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December 11, 2017

Honorable Mary C. Jacobson, A.J.S.C.
Superior Court of New Jersey
400 South Warren Street, 4th Floor
Trenton, NJ 08650

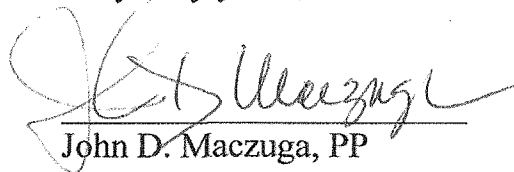
Re: Master's Report-Final Compliance Hearing
IMO Township of Hopewell-Docket No. MER-L-1557-15

Dear Judge Jacobson:

Enclosed please find my *Master's Report: Final Compliance Hearing* in the above captioned matter.

I look forward to presenting the results of my report in testimony at the hearing in this matter on December 14, 2017. In the interim, I would be pleased to answer any questions Your Honor may have concerning the report.

Very truly yours,



John D. Maczuga, PP

Cc. Ronald Morgan, Esq. (electronically)
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Docket No. MER-L-1557-15

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**Township of Hopewell
Mercer County, New Jersey**

*In the Matter of Township of Hopewell, County of Mercer
Docket No. MER-L-1557-15*

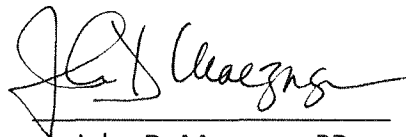
December 11, 2017

Prepared for:

The Honorable Mary C. Jacobson, A.J.S.C.
Mercer Superior Court
Mercer County Courthouse – Criminal Justice Building
PO Box 8068
Trenton, NJ 08650

Prepared by:

JDM Planning Associates, LLC
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A handwritten signature in black ink, appearing to read 'John D. Maczuga', written over a horizontal line.

John D. Maczuga, PP
New Jersey Professional Planner
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1 — Introduction

This report has been prepared in my capacity as Special Master, appointed by The Honorable Mary C. Jacobson, A.J.S.C., in the matter of Township of Hopewell, County of Mercer, Docket No. MER-L-1557-15, which is a Declaratory Judgment action filed by the Township of Hopewell on July 7, 2015.

On June 12, 2017 the Township of Hopewell (the “Township”) reached individual settlement agreements with the following intervenors: CF Hopewell CC&L, LLC (“CF Hopewell”); Albert Enourato (“Enourato”); U.S. Home Corporation (d/b/a Lennar) (“Lennar”); and, Woodmont Properties, LLC and Federal City Road, LLC (collectively “Woodmont”). The Township, the declaratory judgment plaintiff, and FSHC, an additional intervenor, subsequently reached a settlement. The specific terms of the Hopewell/FSHC settlement are set forth in an executed Settlement Agreement, dated July 13, 2017. The Hopewell/FSHC settlement agreement incorporated a “Supplemental Agreement,” signed by the four intervenors, cited above, amending their respective intervenor settlement agreements with the Township.

Your Honor conducted a consolidated Fairness/Compliance Hearing on August 28, 2017. Per Order dated September 21, 2017 the Court determined that the terms of the four Settlement Agreements referenced above, individually and collectively, are fair and reasonable to the interests of low- and moderate-income households. Your Honor further found that the draft summary of Township’s compliance plan contained in the Settlement Agreements “is facially constitutional and creates a fair and reasonable opportunity for Hopewell Township to meet its obligations under the Fair Housing Act and Mount Laurel IV,” subject to satisfaction of the conditions set forth in my August 21, 2017 Master’s Report and further subject to the Court’s approval of the Township’s duly adopted amended Housing Element and Fair Share Plan. The Order established December 14, 2017 as the date of the Final Compliance Hearing.

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On October 25, 2017, Deer Valley Realty, LLC ("Deer Valley"), an additional intervenor in this matter, filed a *Complaint In Lieu of Prerogative Writs*. On November 15, 2017 Deer Valley filed a *Motion to Adjourn the Final Compliance Hearing Dated December 14, 2017*. Your Honor denied the motion to adjourn on December 7, 2017. The claims made by Deer Valley pursuant to the prerogative writ complaint are not addressed as part of this report.

