%.

6. 50% of the affordable units shall be made available as low-income units including at least 13% of the affordable units, which shall be made available as very low income units.
7. The parties anticipate that the Township shall receive credit for the equivalent of at least 35 affordable units, based on 10% of the beds in the CCRC being available to residents who are entitled to Medicaid. Any affordable unit credits in excess of 35 shall be deducted from the number of affordable units allocated to CF Hopewell's Residential Component.
8. To facilitate the construction of affordable housing units, the Township and CF Hopewell are willing to exchange and transfer title to certain land. Exhibit A attached hereto is an aerial photo overlaid with three color-coded parcels. The green area is located in the western portion of Block 93, Lot 6.01 and is part of the Existing CF Hopewell Land (the "Green Area"). The blue area is owned by the Township and is Block 93, Lots 5.01 and 5.02 (the "Blue Area"). The yellow area contains approximately 37 acres, is a portion of Block 93, Lot 3.01 and was to be deeded to the Township with other land after the occurrence of certain events (the "Yellow Area"). In lieu of prior agreements regarding the timing of the transfer of land to the Township, CF Hopewell and the Township agree that the CF Hopewell shall deed to the Township the Green Area, the Township shall deed to CF Hopewell the Blue Area, and that CF Hopewell shall be entitled to cause the Yellow Area and the Blue Area to become part of the Modified CF Hopewell Land, such transfers to occur at the times specified below.
9. The Green Area is presently included in the Mercer County Waste Water Management Plan's ELSA Sewer Service Area (the "SSA"), whereas the Yellow Area and Blue Area are not. The Township agrees to immediately begin, and thereafter to actively pursue, all necessary steps to remove the Green Area from the SSA and to cause the Yellow Area and the Blue Area to be placed in the SSA, such that all of the Modified CF Hopewell Land shall be within the SSA.
10. Adjacent to Tract H on the Existing CF Hopewell Land are Tracts I and K, owned by CHS. CF Hopewell intends to immediately venture with CHS to construct the CCRC which may be developed in up to four separate phases on Tracts H, I, and K (and possibly portions of Tract J), with up to 400 assisted living beds. The Township shall immediately (a) allow for a lot line change so as to cause the property identified as Southfield Drive (being part of Lot 3.21, Block 91) to be added to Tract H, and (b) allow for the subdivision of Tracts H, I, J and K to facilitate development of the CCRC, based upon site plans provided by CF Hopewell. Further, the Township agrees to promptly negotiate and approve the Developer's Agreement (if the zoning ordinance is amended) or the Redevelopment Agreement (if Area in Need of Redevelopment is used) which shall permit the construction of the entire CCRC promptly after its receipt of all necessary approvals. The Township agrees to proceed within 90 days of this Agreement with the introduction and approval of a zoning ordinance amendment reasonably satisfactory to CF Hopewell which will permit the CCRC, as defined herein, whether or not the court

approves the overall Agreement or the fairness plan. Alternatively, if the Township places the CCRC within an Area in Need of Redevelopment within 90 days of this Agreement, on terms reasonably satisfactory to CF Hopewell, the Township can also satisfy the above obligation through such process.

11. Immediately upon the court's entry of an Order approving the fairness of this settlement, the Township shall begin the process of designating the Modified CF Hopewell Land as "areas in need of redevelopment" pursuant to N.J.S.A. 40A:12A-1 et seq., in the format known as "non-condemnation", by enacting a resolution and taking all other necessary steps, all so as to complete that statutory process within the 120 day time frame set forth in Paragraph 6 of the Settlement Agreement Letter.
12. Within that same 120 day timeframe set forth in Paragraph 6 of the Settlement Agreement Letter, the Township shall also complete the redevelopment planning process by adopting a redevelopment plan and shall enter into a redevelopment agreement with CF Hopewell (the "Redevelopment Agreement") allowing for the construction of the following principal permitted uses, bulk standards and the phasing elements on the Modified CF Hopewell Land. The terms of the redevelopment plan and Redevelopment Agreement shall be subject to review of Fair Share and the Special Master to the same extent of any other actions by the Township, as set forth in Paragraph 6 of the Settlement Agreement Letter.
13. The Redevelopment Agreement shall include, at a minimum, the following principal permitted uses:
  - Up to a 500 unit CCRC in the form of an assisted living and independent living project on Tracts H, I, and K (and possibly Tract J);
  - Approximately 2,150 residential dwelling units, potentially split as detailed below (it being understood that the categories below hypothetically add to a larger number), at the discretion of CF Hopewell:

On Tract L, and all of the Yellow Area and Blue Area:

Up to 500 apartments;

Up to 1,050 townhomes; and

Up to 500 single-family homes.

On Tracts F, H and J:

Up to 700 apartments;

Up to 250 townhomes; and

Up to 200 single-family homes.

- 100,000 square feet of retail/commercial space on Tract L.
- 100,000 square feet of residential amenity buildings, allocated throughout the Modified CF Hopewell Land.

14. In order to achieve the total number of units agreed to in this Addendum, maximum building height shall be permitted to be 4 stories over one level of parking or 55 feet in total and uses shall include grocery stores, pharmacies, banks, restaurants, convenience-oriented retail stores and other uses associated with a mixed use development of this scale (drive-thrus shall be permitted for all commercial uses in order to limit parking needs). Similarly, because significant portions of the Modified CF Hopewell Land is environmentally constrained, no floor area ratio limit shall be placed on individual parcels within the development and bulk standards for front, side and rear setbacks and parking standards in the redevelopment plan and all related ordinances shall be reduced. By way of example, and not of limitation, building front, side and rear setbacks shall be reduced to 10 feet or to the minimum required by New Jersey fire and building codes, except that the setbacks from Scotch Road shall be 50 feet, and no building taller than 35 feet shall be constructed within 100 feet of Scotch Road. Further, parking requirements shall be 1.25 spaces per apartment, 1.75 per townhouse, 2 per single-family house, and 3/1,000 square feet of retail/commercial, with no parking space requirement for the CCRC. If any of the reductions are inconsistent with Residential Site Improvement Standards (RSIS), exceptions or waivers shall be sought subject to said waivers or exceptions not resulting in a built environment that is inconsistent with industry standard for redevelopment design criteria.

15. The Redevelopment Agreement shall provide for phasing of development of the Residential Component and the Commercial Component as contemplated by the following list:

- a. Phase 1: up to 150 apartments;
- b. Phase 2: up to 800 apartments, 250 townhomes, 250 single-family homes, and the Commercial Component;
- c. Phase 3: up to 800 townhomes and 250 single-family homes;
- d. Phases 4: up to 400 apartments, 250 townhomes and 250 single-family homes; and
- e. Phase 5: up to 580 apartments.

The number of units above exceeds the anticipated total of 2,150 so that CF Hopewell may adjust the sequence of phasing and the actual number, types and location of development of the various permitted uses, so long as the phasing of affordable units conforms to the requirements of N.J.A.C. 5:93-1, et seq.

16. In the event that the Township has not completed the designation of the Modified CF Hopewell Land as an “area in need of redevelopment” within 60 days of the court’s entry of an Order approving the fairness of this settlement, CF Hopewell shall be entitled, but not obligated, to require that the Township immediately modify its Master Plan and Land Use Ordinance consistent with the provisions of this Addendum and to cause the General Development Plan applicable to the Existing CF Hopewell Land to be amended accordingly. Alternatively, if a court of competent jurisdiction determines that such a redevelopment determination was not proper, the Township shall immediately modify its Master Plan, Land Use Ordinance and the GDP, as provided above.
17. Upon the later to occur of (1) execution of the Redevelopment Agreement, or (2) the placement of the Blue Area and the Yellow Area into the SSA, the Green Area, together with the subdivided northern portion of Block 93, Lot 3.01 shall be deeded to the Township. Simultaneously and in exchange, the Blue Area shall be deeded by the Township to CF Hopewell.
18. The Redevelopment Agreement shall require that the Township confirm in writing its support for CF Hopewell’s submissions and applications for all utilities (specifically including water and sewer service) and all necessary government agency or private utility approvals related to all aspects of the development within five (5) business days of a written request for such support from CF Hopewell. Specifically, the Township shall assist CF Hopewell in its dealings with ELSA, Mercer County, NJDOT, NJDEP, NJDOH, the DRCC and any other public or private entity with which CF Hopewell must deal in order to develop the Modified CF Hopewell Land consistent with the Redevelopment Agreement. The Township shall make available redevelopment tools for the CF Hopewell project as fully as permitted by law, including assistance with right-of-way or easement acquisitions of public or private property as may be necessary for off-site infrastructure improvements. The Township shall also permit CF Hopewell’s joint use of existing or future Township-owned easements or land for the placement of utilities or other infrastructure.
19. The Existing CF Hopewell Land is located in the Mercer County Transportation Development District (the “TDD”) and CF Hopewell or others have fulfilled all of the TDD obligations relative to the Existing CF Hopewell Land. The Redevelopment Agreement shall confirm that CF Hopewell shall be required only to install such traffic improvements on Scotch Road deemed necessary by qualified traffic engineers for the movement of traffic into the Modified CF Hopewell Land. By way of example, if approved by a qualified traffic engineer, the Township shall permit the installation of left-turn pocket lanes from the northbound lanes of Scotch Road in at least three locations into the Modified CF Hopewell Land. After the extent of such improvements to Scotch Road has been determined, the Township shall support same with Mercer County or other governmental agencies with jurisdiction over such construction. As an element of the Redevelopment Agreement, but only after the scope of the above traffic improvement work has been finally approved, CF Hopewell and the Township shall consent to the dissolution of the Mercer County TDD.

