

WILENTZ, GOLDMAN & SPITZER P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, New Jersey 07075
Tel.: (732) 855-6039
Fax: (732) 726-6560
Attorneys for Plaintiff
Attorney ID No. 017281995
Donna M. Jennings, Esq.

```

-----X
                                     : SUPERIOR COURT OF NEW JERSEY
JACKSON TRAILS, LLC, a New         : LAW DIVISION
Jersey limited liability          : OCEAN COUNTY
corporation,                      :
                                     : DOCKET NO.:
           Plaintiff,              :
v.                                  :           CIVIL ACTION
                                     :
TOWNSHIP OF JACKSON, a New        : VERIFIED COMPLAINT IN LIEU OF
Jersey municipal corporation      : PREROGATIVE WRITS
and body politic; and the        :
JACKSON TOWNSHIP PLANNING        : MOUNT LAUREL / AFFORDABLE
BOARD, a municipal agency.       : HOUSING
           Defendants.           :
-----X

```

COMPLAINT

Plaintiff, Jackson Trails, LLC, by and through counsel, complains of Defendants, the Township of Jackson and the Jackson Township Planning Board (collectively, "Defendants"), as follows:

PARTIES

1. Plaintiff, Jackson Trails, LLC ("Plaintiff"), is a Limited Liability Company located in Ocean County, New Jersey, with an address of 305 Main Street, Lakewood, New Jersey 08701.

2. Defendant, Township of Jackson, New Jersey (the "Township" or "Jackson Township"), is a municipal corporation of

the State of New Jersey, having offices at 95 West Veterans Highway, Jackson, New Jersey.

3. Defendant, Jackson Township Planning Board (the "Planning Board"), is a municipal agency organized pursuant to N.J.S.A. 40:55D-69, with its principle place of business at 95 West Veterans Highway, Jackson, New Jersey.

PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS

A. Plaintiff's Planning Board Application

4. Plaintiff owns property located in Jackson Township's Residential Growth 3 zoning district (the "RG-3 Zone") and identified as Block 23001, Lots 22-25 and 27-29 on the Jackson Township Tax Map, and is the contract purchaser of Lot 26 in Block 23001 (collectively, the "Property").

5. Plaintiff intends to develop the Property as an inclusionary residential housing development with 367 single-family homes, 92 multi-family units, and a house of worship (the "Development").

6. Notably, the construction of 92 multi-family units would satisfy a portion of the Township's Mount Laurel obligation, as described herein below.

7. On August 10, 2018, Plaintiff submitted an application to the Planning Board seeking conditional use approval, preliminary and final major subdivision approval, and

preliminary and final major site plan approval for the Development on the Property (the "Application").

8. The Development is permitted as a conditional use in the RG-3 Zone.

9. The Application was fully compliant with the Township's Land Use Ordinance, and so no bulk variances were required for the Development.

10. The Application required a design waiver with respect to lighting in order to permit a lower lighting level than otherwise required by the Township's Land Use Ordinance, as directed by the Planning Board and its professionals.

11. The Planning Board held two (2) public hearings on the Application on August 19, 2019 and October 7, 2019.

12. At the end of the October 7, 2019 public hearing, a motion was made to grant preliminary major site plan and subdivision approval of the Development.

13. A vote was then taken by the Planning Board, wherein the motion to grant the Application was tied at four votes to approve and four votes to deny.

14. The tied vote was a denial of the Application pursuant to N.J.S.A. 40:55D-9(a).

15. On November 22, 2019, Plaintiff filed a Motion for Reconsideration, requesting that the Planning Board reconsider its decision to deny its fully-conforming application.

16. On December 2, 2019, a third public hearing was held by the Planning Board with respect to the Application.

17. The Planning Board failed to act on the Motion for Reconsideration.

18. Later on in the public hearing, the Planning Board adopted Resolution 2019-31, denying Plaintiff's Application. (See Exhibit G).

B. Plaintiff's Federal Action and Dismissal of Count XIV

19. Plaintiff then filed a Complaint in the United States District Court for the District of New Jersey - Civ. No. 3:20-cv-01150 - alleging, among other things, in Count XIII of the Complaint that the Planning Board's denial of the Application was arbitrary, capricious, and unreasonable.

20. In Count XIV, the Complaint also alleged that the denial of the Application constituted a violation of the Township's Housing Element & Fair Share Plan (the "HEFSP") (See Exhibit A), the Township's Settlement Agreement with Fair Share Housing Center ("FSHC") (See Exhibit B), and the Judgment of Repose entered on August 16, 2017 (the "JOR"). (See Exhibit C).

21. On March 13, 2020, the Township and the Planning Board (collectively, the "Defendants") moved to dismiss Counts XIII and XIV of Plaintiff's Complaint.

22. On October 9, 2020, the United States District Court (the "Court") entered an Order denying in part, and granting in part, the Defendants' motion. (See Exhibit D).

23. Particularly, the Court elected to maintain jurisdiction over Count XIII; however, the Court declined to exercise supplemental jurisdiction over Count XIV.

24. Thus, Defendants' motion, to the extent that it sought dismissal of Count XIV, was granted without prejudice.

25. The Court concluded:

"[Plaintiff] contends that even though Count Fourteen presents a complex issue of state law, the Court should nevertheless retain jurisdiction because otherwise there will be 'two parallel lawsuits involving the same nucleus of facts in two separate courts.' The Court recognizes that considerations of convenience and judicial economy weigh in favor of retaining jurisdiction. Principles of comity, however, outweigh these concerns. 'The New Jersey courts are critical actors in the *Mt. Laurel* system' that 'have developed and implemented a complex, fact-intensive process for carrying out the New Jersey Supreme Court's mandate, and they continue to develop and implement that process today.'"

[See Exhibit D, at p. 16 (citations omitted)].

C. **Jackson Township's Declaratory Judgment Action and Settlement Agreement**

26. Prior to Plaintiff's Application, on or about July 7, 2015, Jackson Township filed a declaratory judgment action seeking an order concluding, among other things, that the Township has provided for its fair share of the regional need

for low and moderate income housing pursuant to the New Jersey Supreme Court's decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"). See In the Matter of the Application of the Township of Jackson, Docket No. OCN-L-1879-15 (the "DJ Action").

27. At the time it filed the DJ Action, Jackson Township faced the potential of having to provide over 3,500 affordable housing units to fulfill its fair share obligations to provide low and moderate income housing pursuant to the Mount Laurel doctrine.

28. However, on or about October 25, 2016, Jackson Township reached a settlement agreement with the FSHC and Highview Homes (the "Settlement Agreement"), the latter being an intervener in the DJ Action.

29. The Settlement Agreement established Jackson Township's affordable housing obligations as follows:

- a. Rehabilitation Share: 28 units;
- b. Prior Round Obligation: 1,247 units; and
- c. Third Round Prospective Need: 1,250 units.

[See Exhibit B, at ¶ 3].

30. As noted in the Settlement Agreement, Jackson Township's Third Round Prospective Need, totaling 1,250 units, was significantly decreased by virtue of the Settlement

Agreement, reducing Jackson's affordable housing obligation by more than half. Ibid.

31. The Settlement Agreement also sets forth various mechanisms by which the Township can satisfy its Mount Laurel obligations, including the use of bonus credits, the rehabilitation of dilapidated housing units, and proposed new construction within the Township. See Exhibit B, at ¶¶ 4-6.

32. The Settlement Agreement requires, among other things, that 20% of the total housing units of any development that is to take place within the Regional Growth Zones (the "RG Zones") - specifically, the RG-2 and RG-3 Zones - be low or moderate income housing. Id. at ¶ 6.

33. Notably, Plaintiff's Property is located in the RG-3 Zone.

34. The RG-3 Zone is comprised of only eleven (11) lots, totaling 133.34 acres.

35. Plaintiff's Property comprises eight (8) of those eleven (11) lots, totaling 129.8 acres, and further comprises 97% of the total acreage of the entire RG-3 Zone.

36. On December 31, 2016, the Superior Court of New Jersey determined that the Settlement Agreement is "fair and adequately protects the interests of low and moderate-income persons within Jackson's housing region[.]" See Exhibit E.

37. The December 31, 2016 Order then directed the Township to create and submit a HEFSP for the court to review and determine whether the proposed plan is constitutionally compliant and provides a fair and reasonable opportunity for the Township to meet its Mount Laurel obligations.

D. Jackson Township's HEFSP and Judgment of Compliance and Repose

38. Jackson Township's HEFSP, dated June 8, 2017, sets forth specifically how the Township proposed to satisfy its Third Round Prospective Need of 1,250 units. See Exhibit A, at p. 27.

39. An important component of the Township's HEFSP is the Township's reliance upon the 290 affordable units that are to be produced by development within the RG-2 Zone (once site nos. 12, 13, and 14 are discounted) and RG-3 Zone to assist in the satisfaction of the Township's Third Round obligation. See Exhibit A, at p. 27; see also, Exhibit B, at ¶ 6(G).

40. As a result of the Settlement Agreement and the HEFSP, Jackson Township was able to obtain a Judgment of Compliance and Repose ("JOR") from the New Jersey Superior Court, Law Division, on August 16, 2017, which provided judicial approval of the Township's HEFSP and "immunity to the Township and the Planning Board from all Mount Laurel litigation through July 1, 2025." See Exhibit C, at p. 7, ¶ J.

41. The JOR stated that the HEFSP "adequately meets the Township's obligation to provide a realistic opportunity for the provision of low and moderate-income housing and constitutes an appropriate means to fully satisfy the Township's Mount Laurel obligation." Id. at p. 6, ¶ C.

42. Specifically, to meet the Township's 1,250-unit Third Round obligation, the Township is obligated, per the JOR, to ensure that "290 units be developed in the remainder of the RG-2 and RG-3 zones in inclusionary developments with a 20% mandatory set-aside." Id. at p. 4, ¶ 8(8).

43. The JOR further requires that "[t]he Township shall fully implement its housing element and fair share plan." Id. at p. 6, ¶ D.

44. To facilitate the Township's compliance, the JOR makes clear that:

"The Planning Board and all its respective agents, employees and representatives shall make *bona fide* efforts to implement and expedite the components of the Township's compliance package which are within the control of the Planning Board, including *bona fide* efforts to expedite all Planning Board development approvals of all inclusionary developers identified in the housing element and HEFSP to facilitate the provision of affordable housing."

[Id. at p. 7, ¶ G].

45. Despite this obligation, the Planning Board flouted the terms of the Settlement Agreement, HEFSP, and the JOR by

denying Plaintiff' fully conforming Application to develop, within the RG-3 Zone, an inclusionary residential Development that will include 92 affordable housing units, satisfying a portion of the Township's 290-unit obligation within the RG-2 and RG-3 Zones.

46. This is not the first time the Planning Board has blatantly ignored an Order of the court.

47. In El at Jackson, LLC v. Township of Jackson Planning Board, Docket No. OCN-L-271-20PW, the Plaintiff, El at Jackson, filed a Verified Complaint seeking to, among other things, vacate the JOR and revoke Jackson Township's immunity from builder's remedy litigation as conferred by the JOR.

48. El at Jackson's request was based, in part, on the fact that the Planning Board denied El at Jackson's fully conforming application for development within the Township of Jackson.

49. On June 18, 2020, in deciding El at Jackson's motion to enforce its rights as a litigant, the Superior Court of New Jersey, Law Division, noted as follows:

Following the Planning Board's denial[,] this litigation then ensued. At a conference with the parties at the Ocean County Courthouse earlier this year the parties entered into settlement negotiations. As a result of those negotiations an agreement was reached whereby the Township Planning Board would agree to meet in closed session to confirm the Settlement. The Board pursuant to the proposal which was

reduced to an Order entered by the Court on April 7, 2020 could either agree to stand ... on its denial; whereupon the matter would then be remanded to the Court for a decision on El's motion to enforce its rights or the Board could agree to vacate its denial and then grant preliminary and final subdivision and site plan approval subject to certain provisions outlined in the April 7th Order.

[See Exhibit F, at 11:11-12:1].

50. However, the Planning Board did not do as instructed by the Court.

51. Instead:

"[T]he Planning Board ... agreed to vacate its denial and to grant preliminary and major subdivision and site plan approval ... However, due to reasons not fully explained to the Court either in its briefing or at oral argument the Board withheld final approval to both the subdivision and the site plan application. The Planning Board also placed the condition with regard to the issuance of CO's with regard to certain off tract improvements regarding the construction of a connector road and other related issues to that. That also is not in conformance - that condition was not in conformance with the April 7, 2020 Order which was again the culmination of settlement negotiations among counsel and then approved by the Court."

[Id. at 13:2-18].

52. In short, "the Board chose to fashion its own remedy, a remedy in violation of both the law and the Court Order." Id. at 14:6-8.

53. The Court eventually decided it would not grant El at Jackson's request to vacate the JOR and revoke Jackson

Township's immunity from builder's remedy litigation "at this time". Id. at 17:20-22.

54. The Court continued:

While the Planning Board did not fully conform with the provisions of the April 7, 2020 Order in particular by withholding final approval and by imposing an improper condition as it relates to the connector road and other off site improvements, the view is the Township's action is generally compliant. The Court's indulgence has its limits, however, and El may renew its application in the future should events warrant."

[Id. at 17:23-18:5 (emphasis added)].

COUNT I

Violation of Jackson Township's Mount Laurel Obligations

55. Plaintiff repeats and re-alleges each of the allegations contained in the preceding paragraphs of this Complaint as though set forth fully herein.

56. Through the decisions of Southern Burlington County, NAACP v. Twp. of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I") and Southern Burlington County, NAACP v. Twp. of Mt. Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Supreme Court established that municipal exclusionary planning and zoning practices that prevent affordable housing opportunities for individuals who are economically disadvantaged are unconstitutional.

57. In light of the statewide need for the development of affordable housing, the New Jersey Supreme Court ordered that municipalities must take affirmative steps to provide realistic opportunities for their "fair share" of the region's need for housing affordable to low and moderate income families through amendment to municipal zoning and land use regulations.

58. In response to the New Jersey Supreme Court's mandate, the Legislature enacted the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., thereby creating and authorizing the Council on Affordable Housing ("COAH") to evaluate the statewide need for affordable housing, divide that statewide need by region, and review and approve local municipal housing plans for the provision of affordable housing in satisfaction of the overall regional need.

59. In 2015, with the issuance of the Mount Laurel IV decision, the New Jersey Supreme Court declared COAH moribund and transferred the evaluation of municipal compliance with the constitutional Mount Laurel obligation from COAH to the New Jersey trial courts.

60. The Mount Laurel IV opinion authorized New Jersey municipalities to file declaratory judgment actions seeking to comply with their Mount Laurel obligations and, as noted above, Jackson Township filed such an action, *i.e.*, the DJ Action referenced above.

61. The Township's July 7, 2015 DJ Action was thus necessary in order for the Township to protect itself against builder's remedy lawsuits, which protection it ultimately obtained through the JOR until 2025.

62. The Township initially faced the potential of having to provide for over 3,500 affordable housing units to fulfill its total Mount Laurel obligation for the Third Round alone.

63. However, through the execution of the Settlement Agreement, the Township was able to reduce its Third Round obligation by more than 50%, *i.e.*, to only 1,250 affordable housing units, provided that it comply with the terms of the Settlement Agreement and the JOR which required implementation of the HEFSP.

64. An important component of the HEFSP was the Township's development of 290 affordable units in the RG-2 and RG-3 Zones.

65. The Township expressly relied on the development of the 290 affordable units within the RG-2 Zone and RG-3 Zone, the latter where the Property is located, when it entered into the Settlement Agreement and obtained the subsequent issuance of the JOR in the Township's DJ Action.

66. However, contrary to the terms of the Settlement Agreement, the HEFSP, and said JOR, the Planning Board denied Plaintiff' fully conforming Application to develop, within the RG-3 Zone, an inclusionary residential Development that will

include 92 affordable housing units, satisfying a portion Township's 290-unit obligation within the RG-2 and RG-3 Zones.

67. The Resolution denying Plaintiff's Application constitutes a direct violation of the terms of the Settlement Agreement, the HEFSP, and the JOR, as well as the Township's obligations of good faith and fair dealing in the discharge of its obligations associated with the implementation of the Settlement Agreement.

68. The Board's denial renders the Township's compliance with its Mount Laurel obligations to be deficient by at least 92 affordable housing units.

69. In addition, the JOR specifically directed the Planning Board to "make *bona fide* efforts to implement and expedite the components of the Township's compliance package which are within the control of the Planning Board" specifically "including *bona fide* efforts to expedite all Planning Board development approvals of all inclusionary developers identified in the housing element and HEFSP to facilitate the provision of affordable housing."

70. Plaintiff provided sufficient evidence demonstrating complete compliance with the Township's Land Use Ordinance, including but not limited to the specific area, dimensional, and setback requirements of the RG-3 Zone, and RSIS standards.

71. Thus, for the reasons expressed above, the Township and the Planning Board violated the JOR mandate to "facilitate the

provision of affordable housing'" and violated the Township's Mount Laurel obligations pursuant to the Settlement Agreement, the HEFSP, and the JOR when it denied the Application.

72. The Court's authority to appoint a hearing officer has been specifically authorized by the Appellate Division in Cranford Development Associates, LLC v. Twp. of Cranford, 445 N.J. Super. 220 (App. Div. 2016), wherein bad faith municipal behavior was found to warrant a court-supervised approach to hearing and deciding the litigant's affordable housing obligation.

73. As in Cranford, given the Defendants' actions and given the Planning Board's illegal, baseless denial of Plaintiff's fully conforming Application, the Court is justified in appointing a hearing examiner to hear and decide the Application, including any further Application for relief or approval to any component of the Development.

WHEREFORE, Plaintiff demands entry of judgment as follows:

- a. Declaring that the Defendants are in violation of the terms of the Settlement Agreement, HEFSP, and Judgment of Compliance and Repose;
- b. Declaring Jackson's Land Use Ordinance non-compliant, and authorizing Plaintiff to file a builder's remedy lawsuit against the Township;

- c. Appointing a hearing examiner with authority, under the auspices of the Court, to hear all affordable housing applications, including Plaintiff's Application, and any other municipal applications or relief requested or required.
- d. Awarding Plaintiff reasonable attorneys' fees and costs in connection with this litigation; and
- e. Awarding such further relief as the Court deems just and proper.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiff,
Plaintiff, LLC

By: 

DONNA M. JENNINGS, ESQ.

Dated: November 6, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Donna M. Jennings, Esq., of Wilentz, Goldman & Spitzer, P.A., is hereby designated as trial counsel for the Plaintiff, Jackson Trails, LLC, in this matter.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiff,
Jackson Trails, LLC

By: 

DONNA M. JENNINGS, ESQ.

Dated: November 6, 2020

R. 4:5-1 CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any court or any pending arbitration proceeding, except for an action pending in the United States District Court for the District of New Jersey - Civ. No. 3:20-cv-01150. I further certify that Fair Share Housing Center may have an interest in this action and has been served with this Complaint and has been given an opportunity to intervene. Other than that I know of no other parties who should be joined in this action pursuant to R. 4:28, or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiff,
Jackson Trails, LLC

By: 

DONNA M. JENNINGS, ESQ.

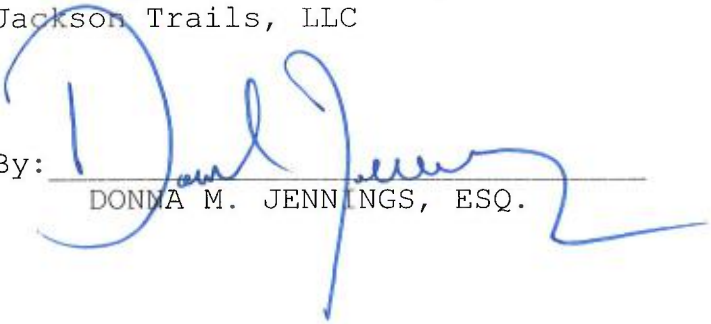
Dated: November 6, 2020

CERTIFICATION PURSUANT TO R. 4:69-4

I hereby certify that all necessary transcripts of proceedings have been ordered and will be submitted to the Court and served on the Defendants in accordance with the Court's direction.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiff,
Jackson Trails, LLC

By:



DONNA M. JENNINGS, ESQ.

Dated: November 6, 2020

VERIFICATION

STATE OF NEW JERSEY

:SS

COUNTY OF OCEAN

MORDECHAI EICHORN, of full age, certifies:

1. I am the Managing Member of the Plaintiff, Jackson Trails, LLC, in this matter.

2. I have read the following Complaint and I am familiar with the contents thereof.

3. The matters and statements set forth in said Complaint are true based upon my personal knowledge.

I certify that the foregoing statements made by me are true. I am aware that if any of the above statements are willfully false, I am subject to punishment.

BY:



MORDECHAI EICHORN

Dated: November 6, 2020

CERTIFICATION OF FACSIMILE SIGNATURE

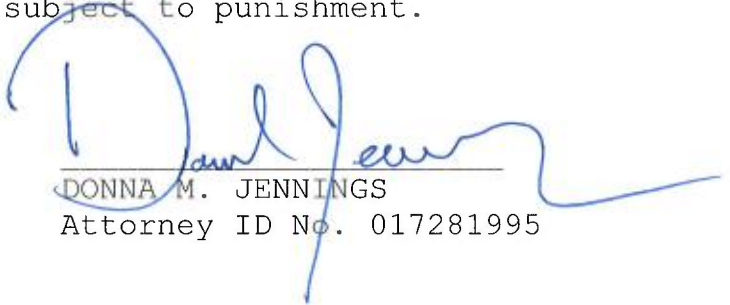
Pursuant to R. 1:4-4(c)

DONNA M. JENNINGS, an attorney-at-law of the State of New Jersey, by way of certification, says:

1. MORDECHAI EICHORN has acknowledged the genuineness of his signature on the attached facsimiles of his original signature. A copy with an original signature affixed will be filed, if requested, by the Court or adverse party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: November 6, 2020



DONNA M. JENNINGS
Attorney ID No. 017281995

EXHIBIT A

Amended Housing Element and Fair Share Plan

**Township of Jackson
Ocean County, New Jersey**

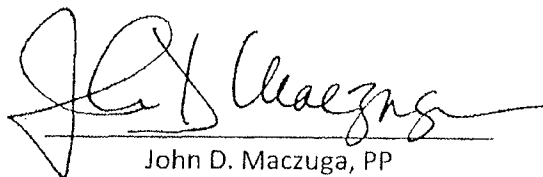
June 8, 2017

Prepared for:

Jackson Township Planning Board
95 West Veterans Highway
Jackson, New Jersey 08527

Prepared by:

JDM Planning Associates, LLC
614 Harbor Road
Brick, New Jersey 08724

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
License No. 1714

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Table of Contents

1.0	Introduction.....	1
2.0	Analysis of Demographic, Housing and Employment Characteristics.....	5
2.1	Jackson’s Demographics.....	5
2.2	Jackson’s Housing Stock	6
2.3	Jackson’s Employment Characteristics.....	9
3.0	Municipal Fair Share Obligation	11
4.0	Compliance Plan	12
4.1	Rehabilitation Obligation.....	12
4.2	Prior Round Obligation.....	12
4.2.1	Prior Cycle Credits	13
4.2.2	Regional Contribution Agreements (RCAs)	15
4.2.3	Built Affordable Units (Post December 15, 1986).....	16
4.2.4	Proposed Affordable Units	20
4.2.5	Prior Round Compliance Plan Caps and Requirements	24
4.3	Third Round Compliance Plan.....	26
4.3.1	Proposed Affordable Units	27
4.3.2	Third Round Compliance Plan Caps and Requirements	34
5.0	Additional Fair Share Plan Components.....	37
5.1	Spending Plan	37
5.2	Affirmative Marketing Plan.....	37
5.3	Reporting Requirements	37
5.4	Amendments to Affordable Housing Ordinances.....	38

*Amended Housing Element and Fair Share Plan
June 8, 2017*

List of Tables

Table 1: Population Trends, 1990-2010..... 5

Table 2: Demographic Indicators, 2010..... 6

Table 3: Population by Age, 2010 6

Table 4: Housing Characteristics, 2010 8

Table 5: Housing Affordability as a Percentage of Household Income, 2010–2014 9

Table 6: Occupation of Employed Civilian Population Aged 16 and Over, 2010–2014 . 10

Table 7: Household Income, 2010–2014 10

Table 8: Prior Round (1987–1999) Compliance Plan Summary 13

Table 9: Rental Bonus Credits Prior Round Obligation (1987-1999) 25

Table 10: Third Round (1999–2015) Compliance Plan Summary 27

List of Appendices

- Appendix A: Settlement Agreement
- Appendix B: December 31, 2016 Order of the Court
- Appendix C: MR–AH–8 Zone Ordinance
- Appendix D: DVT Enterprises, LLC (Maplewood Estates) Settlement Agreement
- Appendix E: Ordinance No. 6-17
- Appendix F: MF–AH–7 Zone Ordinance
- Appendix G: Ordinance No. 8-17
- Appendix H: Spending Plan
- Appendix I: Affirmative Marketing Plan
- Appendix J: Amended Affordable Housing Ordinance

*Amended Housing Element and Fair Share Plan
June 8, 2017*

1.0 INTRODUCTION

Jackson Township has been engaged in affordable housing activities under the auspices of the Court for over 25 years. In November 1992, the Jackson Township Planning Board prepared a Housing Element of the Master Plan addressing its first cycle (1987–1993) Council on Affordable Housing (COAH) mandated affordable housing obligation. The Housing Element was adopted by the Planning Board on January 26, 1993. A Fairness Hearing was conducted by the Court and, with the recommendation of the Court-appointed Special Master, the Court approved the Township’s first cycle plan and a Judgment of Compliance and Repose was entered on October 29, 1993. The Judgment of Compliance and Repose granted the Township six years of protection from exclusionary zoning challenges.

