In the Matter of the Application of the Township of North Brunswick for a Declaratory Judgment,
Docket No. MID-L-3565-15

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this ____ day of March 2016, by and among the Township of North Brunswick, Middlesex County, declaratory plaintiff in the above-captioned matter, which has an address of 710 Hermann Road, North Brunswick, New Jersey 08902 (hereafter "the Township"); and Intervenors/Defendants Fair Share Housing Center, a non-profit organization, with an address of 510 Park Boulevard, Cherry Hill, New Jersey, 08002 ("FSHC"); K-Land No. 54, LLC, c/o it's attorneys, Richard Hoff, Jr., Esq., Bisgaier Hoff, 25 Chestnut St., Suite #3, Haddonfield, NJ 08033 ("Kaplan"); and Intervenor North Brunswick TOD Associates, LLC, c/o its attorneys, Thomas F. Carroll, III, Esq., Hill Wallack, LLP, 21 Roszel Road, Princeton, NJ 08540 ("NBTOD") (collectively referred to as "the defendants").

WITNESSETH:

WHEREAS, on December 30, 2008, the Township petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation based on rules appearing at N.J.A.C.5:97; and

WHEREAS, the Township submitted a Spending Plan as part of its Third Round Petition for Substantive Certification. The Township amended its Spending Plan in accordance with COAH requests on June 18, 2010. On June 24, 2010 COAH passed a Resolution approving the Township's June 18, 2010 Spending Plan. On December 19, 2011 the Township submitted a Spending Plan Amendment to the Department of Community Affairs ("DCA") in accordance

with Governor Christie's Reorganization Plan 001-2011. On January 11, 2012, DCA granted approval of the December 19, 2011 Spending Plan Amendment; and

WHEREAS, the rules that appear at N.J.A.C. 5:97 and on which the Township's substantive certification was based were subsequently invalidated by the Superior Court, Appellate Division, in a decision that was affirmed by the New Jersey Supreme Court; and

WHEREAS, in a decision dated March 10, 2015, In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), the New Jersey Supreme Court found that COAH did not provide an adequate forum for demonstrating compliance with the Mount Laurel doctrine; and

WHEREAS, the New Jersey Supreme Court established a transitional process in which municipalities, instead of proceeding through the COAH process, could file declaratory judgment actions focused on whether the municipality's housing plan meets its Mount Laurel obligations; and

WHEREAS, the New Jersey Supreme Court provided that a trial court's evaluation of a municipality's plan that had received substantive certification, as supplemented or amended, may result in the municipality's receipt of the judicial equivalent of substantive certification and accompanying protection as provided under the Fair Housing Act of 1985; and

WHEREAS, on June 19, 2015, in accordance with the Supreme Court's decision, the Township filed a declaratory action that is captioned In the Matter of the Application of the Township of North Brunswick for a Declaratory Judgment, Docket No. MID-L-3565-15; and

WHEREAS, Intervenors/Defendants K-Land No. 54, LLC, are owners of property within the Hidden Lake Town Center, which property is identified on the Township tax maps as Block 4.05, Lot 122.02, and Block 148.11, Lot 1, approximately 18 acres located on the southbound side of Route 130 (the "Kaplan Properties");

WHEREAS, the Kaplan Defendants were permitted to intervene in this matter by order dated August 25, 2015, and did in fact intervene through the filing of an Answer; and

WHEREAS, consent to FSHC's intervention as a defendant in this matter is contemplated by this Agreement for the purpose of entering into and being permitted to enforce this Agreement; and

WHEREAS, North Brunswick TOD Associates, LLC ("NBTOD") has participated in the Declaratory Judgment action as an interested party and is taking action pursuant to the terms of this Agreement to accelerate the provision of very low and low income affordable housing units in their inclusionary development on the former Johnson & Johnson facility on the northbound side of Route 1. NBTOD is joined as a party to this Agreement to enable them to enforce its terms; and

WHEREAS, 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; and

WHEREAS, the Township, the Kaplan Defendants, NBTOD and FSHC have agreed to settle this litigation by entering into this Settlement Agreement and requesting that the Superior Court, Middlesex County, find that this Agreement, and the approach to meeting the Township's Prior Round and Third Round Mount Laurel obligations, as detailed herein, are fair to the interests of lower-income New Jerseyans and entitle the Township to protection from Mount Laurel litigation for a period of ten years from the order entered by the court approving this Settlement Agreement; and

WHEREAS, all parties recognize that this Agreement must be reviewed by the court in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township,

197 N.J. Super. 359, 364 (Law Div.1984), aff'd o.b., 209 N.J.Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), and that, in order to approve the settlement, the court must find that it adequately protects the interests of lower-income persons for whom the affordable units proposed by the settlement are to be built; and

WHEREAS, North Brunswick has prepared a fair share plan in which it has actually met its entire Prior Round obligation and significant portions of its Third Round obligation, and identified specific sites and mechanisms for the remainder of its Third Round obligation that present a realistic opportunity for the development of housing affordable to lower-income households, including families, people with special needs, very-low-income households including very-low-income families, and seniors; and

WHEREAS, 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 parties to arrive at a settlement of those obligations using a mutually agreed upon process for determining those obligations in the context of a settlement rather than litigating a full resolution of those obligations.

WHEREAS, in order to amicably resolve this matter, in a way that all parties agree complies with the Mount Laurel doctrine, the parties have agreed to the terms that follow.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, TERMS, AND CONDITIONS SET FORTH HEREIN, INTENDING TO BE LEGALLY BOUND HEREBY, PLAINTIFF AND INTERVENORS/DEFENDANTS AND INTERESTED PARTY, NBTOD, AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The Parties incorporate the foregoing recitals as incorporated herein and made a part hereof.

2. **Purpose of Agreement.** The purpose and intent of this Agreement is to settle the pending litigation on terms that are fair to lower-income households in accordance with the requirements of Mount Laurel IV and the Mount Laurel doctrine through the provision of a realistic opportunity for affordable housing on the terms set forth herein.

3. **Establishment of fair share obligation.** In accordance with Morris County Fair Housing Council, supra, 197 N.J. Super. at 364, the parties agree to the following as to the Township's Prior Round and Third Round fair share obligations:

a. The Prior Round need, as originally determined by COAH in 1994 for the period 1987-1999, is 395.

b. The Present Need, as agreed upon by the parties based upon implementing the directives of Mount Laurel IV using 2010 Census data, is 199.

c. The prospective need is for the period 1999-2025, and is calculated as follows. David N. Kinsey, PhD, FAICP, PP, in collaboration with FSHC, in July 2015 calculated the fair share obligation for North Brunswick for the period 1999-2025 as 1,161 units, utilizing the Prior Round methodology with the most up to date available data. The parties agree for settlement purposes to utilize this calculation as the basis for the prospective need, but makes the following adjustment to this calculation:

i. A reduction in the calculation agreed to by the parties as a settlement incentive, which reduces the obligation to 700.

4. **Fair share compliance.** A summary of the Township's plan for meeting the above-referenced fair share obligations is attached hereto as Exhibit A, which summary shall be adopted in a more complete form that conforms to the summary in the form of the Township's formal Housing Element and Fair Share Plan, which shall be adopted by the Township and

incorporated as an Exhibit to this Settlement Agreement pursuant to the schedule detailed in paragraph 7 below. The parties agree as an essential term in this agreement, that the plan summarized in Exhibit A does meet, and that the municipality shall continue to meet, the following requirements:

a. For the Present Need, the Township will meet its obligation pursuant to a rehabilitation program in accordance with the rules and requirements of N.J.A.C. 5:93, to be specified in further detail in the Housing Element and Fair Share Plan.

b. For the Prior Round Obligation, Exhibit A summarizes the Township's compliance with its Prior Round Obligation of 395 units in accordance with the rules and requirements of N.J.A.C. 5:93 except that as a condition of settlement the parties agree that both the bonus and age restricted cap shall be calculated irrespective of prior cycle credits and applied to the full obligation as is reflected in Exhibit A.

c. For the prospective need obligation the Township shall meet its 700 unit obligation as summarized in Exhibit A, which exhibit is in accordance with the following standards as agreed to be the Parties:

i. At least twenty five percent of the obligation will be met through rental units, including at least half rental units available to families.

ii. At least half of the units in total must be available to families.

iii. At least half of the units must be for low-income households. Within that, 13 percent of the units must be available to people who are very-low-income, half of those to very low income families consistent with N.J.S.A. 52:27D-329.1.

iv. A maximum of 25 percent of the housing may be age-restricted.

v. In the context of settlement, FSHC will waive its claims that only Third Round bonus standards apply and agree to the bonus approach adopted by Judge Jacobson in her November 19, 2015 decision captioned in all of the Mount Laurel declaratory judgment actions in Mercer County in which a municipality can choose either Prior Round or Third Round bonus standards, capped at 25 percent of prospective need obligation. As reflected in the attached Exhibit A, the Township in the context of this settlement has elected to use the Prior Round bonus standards for its prospective need obligation, capped at 25 percent of the 700 unit obligation to be addressed for 1999-2025.

d. All units shall 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, and all other applicable law. The Township as part of its Housing Element and Fair Share Plan shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by the Council on Affordable Housing to ensure that this provision is satisfied.