2 — Notice

Counsel for the Township has provided a copy of the notice for the December 14, 2017 Final Compliance Hearing and a copy of the affidavits of publication of said notice. The notice was published on November 12, 2017 in *The Times of Trenton*, on November 10, 2017 in the *Hopewell Valley News*, and on November 12, 2017 in *The Trentonian*. The notice was also posted on the Township's official bulletin board and website on November 7, 2017. The notice properly summarized the purpose of the hearing and advised interested members of the public of the availability and locations for inspection of the Township's Third Round Housing Element and Fair Share Plan. The notice further invited written comments, objections, or notice of intent to appear at the hearing to provide comment, on or before November 30, 2017. Excluding the Deer Valley actions cited above, no written comments or notice of intent to appear have been received as of the November 30, 2017 date set forth in the notice.

As cited in Section 5 below, the Township has revised and supplemented its November 16, 2017 Third Round Housing Element and Fair Share Plan, as well as the supporting information posted on its website related to same, subsequent to the publication of the notice of the final compliance hearing. While sufficient information has been available to this office in the preparation of this report to support the conclusions and recommendations contained herein, the Township should be prepared to address, and the Court may be required to determine, the

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timeliness and adequacy of the information available to the other participants in this process. Much of the information put forth by the Township supporting the conclusions contained in *The Third Round Housing Element and Fair Share Plan* adopted by the Planning Board on November 16, 2017 is either found in voluminous appendices to the amended *Third Round Housing Element and Fair Share Plan*, which was not available in final form until on or about November 23, 2017, or in documents on the Township's website.

3 — Review Context

The New Jersey Supreme Court, in its Mount Laurel IV decision (In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 [2015]), cited COAH's inability to adopt constitutional rules for the "third round" (i.e., 1999 to 2025) to guide municipal affordable housing compliance. The Court invalidated two attempts by COAH to adopt third round rules, but left relatively intact COAH's second round rules (i.e., N.J.A.C. 5:93). Trial Courts have continued to rely upon these second round rules in fairness and compliance hearings since the second round ended in 1999. I will rely primarily on COAH's second round rules in evaluating the Township's compliance plan to satisfy the affordable housing obligation established pursuant to the Settlement Agreements and approved pursuant to Your Honor's September 21, 2017 Order of Fairness and Preliminary Compliance. This report also addresses the Township's compliance with the terms of the four settlement agreements.

4 — Fair Share Obligation

Pursuant to the Court's September 21, 2017 Fairness and Preliminary Compliance Order, the following represents the Township's fair share obligation for the period from 1987 through July 1, 2025:

- Present Need (Rehabilitation Obligation): zero units
- Prior Round (1987–1999) Obligation: 520 units

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- Third Round (1999–2025) Obligation: 1,141 units

5 — Compliance Plan Analysis

On November 16, 2017, the Hopewell Township Planning Board adopted a *Third Round Housing Element and Fair Share Plan*, dated November 16, 2017 and prepared by the Hopewell Township Planning Board with the assistance of Banisch Associates, Inc. The Township has provided this office with a document entitled *Third Round Housing Element and Fair Share Plan*, prepared by the Hopewell Township Planning Board with the assistance of Banisch Associates, Inc., which bears the adoption date of November 16, 2017, and two revision dates, November 20, 2017 and November 23, 2017. The proposed revisions to Third Round Housing Element and Fair Share Plan adopted on November 16, 2017 do not involve any substantive changes to the Township's compliance plan. The Township has advised that the revised Third Round Housing Element and Fair Share Plan, bearing the latest revision date of November 23, 2017, was scheduled for a public hearing and anticipated adoption at the December 7, 2017 meeting of the Hopewell Township Planning Board. The analysis and comments that follow are with reference to the revised Third Round Housing Element and Fair Share Plan bearing the latest revision date of November 23, 2017 (hereafter referred to as the *HE&FSP*).

5.1 — Present Need (Rehab Obligation)

The Township's present need is zero. The Township does not require, nor proposes, a rehabilitation program; however, the draft Spending Plan contained in the HE&FSP contains several references to rehabilitation of units in the event eligible units are located. Should any eligible units be located and the Township opt to pursue a rehabilitation program, the details of the program (e.g. rehabilitation program manual, administrative agent, etc.) and an amendment to the Spending Plan would require Court approval. As an alternative, the Hopewell/FSHC Settlement Agreement provides the Township the right to participate in the Mercer

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County Residential Home Improvement program to rehabilitate eligible units that may be identified in the future.