In 1994, COAH issued its cumulative (1987-1999) first and second housing cycle (round) municipal affordable housing obligations. In early 1999, the Township embarked upon the process of developing a cumulative affordable housing compliance plan (Housing Element and Fair Share Plan) under the auspices and protection of the Court. A Draft Housing Element was prepared in November 2000 and submitted to the Court Special Master for review. The Draft Housing Element included a request for reduction of the Township’s obligation under COAH’s “1,000-unit cap rule”, a “senior cap” waiver request, and a request for 247 credits under the “credits without controls rule”. The ultimate resolution of these issues and other circumstances (incl.: the issuance of new COAH rules; an additional third round obligation; the subsequent challenge and modification of said rules; and, necessary modifications to the Hovbilt [Site No. 6] and Leigh at Jackson [Site No. 2] affordable housing developments) delayed the preparation of the Township’s Cumulative (1987-1999) Affordable Housing Compliance Plan until late 2007. On January 14, 2008, the Planning Board adopted a Housing Element and Fair Share Plan, which was subsequently endorsed by the Township Council on January 22, 2008.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Since the adoption of the 2008 Housing Element and Fair Share Plan, the Township has continued to pursue and process affordable housing production opportunities under the auspices of the Court. On June 29, 2011, the Court issued a Consent Order Incorporating Stipulation of Settlement between Leigh Realty Company, the Jackson Township Planning Board and Jackson Township with respect to Affordable Housing Site No. 2 (formerly Leigh at Jackson). On November 23, 2011, the Court issued an Order granting the relief sought by the Township to modify the Second Amendment to the Hovbilt, Inc. and Jackson Township Affordable Housing Agreement with respect to Affordable Housing Site No. 6. The Order further provided that the Township revise its Compliance Plan to reflect changes to the 2008 Housing Element and Fair Share Plan as a result of the Settlement Agreements affecting Affordable Housing Sites Nos. 2 and 6, and to further conduct a compliance hearing on said plan "... to demonstrate compliance with its prior round and rehabilitation obligations and credits towards its future third round obligation...".

On November 19, 2012, the Planning Board adopted an Amended Housing Element and Fair Share Plan to address the requirements of the November 23, 2011 Order of the Court (i.e., to demonstrate compliance with Township's prior round and rehabilitation obligations and credits toward its future, but at that time, undetermined, third round obligation). The Township Council, on November 20, 2012, endorsed the Amended Housing Element and Fair Share Plan adopted by the Planning Board.

Subsequent to the adoption of the 2012 Plan, and notwithstanding the substantial period of time during which there were no third round rules or a definitive third round affordable housing obligation, the Township continued to pursue and foster affordable housing opportunities aimed at the creation of number of additional affordable units.

The New Jersey Supreme Court, in its decision in March of 2015, In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), transferred the evaluation of municipal compliance with the Mount Laurel doctrine from COAH to the trial courts. On July 7, 2015, the Township filed a motion for a Declaratory Judgment (IMO Township of

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Jackson, County of Ocean, Docket No. OCN-L-001879-15) seeking the declaration of the Court of its compliance with the Mount Laurel doctrine and the Fair Housing Act (N.J.S.A. 53:27D-301 et seq.) in accordance the Court's Mount Laurel IV decision. Fair Share Housing Center, Inc. (FSHC), Highview Homes and EL @ Jackson were granted intervenor status in separate Orders of the Court.

After the filing of the Declaratory Judgment action, the Township and FSHC participated in numerous conferences, motions, appeals, and other proceedings, and with the assistance of the Court's Special Master, Philip Caton, PP, FAICP, ultimately reached a settlement agreement with FSHC and Highview Homes. This agreement, hereinafter referred to as the Settlement Agreement, was dated October 25, 2016 and signed by both FSHC and Highview Homes, and is attached hereto as Appendix A and sets forth the Township's second and third round fair share obligations and a compliance plan to address the obligations.

The Settlement Agreement, and the preliminary compliance plan for the period from 1987 to 2025 that is contained therein, were the subject of a Fairness and Preliminary Compliance hearing before the Honorable Mark A. Troncone, J.S.C., on December 16, 2016. Based upon the testimony of the Court Master and the recommendations set forth in his report entitled *Master's Report for a Mount Laurel Fairness and Preliminary Compliance Hearing, Township of Jackson, Ocean County, New Jersey, IMO Application of the Township of Jackson, Docket No. OCN-L-1879-15*, Judge Troncone issued an Order, dated December 31, 2016 (attached hereto as Appendix B). The Order approved the Settlement Agreement, the obligations established, and compliance mechanisms therein, and contained a further finding that the Township's preliminary compliance plan is "facially constitutionally compliant and provides a fair and reasonable opportunity for Jackson to meet its obligation under Mount Laurel IV", subject to the "Court's approval by way of a Final Compliance Hearing."

This Amended Housing Element and Fair Share Plan is intended to: demonstrate satisfaction of the Township's affordable housing obligations, and the other provisions

*Amended Housing Element and Fair Share Plan
June 8, 2017*

and conditions established pursuant to the Settlement Agreement and Judge Troncone's December 31, 2016 Order; and, following a Final Compliance hearing, receive Final Judgment of Compliance and Repose for the period 1987 to 2025.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

2.0 ANALYSIS OF DEMOGRAPHIC, HOUSING AND EMPLOYMENT CHARACTERISTICS

In accordance with the provisions of the Fair Housing Act and applicable regulation, this housing element contains the following discussion of the Township's demographic, housing, and economic characteristics. The information provided in this section has been compiled from the US Census Bureau, and the New Jersey Department of Labor and Workforce Development.

2.1 Jackson's Demographics

At the time of the 2000 US Census, the Township of Jackson had a population of 42,816 residents (Table 1). This figure represents a 28.8 percent increase over the 33,233 residents that were counted at the time of the 1990 US Census. The Township of Jackson continues to grow considerably, as evidenced by the US Census Bureau's 2010 population estimate of 54,856 residents, which represents a 28.1 percent increase in population in the Township between 2000 and 2010.

Table 1: Population Trends, 1990-2010

	1990	2000	2010	% Change 1990-2000	% Change 2000-2010
Township of Jackson	33,233	42,816	54,856	28.8	28.1

Source: US Census Bureau (1990, 2000 and 2010)

According to the 2010 US Census, the Township's population is composed of 19,417 households (Table 2). The Township's average household size of 2.80 is greater than both the County's and the State's. It is noted that the Township's percentage of population that is 65 years or older, 14.8 percent, is significantly less than the percentage that is represented at the County level, but more than the percentage that is represented at the State levels. The median household income of Jackson Township, which at the time of the 2010 US Census was estimated to be \$89,463, is significantly higher than the estimated median household income at the County and State levels. The median age of 41.6 years that describes Jackson's residents is lower than at the County level, but higher than at the State level.

Amended Housing Element and Fair Share Plan
June 8, 2017

Table 2: Demographic Indicators, 2010

	Number of Households	Average Household Size	Median Age	% of Population ≥ 65 years	Median Household Income
Township of Jackson	19,417	2.80	41.6	14.8	\$89,463
Ocean County	221,111	2.58	42.6	21.0	\$59,565
New Jersey	3,214,360	2.68	39.0	13.5	\$69,400

Source: US Census Bureau; American Community Survey (Median Household Income)

With regard to the age-structure of the Township's population, the 2010 US Census reported that there were 2,949 pre-school age children in Jackson, which was 5.4 percent of the total population (Table 3). School age children accounted for 11,920 residents, or 21.8 percent of the total population. Working age individuals accounted for 31,864 residents, or 58.1 percent of the total population. Finally, those aged 65 years or older accounted for 8,123 residents, which equated to 14.8 percent of the 2010 population.

Table 3: Population by Age, 2010

	Number	% of Total
Pre-School Age		
Under 5 Years	2,949	5.4
School Age		
5 to 9 Years	3,709	6.8
10 to 14 Years	4,222	7.7
15 to 19 Years	3,989	7.3
Working Age		
20 to 24 Years	2,737	5.0
25 to 34 Years	5,073	9.3
35 to 44 Years	7,929	14.4
45 to 54 Years	9,579	17.5
55 to 59 Years	3,312	6.0
60 to 64 Years	3,234	5.9
Senior Age		
65 Years and Older	8,123	14.8

Source: US Census Bureau

2.2 Jackson's Housing Stock

According to the 2010 US Census, Jackson had a total of 20,342 housing units (Table 4). This was an increase of 5,704 units since the 2000 US Census. Of the total number of housing units in existence at the time of the 2010 US Census, 19,417 units, or 95.5

*Amended Housing Element and Fair Share Plan
June 8, 2017*

percent, were listed as occupied; owners occupied 87.2 percent of these units, while renters occupied 12.8 percent. The percentage of renter-occupied units is lower than at the County level, where 18.9 percent of all occupied housing units are occupied by renters.

The 2010 US Census reported an average household size in Jackson Township of 2.80 persons, and an average family size of 3.21 persons. These sizes are higher than the corresponding figures for the County. Of the total number of households, family households accounted for 15,042, or 77.5 percent, and non-family households¹ accounted for 4,375, or 22.5 percent.

A total of 10.2 percent of the Township's housing stock was estimated to have been constructed before 1960, and the estimated median year of construction was 1988. The median year of construction is more recent than that of the County and of the State, where it is 1978 and 1966, respectively.

In addition to the above, it is noted that the Township's housing stock is in fair condition. This is evidenced by the fact that the rehabilitation share of old, overcrowded and deficient housing is just 28 units, which represents about one-half of one percent (0.5) of all housing units. Further evidence of the fair condition of the Township's housing stock is provided by the fact that only 137 units (about 0.7 percent of all units) lacked complete plumbing facilities, and only 104 units (about 0.5 percent of all units) lacked complete kitchen facilities. It is also noted that only about 0.7 percent of all occupied units reported overcrowded conditions (1.01 occupants or more per room) in 2010, according to US Census Bureau 2010–2014 estimates.

Regarding housing values, it is noted that the median value of the owner-occupied

¹ A non-family household is present when a householder lives alone, or when the householder shares the home exclusively with people to whom he or she is not related.

Amended Housing Element and Fair Share Plan
June 8, 2017

housing units in Jackson during 2010 was estimated to be \$324,600. This is greater than the County median value of \$264,100, and the State median value of \$319,900. Jackson Township's estimated median gross rent of \$1,168 is also higher than the County and State median gross rents of \$1,139 and \$1,046, respectively.

Table 4: Housing Characteristics, 2010

	Number	% of Total
Housing Units		
Number of Units	20,342	100.0
Occupied Housing Units	19,417	95.5
Vacant Housing Units	925	4.5
Number of Units (2000)	14,638	100.0
Occupancy/Household Characteristics		
Number of Households	19,417	100.0
Persons Per Household	2.80	N/A
Family Households	15,042	77.5
Non-Family Households	4,375	22.5
Year Structure Built*		
2010 or Later	198	1.0
2000 to 2009	5,898	28.4
1990 to 1999	3,542	17.0
1980 to 1989	3,661	17.6
1970 to 1979	2,919	14.0
1960 to 1969	2,469	11.9
1950 to 1959	993	4.8
1940 to 1949	499	2.4
1939 or Earlier	624	3.0
Condition of Units*		
Lacking Complete Plumbing Facilities	137	0.7
Lacking Complete Kitchen Facilities	104	0.5
Home Value (Owner-Occupied Units)*		
\$300,000 or More	9,874	57.8
\$200,000 - \$299,999	4,756	27.8
\$150,000 - \$199,000	965	5.6
\$100,000 - \$149,000	306	1.8
\$50,000 - \$99,999	281	1.6
\$0 - \$49,999	902	5.3
Median Value	\$324,600	N/A
Median Rent *		
\$1,499 or More	639	23.8
\$1,250 - \$1,499	466	17.4
\$1,000 - \$1,249	724	27.0
\$500 - \$999	706	26.3
\$0 - \$499	150	5.6
Median Rent	\$1,168	N/A

Source: US Census Bureau

Note: (*) 2010–2014 5-Year American Community Survey Estimates of the US Census Bureau

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Housing units that have a monthly cost of less than 30 percent of gross household income are considered to be affordable. In the Township of Jackson, a total of 60.6 percent of all owner-occupied housing units and 36.6 percent of renter-occupied housing units were estimated to be affordable (Table 5).

Table 5: Housing Affordability as a Percentage of Household Income, 2010–2014

	Number	% of Total
Selected Monthly Owner Costs		
< 20%	5,654	33.1
20% to 24%	2,619	15.3
25% to 29%	2,073	12.1
30% or More	6,676	39.1
Not Computed	62	0.4
Gross Rent		
< 15%	91	3.3
15% to 19%	253	9.1
20% to 24%	294	10.6
25% to 29%	379	13.6
30% or More	1,644	59.1
Not Computed	120	4.3

Source: 2010–2014 5-Year American Community Survey Estimates of the US Census Bureau

2.3 Jackson's Employment Characteristics

The 2010–2014 American Community Survey (ACS) estimates that 26,205, or about 58.9 percent, of Jackson Township's residents aged 16 and over were employed in the civilian labor force (Table 6). Of those who are employed in the civilian labor force: 37.6 percent are in management, professional, and related occupations; 14.9 percent are in service occupations; 27.7 percent are in sales and office occupations; 11.5 percent are in natural resources, construction, extraction, and maintenance occupations; and, 8.3 percent are involved in production, transportation, and material moving occupations.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Table 6: Occupation of Employed Civilian Population Aged 16 and Over, 2010–2014

	Number	% of Total
Management, Professional, Related	9,856	37.6
Service	3,905	14.9
Sales, Office	7,261	27.7
Natural Resources, Construction, Extraction, Maintenance	3,010	11.5
Production, Transport, Material Moving	2,173	8.3

Source: 2010–2014 5-Year American Community Survey Estimates of the US Census Bureau

In 1999, the median household income in Jackson was \$65,218. According to US Census Bureau estimates, it had risen to \$87,629 by 2014 (Table 7). At first glance this may seem like a significant increase. However, it is noted that when these values are inflation-adjusted to 2014 dollars², the median income has actually decreased by \$5,045 or 5.4 percent.

Table 7: Household Income, 2010–2014

	Number	% of Total
< \$10,000	479	2.4
\$10,000 to \$14,999	539	2.7
\$15,000 to \$24,999	1122	5.6
\$25,000 to \$34,999	1316	6.6
\$35,000 to \$49,999	1768	8.9
\$50,000 to \$74,999	3,261	16.4
\$75,000 to \$99,999	2,784	14.0
\$100,000 to \$149,999	4,879	24.6
\$150,000 to \$199,999	2,219	11.2
\$200,000 or More	1,498	7.5
Median Household Income (Dollars)	\$87,629	N/A

Source: 2010–2014 5-Year American Community Survey Estimates of the US Census Bureau

With regard to the number of jobs that are located within the Township, it is noted that the New Jersey Department of Labor and Workforce Development indicates that there was an average of 11,538 jobs located within the municipality during 2015, which is the latest data available. This represents an increase of approximately 34.0 percent over the 2005 average of 8,609 jobs. The Department of Labor and Workforce Development's basis for this information is jobs that are covered by public unemployment and disability insurance.

² The 1999 median household income of \$65,218 has the same purchasing power as \$92,674 in 2014.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

3.0 MUNICIPAL FAIR SHARE OBLIGATION

Pursuant to the October 25, 2016 Settlement Agreement approved by Judge Troncone's December 31, 2016 Order, the Township's fair share obligation for the period from 1987 through June 30, 2025 is comprised of three components, as follows:

- Rehabilitation Obligation: 28 units
- Prior Round (1987-1999) Obligation: 1,247 units
- Third Round (1999-2025) Obligation: 1,250 units

In accordance with the terms of the Court-approved Settlement Agreement, implementation of this Housing Plan will satisfy the Township's third round obligation through June 30, 2025. The Settlement Agreement, however, did not resolve certain issues related to the application of the cap provided in Section 307.e. of the Fair Housing Act, N.J.S.A. 52:27D-307.e., but did provide that to the extent the issues are resolved in future decisions of the courts, an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, any adjustment in to the third round obligation would be addressed in future compliance rounds in accordance with the then-applicable law.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

4.0 COMPLIANCE PLAN

The following sections demonstrate and detail the satisfaction of the three components of the Township's fair share obligation for the period from 1987 through 2025.

4.1 Rehabilitation Obligation

Per the Court-approved settlement agreement, the Township's 2010 rehabilitation obligation is 28 units. In July 2012, the Township re-established its former rehabilitation program to build upon the success of its earlier program. The current program is funded with a total of \$1,380,000 from the Township's affordable housing trust fund, and is administered by Rehabco, Inc. The program has completed 17 units since the 2012 restart, with an average cost of \$17,238. In addition, three units have been rehabilitated since 2010 under the Ocean County HUD HOME program, with an average cost of \$28,246. The average cost of the twenty units rehabilitated in the Township since 2010 is \$18,889. The Township is currently entitled to claim 20 credits toward its 28-unit rehabilitation obligation. However, the Township is committed to expend the entire \$1,380,000 committed to rehabilitation under its current Spending Plan towards rehabilitation through 2025 and will continue to satisfy its rehabilitation obligation and beyond with that commitment.

4.2 Prior Round Obligation

Per the Court-approved Settlement Agreement, the Township's prior round (1987–1999) obligation is 1,247 units, which is met through the mechanisms in Table 8, Prior Round (1987-1999) Compliance Plan Summary (below).

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Table 8: Prior Round (1987–1999) Compliance Plan Summary

Compliance Mechanism	Affordable Units	Rental Bonus Credits	Total Credits
<i>Prior Cycle Credits (April 1, 1980 — December 15, 1986)</i>			
Credits without Controls	205	0	205
Group Home	5	0	5
<i>RCAs</i>			
Trenton (Completed)	50	0	50
<i>Built Affordable Units (After December 15, 1986)</i>			
Site No. 1 — Willow Point (Family Rental)	100	100	200
Site No. 3 — West Lake Village (Senior Rental)	150	0	150
Bella Terra (Assisted Living; Senior Rental)	11	0	11
Sunrise (Assisted Living; Senior Rental)	2	0	2
Orchards at Bartley (Assisted Living; Senior Rental)	15	0	15
Colonial Arms (Senior Rental)	24	0	24
Tomorrow's Hope (Special Needs)	5	5	10
Windsor Crescent/CJS (Family Rental)	111	111	222
Arc of Ocean (Special Needs)	4	4	8
Habitat for Humanity (Block 2401, Lot 16; Family Sale)	1	0	1
<i>Proposed Affordable Units</i>			
Site No. 6 — Hovbill (Family Rental/For-Sale)	220	0	220
Site No. 2 — Leigh (Jackson Woods; 159 Family For-Sale; 72 Family Rental)	231	39	270
Totals	1,134	259	1,393

The individual components of the Township's prior round compliance plan set forth in Table 8 are detailed in the following sections:

4.2.1 Prior Cycle Credits

Jackson Township claims 210 credits toward satisfying its prior round obligation with crediting detailed below:

Credits without Controls

Jackson Township claims 205 credits for the creation of affordable housing units resulting from free market residential development that occurred between April 1, 1980 and December 15, 1986. The Township will apply these credits toward satisfying its prior round obligation.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Pursuant to N.J.A.C. 5:93-3.2(b), a municipality may earn credits for affordable housing units developed via free market residential development provided that:

1. The date of construction of the unit is within the time period specified and is confirmed by a certificate of occupancy.
2. The unit is certified to be in sound condition as a result of an exterior inspection by a licensed building inspector.
3. The unit is currently occupied by a low- and moderate-income household. Household income is to be certified by the head of household on a form designed and accepted by COAH.
4. If the unit is a for sale unit, the unit shall have a market value that is affordable to be a moderate-income household pursuant to the requirements of N.J.A.C. 5:93-7.4(a) and (e). The market value of each such unit is no greater than a sales price determined by averaging the reported actual sales prices of three comparable housing units from the municipality that can be documented as being arms length, closed sales transactions and which occurred within one year of the date of filing of the petition.
5. If the unit is a rental unit, the unit shall have a monthly rent that is affordable to a moderate-income household pursuant to the requirements of N.J.A.C. 5:93-7.4(a) and (f) and the rental unit must be an arms length transaction.

In Summer 1998, the Township initiated an extensive "credits without controls" survey in an effort to determine the number of residential dwelling units that qualify as affordable units pursuant to N.J.A.C. 5:93-3.2(b). Survey forms were mailed to approximately 700 residential units that were identified as rental units with an assessed value of \$125,000 and were constructed between April 1, 1980 and December 15, 1986. A total of 491 responses were received by the Court Master.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

A structural conditions survey of eligible units was undertaken by the Township's building inspectors during March 2007. Using the results of this survey, the Court Master determined that six (6) units did not meet the "sound condition" criteria set forth above, and subsequently recommended the approval of the Township's petition to apply 194 "credits without controls" toward satisfying its prior round obligation. The Honorable Eugene D. Serpentelli, A.J.S.C., approved the Court Master's recommendation by Order dated June 21, 2007.

On January 8, 2008, the Court Master issued a letter advising the Township of its eligibility to claim eleven (11) additional "credits without controls", due to an increase in the maximum and rental sale prices permitted by COAH. After evaluating the responses from the Township's "credit without controls" survey in the context of COAH-determined maximum affordable rental and sale prices, the Court Master determined that the Township is eligible to apply 205 "credits without controls" toward satisfying its prior round obligation. Therefore, the Township claims 205 "credits without controls", and will apply these credits toward satisfying its prior round obligation.