5. **Reservation of rights pursuant to R. 4:50-1.** The parties to this Agreement may move pursuant to R. 4:50-1, based on the standards of that rule and relevant case law, to amend the Judgment that approves this Agreement, if such Judgment is issued after a fairness hearing pursuant to paragraph 8 below, on the terms that follow, with all parties having the right to take any position they wish in response to such a motion:

a. If other relevant decisions in the future if applied to the Township would establish the Township's obligation as less than 700 units, then the Township reserves the right to move to reduce the obligation, provided that the Township would maintain the

sites in its Fair Share Plan and required by this Agreement and may carry over any resulting extra credits to future rounds.

6. **Settlement terms involving Intervenors/ Defendants The Kaplan Organization.** In partial satisfaction of the Township's Third Round affordable housing obligation as established by this Agreement, the Township has proposed to modify the PUD II Zone which includes Kaplan's property of approximately 18 acres on Route 130 Southbound, known as Block 148.11, Lot 1, to allow for the construction of up to 270 age-restricted units. The maximum gross density shall not exceed 18 units per acre. The project will be an inclusionary development with 10% of the total number of units being affordable with 60% of the affordable units being low income units and 40% being moderate income units. Thirteen (13%) of the low income units must be classified as very low. If the total of 270 units are built, 27 shall be affordable units with 3 of the 27 affordables classified as very low income units, 13 of the 27 affordables classified as low imncome and 11 of the 27 affordables as moderate income.

In order to insure this inclusionary age restricted development comes to fruition, the parties agree that if the Kaplan Organization has not submitted development plans for this project within 4 years of the execution of this Settlement Agreement, the Township has the right, in the exercise of its reasonable discretion, to remove the zoning provision allowing for an inclusionary age restricted development from this property and to place a similar zoning provision on another property in the Township.

Despite the foregoing provisions, the Parties acknowledge and agree that the Kaplan Defendants reserve the right to seek reasonable waivers and variances from the zoning requirements ultimately applicable to the Kaplan Property, which shall be reviewed by the appropriate land use board in accordance with the standards of N.J.S.A. 40:55D-1 et seq., and

applicable law, provided that the Kaplan Defendants shall not seek a density variance in accordance with the provision of N.J.S.A. 40:55-70(d)(5) or a height variance in accordance with the provisions of N.J.S.A. 40:55-70(d)(6).

a. **Affordable Units within Kaplan Development to Comply with Applicable Standards.** The Kaplan Defendants shall take all necessary steps to make the affordable units provided for under the Agreement creditworthy pursuant to COAH regulations, UHAC regulations and all other applicable laws. Said affordable units shall be creditworthy for a thirty (30) year period, which thirty (30) year period may be extended by the Township in its sole discretion and without the consent of owner of Kaplan Property.

7. **Settlement Terms Involving Interested Party North Brunswick TOD Associates, LLC.** North Brunswick TOD Associates, LLC ("NBTOD") the owners of a mixed use inclusionary development on the former Johnson & Johnson site on Route 1 Northbound was required to provide affordable housing on site as required to address the affordable housing obligation generated by the transit-oriented mixed use development. To resolve subsequent litigation between NBTOD, Fair Share Housing Center ("FSHC"), the Township and Township Planning Board, the parties agreed that 229 of the 1,875 units or 12.2% of the total would be affordable units. The Zoning Ordinance currently restricts the developer to building no more than 300 units prior to construction commencing on the anticipated train station at the site of which at least 30 were to be affordable units. The Township will amend the Zoning Ordinance to increase to 400 the number of units that may be built prior to construction commencing on the train station at the site provided that NBTOD agrees to construct at least 51 affordable units out of the 400 permitted with at least 5 very low income units, 29 low income

units and 17 moderate income units. The total number of affordable housing units for the entire development shall remain at 229 units with 23 very low income units, 92 low income units and 114 moderate income units.

8. **Process for Agreement to Become Final; Notice and Fairness Hearing**. In accordance with the Case Management Order entered in this matter by the Hon. Douglas K. Wolfson, J.S.C., on March 9, 2016:

a. The Township filed its amended proposed Housing Element and Fair Share Plan (the "Plan") with the court and all parties to this Agreement on or about March 21, 2016.

b. The Township shall provide notice in the form attached to this Agreement as Exhibit B, in accordance with the procedures recognized by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) no later than March 27, 2016, for a Fairness Hearing on April 27, 2016, at 2:00PM

c. The Planning Board of the Township considered and approved the Housing Element and Fair Share Plan, and the Township Council has endorsed the Housing Element and Fair Share Plan. If the Township Council does not approve the Agreement, this Agreement is null and void and all parties shall continue with the litigation and shall not be prejudiced in any way by the terms of this Agreement.

d. The Special Master shall provide her review of the Agreement and any comments received to the Court no later than April 17, 2016.

e. The Court shall review the Agreement at the Fairness Hearing on April 27, 2016, any public comments received in accordance with the public notice and/or from members of the public wishing to comment at the Fairness Hearing.

f. If the Court upon review of the Agreement finds that it is fair and consistent with East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), the parties anticipate that the Court will enter a Judgment approving this Agreement and granting the Township the judicial equivalent of substantive certification, with all of the immunities and rights that such a Judgment confers upon the Township, through December 31, 2025.

9. **Effective Date of Agreement and Duty to Defend.** The terms set forth in this Agreement shall become effective upon the completion of the fairness hearing referenced above and the entry of a Judgment approving this settlement. If an appeal is filed of the court's approval or rejection of this agreement, the parties agree to defend this agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if this 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.

10. **Affirmative marketing Requirement.** 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 Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP, and the Latino Action Network, and shall as part

of its regional affirmative marketing strategies during the period of its judgment of repose provide notice to those organizations of all available affordable housing units.

10. **Severability.** 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.

11. **Successors Bound.** The provisions of this Agreement and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.

12. **Governing Law**. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

13. **No Modification**. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

14. **Counterparts.** 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.

15. **Voluntary Agreement**. 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.

16. **Preparation.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

17. **Exhibits And Schedules.** 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.

18. **Entire Agreement.** 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.

19. **Conflict Of Interest.** No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

20. **Notices.** All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be

deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO THE TOWNSHIP:

Township Clerk
710 Hermann Road
North Brunswick NJ 08902

WITH A COPY TO:
Ronald H. Gordon, Esq.
DeCotiis, FitzPatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd., Suite 31
Teaneck, NJ 07666

TO FSHC:

Adam Gordon, Esquire
510 Park Blvd.
Cherry Hill, NJ 08002

TO THE KAPLAN DEFENDANT:

The Kaplan Organization
433 River Road
Highland Park, NJ 08904

WITH A COPY TO:
Richard J. Hoff, Jr., Esquire
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033

TO INTERESTED PARTY NORTH BRUNSWICK TOD ASSOCIATES, LLC

North Brunswick TOD Associates, LLC
820 Morris Turnpike
Short Hills, NJ 07078

WITH A COPY TO:

Thomas F. Carroll, III, Esq.
Hill Wallack, LLP
21 Roszel Road
Princeton, NJ 08540

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of the successor.

IN WITNESS WHEREOF, the Plaintiff and Defendants hereto have caused this Agreement to be properly executed and attested to this _____ day of _____, 2016.