5.2 — Prior Round Obligation

The Township's compliance plan for satisfaction of its 520-unit prior round obligation per Table 24 of the HE&FSP is replicated in the following Table 1.

Table 1: Prior Round Obligation Compliance Summary

Mechanism	Units	Bonus	Total
Substantial Compliance			
Substantial Compliance	46	—	46
Regional Contribution Agreement			
Trenton	198	—	198
Alternative Living Arrangements			
CIFA Group Home	4	4	8
Community Options	4	4	8
Homefront	3	3	6
Wrick Avenue	1	1	2
Minnietown Lane	2	—	2
Project Freedom	72	72	144
Accessory Apartments			
Accessory Apartments	-	1	1
100-Percent Affordable Developments			
Hopewell Gardens	100	15	115
Inclusionary Developments (Constructed)			
Brandon Farms	135	—	135
Pennington Pointe	5	—	5
Totals	524	99	669

Table 24 of the Township's HE&FSP appears to contain several errors. Table 24 lists the Wrick Avenue project, a one-unit, for-sale project, as generating one rental bonus credit for a total of 2 credits. The Township is not entitled to a rental bonus credit for this for-sale unit. The one accessory apartment is listed as a "bonus" unit, however, it should be listed in the "units" column. The 46-unit substantial compliance bonus is listed in "units" column, but would appear more appropriately placed in the "bonus" column or a separate column. The total of the rental bonus credits listed in Table 24 is actually 100, but is shown as 99, and the total credits listed actually total 670, but are shown as 669. The correct total of rental bonus

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credits should be 98 and the total of prior round credits is 669. The Township should make the necessary corrections to it's the HE&FSP at the time of the next amendment thereto. **(Condition 1)**

The body of the HE&FSP contains a very limited description of the individual components of the Township's prior round compliance plan, limited description of the current status of the individual components (e.g. built, under construction, dates of completion, etc.), and no documentation or references to documentation in support of the Township's claim to crediting for the individual components. The revised HE&FSP (11/23/2017) contains a voluminous appendix (Chapter VII – COAH Substantive Certification Information) containing correspondence, reports and copies of the staff reports and COAH resolutions granting substantive certification of the Township's prior round plan on January 8, 1996 and extended substantive certification on July 27, 2005. Based upon my review of the documents in "Chapter VII" and additional information provided by the Township, there is sufficient documentation to support the Township's claim for crediting for the following components of the prior round compliance plan:

- 46 substantial compliance bonus units/credits;
- 198 credits for regional contribution agreements completed with the City of Trenton;
- The CIFA — Group Home (4 credits/4 rental bonus credits);
- Community Options, Inc. — Special Needs Facility (4 credits/4 rental bonus credits);
- Homefront — TLC, Inc. Facility (3 units/3 rental bonus credits);
- Wrick Avenue — Family for-sale unit (1 unit)
- Minnietown Lane — Family for-sale units (2 units);
- Pennington Pointe — Age-restricted, for-sale units (5 units)
- Hopewell Gardens, a 100-percent affordable development;
- Brandon Farms — Family for-sale units (135 units);

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- 99 rental bonus credits as follows: 11 one-for-one credits for the 11 alternative living arrangement units; 73 one-for-one credits for 73 (of the 75) family rental units; and 15 one-for-one credits for the 15 special needs units in the Hopewell Gardens development.

While I am confident that adequate documentation can be provided, the Township should submit documentation to support its claim for crediting for the following prior round compliance plan components **(Condition 2)**:

- Project Freedom (72 units/72 rental bonus credits); and,
- Hopewell Gardens (Prior Round — 100 units/15 rental bonus credits)

The total number of units/credits claimed by the Township toward its 520-unit prior round obligation for the compliance mechanisms above is 669, resulting in a 149-unit surplus. The surplus units are to be carried forward toward the Township's third round obligation.