Alternative Living Arrangements Facilities

The Township claims five (5) prior cycle credits for the Developmental Services of New Jersey, Inc. facility, which is located at 76 Buckingham Drive (Block 75.28, Lot 14). This five (5) bedroom group home for mentally challenged adults was issued a certificate of occupancy in 1985. Although Developmental Services of New Jersey, Inc. has ceased operations at the facility, the facility was operational for a minimum of ten years and, therefore, qualifies for crediting.

4.2.2 Regional Contribution Agreements (RCAs)

The Township claims 50 credits from approved Regional Contribution Agreements (RCAs), as outlined below:

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Vista Center (Affordable Housing Site No. 1)

On December 21, 1999, the Honorable Eugene Serpentelli approved an amendment to Jackson Township's 1993 Affordable Housing Plan whereby the developers of the Vista Center Planned Mixed-Use Development (PMUD) were permitted to satisfy a portion of their affordable obligation via a payment in lieu to fund a 50-unit RCA agreement with the City of Trenton at the then-permitted rate of \$20,000 per unit. The Township and the City of Trenton subsequently entered into an RCA. The agreement was approved by the various agencies having jurisdiction, and the agreement implemented. All monies were transferred and the agreement concluded by the end of 2005.

4.2.3 Built Affordable Units (Post December 15, 1986)

The Township claims 433 credits for new affordable housing units built in the Township since 1986. Details of this crediting are provided below:

Vista Center/Willow Pointe (Affordable Housing Site No. 1)

In the Township's first cycle Compliance Plan, Vista Center was identified as Affordable Housing Site No. 1. The original proposal in 1987 was for a large, mixed-use development on 1,300 acres that would include a golf course, commercial development, office space, light manufacturing, and a variety of residential housing types totaling approximately 2,800 dwelling units. The Planning Board's approval of the Master Development Plan was conditioned on the developer providing 280 low- and moderate-income units. The developer subsequently reduced its proposal to 800 age-restricted and 190 single-family detached homes, and the revised plan was approved by the Planning Board on April 27, 1999, subject to the applicant entering into an agreement with the Township with respect to the affordable housing obligation. An agreement was entered into by Jackson Township and Vista Center Associates on September 13, 1999. The agreement included the provision of 100 income-restricted family rental units in section AH-1 of the project. The units have been completed and the final certificate of occupancy has been issued. As a family rental project, the units are eligible for one-for-one rental bonus crediting.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

In addition the Vista Center Associates agreed to pay \$1,000,000 to fund 50 Regional Contribution Agreement (RCA) units (see Section 4.2.2 above) and non-residential affordable housing fees in accordance with the Township's Affordable Housing Development Fee Ordinance.

West Lake Village (Affordable Housing Site No. 3)

The West Lake Village project was identified as Affordable Housing Site No. 3 with an affordable housing obligation of 60 units in the first cycle compliance plan. The site is located between South Boston Road and Cooks Bridge Road. In accordance with the agreement between the Township and the developers of Westlake Village, LLC, which was dated September 13, 1999, the developers were to construct 150 units of age- and income-restricted rental housing. The Court approved the amendment of the Township's 1993 plan to permit the project on December 21, 1999. All 150 units have been constructed and are fully occupied. The final Certificate of Occupancy was issued on February 11, 2003.

Bella Terra

Bella Terra is an assisted living facility, which is located at 2 Kathleen Drive in Jackson Township. The facility contains 107 assisted living facility beds. In accordance with regulatory requirements, twenty percent of the assisted living rental beds must be set aside for Medicaid residents. In the case of the Bella Terra assisted living facility, twenty percent of the total number of beds have been set aside for occupation by Medicaid residents.

Pursuant to N.J.A.C. 5:97-6.11, a municipality may receive one credit for each Medicaid unit within an assisted living facility. Therefore, making the most conservative assumptions that all the low-income units are two-bedroom units and occupied by related individuals, the Township claims eleven (11) credits toward satisfying its prior round obligation based on the following formula: *(107 Assisted Living Facility Beds × 0.20 Set Aside) ÷ 2 Beds per Bedroom = 11 Units of Credit.*

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Sunrise

Sunrise of Jackson is an assisted living facility that is located at 390 County Line Road in Jackson Township. The facility contains 75 assisted living facility bedrooms with a total of 100 beds. Per agreement with the Township dated May 10, 2007, the owner agreed to restrict ten (10) units within the facility to Medicaid recipients.

Pursuant to N.J.A.C. 5:97-6.11, a municipality may receive one credit for each Medicaid unit in an assisted living facility. Therefore, the Township claims ten (10) credits toward satisfying its prior round obligation.

Care One at Jackson

Care One at Jackson is a senior care facility, which is located at 11 History Lane in Jackson Township. The facility offers post-acute specialty services and long-term care to its clients. At present, Care One at Jackson contains sixteen (16) comprehensive personal care beds. In accordance with regulatory requirements, a minimum of twenty percent of the personal care units are set aside for low-income residents. Therefore, the Township claims two (2) credits toward satisfying its prior round obligation based on the following formula: *(16 Comprehensive Personal Care Beds × 0.20 Set Aside) ÷ 2 Beds per Bedroom = 2 Units of Credit.*

The Orchards at Bartley

The Orchards at Bartley is a 72-unit assisted living facility that is located at 175 Bartley Road. This facility was awarded \$9,981,591.00 in revenue bonds from the New Jersey Healthcare Facilities Finance Authority. In accordance with regulatory requirements, twenty percent of the assisted living rental units must be set aside for low-income residents. Fifteen (15) rental units are set aside for individuals whose income does not exceed 50 percent of median income for the region. The site received a certificate of occupancy on September 17, 2001.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Colonial Arms

The Township is claiming 24 credits for a multi-family rental project on West Veteran's Highway known as Colonial Arms (Block 12001, Lot 5). This project was financed with funding from the U.S. Department of Agriculture (USDA) through a Section 515 Rural Rental Housing Loan. Eligible tenants include: low-income seniors; and; low-income handicapped or disabled persons, regardless of age. Colonial Arms is comprised of three buildings. Eighteen units are located in Building A, which received a Certificate of Occupancy in 1964. No credits can be claimed for these units, which were built before 1980. Another 24 deed-restricted units were located in Buildings B and C, which received Certificates of Occupancy in 1988. The 24 units had been deed-restricted for a minimum of twenty years prior to the expiration of the affordability controls in 2007, and, hence, the Township may claim crediting for these units.

Tomorrow's Hope

In addition to the prior cycle credits for alternative living arrangement facilities, the Township claims five (5) rental credits for Tomorrow's Hope alternative living arrangement facility, which received a certificate of occupancy on September 30, 1994. This five (5) bedroom group home for developmentally disabled adults is located at 609 Henry Street (Block 91, Lot 19.03). Post-1986 alternative living arrangement units are eligible for rental bonus crediting.

Windsor Crescent/Community Investment Strategies (CIS)

Windsor Crescent, located on Solar Avenue, is a 100-percent affordable, family rental development, which was built and occupied in 2011 and contains 111 dwelling units. The project is situated on a 20.5-acre tract of land that was assembled by the Township, and developed by Community Investment Strategies, Inc., which maintains its offices at 201 Crosswicks Street, Bordentown, NJ 08505. The development was financed with Low-Income Housing Tax Credits (LIHTCs) and subsidies from the New Jersey Department of Community Affairs (NJDCA) and the New Jersey Housing and Mortgage Finance Agency (HMFA) and, as such, has qualifying affordability controls. As a family rental project, the units are eligible for one-for-one rental bonus crediting.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

ARC of Ocean County

The Township claims four (4) rental credits for special needs housing units provided by the ARC of Ocean County, which received a certificate of occupancy in March 1, 2009. The four (4) bedroom group home for developmentally disabled adults is located at 76 Buckingham Drive (Block 13203, Lot 2). Units (i.e., bedrooms) in post-1986 alternative living arrangements are eligible for rental bonus credits.

Habitat for Humanity

One (1) unit of credit is claimed for a family for-sale unit located at 490 Cedar Swamp Road (Block 4201, Lot 16). The unit was constructed by Habitat for Humanity on donated land, and was issued a certificate of occupancy on August 25, 2011. The unit was affirmatively marketed and 30-year affordability controls were established in the deed of sale, which was dated August 26, 2011.

4.2.4 Proposed Affordable Units

The Township claims 423 units/credits in its 1987-1999 cumulative plan for two projects included in prior Court-approved plans that, to date, have not been constructed. Details involving these projects are provided in the following subsections.

Hovbilt (Affordable Housing Site No. 6)

In 1999, the Township sought Court approval to amend its 1993 Plan to include the Fairview at Jackson (Hovbilt) site in its affordable housing plan, and to approve an agreement between Hovbilt and the Township to accept a payment in lieu for low- and moderate-income units otherwise to have been built within the development. The agreement called for the full funding of a 97-unit RCA at the rate of \$20,000 per unit. Upon favorable recommendation of the Court Master, Philip Caton, and after a Fairness Hearing on December 21, 1999, the Plan amendment and developers agreement were approved by Order of the Honorable Eugene Serpentelli on January 10, 2000.

In April 2007, the Township petitioned the Court to amend its January 10, 2000 Order to allow the amendment of the Developer's Agreement with the Township to convert the

*Amended Housing Element and Fair Share Plan
June 8, 2017*

developer funding of a 97-unit RCA to an age-restricted inclusionary project with a 15 percent low- and moderate-income set aside in a project of up to 1,275 units. This modification would have produced up to 192 low- and moderate-income, age-restricted units. Upon favorable recommendation of the Court Master and having conducted a compliance hearing on the matter, the Honorable Eugene Serpentelli issued an Order dated June 21, 2007, which approved the amendment of the Township's Plan and the developer's agreement. As part of the Court Order, Hovbilt agreed to a range of affordability and pricing stratification of the inclusionary affordable units geared toward making additional units available to households with incomes of 30 percent of the regional median household income. The Township has agreed to apply for subsidies to write down the affordability of the inclusionary units, such that additional units may be available to households at or below 30 percent of the regional median, above and beyond that which had already been agreed to by Hovbilt.

The Court, under the scope of its review during the December 21, 1999 Fairness Hearing, determined the property to be approvable, available, developable and suitable as defined in N.J.A.C. 5:93-1.3. On April 2, 2007, the Jackson Township Planning Board granted conditional Preliminary and Final Major Site Plan and Subdivision approval to Sections 1 and 2 of the proposed development, which consisted of 965 units.

The Township and Hovbilt entered into a further agreement (i.e., Second Amendment to the Hovbilt, Inc. and Jackson Township Affordable Housing Agreement). This agreement was approved by Order of the Court dated November 23, 2011, after a conducting a Compliance Hearing on November 10, 2011. The Second Amendment to the Affordable Housing Agreement allowed Hovbilt, or its assign, to sell approximately 290 acres to the Trust for Public Land, to be added to the State-owned Collier's Mill Wildlife Area.

The lands to be conveyed to the Trust for Public Land included an area containing approximately 63 dwelling units approved in 2007 as part of General Development Plan (GDP) for 965 units, as well as an area contemplated for an additional 310 units under the prior Affordable Housing Agreement. The parties to the Second Amendment to the

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Affordable Housing Agreement also agreed to include a provision that Hovbilt shall set aside 192 units for inclusionary affordable housing as part of the 902 units previously approved as part of the GDP that remains after removal of the subject property as sold to TPL. Jackson and Hovbilt further agreed that Hovbilt could apply to amend the approvals to include up to 1,100 units on the property still owned by Hovbilt of which 20% would be set aside for affordable housing, with a minimum of 192 affordable units. The Second Amendment provided that in the event final approval for 902 units is reduced as a result of "...a change in state, county or local legislation, regulations, permitting or determinations that limit the development of the Property, Jackson and Hovbilt reserved the right to request an appropriate reduction in the number of affordable housing units through a further hearing before this Court...".

The Second Amendment was signed and approved by the Court and the lands conveyed to the Trust for Public Land in 2012. Hovbilt subsequently filed for bankruptcy and the Hovbilt Site was sold in a Bankruptcy Court proceeding to M&M at Jackson, LLC. The Township was subsequently advised that a new entity, EL at Jackson, LLC, had been formed and assumed the ownership, rights, and obligations of Hovbilt. On September 16, 2016, a Consent Order was entered providing for the rezoning of the former Hovbilt site. Appendix C provides a copy of an ordinance, which is scheduled to be introduced by the Township Council on June 13, 2017 and considered for adoption on June 27, 2017, and which creates a new Mixed Residential-Affordable Housing-8 (MR-AH-8) Zone and rezones the former Hovbilt site (Affordable Housing Site No. 6) in a manner that is consistent with the September 16, 2016 Consent Order, the Settlement Agreement and the prior Affordable Housing Agreements related to the site.

The zoning permits non-age-restricted mixed residential dwelling unit buildings, including detached single-family and two-family dwellings, as well as multi-family development. The zoning permits up to 1,100 dwelling units and requires 20 percent of the units to be set aside for low- and moderate-income households, with 17 percent of the affordable units to be set aside for very low-income households. Upon adoption of the MR-AH-8 Zoning amendment,

*Amended Housing Element and Fair Share Plan
June 8, 2017*

the site will again be approvable, available, developable and suitable, and, therefore, entitle the Township to claim crediting for 220 units.

Leigh/Jackson Woods (Affordable Housing Site No. 2)

The Leigh/Jackson Woods project, Affordable Housing Site No. 2, was approved by the Court for inclusion in the Township's 1993 Compliance Plan. The project had received a conditional Preliminary Subdivision and Site Plan approval from the Planning Board in March 1989. The 1989 preliminary approval provided for the construction of a total of 1,641 units (311 detached single-family and 1330 multi-family dwelling units), ten percent of which (164 units) were to be set aside for low- and moderate-income households. The Planning Board, on October 15, 2007, voted to deny Final Subdivision and Site Plan approval for Section C of the project and determined that the preliminary approval granted in 1989 for the entire project had lapsed.

Leigh Realty Company subsequently filed several legal challenges to actions taken by the Planning Board and Township related to land development applications made for the property. After lengthy mediation under the guidance of the Court Master, Leigh Realty Company, the Township and Planning Board reached a settlement of these legal challenges. A Consent Order Incorporating Stipulation of Settlement was entered by the Honorable Vincent J. Grasso, A.J.S.C. on June 29, 2011. Chief among the provisions of the Settlement Agreement and Order was the right of Leigh Realty to seek approval of 1,541 dwelling units, of which 15 percent (231) are to be set aside as low- and moderate-income units.

On June 4, 2012 the Jackson Township Planning Board granted Preliminary Major Site Plan approval to The Jackson Woods project for 1,541 non-age-restricted dwelling units, of which 231 units are to be set aside for low- and moderate-income families and individuals. On August 6, 2012 the Jackson Township Planning Board granted Amended Preliminary Major Site Plan approval and Final Major Site Plan approval for the Central Portion (Phase I) of the Jackson Woods development. The approved (final) Central Portion (Phase I) consists of 510 multi-family rental units, of which 72 rental units are to set aside as affordable. Construction

*Amended Housing Element and Fair Share Plan
June 8, 2017*

of site improvements and housing units in the Central (Phase I) currently underway, with numerous buildings built and occupied.

The Southeast Section (Phase II) received amended preliminary and final subdivision approval in November 2015. The Southeast Section is to contain 553 for-sale townhomes and an 88-unit, entirely affordable family rental component to be developed by Walters Homes. Funding approval has been received from New Jersey Housing and Mortgage Finance Agency (HMFA) for the affordable units. Construction is scheduled to begin in June 2017 and is anticipated to be completed in 12 to 15 months. The Southwest Section (Phase III) is to contain 549 family rental units, of which 71 are to be reserved for low- and moderate-income households. Construction in the Southwest Section is expected to commence in 2019.

Based upon the foregoing, the Township claims 231 dwelling units and 39 rental bonus credits towards its prior round obligation for the Jackson Woods development. The Township is not eligible to claim all 72 rental units for rental bonus crediting in Central Portion (Phase I) against its prior round obligation having reached the 259-unit rental bonus cap with the thirty-ninth unit in Phase I.

4.2.5 Prior Round Compliance Plan Caps and Requirements

Rental Bonus Credits

Pursuant to N.J.A.C. 5:97-3.5(a), the number of rental units eligible for one-for-one rental bonus credits is limited to qualifying affordable rental units, up to the municipal rental obligation. As cited in Section 7.3 (above), the Township's rental obligation is 259 units. Jackson Township claims one-for-one rental bonus credits for 259 of existing affordable rental units developed per Table 9 (below).

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Table 9: Rental Bonus Credits Prior Round Obligation (1987-1999)

Project	Rental Units	Rental Bonus Credits
Affordable Housing Site No. 1 – Willow Point – Family Rental (100 × 1)	100	100
Affordable Housing Site No. 2 – Jackson Woods- Family Rental (39 × 1)	39	39
Tomorrow’s Hope (Special Needs) – (5 × 1)	5	5
Windsor Crescent/CIS – Family Rental (111 × 1)	111	111
ARC of Ocean (Special Needs) – (4 × 1)	4	4
Total	259	259

Minimum Rental Obligation

At least 259 units must be rental units in accordance with N.J.A.C. 5:97-3.10.(b) (i.e., 0.25 [Prior Round Obligation (1,247) Minus (-) Prior Cycle Credits (210)] = 259). The Township has provided 504 rental units and, therefore, complies with this requirement.

Rental unit crediting has been generated from the following projects:

- Site No. 1 – Willow Pointe (100 Units)
- Site No. 3 – West Lake Village (150 Units)
- Bella Terra (11 Units)
- Sunrise (10 Units)
- Care One at Jackson (2 Units)
- Orchards at Bartley (15 Units)
- Colonial Arms (24 Units)
- Tomorrow’s Hope (5 Units)
- Windsor Crescent/CIS (111 Units)
- ARC of Ocean (4 Units)
- Site No. 2 – Leigh (72 Units)

Maximum RCA Credits

Prior to P.L. 2008, c.46, enacted into law on July 17, 2008, the Township was permitted under COAH regulations to transfer a maximum of 624 units through RCA agreements.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

The use RCAs as a mechanism to satisfy a portion of its obligation was effectively eliminated by this legislation. In 2005, prior to the enactment of P.L. 2008 c.46, the Township had completed the transfer 50 units to the City of Trenton through an RCA agreement, and is entitled to claim crediting for these units under the provisions of P.L. 2008, c.46.

Maximum Age-Restricted Units

The Township is permitted to provide a maximum of 247 age-restricted affordable units to address its prior round obligation per N.J.A.C. 5:97-3.10(c) (i.e. $.25 [Prior Round Obligation (1247)] Minus (-) Prior Cycle Credits [210] Minus (-) Transferred RCA Units [50] = 247$). The Township's prior round compliance plan provides 212 age-restricted units, and therefore complies with the maximum age-restricted unit cap. Age-restricted units have been provided as follows:

- West Lake Village (150 Units)
- Bella Terra (11 Units)
- Sunrise (10 Units)
- Care One at Jackson (2 Units)
- Orchards at Bartley (15 Units)
- Colonial Arms (24 Units)

4.3 Third Round Compliance Plan

The Township claims a total of 1,250 credits, including a surplus of 146 credits from the prior round that has been carried forward toward its third round obligation. The following table (Table 10: Third Round Compliance Plan Summary), enumerates how the Township will address its Court-approved 1250-unit third round obligation.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Table 10: Third Round (1999–2015) Compliance Plan Summary

Project Name	Project Location	Project Type	Affordable Units	Rental Bonus Credits	Total Credits
A. EL @ Jackson, LLC (Carried Forward from Site No. 6)	Perrineville Road	Family Rental (Units Carried Forward from Prior Round)	146	0	146
B. Holly Oaks	Block 14801, Lot 5	Inclusionary Age-Restricted For-Sale	5	0	5
C. DVT Enterprises (Maplewood Estates)	Block 1720, Lot 173.03	Family For-Sale	1	0	1
D. SNHPLP Program	TBD	Special Needs Housing	8	0	8
E. Leigh Realty-North Tract (Site No. 10)	Interchange of Route 195 and Route 526/527	Mixed-Use Family Rental	273	272	545
F. Highview Homes (Site No. 15)	Block 164, Lot 2	Inclusionary Family Rental	40	40	80
G. RG-2 Zone (Sites Nos. 12, 13, and 14)	Various	Inclusionary Family For-Sale	175	0	175
H. Remainder of RG-2 and RG-3 Zones	TBD	Inclusionary with 20-Percent Set-Aside	290	0	290
Totals			938	312	1,250

The components of the Township's third round compliance plan that are set forth in Table 10 are described below:

4.3.1 Proposed Affordable Units

Hovbilt (Affordable Housing Site No. 6)

The Township will carry forward to the third round 146 of the total of 220 affordable units in the Hovbilt project (Affordable Housing Site No. 6), which has been described in detail above.

Holly Oaks

A use variance to permit the construction of 28 age-restricted multi-family units and a free-standing bank was approved by the Jackson Township Zoning Board of Adjustment on August 6, 2008, and preliminary and final site plan approval of the bank and preliminary site plan approval of the residential units was approved on January 21, 2009.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

The Holly Oaks development, located at the southwest corner of the intersection of Manhattan Street and Cooks Bridge Road (Block 14801, Lot 5), received amended preliminary and final site plan approval of both the bank and residential units on September 9, 2009. All approvals are conditioned upon the set aside of five (5) of the twenty-eight (28) total units as affordable units. Based upon the foregoing, the Township claims five (5) credits for the for-sale, age-restricted units to be created by this project toward its third round affordable housing obligation.

DVT Enterprises, LLC (Maplewood Estates)

DVT Enterprises, LLC, the owner and applicant of property known as Block 17201, Lots 1, 37, and 38, received final major subdivision approval from the Jackson Township Planning Board on May 16, 2005. The 13-lot subdivision included 12 new building lots, and a lot bearing an existing detached single-family dwelling. The approval was conditioned upon the applicant satisfying the Township's "Growth Share Ordinance." DVT Enterprises filed a complaint against the Township and Planning Board on January 30, 2009 challenging the growth share ordinance requirements. Pursuant to a Settlement Agreement with DVT Enterprises, LLC dated June 21, 2010, a copy of which is attached as Appendix D, the developer of the property is required to deed restrict the existing dwelling for occupancy by a moderate-income household and pay a total of \$76,114 (\$6,342.84 per unit upon issuance of a certificate of occupancy) into the Township's Affordable Housing Trust Fund. Construction of site improvements has recently commenced and building permits have been sought. The Township claims one credit for the affordable unit in the Maplewood Estates development.

Special Needs Housing Partnership Loan Program (SNHPLP)

By Memorandum of Understanding dated April 10, 2012, the Township, the New Jersey Housing and Mortgage Finance Agency (HMFA) and the New Jersey Department of Human Services (DHS) agreed to participate in the Special Needs Housing Partnership Loan Program (SNHPLP) in an effort to expand housing opportunities and expedite the placement of developmentally disabled individuals into community-based supportive housing within Jackson Township. The Township has transferred \$500,000 from its

*Amended Housing Element and Fair Share Plan
June 8, 2017*

affordable housing trust fund to the New Jersey Department of Community Affairs (DCA), which is to be matched by \$500,000 from the State to fund the development of special needs housing. Based upon the program guidelines of a maximum expenditure of \$125,000 per bedroom, the program will generate a minimum of eight (8) bedrooms of special needs housing. Advancing Opportunities, Inc. has received approval from HMFA, with the concurrence of the Township, to develop a four-bedroom group home (Middletree Home) on West Veterans Highway. Applications for building permits have been made and construction is scheduled to start immediately upon receipt thereafter. The Township claims eight units of credit toward its third round affordable housing obligation for the Middletree Home project and an additional future site to be developed under the SNHPLP.