20. The notice provisions contained in Paragraph 30 of the Settlement Agreement Letter shall be expanded to require notice to all of the following notice parties for CF Hopewell:

TO CF HOPEWELL:

CF HOPEWELL CC&L LLC  
1345 Avenue of the Americas, 46th Floor  
New York, New York 10105

WITH COPIES TO:

David Moore  
Skyline Pacific Properties, LLC  
221 Pine Street, 4th Floor  
San Francisco, CA 94104  
david.moore@skylinepacific.com

Chip Erickson  
Sansome Pacific Properties, Inc.  
303 Sacramento Street, 4th Floor  
San Francisco, CA 94111  
cerickson@sansomepacific.com

and

Ryan Kennedy, Esquire  
Stevens and Lee, a PA P.C.  
100 Lenox Drive, Suite 200  
Lawrenceville, NJ 08648  
rpke@stevenslee.com

21. To the extent that the terms of this Addendum are inconsistent with either (a) the October 25, 2004 Settlement Agreement in the matter captioned Merrill Lynch Hopewell, LLC, et al. v. Township of Hopewell, et al., Docket Nos. MER L-1582-01 and L-3456-01, or (b) any Developer's Agreements or land use approvals flowing from that Settlement Agreement, regarding the type or intensity of development on the Existing CF Hopewell Land, this Addendum shall control, it being the express intention of the parties to the Settlement Agreement Letter and this Addendum that the Modified CF Hopewell Land shall be developed in the manner provided herein. Any party shall be entitled to cause a joint petition to the Court in the within 2015 affordable housing proceedings for an Order amending the 2004 Settlement Agreement to the extent that any party becomes concerned that the earlier Settlement Agreement, Developer's Agreement or land use approvals are inconsistent with the terms of the Settlement Agreement Letter or this Addendum.

By signing below, each party acknowledges that the signatory was authorized to execute this Addendum by the entity for which he or she signs, and that it shall become part of the attached Settlement Agreement Letter.

CF Hopewell CC&L LLC

By: \_\_\_\_\_

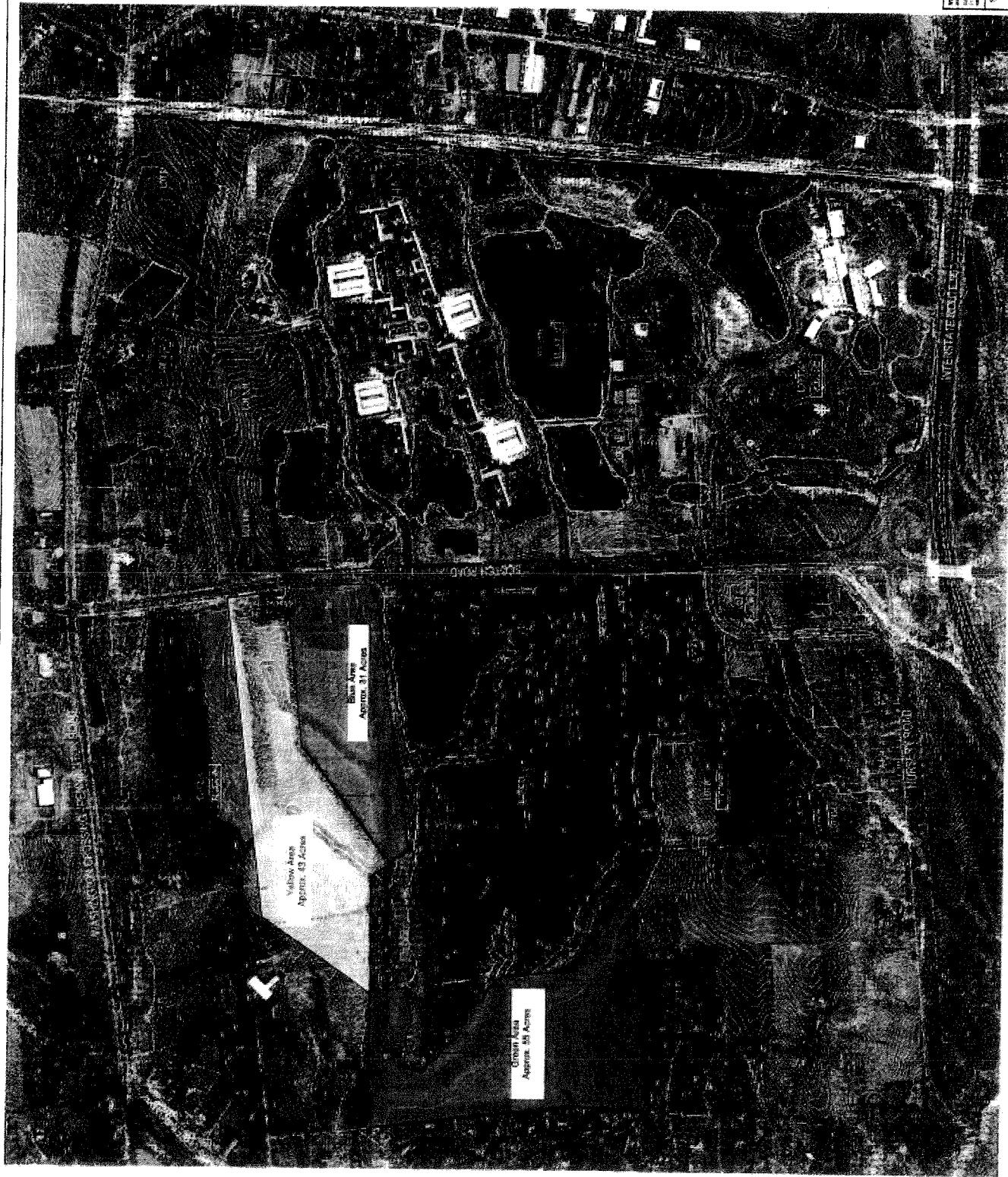
Name: **CONSTANTINE M. DAKOLIAS**  
Title: **PRESIDENT**  
Date: 6/14/2017

Township of Hopewell, Mercer County

By: Kevin D. Kuchinski  
Name: Kevin D. Kuchinski  
Title: Mayor  
Date: 6/13/17

Attest:

Laurie E. Gompf  
Name: Laurie E. Gompf  
Title: Municipal Clerk  
Date: 6/13/17



THE STATE OF PENNSYLVANIA



PAPERS SCALE

TOWNSHIP OF HOPEWELL  
MERCER COUNTY, NEW JERSEY

RESOLUTION #17-213

RESOLUTION AUTHORIZING EXECUTION OF  
PROPOSED SETTLEMENT LETTER AGREEMENT  
AND ADDENDUM THERETO WITH CF HOPEWELL  
CC&L LLC IN THE TOWNSHIP'S PENDING THIRD  
ROUND AFFORDABLE HOUSING PROCEEDINGS  
ENCAPTIONED IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF HOPEWELL,  
COUNTY OF MERCER, DOCKET NO. MER-L-1557-15  
(MOUNT LAUREL)

WHEREAS, the Township of Hopewell is a third round declaratory judgment petitioner in affordable housing proceedings captioned In the Matter of the Application of the Township of Hopewell; and

WHEREAS, several property owners have intervened in the proceeding and expressed an interest in construction of affordable housing during the third round while others have expressed an interest and commitment to construct affordable housing but have not formally intervened; and

WHEREAS, CF Hopewell CC&L LLC ("CF Hopewell") owns and controls property on both sides of Scotch Road and has committed to produce a substantial amount of affordable housing on its parcels by intervening in the proceedings and the Township and CF Hopewell have been able to structure an Agreement and Addendum thereto with respect to (a) the Township's third round fair share obligation, (b) the design concept for the proposed inclusionary affordable housing project to be undertaken, and (c) the number of affordable housing units/credits that will be produced.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Hopewell, County of Mercer, that the Letter Settlement Agreement and Addendum to confirm the Township's third round fair share obligation by and between the Township and CF Hopewell are hereby approved.