The prior round compliance plan set forth in the HE&FSP does not address the maximum age-restricted unit cap of 80 units. The Township should submit information addressing the prior round age-restricted unit cap or demonstrate that the cumulative compliance plan (prior round plus third round) is within the 25-percent age-restricted cap. **(Condition 3)**

The minimum prior round rental unit requirement is met where 130 rental units are required and 170 units are provided in the compliance plan. The prior round compliance plan does not exceed the rental bonus cap of 130 units where 99 rental bonus units are claimed.

5.3 — Third Round Obligation

The Township's compliance plan for satisfaction the 1,141-unit third round obligation is summarized in the following Table 2.

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Table 2: Third Round Obligation Compliance Summary

Mechanism	Units	Bonus Credits	Total Credits
Prior Round Surplus			
Prior Round Surplus	149	—	149
100-Percent Affordable Developments			
Hopewell Gardens	49	—	49
Inclusionary Developments (Proposed)			
Zaitz	78	78	156
CF Hopewell	430	185	615
CF Hopewell/Capital Health	35	—	35
Woodmont	48	48	96
BMS	50	—	50
Enourato	12	5	17
Totals	851	316	1,167

The Township's third round compliance plan provides for a total of 1,167 units/credits (26 units/credits in excess of the 1,141 units third round obligation) and includes: 149 units/credits carried forward from the prior round; 49 additional age-restricted rental units in the Hopewell Gardens Development not claimed in the prior round; and, 316 rental bonus credits, leaving 653 units to be constructed in six inclusionary development sites.

The body of the third round HE&FSP contains no description or analysis of any of the six individual inclusionary development sites, but rather simply cites the Planning Board's examination of the suitability of the inclusionary sites in the compliance plan and the conclusion that all of the sites are approvable, available, developable, and suitable. Chapter V – Site Suitability Information was subsequently added to the HE&FS adopted on November 16, 2017 and contains site and proposed development information including, but not limited to, site and proposed development information, environmental constraint mapping, developable area determinations, and draft zoning ordinance or redevelopment plans for the six individual inclusionary sites. The following comments are provided relative to the six inclusionary development sites:

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- **Bristol Myers Squibb (BMS)**

- The Township claims 50 credits for potential development of currently undeveloped portions of the existing BMS site. Chapter V – Site Suitability Information contains a draft zoning amendment permitting garden apartment and townhomes as a conditional use on the BMS site, conditioned upon the set aside of 20 percent of the total number of for-sale units developed, or a minimum of 15 percent of the total number of units for rental units for very-low, low and moderate-income households. The ordinance provides that a minimum of 50 affordable units be set aside and the total number of units on the site would be capped at 250. The draft ordinance raises a number of issues to be addressed by the Township.
- Since the proposed zoning amendment to allow limited inclusionary residential development on the undeveloped portions of the BMS site is optional there is a significant possibility that this development may not occur. The HE&FSP addresses this issue in a footnote whereby in the event the 50-unit inclusionary development on the BMS site is not realized at the time of mid-point realistic opportunity review (July 1, 2020), the Township is required to amend its HE&FSP to address the gap in its plan. It is also noted that the draft redevelopment plan for the Zaitz site includes language to the effect that 30 additional affordable units may be constructed on the Zaitz tract. The Township should provide details of this “back-up plan” in the event the affordable units on the BMS site are not realistically anticipated on July 1, 2020. **(Condition 4)**
- The provisions of zoning amendment requiring a minimum of 50 affordable units and capping the total number of units at 250 effectively creates a 20-percent set aside for rental development. This coupled with the bedroom restrictions on the market rate units imposed by the

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ordinance may deter the inclusionary development of the BMS site. The Township should address these aspects of the ordinance. **(Condition 5)**

- The site suitability information for the Bristol Myers Squibb site, which is provided in Chapter V of the HE&FSP, also provides an Environmental Constraints map and information indicating the “developable” (i.e., environmentally unconstrained) area of the site, is 332.6 acres, which does not appear to reconcile with the area shown as “Future Developable Area.” Presumably “future developable area” is that portion of the site intended for development under the conditional use standards of the proposed ordinance. The site is indicated to have sewer and water service. The Township should clarify whether there is sufficient area within the area designated as the “Future Developable Area” to accommodate 250 units under the standards set forth in the proposed ordinance. **(Condition 6)**
- Until such time as the concerns raised and information requested are addressed by the Township, I cannot conclude that this compliance mechanism represents a realistic opportunity for the development of the 50 affordable units proposed under the Township’s HE&FSP; however, I am confident these issues can be satisfactorily resolved.
- Section V of the draft ordinance establishing the inclusionary development conditional use on the BMS site also contains the Township-wide mandatory affordable housing set-aside provisions, required to be adopted pursuant to Section 6. of the Settlement Agreement. The Township should adopt these provisions as a separate Ordinance as amendments to the remainder of the ordinance per the comments above may take some time and affordable housing opportunities may be lost in any delay. **(Condition 7)**