ATTEST:

Plaintiff North Brunswick Township

_____

By:_____
Mayor _____

Dated:_____

Dated:_____

Fair Share Housing Center, Inc.

_____

By:_____
Kevin D. Walsh, Esq.
Executive Director

Dated:_____

Dated:_____

The Kaplan Organization

_____

By:_____

Dated:_____

Dated:_____

North Brunswick TOD Associates, LLC

_____ By:_____

Dated:_____ Dated:_____

EXHIBIT A

TOWNSHIP OF NORTH BRUNSWICK

MARCH 17, 2016 HOUSING ELEMENT/FAIR SHARE PLAN

Introduction and Status of Previous Third Round COAH Submissions

The North Brunswick Planning Board adopted a comprehensive new Master Plan on May 16, 2006. Even though the Council on Affordable Housing (COAH) had adopted new Third Round affordable housing regulations on December 20, 2004, the Housing Element that was incorporated into the 2006 Master Plan specifically did not project or address the Township's obligation for affordable housing units. The decision not to include a new Fair Share Plan in the Master Plan was based upon the fact that the Township's Second Round Substantive Certification did not expire until October 1, 2009. As such, the Township was not required to file a Fair Share Plan by the December 31, 2005 deadline.

However, The Housing Element incorporated in the 2006 Master Plan did meet the requirements of a Housing Element in the Municipal Land Use Law by providing a detailed analysis of population and housing statistics in the Township, as well as standards and proposals for construction of various types of housing within the Township.

Subsequent to the promulgation of revised COAH regulations, amended through October 20, 2008, the Planning Board prepared a Housing Element Amendment/Fair Share Plan (FSP) specifically designed to address the Township's Third Round affordable housing obligation. This FSP was adopted by the Planning Board on December 29, 2008 and was then referred to the Township Council. The Township Council passed a resolution petitioning COAH for Substantive Certification on December 30, 2008. However, due to legal challenges to COAH's Third Round regulations, COAH never processed the FSP through the review process necessary to achieve Substantive Certification.

However, even though COAH staff stopped processing FSPs for Substantive Certification, COAH did allow municipalities to advance affordable housing projects forward by reviewing and approving Spending Plans that complied with the regulations.

The Township of North Brunswick submitted a Spending Plan as part of its Third Round Petition for Substantive Certification. The Township subsequently amended its Spending Plan in accordance with COAH requests on June 18, 2010. On June 24, 2010, COAH passed a resolution approving the Township's June 18, 2010 Spending Plan.

Subsequent to the approval of this Spending Plan, the Township became aware of two emergent opportunities for affordable housing. These two projects included the proposed acquisition and renovation of a 184 unit garden apartment complex known as Oakleaf Village by Community Investment Strategies, Inc. (CIS), and the Special Needs Housing Partnership Program sponsored by the Department of Community Affairs (DCA). Pursuant to regulations, the Township passed a resolution on December 19, 2011 seeking approval of a Spending Plan Amendment dated December 19, 2011. In accordance with Governor Christie's Reorganization Plan 001-2011, the review of this request was no longer conducted by COAH, but rather by DCA. On January 11, 2012, DCA granted approval of the December 19, 2011 Spending Plan. This amended Spending Plan approval allowed for the Township to move forward with the two projects mentioned above, both of which are incorporated herein as part of the Township's March 17, 2016 Housing Element/Fair Share Plan (FSP).

Transfer to Court Jurisdiction

On March 10, 2015, the New Jersey Supreme Court issued an order that required municipalities to seek judicial review to determine compliance with their Mt. Laurel obligations. This order effectively eliminated the administrative process overseen by COAH through which municipalities could be deemed compliant with their Mt. Laurel obligations. The effect of this order was to make the Superior courts the forum to determine municipal compliance. The Supreme Court's action effectively provided a 120 day window for municipalities to file a Declaratory Judgment action in Superior Court in order to obtain judicial approval of their efforts and plans to provide for their fair share of the regions affordable housing need. The order provided that municipalities that file a Declaratory Judgment will have a five month window to develop their compliance plans. Superior Court judges were given the power to grant immunity to municipalities while they take steps to enact a valid affordable housing plan.

While the Supreme Court ruling necessitated the Township adopting a Housing Element/Fair Share Plan to address its affordable housing obligation, the Township

Planning Board was also already in the midst of a Master Plan Reexamination study in accordance with the 10 year time frame provided by the Municipal Land Use Law.

Therefore, the purpose of this Housing Element/Fair Share Plan (FSP) is twofold;

---to provide a reexamination of the Housing Element adopted in May of 2006, with appropriate modifications dictated by changing demographics and land use trends; and

---to provide a projection of the Township's Third Round affordable housing obligation and a comprehensive implementation plan that provides a realistic opportunity to realize its Third Round obligation over the next ten years.

The Township of North Brunswick filed for Declaratory Judgment on June 19, 2015. Subsequent to this filing, the Township prepared and submitted a document entitled Summary of Plan for Total Fair Share Obligation in accordance with standards developed by the Special Master responsible for Middlesex County municipalities.

A series of settlement meetings were attended in the judge's chambers in Superior Court over the course of several months. These meetings included the judge, the court-appointed Special Master, representatives of the Township of North Brunswick, and attorneys for the Fair Share Housing Center and three interested developers who own property in the Township.

After numerous meetings and negotiations, the Township has prepared a Third Round FSP that addresses the Township's fair share of the regions affordable housing need for the time period 2000-2025. This 26 year time period incorporates a 16 year Gap Period and a 10 year future prospective need.

All parties to the negotiations are in agreement that the projects incorporated in the plan can move forward expeditiously and result in a realistic opportunity for the Township to satisfy its affordable housing obligation over the next ten years.

The remainder of this FSP provides the following:

---a brief description of demographic information related to the Township's population and housing stock;

---a description of relevant studies and projections of affordable housing need;

---an explanation of the reasoning behind the determination of the Township's Third Round affordable housing obligation established herein;

---an outline of each of the projects proposed by the Township to address its Third Round affordable housing obligation for the 26 year period spanning 2000 through 2025; and

---two spreadsheets detailing how the Township's Third Round affordable housing obligation is addressed through a combination of new construction of both family and age-restricted units, substantial rehabilitation, alternative housing for the developmentally disabled, housing for the homeless, application of surplus new construction units from the Township's Second Round Substantive Certification, and rental bonuses.

Demographic Characteristics

The US Census Bureau did not use a long form for the 2010 Census. In several previous censuses, one in six households received this long form, which asked for detailed social and economic information. The 2010 Census used only a short form asking 10 basic questions.

The short form basically only provided information on how many people were living in the unit, the type of unit, whether the unit had a mortgage, whether the unit was owner-occupied or rented, the sex, age and race of occupants, and whether the person was of Hispanic or Latino origin.

The population of the Township of North Brunswick was 36,287 in 2000. This represented a 5,000 person increase, or 16%, between 1990 and 2000. According to the 2010 US Census, the Township's population was 40,742. This represents a 4,455 person increase, or 12.2%, between 2000 and 2010.

The Township's housing stock increased at a lesser rate from 2000 to 2010, increasing by 8% from 13,932 housing units to 15,045 housing units.

Between 2000 and 2010 there was very little change to the age profile in the Township, as the median age (35.5), the percentage of residents under 18 years of age (23.5%) and percentage of residents 62 years and over (12.2%) stayed virtually the same. 7.3% of the Township's population was under 5 years of age, and 16.2% was 5-17 years of age in 2010.

However, there was a substantial change relative to race and persons of Hispanic or Latino origin. The percentage of the population that is white dropped from 63.1% in 2000 to 46.9% in 2010. At the same time, the black population increased from 15.1% to 17.3%, while the Asian population increased from 14% to 24 %. The Hispanic or Latino population increased from 10.3% to 17.6%.

The average household size increased slightly from 2.58 to 2.72 persons per household, and the percentage of owner-occupied housing units declined slightly from 62.9% to 61%.

Available Studies Projecting Affordable Housing Obligations Statewide

In order to develop a Third Round affordable housing obligation, it was first necessary to review and critique the studies and projections prepared by acknowledged experts in the affordable housing arena. During the years of litigation involving COAH's proposed Third Round rules, a number of different projections have been advanced relative to the number of affordable housing units required to be developed in the State, regionally and in individual municipalities.