BE IT FURTHER RESOLVED that the Mayor and Municipal Clerk of the Township of Hopewell be and are hereby authorized to execute the Letter Settlement Agreement and Addendum thereto for submission to the Court for review and approval of same.

BE IT FURTHER RESOLVED that the Township's professionals be and are hereby authorized to take such steps as may be necessary to facilitate approval of the Letter Settlement Agreement and Addendum by the Court.

BE IT FURTHER RESOLVED that the Letter Settlement Agreement and Addendum thereto result from confidential mediation as directed by the Court and that the contents thereof may only be revealed when the Agreement and Addendum have been submitted to the Court for a preliminary fairness determination as to whether the Agreement and Addendum have sufficient merit in accordance with Mount Laurel case law to warrant the

scheduling of a Fairness Hearing upon adequate notice to the public which will invite public comment.

Date Adopted: June 12, 2017

I, Laurie E. Gompf, Municipal Clerk of the Township of Hopewell, County of Mercer and State of New Jersey, hereby certify that the foregoing is a true copy of a Resolution adopted by the Township Committee of the Township of Hopewell at a regular meeting held on June 12, 2017, at which a quorum was present.

Laurie E. Gompf

Laurie E. Gompf, Municipal Clerk



Parker McCay P.A.  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900  
F: 856.596.9631

[www.parkerccay.com](http://www.parkerccay.com)  
Ronald C. Morgan, Esquire  
P: 856-985-4010  
F: 856-552-1427

June 12, 2017

File No. 17005-0001 RCM

Thomas F. Carroll, III, Esquire  
Hill Wallack, LLP  
21 Roszel Road  
P.O. Box 5226  
Princeton, NJ 08543-5226  
Attorneys for Intervenor,  
Woodmont Properties, LLC

**Re: In the Matter of the Application of the Township of Hopewell  
Docket No. MER-L-1557-15 (Mount Laurel)**

Dear Mr. Carroll:

This letter memorializes the terms of an agreement (“Agreement”) reached between the Township of Hopewell (the “Township”), the declaratory judgment plaintiff, Woodmont Properties, LLC (“Woodmont”), an intervenor and interested party in the lawsuit styled In the matter of the Application of the Township of Hopewell, which is currently pending in the Superior Court of the State of New Jersey, Mercer County, bearing Docket No. MER-L-1557-15 (the “Action”), and Federal City Road LLC (collectively, the “Parties”<sup>1</sup>).

#### Background

Hopewell filed the Action on July 7, 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. The Parties engaged in mediation in an attempt to resolve the Action. Through that process, the Parties agreed to settle the Action 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 Parties hereby agree to the following terms:

<sup>1</sup> Fair Share Housing Center (“FSHC”) is not an intervenor in the pending proceedings or a signator to this Agreement. However, FSHC is identified in this Agreement for notice and monitoring purposes consistent with the Supreme Court’s directives in its March 10, 2015 Mount Laurel IV decision.

COUNSEL WHEN IT MATTERS.<sup>SM</sup>

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

June 12, 2017  
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1. Through the crediting described in this Agreement and the attached Exhibit A and through the adoption and implementation of a Housing Element and Fair Share Plan ("Plan") that is consistent with this Agreement and the attached Exhibit A, the Township 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 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. The Parties agree that Hopewell's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>2</sup> )	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> )	520
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Settlement Agreement)	1,141

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, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (Jan. 18, 2017).

4. Although the Township has a third round present need of 0 units, the Township also reserves the right to participate in the Mercer County Residential Home Improvement Program to facilitate the rehabilitation of any substandard units occupied by low and moderate income households that may be identified in the future.

<sup>2</sup> 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, as revised on April 12, 2017 as to gap present need. The 1,141 unit third round number represents a 35% reduction of Dr. Kinsey's 2016 uncapped number of 1,756 units which, when annualized over a 26-year third round, is consistent with the annualized housing obligation assigned to Hopewell by COAH for the 12-year cumulative prior rounds from 1987 to 1999. The parties agree that this reduction is fair and reasonable such that the annualized housing obligation from 1987 to 2025 is consistent because the Supreme Court directed that the third round numbers are to be calculated using COAH's prior round methodologies.

5. As noted above, the Township has a Prior Round prospective need of 520 units, which is met through the compliance mechanisms specified on Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."
6. The Township has a stipulated and agreed Third Round housing obligation of 1,141 units. That obligation will be satisfied using the mechanisms described in Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."

Additionally, within 120 days of the court's entry of an Order approving the fairness of this Agreement, the Township agrees to adopt an ordinance, subject to the review of the Special Master (and FSHC if it elects to review the Ordinance), providing that if the Township permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, at a gross residential density of 6 units to the acre or more, the Township shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Agreement to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of six (6) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Township's Planning or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. Nothing in this paragraph precludes the Township from imposing an affordable housing set-aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15 percent. Except to the extent provided in the Addendum attached to and made a part of this Agreement, this requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in this Agreement or Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. In the event the Addendum contemplates sooner action than specified herein, the Addendum shall control.

7. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
8. 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 Chart attached hereto as Exhibit A referred to in Paragraphs 5 and 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - 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.
9. 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), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch Branches of the NAACP, Shiloh Baptist Church, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this 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.
10. 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. 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.

11. Except as qualified in Paragraph 16 hereof, as an essential term of this settlement, within one hundred and twenty (120) days of the Court's consideration of this Settlement Agreement, the Township shall introduce and adopt a revised Housing Element and Fair Share Plan in accordance with the terms of this Agreement and an Ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning including redevelopment and overlay zoning for unmet need mechanisms contemplated herein. In the event that the Addendum contemplates action sooner than specified herein, the terms of the Addendum shall control.
12. The Parties agree that if a decision of a court of competent jurisdiction in Mercer 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 the Action to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the compliance mechanisms described in Exhibit A attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the compliance mechanisms approved pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. 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 or seeking leave to amend an order or judgment pursuant to R. 4:50-1 other than an amendment to the fair share number specifically authorized by this paragraph. 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.

13. The Township will prepare a revised Affordable Housing Trust Account Spending Plan within 120 days of the Court's approval of this Agreement for submission to the Court for review and approval. The Township reserves the right to request the Court's approval that the expenditures of funds under the revised Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, and FSHC shall have the right to respond to such request and comment on the revised Spending Plan. The Parties agree that any funds deemed "committed" by the Court shall have the four-year time period for expenditure designated pursuant to N.J.S.A. 52:27D-329.2 and -329.3 begin 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, and every anniversary thereafter through the end of 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 FSHC 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.
14. 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
15. 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 FSHC, a status report as to its implementation of its 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 FSHC, 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 FSHC, 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.
16. 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), affd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough 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. In the event that 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 the Settlement Agreement is rejected by the Court at such a Fairness Hearing, the Parties may nevertheless agree to continue the effectiveness of this Agreement thereafter, which continuation shall be documented by the exchange of letters signed by the Parties or other assignees.
17. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend this 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.
18. This Agreement and Addendum may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Mercer County. A prevailing movant or plaintiff in such a motion or separate action may be entitled to reasonable attorney's fees.

19. 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.
20. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
21. This Agreement may not be modified, amended or altered in any way except by a writing signed by the Parties or their respective assignees.
22. 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.
23. 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. The rights and obligations of any party to this Agreement may be assigned without the consent of the Township.
24. 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.
25. Any and all Exhibits, Addenda and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits, Addenda 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 the Parties.
26. 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.

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27. 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.
28. 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.
29. 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 THE COURT MASTER:** John D. Maczuga, P.P.  
JDM Planning Associates, LLC  
614 Harbor Road  
Brick, NJ 08724  
Phone: (732) 864-6369  
Telecopier:  
E-mail: [jmacguza@jdmplanning.com](mailto:jmacguza@jdmplanning.com)

**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](mailto:kevinwalsh@fairsharehousing.org)

**TO THE TOWNSHIP:** Ronald C. Morgan, Esq.  
Parker McCay P.A.  
9000 Midlantic Drive  
P.O. Box 5054  
Mount Laurel, NJ 08054-5054  
Phone: 856-985-4010  
Telecopier: 856-552-1427  
E-mail: [rmorgan@parkermccay.com](mailto:rmorgan@parkermccay.com)

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**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Laurie E. Gompf  
Hopewell Township Municipal Clerk  
201 Washington Crossing-Pennington Road  
Titusville, New Jersey 08560  
Telecopier: 609-737-0605  
Email: [lgompf@hopewelltwp.org](mailto:lgompf@hopewelltwp.org)

**TO WOODMONT PROPERTIES:**

Thomas F. Carroll, III, Esquire  
Hill Wallack, LLP  
21 Roszel Road  
P.O. Box 5226  
Princeton, NJ 08543-5226  
Phone: 609-924-0808  
Telecopier: 609-452-1888  
Email: [tcarroll@hillwallack.com](mailto:tcarroll@hillwallack.com)

30. Woodmont and Federal City Road LLC have heretofore presented Conceptual Development Plans to the Township and its Planning Board to construct 300 multi-family rental units on the Klockner tract that is identified in the Third Round Fair Share Plan Summary that is attached hereto as Exhibit A. The Plans propose a 16% affordable rental set-aside which will yield 48 affordable family rental units and enable the Township to seek 2 for 1 family rental bonus credits as specified in Exhibit A. The Township accepts Woodmont's affordable housing proposal and agrees to rezone the Klockner tract to facilitate the foregoing within 120 days of the Court's consideration of this Agreement. Additional provisions governing said development are as set forth in the attached Addendum.