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- **Zaitz**

- The Township claims 78 affordable family rental units and 78 rental bonus credits for the Township-owned Zaitz tract. The development of the site is governed by the terms of Section 11 of the Settlement Agreement between Hopewell Township and FSHC. The Settlement Agreement requires the Township to adopt a redevelopment plan, designate a redeveloper, and approve a redevelopment agreement for the property within 120 days of the Court's approval of the Settlement Agreement. The body of the Township's HE&FSP is silent as to any details pertaining to the project or status of same. Chapter V of the HE&FSP, Site Suitability Information — Zaitz, provides some limited site information, an Environmental Constraints map, a draft of an Ordinance adopting the Redevelopment Plan for the Zaitz area, and a draft Redevelopment Plan for Block 85, lots 3,4, 5.01, 7 and 24 (Zaitz Tract).
- Based upon the information contained in Chapter V, the site has access to sewer and water service and only limited areas with environmental constraints. The total developable area of the site is indicated to be 56 acres. The information in Chapter V, including the draft Redevelopment Plan sufficiently address site suitability. I am of the opinion that the site represents a realistic opportunity for the development of the 78 affordable family rental units claimed by the Township. The draft Redevelopment Plan requires the provision of 30 additional affordable units on the site in the event the inclusionary development proposed on the BMS site is unrealized. Documentation of the adoption of the draft Redevelopment Plan should be provided. Details of the "back-up plan" should be specified in the Redevelopment Plan and Redeveloper Agreement and subject to approval by the Court. **(Condition 8)**

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- **CF Hopewell and CF Hopewell/Capital Health**
 - The Township claims 430 affordable units based upon a 20-percent set-aside for the residential component of a redevelopment plan for the various holdings controlled by, or to be controlled by CF Hopewell (subsequent to a land swap with the Township and modifications of the sewer service area). A minimum of 185 of the 430 affordable units are to family rental units and a maximum of 15-percent of the affordable units are to be age-restricted.
 - An additional 35 units are claimed for the mandated Medicaid beds in a proposed continuing care retirement community (CCRC) to be developed by CF Hopewell on lands currently owned by Capital Health Systems (CHS). The CF Hopewell holdings and lands owned are governed by the provisions of the June 12, 2017 Hopewell/CF Hopewell Settlement Agreement and the June 13, 2017 Addendum thereto and the Supplemental Agreement of July 13, 2017. The body of the HE&FSP provides no description of the proposed development of the CF Hopewell and CF Hopewell/Capital Holdings properties or current status.
 - Chapter V — Site Suitability Information: CF Hopewell CC&L, LLC, of the HE&FSP contains the following: a limited “Site Suitability Information Sheet”; an “Environmental Constraints” map and parcel-by-parcel constraints analysis; a draft ordinance adopting the CF Hopewell Redevelopment Plan; and, a draft Redevelopment Plan for all of the CF Hopewell involved properties. The Site Suitability Information sheet indicates the “net area for development” is 56.10 acres, which is an obvious error. The parcel-by-parcel constraints analysis on the Environmental Constraints indicates the cumulative “developable” area to be 379.66 acres.
 - The draft Redevelopment Plan and Site Suitability Information contained in Chapter V of the HE&FSP in my opinion sufficiently address site

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suitability and, therefore, create the realistic opportunity for the creation of the affordable housing units set forth in the Township's HE&FSP.

