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Attorney for Township of Clinton

IN RE: TOWNSHIP OF CLINTON	)	SUPERIOR COURT OF NEW JERSEY
COMPLIANCE WITH <u>MOUNT LAUREL</u>	)	LAW DIVISION-HUNTERDON COUNTY
THIRD ROUND AFFORDABLE	)	DOCKET NO. HNT-L-315-15
HOUSING OBLIGATION	)	
	)	Civil Action
	)	
	)	<u>Mount Laurel IV</u>
	)	
	)	ORDER APPROVING SETTLEMENT
	)	AGREEMENT AND, PRELIMINARILY,
	)	FAIR SHARE COMPLIANCE PLAN,
	)	AND ESTABLISHING NEXT STEPS

This matter having been opened to the Court in accordance with East/West Venture v. Bor. of Fort Lee, 289 N.J. Super. 311 (App. Div. 1996) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), by the joint application of Stickel, Koenig, Sullivan & Drill, LLC (Jonathan E. Drill, Esq. and Kathryn J. Razin, Esq., appearing), attorney for Township of Clinton (the "Township"), and Kevin Walsh, Esq., staff attorney with and on

behalf of Fair Share Housing Center ("FSHC"), a public interest organization representing the housing rights of New Jersey's poor (FSHC is an intervening defendant in the within litigation), for the review of a proposed settlement (the "settlement") of the within Mount Laurel declaratory judgment action <sup>1</sup> at a so-called "fairness" hearing (the "Fairness Hearing"); and the terms of the settlement being set forth in a written agreement entered into by and between the Township and FSHC dated February 5, 2018, last signed on February 7, 2018 (the "Amended Settlement Agreement"), which Amended Settlement Agreement is expressly subject to court approval following the Fairness Hearing; and the Court conducting a Fairness Hearing on the Amended Settlement Agreement on March 19 and 20, 2018, having determined that the Township provided proper notice of the Fairness Hearing as reflected in the Certification of Service and Publication of Notice (which was entered into evidence as Exhibit P-5); and a number of individuals having submitted objections to the Court regarding the Amended Settlement Agreement but none of the individuals having appeared at the Fairness Hearing to testify, question witnesses or otherwise present evidence objecting to the Amended Settlement Agreement; and one entity, Clinton 94, LLC (Clinton 94, LLC is an intervening defendant in the within litigation), having submitted objections to the Court regarding the Amended Settlement Agreement, and having further

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<sup>1</sup> The within Mount Laurel declaratory judgment action was brought pursuant to Mount Laurel IV, 221 N.J. 1 (2015).

appeared during the Fairness Hearing through its counsel Jeffrey Kantowitz, Esq., to cross examine witnesses, present evidence through the testimony of its principal, David Meiskin, and make a closing argument to the Court, all for the purpose of objecting to the Amended Settlement Agreement; and the Court's special master, Michael P. Bolan, PP, AICP (the "master"), having submitted a report to the court dated March 12, 2018 (the "master's report") (which master's report was entered into evidence as Exhibit C-1); and the master having testified during the Fairness Hearing; and the Township's affordable housing planner, Joseph H. Burgis, PP, AICP, having also testified during the Fairness Hearing; and a number of exhibits having been entered into evidence during the Fairness Hearing (which exhibits are listed on the "Fairness Hearing Exhibit Table" attached hereto); and the master recommending in the master's report and during testimony that the Court approve the Amended Settlement Agreement as fair and reasonable to and adequately protecting the interests of the protected class, namely, low and moderate income persons / households, subject to conditions; and the Court determining for the reasons set forth in the memorandum opinion attached hereto that the Amended Settlement Agreement (which was entered into evidence as Exhibits P-3 and P-4) is fair and reasonable to and adequately protects the interests of low and moderate income persons / households so should be approved, subject to conditions;

and the Court determining that an order should be entered memorializing the Court's findings and conclusions and providing for the next steps in the litigation;

IT IS ON THIS 3rd DAY OF MARCH, 2018, ORDERED AND ADJUDGED AS FOLLOWS:

1. Approval of Amended Settlement Agreement. The Amended Settlement Agreement is hereby approved as fair and reasonable to and adequately protecting the interests of low and moderate income persons / households, subject to the conditions set forth in ordering paragraph #2 below.

2. Conditions of Approval. The Township shall satisfy the following as conditions of the Court's approval of the Amended Settlement Agreement:

a. Within 90 days of the entry of this order, the Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan ("HE&FSP") with any revisions required by or resulting from the Amended Settlement Agreement and the within conditions. For proposed inclusionary development sites, the HE&FSP must include an analysis of the sites to demonstrate that they are approvable, available, developable and suitable in accordance with COAH's Second Round Rules. The Fair Share Plan shall include as drafts any Zoning Ordinance amendments and agreements necessary to effectuate the terms of the Amended Settlement Agreement.

b. Within 90 days of the Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt ordinance(s) providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of the Amended Settlement Agreement and the zoning contemplated in the Amended Settlement Agreement. The Affordable Housing Ordinance shall incorporate all of the provisions of the Amended Settlement Agreement, applicable provisions of UHAC and COAH's Second Round rules, and any other provisions that result from the adopted HE&FSP.

