



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.parkermccay.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"¹), 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.

¹ 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.SM

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 ²)	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

² 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

TO FSHC:

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

TO THE TOWNSHIP:

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@hopewelltp.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

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

Page 11

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

Kevin D. Kushnir

Dated: 6/13/2017

On behalf of CF Hopewell CCdbL LLC

[Signature]

Dated: 6/14/2017



PARKER McCAY

June 12, 2017
Page 11

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

Kevin D. Kuchinski

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 rd round credits and bonuses	1,018
Total 3 rd 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
Substantial Compliance				46		46			
Regional Contribution Agreement									
Trenton			198	198		198			
Alternative Living Arrangements									
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			
Accessory Apartments			1		1	1			
100% Affordable Housing Developments									
Hopewell Gardens	85 (Rental)	15	100	100	15	115	49	16	65
Inclusionary Housing Developments - Constructed									
Brandon Farms			135	135		135			
Pennington Pointe	5		5	5		5			
Inclusionary Housing Developments - Proposed									
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
Extensions of Expiring Control	NA								
Prior Round Surplus									
Surplus credits			149				149		149
Total	90	419	1297	570	99	669	821	316	1167
Minimum Rental Requirements									
Prior Round 520 x .25 = 130			99						
Third Round 1141 x .25 = 285			316						
Maximum Age-Restricted Requirements									
Prior Round 130			85						
Third Round 285			15						
Minimum Very Low-Income Requirements									
Third Round since 2008									
Third Round Minimum Family Requirements									
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

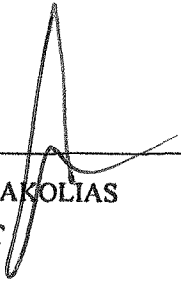
and

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.

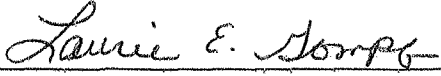
CF Hopewell CC&L LLC

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

Township of Hopewell, Mercer County

Attest:

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


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



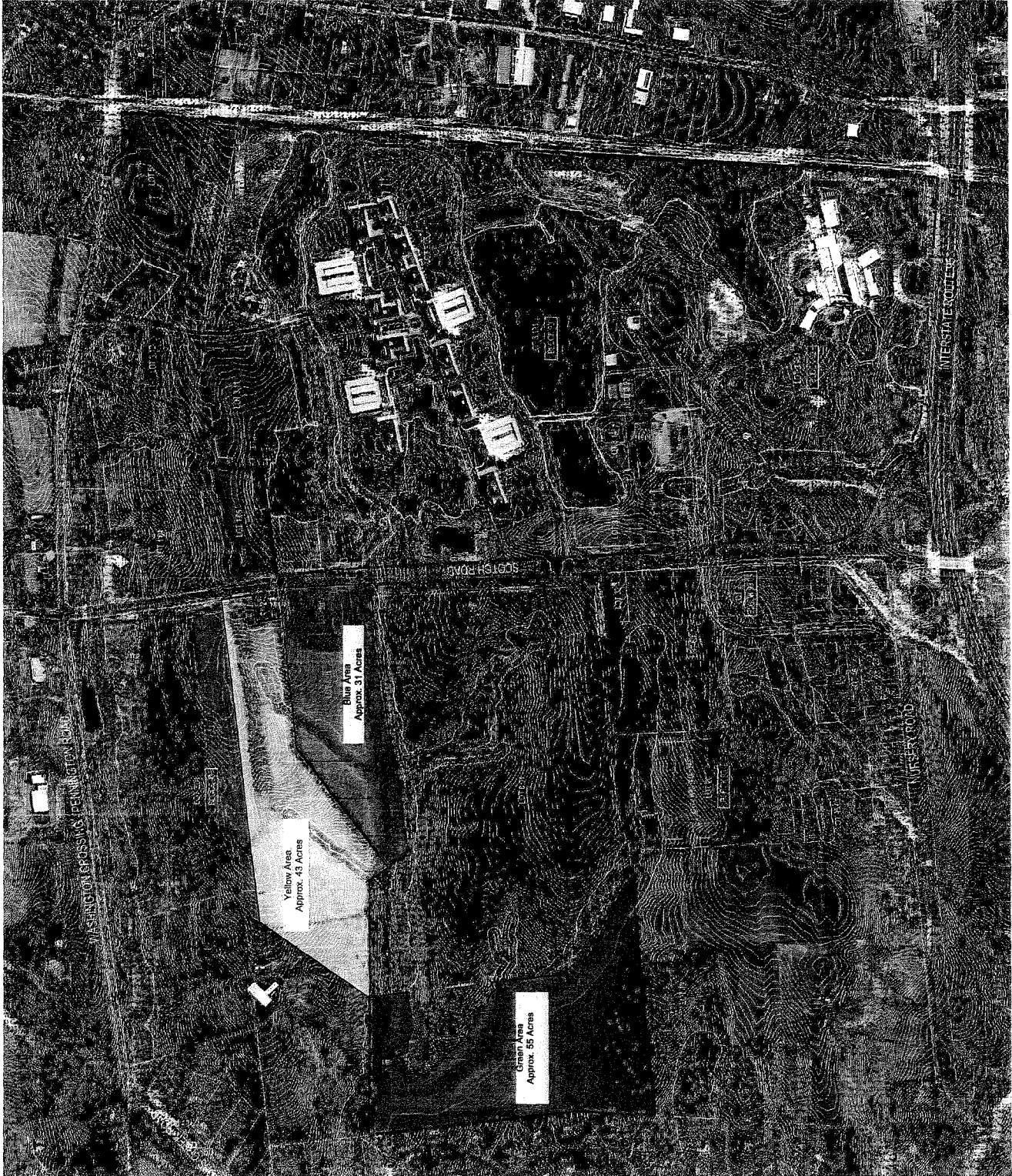
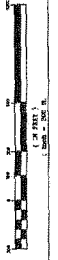
van note-harvey



van note-harvey associates, inc.
10000 Van Note-Harvey Road
Suite 100
Houston, Texas 77055
Tel: 281-410-1000
Fax: 281-410-1001
www.van-note-harvey.com

SITE CONSTRAINTS ALONG SCOTCH ROAD
SCOTCH ROAD
STATION 10

GRAPHIC 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 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, 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.

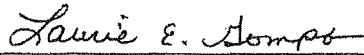
BE IT FURTHER RESOLVED that the Township's professionals be and are hereby authorized to take such steps as may be necessary to facilitate approval of the Letter Settlement Agreement and Addendum by the Court.

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, Municipal Clerk