However, I recommend that the following documentation should be submitted to the Court within one year as a condition of any forthcoming grant of a Judgment of Compliance and Repose: adoption of the draft Redevelopment Plan; approved Redeveloper Agreements; approvals of the modifications to the sewer service area; and, completion of the land swap between the Township and CF Hopewell. **(Condition 9)**

- **Woodmont**

- The Township claims 48 family rental units in a 300-unit inclusionary development on the "Klockner Tract." The project is governed by the provisions of the June 12, 2017 Woodmont Settlement Agreement and the June 13, 2017 Addendum thereto and the Supplemental Agreement of July 13, 2017.
- The body of the HE&FSP contains no description of the proposed project or current status. Chapter V — Site Suitability Information: Woodmont contains the following: a Site Suitability Information sheet; an Environmental Constraints map; a parcel-by-parcel constraints analysis; an executed copy of Ordinance No. 17-1666 adopting, on October 23, 2017, the Woodmont Redevelopment Plan, bearing the date of October 2, 2017; and, a copy of the Redevelopment Plan for Block 78.09, Lot 21 (the Woodmont property).
- The Site Suitability Information sheet indicates the "net area for development" to be 15 acres with available sewer and water service. The site suitability information sheet and adopted redevelopment plan sufficiently address site suitability and, therefore, I am of the opinion that the site creates a reasonable opportunity for the development of the 48 affordable units set forth in the Township's HE&FSP. As a condition of any forthcoming grant of Judgment and Repose, the Township should provide

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the Court with documentation of the execution of the Redeveloper Agreement. **(Condition 10)**

- **Enourato**

- The Township claims 12 units toward its third round obligation for the rezoning of the Enourato Site so as to provide for inclusionary development at a density of 8 dwelling units per acre with a 12-unit affordable set aside. The proposed affordable units are to be family rental. The project is governed by the Enourato/Lennar Settlement Agreement dated June 12, 2017 and the June 13, 2017 Addendum thereto and the Supplemental Agreement of July 13, 2017.
- The body of the HE&FSP contains no description of the project. Chapter V — Site Suitability Information: Enourato of the HE&FSP contains the following: a Site Suitability Information sheet; an Environmental Constraints map and parcel constraints analysis; and, a copy of a draft ordinance rezoning the property to permit multi-family residential development. The Site Suitability Information sheet indicates the “net area for development” to be 7.0 acres with available sewer and water service. The draft ordinance would permit the development of a maximum of 88 units, of which a minimum of 12 units are to be affordable units pursuant to the Settlement Agreement. The information contained in Chapter V of the HE&FSP related to this site sufficiently addresses site suitability and, therefore, I am of the opinion that the site represents a realistic opportunity for the development of affordable housing as set forth in the Township’s third round compliance plan. As a condition of any forthcoming grant of a Judgment of Compliance and Repose, the Township should document the adoption of the draft ordinance rezoning the Enourato property. **(Condition 11)**

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The total number of units/credits claimed by the Township toward its 1,141-unit third round obligation for the compliance mechanisms above is 1,167, which results in a 26-unit excess that is, presumably, to be carried forward to a future round.

5.4 — Rental Unit Requirement

The Township correctly calculates the rental unit requirement pursuant to COAH rules to be 130 units for the prior round and 285 units for the third round. The Township's compliance plan provides 170 units in the prior round and 485 units in the third satisfying this requirement.

5.5 — Family Units

The Township correctly calculates its third round family unit requirement to be 571 units, but provides no details as to how this requirement is met. The Township should submit details as to satisfaction of this requirement. **(Condition 12)**

5.6 — Low-Moderate Income Split and Very-Low Income Requirements

All proposed development set forth in the Township's third round compliance plan, including potential units from the Township-wide mandatory set aside ordinance, are subject to either zoning ordinance or settlement agreement provisions consistent with, or exceeding, these requirements.

5.7 — Age-Restricted Units Cap

The Township's HE&FSP prior round compliance plan contains no calculation of the prior round age-restricted unit cap or the number of age-restricted units in the prior round plan. The prior round age-restricted cap is 80 units and the plan would appear to contain 90 age-restricted units, thus exceeding the cap by 10 units. The third round age-restricted cap is correctly calculated as 285 units while the third round plan, though unstated, appears to include at least 94 age-restricted units, with the potential for 15 additional Medicaid beds in the CF Hopewell /CF Hopewell/Capital Health Systems CCRC facility, 65 additional age-restricted units in

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the various CF Hopewell inclusionary developments, and 50 potentially age-restricted units on the BMS site. The potential total of 224 third round age-restricted units is 61 units below the 285 unit third round cap. The combined prior and third round age-restricted cap is 365 units and the cumulative number of potential age-restricted units is 314. Given the fact that the cumulative number of age-restricted units is 51 units below the combined prior and third round age-restricted units cap, I am of the opinion that the fact that the prior round age-restricted units cap, established pursuant to COAH rules, is technically exceeded is inconsequential.