Burchell Study

The first study to be discussed happens to be the last official projections prepared for COAH as part of COAH's proposed Third Round Substantive Rules in 2014. This study and projections were prepared by the Rutgers University Center for Urban Policy research under the primary direction of Robert Burchell (Burchell Study). This study, dated April 27, 2014, was entitled Municipal Determination of Rehabilitation Share, Fair Share, and Unanswered Prior Obligation: Overview. This study was included as a series of Technical Appendices to the proposed Third Round Substantive Rules of COAH. These Third Round rules and projections were published in the NJ Register on June 2, 2014. The Burchell Study projected the total statewide prospective need for affordable housing to be 52,191 units.

The Burchell Study purportedly addressed the Supreme Court's concerns with earlier COAH regulations. This study projected the Township's affordable housing need to be 199 units of Rehabilitation Share housing that demonstrates a need for rehabilitation work, 343 units to address a 15 year GAP period from 2000-2014, and 256 units of prospective housing need for the ten year period from 2015-2024.

The GAP period in the Burchell Study encompasses a 15 year GAP period. In order to reflect a 16 year GAP period, the 343 unit projection in the proposed Third Round projections would need to be multiplied by 1.066. When this is done, the Township's GAP period need would increase from 343 units to 366 units.

If we add the Township's GAP period number of 366 units to the 256 units of prospective need, this results in a total obligation of 622 affordable housing units.

While the 10 year prospective figure was for the period from 2015-2024, as opposed to 2016-2025, the projection reflects the required 10 year time frame, and as such, does not require any adjustment.

However, COAH failed to adopt these regulations and affordable housing projections, and as such, these numbers have no official standing. However, these projections are a beginning point for purposes of discussion.

Kinsey Study

The second study projecting the State, regional and municipal affordable housing obligations was prepared by David Kinsey under the sponsorship of the Fair Share Housing Center (FSHC). This study, entitled New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Rond (1987-1999) Methodology, herein referred to as the Kinsey Study, was dated April 16, 2015, and was subsequently updated on July 17, 2015. The Kinsey Study projected the total prospective statewide affordable housing need over the period 2000-2025 to be 201,382 units.

A brief comparison of the statewide numbers shows that the projected affordable housing need in the Kinsey Study is more than three times the need projected in the Burchell Study. The Kinsey Study projected North Brunswick's need to be 1161 units.

As municipalities began to file for Declaratory Judgments, the two Special Masters assigned to the Middlesex County municipalities determined, after consultation with the judge, to hold a meeting of professional planners involved in the provision of affordable housing in order to identify and discuss issues and concerns related to the methodology utilized in the Kinsey Study. More than 20 professional planners met over the course of two days to review the methodology utilized in the Kinsey Study in detail, and a number

of questions and concerns were voiced about the assumptions and methodology employed in the Kinsey Study.

Based upon the many concerns discussed at these meetings, the Township's professionals believe that there is substantial overstatement of the statewide affordable housing need in the Kinsey Study, as well as inconsistencies with how the regional need is allocated to the individual municipalities The Township believes that the need could be overstated by as much as 40 % or more.

Burchell II Study

In response to the projections generated in the Kinsey Study, a consortium of 200 plus municipalities then hired the Rutgers University Center for Urban Policy Research to prepare affordable housing need calculations for the State, the six COAH regions and each municipality. The report was prepared under Dr. Robert Burchell's supervision. Burchell had been responsible for preparing several earlier rounds of COAH projections, and he is widely acknowledged to be one of the foremost experts on affordable housing need in New Jersey.

Dr. Burchell prepared a draft report dated August 15, 2015. This report is entitled New Jersey Third Round Low and Moderate Income Housing Obligations for 2015 (Rehabilitation Share) 2015-2025 (Fair Share) and 1987 to 2015 (Prior Obligation) Using Procedures Similar to and Based-on COAH Rounds One and Two. This report will be referred to as the Burchell II Study. The Burchell II Study projected the Township's affordable housing obligation to be 187 units of Rehabilitation Share, which is equates to the former COAH Present Need category, 447 units for the 15 year GAP period from 2000-2014, and 362 units of prospective need for the ten year period from 2016-2025.

However, while the draft report was under review, Dr. Burchell suffered health problems that would not allow him to complete the report and testify in court. As a result, the Burchell II Study also has no official standing.

Econsult Study

As a result of Dr. Burchell's inability to finalize the study, the municipal consortium retained the services of Econsult Solutions, Inc. to provide projections of State, regional and municipal affordable housing need (Econsult Study). The Econsult Study, entitled New Jersey Affordable Housing Need and Obligations, calculated regional affordable

housing need and affordable housing obligations for each municipality in accordance with relevant Court decisions and the First Round and Second Round methodologies as specified by the New Jersey Supreme Court in its March decision. However, this report, dated December 22, 2015, assigned no affordable housing obligation for the 16 year GAP period, stating "... no legal affordable housing obligation or identifiable additive affordable housing need emerges from the "gap" period." The methodology incorporated into the Econsult Study resulted in projections of affordable housing need for the State, regions and municipalities that were significantly lower than the projections of the Kinsey Study, the Burchell Study and the Burchell II Study.

Under the Econsult Study, the Township's present need was projected to be 197 housing units. The Econsult Study methodology resulted in a prospective need for the Township of zero new affordable housing units.

Given the Econsult Study's findings that there exists zero affordable housing need for the 16 year GAP period, the Township of North Brunswick has rejected the Econsult Study.

Studies Commissioned by the League of Municipalities

In addition to Burchell's two sets of projections, the Kinsey report, and the Econsult report, the League of Municipalities commissioned two consulting firms to provide an analysis of the State's affordable housing policies and needs, as well as the methodology utilized in the Kinsey Study.

The first these two reports, authored by Nassau Capital Advisors, LLC, is entitled Demographic and Economic Constraints on the Inclusionary Zoning Strategy Utilized for the Production of Low and Moderate Income Housing in New Jersey (NCA Study). This report, dated September 22, 2015, came to the conclusion that the State economy is "...likely to continue to struggle over the next ten years to achieve a level of growth needed to fuel a robust housing market."

The NCA Study also concluded that, "The inclusionary zoning strategy faces a significant obstacle in its ability to produce affordable housing ... as a result of the recent shift in the locational preferences of the housing market away from suburban and rural communities, and now noticeably towards the state's urban areas. New Jersey's "urban aid" municipalities are likely to attract a growing share of the state's new housing production in the coming decade. Because these municipalities are exempt

from the "set aside" rules of the inclusionary zoning strategy, this trend will significantly diminish the effectiveness of the inclusionary zoning strategy in meeting affordable housing goals."

This shift in population growth toward the state's urban areas is a significant finding, as much of the new housing to be constructed in the State over the next ten years appears to be located in the urban municipalities that are specifically excluded from having to provide affordable housing in the Kinsey study. The exclusion of these Urban Aid municipalities in the Kinsey study was the subject of much discussion at the two meetings of professional planners moderated by the two Middlesex County Special Masters.

The NCA Study authors also, "...find no credible evidence to support the conclusion that New Jersey's economy will be able to increase its historic level of housing production to a level that will allow the inclusionary zoning strategy to come close to achieving the aspirational goals of affordable housing advocates." This finding relative to the inability of the economy to support excessive housing growth is also very significant, because inclusionary zoning developments require anywhere from four to nine units of market priced housing for each unit of affordable housing provided. The sheer number of total housing units required to provide for the affordable housing needs projected in the Kinsey study through inclusionary zoning appear to be very unrealistic. In addition, projects that provide 100% affordable units are extremely limited by the 18 million dollar annual limitation on Low Income Housing Tax Credits (LIHTC) in the State.

Finally, the NCA Study states, "...we project the production of all new housing units in New Jersey ... over the next decade of between 180,000 to 250,000 new housing units." The report further concludes, "... we estimate that the inclusionary zoning strategy is capable of delivering a total of between 17,000 to 24,000 new units of low and moderate income housing during the next ten years." These last two findings are also very significant, as the Kinsey Study projects the statewide need for affordable housing to be in excess of 200,000 units. The Kinsey projection for the number of affordable housing units needed is eight to ten times higher than the number of affordable units that the NCA Study concludes can be provided through inclusionary zoning techniques. The required number of affordable units in the Kinsey Study is equivalent to the total number of all housing units, including both market and affordable, that the NCA Study concludes could reasonably be anticipated to be built over this ten year time frame.