Please sign below if these terms are acceptable.

Sincerely,



RONALD C. MORGAN, ESQ.  
Affordable Housing Counsel for  
Petitioner, Township of Hopewell



June 12, 2017  
Page 11

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

Kris D. Kishan

Dated: 6/13/2017

On behalf of Woodmont Properties, LLC:

Dated: \_\_\_\_\_



PARKER McCAY

June 12, 2017  
Page 11

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

On behalf of Woodmont Properties, LLC:

  
Stephen Szwarc, EVP

Dated: 6/13/17

On behalf of Federal City Bank, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_



June 12, 2017  
Page 11

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

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---

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Dated: \_\_\_\_\_

On behalf of Woodmont Properties, LLC:

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---

---

Dated: \_\_\_\_\_

On behalf of Federal City Corp, LLC

A handwritten signature in black ink that reads "Jeffrey Dobrzynski". The signature is somewhat slanted and appears to be "Jeffrey Dobrzynski".

Dated: June 13, 2017

# **EXHIBIT A**

Hopewell Township  
Third Round Fair Share Plan Summary

**Fair Share Obligation (Kinsey May 2016)**

Present need	0
Prior round (1987-1999)	520
Gap Present Need (1999-2015)	866
Prospective need (2015-2025)	890
Cumulative Third Round (1999-2025)	1,756
1999-2025 after 35% reduction	1,141

**Third Round Fair Share Plan**

Prior round surplus	149
Total 3 <sup>rd</sup> round credits and bonuses	1,018
Total 3 <sup>rd</sup> round credits	1,167

HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 – 3      REVISED JUNE 12, 2017

Program	Senior	Rental	Total Units	520-Unit Prior Round			1141-Unit Third Round		
				Credits	Bonus	Total	Credits	Bonus	Total
<b>Substantial Compliance</b>				46		46			
<b>Regional Contribution Agreement</b>									
Trenton			198	198		198			
<b>Alternative Living Arrangements</b>									
CIFA group home		4	4	4	4	8			
Community Options		4	4	4	4	8			
Homefront		3	3	3	3	6			
Wrick Avenue		1	1	1		1			
Minnietown Lane		2	2	2		2			
Project Freedom		72	72	72	72	144			
<b>Accessory Apartments</b>				1		1	1		
<b>100% Affordable Housing Developments</b>									
Hopewell Gardens	85 (Rental)	15	100	100	15	115	49	16	65
<b>Inclusionary Housing Developments - Constructed</b>									
Brandon Farms			135	135		135			
Pennington Pointe	5		5	5		5			
<b>Inclusionary Housing Developments - Proposed</b>									
Zaitz			78			78		78	
CF Hopewell		185	430			430	185	615	
CF Hopewell/Capital Health		35	35			35	35	70	
Klockner		48	48			48	48	96	
BMS		50	50			50	32	82	
Enourato						12		12	
<b>Extensions of Expiring Control</b>		NA							
<b>Prior Round Surplus</b>									
Surplus credits				149			149		149
<b>Total</b>	90	419	1297	570	99	669	821	316	1167
<b>Minimum Rental Requirements</b>									
Prior Round 520 x .25 = 130				99					
Third Round 1141 x .25 = 285				316					
<b>Maximum Age-Restricted Requirements</b>									
Prior Round 130				85					
Third Round 285				15					
<b>Minimum Very Low-Income Requirements</b>									
Third Round since 2008									
<b>Third Round Minimum Family Requirements</b>									
Maximum rental bonus potential both rounds		415							

# **EXHIBIT B**

**Addendum to Settlement Agreement Letter between  
Hopewell Township and Woodmont Properties, LLC/Federal City Road, LLC, Dated June  
13, 2017**

1. Woodmont Properties LLC ("Woodmont") is an intervenor in the litigation captioned In the Matter of Hopewell Township, County of Mercer, Docket No. MER -L-1557 -15, by which the Township of Hopewell (the "Township") seeks a declaration of its compliance with the Mt. Laurel doctrine, etc., and Fair Share Housing Center ("Fair Share") is a Court-designated interested party. An additional party to this Addendum and the Settlement Agreement is Federal City Road, LLC, and Woodmont and Federal City Road, LLC are collectively referred to herein as the "Woodmont Parties."
2. Simultaneously with their execution of this Addendum, the Woodmont Parties and the Township shall execute the Settlement Agreement Letter to which this Addendum is attached as Exhibit B. By signing this Addendum, each of the parties acknowledges that this Addendum is intended to be an integral part of the Settlement Agreement Letter and that the rights and responsibilities expressed therein and in this Addendum shall apply to the parties to the extent applicable. Any conflict between the provisions of the Settlement Agreement Letter and this Addendum shall be determined in favor of this Addendum.
3. The Woodmont Parties have contracted to purchase the parcel referred to as the Klockner Tract on the chart attached to the Settlement Agreement Letter as Exhibit A (the "Klockner Tract") which Tract contain approximately 22 acres, and is designated as Block 78.09, Lot 21.
4. The Woodmont Parties intend to develop the Klockner Tract as an inclusionary 300 unit rental complex, as well as amenity buildings, with 48 of said units being units affordable to low and moderate income households.
5. 50% of the affordable units shall be made available as low-income units including at least 13% of the affordable units, which shall be made available as very low income units, and the remaining 50% of the affordable units shall be made available to households with moderate incomes.
6. The Klockner Tract is presently included in the Mercer County Waste Water Management Plan's ELSA Sewer Service Area (the "SSA").
7. By no later than June 15, 2017, the Township shall begin the process of designating the Klockner Tract as an "area in need of redevelopment" pursuant to N.J.S.A. 40A:12A-1 et seq., in the format known as "non-condemnation", by enacting a resolution and taking all other necessary steps, all so as to complete that statutory process within 120 days of the execution of the Settlement Agreement Letter.
8. Within that same 120 days of the execution of the Settlement Agreement Letter, the Township shall also complete the redevelopment planning process by adopting a redevelopment plan and shall enter into a redevelopment agreement with the Woodmont

Parties (the "Redevelopment Agreement") allowing for the construction of the principal permitted uses described in this Addendum and the applicable bulk standards. The terms of the redevelopment plan and Redevelopment Agreement shall be subject to review of the Special Master to the same extent of any other actions by the Township. The parties shall also endeavor to enter into a payment in lieu of taxes ("PILOT") agreement under New Jersey's Long Term Tax Abatement Statute.

9. The Redevelopment Agreement shall include, at a minimum, the following principal permitted uses:
  - 300 residential dwelling units, 48 of which shall be affordable units, with amenity buildings, including a clubhouse and a maintenance building.
10. In order to achieve the total number of units agreed to in this Addendum, maximum building height shall be permitted to be 4 stories as to at least two of the buildings to be located on the Klockner Tract, with said buildings to be located toward the rear of the site, with the remaining buildings to be 3 stories in height. The affordable units may be co-located to improve both finance options and management, recognizing that occupants of the affordable units will have full and complete access to all community amenities. The building(s) containing the affordable units shall be visibly similar to the market rate buildings. Development of the Klockner Tract shall be generally consistent with the Concept Plan attached hereto, subject to revisions justified based upon full engineering of the development. The governing bulk standards are as set forth below:

Hopewell Township  
Proposed Zoning for Block 78.09, Lot 21

	<u>Proposed</u>
Minimum Lot Area	20 acres
Minimum Lot Frontage	150 feet
<u>Minimum Building Setbacks</u>	
Front Yard Setback	100 feet
Side/Rear Yard Setback	35 feet
Building to Building Setback	25 feet
Maximum Impervious Coverage	40%
Maximum Density	1.5 units/acre
Maximum Building Height (height measured grade to ridge)	4 stories / 75 feet
Parking	1.5 spaces/unit