Village Green (Leigh Realty – North Tract, Affordable Housing Site No. 10)

The Village Green site (Affordable Housing Site No. 10) consists of approximately 325 noncontiguous acres that are generally located at the Interstate Route 195/Ocean County Routes 527 & 526 interchange. The property is adjacent to the Leigh/Jackson Woods site (Affordable Housing Site No. 2). The Village Green site is owned or controlled by Leigh Realty or affiliated companies. The property is currently zoned HC, Highway Commercial, and LM, Light Manufacturing. The property received various approvals from the Jackson Township Board of Adjustment to construct approximately 2,900,000 square feet of mixed commercial (non-residential) development in a regional commercial development known as “Jackson Commons”.

Leigh Realty expressed an interest in developing the property as a mixed-use, town center-type development to be known as the “Village Green”. The Township and Leigh Realty, as part of the negotiations resulting in the Affordable Housing Site No. 2 (Jackson Woods) settlement agreement, discussed the potential rezoning of the Affordable Housing Site No. 10 (Leigh Realty—North Tract) to permit the development of a self-contained mixed-use development. Those discussions conducted with the participation of the Court Master resulted in the parties entering into a Consent Agreement signed by the Court, after a “Fairness Hearing”, on October 15, 2015.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

The Consent Agreement provided for the rezoning of the property to permit a minimum of 1,365 dwelling units and a minimum required non-residential component of 273,000 square feet. Twenty percent (273) of the 1,365 dwelling units within the overall mixed-use development would be required to be set aside as affordable family rental units. The Court Master, affirmed by the Court, has determined the Agreement represents a realistic opportunity for the production of 273 units of affordable housing. On May 9, 2017, the Township Council adopted Ordinance No. 6-2017, which rezoned the property pursuant to the Court-approved Consent Agreement. Ordinance No.6-2017 is attached as Appendix E.

Highview Homes (Affordable Housing Site No. 15)

Affordable Housing Site No. 15 (Block 1203, Lot 29) is an approximately 40-acre, vacant, wooded site that is located at the northeast quadrant of the intersection of New Prospect Road and Larsen Road. Highview Homes is the contract purchaser and an intervenor in the Township's Declaratory Judgment Petition (Docket No. OCN-L-1879-15). Highview Homes is a party to the Court-approved Settlement Agreement (Appendix A) whereby the site would be rezoned from its current R-1 Single-Family Residential zoning to permit a maximum of 214 multi-family residential rental units, of which 40 are to be reserved for low- and moderate-income households and individuals. Approximately 20 acres of the site is free of environmental restrictions, and sanitary sewer and water facilities are available. The site is bounded: on the south, across Larsen Road, by Jackson Fire Company No. 1 Station and First Aid Facility and Johnson Elementary School; to the east by detached single-family homes along Birch Drive; and to the west by detached single-family residences along the west side of North New Prospect Road. A draft ordinance creating the MF-AH-7 Zone and rezoning the Highview Homes property accordingly, consistent with the Court-approved Settlement Agreement, is attached as Appendix F. Said Ordinance is scheduled for introduction at the June 13, 2017 Council meeting and to be considered for adoption on June 27, 2017. Based upon the foregoing the site is available, developable and suitable for development as reflected in this plan and the Township is entitled to claim 40 affordable family rental units toward its third

*Amended Housing Element and Fair Share Plan
June 8, 2017*

round obligation.

RG-2 Associates, LLC (Affordable Housing Site No. 12)/Swanbourne, LLC (Affordable Housing Site No. 13)/Jackson Holdings/Grawtown (Affordable Housing Site No. 14)

Per the Court-approved Settlement Agreement, the Township has included these three sites in its third round plan. All three sites (Site Nos. 12, 13 and 14) are located in the RG-2, Regional Growth Zone, which is situated within the Pinelands area of the Township. Pursuant to P.L. 2008, c.46, developments consisting of newly-constructed residential units, located, or to be located, within the jurisdiction of the Pinelands Commission and subject to the Pinelands Comprehensive Management Plan "shall be required to be reserved for occupancy by low- or moderate-income households at least 20 percent of the residential units constructed, to the extent this is economically feasible." Development plans for all three sites have been prepared, and separate applications have been submitted to the Township at various times and with varying outcomes. All three development applications were submitted to the Pinelands Commission at the time development approvals were sought from Jackson Township and all three development applications have received a certificate of filing from the Pinelands Commission. Collectively the three projects are anticipated to yield 874 detached, single-family units, 20 percent of which (175) are to be set aside for low and moderate-income households. The particulars of the individual projects are provided below.

1. RG-2 Associates, LLC (Affordable Housing Site No. 12): The RG-2 Associates, LLC property (Block 19403, Lots 2, 6, 7, 10, 12, 19, 20, 30 & 31) consists of 166.6 total acres and is located on Grawtown Road. The site contains 132 developable/upland acres. The developer proposes to build detached, single-family homes on 12,000 square foot lots. The proposed development is to be served by public sewer. The project received preliminary and final major subdivision approval for 186 building lots on November 21, 2016. The required, 20-percent set aside is 37 affordable, for-sale units. The Township claims 37 credits toward its third round obligation for the 37 affordable units that are to be

*Amended Housing Element and Fair Share Plan
June 8, 2017*

developed on this site.

2. Swanbourne, LLC (Affordable Housing Site No. 13): The Swanbourne, LLC property (Block 20801, Lots 3, 8, 9, 10, 12, 15, 16, 17, 18, and 28 and Block 20701, Lot 3)) consists of 159 total acres with access to South Hope Chapel Road. The site contains 102 developable/upland acres. The developer proposes to build detached, single-family residences on 12,000 square feet lots. The site has access to public sewer. Development plans that provide for a total of 195 building lots have been prepared, and application has been made to the Jackson Township Zoning Board of Adjustment for a “(d)5 density bonus” and major subdivision approval of this 195-building lot development. The application before the Zoning Board of Adjustment has been adjourned by the applicant’s request to July 19, 2017. As a result of the adoption of Ordinance No. 8-2017 by the Township Council on May 23, 2017 (attached as Appendix G) the applicant will not require a “(d)5 density variance” and the Planning Board is likely to assume jurisdiction. The required, 20-percent set-aside would be 39 affordable, for-sale units. The Township claims 39 credits toward its third round obligation for the 39 affordable, for-sale single-family units on this site.

3. Jackson Holdings/Grawtown Estates (Affordable Housing Site No. 14): The Jackson Holdings property (Block 19301, Lot 4) consists of 302 acres along the west side of Grawtown Road. The site contains 191 developable/upland acres. A prior application in 2007 for 493 detached single-family building lots (9,000 square feet minimum) was denied by the Planning Board under the conditional use section of the ordinance, primarily on the basis of the applicant’s failure to obtain a Certificate of Filing from the Pinelands Commission demonstrating consistency with the Pinelands Comprehensive Management Plan and traffic concerns. In December 2007 Jackson Holdings filed a legal challenge to the Planning Board’s denial, raising as an issue the validity of the conditional use requirements of the Township’s ordinance. The trial court reversed the determination of the Planning Board and remanded the application to the Planning

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Board for approval. The Planning Board appealed and the Appellate Division remanded to the trial court for the inclusion of the Township.

The Township of Jackson Planning Board undertook a periodic reexamination of its Master Plan in 2008. Several ordinances implementing the provisions of the Master Plan were adopted by the Township Council on November 9, 2010, including Ordinance No. 29-10, which is referenced below. The 2009 Master Plan and implementing ordinances were submitted to the Pinelands Commission. The Commission has not certified either the 2009 Master Plan as it pertains to the Pinelands Area portion of Jackson Township (n.b., it has certified the 2009 zoning map) or Ordinance 29-10.

Ordinance No. 29-10 directly affected all of the properties zoned as RG-2 and RG-3. Specifically, Ordinance No. 29-10 removed and repealed §109-81.D and §109-82.D, which were the conditional use sections in the RG-2 and RG-3 Regional Growth Zones within the Pinelands Areas portion of Jackson Township. These sections permitted the development of residential lots at less than one acre, and at increased densities on lands with certain environmental constraints or impacted by Joint Base McGuire-Dix-Lakehurst pursuant to the Joint Base Land Use Study. They were removed based on density recommendations as described in the Joint Land Use Study for Joint Base McGuire-Dix-Lakehurst (JLUS), the Toms River Corridor Study and the goals and principles of the 2009 Jackson Township Master Plan.

The legal challenge filed by Jackson Holdings in 2007 ultimately concluded in 2011 with the Township asserting that the conditional use standards of the RG2 and RG3 zoning districts were invalid. Ordinance No. 8-17, which was adopted by the Township Council on May 23, 2017 (Appendix G), revised and re-established conditional use standards permitting development of detached single-family units on lots of less than one acre in size and opening the door for the re-application consistent with that previously submitted in 2007 (i.e., 493 building

*Amended Housing Element and Fair Share Plan
June 8, 2017*

lots [minimum 9,000 square feet]). The required 20 percent set-aside will result in the creation of 99 affordable for sale units.

4.3.2 Third Round Compliance Plan Caps and Requirements

Third Round Age-Restricted Units

Utilizing N.J.A.C. 5:97-3.10(c)2 as the basis for determining the maximum number of age-restricted units that the Township may claim toward its third round obligation, the Township can claim up to a maximum of 312 age-restricted units. This is determined as follows: *Age-Restricted Maximum = 0.25 × Third Round New Construction Obligation = 0.25 × 1250 = 312 Units.*

The Township's third round plan contains only the five proposed age-restricted units in the Holly Oaks development and therefore is well below the age-restricted unit cap.

Third Round Rental Obligation

Utilizing N.J.A.C. 5:93-5.15, the Township's rental obligation is calculated as follows: *0.25 × Calculated Need = .25 × 1250 = 312 Units.* The Township's third round compliance plan, which is set forth in Table 10, includes 467 rental units (viz., EL at Jackson, the SNHPLP program, Leigh Realty North, and Highview projects) and, therefore, exceeds by far the minimum rental requirement.

Third Round Rental Bonus Credits

Utilizing N.J.A.C. 5:93, the Township may claim rental bonus credits for rental units up to its rental obligation of 312 units. As detailed in Table 10, the Township claims one-for-one rental bonus credits for 272 of the 273 family rental units in Leigh Realty—North Tract (Affordable Housing Site No. 10) and the 40 family-rental units in Highview Homes development (Affordable Housing Site No. 15) for a total of 312 rental bonus credits.

Third Round Very Low-Income Housing Requirement

The July 2008 amendments to the New Jersey Fair Housing Act (P.L. 2008, c.46) and the

*Amended Housing Element and Fair Share Plan
June 8, 2017*

FSHC Settlement Agreement provide that a minimum of 13 percent of the low- and moderate-income units developed in a municipality shall be “reserved for occupancy by very low-income households.”

The Township’s prior and third round compliance plans provide for a total of 1,243 new affordable units to be constructed and subject to the 13 percent very low-income requirements of the Fair Housing Act and the Court-approved Settlement Agreement, resulting in a very low-income requirement of 162 units. The following demonstrates compliance with these requirements:

1. As part of the 2007 Court Order, Hovbilt (Affordable Housing No. 6) agreed to a range of affordability and pricing stratification of the inclusionary affordable units geared toward making additional units available to households with incomes of 30 percent of the regional median. The Township has agreed to apply for subsidies to write down the affordability of the inclusionary units, such that additional units may be available to households at or below 30 percent of the regional median, above and beyond that which has been already agreed to by Hovbilt. These requirements survive the bankruptcy sale of the property and will be a condition of any forthcoming development approval obtained by EL @ Jackson, LLC and will yield 37 very low income units.
2. Leigh/Jackson Woods (Affordable Housing Site No. 2), as described in a preceding section of this Amended Housing Element and Fair Share Plan, consists of three phases. Phase I (Central) is currently under construction and the project affordable housing plan for this phase provides for eight of 72 affordable units in this phase to be qualifying very low-income family rental units. Construction of the affordable units in Phase II (Southeast) is scheduled to commence in June 2017. This 88-unit, all-affordable project, pursuant to funding requirements, will have a minimum of 10 percent (9) of the family rental units as very low-income units. A requirement that 13 percent of the 71 affordable units (9) in Phase III (Southwest) will be developed as very low-income units will be a condition of

*Amended Housing Element and Fair Share Plan
June 8, 2017*

any forthcoming development approval.

3. All eight units to be developed pursuant to the SNHPLP program will qualify as very low-income units.
4. The Township and Planning Board will require that 13 percent of the 273 affordable, family-rental units (35) be reserved for occupancy by very low-income households as a condition of any forthcoming development approvals and the required project-specific affordable housing plan related to the Leigh Realty-North Tract (Affordable Housing Site No. 10).
5. The Township and Planning Board will require that 13 percent of the 40 affordable, family-rental units (5) be reserved for occupancy by very low-income households as a condition of any forthcoming approvals and the required project-specific affordable housing plan related to Highview Homes (Affordable Housing Site No. 15).
6. The Township and Planning Board will require that 13 percent of the 175 affordable units (23) be reserved for occupancy by very low-income households as a condition of any forthcoming development approvals and as part of the required project-specific affordable housing plans related to Affordable Housing Sites Nos. 12, 13, and 14.
7. The Township and Planning Board will require that 13 percent of the required number of affordable units be reserved for occupancy by very low-income households for all future development applications in the RG-2 and RG-3 zones. The anticipated buildout of the RG-2 and RG-3 zones is anticipated to yield 290 affordable units and 38 very low-income units.

Based upon the foregoing, the prior and third round compliance plans are anticipated to generate 172 very low-income units, and, therefore, exceed the 162-unit requirement.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

5.0 ADDITIONAL FAIR SHARE PLAN COMPONENTS

5.1 *Spending Plan*

Appendix H is the Township's Spending Plan adopted and endorsed by Township Council.

5.2 *Affirmative Marketing Plan*

Appendix I is a draft of the Township's Affirmative Marketing Plan to be adopted by resolution of the Township Council.

5.3 *Reporting Requirements*

Per the FSHC Settlement Agreement, on October 25, 2017 and every October 25 thereafter through 2025, the Township is required to provide an annual report of the affordable housing trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with copy to Fair Share Housing Center, Inc., and posted on the municipal website.

Per the FSHC Settlement Agreement, on October 25, 2017 and every October 25 thereafter through March 2025, the Township will prepare a report on the status of all affordable housing activity within the Township. Such report is to be posted on the Township website.

Per the Settlement Agreement, the Township shall conduct a "midpoint realistic opportunity review" due on July 1, 2020 and consisting of a status report as to its implementation of this Amended Housing Element and Fair Share Plan, and an analysis of whether any unbuilt sites or unfulfilled compliance mechanisms continue to present a realistic opportunity for the production of affordable housing, and whether any compliance mechanisms should be revised or supplemented. Such report shall be posted on the Township website.

*Amended Housing Element and Fair Share Plan
June 8, 2017*

Per the Settlement Agreement, within 30 days of October 25, 2019 and every third year thereafter, the Township shall prepare a status report, and post same on its website, as to satisfaction of its very low-income requirements, as set forth in N.J.S.A. 52:27D-329.1 and addressed in this Housing Element and Fair Share Plan.

5.4 Amendments to Affordable Housing Ordinances

Appendix J is a draft ordinance to be adopted by the Township Council amending the Township's affordable housing ordinances consistent with this Amended Housing Element and Fair Share Plan and the Settlement Agreement.

EXHIBIT B



350R-16

Peter J. O'Connor, Esq.
 Kevin D. Walsh, Esq.
 Adam M. Gordon, Esq.
 Laura Smith-Denker, Esq.
 David E. Rahmer, Esq.
 Joshua D. Roberts, Esq.

RECEIVED
 NOV 10 2016

October 25, 2016

Jean Cipriani, Esq.
 Counsel for Township of Jackson
 Gilmore & Monahan, P.A.
 10 Allen St.
 Toms River, NJ 08753

GILMORE & MONAHAN

Re: In the Matter of the Township of Jackson, County of Ocean, Docket
 No. L-1879-15

Dear Ms. Cipriani:

This letter memorializes the terms of an agreement reached between the Township of Jackson (the Township, Jackson, or "the municipality"), the declaratory judgment plaintiff, Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and a defendant in this proceeding, and Highview Homes ("Highview"), which intervened in this proceeding as a defendant pursuant to an order dated _____, 2015.

Background

Jackson filed the above-captioned matter 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. Prior to the completion of a trial on the matter before the Honorable Mark A. Troncione, J.S.C., FSHC, Highview, and the Township began mediation proceedings with the assistance of the Special Master, Philip B. Caton. Through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan, including spending plan in accordance with the terms of this Agreement, and the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when 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.

October 25, 2016
Page 2

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

Rehabilitation Share (per Kinsey Report ¹)	28
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	1247
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	1250

4. The Township's efforts to meet its present need/rehabilitation share include the following: In July 2012 the Township re-established its rehabilitation program to build upon the success of its earlier program. The current program is funded with a total of \$1,380,000 from the Township's affordable housing trust fund, and is administered by Rehabco, Inc. The municipality agrees to continue this program. The 28-unit obligation may be satisfied through units rehabilitated during or since 2010. This is sufficient to satisfy the Township's present need obligation of 28 units.
5. As noted above, the Township has a Prior Round prospective need of 1247 units, which is met through the following compliance mechanisms:

Compliance Mechanism	Affordable Units	Rental Bonuses	Total Credits
Prior Cycle Credits (4/1/80 – 12/15/86)			
Credits without Controls	205	0	205
Group Home	5	0	5
RCAs			
Trenton (Completed)	50	0	50
Built Affordable Units (Post 12/15/86)			
Site #1 – Willow Point (Family Rental)	100	100	200
Site #3 – West Lake Village (Senior Rental)	150	0	150
Bella Terra (Assisted Living; Senior Rental)	11	0	11
Sunrise (Assisted Living; Senior Rental)	2	0	2
Orchards at Bartley (Assisted Living; Senior Rental)	15	0	15
Colonial Arms (Senior Rental)	24	0	24
Tomorrow's Hope (Special Needs)	5	5	10
Windsor Crescent/CIS (Family Rental)	111	111	222
ARC of Ocean (Special Needs)	4	4	8
Habitat for Humanity (B2401, L16; Family Sale)	1	0	1
Proposed Affordable Units			
Site #6 – Hovbilt (Family Rental)	192	0	192
Site #2 – Leigh (Jackson Woods; 159 Family for Sale, 72 Family Rental)	231	39	270
TOTAL	1116	259	1375

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

October 25, 2016
Page 3

6. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 1250 units:

Project Name	Project Location	Project Type	Number of Affordable Units or Credits	Rental Bonus Credits	Total Credits
A. EL @ Jackson, LLC (carried over from Site #6 above)	Perrineville Road	Family Rental (Units Carried Forward from Prior Round)	128	128	256
B. Holly Oaks	Blk. 14801, Lot 5	Inclusionary - Age-restricted- For Sale	5	0	5
C. SNHPLP Program	TBD	Special Needs Housing	8	0	8
D. Leigh Realty-North Tract (Site #10)	Rt.195 and Rt. 526/527 Interchange	Mixed Use Development - Family Rental	273	184	457
E. Highview Homes (Site #15)	Blk. 164, Lot 2	Inclusionary Development -Family Rental	40	0	40
F. RG-2 Zone (Sites #12, #13, and #14)	Misc.	Inclusionary Development -Family Rental	203	0	203
		Subtotal	657	312	969
G. Remainder of RG-2 and RG-3 Zones	281	Inclusionary development - 20% Affordable Unit Setaside Requirement	281	0	281
		Totals	938	312	1250

At its option, Jackson Township may apply to the court to amend the judgment entered in this matter to provide compliance mechanisms, including 100% affordable housing development, that otherwise satisfy the fair share obligations that relate in the chart above to F. RG-2 Zone (Sites #12, #13, and #14) and G. Remainder of RG-2 and RG-3 Zones. Such an application, which shall be on notice to and opportunity to be heard by FSHC, shall demonstrate how the units to be provided instead of units listed above at items F

and/or G provide a realistic opportunity in accordance with applicable law and comply with all terms of this Agreement.

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. The municipality will comply with those requirements through requiring that 13% of the affordable units in the Leigh Realty – North, Highview Homes, and RG-2 Zone (Sites #12, #13, and #14) and Remainder of RG-2 and RG-3 Zones are very low income units, and through the SNHPLP program units. For EL @ Jackson, pursuant to the 2007 Order of Judge Eugene Serpentelli, 17% of the affordable units in that project shall be very low income units.
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 table in paragraph 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, 14 Clifton Ave. S., Lakewood, NJ 08701, the Latino Action Network, PO Box 943, Freehold, NJ 07728, NAACP Toms River Branch, PO Box 5144, Toms River 08754, and NAACP Ocean County/Lakewood Branch, PO Box 836, Lakewood, NJ 08701, OCEAN, Inc., S&F Plaza, 2008 Rt. 37 East – Suite 12, Toms River, NJ 08753, the New Jersey Housing Resource Center, 637 South Clinton Avenue, P.O. Box 18550, Trenton, NJ 08650, and the Supportive Housing Association, 15 Alden St # 14, Cranford, NJ 07016, 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, except as provided in paragraph 7 above. 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.

11. 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.
12. As an essential term of this settlement the Township shall adopt an amended Housing Element and Fair Share Plan including spending plan consistent with this agreement, and shall adopt an ordinance providing for the amendment of the Township's Affordable Housing Ordinances and Zoning Ordinances to implement the terms of this settlement agreement and the zoning contemplated herein within 120 days of Court's approval of this Settlement Agreement.
13. The parties agree that the obligations set forth in this agreement and steps taken to fulfill these obligations meet all the need that the Township is required to address pursuant to the Mount Laurel Doctrine and Fair Housing Act through June 30, 2025.

The parties anticipate that future decisions of a court of competent jurisdiction in Ocean County, including but not limited to decisions of the Appellate Division or Supreme Court and/or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, will establish fair share obligations for the Third Round and the application of the 1000-unit cap during the Third Round, including whether portions of the obligation above the capped amount must be satisfied in future rounds. In view of the unsettled nature of those issues now, the parties have elected not to enter into a settlement regarding whether there may be an obligation deferred to future housing cycles arising from the manner in which the cap is applied during the Third Round. The parties reserve all rights to address how such obligations will be calculated or addressed, including any arguments as to the potential carrying over of any extra credits to future rounds in conformance with the then-applicable law.

Notwithstanding any change in law or other circumstance, the Township shall not have an obligation to be satisfied in the period through 2025 beyond the mechanisms set forth in this Agreement. However, with the exception of F. RG-2 Zone (Sites #12, #13, and #14) and G. Remainder of RG-2 and RG-3 Zones, which are subject to a provision included above that allows for replacement of those compliance mechanisms with alternative compliance mechanisms, the Township shall be obligated to implement all terms of this settlement agreement and its Fair Share Plan, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling the fair share obligation 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.

14. The Township maintains an affordable housing trust fund balance and will prepare a Spending Plan that will be a part of the HEFSP, subject to the review of the Court, the

October 25, 2016
Page 6

Special Master and FSHC. The parties understand that expenditures of funds that the court finds are "committed" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, shall have the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this agreement, 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.

15. 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.
16. 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.
17. FSHC previously had intervened in earlier litigation involving Jackson Township and all parties have acknowledged that due to that earlier intervention FSHC is a party in this litigation. FSHC is hereby deemed to have party status in this matter and to have

October 25, 2016

Page 7

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

18. 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), 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 the attached Plan (Exh. 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.
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, Ocean County. A prevailing movant or plaintiff in such a motion or separate action shall 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 the Special Master, 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 Borough 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

TO THE TOWNSHIP: Jean Cipriani, Esq.
Counsel for Township of Jackson
Gilmore & Monahan, P.A.
10 Allen St,
Toms River, NJ 08753
Telecopier: 732-244-1840
Email: jlc@gm-law.net

TO HIGHVIEW: Richard J. Hoff, Jr., Esq.