5.8 — Rental Bonus Credits

The HE&FSP correctly calculates the maximum number of rental bonus credits the Township may be entitled to pursuant to COAH rules to be 130 in the prior round and 285 in the third round, for a cumulative total of 415. The Township claims 99 rental bonus credits toward its prior round obligation and 316 rental bonus credits toward its third round obligation for a combined total of 415 rental bonus credits. While the combined total matches the combined rental bonus units permitted under COAH rules, the 316 units claimed versus the 285 unit third round cap is technically inconsistent. Given that the combined cap is met, the fact that the third round cap may technically be exceeded in my opinion is inconsequential.

6 — Other HE&FSP Requirements

6.1 — Spending Plan

Chapter IV of the HE&FSP contains a draft Spending Plan bearing the date of November 14, 2017. The draft spending plan provides that at least 30 percent of the existing and projected trust revenue is to be dedicated to render units more affordable (affordability assistance) and one third of that total is to be used to render units more affordable to very-low income households. The spending plan provides that the affordability assistance is to include association fee assistance,

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mortgage assistance, and rental assistance. The spending plan provides 20 percent of existing and projected trust fund revenue is to be dedicated to administrative expenses and 50 percent (\$855,012) for "additional housing activity." As a condition **(Condition 13)** of any forthcoming grant of a Judgment of Compliance and Repose the Township should amend the draft spending plan to address the following:

1. The Township should document the establishment of the various establishment of the various affordability assistance programs including program manuals and designate an administrative agent(s) responsible for the administration of the programs;
2. The Township should amend the spending plan to detail the use of 50 percent of the trust fund revenue designated for "additional housing activity" in the draft spending plan.
3. After satisfactorily addressing items 1 and 2, above, the Governing Body should adopt the Spending Plan.

6.2 — Affirmative Marketing Plan

The Township's HE&FSP does not contain an updated Affirmative Marketing Plan. The Township should prepare a draft of an amended affirmative marketing plan for the various components of its compliance plan. Such amendments shall include the provisions cited in Section 9. of the Settlement Agreement. Upon approval of the draft plan the Township should adopt same. **(Condition 14)**

6.3 — Affordable Housing Ordinance

Chapter VI of the HE&FSP contains a draft of an amended Affordable Housing Ordinance which is acceptable as to form and content. The Township should submit documentation of adoption of the draft affordable housing ordinance. **(Condition 15)**

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6.4 — Reporting and Monitoring Requirements

The Township is reminded of the monitoring and reporting requirements set forth in the Settlement Agreement and it is recommended that compliance with these requirements be made a condition of any forthcoming Judgment of Compliance and Repose. **(Condition 16)**

6.5 — Housing Liaison/Administrative Agent(s)

The Township should submit documentation that a qualified Housing Liaison and Administrative Agent(s) have been designated to implement and administer the various components and programs comprising its compliance plan. **(Condition 17)**

7 — Conclusions and Recommendations

The Township, FSHC, and the various parties to the Settlement Agreements, seek the Court's approval of either a Judgment of Compliance and Repose, or 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 and 5:97, 221 N.J. 1 (2015).

Since reaching a settlement the various parties to the Settlement Agreements, particularly Hopewell Township, have made remarkable progress in a short time, to move forward the various components of its third round compliance plan and for that, should be commended. I am, therefore, confident, notwithstanding the significant number of conditions cited herein, that these conditions can be satisfied by the Township, and at that time, the Township's compliance plan will create a reasonable opportunity for the creation of affordable housing to satisfy the Township's affordable housing obligation for the period 1987 through July 1, 2025.

I, therefore, recommend that the Court grant Hopewell Township a Judgment of Compliance and Repose, or the judicial equivalent of substantive certification sought in this matter, subject to satisfying the conditions herein or as may be deemed

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appropriate after conclusion of the Final Compliance Hearing. I recommend the Township be required to satisfy these conditions within 90 days of the date of the Order in this matter, or as otherwise extended for reasonable cause.