11. In the event that the Township has not completed the designation of the Klockner Tract as an "area in need of redevelopment" within 120 days of the execution of the Settlement Agreement, the Woodmont Parties shall be entitled, but not obligated, to require that the Township immediately modify its Master Plan and Land Use Ordinance consistent with the provisions of this Addendum. Alternatively, if a court of competent jurisdiction determines that such a redevelopment determination was not proper, the Township shall immediately modify its Master Plan and Land Use Ordinance, as provided above.
12. The Redevelopment Agreement shall require that the Township confirm in writing its support for the Woodmont Parties' submissions and applications for all utilities (specifically including water and sewer service) and all necessary government agency or private utility approvals related to all aspects of the development within five (5) business days of a written request for such support from the Woodmont Parties. Specifically, the Township shall assist the Woodmont Parties in their dealings with ELSA, Mercer County, NJDOT, NJDEP, the DRCC and any other public or private entity with which the Woodmont Parties must deal in order to develop the Klockner Tract consistent with the Redevelopment Agreement, including any effort the Woodmont Parties may make to decrease the fees charged by ELSA. The Township shall make available redevelopment tools for the Klockner Tract project as fully as permitted by law, including assistance with right-of-way or easement acquisitions of public or private property as may be necessary for offsite infrastructure improvements. The Township shall also permit the Woodmont Parties' joint use of existing or future Township-owned easements or land for the placement of utilities or other infrastructure.
13. The Woodmont Parties shall not be subject to tree replacement ordinances. Woodmont reserves the right to request relief from other land use ordinances such as stream corridor, off-tract improvement and other cost generative ordinances in order to achieve the number of units set forth in this Addendum or to achieve a superior development layout. Failure to obtain relief when reasonably requested may result in a revision to the Concept Plan attached hereto.

By signing below, each party acknowledges that the signatory was authorized to execute this Addendum by the entity for which he or she signs, and that it shall become part of the attached Settlement Agreement Letter.

Woodmont Properties LLC

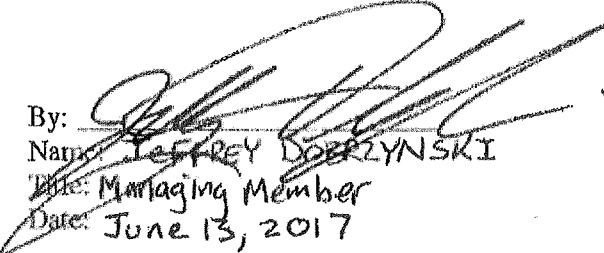
By:

Name: S. A. SANTOLA

Title: E.V.P.

Date: 6/15/17

Federal City Road LLC

By:   
Name: JEFFREY DOBRZYNSKI  
Title: Managing Member  
Date: June 13, 2017

Township of Hopewell, Mercer County

By: \_\_\_\_\_  
Name: Kevin D. Kuchinski  
Title: Mayor  
Date: 5/8/17

Attest:

By: \_\_\_\_\_  
Name: Laurie E. Gompf  
Title: Municipal Clerk  
Date: 5/8/17

Federal City Road LLC

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Township of Hopewell, Mercer County

By: Kevin D. Kuchinski  
Name: Kevin D. Kuchinski  
Title: Mayor  
Date: 5/8/17 6/13/2017  
FDK

Attest:

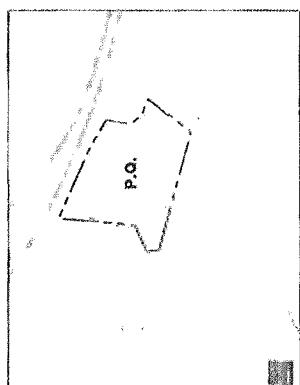
By: Laurie E. Gompf  
Name: Laurie E. Gompf  
Title: Municipal Clerk  
Date: 5/8/17



JUNE 30, 2016

**WOODMONT LUXURY APARTMENTS  
HOPEWELL TOWNSHIP, NEW JERSEY**

SCALE: 1" = 150'



### LOCATION MAP

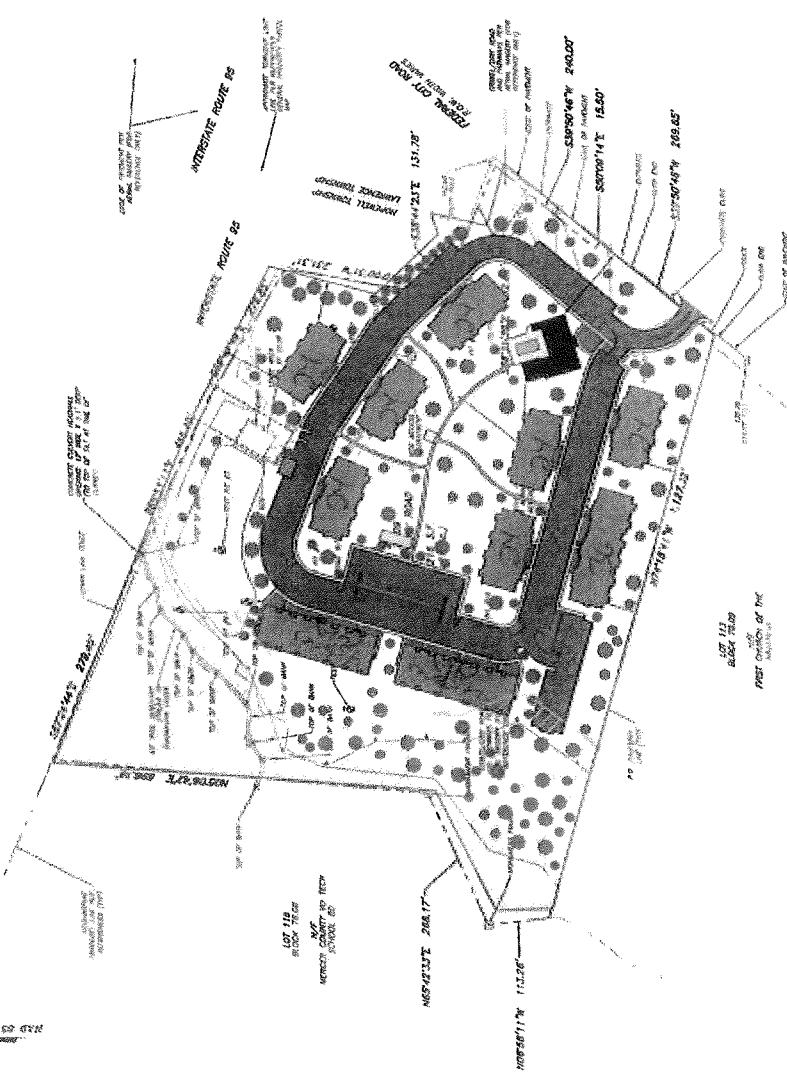
SCALE: 1" = 1/5600  
LOCATION MAP GRAPHIC SCALE



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TOWNSHIP OF HOPEWELL  
MERCER COUNTY, NEW JERSEY

RESOLUTION #17-214

RESOLUTION AUTHORIZING EXECUTION OF  
PROPOSED SETTLEMENT LETTER AGREEMENT  
AND ADDENDUM THERETO WITH WOODMONT  
PROPERTIES, LLC AND FEDERAL CITY ROAD, LLC  
IN THE TOWNSHIP'S PENDING THIRD ROUND  
AFFORDABLE HOUSING PROCEEDINGS  
ENCAPTIONED IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF HOPEWELL,  
COUNTY OF MERCER, DOCKET NO. MER-L-1557-15  
(MOUNT LAUREL)

WHEREAS, the Township of Hopewell is a third round declaratory judgment petitioner in affordable housing proceedings encaptioned In the Matter of the Application of the Township of Hopewell; and

WHEREAS, several property owners have intervened in the proceeding and expressed an interest in construction of affordable housing during the third round while others have expressed an interest and commitment to construct affordable housing but have not formally intervened; and

WHEREAS, Woodmont Properties, LLC and Federal City Road, LLC (collectively "Woodmont") possess contract rights to acquire and develop approximately 22 acres of land in Hopewell Township on property identified on the Tax Map as Block 78.09, Lot 21 and have committed to produce a substantial amount of affordable housing on the property by intervening in the proceedings and the Township and Woodmont have been able to structure an Agreement and Addendum thereto with respect to (a) the Township's third round fair share obligation, (b) the design concept for the proposed inclusionary affordable housing project to be undertaken, and (c) the number of affordable housing units/credits that will be produced.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Hopewell, County of Mercer, that the Letter Settlement Agreement and Addendum to confirm the Township's third round fair share obligation by and between the Township and Woodmont are hereby approved.

BE IT FURTHER RESOLVED that the Mayor and Municipal Clerk of the Township of Hopewell be and are hereby authorized to execute the Letter Settlement Agreement and Addendum thereto for submission to the Court for review and approval of same.

BE IT FURTHER RESOLVED that the Township's professionals be and are hereby authorized to take such steps as may be necessary to facilitate approval of the Letter Settlement Agreement and Addendum by the Court.