The second report was prepared by Econsult Solutions, Inc. prior to Econsult being retained by the consortium of municipalities to project statewide affordable housing needs. This report (Econsult II Study), dated September 24, 2015, is entitled Review and Analysis of Report Prepared by David N. Kinsey, PhD Entitled: "New Jersey Low and Moderate Income Housing Obligations for 1999-2025". The purpose of the Econsult II Study was to analyze the procedures and calculations in the Kinsey Study of statewide affordable housing obligations. The Econsult II Study concludes, "The report prepared by Dr. Kinsey appears to contain a series of such decisions that result in a systematic increase in the final calculation of affordable housing obligations ..." This Econsult II Study also states that problems with the Kinsey report, "...upwardly bias the final calculation."

Determination of the Township of North Brunswick's Prospective Affordable Housing Obligation for the Period from 200-2025

After considering and analyzing the various methodologies utilized by the consulting firms that produced the studies sighted in the previous section, as well as the issues and concerns voiced during the professional planners meetings, and the conclusions and concerns voiced in the two studies prepared for the League of Municipalities, the Township of North Brunswick professionals believe that a the proper number of affordable housing units to be provided in the Township over the next ten years to meet its 2000-2025 affordable housing obligation is 700 units.

This FSP includes two spreadsheets detailing the methods utilized to comply with this 700 unit number, as well as the breakdown of affordable units by project according to income group.

Appendix A, entitled North Brunswick 1999-2025 Third Round Affordable Housing Obligation, prepared by Tom Vigna on March 17, 2016, provides a listing of assumptions utilized and a breakdown of how units are applied to satisfy both the family and age-restricted obligations.

Appendix B, entitled Very Low/Low/Moderate Income Split for North Brunswick Third Round Affordable Housing Obligation, prepared by Tom Vigna on March 17, 2016, provides a breakdown of income distribution by project.

In addition to the prospective need for 2000-2025, the Township must also demonstrate that it has met its Prior Round obligation for the 12 year time period from 1987-1999, as

well as how it intends to address its Rehabilitation Share. The Rehabilitation Share is comprised of units in need of renovation that are presently located in the Township and occupied by lower income households.

Rehabilitation Share

The Burchell Study and the Burchell II Study projected the Township's Rehabilitation Share, or present need, to be 199 and 187 units respectively. The Econsult Study projected the Township's present need to be 197 units. The Kinsey Study provided the same 197 unit estimate. The Township accepts the present need figure of 199 units in accordance with the Burchell Study prepared for COAH's Third Round Rules and Projections.

Compliance with Rehabilitation Share

Since April of 2010, the Township of North Brunswick has accomplished the rehabilitation of 46 units occupied by lower income households. The 46 units accomplished to date are a result of two distinct housing rehabilitation programs described below.

The Township of North Brunswick administers a program funded by an allocation of Community Development Block Grant funds from Middlesex County each year. The money allocated to the North Brunswick Neighborhood Preservation Program has resulted in the rehabilitation of 33 single-family homes since April of 2010.

In addition, the Township of North Brunswick contracted with the North Brunswick Housing Corporation (NBHC) to administer a township wide housing rehabilitation program with funds from the Township's Affordable Housing Trust Fund. $1,075,000 has been allocated for this program in the Township's Spending Plan approved by COAH on January 11, 2012. Since inception of the North Brunswick Housing Rehabilitation Program approximately 18 months ago, the NBHC has completed rehabilitation work on 13 homes at a cost in excess of $250,000.

It is projected that the North Brunswick Neighborhood Preservation Program will renovate an additional 10 homes in 2016, and an additional 63 homes over the nine years from 2017 to 2025.

It is projected that the North Brunswick Housing Rehabilitation Program administered by NBHC will rehabilitate an additional 75 homes over the next five years (2016-2020) before funding from the Affordable Housing Trust Fund is exhausted.

1987-1999 Prior Round Obligation

COAH determined that the Township of North Brunswick's 1987-1999 new construction obligation was 395 units. This number is documented on the COAH Summary Fact Sheet 1987-1999 which is part of the Township's Second Round Substantive Certification.

Compliance with Prior Round Obligation

Prior Cycle Credits (4/1/80-12/31/86)

On September 10, 1984, the Township of North Brunswick executed a Consent Order that settled litigation with the Urban League of Greater New Brunswick. The litigation alleged that Middlesex County municipalities were guilty of exclusionary zoning practices. This Consent Order and a subsequent Judgment of Compliance issued on March 24, 1986 resulted in North Brunswick addressing its "Mt. Laurel" obligation prior to the creation of the Council on Affordable Housing (COAH) and the promulgation of COAH's First Round housing obligation numbers.

The Consent Order established the Township's obligation at 1250 housing units. It awarded the Township credit for 264 units to be applied against this number, leaving a remaining balance of 986 units of lower income housing to be constructed. The agreement also established a 12 year build-out for these 986 units. As a result of this Consent Order, the Township did not have to file a First Round Plan with COAH.

On June 10, 1999, the Township adopted a FSP designed to address its Second Round housing obligation for the 12 year period from 1987-1999. The 1987-1999 new construction obligation was 395 units. The 395 units were substantially less than the lower income obligation resulting from the 1984 Consent Order.

COAH granted Substantive Certification to the Township's Second Round FSP on October 1, 2003. This approval provided the Township with protection against "builder's remedy" lawsuits for a six year period that did not expire until October 1, 2009.

In the Township's Second Round Substantive Certification, COAH granted the Township credit for 219 Prior Cycle Credits.

1000 Unit Inclusionary Zoning Development by K. Hovnanian Companies

The Township's Second Round Substantive Certification reflected 200 units of lower income housing built by K. Hovnanian Companies on the 100 acre Hamelsky Tract. This inclusionary development is comprised of 1000 housing units with a 20% set aside of lower income units.

The Township's 1984 Consent Order established that 67 of these units would be restricted for low income households and 133 of the units for moderate income households. These units received Certificates of Occupancy between 1988 and 2000.

The deed restrictions on these units will begin to expire in 2018. Given the date that these units received Certificates of Occupancy, the Township does not have the right to extend the period of control for these 200 affordable units.

150 Unit Age-Restricted Building Constructed by North Brunswick Housing Corporation (NBHC)

The Second Round Substantive Certification acknowledged that the Township fostered the creation of a non-profit housing corporation to develop a 150 unit building for lower income senior citizens. The North Brunswick Housing Corporation (NBHC) is the developer of the project.

The project is a Low Income Housing Tax Credit project (LIHTC), and as such, no resident is permitted to move into the building unless their income is 60% or less than the median income for the appropriate household size.

While the project is a 150 unit building, COAH only allowed the Township to utilize 100 of the units toward its Second Round obligation due to restrictions on the number of age-restricted units permitted. However, in the Township's Second Round Substantive Certification, COAH stated on page 7, "North Brunswick may request credit for the remaining 50, uncredited, age-restricted units when addressing its Third Round affordable housing obligation."

While the income of residents in this building is capped at 60 % of the median income, the Township conducted a survey of household size and incomes for the 150 units in this

building in order to get information on whether the building was actually serving the very low and low income population. The survey revealed that the building is occupied primarily by very low and low income households, as 39.2% of the residents are classified as very low income, 50.7% as low income and only 10.1% as moderate income.

Alternative Living Arrangements/Supportive & Special Needs

The Township's Second Round Substantive Certification acknowledged that the Township had eight additional units of Special Needs housing, including three bedrooms at a SERV operated property located at 989 Cranbury Crossroad (block 129, lot 46), and five bedrooms at a facility operated by Concerned Citizens for Chronic Psychiatric Adults located at 2 Parkside Drive (block 4.15, lot 2). All eight of these units are assumed to be very low income households.

Regional Contribution Agreements with New Brunswick and Carteret

On March 18, 2002 the Township of North Brunswick approved resolutions authorizing the execution of Regional Contribution Agreements with the City of New Brunswick and the Borough of Carteret. On July 22, 2002, the Township of North Brunswick executed an Affordable Housing Contribution Agreement with Brunswick Manor Associates to provide funding for future RCA agreements.