October 25, 2016
Page 9

Bisgaier Hoff, LLC
25 Chestnut Street -Suite 3
Haddonfield, NJ 08033
Email: rhoff@bisgaierhoff.com

TO SPECIAL MASTER: Philip B. Caton, PP, FAICP
Clarke Caton Hintz
100 Barrack Street
Trenton, NJ 08608
Email: pcaton@cchnj.com

WITH A COPY TO THE MUNICIPAL CLERK: Clerk,
Township of Jackson
95 W. Veterans Hwy
Jackson, NJ 08527
Telecopier: 732-928-4377

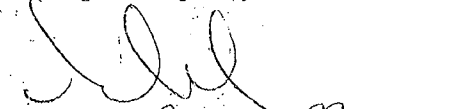
Please sign below if these terms are acceptable.

Sincerely,



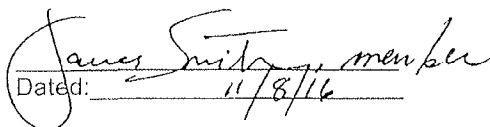
Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Township of Jackson, with the authorization
of the governing body



Michael Renna, Mayor
Dated: 10-26-16

On behalf of Highview Homes:



James Smith, member
Dated: 11/8/16

RESOLUTION OF THE TOWNSHIP OF JACKSON
 JACKSON, NEW JERSEY

RESOLUTION NUMBER: 350R-16

DATE OF ADOPTION: 10-25-16

TITLE: RESOLUTION OF THE TOWNSHIP OF JACKSON, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

Council Member Updegrave presents the following resolution.

Seconded by Martin 1 of 2

WHEREAS, the Township of Jackson filed a complaint in July of 2015 seeking a declaration of its compliance with the Mount Laurel Doctrine and Fair Housing Act, entitled In the Matter of the Township of Jackson, Docket No. OCN-L-1879-15 and has participated in the proceedings in the Court in order to determine the proper methodology for the calculation of Fair Share Obligations for municipalities in Ocean County as contemplated by the Supreme Court In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Decision"); and

WHEREAS, there are open issues regarding an obligation for the period 1999-2015 during which no effective COAH regulations were adopted from which the Township's Third Round affordable housing obligation could be established, and the applicability of the 1,000 unit cap to the Third Round period which ends in 2025; and

WHEREAS, Fair Share Housing Center's position on Jackson Township's Third Round Affordable Housing obligation from 1999-2025, as of its expert report of May 2016 is 3,616 affordable housing units, not inclusive of prior round obligation; and

WHEREAS, prior to the Court reaching a decision, the Township engaged in settlement discussions with Fair Share Housing Center and the parties agreed to establish the Township's Third Round Present Need at 28 units and the Third Round Prospective Need for the 1999-2025 to be 1,250 units, in order to ensure that the Township receives the benefits of bonus credits where appropriate; and

WHEREAS, the Township and Fair Share Housing Center have come to an agreement that the Township shall satisfy its Prospective Need through a plan consisting of 657 units (414 units being part of projects which have previously been included in compliance plan) to be achieved in six separate developments which will enable the Township to claim 312 additional Rental Bonus Credits; and

Ann Marie Eden

ANN MARIE EDEN, R.M.C.
 TOWNSHIP CLERK

DATED: 10-25-16

RECORD OF VOTE				Council V.P.	Council President
TOWNSHIP COUNCIL	Barry Calogero	Scott Martin	Ann Updegrave	Kenneth Bressi	Robert Nixon
YES		✓	✓	✓	
NO	✓				
ABSTAIN					
ABSENT					✓

Ann Marie Eden 178

I, Ann Marie Eden, Municipal Clerk of the Township of Jackson in the County of Ocean, hereby certify that the above is a true copy of a Resolution adopted by the Township Council on the 25th day of October 2016.

WHEREAS, the balance of the Prospective Need will be through the mandatory 20% set aside requirement of the Pinelands Commission in the Regional Growth Zones of the Pinelands sections of the Township; and

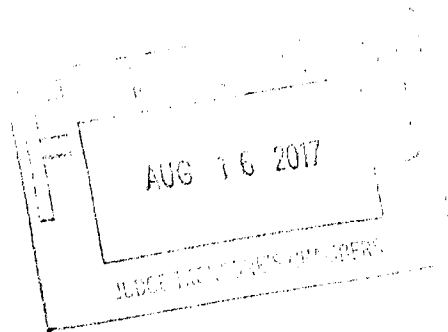
WHEREAS, the proposed settlement agreement, attached hereto, shall settle the Township's entire third round obligation, regardless of determinations by the Courts.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Jackson as follows:

1. The Mayor is hereby authorized to sign the agreement, attached hereto, on its behalf.
2. This Resolution shall take effect immediately.

EXHIBIT C

GILMORE & MONAHAN, P.A.
Ten Allen Street
P.O. Box 1540
Toms River, NJ 08754
(732) 240-6000
Attorneys for **Township of Jackson**
Jean L. Cipriani, NJ ATTY ID# 048771994



**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
JACKSON, a municipal corporation of the
State of New Jersey**

**SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
LAW DIVISION**

DOCKET NO. OCN-L-1879-15

**JUDGMENT OF COMPLIANCE AND
REPOSE**

THIS MATTER having been opened to the Court by Gilmore & Monahan, P.A., attorneys for the Township of Jackson (hereinafter referred to as “Jackson”), Jean L. Cipriani, Esquire, appearing, in the presence of Adam M. Gordon, Esq., attorney for Interested Party and Intervenor, Fair Share Housing Center, Inc., (hereinafter referred to as “FSHC”), Richard J. Hoff, Esq. of Bisgaier Hoff, attorney for Interested Party and Intervenor Highview Homes and Frank Petrino, Esq. attorney for Interested Party and Intervenor EL at Jackson, by way of Final Compliance Hearing held pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law. Div. 1984); and the Court having considered the

GILMORE & MONAHAN
A Professional Corporation
COUNSELLORS AT LAW
Ten Allen Street Professional Center
Ten Allen Street
P.O. Box 1540
Toms River, New Jersey 08754

testimony the Court-appointed Special Master, Philip B. Caton, P.P., A.I.C.P.; and the Court having considered the Settlement Agreement entered into between Jackson, Highview Homes and FSHC dated October 25, 2016, and Jackson's duly adopted and endorsed Housing Element and Fair Share Plan referenced therein and other exhibits presented by Jackson in support thereof; and the Court having considered the testimony and presentations of Interested Parties at the time of the hearing; and good cause having been shown;

IT IS on this 16th day of **August**, 2017, **ORDERED** that

1. The Council of Affordable Housing had adopted regulations codifying a fair share methodology for the Prior Round Obligation, which resulted in the assignment of a Prior (Second) Round Obligation for the Township of Jackson of 1247 units for the period of 1987-1999.
2. The Court finds that the Township's Compliance Plan fully satisfies the Township's Prior (Second) Round Obligation.
3. The Township of Jackson, Highview Homes and Fair Share Housing Center ("FHSC") entered into an Agreement dated October 25, 2016, which the Court found by Order dated December 31, 2016 to fairly and adequately protect the interests of low and moderate income persons within Jackson's housing region based upon the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel litigation.
4. The Jackson Township Planning Board adopted the Housing Element and Fair Share Plan on June 19, 2017 which was endorsed by the Jackson Township Council on June 27, 2017. For ease of reference this Judgment shall refer to the adopted housing element and fair share plan as the Compliance Plan.

5. The Settlement Agreement set the Township's Present Need obligation at 28 units which will be met through ongoing participation in the Ocean County Community Development Block Grant funded Rehabilitation Program and the continued operation of its municipal rehabilitation program which was re-established in July of 2012; and
6. The "prospective need" for the Township for the period 1999-2025 was determined to be 1,250 units by mutual agreement of the parties; and
7. The Township's 1,250 unit obligation shall be subject to the COAH second round rental housing minimum and rental bonus caps as follows:
 - a) At least twenty-five percent (25%) of the obligation will be met through rental units.
 - b) At least half of the rental units must be available to families
 - c) At least half of the units must be for low-income households and at least thirteen percent (13%) of the total units must be available to people who are very-low-income and half of those to very-low-income families
 - d) A maximum of twenty-five percent (25%) of the housing may be age-restricted.
8. The Township shall meet its 1,250 unit obligation as follows:
 - (1) 156 Units carried forward from Prior Round for which crediting was not claimed.
 - (2) 5 units for the Holly Oaks Inclusionary Age-Restricted for-sale development. This project has received preliminary and final site plan approval.
 - (3) 1 Credit for an affordable single-family detached dwelling unit in the DVT Enterprises/Maplewood Estates development, a 13-lot subdivision including 12 new building lots.

- (4) 8 credits for an 8-bedroom special needs facility to be developed under the NJDCA Special Needs Housing Partnership Program pursuant to a Memorandum of Understanding with NJHMFA and the New Jersey Department of Human Services dated April 10, 2012.
- (5) 545 Credits for 273 units and 272 rental bonus credits from the Leigh-realty North Tract “Village Green” Mixed-Use family rental project, memorialized in a Consent Agreement approved by the Court on October 15, 2015.
- (6) 80 credits for 40 affordable family rental units and 40 rental bonus credits in the “Highview Homes” inclusionary development site, which has been rezoned to the MF-AH 7 zone consistent with the Settlement Agreement between Jackson Township, Highview Homes and FSHC.
- (7) 175 credits for 175 affordable family units in the RG-2 Zone:
 - i. Affordable Housing Site #12 - RG-2 Associates - 37 credits for 37 affordable units to be developed in a 186 unit inclusionary development site.
 - ii. Affordable Housing Site #13 - Swanbourne, LLC – 39 credits for 39 affordable for-sale single family units to be developed in the proposed 195 building lot inclusionary development.
 - iii. Affordable Housing Site # 14 - Jackson Holdings/Grawtown Estates 99 credits for 99 affordable for-sale units of the 493-total building lot inclusionary development.
- (8) 290 Units to be developed in the remainder of the RG-2 and RG-3 zones in inclusionary developments with a 20% mandatory set-aside.

9. The Master has issued a report entitled “Master’s Report for a *Mount Laurel* Compliance Hearing” for the Township of Jackson, Ocean County, New Jersey” (hereinafter “Master’s Report”) and incorporated herein by reference in which the Master has recommended approval of the Township’s Compliance Plan based upon his conclusion that (a) the Township’s 2017 Plan is consistent with the Mount Laurel doctrine and COAH’s substantive rules (N.J.A.C. 5:97); (b) that, subject to the submittal of additional information and ordinances, the Township be granted continued immunity from Mount Laurel lawsuits through July 1, 2025 or until the date required for submission of a Fourth Round Housing Element and Fair Share Plan is established by regulation, statute, or decision of a Court with appropriate jurisdiction for all municipalities in New Jersey.
10. The Court has reviewed the Compliance Plan, the master’s report and all objections to the Compliance Plan.
11. The Court adopts the recommendations of the Master conditioned on the submission of additional documentation and ordinances within 120 days of the date of this Order, with the exception of Condition 9 of the Master’s Report, which shall be considered excised from the Master’s Report without objection by the Special Master and other counsel and which the Township shall not be required to satisfy.
12. Based upon review of the aforementioned documents and conditioned on the submittal of additional information identified in the Master’s Report, the Court accepts the recommendations of its Master that the Court award a Judgment of Repose thereby declaring that implementation of the housing element and fair share plan fully discharges the Township of its responsibility of any further affordable housing responsibilities from July 1, 2015 until June 30, 2025.

NOW, THEREFORE, it is on this 16th day of August, 2017

ORDERED and ADJUDGED as follows:

- A. The Township has a rehabilitation share of 28 units.
- B. The Township's Compliance Plan fully satisfies its prior round obligation to create a realistic opportunity for the creation of 1,247 low and moderate-income housing units.
- C. The housing element and fair share plan referenced herein and incorporated by reference adequately meets the Township's obligation to provide a realistic opportunity for the provision of low and moderate-income housing and constitutes an appropriate means to fully satisfy the Township's Mount Laurel obligation.
- D. The Township shall fully implement its housing element and fair share plan. As part of implementing its housing element and fair share plan, the Township shall fund its indigenous needs rehabilitation program from developer's fees or Community Development Block Grant Funds or whatever other means is permitted by law.
- E. The Township of Jackson shall address, to the satisfaction of the Court Master, the Conditions of the Master's Report with the exception of Condition #9 within 120 days of the date of this order. During this 120-day period the Township shall confer with and provide all relevant documents to Special Master Caton and Fair Share Housing Center. The Special Master shall submit a letter to the Court confirming compliance, which shall result in this Judgment being unconditional, whether or not the Court enters another order confirming that the Township has satisfied the conditions. If the Master concludes that the Township has not satisfied the conditions, the Court shall issue an Order to Show Cause providing the Township an opportunity to demonstrate why the repose granted to this Judgment of Compliance and Repose should not be revoked.

- F. The Motion to Enforce Litigant's Rights concerning a challenge to Jackson Township Ordinance 12-17 filed by EL @ Jackson shall be subject to a separate proceeding as directed by the Court from the bench and memorialized in a scheduling order dated August 4, 2017.
- G. The Planning Board and all its respective agents, employees and representatives shall make *bona fide* efforts to implement and expedite the components of the Township's compliance package which are within the control of the Planning Board, including *bona fide* efforts to expedite all Planning Board development approvals of all inclusionary developers identified in the housing element and fair share plan to facilitate the provision of affordable housing.
- H. The Township shall pay the master's fees if it requires the master's services. If a developer in the Township's plan and the Township require the master's services, each shall bear a responsibility to pay half of the master's fees.
- I. The Court shall retain jurisdiction in the event of any challenges to the ordinances adopted pursuant hereto or any ordinances to implement any Court approved amendment to the plan.
- J. This Judgment of Repose shall provide immunity to the Township and the Planning Board from all Mount Laurel litigation through July 1, 2025.
- K. A copy of this Order shall be served upon all parties on the service list in this matter within 7 days of Jackson's receipt thereof.

EXHIBIT D

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JACKSON TRAILS, LLC,

Plaintiff,

v.

TOWNSHIP OF JACKSON and PLANNING
BOARD OF THE TOWNSHIP OF
JACKSON,

Defendants.

Civil Action No. 20-1150 (MAS) (ZNQ)

MEMORANDUM OPINION

SHIPP, District Judge

This matter comes before the Court upon Defendants Township of Jackson (the “Township”) and Jackson Planning Board’s (the “Planning Board”) (collectively, “Defendants”) Motion to Partially Dismiss Plaintiff Jackson Trails, LLC’s (“Plaintiff”) Complaint. (ECF No. 11.) Plaintiff opposed (ECF No. 17) and Defendants replied (ECF No. 18). The Court has carefully considered the parties’ submissions and decides the matter without oral argument pursuant to Local Civil Rule 78.1. For the reasons set forth herein, Defendants’ Motion is granted in part and denied in part.

I. BACKGROUND¹

This case arises from the alleged religious and racial discrimination by Defendants against Plaintiff in connection with the denial of a conditional use, subdivision, and site plan application

¹ For the purposes of a motion to dismiss, the Court accepts as true and summarizes the factual allegations of the Complaint. *See Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

(the “Application”) for a residential housing development (the “Development”) that would include 367 single-family homes, 92 multi-family affordable housing units, and a place of worship. (*See* Compl. ¶¶ 1–5, 25, ECF No. 1.) Plaintiff is a developer that owns land designated as Block 23001, Lots 22–29 (the “Property”), in the Township’s RG-3 Regional Growth Zone (“RG-3”). (*Id.* ¶¶ 25–26.) Plaintiff’s “principal is an Orthodox Jew.” (*Id.* ¶ 2.) Plaintiff alleges the Planning Board improperly denied its Application, “bowing to severe anti-Semitic pressure from local residents and fears that Orthodox Jews may purchase homes and reside in the Development, and due to the inclusion in the Development of a house of worship that may be used as a synagogue.” (*Id.* ¶ 3.) In response, Plaintiff filed the instant action alleging, among other things, that the Planning Board: (1) acted in an arbitrary, capricious, and unreasonable manner when it denied the Application; and (2) violated a settlement agreement and fair share plan. (*Id.* ¶¶ 501–46.)

A. Defendants’ Settlement Agreement and HEFSP²

On July 7, 2015, the Township filed a declaratory judgment action in the New Jersey Superior Court, Ocean County, Law Division,³ seeking a declaration of its compliance with the *Mount Laurel* doctrine,⁴ i.e., “the Township’s obligation to provide for its fair share of the regional need for low and moderate income housing.” (Compl. ¶ 416.) That action was resolved by a settlement agreement (the “Settlement Agreement”) entered into between the Township, the Fair

² Housing Element and Fair Share Plan. (*See* HEFSP, Ex. A to Compl., ECF No. 1-1.) A fair share plan is “an assemblage of maps and documents which set forth the manner in which the town will satisfy its fair share housing obligation.” David J. Frizell & Ronald D. Cucchiaro, 36 N.J. Prac., Land Use Law § 21.11 (3d ed., Oct. 2019 Update).

³ *See In re the Application of the Twp. of Jackson*, Docket No. OCN-L-1879-15.

⁴ “The *Mount Laurel* series of cases recognized that the power to zone carries a constitutional obligation to do so in a manner that creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families.” *In re Adoption of N.J.A.C. 5:96 and 5:97*, 110 A.3d 31, 33 (N.J. 2015) (“*Mount Laurel IV*”).

Share Housing Center, and an intervening developer. (Compl. ¶ 418; *see also* Settlement Agreement Doc. (“SA”), Ex. B to Compl., ECF No. 1-3.)

The Settlement Agreement provides, in relevant part, that the Township has a “Third Round prospective need” obligation of 1250 affordable housing units. (Compl. ¶ 419; SA 3.) To meet that obligation, the Settlement Agreement proposes new construction within the Township along with the requirement that 20% of any construction occurring in certain sites within RG-2 and RG-3, where the Property is situated, be set aside for affordable housing; a total of 281 units. (*See* Compl. ¶ 421; SA 3.) The Complaint appears to allege the Township identified the Property in the Settlement Agreement, for purposes of its Third Round prospective need obligation, and proposed that the Property “include development of 367 units, 92 units of which would be set-aside” for affordable housing.⁵ (*See* Compl. ¶¶ 421–23.)

On December 31, 2016, the Superior Court approved the Settlement Agreement, finding that it “fair[ly] and adequately protects the interests of low and moderate-income persons within Jackson’s housing region.” (Compl. ¶ 424; *see also* Superior Ct. Order 2, Ex. D to Compl., ECF No. 1-5.) The Superior Court then directed the Township to submit a finalized HEFSP addressing its *Mount Laurel* obligations for court approval. (Compl. ¶ 425; Superior Ct. Order 2.) The Township’s HEFSP contains a compliance plan that, like the Settlement Agreement, provides that the Township has a Third Round obligation of 1,250 units with 20% set-aside requirement for developments constructed in certain sites within RG-2 and RG-3; the total amount of units rose to

⁵ While referring to the Settlement Agreement, the Complaint provides a table entitled “Regional Growth Zone Potential Development Summary” in which the Property is identified for a proposed development including 367 single-family homes and 92 affordable housing units. (Compl. ¶ 421.) That table does not appear in the Settlement Agreement. (*See generally* SA.) Moreover, no such identification or proposal is apparent on the face of the Settlement Agreement.

290.⁶ (Compl. ¶¶ 427–28; HEFSP 11, 27.) On August 16, 2017, the Superior Court entered a judgment of compliance and repose (“JCR”) finding that the Township’s HEFSP “adequately meets,” and “constitutes an appropriate means to fully satisfy,” the Township’s *Mount Laurel* obligations. (Compl. ¶ 430; *see* Superior Ct. JCR 6, Ex. C to Compl., ECF No. 1-4.)

B. The Planning Board Denies Plaintiff’s Application

On August 10, 2018, Plaintiff submitted the Application to the Planning Board seeking conditional use, subdivision, and site plan approval for the Development. (Compl. ¶¶ 77, 223.) Plaintiff alleges that “[i]n making its determination, the [Planning] Board relied in great part on the testimony of objecting Township residents and the comments and questions of [Planning] Board members” that arose at the two hearings held on the Application. (*Id.* ¶ 243.)

During the first hearing, held on August 19, 2019, Planning Board officials inquired about the intended use of basements in single-family homes, which Plaintiff claims is due to a “concern[] that members of the Orthodox Jewish community would illegally use their basements as rentals for other Orthodox Jews.” (*Id.* ¶¶ 111–22.) An inquiry also arose as to whether rental units would be used as dormitories, which the Township banned in an alleged effort to “prevent[] boarding schools, or yeshivas, for the Orthodox Jewish community in the Township.” (*Id.* ¶¶ 121–23.) Township residents raised similar questions, and further inquired into issues concerning the house of worship, private schooling, and bussing. (*Id.* ¶¶ 127–33.)

The Planning Board held the second hearing on October 7, 2019. (*Id.* ¶ 134.) At its commencement, the Planning Board was advised by its attorney not to consider a Planning Board member’s e-mail correspondence in which he opposed Plaintiff’s Application. (*Id.* ¶¶ 135–39.)

⁶ Also like the Settlement Agreement, the HEFSP does not appear to identify the Property (*see generally* HEFSP); the Complaint does not allege otherwise (*see* Compl. ¶¶ 426–28).

That same Planning Board member, who is also a member of the Township's Environmental Commission,⁷ allegedly posted a purportedly anti-Semitic comment online. (*Id.* ¶ 140.) At Plaintiff's request, the Planning Board member recused himself and the hearing proceeded without him. (*Id.* ¶ 143.) During the public comment period, the Planning Board's attorney admonished a Township resident who inquired about the nature of the house of worship, stating that the issue had no bearing on Plaintiff's Application. (*Id.* ¶¶ 177–79.) That same resident allegedly made anti-Semitic comments on Facebook, in e-mail correspondence to Township officials, and during other Township meetings. (*Id.* ¶¶ 180–84.) The Planning Board attorney similarly admonished other Township residents who commented on bussing of the children to schools. (*Id.* ¶¶ 186–191.) The Planning Board sought to adjourn the matter, which Plaintiff opposed. (*Id.* ¶¶ 201–03.) By a 4-4 vote, the Planning Board denied Plaintiff's Application.⁸ (*Id.* ¶¶ 205–06.) Plaintiff moved for reconsideration. (*Id.* ¶ 211.)

On December 2, 2019, the Planning Board adopted Resolution 2019-31 (the "Resolution") denying Plaintiff's Application. (*Id.* ¶ 214; *see generally* Resolution Doc., Ex. E to Compl., ECF No. 1-6.) Plaintiff alleges the Resolution provides pretextual justifications for denying its Application. First, the Resolution states that there are unresolved questions concerning the Application's impact on the Joint Military Base of McGuire-Dix-Lakehurst, which Plaintiff claims is pretextual because the military base is an off-site condition that is not within the Planning Board's jurisdiction. (Compl. ¶¶ 217–18.) The Resolution also states that the Planning Board

⁷ The Environmental Commission reviews and provides recommendations on "any application for development in the Township." (Compl. ¶ 251.)