BE IT FURTHER RESOLVED that the Letter Settlement Agreement and Addendum thereto result from confidential mediation as directed by the Court and that the contents thereof may only be revealed when the Agreement and Addendum have been submitted to the Court for a preliminary fairness determination as to whether the Agreement

and Addendum have sufficient merit in accordance with Mount Laurel case law to warrant the scheduling of a Fairness Hearing upon adequate notice to the public which will invite public comment.

Date Adopted: June 12, 2017

I, Laurie E. Gompf, Municipal Clerk of the Township of Hopewell, County of Mercer and State of New Jersey, hereby certify that the foregoing is a true copy of a Resolution adopted by the Township Committee of the Township of Hopewell at a regular meeting held on June 12, 2017, at which a quorum was present.

Laurie E. Gompf

Laurie E. Gompf, Municipal Clerk



Parker McCay P.A.  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900  
F: 856.596.9631  
[www.parkermccay.com](http://www.parkermccay.com)  
Ronald C. Morgan, Esquire  
P: 856-985-4010  
F: 856-552-1427

June 12, 2017

File No. 17005-0001 RCM

Frank J. Petrino, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
Princeton Pike Corporate Center  
2000 Lenox Drive, Suite 203  
Lawrenceville, NJ 08648  
Attorneys for Albert Enourato

**Re: In the Matter of the Application of the Township of Hopewell**  
**Docket No. MER-L-1557-15 (Mount Laurel)**

Dear Mr. Petrino:

This letter memorializes the terms of an agreement ("Agreement") reached between the Township of Hopewell (the "Township"), the declaratory judgment plaintiff in the lawsuit styled In the matter of the Application of the Township of Hopewell, which is currently pending in the Superior Court of the State of New Jersey, Mercer County, bearing Docket No. MER-L-1557-15 (the "Action"), Albert Enourato ("Enourato"), an interested party and U.S. Home Corporation (d/b/a Lennar). The Township, Enourato and Lennar are collectively referred to as the "Parties".<sup>1</sup>

#### Background

Hopewell filed the Action on July 7, 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. The Parties engaged in mediation in an attempt to resolve the Action. Through that process, the Parties agreed to settle the Action 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 Parties hereby agree to the following terms:

<sup>1</sup> Fair Share Housing Center ("FSHC") is not an intervenor in the pending proceedings or a signator to this Agreement. However, FSHC is identified in this Agreement for notice and monitoring purposes consistent with the Supreme Court's directives in its March 10, 2015 Mount Laurel IV decision.

June 12, 2017  
Page 2

1. Through the crediting described in this Agreement and the attached Exhibit A and through the adoption and implementation of a Housing Element and Fair Share Plan ("Plan") that is consistent with this Agreement and the attached Exhibit A, the Township 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 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. The Parties agree that Hopewell's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>2</sup> )	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	520
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Settlement Agreement)	1,141

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, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (Jan. 18, 2017).

4. Although the Township has a third round present need of 0 units, the Township also reserves the right to participate in the Mercer County Residential Home Improvement Program to facilitate the rehabilitation of any substandard units occupied by low and moderate income households that may be identified in the future.

<sup>2</sup> 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, as revised on April 12, 2017 as to gap present need. The 1,141 unit third round number represents a 35% reduction of Dr. Kinsey's 2016 uncapped number of 1,756 units which, when annualized over a 26-year third round, is consistent with the annualized housing obligation assigned to Hopewell by COAH for the 12-year cumulative prior rounds from 1987 to 1999. The parties agree that this reduction is fair and reasonable such that the annualized housing obligation from 1987 to 2025 is consistent because the Supreme Court directed that the third round numbers are to be calculated using COAH's prior round methodologies.

5. As noted above, the Township has a Prior Round prospective need of 520 units, which is met through the compliance mechanisms specified on Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."
6. The Township has a stipulated and agreed Third Round housing obligation of 1,141 units. That obligation will be satisfied using the mechanisms described in Exhibit A to this Agreement in the chart "HOPEWELL TOWNSHIP COMPOSITE FAIR SHARE PLAN ROUNDS 1 - 3."

Additionally, within 120 days of the court's entry of an Order approving the fairness of this Agreement, the Township agrees to adopt an ordinance, subject to the review of the Special Master (and FSHC if it elects to review the Ordinance), providing that if the Township permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, at a gross residential density of 6 units to the acre or more, the Township shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Agreement to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of six (6) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Township's Planning or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. Nothing in this paragraph precludes the Township from imposing an affordable housing set-aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15 percent. Except to the extent provided in the Addendum attached to and made a part of this Agreement, this requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in this Agreement or Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. In the event the Addendum contemplates sooner action than specified herein, the Addendum shall control.



7. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families.
8. 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 Chart attached hereto as Exhibit A referred to in Paragraphs 5 and 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - 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.
9. 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), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch Branches of the NAACP, Shiloh Baptist Church, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this 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.
10. 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. 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.

11. Except as qualified in Paragraph 16 hereof, as an essential term of this settlement, within one hundred and twenty (120) days of the Court's consideration of this Settlement Agreement, the Township shall introduce and adopt a revised Housing Element and Fair Share Plan in accordance with the terms of this Agreement and an Ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning including redevelopment and overlay zoning for unmet need mechanisms contemplated herein. In the event that the Addendum contemplates action sooner than specified herein, the terms of the Addendum shall control.
12. The Parties agree that if a decision of a court of competent jurisdiction in Mercer 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 the Action to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the compliance mechanisms described in Exhibit A attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the compliance mechanisms approved pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. 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 or seeking leave to amend an order or judgment pursuant to R. 4:50-1 other than an amendment to the fair share number specifically authorized by this paragraph. 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.



13. The Township will prepare a revised Affordable Housing Trust Account Spending Plan within 120 days of the Court's approval of this Agreement for submission to the Court for review and approval. The Township reserves the right to request the Court's approval that the expenditures of funds under the revised Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, and FSHC shall have the right to respond to such request and comment on the revised Spending Plan. The Parties agree that any funds deemed "committed" by the Court shall have the four-year time period for expenditure designated pursuant to N.J.S.A. 52:27D-329.2 and -329.3 begin 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, and every anniversary thereafter through the end of 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 FSHC 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.
14. 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
15. 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 FSHC, a status report as to its implementation of its 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 FSHC, 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 FSHC, 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.
16. 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), affd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough 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. In the event that 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 the Settlement Agreement is rejected by the Court at such a Fairness Hearing, the Parties may nevertheless agree to continue the effectiveness of this Agreement thereafter, which continuation shall be documented by the exchange of letters signed by the Parties or other assignees.
17. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend this 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.
18. This Agreement and Addendum may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Mercer County. A prevailing movant or plaintiff in such a motion or separate action may be entitled to reasonable attorney's fees.

19. 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.
20. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
21. This Agreement may not be modified, amended or altered in any way except by a writing signed by the Parties or their respective assignees.
22. 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.
23. 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. The rights and obligations of any party to this Agreement may be assigned without the consent of the Township.
24. 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.
25. Any and all Exhibits, Addenda and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits, Addenda 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 the Parties.
26. 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.



June 12, 2017  
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27. 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.
28. 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.
29. 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 THE COURT MASTER:**

John D. Maczuga, P.P.  
JDM Planning Associates, LLC  
614 Harbor Road  
Brick, NJ 08724  
Phone: (732) 864-6369  
Telecopier:  
E-mail: [jmacguza@jdmplanning.com](mailto:jmacguza@jdmplanning.com)

**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](mailto:kevinwalsh@fairsharehousing.org)

**TO THE TOWNSHIP:**

Ronald C. Morgan, Esq.  
Parker McCay P.A.  
9000 Midlantic Drive  
P.O. Box 5054  
Mount Laurel, NJ 08054-5054  
Phone: 856-985-4010  
Telecopier: 856-552-1427  
E-mail: [rmorgan@parkerMcCay.com](mailto:rmorgan@parkerMcCay.com)

June 12, 2017  
Page 10

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Laurie E. Gompf  
Hopewell Township Municipal Clerk  
201 Washington Crossing-Pennington Road  
Titusville, New Jersey 08560  
Telecopier: 609-737-0605  
Email: [lgompf@hopewelltwp.org](mailto:lgompf@hopewelltwp.org)

**TO ALBERT ENOURATO:**

Frank J. Petrino, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
Princeton Pike Corporate Center  
2000 Lenox Drive, Suite 203  
Lawrenceville, NJ 08648  
Phone: 609-989-5029  
Telecopier: 609-392-2100  
Email: [fpetrino@eckertseamans.com](mailto:fpetrino@eckertseamans.com)

**TO LENNAR:**

Mitchell Newman, Esq.  
Director of Land Acquisition and Entitlements  
Lennar Corporation  
2465 Kuser Road, 3rd Floor  
Hamilton, NJ 08690  
Phone: (609) 245-2245  
Email: [Mitch.Newman@Lennar.com](mailto:Mitch.Newman@Lennar.com)

30. The Parties acknowledge that Mr. Enourato, through his attorney, heretofore directed a letter to the Township pursuant to N.J.S.A. 52:27D-310(f) requesting that the Township give consideration to his property located at 2500 Pennington Road [Block 78, Lot 17] to facilitate affordable housing production which the Township and its Planning Board did include in the Enourato Property in the 2015 Third Round Preliminary Plan Summary that was submitted to the Court. However, the Enourato Property was not identified as an inclusionary parcel in the May 8, 2017 Third Round Plan Summary principally because Mr. Enourato was unsure how many low and moderate income units he could commit to provide when the revised Plan Summary was prepared. However, a letter under date of May 25, 2017 has been received from Mr. Enourato's attorney indicating that Mr. Enourato's development proposal will provide a "minimum" of 12 affordable units. By virtue of its execution of this Agreement, the Township commits that it has or will promptly amend the Plan Summary to include Mr. Enourato's tract as an inclusionary site



June 12, 2017  
Page 11

that will produce 12 affordable units. Additional provisions governing the development of the Enourato Property are set forth in the attached Addendum.