The first phase of the contribution included payment of $2,700,000 to fund 135 RCA units at a cost of $20,000 per unit. With this funding, the Township entered into an agreement with New Brunswick for 90 lower income units and with Carteret for 45 lower income units. The Township's Second Round Substantive Certification approves these 135 RCA units. COAH approved the Regional Contribution Agreements with both municipalities, and funds for these projects were transferred to the respective towns over the next four years.

Rental Bonuses

The Township's Second Round Substantive Certification also granted the Township 15 rental bonuses as spelled out in the Second Round Substantive Certification.

Surplus New Construction Units

The above described units resulted in a Surplus Credit of 282 new construction lower income units. However, the COAH Second Round Substantive Certification also

acknowledged that, "North Brunswick may request credit for the remaining 50, uncredited, age-restricted units when addressing its third round affordable housing obligation." This statement resulted from the fact that the Township could not take credit for the entire 150 units built by the NBHC due to the limitation on the number of age-restricted units in any round. As a result, the Township effectively has 282 surplus new construction units to be carried forward from it Second Round Plan and 50 age-restricted unit credits to be carried forward from its Second Round Plan.

Compliance with Third Round 700 Unit Prospective Need Obligation

Rules and Assumptions

The following assumptions and rules were utilized to address the Township's 700 unit Third Round obligation:

---a minimum of 75 % (525) of the 700 units must be family units, with a minimum of 25 % (175) rental units and a maximum of 25 % (175) age-restricted units;

---the maximum number of bonuses that can be awarded (92) is calculated to be equal to 25 % of the number which remains (368) after subtracting out surplus new construction units and credits from the Second Round Substantive Certification [.25 X (700-282-50)]; and

---226 of the 282 surplus new construction units are attributable to family units from the Second Round, while 56 of the surplus new construction units are attributable to age-restricted units from the Second Round.

These assumptions and rules are applied in Appendix A to demonstrate compliance with the family and age-restricted prospective housing need.

Overview of Compliance with Family Obligation of 525 Units

After subtracting the number of family surplus new construction units carried forward from the Second Round Substantive Certification (226), the remaining 299 family unit obligation is met with a combination of bedrooms for alternative housing (18), affordable units from the 1875 unit Main Street development (51), nine bedrooms of housing for the homeless in the Community Investment Services (CIS) Crescent development, 129 of the 177 apartment units in the CIS development, and 92 bonuses

derived from the above housing. Each of the units described above qualifies for a bonus, but the total number of bonuses was limited to 92 units.

Details on each of these specific projects are provided below after the following overview of compliance with the age-restricted obligation.

Overview of Compliance with Age-Restricted Obligation of 175 Units

After subtracting the number of age-restricted surplus new construction units (56) and the excess senior credits (50) from the Second Round Substantive Certification, the remaining 119 age-restricted unit obligation is met with a combination of affordable units resulting from the residential conversion of an underperforming shopping center by the Kaplan Organization (5), affordable housing units from the Kaplan Organization construction of a 270 unit inclusionary age-restricted development on Rt. 130 (27), and 37 of the remaining 48 CIS family units in the Crescent development.

Alternative Living Arrangement Bedrooms

Fourteen of the eighteen bedrooms of Special Needs housing are the result of four more community residences for the developmentally disabled that have located in the Township since submission of the Township's Second Round Plan. The 14 bedrooms reflected herein are located as follows:

---a 3 bedroom facility located at 1080 Ottawa (block 17, lot 115), operated by Alternatives, Inc. which was purchased on 11/12/2013;

---a 5 bedroom facility located at 1066 Antonia Drive (block 133, lot 48.02), operated by Dungarvin which was purchased on 8/9/2000;

---a 3 bedroom facility located at 426 Calvert Road (block 229, lot15.01), operated by Enable NJ which was purchased on 3/20/2006; and

---a 3 bedroom facility located at 1209 Douglass Avenue (block 138, lot 12), operated by SERV which was purchased on 6/14/2000.

In Appendix B all 14 of these units are assumed to be very low income.

The remaining four bedrooms are located at 527 Taylor Drive. These four bedrooms were realized by the township's participation in the Special Needs Housing Partnership Program sponsored by the Department of Community Affairs (DCA). The Township

executed an agreement with the New Jersey Housing and Mortgage Finance Agency and New Jersey Department of Human Services on 12/20/2011 and transferred $250,000 to DCA from the Township's Affordable Housing Trust Fund within 30 days of execution.

1875 Unit Inclusionary Zoning Development by North Brunswick TOD Associates, LLC (NBTOD)

On May 17, 2010, the Township of North Brunswick amended the Zoning Ordinance to provide an overlay zone to allow construction of a mixed use inclusionary development on the former J&J facility on the northbound side of Rt. 1. The amendment required the developer to provide affordable housing on site as required to address the affordable housing obligation generated by the transit-oriented mixed use development in accordance with COAH phasing requirements. To resolve subsequent litigation, a Settlement Agreement was executed on February 3, 2014 between the Fair Share Housing Center (FSHC), the Township of North Brunswick Planning Board and NBTOD. The settlement agreement provided that 229 of the 1875 units in this development are required to be affordable to lower income households. This amounts to 12.2 % of the total units.

Preliminary site plan approval has been granted for the entire 1875 housing units to be accommodated on site. However, the Township Zoning Ordinance currently restricts the developer to building no more than 300 housing units prior to construction commencing on the anticipated train station at the site. 30 of these first 300 housing units are required to be affordable units according to the Settlement Agreement.

In order to address the concerns of FSHC to achieve a more desirable income split for the 276 new affordable housing units incorporated in this FSP, the Township is proposing to amend the Zoning Ordinance and development approvals to allow the developer to move forward with 400 total units prior to commencement of construction on the train station. In return for an additional 100 housing units being permitted prior to the commencement of the train station, NBTOD has agreed that they will construct 51 affordable units with an income breakdown of 5 very low income units, 29 low income units and 17 moderate income units. The total number of very low, low and moderate income units to be provided in the entire development shall not be modified and shall remain 23 very low, 92 low and 114 moderate.

All 51 affordable units shall be among the first 242 rental units to be built as part of the initial 400 units, and even if construction begins on the train station before completion of these first 300 housing units, 51 of these first 242 rental units shall be affordable units in accordance with the income breakdown provided herein. This requirement shall be incorporated into the Settlement Agreement.

While this project will include 229 lower income units, the Township does not need to utilize all of these units to meet its Third Round Obligation when other projects, bonuses and credits are taken into consideration. Appendices A & B indicate that 178 of the 229 affordable housing units to be built in the NBTOD Main Street development will still remain to be carried forward toward a future Fourth Round obligation beginning in 2026.

The Planning Board resolution of approval for preliminary site plan requires NBTOD to function as Administrative Agent for the affordable units. NBTOD shall provide regular updates to the Township of North Brunswick Municipal Housing Liaison.

Community Investment Services (CIS) 100 % Affordable Crescent Development

On January 11, 2012, COAH approved an amended Spending Plan that permitted $5,250,000 to be provided to CIS to purchase and renovate a 184 unit apartment complex that had fallen into a serious state of disrepair. The property had gone into receivership and CIS had been selected as the purchaser of the property by the receivership judge. The Township executed an Affordable Housing Agreement with CIS on March 27, 2012.

The Township determined to provide a contribution of $5,000,000 toward the purchase and renovation of the apartment complex in return for the property being deed restricted for a period of 30 years. During the negotiations, the subject of housing for the homeless was discussed. The Township is familiar with the plight of the homeless in the county based upon prior meetings and discussions with Coming Home of Middlesex County, Inc. As a result of these discussions, the Township agreed to an additional contribution of $250,000 in return for several concessions, including CIS restricting no less than six of the units for housing for the homeless.

One apartment unit has been converted into a Superintendent's apartment. Of the remaining 183 units, six units shall be converted into housing for the homeless (three two bedroom units and three one bedroom units) resulting in nine bedrooms to house

the homeless. The remaining 177 units are to be renovated and rented to lower income households. During the negotiations leading up to the agreement, the Township reviewed pro formas from CIS in order to determine the appropriate financial structure for the agreement. The acquisition price of almost 12.5 million dollars and the approximately 12.5 million dollars in projected renovation work required to bring the project up to Township standards required an allocation of Low Income Housing Tax Credits (LIHTC) to make the project feasible. LIHTCs have always been a major part of the permanent financing of this project. While the project has received a commitment of LIHTCs, permanent financing to cover the costs of much of the renovation work required has not yet been secured due to changing regulations caused by Hurricane Sandy.