⁸ A tie vote results in the denial of an application under the Planning Board's rules. (Compl. ¶ 206; Pl.'s Opp'n Br. 8.)

expressed concerns over Plaintiff's Environmental Study and Traffic Study, which Plaintiff claims is pretextual because it submitted appropriate documents and because the issues raised are also not within the Planning Board's jurisdiction. (*Id.* ¶¶ 229–38.) The Resolution further states that Plaintiff would not consent to the Planning Board's request for additional time to review the evidence and “would not consent to any further adjournments, did not want to present or permit any additional testimony or allow any additional public comment.” (*Id.* ¶ 220.) Plaintiff avers it was “not obligated to consent” and was entitled to a Board vote and approval on its Application pursuant to the New Jersey Municipal Land Use Law (“MLUL”), N.J. Stat. Ann. §§ 40:55D-1, *et seq.* (*Id.*)

The Resolution also addressed Plaintiff's motion for reconsideration, stating the “motion reargued, essentially, questions of law, and again, [Plaintiff] did not agree therein to permit any additional information to be provided to the Board.” (Resolution Doc. 8.) The Board published notice of its decision in a local newspaper on December 21, 2019. (Compl. ¶ 242.)

On February 3, 2020, Plaintiff filed the instant fourteen-count Complaint alleging: Counts One through Four for violations of the Fairing Housing Act (“FHA”), 42 U.S.C. §§ 3604, 3617 (Compl. ¶¶ 461–80); Count Five for violations of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* (*id.* ¶¶ 481–82); Counts Six through Ten for violations of the First and Fourteenth Amendments of the United States Constitution (*id.* ¶¶ 483–94); Count Eleven for violations of 42 U.S.C. § 1982 (*id.* ¶¶ 495–97); Count Twelve for violation of the New Jersey Law Against Discrimination (“NJLAD”), N.J. Stat. Ann. §§ 10:5-1, *et seq.* (*id.* ¶¶ 498–500); Count Thirteen for arbitrary and capricious denial of the Application contrary to the MLUL (*id.* ¶¶ 501–29); and Count Fourteen, which is characterized as violation of the HEFSP and the Settlement Agreement (*id.* ¶¶ 530–546).

On March 13, 2020, Defendants filed the present Motion, seeking dismissal of Counts Thirteen and Fourteen for lack of subject matter jurisdiction and failure to state a claim. (Defs.' Moving Br. 13, ECF No. 11-3.) That same day, Defendants answered the other counts of the Complaint. (ECF No. 12.)

II. LEGAL STANDARDS

A. Rule 12(b)(1)⁹

Because federal courts are courts of limited jurisdiction, the party seeking to invoke the Court's jurisdiction bears the burden of proving the existence of subject matter jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "A Rule 12(b)(1) motion may be treated as either a facial or factual challenge to the court's subject matter jurisdiction." *Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000). On a facial attack, the Court considers only the allegations of the complaint and documents referenced therein, construing them in the light most favorable to the plaintiff. *Id.* On a factual attack, "no presumptive truthfulness attaches to [the] plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

B. Rule 12(b)(6)

Rule 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). On a motion to dismiss for failure to state a

⁹ All references to a "Rule" or "Rules" refer to the Federal Rules of Civil Procedure, unless otherwise noted.

claim, the “defendant bears the burden of showing that no claim has been presented.” *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005).

A district court conducts a three-part analysis when considering a motion to dismiss pursuant to Rule 12(b)(6). *See Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). “First, the court must ‘tak[e] note of the elements a plaintiff must plead to state a claim.’” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)). Second, the court must “[review] the complaint to strike conclusory allegations.” *Id.* The court must accept as true all the plaintiff’s well-pleaded factual allegations and “construe the complaint in the light most favorable to the plaintiff.” *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). In doing so, however, the court is free to ignore legal conclusions or factually unsupported accusations that merely state “the-defendant-unlawfully-harmed-me.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Finally, the court must determine whether “the facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’” *Fowler*, 578 F.3d at 211 (quoting *Iqbal*, 556 U.S. at 679). A facially plausible claim “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 210 (quoting *Iqbal*, 556 U.S. at 678).

III. DISCUSSION

A. **Count Thirteen**

Defendants argue this Court lacks subject matter jurisdiction over Count Thirteen because Plaintiff “failed to exhaust judicial remedies” by not appealing the Planning Board’s decision to the state court via an action in lieu of prerogative writs. (Defs.’ Moving Br. 10,16–25.) Defendants seem to also argue that, for the same reason, Count Thirteen is not ripe for federal court review. (*See* Defs.’ Moving Br. 20–21 (In addressing ripeness, Defendants posit that “the decision of the

planning board is appealable to the Superior Court and thus is not final.”). Defendants alternatively argue Count Thirteen fails to state a plausible claim for relief due to Plaintiff’s “conclusory allegations that their [A]pplication was denied based on a perceived undercurrent of alleged anti-Semitism.” (*Id.* at 13.) In opposition, Plaintiff argues it exhausted the required administrative remedies and the Court has supplemental jurisdiction over Count Thirteen, which is sufficiently pled. (Pl.’s Opp’n Br. 18–19, ECF No. 17.)

1. The Court Has Supplemental Jurisdiction Over Count Thirteen¹⁰

The applicable exhaustion requirement is found in New Jersey Court Rule 4:69-5, which provides that “except where it is manifest that the interest of justice requires otherwise,” actions in lieu of prerogative writs “shall not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.” N.J. Ct. R. 4:69-5; *See Congregation Kollel, Inc. v. Twp. of Howell*, No. 16-2457, 2017 WL 637689, *3, 12 (D.N.J. Feb. 16, 2017) (applying New Jersey Court Rule 4:69-5’s exhaustion of administrative remedies requirement where the plaintiffs challenged the validity of an ordinance following the denial of their land use application); *see also Mendez v. Port Auth. of N.Y. & N.J.*, No. 14-7543, 2017 WL 1197784, at *10 (D.N.J. Mar. 31, 2017) (“[A] plaintiff must exhaust administrative remedies before bringing an action in lieu of prerogative writ.”). An action in lieu of a prerogative writ “permits a ‘court [to] set aside a municipal board decision if it is shown to be arbitrary, capricious or unreasonable, not supported in the evidence, or otherwise contrary to law.’” *Nat’l Amusements*

¹⁰ While the Complaint refers to Count Thirteen as “Arbitrary and Capricious Denial of Land Use Application,” it is effectively a state law claim for an action in lieu of prerogative writ. The parties do not appear to argue otherwise. (*See* Defs.’ Moving Br. 24–27; *see* Pl.’s Opp’n Br. 18.)

Inc. v. Borough of Palmyra, 716 F.3d 57, 63 (3d Cir. 2013) (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 671 A.2d 567, 581 (N.J. 1996)).

Here, Plaintiff exhausted administrative remedies by obtaining the Board’s final decision, which the Board then adopted in the Resolution and published notice thereof.¹¹ *Edison Bd. of Educ. v. Zoning Bd. of Adjustments of Edison Twp.*, 2020 WL 4196496 (N.J. Super. Ct. App. Div. July 22, 2020) (“[A] party seeking the court’s review of a ‘determination of a planning board . . . must commence [an] action in lieu of prerogative writs.”); *see also* N.J. Ct. R. 4:69-6 (an action in lieu of prerogative writs to review a planning board’s decision must be commenced within forty-five days of the decision’s publication). And, contrary to Defendants’ suggestion, actions in lieu of prerogative writs can be brought in federal court. *See Acad. Hill, Inc. v. City of Lambertville*, No. 19-426, 2020 WL 3642694, *8 (D.N.J. July 6, 2020) (“Defendants’ argument that Plaintiffs are required to assert this [inverse-spot zoning] claim in state court is unavailing. This Court has previously exerted supplemental jurisdiction over state claims alleging an ordinance is arbitrary, capricious, and unreasonable under the [MLUL].”). The Court, accordingly, finds Plaintiff exhausted administrative remedies and may file an action in lieu of prerogative writs in federal court.¹²

¹¹ Defendants provide no applicable legal authority to support the proposition that a party must exhaust “judicial remedies” prior to filing an action in lieu of prerogative writs in federal court. Instead, Defendants primarily cite cases addressing the legal standard—not exhaustion requirement—for due process claims. Defendants have not, however, moved to dismiss Plaintiff’s due process claims in the instant motion. (*See* Defs.’ Moving Br. 16–23.)

¹² To the extent Defendants argue Count Thirteen is not ripe for judicial review, such argument fails in part because Plaintiff obtained a final decision from the Plaintiff Board. *See Felmeister v. Off. of Attorney Ethics*, 856 F.2d 529, 535 (3d Cir. 1988) (“With regard to administrative agency actions, considerations of ripeness reflect the need to protect those agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” (internal quotations and citation omitted)).

Any challenge to the Court's jurisdiction, therefore, should have been premised on supplemental jurisdiction. Although Defendants do not challenge the Court's supplemental jurisdiction over Count Thirteen, the Court must still consider whether it has jurisdiction over such claim. *See Bracken v. Matgouranis*, 296 F.3d 160, 162 (3d Cir. 2002).

“[I]n any civil action of which the district courts have original jurisdiction, the district court[] shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” § 28 U.S.C. 1367(a). There are three requirements for supplemental jurisdiction: (1) the “federal claim must have substance sufficient to confer subject matter jurisdiction on the court”; (2) “the state and federal claims must derive from a common nucleus of operative facts”; and (3) the claims must be such that they “would ordinarily be expected” to be tried in one judicial proceeding. *Lyon v. Whisman*, 45 F.3d 758, 760 (3d Cir. 1995) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). The party seeking to invoke the Court's jurisdiction bears the burden of establishing the existence of supplemental jurisdiction. *Korrow v. Aaron's Inc.*, No. 10-6317, 2015 WL 7720491, at *5 (D.N.J. Nov. 30, 2015).

Here, Count Thirteen satisfies the three requirements outlined in *Lyon*. That is, Plaintiff's federal claims have substance sufficient to confer subject matter jurisdiction on the court. (Compl. ¶¶ 461–97.) Plaintiff's federal claims and Count Thirteen derive from the same nucleus of operative facts: the Planning Board's denial of Plaintiff's Application. For the same reason, those claims would ordinarily be expected to be tried in one judicial proceeding. *See MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1102 (3d Cir. 1995) (“logic and prudent use of judicial resources dictate that these claims[, which arise from the same fraudulent activity,]

be tried in one judicial proceeding”). The Court, therefore, has supplemental jurisdiction over Count Thirteen.

2. Count Thirteen Raises a Plausible Claim for Relief

Defendants argue, in a cursory manner, that Count Thirteen fails to state a cause of action. (Defendants’ Moving Br. 12–14, 19.) Defendants further contend that the Planning Board’s decision was not arbitrary, capricious, or unreasonable. (*Id.* at 26–27.)

“The MLUL is a carefully constructed and comprehensive framework governing the powers of municipalities relating to land use and development.” *N.J. Shore Builders Ass’n v. Twp. of Jackson*, 972 A.2d 1151, 1153 (N.J. 2009). The MLUL “grant[s] power to local planning boards to review and approve” land use applications “and require[s] ordinances that contain provisions for an application process for development.” *See Lakeview Mem’l Park Ass’n v. Burlington Cnty. Constr. Bd. of Appeals*, 232 A.3d 529, 537 (N.J. Super. Ct. Law Div. 2019); *see* N.J. Stat. Ann. § 40:55D-38. The challenging party bears the burden of demonstrating the planning board’s decision was arbitrary, capricious, or unreasonable. *Rivkin*, 671 A.2d at 581. While courts “will give substantial deference to findings of fact, it is essential that the board’s actions be grounded in evidence on the record.” *Fallone Props., LLC v. Bethlehem Twp. Planning Bd.*, 849 A.2d 1117 (N.J. Super. Ct. App. Div. 2004).

Here, Plaintiff alleges it submitted a “fully conforming Application” to the Planning Board that should have been approved. (*See* Compl. ¶¶ 505–09, 527–28.) Plaintiff asserts it submitted a substantial number of supporting documents and presented the testimony of various expert witnesses. (*Id.* ¶¶ 512–13.) According to Plaintiff, the Planning Board nevertheless denied its Applications without “any lawful justification.” (*Id.* ¶ 528.) Plaintiff claims the Planning Board

denied its Application based on the “severe anti-Semitic pressure from local residents” to do so. (*Id.* ¶ 3.) Planning Board allegedly relied in part “on the testimony of objecting Township residents and the comments and questions of Board members,” including issues concerning the house of worship, intended use of basements, private schooling, and bussing. (*Id.* ¶¶ 111–90, 243.) Plaintiff posits the Planning Board provided pretextual justifications for denying the Application because the purported concerns raised by the Planning Board were matters outside of its jurisdiction. (*Id.* ¶¶ 217–38.) Defendants, notably, do not dispute Plaintiff’s contention that those matters were outside of its jurisdiction but rather, in justifying denial of the Application, seem to rely on a purportedly outdated environmental study provided by Plaintiff and Plaintiff’s refusal to allow the Planning Board more time to review the evidence. (*See* Defs.’ Moving Br. 1–2, 26–27.)

Drawing all reasonable inferences in Plaintiff’s favor, the Court finds Count Thirteen sufficiently alleges Planning Board acted in an arbitrary, capricious, or unreasonable manner when it denied Plaintiff’s Application. The Court, at this juncture, will not address the merits of the underlying claim. *See In re Ins. Brokerage Antitrust Litig.*, No. 1663, 2007 WL 1062980, at *3 (D.N.J. Apr. 5, 2007) (“[T]he purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case.”). Because Count Thirteen is sufficiently pled, the Court will exercise supplemental jurisdiction over that claim. Defendants’ Partial Motion to Dismiss, to the extent it seeks dismissal of Count Thirteen, is therefore denied.

B. The Court Declines to Exercise Supplemental Jurisdiction Over Count Fourteen

Relying on *Ohad Associates. v. Township of Marlboro*, No. 10-2183, 2010 WL 3326674 (D.N.J. Aug. 23, 2010), Defendants argue this Court lacks supplemental jurisdiction over Count Fourteen because Plaintiff’s claim—an alleged violation of the *Mount Laurel* doctrine—raises “a complex issue of state law” that should be resolved in state court. (Defs.’ Moving Br. 28–31.)

In opposition, Plaintiff characterizes Count Fourteen as a breach of contract claim, asserting that “any ‘novel or complex issues’ have already been addressed by the state courts.” (Pl.’s Opp’n Br. 21 (“the only issue here is whether Defendants breached their Settlement Agreement and their HEFSP”).) Moreover, Plaintiff contends *Ohad* is “easily distinguish[able]” because in that case the district court declined to exercise supplemental jurisdiction due to the “ongoing involvement of [Council on Affordable Housing (“COAH”)].”¹³ (*Id.* at 26–27.)

Supplemental jurisdiction “is a doctrine of discretion, not of plaintiff’s right.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). The district court may decline to exercise supplemental jurisdiction over a state-law claim if:

- (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). In determining whether to exercise supplemental jurisdiction, “a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.” *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997) (quoting *Carnegie-Mellon Univ.*, 484 U.S. at 350).

Before reviewing the *Ohad* decision, the Court notes Count Fourteen does not set forth a simple breach of contract claim because the alleged violations of the Settlement Agreement and HEFSP necessarily implicate the *Mount Laurel* doctrine. Plaintiff alleges, for example, that the

¹³ The COAH “was designed to [p]rovide an optional administrative alternative to litigating constitutional compliance through civil exclusionary actions.” *Mount Laurel IV*, 110 A.3d at 33. Finding the COAH moribund, the New Jersey Supreme Court ordered that “the courts may resume their role as the forum of first resort for evaluating municipal compliance with *Mount Laurel* obligations.” *Id.* at 35.

Planning Board's denial of its Application "violate[s] the Township's *Mount Laurel* obligations pursuant to the Settlement Agreement and the JCR," "which required implementation of the HEFSP." (Compl. ¶¶ 538, 546.) Indeed, Plaintiff asserts it "has standing to enforce [the Settlement] [A]greement and HEFSP" pursuant to a state court case that held "any individual demonstrating an interest in, or any organization that has the objective of, securing lower housing opportunities in a municipality *will have standing to sue such municipality on Mount Laurel grounds.*" (Pl.'s Opp'n Br. 11. (emphasis added) (citing *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 456 A.2d 390, 483 (N.J. 1983).) The Court, therefore, finds Count Fourteen involves an alleged violation of the *Mount Laurel* doctrine.

In *Ohad*, the plaintiff applied to the planning board for approval to construct a development. 2010 WL 3326674, at *1. After the board denied the application, the plaintiff filed a lawsuit in state court, alleging the board's decision violated a consent judgment previously entered against the township. According to the plaintiff, that judgment had identified plaintiff's property, among others, for development to meet the township's *Mount Laurel* obligations. *Id.* at *1-2. The township, meanwhile, sought COAH's approval for a proposed compliance plan. *Id.* at *2. The plaintiff objected to that proposal. *Id.* The parties engaged in mediation that ultimately resulted in an unconsummated settlement agreement. *Id.* at *2. The plaintiff then filed the underlying *Ohad* action against the township and the board (among others) in state court, in part alleging violations of the consent order and settlement agreement. The defendants removed the matter to federal court and the plaintiff moved to remand. *Id.* at *2.

In declining to exercise supplemental jurisdiction, the district court did not base its decision on the ongoing involvement of COAH despite Plaintiff's assertion to the contrary. Rather, the district court rejected the plaintiff's argument that the court should abstain because there "were

ongoing proceedings before COAH involving the [d]efendants' *Mount Laurel* obligations and that [the] [p]laintiff [was] participating in those proceedings." *Id.* at *4. Instead, the district court declined jurisdiction because it concluded that the plaintiff's claims "raise[d] a complex issue of state law that ought to be remanded to the New Jersey state courts for resolution." *Id.* at *6. The district court explained that "the designation of a specialist judge in each region who handles all of that region's *Mt. Laurel* claims speaks to th[e doctrine's] complexity, as does the intricacy of the housing-plan approval process." *Id.* at *6. Consequently, the court cautioned that "[a] federal court that opts to decide a *Mt. Laurel* claim not only risks making a substantive legal error, but also intrudes upon" a "process that has been entrusted to state court judges[.]" *Id.* at *6.

Plaintiff contends that even though Count Fourteen presents a complex issue of state law, the Court should nevertheless retain jurisdiction because otherwise there will be "two parallel lawsuits involving the same nucleus of facts in two separate courts." (Pl.'s Moving Br. 29–30.) The Court recognizes that considerations of convenience and judicial economy weigh in favor of retaining jurisdiction. Principles of comity, however, outweigh these concerns. "The New Jersey courts are critical actors in the *Mt. Laurel* system" that "have developed and implemented a complex, fact-intensive process for carrying out the New Jersey Supreme Court's mandate, and they continue to develop and implement that process today." 2010 WL 3326674, at *6.

The district court's reasoning in *Ohad* for declining jurisdiction applies with equal force here. The Court finds that Count Fourteen is not a simple breach of contract claim and necessarily implicates the *Mount Laurel* doctrine. Moreover, the principles of comity outweigh Plaintiff's concerns of pursuing parallel suits. The Court also notes that, unlike in the parties in *Ohad*, Plaintiff was not a party to the Settlement Agreement. Nor does the Settlement Agreement or HEFSP appear

to identify Plaintiff's Property, much less address a proposal for development.¹⁴ The Court, accordingly, declines to exercise supplemental jurisdiction over Count Fourteen.¹⁵ Defendants' Partial Motion to Dismiss, to the extent it seeks dismissal of Count Fourteen, is therefore granted.

IV. CONCLUSION

For the reasons set forth above, Defendants' Partial Motion to Dismiss is granted in part and denied in part. The Court will enter an Order consistent with this Memorandum Opinion.



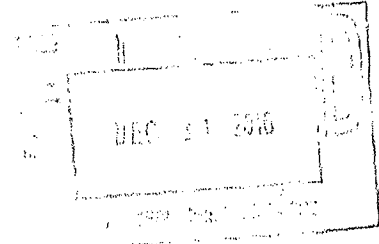
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

¹⁴ While identifying other developers for the Township's Third Round prospective need obligations, the Settlement Agreement and HEFSP appear to only refer to Plaintiff and/or the Property to the extent the documents identify RG-3, where Plaintiff's Property is situated. (See HEFSP 27; see SA 3.)

¹⁵ Because the Court declines to exercise supplemental jurisdiction over Count Fourteen, the Court does not reach the merits of the parties' remaining arguments.

EXHIBIT E

GILMORE & MONAHAN, P.A.
Ten Allen Street
P.O. Box 1540
Toms River, NJ 08754
(732) 240-6000
Attorneys for Township of Jackson
JEAN L. CIPRIANI, ESQ. NJ ATTY ID #: 048771994



<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF JACKSON, a municipal corporation of the State of New Jersey</p>	<p>SUPERIOR COURT OF NEW JERSEY OCEAN COUNTY LAW DIVISION</p> <p>DOCKET NO. OCN-L-1879-15</p> <p>ORDER ON FAIRNESS AND PRELIMINARY COMPLIANCE HEARING</p>
---	---

THIS MATTER having been opened to the Court by Gilmore & Monahan, P.A., attorneys for the Township of Jackson (hereinafter referred to as "Jackson"), Jean L. Cipriani, Esquire, appearing, in the presence of Adam Gordon, Esquire, attorney for Interested Party and Intervenor, Fair Share Housing Center, Inc., (hereinafter referred to as "FSHC") and Richard Hoff, Esquire, attorney for Interested Party and Intervenor Highview Homes, by way of Fairness and Preliminary Compliance Hearing held pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law. Div. 1984); and the Court

GILMORE & MONAHAN
A Professional Corporation
COUNSELLORS AT LAW
Allen Street Professional Center
Ten Allen Street
P.O. Box 1540
Toms River, New Jersey 08754

having considered the testimony of Jackson qualified expert, John Maczuga, P.P., and the Court-appointed Special Master, Philip Caton, P.P., F.A.I.C.P.; and the Court having considered the Settlement Agreement entered into between Jackson, FSHC and Highview Homes dated October 25, 2016, and Jackson's Revised Housing Plan Summary referenced therein; and the Court having considered the testimony and presentations of Interested Parties at the time of the hearing; and good cause having been shown;

IT IS on this 31st day of December 2016, **ORDERED** that

1. The Court finds that the Settlement Agreement between Jackson, FSHC and Highview Homes is fair and adequately protects the interests of low and moderate income persons within Jackson's housing region based upon the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel litigation; and

2. The Court preliminarily finds that Jackson's proposed draft summary Housing Element and Fair Share Plan is facially constitutionally compliant and provides a fair and reasonable opportunity for Jackson to meet its obligation under Mount Laurel IV, subject to Jackson's satisfaction of any conditions set forth by the Court's Special Master, and subject to the Court's approval by way of a Final Compliance Hearing to be held as hereinafter set forth; and

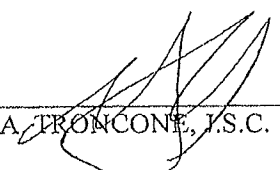
3. A Final Compliance Hearing is hereby scheduled for 1:30 p.m. on **May 5, 2017**, by which time Jackson shall have complied with the above-referenced conditions, shall have submitted to the Special Master for review and comment Jackson's Housing Element and Fair Share Plan and all Resolutions and Ordinances required to implement the Housing Element and Fair Share Plan, and shall have provided for the Planning Board of the Township of Jackson to

finalize and adopt the Housing Element and Fair Share Plan and the Jackson Township Council to endorse same and to adopt all necessary effectuating Resolutions and Ordinances; and

4. FSHC be and hereby is granted status of Intervenor in this matter; and

5. The temporary immunity previously granted to Jackson herein is hereby extended until and through the day following the May 31, 2017; and

6. A copy of this Order shall be served upon all parties on the service list in this matter within 7 days of Jackson's receipt thereof.


MARK A. TRONCONE, J.S.C.