Please sign below if these terms are acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read "R.C.M." followed by a stylized surname.

RONALD C. MORGAN, ESQ.  
Affordable Housing Counsel for  
Petitioner, Township of Hopewell

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

A handwritten signature in black ink, appearing to read "Kevin D. Kehoe".

Dated: 6/13/2017

On behalf of Albert Enourato:

A handwritten signature in black ink, appearing to read "Albert Enourato".

Dated: 6/16/2017

On behalf of U.S. Home Corporation  
d/b/a Lennar

A handwritten signature in black ink, appearing to read "U.S. Home Corporation".

Dated: 6/19/2017

# **EXHIBIT A**

Hopewell Township  
Third Round Fair Share Plan Summary

**Fair Share Obligation (Kinsey May 2016)**

Present need	0
Prior round (1987-1999)	520
Gap Present Need (1999-2015)	866
Prospective need (2015-2025)	890
Cumulative Third Round (1999-2025)	1,756
1999-2025 after 35% reduction	1,141

**Third Round Fair Share Plan**

Prior round surplus	149
Total 3 <sup>rd</sup> round credits and bonuses	1,018
Total 3 <sup>rd</sup> round credits	1,167



# **EXHIBIT B**

**Addendum to Settlement Agreement by and between  
the Township of Hopewell and Albert Enourato and U.S. Home Corporation d/b/a Lennar  
(Albert Enourato and Lennar hereinafter collectively referred to as "Enourato")**

Albert Enourato is the owner and Lennar the contract purchaser of property located within the Township consisting of 11.70± acres with frontage on Rt. 31 and identified as Block 78, Lot 17 ("Enourato Property"). In partial satisfaction of the Township's Third Round affordable housing obligation, the Township will rezone the Enourato Property to provide for the inclusionary development of up to 8 dwelling units per gross acre, subject to the following conditions and obligations:

a. **Zoning Standards:**

The following zoning standards will be incorporated into the proposed development:

i. The Enourato Property will be developed by Lennar substantially in accordance with the Concept Plan dated June 12, 2017 and attached hereto as Exhibit 1 ("Enourato Concept Plan").

ii. The development shall consist of up to 8 dwelling units per acre, including 12 low and moderate-income "rental" or for-sale" family units.

iii. The development shall consist of a mix of unit types, including the following:

a) Traditional townhouse units (not to exceed 3 stories or 45 feet in height). A maximum of 8 units per building.

b) Stacked townhouse units (Not to exceed 3 stories or 45 feet in height). A stacked townhouse unit is defined as a type of multi-family, multi-level residential dwelling units within a linear townhouse style building. A maximum of 18 units per building.

c) Multi-family residential buildings (not to exceed 3 stories or 45 feet in height). A maximum of 24 units per building.

iv. The development of the Enourato Property shall be governed by the following zoning standards:

**ZONING SCHEDULE:**

ZONING STANDARD	EXISTING HBO ZONE <sup>2</sup>	PROPOSED STANDARDS
Min. Lot Area (Overall Tract)	1 to 5 Acres	10 Acres
Min Lot Width (Overall Tract)	150 to 300 Feet	300 Feet
Min Lot Depth (Overall Tract)	200 to 300 Feet	200 Feet
Min Front Yard Setback (Tract) <sup>1</sup>	65 to 100 Feet	45 Feet
Min Side Yard Setback (Tract) <sup>1</sup>	30 to 80 Feet	40 Feet
Min Rear Yard Setback (Tract) <sup>1</sup>	40 to 80 Feet	40 Feet
Min. Setback from Buildings Onsite:		
Front to Front		60 Feet
Front to Side		40 Feet
Side to Side		20 Feet
Rear to Rear		50 Feet
Max Floor Area Ratio	0.10 to 0.20	
Max. Building Coverage		30%
Max. Impervious Coverage	40% to 65%	60%
Max. Building Height	20 to 35 Feet	45 Feet / 3-stories
Maximum Gross Residential Density		8 units / acre
Parking: Location / Setbacks		
From Building		10 Feet
Parking Spaces: Number		Per RSIS
Parking Stall Size	9 FT x 18 FT	9 FT x 18 FT
Drive Aisle Width	24 Feet	24 Feet
COAH Units (Min.)		12 Units
Landscape Buffer (Overall Tract)		
Front Yard		25 Feet
Side / Rear Yard		20 Feet

1. Patios, decks, and fences permitted to be located within building setbacks.
2. Existing HBO Zoning Standards based upon permitted use in zone. Values shown are the range of minimum or maximum values listed in Ordinance Section 17-163e. Lot, Yard, Height and Coverage Requirements.

v. The affordable units shall be family units and not age restricted, and shall be located within one (1) stacked townhouse or multi-family residential building situated in a central portion of the development. A Certificate of Occupancy for the affordable building must be issued before the Township is obligated to issue more than 51% of the Certificates of Occupancy for the market rate units.

vi. The Township shall cause its Planning Board to expedite the review of development applications submitted by Enourato. Any reasonable variances, waivers and/or exceptions necessary to achieve approval of an inclusionary development of up to 8 dwelling units per acre shall be reviewed and granted by the Township's Planning Board. Despite the foregoing provision, the Parties acknowledge and agree that Enourato shall not seek a density variance in accordance with the provision of N.J.S.A. 40:55D-70(d)(5) or a height variance in accordance with the provisions of N.J.S.A. 40:55D-70(d)(6).

b. **Affordable Family Units within Enourato Development to Comply with Applicable Standards.** The affordable component shall include low income units and moderate income units, as the term low and moderate income units are defined by COAH regulations and the provisions of the Uniform Housing and Affordability Controls Act, N.J.A.C. 5:80-26.1, et seq. (hereinafter "UHAC"). Enourato shall take all necessary steps to maintain affordability controls for the affordable units provided for under the Agreement in accordance with the UHAC regulations and all other applicable laws for a fifty (50) year period from the date that a certificate of occupancy is issued for each of the affordable units which affordability controls shall only be terminated in accordance with the UHAC regulation or other applicable successor regulations or laws.

c. **Route 31 Entrance.**

i. Enourato proposes to seek approval from NJDOT to restripe or widen Route 31, as needed, to permit a southbound left turn lane into the development and to maintain two (2) southbound through lanes. Northbound access will be provided for right in and left and right out movements. The Township shall support Enourato's application to NJDOT and use reasonable efforts to cause NJDOT to issue the necessary Access and/or Street and/or Intersection Permit.

ii. Based upon property acquired by NJDOT's predecessor in the 1940's, the Concept Plan attached as Exhibit 1 depicts the northbound right-of-way of Rt. 31 as 103 feet from the existing centerline of the road, whereas current NJDOT requirements list the Desirable Typical Section (half width) as 57 feet, or a difference of 46 feet. Enourato believes that NJDOT considers the 46 feet to be "Excess Land" that may be purchased from the State. If purchased, the Concept Plan may be modified to increase the number of market rate units and any revision shall attempt to maximize front yard and buffer area for visual screening.

d. **The Ewing Lawrence Sewer Authority.**

The Enourato Property is presently included in the Mercer County Wastewater Management Plan's ELSA Sewer Service Area. Within 60 days of execution of the Settlement Agreement, the Township shall request that ELSA enter into a Sewer Agreement which shall set forth the conveyance system improvements required to connect the inclusionary development on the Enourato Property to ELSA's existing conveyance facilities (pump station and mains) located in the Denow Road Extension in the vicinity of the western entrance to the Hopewell Shopping Center, the cost to purchase the treatment capacity needed to serve the inclusionary development, the amount of the Connection Fees per unit and the amount of Annual Service Fees per unit.