In order to secure LIHTCs, CIS committed to limit the income of all tenants to no more than 60% of the median income for the appropriate household size. The Affordable Housing Agreement with the Township did not require CIS to stratify incomes in accordance with COAH's Third Round requirement for 10 % very low, 40 % low and 50 % moderate income because COAH regulations in both the Second and Third Rounds state that projects funded by LIHTCs are exempt from the stratification requirements spelled out in the Uniform Housing Affordability Controls (UHAC). Correspondence from two COAH Executive Directors provided by CIS to Township officials clarified that housing units financed in whole or in part with LIHTCs are neutral and do not affect the required split of low and moderate income units. These letters state that LIHTC affordable housing units are exempt from the low/moderate income split requirement, and the exempted low income units do not have to be made up for elsewhere in a municipality's Fair Share Plan. 50 % of the remaining obligation after subtracting any creditworthy LIHTC units from a municipality's overall affordable housing obligation would be required to be affordable to low income households.

However, the proposed distribution of units by income category was a paramount concern of FSHC during negotiations toward a settlement of the litigation. The fact that 100% of the units in the Crescent development were classified as moderate income had a severe negative effect upon the Township's overall distribution of lower income units.

In an attempt to satisfy FSHC's concern, the Township reviewed information provided by CIS to determine the actual incomes of the first 118 units rented. This information revealed that 50% of the households qualify as very low income, 48.3% as low income

and 1.7% as moderate income. This income reveals that even though the incomes are limited to no more than 60 % of the median income, most of the residents have annual incomes that qualify them as very low or low income. It was also revealed that a substantial number of tenants have secured Section 8 Rent Certificates or Vouchers which subsidy their monthly rent payments.

However, it became clear after several months of negotiation that the only feasible way to satisfy FSHC's concerns was for the Township and CIS to meet and amend the Affordable Housing Agreement to require a significant number of low income units. The Township has been successful in renegotiating its agreement with CIS to require that 60 of the 177 rental units shall be restricted to residents who qualify as low income. This renegotiation, in concert with modifications to the NBTOD lower income unit distribution, will allow the Township to address FSHC's concern.

166 of the 177 rental units in the Crescent development will be utilized to meet the Township's Third Round need. 60 of these units will be low income and 106 units will be moderate income. The 11 remaining CIS moderate income units will carry forward to a future Fourth Round obligation in 2026.

The Affordable Housing Agreement with CIS requires CIS to function as Administrative Agent for the affordable units, complying with UHAC requirements where applicable, and filing all necessary forms and reports as required by DCA. CIS will provide regular updates to the Township of North Brunswick Municipal Housing Liaison.

Rental Bonuses

While all of the units provided for in the Township's Third Round FSP qualify for a bonus, the number of bonuses is limited to 92 units. This represents 25 % of the remaining affordable housing obligation after subtracting surplus new construction units and credits carried over from the Township's Second Round Substantive Certification. Applying these 92 bonuses to the remaining family obligation, as shown in Appendix A, reduces the remaining family obligation to zero.

Conversion of Hidden Lake Towne Center to Senior Housing by the Kaplan Organization

After subtracting 56 surplus new construction units attributable to age-restricted housing and 50 credits for age-restricted housing from the Second Round Substantive

Certification, the Township was left with a remaining senior obligation of 69 units. Five affordable units will be provided from the Planning Board approval for the Kaplan Organization to convert an underutilized retail center into 39 units of senior housing. The Planning Board approval required that five of the converted units must be restricted to lower income units. In accordance with UHAC requirements, three of these units will be low and two will be moderate.

Inclusionary Age-Restricted Development by the Kaplan Organization on the Southbound Side of Rt. 130

During early Planning Board workshop discussions in 2016 relative to potential land use changes to be considered in the Master Plan reexamination process, it became clear that finding a site for an age-restricted development was a top priority of the Planning Board. The two current age-restricted developments in the Township, known as Martin Gerber Apartments and North Brunswick Senior Housing, are both 100 % affordable projects. There is no age-restricted housing in the Township that does not impose maximum income limitations on the income of applicants.

For more than a dozen years the Planning Board has been championing the development of an age-restricted housing development. On April 13, 2004, after months of study, the Planning Board amended the Master Plan to designate 70 acres for age-restricted housing. A 325 unit age-restricted development consisting of small lot single family homes, townhouses and condominium flats was approved by the Planning Board on this site. The 2006 Master Plan revision added one additional site for age-restricted housing.

However, due to the State statute that allowed age-restricted developments to be converted to family housing, as well as potential environmental constraints associated with the second site, neither site designated in the 2004 or 2006 Master Plan revisions was developed for age-restricted housing.

On November 12, 2009 the Planning Board adopted an amendment to the Master Plan entitled Continued Need for Market Priced Age-Restricted Housing. In this amendment, it states, "the Planning Board encourages the Council to take whatever steps it can to facilitate the construction of this much needed age-restricted housing.

Today, there is still no land developed for age-restricted housing in the Township other than the two 100 % affordable projects mentioned earlier. As a result, the Township is

providing as part of its Third Round FSP to modify the zoning of the PUD II Zone to allow for the construction of up to 270 age-restricted housing units on approximately 18 acres of land owned by the Kaplan Organization on southbound Rt. 130. This property is known as block 148.11, lot 1. The maximum gross density shall not exceed 18 units per acre.

This project is to be an inclusionary development with 10 % of the total number of units being affordable. In order to further the Township's efforts to satisfy the FSHC's concerns about the lower income mix, the Kaplan Organization will be required to provide 60 % low income units and 40 % moderate income units. If the entire 270 units are developed, this will result in 27 additional lower income units. In order to meet FSHC's requirement that 13% of the Township's total lower income units must be classified as very low, three of these units shall be very low income, 13 units low income, and 11 units can be moderate income. This income breakdown is necessary to satisfy the required income split.

The Planning Board resolution of approval for the preliminary site plan approval of this site shall require the Kaplan Organization to function as Administrative Agent for the affordable units. The Kaplan Organization will provide regular updates to the Township of North Brunswick Municipal Housing Liaison.

Given the high priority that the Planning Board places on bringing to fruition the development of age-restricted housing, as well as the importance of this inclusionary development in the Township's Third Round FSP, it is proposed that the Township has the right to remove the zoning provision allowing for an inclusionary age-restricted development from this property and to place a similar provision on another property in the Township if the Kaplan Organization has not submitted plans to the Planning Board within four years of the execution of the Settlement Agreement.

Summary of Units Addressing Third Round Affordable Housing Obligation

The 368 total units remaining to be addressed in the Township's Third Round FSP, after applying 282 surplus new construction units and 50 age-restricted credits from the Township's Second Round Substantive Certification, are provided by the following projects and bonuses:

---14 bedrooms of very low income alternative housing provided in four group homes that have located in the Township since the Township received Substantive Certification of its Second Round Plan;

---four bedrooms of very low income alternative housing resulting from the Township transferring $250,000 to DCA to convert 527 Taylor Drive to a community residence for the developmentally disabled;

--51 affordable rental units comprised of five very low income, 29 low income and 17 moderate income units to be built by NBTOD Associates;

--nine bedrooms of very low income housing for the homeless to be developed by CIS in six housing units in accordance with their Affordable Housing Agreement with the Township;

---166 affordable rental units to be comprised of 60 low income and 106 moderate income units to be provided by CIS in the Crescent development project;

---five affordable age-restricted rental units comprised of 3 low income and 2 moderate income units to be constructed by the Kaplan Organization as part of the conversion of an underperforming retail building;

---27 affordable age-restricted rental units comprised of three very low income, 13 low income and 11 moderate income units to be constructed by the Kaplan Organization in an inclusionary age-restricted development on Rt. 130; and

---92 bonuses earned based upon the 276 new units described above.

In addition to the units applied herein to satisfy the Township's Third Round FSP, the parties to the litigation agree that the Township shall be able to carry forward a total of 189 affordable housing units toward a future Fourth Round obligation comprised of the following:

---178 rental units to be comprised of 18 very low, 63 low and 97 moderate income units to be constructed by NBTOD; and

---11 remaining moderate income rental units from the CIS Crescent development.