GILMORE & MONAHAN
A Professional Corporation
COUNSELLORS AT LAW
Allen Street Professional Center
Ten Allen Street
P.O. Box 1540
Trent River, New Jersey 08754

EXHIBIT F

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
VIA MICROSOFT TEAMS
LAW DIVISION, CIVIL PART
DOCKET NO. OCN-L-1879-15
OCN-L-822-92

IN THE MATTER OF THE)
TOWNSHIP OF JACKSON, a)
Municipal Corporation of)
the State of New Jersey.)
X-----))
EL AT JACKSON, LLC,)
)
)
Plaintiff,)
)
vs.)
)
TOWNSHIP OF JACKSON)
PLANNING BOARD,)
)
)
Defendant.)
X-----X

DOCKET NO. OCN-L-271-20PW

TRANSCRIPT
OF
MOTION

Place: Ocean County Courthouse
100 Hooper Avenue
Toms River, NJ 08754

Date: June 18, 2020

BEFORE:

THE HONORABLE MARK A. TRONCONE, J.S.C.

TRANSCRIPT ORDERED BY:

SEAN GERTNER, ESQUIRE
(Gertner & Gertner)

Transcriber:
Geraldine Famularo
19 Cherrywood Circle
Brick, New Jersey 08724
(732) 458-8298

Sound Recorded
By Court Personnel

APPEARANCES:

DOUGLAS K. WOLFSON, ESQUIRE
MITCHELL NEWMAN, ESQUIRE
(Weingarten Law Firm)
Attorney for Plaintiff EL at Jackson, LLC.

JASON R. TUVEL, ESQUIRE
(Prime & Tuvel)
Attorney for EL at Jackson, LLC.

JEFFREY SURENIAN, ESQUIRE
(Surenian, Edwards & Nolan)
Attorney for the Township of Jackson.

SEAN GERTNER, ESQUIRE
(Gertner & Gertner)
Attorney for The Jackson Planning Board.

ADAM GORDON, ESQUIRE
(Fair Share Housing Center)
Attorney for Fair Share Housing Center.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(The matter was called at 10:35 a.m.)
THE COURT: This is the matter of EL At
Jackson, LLC versus The Township of Jackson, Mayor and
Council of the Township of Jackson Planning Board, and
the Township of Jackson. Docket number L-271-20.
Counsel, your appearances, please, starting
with plaintiff.
MR. WOLFSON: Doug Wolfson for the plaintiff
along with Jason Tuvel and Ms. Newman.
MR. TUVEL: Good morning, Your Honor. Jason
Tuvel, for the record.
MR. GERTNER: Good morning, Your Honor. Sean
Gertner on behalf of the Jackson Township Planning
Board.
MR. SURENIAN: Jeff Surenian for Jackson
Township.
THE COURT: Good morning, Mr. Surenian.
Good morning, Mr. Gertner.
MR. GORDON: Good morning, Your Honor. Adam
Gordon on behalf of Fair Share Housing Center.
THE COURT: Okay. I think that's everybody.
All right. This matter returns to Court
following the filing of a Verified Complaint, a motion
to enforce litigant's rights by the plaintiff EL at
Jackson, LLC, a Delaware Limited Liability Company,

1 against the defendants Township of Jackson, Mayor and
 2 Council of the Township of Jackson, and the Planning
 3 Board of the Township of Jackson.

4 Fair Share Housing Center, recognized by this
 5 Court as an interested party is also in this matter and
 6 joins EL in its motion. The motion is opposed by the
 7 Township.

8 Now, by its motion EL is seeking the
 9 following relief; consolidating this action with the
 10 docket, and I think that's been unopposed. So that will
 11 be granted.

12 The other requested relief is vacating and
 13 reversing the defendant Planning Board denial of the
 14 plaintiff's application for preliminary and final major
 15 site plan and preliminary major subdivision approval
 16 with the design exception submitted on November 30th,
 17 2018. That has been somewhat addressed, but I will get
 18 into that later.

19 Three, granting a statutory approval pursuant
 20 to N.J.S.A. 40:55D-61 for plaintiff's application for
 21 preliminary and final major site plan approval and
 22 final major subdivision approval for design exceptions
 23 submitted on January 31, 2019 regarding the south
 24 parcel.

25 Appointing a Special Hearing Examiner

1 pursuant to the protocols approved in the Cranford
 2 Development Associates, LLC versus Township of Cranford
 3 cited at 445 NJ Super 220, an Appellate Division case
 4 in 2016. This examining officer would hear any
 5 applications and any other application pertaining to
 6 any Affordable Housing site so designated under the
 7 Township Housing Element and Fair Share Plan.

8 Next would directing the Special Hearing
 9 Examiner with the assistance of the Special Master Ms.
 10 Lonergan to review and make recommendations concerning
 11 the approval of said applications as well as any and
 12 all other applications as plaintiff may make in
 13 connection with this property in Jackson as described
 14 in the plaintiff's Verified Complaint.

15 Vacating the Judgment of Compliance and
 16 Repose previously granted by this Court to the Township
 17 of Jackson and reinstating litigation against the
 18 plaintiff Township; revoking Jackson's immunity from
 19 builder's remedy litigation as conferred by the
 20 Judgment of Compliance and Repose which was entered on
 21 August 16th, 2017.

22 Next would be requiring the Township to
 23 notify through publication and certified mailings all
 24 others who are partners, interveners, and proposed
 25 interveners to this litigation that the Judgment of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Compliance and Repose has been vacated.
 Awarding EL at Jackson damages, interest, and attorneys fees, cost of suit for which EL would submit an affidavit of service to the for its review and approval.
 Next would be that the Court retain jurisdiction with regard to any subsequent challenges or Complaints regarding the development of EL's property in Jackson pursuant to the above-listed Judgments.
 Next would be the planary matters and Counts and Verified Complaint will be subject to further proceedings and scheduling Orders to be set by the Court.
 The relief requested by EL is joined by Fair Share Housing Center and opposed in its entirety by the Township of Jackson and the other defendants.
 EL is the owner of certain real property in Jackson Township consisting of approximately 355 acres. Throughout this litigation the property has been broken out into three parcels; Block 10401, Lots 501 and 504 as designated on the Jackson Township Municipal Tax Map; contains 241.8 acres and is commonly referred to as the north parcel. Block 17802, Lot 5701 is referred to as a set parcels and contains 113.5 acres. And the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

7
 third and final tract is a 4.25 acre parcel consisting of Block 11404, Lots 52 and 69 and has frontage on two public roadways, and EL proposes to build what's known as a connector road on this final parcel.
 The proposed development of the property now owned EL has a long history and has been a central part of Jackson Township's plan to satisfy its Mount Laurel obligation. In September, 1999 the Township entered into an agreement with Hovbuilt, Inc., who is EL's predecessor in title, to permit the construction of an inclusionary Affordable Housing project on the site. That agreement was the subject of a Fairness Hearing before the Honorable Eugene Serpentelli on January 10th, 2000. At that time Judge Serpentelli entered an Order approving the Settlement.
 In 2007 an amendment to the 1999 Settlement Agreement was executed between Jackson and Hovbuilt to allow up to twelve -- 1,275 units to be constructed with an Affordable Housing set aside of 15 percent or 192 units. This amended agreement was also the subject of a Fairness Hearing and subsequently approved by the Honorable Vincent Grasso. A further amendment was approved in 2011.
 Ultimately Hovbuilt never developed the property and following a Chapter 11 Backrup in 2011

8

1 filing by Hovbuilt EL purchased the subject I believe
2 at auction in 2013. EL then continued as the new owner
3 to pursue its rights to develop the property.

4 In 2015 in the wake of the New Jersey Supreme
5 Court decision in the Mount Laurel IV litigation
6 Jackson Township was one of thirteen Ocean County
7 municipalities to file a Declaratory Judgment action
8 seeking substantive certification from this Court to
9 shield the Township from builder's remedy lawsuits.

10 During the pendency of the Court's review of
11 the various DJ actions the Township and Fair Share
12 entered into an agreement in 2016. Part of that
13 Settlement was the continued inclusion of the EL
14 development in the Township's Fair Share Plan which in
15 turn was the basis for the Court granting a Judgment of
16 Compliance and Repose on August 16th, 2017.

17 Matters between the Township and EL even then
18 were not fully resolved. Prior to the entry of the
19 Order of Repose EL had filed a motion in aid of
20 litigant's rights challenging Jackson Township's
21 Ordinance number 12-17 which placed certain
22 restrictions which according to EL prevented the
23 reasonable development of the EL property as previously
24 contemplated by the parties. In fact, the Judgment of
25 Repose noted that the challenge to the Ordinance would

9

1 be the subject of a separate proceeding.

2 Ultimately in January of 2018 this particular
3 litigation was resolved via Court-ordered mediation
4 which resulted in the Township's agreement to amend its
5 Ordinance to allow a yield of 1100 units on the EL
6 property with 220 Affordable units to be included in
7 that number. EL then proceeded with its preparation of
8 development plans. The amended Ordinance was adopted by
9 the Township and the Ordinance itself provides that the
10 Order constitutes the agreement between EL and the
11 Township under which EL property was to be developed.

12 In November, 2018 EL filed an application for
13 general development plan approval pursuant to
14 N.J.S.A. 40:55-55.2 for its entire property.
15 Simultaneously EL filed applications for preliminary
16 and final major site plan approval and for preliminary
17 and final major subdivision approval for the north
18 parcel and the connector road.

19 In January EL filed similar applications for
20 the south parcel, as well.

21 The GDP applications sought approval for the
22 1100 units of housing consisting of 360 apartment
23 units, 278 single-family homes, 276 stacked townhouse
24 units, and 180 townhouses. Of these units 220 apartment
25 units were to be designated as Affordable housing units

10

1 to be made available to low and moderate income
2 households. These Affordable units were to be
3 constructed in both the north parcel and the south
4 parcel.

5 On April 1, 2019 the Planning Board approved
6 the GDP application. A memorializing Resolution was
7 subsequently adopted on May 20th, 2019. The Resolution
8 provided the GDP approval to be valid for twenty years
9 and also noted the construction of the 220 Affordable
10 units would go towards satisfying the Township's
11 Affordable Housing obligation and was in furtherance of
12 the 2017 Settlement Agreement entered into between the
13 parties as well as the Order of Repeal that was
14 executed by the Court in that year, as well.

15 The Resolution of the GDP noted that EL's GDP
16 application was in full conformance with the Township
17 Zoning Ordinance and addressed all existing onsite
18 environmental conditions.

19 Following the GDP approval the Planning Board
20 then proceeded to hear EL's applications for site plan
21 and subdivision approval. Public hearings were
22 conducted on June 17th, 2019; August 5, 2019; October
23 21, 2019, and November 4, 2019. And this was the
24 application for the north parcel and the connector
25 road. Despite both its prior GDP approval and the

11

1 confirmation by its own experts that EL's applications
2 remained fully conforming to the Township's Zoning
3 Ordinance the Planning Board voted to deny the
4 application. The Resolution memorializing its denial
5 was adopted by the Planning Board on December 16th,
6 2019. While denying the application the Resolution
7 nevertheless noted that EL's application again was
8 compliant with the Township Ordinances and further
9 noted no variance or design waivers were requested or
10 required.

11 Following the Planning Board's denial this
12 litigation then ensued. At a conference with the
13 parties at the Ocean County Courthouse earlier this
14 year the parties entered into settlement negotiations.
15 As a result of these negotiations an agreement was
16 reached whereby the Township Planning Board would agree
17 to meet in closed session to confirm the Settlement.
18 The Board pursuant to the proposal which was reduced to
19 an Order entered by the Court on April 7th, 2020 could
20 either agree to the plan on its denial; whereupon the
21 matter would then be remanded to the Court for a
22 decision on whether to enforce its rights or the
23 Board would agree to vacate its denial and then grant
24 preliminary and final subdivision and site plan
25 approval subject to certain provisions as outlined in

the April 7th Order.

A review of the record below reveals that the initial decision of the Planning Board to deny EL's application was completely without legal justification. EL's applications were in full conformance with the Township's Ordinances and development regulations, a fact confirmed by the Board's own experts.

EL has cited to a myriad of cases standing for the proposition that local Planning Boards cannot deny a fully conforming application. They cite to Pizzo Mantin Group versus Township of Randolph, 137 NJ 216 (1994) New Jersey Supreme Court case. In that case the Court noted that at most in the discretion of the Planning Board in those circumstances limited to approving the application with appropriate and reasonable conditions.

The applicant cited -- Petitioner/Plaintiff here also cites the Shim versus Washington Township Planning Board case, as well, 298 NJ Super 295, an Appellate Division case from 1997.

The Court would note that the denial of a fully conforming application for Planning Board or site plan approval was a drastic action and there would have to be some basis found in the Statute or overwhelming public interest to do so. The Court no reasons extent

here.

We are, however, no longer confronted with that particular circumstance. No doubt, the Planning Board with the advice of counsel agreed to vacate its denial and to grant preliminary and major subdivision and site plan approval. That was done at a hearing previously. However, due to reasons not fully explained to the Court either in his briefing or at oral argument the Board withheld final approval to both the subdivision and site plan application. The Planning Board also placed the condition with regard to the issuance of CO's with regard to certain off tract improvements regarding the construction of a connector road and other related issues to that. That also is not in conformance -- that condition was not in conformance with the April 7, 2020 order which was again the culmination of settlement negotiations among counsel and then approved by the Court.

Counsel for the Planning Board argues that the plaintiff was faced with a binary choice at the April 20th meeting to either stand pat on its denial on the EL application and return to Court to essentially defend it. That was their position, that is, the denial of a fully conforming discretionary project or to comply with the Court Order and is viewed to be having

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

unacceptable conditions.

However, the Court finds that there was a third choice. That is, they could refuse to vacate its denial; they could return to the Court and attempt to renegotiate a more acceptable Settlement Agreement in their minds. Instead, the Board chose to fashion its own remedy, a remedy in violation of both the law and the Court Order.

It is for these reasons the Court will grant in part EL's motion to enforce litigant's rights. Accordingly, the Court will modify the most recent action of the Jackson Township Planning Board relating to the north parcel and the road connection taken at its April 20th public meeting and memorialized in a subsequent Resolution of May 18th, 2020.

The modifications are as follows. EL is hereby granted preliminary and final major subdivision approval, preliminary and final major site plan approval, conditional use approval for the north parcel also known as Jackson Park North.

Is that still the name of the project, by the way? Jackson Park North?

MR. WOLFSON: Yes. Yes.

THE COURT: Okay. In accordance could set a plan prepared by I believe it's Partner Engineering and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Science Inc. (Phonetic)

Condition number one of the May 18th Resolution of approval relating to the connector road between Perrineville Road and Cassville Road is hereby stricken in its entirety and replaced with provisions of paragraph eight of the Court's prior Order of April 7th, 2020 which is incorporated herein.

Further, any other condition of the Board's May 18th Resolution which are inconsistent with the Court's April 7th, 2020 Order are likewise struck and vacated.

The Court will also grant EL's Fair Share application for attorneys fees and costs related to the litigation commencing from the Board's denial of EL's applications in November, 2019.

The Court is aware that the award of legal fees and costs are not typical in the Mount Laurel cases. The Appellate Division in Stranford Development Associates, LLC versus Township of Stranford, 445 NJ Super 220 which is a 2016 Appellate Division case denied a developer's demand for attorneys fees, ruling that there was no provision in the Fair Housing Act for the award of fees. The Court there also noted that the developer in builder's remedy lawsuits, which was the context of that case, remitted constitutional right in

1 that the fee shifting provisions are therefore not
 2 appropriate. In the typical builder's remedy lawsuit
 3 such as was the case as noted in the Cranford case the
 4 increase in density provides the incentive for the
 5 developer to pursue the litigation and, therefore, the
 6 award of counsel fees are not warranted.

7 However, in this case we are not dealing with
 8 a builder's remedy lawsuit. Rather we are dealing with
 9 circumstances far different than in the Cranford case.
 10 Here we are confronted with the action of the Township
 11 denying a fully conforming application, one that was
 12 specifically agreed to by the Township and incorporated
 13 in the Settlement Agreement between it and the
 14 developer and then approved by this Court as an
 15 essential part of the Township's Affordable Housing
 16 plan which also approved by the Court which was one of
 17 the bases for the 2017 Judgment of Repeal. Thus, the
 18 Township here not only breached the Settlement
 19 Agreement between the parties, but also the obligations
 20 under the Judgment of Repeal.

21 Accordingly, the Court finds that in this
 22 case distinct the fact situation present in the
 23 Cranford case. The grant of fees and cost is not for
 24 the purpose of sanctioning the Township primarily, but
 25 rather to place EL and Fair Share in the position they

1 would have been in had the Township granted as it was
 2 legally obligated to do EL's fully conforming
 3 application in 2019. And that's since the Township
 4 breached this 2017 Settlement Agreement with EL and
 5 Fair Share. But for the Township's actions EL and Fair
 6 Share would not have incurred the fees and costs to
 7 which they now seek reimbursement. They are entitled to
 8 some relief under those circumstances.

9 Therefore, counsel for both EL and Fair Share
 10 shall submit affidavits of services. Within the thirty
 11 days of the Court review and approval the Township will
 12 have fourteen days from that submission to interpose
 13 any objections to any specific items. Requests for fees
 14 and costs shall be limited to those directly occurred
 15 as a result of the Township's denial of EL's
 16 application. And the Court will also keep in mind when
 17 it's reviewing and awarding any fees that the Township
 18 did take action to attempt to address the denial which
 19 was previously issued by the Planning Board.

20 The Court will not grant at this time EL's
 21 request for the Township's Judgment of Compliance and
 22 Repeal granted by this Court on August 16th, 2017.
 23 While the Planning Board did not fully conform with the
 24 provisions of the April 7th, 2010 Order in particular
 25 by withholding final approval and by imposing a

1 improper condition as it relates to the connector road
2 and other off site improvements, the work is the
3 Township's action is generally compliant. The court's
4 indulgence has limits, however, and EL may renew its
5 application in the future should events warrant.

6 Similarly, the Court will not grant at this
7 juncture EL's motion to grant an automatic default
8 approval to EL's pending applications for the south
9 parcel.

10 However, the Court also will not grant at
11 this time EL's request for appointment of a Special
12 Hearing Examiner pursuant to the protocol set forth in
13 the Cranford Development Associates case which I
14 mentioned before. However, the Court does find that
15 there is a need for oversight of the Township's
16 compliance with its obligations under the 2017 Judgment
17 of Compliance and Repose.

18 Accordingly, the Court hereby directs a
19 Special Master for Jackson Township Mary Beth Lonergan
20 who is a planner in the State of New Jersey to
21 participate in all future proceedings conducted by the
22 Jackson Township, its Boards and agencies relating to
23 any inclusionary site including EL's, including --
24 which are included in the Township Affordable Housing
25 Plan. Pursuant to the Supreme Court's ruling in Mount

1 Laurel II the Trial Courts have considerable discretion
2 in fashioning remedies to enforce the Affordable
3 Housing obligations including the appointment of
4 Special Masters. While the Court does not believe that
5 a Special Hearing Examiner which would basically make
6 the mistake -- the decision with regard to future
7 approvals for EL and other Affordable housing projects,
8 the Court believes that that is an extreme measure and
9 should be limited to extreme circumstances.

10 The Court does not believe that removal of
11 jurisdiction of the Planning Board to hear these
12 matters is appropriate at this point in time. However,
13 the Court, as indicated, believe that monitoring is
14 required as a result of the history relating to this
15 project.

16 So with regard to EL's pending application
17 for the south parcel and, to the extent, for future
18 inclusionary housing projects in Jackson in the future,
19 Special Master Lonergan shall, and, review the pending
20 application to determine its consistency with the
21 Jackson Township Fair Share Plan and to ensure that it
22 corresponds with the Planning Board project goals to
23 review the application's consistency with the Township
24 Ordinances and development applications; correspond
25 with EL and its professionals regarding pending

20

1 applicator; issue a report at least 72 hours in
 2 advance of a public hearing regarding the application's
 3 consistency with the Jackson Township Affordable
 4 Housing Plan. Copies of this report will be provided to
 5 the members of the Planning Board, its professional
 6 staff, EL, its professionals, and to Fair Share Housing
 7 Center. This report shall be entered into evidence at
 8 the public hearing. Ms. Loneragan will also attend all
 9 public hearings relating to EL's pending application
 10 and shall provide a summary of her report to the Board
 11 prior to the Board taking any final action and is to be
 12 available to address any questions or concerns or
 13 comments that the Board may have, its professionals may
 14 have, members of the general public, or EL, for that
 15 matter, may have through the Chair. The Special Master
 16 shall monitor all proceedings and issue a report to the
 17 Court relating to the Board's proceedings within 72
 18 hours after the close of the public meeting. Copies of
 19 said monitoring report shall be provided to the Board,
 20 EL, and Fair Share, and in the future to all the
 21 developers and the Board, as well.

22 With regard to the now approved preliminary
 23 and final subdivision and site plan for the north
 24 parcel connector road, the Special Master will also
 25 monitor the Resolution of Compliance phase of the

21

1 approval to insure that EL's development proceeds pace
 2 and that the town properly processes the application
 3 and plan for signature, and so on and so forth.

4 All costs for any Special Master services
 5 will be paid by the Township as has been the practice
 6 in the past in accordance with prior Orders of the
 7 Court.

8 In light of the above, the Special Master and
 9 the pending EL application and the protocols put into
 10 place by this decision, (coughing) to schedule a
 11 special meeting of June 22nd public hearing to allow
 12 the Special Master to prepare her report.

13 The Court is also taking this action for
 14 several other reasons. Based upon the reports of the
 15 parties relating to the most recent hearing the Court
 16 has all confidence that the technology now being
 17 utilized and the virtual proceedings can produce an
 18 accurate and reliable record of proceedings. The Court
 19 does not blame any party. As a result of that we are
 20 faced with an unusual circumstance unprecedented where
 21 we're trying to conduct these meetings in a virtual
 22 fashion. And when you have the case, especially with
 23 the keen public interest that's present here, it is
 24 very difficult. Now, I know that the parties are
 25 asking for it and I did receive certain correspondence

1 from the parties, Mr. Gertner in particular that he is
2 confident that those glitches which occurred at the
3 last public hearing have been addressed, but I'm not
4 confident yet that's, in fact, the case.

5 So, accordingly, the parties are to agree to
6 a special meeting date between August 10th -- that's a
7 Monday -- and Thursday, August 27th, 2020 to hear EL's
8 pending application. It is the Court's hope that the
9 current Covid-19 emergency regulations will be relaxed
10 by then to the extent to allow for a non-virtual public
11 hearing. If the emergency regulations are not so
12 relaxed, the parties will hopefully develop and test
13 and have some track record with regard to the virtual
14 platform that is better equipped to provide a more
15 effective public hearing.

16 Accordingly, the Court will conduct a case
17 management conference with the parties on Monday,
18 August 3rd, 2020 at ten a.m. to further review the
19 status of the Covid-19 emergency and its effect on the
20 ability to conduct those future hearings.

21 Finally -- excuse me one second -- finally,
22 the Court retains jurisdiction with regard to any
23 subsequent challenges or complaints regarding the
24 development of the EL property in Jackson Township.
25 Unless specifically addressed by this Opinion, any

1 other relief requested by the movant is hereby denied.

2 Mr. Gordon of Fair Share Housing is to
3 prepare an Order consistent with this Opinion and
4 submit it under the five-day rule.

5 Thank you, Counsel. Any questions?

6 MR. GERTNER: Your Honor --

7 THE COURT: Mr. Gertner, go ahead.

8 MR. GERTNER: Thank you, Your Honor. Two
9 questions. One, you've just considered this a final
10 Order?

11 THE COURT: No, I don't think it's a final
12 Order. The Court is retaining jurisdiction. I guess it
13 would be a final decision with regard to the north
14 parcel in the sense that the Court did grant
15 preliminary and final major subdivision and site plan
16 approval. So to that extent, yes.