**e. Trenton Water Works.**

If requested by Enourato, the Township shall promptly endorse a waterline extension application which seeks to obtain water service from Trenton Water Works by connecting into the existing water mains located in the Denow Road Extension in the vicinity of the western entrance to the Hopewell Shopping Center.

**f. Easements for Sewer and Water Line Extensions to connect the inclusionary development into existing sewer and water facilities in the Denow Road Extension in the vicinity of the western entrance to the Hopewell Shopping Center.**

The Township shall assist Enourato in obtaining, either voluntarily or involuntarily, easements from the owners of Block 78, Lot 15.02, Block 78, Lot 15.99, Block 78, Lot 16 and Block 78, Lot 35 needed to extend sanitary sewer and water lines from the Enourato Property to the existing sanitary sewer and water facilities located in the Denow Road Extension. Enourato shall bear the Township's costs, including the costs of condemnation if such action is required to secure such easements.

**g. Transportation Development District (TDD).**

To the extent applicable to the Enourato Property, Enourato supports the dissolution of the Mercer County TDD.

**h. Interpretation.**

To the extent the terms of this Addendum are inconsistent with the attached Settlement Agreement, or any development approvals granted to Enourato subsequent to the rezoning of the Enourato Property, the terms of this Addendum shall control.

i. **Party Status.**

Enourato is hereby deemed to have party status in this matter and to have intervened in the Action as defendants without the need to file a motion to intervene or an answer or other pleading. The Parties to the attached Settlement Agreement agree to request that the Court enter an order declaring Enourato as an intervenor, but the absence of such an order shall not impact the rights of Enourato or this Agreement, to which FSHC is not a party. The attached Settlement Agreement and this Addendum may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Middlesex County.

By signing below, each party acknowledges that the signatory was authorized to execute this Addendum by the entity for which he or she signs, and that it shall become an integral part of the attached Settlement Agreement Letter.

**ALBERT ENOURATO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Entitlements

Date: June 16, 2017

**TOWNSHIP OF HOPEWELL,  
MERCER COUNTY**

By: Kevin D. Kuchinski  
Name: Kevin D. Kuchinski  
Title: Mayor  
Date: June 13, 2017

**U.S. HOME CORPORATION  
d/b/a LENNAR**

By: Mitchell Newman  
Name: Mitchell Newman, Esq.  
Title: Director of Land Acquisition and  
Date: June 19, 2017

ATTEST:

Laurie E. Gompf  
Name: Laurie E. Gompf  
Title: Municipal Clerk  
Date: June 13, 2017

APPROXIMATE 150'  
TOWNSHIP STREAM  
CORRIDOR BUFFER

**EXISTING  
WETLANDS AREAS  
TO REMAIN**

**EXISTING  
WOODED AREAS  
TO REMAIN**

STING  
ANTI-ANDS AREA

卷之二

102

THE TOWER

STACKED  
AFFORDABLE  
TOWNHOUSES  
12 UNITS  
(24 x 63')

90 units  
100 units

PENNINGTON ROAD (U.S.H. ROUTE 31) OLD ROMNEY ROAD CENTRELINE

THESE PLANS ARE  
NOT TO BE USED  
FOR BID OR  
CONSTRUCTION

**LENNAAR**  
DOLCE VITA

TOWNSHIP OF HOPEWELL  
MERCER COUNTY, NEW JERSEY

RESOLUTION #17-212

RESOLUTION AUTHORIZING EXECUTION OF  
PROPOSED SETTLEMENT LETTER AGREEMENT  
AND ADDENDUM THERETO WITH ALBERT  
ENOURATO AND U.S. HOME CORPORATION (D/B/A  
LENNAR) IN THE TOWNSHIP'S PENDING THIRD  
ROUND AFFORDABLE HOUSING PROCEEDINGS  
ENCAPTIONED IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF HOPEWELL,  
COUNTY OF MERCER, DOCKET NO. MER-L-1557-15  
(MOUNT LAUREL)

WHEREAS, the Township of Hopewell is a third round declaratory judgment petitioner in affordable housing proceedings captioned In the Matter of the Application of the Township of Hopewell; and

WHEREAS, several property owners have intervened in the proceeding and expressed an interest in construction of affordable housing during the third round while others have expressed an interest and commitment to construct affordable housing but have not formally intervened; and

WHEREAS, Albert Enourato and U.S. Home Corporation (d/b/a Lennar) own and control 11.70 acres of property in Hopewell Township proximate to Route 31 that are shown and designated on the Tax Map as Block 78, Lot 17, and have forwarded correspondence to the Township pursuant to N.J.S.A. 52:27D-310(f) committing to produce a substantial amount of affordable housing on the Enourato property and the Township and Mr. Enourato and Lennar

have been able to structure an Agreement and Addendum thereto with respect to (a) the Township's third round fair share obligation, (b) the design concept for the proposed inclusionary affordable housing project to be undertaken, and (c) the number of affordable housing units/credits that will be produced.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Hopewell, County of Mercer, that the Letter Settlement Agreement and Addendum to confirm the Township's third round fair share obligation by and between the Township and Albert Enourato and Lennar are hereby approved.

BE IT FURTHER RESOLVED that the Mayor and Municipal Clerk of the Township of Hopewell be and are hereby authorized to execute the Letter Settlement Agreement and Addendum thereto for submission to the Court for review and approval of same.

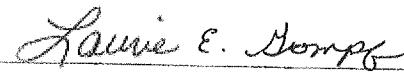
BE IT FURTHER RESOLVED that the Township's professionals be and are hereby authorized to take such steps as may be necessary to facilitate approval of the Letter Settlement Agreement and Addendum by the Court.

BE IT FURTHER RESOLVED that the Letter Settlement Agreement and Addendum thereto result from confidential mediation as directed by the Court and that the contents thereof may only be revealed when the Agreement and Addendum have been

submitted to the Court for a preliminary fairness determination as to whether the Agreement and Addendum have sufficient merit in accordance with Mount Laurel case law to warrant the scheduling of a Fairness Hearing upon adequate notice to the public which will invite public comment.

Date Adopted: June 12, 2017

I, Laurie E. Gompf, Municipal Clerk of the Township of Hopewell, County of Mercer and State of New Jersey, hereby certify that the foregoing is a true copy of a Resolution adopted by the Township Committee of the Township of Hopewell at a regular meeting held on June 12, 2017, at which a quorum was present.



Laurie E. Gompf, Municipal Clerk



# PARKER McCAY

Parker McCay P.A.  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900  
F: 856.596.9631  
[www.parkerccay.com](http://www.parkerccay.com)

Linda A. Galella, Esquire  
*Counsel*  
P: 856-985-4052  
F: 856-489-6980  
[lgalella@parkerccay.com](mailto:lgalella@parkerccay.com)

July 24, 2017  
VIA EMAIL ONLY

File No. 17005-0001 RCM

The Honorable Mary C. Jacobson A.J.S.C.  
Mercer County Superior Court  
400 South Warren Street  
Trenton, NJ 08650

Re: **IMO Application of the Township of Hopewell**  
**Docket No. MER-L-1557-15**

Dear Judge Jacobson:

I am writing in reference to 2 scriveners errors contained on page 2 in paragraph 3 in reference to Mr. Morgan's letter to Your Honor dated July 21, 2017:

- The Notice of the August 28, 2017 consolidated Fairness Hearing will be published in the weekly Hopewell Valley News on July 28, 2017 (not July 27, 2017);
- The Notice will also be posted on the Township's official Bulletin Board and the Township's website today, July 24, 2017 (not August 24, 2017).

I hope this clears up any confusion.

Thank you for your kind courtesies throughout and please have your law clerk call me should the Court have any questions or require any additional information.

Very truly yours,

LINDA A. GALELLA

LAG/lag

COUNSEL WHEN IT MATTERS.<sup>SM</sup>

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

July 24, 2017  
Page 2

cc: All via e-mail only:  
John Maczuga, P.P. – Court Master  
All Counsel and Parties on attached Service List  
Adam Gordon, Esquire  
Christopher Tarr, Esquire  
Ryan Kennedy, Esquire  
Thomas Carroll, III, Esquire  
Frank Petrino, Esquire  
Mitch Newman, Esquire  
Richard Hoff, Esquire  
Donna M. Jennings, Esquire  
David Moore  
Chip Erickson  
Robert Geiger  
Laurie Gompf – Township Clerk  
Paul Pogorzelski, Township Administrator  
Frank Banisch, P.P.  
Vanessa Sandom

**SERVICE LIST**  
**IMO Application of the Township of Hopewell**  
**Docket No. MER-L-1557-15**

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Adam Gordon, Esq.  
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