APPENDIX A

NORTH BRUNSWICK 1999-2025 THIRD ROUND AFFORDABLE HOUSING OBLIGATION

prepared by Tom Vigna on 3/17/2016

Rules and Assumptions

700	Housing Obligation
282	New Construction Surplus Credits from 2nd Round
226	# of the 282 New Construction Surplus Credits Attributable to Family Units from 2nd Round
56	# of the 282 New Construction Surplus Credits Attributable to Age-Restricted Units from 2nd Round
50	Excess Senior Units from NB Senior Housing that COAH Said the Township May Carry Over to a Subsequent Round
368	Minimium # of New Units to Be Part of Plan (700 minus 282 Surplus Credits and 50 Excess Senior Units)
175	Maximum # of Age Restricted (25% of 700 Unit Obligation)
525	Minimum # of Family Units (75% of 700 Unit Obligation)
175	Minimum # of Rental Units (25% of 700 Unit Obligation)
92	Maximum # of Bonuses (25% of the 368 New Units Remaining after Subtracting Out 282 Credits & 50 Excess Senior Units)

Compliance with Family Obligation

525	Minimum # of Family Units (75% of 700 Units)
226	# of New Construction Surplus Credits Attributable to Family Units from 2nd Round Substantive Certification
299	Remaining Family Obligation
14	Alternative Housing Bedrooms from 4 Group Homes since 2nd Round Certification (14 very low)
285	Remaining Family Obligation
4	Alternative Housing Bedrooms from 250K Given to DCA (4 very low)
281	Remaining Family Obligation
51	NBTOD Affordable Units (5 very low/29 low/17 moderate) (178 units still remain to be carried to a 4th Round)
230	Remaining Family Obligation
9	Bedrooms of Housing for the Homeless from CIS Project (9 very low)
221	Remaining Family Obligation
129	129 of the 177 CIS Rental Units (60 low/69 mod) (48 moderate units still remain)
92	Remaining Family Obligation
92	Bonuses from Alternative Housing & Homeless Bedrooms and NBTOD & CIS Projects (capped at 92 units)
0	**Remaining Family Obligation**

Compliance with Age-Restricted Obligation

175	Maximum # of Age Restricted (25% of 700 Unit Obligation)
56	# of New Construction Surplus Credits Attributable to Age-Restricted Units from 2nd Round Substantive Certification
119	Remaining Senior Obligation
50	Excess Senior Units from NB Senior Housing that COAH Said the Township May Carry Over to a Subsequent Round
69	Remaining Senior Obligation
5	Affordable Units in Kaplan Conversion of Towne Center to 39 Units of Age-Restricted Housing (3 low/2 mod)
64	Remaining Senior Obligation
27	27 Affordable Units from Kaplan 10% Setaside on 18 acres at 15 units/acre (3 very low/13 low/11 mod)
37	Remaining Age-Restricted Obligation
37	37 of the Remaining 48 CIS Family Units Will Be Applied (48 mod) (11 units still remain to be carried to a 4th Round)
0	**Remaining Age-Restricted Obligation**

Appendix B

VERY LOW/LOW/MODERATE INCOME SPLIT FOR NORTH BRUNSWICK THIRD ROUND AFFORDABLE HOUSING OBLIGATION
prepared by Tom Vigna on 3/17/2016

368 New Units to Be Part of the Plan after Application of All New Construction Surplus Credits and Excess Senior Units from 2nd Round

Description of Units	1999-2025 Units				Units Remaining for 4th Round			
Family Units	Very Low Income	Low Income	Moderate Income	Total Units	Very Low Income	Low Income	Moderate Income	Total Units
Alternative Housing Bedrooms from 4 Group Homes	14			14				
Alternative Housing Bedrooms from DCA Payment	4			4				
Affordable Units from NBTOD Main Steet	5	29	17	51	18	63	97	178
Bedrooms for the Homeless from CIS	9			9				
Rental Apartments in CIS Project		60	106	166			11	11
Total New Family Units	32	89	123	244	18	63	108	189
Bonuses (25% of 368)				92				
New Family Units Plus Bonuses				336				
Age-Restricted Units								
Kaplan Conversion of Towne Center		3	2	5				
Kaplan Age-Restricted on 18 Acres on Rt. 130	3	13	11	27				
Total New Age-Restricted Units	3	16	13	32				
Total New Units	**35**	**105**	**136**	**276**				
% of the 276 New Units	13%	38%	49%	100%				

EXHIBIT B

NOTICE OF FAIRNESS HEARING FOR CONSIDERATION OF THE HOUSING ELEMENT AND FAIR SHARE COMPLIANCE PLAN OF THE TOWNSHIP OF NORTH BRUNSWICK, COUNTY OF MIDDLESEX ("TOWNSHIP")

Docket No. MID-L-3565-15

PLEASE TAKE NOTICE that on Wednesday, April 27, 2016, beginning at 2:00 P.M., a "Fairness and Compliance Hearing" (the "Hearing") will be conducted before the Honorable Douglas K. Wolfson, J.S.C. at the Middlesex County Superior Court Courthouse, Chambers 408, 56 Paterson Street, New Brunswick, NJ 08903. Upon conclusion of the Hearing, the Court will determine whether the terms of a Settlement Agreement (the "Settlement Agreement") between the Township and Intervenor, Fair Share Housing Center ("FSHC"), Intervenor, K-Land No. 54, LLC ("Kaplan") and Interested Party, North Brunswick TOD Associates, LLC ("NBTOD") to resolve the within Declaratory Judgment action, is fair and reasonable to low income and moderate income households and whether the Township's proposed Housing Element and Fair Share Plan (hereinafter the "Affordable Housing Plan"), satisfies the Township's obligation to provide a realistic opportunity for the creation of affordable housing pursuant to its constitutional responsibilities under the *Mount Laurel Doctrine.*

Particularly, the Court will consider whether the Affordable Housing Plan, which has been adopted by the Township Planning Board and endorsed by the Township Council, subject to the Court's approval, satisfies the Township's obligation to provide a realistic opportunity for the creation of affordable housing. The Affordable Housing Plan addresses the Township's Present Need Obligation (or rehabilitation obligation) of 199 housing units, its Prior Round Obligation of 395 housing units and its Third Round Prospective Need Obligation of 700 units, all as determined pursuant to the Fair Housing Act, *N.J.S.A.* 52:27D-301, et seq., the substantive, applicable regulations of the New Jersey Council on Affordable Housing ("COAH"), the New

Jersey Supreme Court's March 10, 2015 decision in the matter of In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015), and other applicable laws.

The Township seeks a Judgment of Compliance and a Judgment of Repose, which will afford the Township, among other things, a period of ten years of protection from any builder's remedy lawsuits brought pursuant to the *Mount Laurel Doctrine.*

The Affordable Housing Plan sets forth those compliance mechanisms the Township will employ to address its affordable housing obligation. The full text of the Settlement Agreement and the Township's Affordable Housing Plan is available for public inspection and/or photocopying (at requestor's expense) during normal business hours at the Township Clerk's office located at 710 Hermann Road, North Brunswick, New Jersey and is posted on the Township's website at www.northbrunswicknj.gov.

Any interested person may seek to appear and be heard at the Hearing to address the Township's Affordable Housing Plan and the Settlement Agreement, and offer any comments or objections, *provided* any such person first files with the Court at the above address, its comments or objections, in writing, no later than ten (10) days prior to the Hearing and serves and emails such objections or comments upon the following:

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Hill Wallack, LLP
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Princeton, NJ 08540
Attorneys for North Brunswick TOD Associates, LLC, Interested Party
TCarroll@hillwallack.com

This Notice is provided pursuant to Order of the Court and is intended to inform interested persons of the Settlement Agreement and the Township's Affordable Housing Plan and inform such persons that they may comment upon the Settlement Agreement and Affordable Housing Plan before the Court reviews and evaluates whether to approve the Settlement Agreement and Affordable Housing Plan. This Notice does not indicate any view by the Court as to the fairness of the Settlement Agreement or the adequacy of the Township's Affordable Housing Plan.

DeCOTIIS, FITZPATRICK & COLE, LLP

By: _____
Ronald H. Gordon, Esq.
Attorney for the Township of North Brunswick

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