17 MR. GERTNER: Thank you, Your Honor. I would
18 ask that Mr. Gordon include that language in his
19 proposed form.

20 Secondly --

21 THE COURT: And the Court -- I need to put
22 this on the record -- the Court also reserves the right
23 to amplify its decision with regard to a written
24 Opinion should the need arise.

25 MR. GERTNER: Thank you, Your Honor.

1 And second question. Does this render -- at
2 this point does Your Honor render moot the prerogative
3 writ action filed by the plaintiff?

4 THE COURT: No, because I think that also
5 covers the south parcel, as well, because they were
6 asking for automatic approval for that parcel, which I
7 denied in my Opinion.

8 MR. GERTNER: So from a procedural
9 perspective, respectfully -- and this question I kind
10 of throw up to Your Honor and to the other folks on the
11 call -- the Board has yet to file an Answer because we
12 were addressing this. How long do we have to file an
13 Answer to the pending prerogative writ action?

14 THE COURT: You'll have twenty days from the
15 entry of the Order. And Mr. Gordon will put that into
16 the proposed form.

17 MR. GERTNER: Thank you.

18 MR. SURENIAN: Jeff Surenian. The Township did
19 not file an Answer for the same reason. We thought that
20 this motion would resolve it. So we need to file an
21 Answer. We need twenty days, as well.

22 THE COURT: That's fine, Mr. Surenian. No
23 problem.

24 MR. WOLFSON: Judge, there's nothing left
25 against the Town.

1 THE CLERK: Who is that?

2 MR. SURENIAN: I don't even know if there is
3 any.

4 MR. WOLFSON: You denied the request to revoke
5 immunity. You denied the request to set aside the
6 Judgment of Repose.

7 THE COURT: Well, I did say, Mr. Wolfson, at
8 this time.

9 MR. WOLFSON: Well, okay.

10 THE COURT: Subject to what happens with the
11 south parcel. So I think he should file an Answer
12 because I'm retaining jurisdiction as requested by your
13 client. So that Answer should be filed because there's
14 a possibility depending on what happens going forward.
15 For instance, if the Planning Board were to deny the
16 south parcel, I would assume he would still seek that
17 relief of --

18 MR. WOLFSON: But we don't have to file
19 another Complaint. That's fine.

20 THE COURT: Okay.

21 MR. GERTNER: Actually, Your Honor, off the
22 top of my head, a third question. I presume that the
23 Order that Mr. Gordon prepares will direct the Planning
24 Board to revise or pass another Resolution in
25 accordance with the Order; right?

1 THE COURT: Well, I don't know if it's
2 necessary.
3 MR. GERTNER: There's a Court Order.
4 THE COURT: The Court Order stands as a
5 Resolution in place of the Resolution.
6 MR. GERTNER: All right. I just wanted to make
7 sure.
8 UNIDENTIFIED ATTORNEY: In that regard, Judge,
9 I just couldn't write fast enough. When you appointed
10 Mary Beth Lonergan to oversee, I thought you said
11 including the conditions that may be necessary for
12 north.
13 THE COURT: She is to be -- part of the
14 Opinion addresses the Resolution compliance phase of
15 the north parcel. In other words, she is to monitor
16 that, as well, to make sure that, you know, the
17 submission of plans, the signature of those plans, and
18 review of the approval by Board professionals,
19 preparation of the bond, and so on and so forth, are
20 done at an appropriate pace.
21 MR. TUVEL: Your Honor, I have two questions,
22 if that's okay. My first question on the south
23 application for -- can myself and Mr. Gertner
24 coordinate with the Special Master regarding the
25 virtual hearing process as well as provide her a copy

1 of the plans and reports and application material that
2 she will need to prepare her. So we can reach out to
3 her. That's my point.
4 THE COURT: Yes. The Order provides -- and it
5 goes both ways -- the Order provides for --
6 MR. TUVEL: Ms. Lonergan --
7 THE COURT: Who's joining us on the phone --
8 she's present -- to correspond with you also. You can
9 freely do that, as well.
10 MR. NEWMAN: Okay. I wanted to follow up on
11 that question, Judge. You've given us a time frame
12 within which to have a special meeting, but we already
13 noticed for the meeting on the 22nd. With the Court's
14 permission, I would like that meeting to at least occur
15 so that they can announce at that meeting the new date,
16 so we don't have to go through the entire thing all
17 over again.
18 THE COURT: Mr. Gertner?
19 MR. GERTNER: We can simply adjourn the
20 meeting. I mean, at this point why should I have the
21 Planning Board --
22 UNIDENTIFIED ATTORNEY: (indiscernible)
23 MR. GERTNER: -- (simultaneous speech) -- I
24 apologize -- the same theory that there's a Court Order
25 that carries this forward, the Court Order can deal

1 with any, I guess, notice issues.

2 (Simultaneous speech)

3 MR. GERTNER: Excuse me. Let me finish.

4 THE COURT: Go ahead, finish.

5 MR. GERTNER: The other point is I can't sit
6 here today -- I don't know how long the link that we
7 noticed with is good for. In other words, it was good
8 for this week from the 15th to the 22nd, but I can't
9 make that representation.

10 THE COURT: Okay. I get that. But the reason
11 why I think should meet and continue to meet on Monday
12 would be, first of all, to announce that the meeting is
13 going to be carried and then to try to select -- and I
14 think the parties should confer before that to agree on
15 a new date so it can be announced at that time.

16 MR. TUVEL: Your Honor, a backup solution to
17 that is if we can't get a date between now and then, we
18 could carry it on the 22nd to their next regularly
19 scheduled meeting and then make a further announcement
20 at the next regularly scheduled meeting as a backup
21 because they have to meet, anyway, and Mr. Gertner can
22 announce that at the next meeting they will announce
23 the new date. That at least preserves the (cough) as to
24 go forward.

25 THE COURT: I'm fine with that. But what I

1 want you to do, though, is I want you to be available
2 at the meeting so that we can confirm that because Mr.
3 Gertner is going to have to talk to the Board in terms
4 of the date. But I want you there so that you can
5 confirm that you're available on that date.

6 MR. TUVEL: Sure. Sean and I have been working
7 very well together. So that's fine.

8 And then the other question I have for Your
9 Honor is on the north. Are you reversing the denial of
10 the original Resolution of denial? Is that what you
11 did?

12 THE COURT: Well, I think that was effectively
13 done already. I'm modifying what they did at their last
14 meeting to incorporate both the final approval and also
15 to excise that condition and that was the connector
16 road on the issuance of the CO's.

17 MR. TUVEL: We also had an issue with that one
18 condition regarding the drainage and having to provide
19 future calculations based on future regs. Was that also
20 considered in the Opinion?

21 THE COURT: Not specifically now. Was it
22 addressed in the 2020 Order?

23 MR. TUVEL: No, it was not. It was a separate
24 condition that was raised for the first time.

25 THE COURT: Quite frankly, I did not review

1 that and I don't think it was briefed specifically. If
2 you want to raise that issue again, I'm willing to
3 consider that. But, no, I have not addressed that
4 issue.

5 MR. WOLFSON: Okay. (indiscernible) Mary Beth
6 Lonergan do it.

7 UNIDENTIFIED ATTORNEY: Mr. Wolfson, you and I
8 agree. That's exactly what I was --

9 MR. WOLFSON: That's fine, too.

10 THE COURT: I'm going to ask the parties to
11 try and resolve that. If you can't, then come back.

12 MR. GERTNER: Your Honor, I have no objection
13 for the sole purposes of this Order which is a final
14 Order as to the north parcel that the Order could
15 provide that as to that question since you ordered Ms.
16 Lonergan to oversee Resolution compliance, that she
17 could review that.

18 THE COURT: I would certainly recommend that
19 that be done and I would certainly be comfortable with
20 accepting any recommendation that she may have, as
21 well, subject to the parties making arguments, as well,
22 if it's still a point of contention.

23 MR. WOLFSON: That's fair.

24 MR. GERTNER: Thank you, Your Honor.

25 THE COURT: Do we still need to be on the

1 record? Is there anything more about the -- before we
2 get into the process here, is there anything else about
3 my Opinion, so we can get off the record?

4 MR. GORDON: I do want to be on the record
5 just to ask one question about this finality. I'm a
6 little bit confused about -- I think that (cough) the
7 final is as to north, but neither the motion nor the
8 Complaint sought relief just as to the north. And so
9 I'm a little bit confused as to what you're getting at
10 because I don't see -- Your Honor said --

11 THE COURT: I suspect what he's asking is that
12 if his client decides to take an appeal of my decision
13 with regard to the north parcel, it would be handled as
14 a regular appeal as opposed to an interlocutory appeal
15 from the Appellate Division if it's not a final Order.
16 I don't perceive anything else needs to be done with
17 regard to the approval process with regard to the north
18 parcel. I've granted now preliminary and final major
19 subdivision, site plan. I don't think there's anything
20 out there left to be approved or denied.

21 UNIDENTIFIED ATTORNEY: Conditions, Judge. We
22 don't get to decide whether it's final or not. So it's
23 final or it's not, and they take their chances.

24 UNIDENTIFIED ATTORNEY: Well, but, Your Honor,
25 you indicated and as you just --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Well, on my Orders, I don't put final Order. I mean, to me, it's my belief that there's nothing left for the Court to do or the parties to do with regard to the north parcel. So I think the north parcel is resolved in terms of Court interaction at this point.

MR. WOLFSON: Your Honor, just a small item. I think you said it once, but just to confirm. It was preliminary and final major site plan, preliminary and major final subdivision and the conditional use.

THE COURT: And the conditional use. That's correct.

MR. WOLFSON: All right. Thank you. Thank you.

THE COURT: Is there anything else regarding the decision? Can we go off?

MR. GORDON: I don't know that we'll have a form of Order out before sometime on Monday just because I have another hearing. I just want it to be clear, the Order may not be out before this hearing.

MR. WOLFSON: And just again so that this is still part of the record I guess before we go off, I just would be remiss not to indicate that certainly the Board -- and I perceive I'm speaking on behalf of the Council, as well -- to indicate that neither the Board nor the Township perceives that your Order contained a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Settlement Agreement that had in any way been agreed to by counsel. I just put that on the record.

THE COURT: And I think I indicated on the record, but my Opinion stands that it was an agreement fashioned by counsel and approved by the Court, and it was then presented to your client in closed session and they had options to proceed. If they wanted to deny -- they did not want to proceed with that proposed settlement. It came back to the Court. But if they didn't agree, then they had to comply with the other provisions of the Order and not pick and choose what they were going to grant or not grant and what conditions they were going to impose or not impose. That was the intention of the Court.

MR. WOLFSON: We'll leave that for future argument.

THE COURT: Very good. Anything else before we go off the record? All right. Let's go off the record.

(The matter concluded at 11:18 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

CERTIFICATION

I, Geraldine Famularo, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on Courtsmart 6/18/20, index 10:35:19 to 11:18:41 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Geraldine Famularo

GERALDINE FAMULARO

#154
AOC NUMBER

Dated: June 24, 2020

EXHIBIT G

RESOLUTION 2019-31

RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF JACKSON, COUNTY OF OCEAN, STATE OF NEW JERSEY DENYING THE APPLICATION FOR PRELIMINARY & FINAL MAJOR SUBDIVISION APPROVAL, CONDITIONAL USE APPROVAL AND PRELIMINARY & FINAL MAJOR SITE PLAN APPROVAL, JACKSON TRAILS, LLC, BLOCK 23001, LOTS 22-29

WHEREAS, Jackson Trails, LLC, has applied to the Jackson Township Planning Board seeking Preliminary & Final Major Subdivision Approval, Conditional Use Approval and Preliminary & Final Major Site Plan Approval with respect to the property commonly known as Lots 22-29 in Block 23001, as shown on the official tax maps of the Township of Jackson; and

WHEREAS, in support of this application, the Applicant has submitted a Preliminary & Final Major Subdivision Plan dated July 12, 2018, with a latest revision date of July 29, 2019, indicated, consisting of 80 sheets and signed by Graham J. Macfarlane; and

WHEREAS, the Applicant has further submitted a Boundary Survey prepared by Professional Design Services, LLC, and signed by James J. Kuhn, which drawing is dated October 11, 2017, with a latest revision date of January 9, 2018; and

WHEREAS, the Applicant has further submitted 2 separate Boundary Surveys for Lots 22, 23 and 24, and Lots 25, 27 and 28 respectively, prepared by Professional Design Services, LLC, both of which were signed by James J. Kuhn; and

WHEREAS, the Applicant has further submitted Architectural Floor Plans & Elevation Drawings prepared by Anthony F. Zero, dated June 18, 2019, with no revision dates indicated, an Environmental Impact Statement prepared by Professional Design Services, LLC, dated June 30, 2018, a Traffic Impact Study prepared by McDonough & Rea Associates dated January 3, 2019, with a latest revision date of July 19, 2019, Preliminary Plans – Major

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

Subdivision Construction Plan County Route 547 consisting of 22 sheets prepared by Professional Design Services, LLC, signed by Graham J. Macfarlane dated September 28, 2018, with a latest revision date of July 29, 2019, Stormwater Management Report prepared by Professional Design Services, Inc., signed by Graham J. Macfarlane dated July 3, 2018, with a latest revision date of July 18, 2019, Boundary & Topographic Survey consisting of 1 sheet prepared by Professional Design Services, LLC, signed by James J. Kuhn dated April 30, 2019 with no revision dates indicated, Demolition Plan consisting of 1 sheet prepared by Professional Design Services, LLC, signed by Graham J. Macfarlane dated May 7, 2019, with no revision dates indicated, Phasing Plan consisting of 1 sheet prepared by Professional Design Services, LLC, signed by Graham J. Macfarlane dated May 21, 2019, with no revision dates indicated, Tree Location and Tree Save Plan consisting of 1 sheet prepared by Professional Design Services, LLC, signed by Graham J. Macfarlane dated May 14, 2019, with no revision dates indicated, Architectural Floor Plan and Elevation Drawing prepared by AFZ Architecture & Design dated June 18, 2019, with no revision dates indicated, Preliminary & Final Major Subdivision Plans Pump Station Site Plan consisting of 7 sheets prepared by Professional Design Services, LLC, signed by Graham J. Macfarlane dated July 12, 2018, with a latest revision date of July 15, 2019, Boundary & Topographic Survey consisting of 1 sheet prepared by Professional Design Services, LLC, signed by James J. Kuhn dated April 30, 2019, with no revision dates indicated, Major Subdivision Final Plat consisting of 1 sheet prepared by Professional Design Services, LLC, signed by James J. Kuhn dated July 12, 2019, with no revision dates indicated, Final Plat Major Subdivision Plan Phase 1 consisting of 5 sheets prepared by Professional Design Services, LLC, signed by James J. Kuhn dated July 12, 2019, with no revision dates indicated, Final Plat Major Subdivision Phase 2 consisting of 3 sheets prepared by Professional Design Services, LLC, signed by James J, Kun, dated July 12, 2019,

**DABTI, MURPHY
McGUICKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

with no revision dates indicated, Final Plat Major Subdivision Phase 3 consisting of 1 sheet prepared by Professional Design Services, LLC, signed by James J. Kuhn dated July 12, 2109, with no revision dates indicated, Final Plat Major Subdivision Plan Phase 3 consisting of 4 sheets prepared by Professional Design Services, LLC, signed by James J. Kuhn dated July12, 2019, with no revision dates indicated, and a Final Plat Major Subdivision Plan Phase 4 consisting of 4 sheets prepared by Professional Design Services, LLC, dated July 12,2019, with no revision dates indicated; and

WHEREAS, the Applicant has sought Conditional Use Approval, Preliminary & Final Major Subdivision Approval, as well as Preliminary & Final Major Site Plan Approval to establish 367 single-family, residential building lots, 2 lots designated for multi-family development including a total of 92 multi-family units, 2 stormwater management lots, 1 of which would contain a sanitary sewer pump station, and a 24,500 sq. ft. house of worship lot; and

WHEREAS, each of the proposed building lots would comply with the specific area, dimensional and setback requirements of the RG-3 Zoning District, utilizing the Pinelands Development Credits in accordance with Ordinance Section 244-91(D); and

WHEREAS, the Applicant has been represented by Salvatore Alfieri, Esquire; and

WHEREAS, during the hearings on this matter, the Applicant presented the testimony of Ian Borden, a Professional Planner of the State of New Jersey who is qualified and accepted by the Board as an expert witness in this matter; and

WHEREAS, Mr. Borden attempted to address each of the conditional use requirements and environmental issues effecting the subject property at the initial hearing in this matter; and

WHEREAS, Mr. Borden gave a brief description of a Traffic Report, although he is not a Traffic Expert; and

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, Mr. Borden further testified as to the phasing of the proposed project; and

WHEREAS, Mr. Borden testified that, in addition to the 367 single-family lots, an additional 92 affordable housing units would be constructed totaling 459 units in total; and

WHEREAS, Mr. Borden testified as to the density of the subject property, the proposal of a sanitary sewer connected through an interlocal agreement with Manchester Township, while obtaining potable water from the Jackson Township Municipal Utilities Authority; and

WHEREAS, Mr. Borden testified that a Certificate of Filing was received from the Pinelands Commission dated April 5, 2019; and

WHEREAS, Mr. Borden testified that, as part of the Township's Affordable Housing Plan, the site in question has a 20 percent set aside for affordable housing; and

WHEREAS, Mr. Borden testified as to the conditional use standards of Ordinance 244-91, and testified that the Applicant meets the conditions of the conditional use standards; and

WHEREAS, the Applicant submitted into evidence:

Exhibit A-1. A deed restriction language with respect to a contaminated site and adjoining property; and

WHEREAS, the Applicant's expert testified that the application as presented conforms with all zoning requirements and design standards, and the Applicant is not seeking any variance relief as part of this application; and

WHEREAS, the Applicant presented the testimony of Richard Venino, Esquire, an asserted Title Expert, who testified as to the status of Division Street, which is a 50 ft. right-of-way shown on the Township's tax maps; and

WHEREAS, Mr. Venino indicated there is no public interest in this right-of-way and no other properties have use or access to same; and

DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, the Applicant next presented the testimony of Graham Macfarlane, a Professional Engineer and Professional Planner of the State of New Jersey who is, likewise, qualified as an expert witness in this matter; and

WHEREAS, Mr. Macfarlane introduced the following exhibits:

Exhibit A-2. An aerial display;

Exhibit A-3. Overall development plan layout;

Exhibit A-4. Overall improvement plan colored rendering;

Exhibit A-5. House of Worship site plan; and

WHEREAS, Mr. Macfarlane's testimony revealed that the application as presented would be compliant with RSIS Standards and all Ordinance requirements; and

WHEREAS, the Applicant did request a waiver with respect to lighting to permit a lower lighting level than otherwise required by Ordinance; and

WHEREAS, the Board then opened the matter to public comment and such comment was received from numerous residents testifying in opposition to the application; and

WHEREAS, this matter was then continued before the Jackson Township Planning Board on October 7, 2019; and

WHEREAS, the Applicant presented the testimony of their Traffic Expert, John Rea, a Professional Engineer of the State of New Jersey who is qualified and accepted by the Board as an expert witness in this matter; and

WHEREAS, Mr. Rea testified as to his traffic counts and report, which had been submitted to the Board; and

WHEREAS, during the second public hearing, the Applicant withdrew its request for a waiver with respect to sidewalks; and

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, Mr. Rea's testimony reveals that levels of service in the PM peak periods are at level D on 2 separate roadways and level F along South Hope Chapel Road; and

WHEREAS, Mr. Rea testified that various roadways surrounding the project are county roads and the Applicant requires approval from the County of Ocean with respect to road widening or other improvements in the county right-of-way; and

WHEREAS, Mr. Rea testified that the Applicant requires access from 2 points to the subject properties; and

WHEREAS, a discussion was held relating to a Traffic Report of the Township's Traffic Safety Officer dated August 15, 2019; and

WHEREAS, Exhibit A-7 was marked into evidence which was an Ocean County Engineer's Office checklist review dated August 21, 2019; and

WHEREAS, the Applicant then submitted the testimony of Graham Macfarlane, P.E., who testified as to Exhibit A-8, minutes of an Ocean County Planning Board Meeting of August 21, 2019; and

WHEREAS, numerous members of the public, again, testified in opposition to this application; and

WHEREAS, late in the evening of October 7, 2019, Members of the Board questioned whether it was appropriate to vote on the application as presented to date, as there appeared to be additional questions which the Board Members had based upon public comments received by the Board that evening; and

WHEREAS, the Board did discuss a number of conditions which the Applicant acknowledged; and

WHEREAS, questions remained relating to the impact of this application on the Joint Military Base of Lakehurst Dix Maguire; and

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, the Board requested from the Applicant additional time to review the details of the items which had been presented in evidence, to review the application plans as presented before rendering an ultimate decision on this matter; and

WHEREAS, the Applicant's Attorney advised the Board that they would not consent to any further adjournments, did not want to present or permit any additional testimony or allow any additional public comment and argued that their application was fully compliant and essentially demanded the Board vote to approve their application; and

WHEREAS, Board Members relayed concerns regarding the Applicant's Environmental Study, the terms of any proposed stipulations or conditions which would apply to any approval granted whether it be preliminary and final; and

WHEREAS, the Board questioned whether an additional Traffic Study would be required as the phasing plan was completed, as well as the age of certain environmental studies being more than 14 years old; and

WHEREAS, despite concerns of certain Members of the Board that it was inappropriate to vote that evening, a motion was duly made and seconded by other Members to approve the application, which motion received 4 votes in the affirmative and 4 votes in the negative; and

WHEREAS, the matter was subsequently adjourned, however, the failure of the motion to receive affirmative vote of 5 of the 8 Members present resulted as a matter of law in the denial of the application; and

WHEREAS, the Applicant subsequently filed a Motion for Reconsideration before the Board, which Motion was heard on December 2, 2019; and

**DASTI, MURPHY
McGUCHIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
PORKED RIVER, N.J. 08731

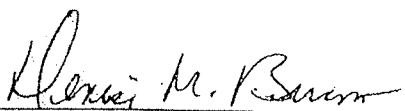
WHEREAS, that motion reargued, essentially, questions of law, and again, the Applicant did not agree therein to permit any additional information to be provided to the Board; and

NOW, THEREFORE BE IT RESOLVED this 2nd day of December, 2019 that the Applicant's request for Preliminary and Final Major Subdivision Approval, Conditional Use Approval, and Preliminary and Final Major Site Plan Approval has been denied.

BE IT FURTHER RESOLVED the Board Secretary shall cause to be published a Notice of Decision pursuant to the provisions of this Board and N.J.S.A 40:55-10(i) and provide an Affidavit of Publication to the Secretary of the Board.

CERTIFICATION

I hereby certify that I, the undersigned, am Secretary to the Planning Board of the Township of Jackson and hereby certify that the foregoing Resolution was adopted by the Planning Board at a meeting held on the 2nd day of December, 2019 and memorialized by the Planning Board on the 16th day of December, 2019.



DENISE BUONO, SECRETARY
Jackson Township Planning Board

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-002627-20

Case Caption: JACKSON TRAILS, LLC VS TOWNSHIP OF JACKSON

Case Initiation Date: 11/06/2020

Attorney Name: DONNA MARIE JENNINGS

Firm Name: WILENTZ GOLDMAN & SPITZER

Address: 90 WOODBRIDGE CENTER DR STE 900 PO BOX 10

WOODBRIDGE NJ 070950958

Phone: 7326368000

Name of Party: PLAINTIFF : Jackson Trails, LLC

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: United States District Court for the District of New Jersey Civ. No. 3:20-cv-01150

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: Jackson Trails, LLC? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

11/06/2020
Dated

/s/ DONNA MARIE JENNINGS
Signed