c. Within 90 days of the entry of this order, the Township shall demonstrate compliance with the requirements of N.J.A.C. 5:93-5.5 for non-inclusionary developments. These requirements include evidence that the Township has adequate and stable funding; a pro forma of total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending; and, a construction or implementation schedule, or timetable, for each step of the development in the development process, with the schedule providing for construction to begin within two years of the entry of the within order. The schedule shall provide for construction of the Marookian project and the LeCompte project consistent with the terms of Paragraph 10 of the Settlement Agreement. The Township shall indicate the entity responsible for undertaking and monitoring the

construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the Court at least 60 days prior to the compliance hearing in this matter.

d. Within 90 days of the entry of this order, the Township shall endorse a Spending Plan in conformance with the terms of the Amended Settlement Agreement.

e. At least 60 days prior to the compliance hearing, the Township shall provide a structural conditions survey to identify substandard housing in accordance with N.J.A.C. 5:93-5.2. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied.

f. Within 90 days of the entry of this order, the Township shall provide documentation for the existing group home at Block 4.03, Lot 40, including the deed restriction, Supportive and Special Needs Housing Survey, and a copy of the facility license, if applicable.

g. Within 90 days of the entry of this order, the Township shall provide the deed restrictions for the Mews project.

h. Within 90 days of the entry of this order, the Township shall provide evidence of the approvals for the CRC Longview group home and the Fox/Seals redevelopment area.

i. Within 90 days of the entry of this order, the Township shall provide a letter from the developer of the Headley

Farm Estate inclusionary development agreeing to the density and set-aside for the proposed development and supporting the terms of the Amended Settlement Agreement.

j. Within 90 days of the entry of this order, the Township shall adopt a Resolution appointing a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting, if it has not already done so.

k. Within 90 days of the entry of this order, the Township shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

l. Within 90 days of the entry of this order, the Township shall adopt a Resolution adopting the Township's Affirmative Marketing Plan, as modified by the terms of the Settlement Agreement. The monitoring and reporting requirements identified in Paragraphs 20, 21 and 22 of the Amended Settlement Agreement shall be continuing conditions of the Court's approval.

3. Scheduling of Compliance Hearing. The Court will schedule a Compliance Hearing in this matter to review and approve the HE&FSP, including the Spending Plan, as well as all implementing ordinances,

after consulting with the parties and the master as to availability for appearances.

4. Extension and Continuation of Temporary Immunity. The temporary immunity previously granted to the municipality and its Planning Board from any and all exclusionary zoning lawsuits is hereby extended and continued through the date of the Compliance Hearing.

5. Service of Order. A copy of this order shall be served by counsel for the Township on all persons and/or entities on the municipal service list within five (5) days of the receipt of this order by the counsel for the Township.

*/s/ Thomas C. Miller, P.J.Civ.*

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HON. THOMAS C. MILLER, P.J.Civ.



**FAIRNESS HEARING EXHIBIT TABLE**

<b>Exhibit</b>	<b>Description</b>	<b>In Evidence</b>
<b>P-1</b>	<b>Initial Settlement Agreement dated 12/12/17, last signed 12/13/17, submitted via eCourts 12/18/17</b>	<b>3/19/18</b>
<b>P-2</b>	<b>Proof of Service of Notice of Fairness Hearing on Initial Settlement Agreement dated 1/24/18, submitted via eCourts 1/24/18</b>	<b>3/19/18</b>
<b>P-3</b>	<b>Amended Settlement Agreement dated 2/5/18, last signed 2/7/18, submitted via eCourts 2/8/18 (original)</b>	<b>3/19/18</b>
<b>P-4</b>	<b>Exhibit A to both the Initial Settlement Agreement and the Amended Settlement Agreement: COAH Second Round Substantive Certification Resolutions with Reports</b>	<b>3/19/18</b>
<b>P-5</b>	<b>Proof of Service of Notice of Fairness Hearing on Amended Settlement Agreement dated 3/12/18, submitted via eCourts 3/12/18 (original)</b>	<b>3/19/18</b>
<b>P-6</b>	<b>Concept Plan for the CIS project at the LeCompte site dated March 12, 2018</b>	<b>3/20/18</b>
<b>P-7</b>	<b>Color rendered underlayment or base map of the Concept Plan dated March 12, 2018 showing the CIS site outside the environmental features on the property</b>	<b>3/20/18</b>
<b>P-8</b>	<b>Dwyer Geosciences, Inc. (Thomas E. Dwyer, PG) report on feasibility of on-site water supply dated February 7, 2018</b>	<b>3/20/18</b>
<b>P-9</b>	<b>Natural Systems Utilities (Adam G. Stern, PE) report on feasibility of on-site wastewater management system dated February 16, 2018.</b>	<b>3/20/18</b>
<b>O-1</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "1" inclusive of hand-drawn LeCompte site area</b>	<b>3/20/18</b>
<b>O-2</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "2" with notation, "Preserve Forest Critical Wildlife Habitat"</b>	<b>3/20/18</b>
<b>O-3</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "3"</b>	<b>3/20/18</b>
<b>O-4</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "4"</b>	<b>3/20/18</b>
<b>O-5</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "5"</b>	<b>3/20/18</b>
<b>O-6</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "6"</b>	<b>3/20/18</b>
<b>O-7</b>	<b>Hand-marked NJ Highlands Council Interactive Map, Labeled "7"</b>	<b>3/20/18</b>
<b>C-1</b>	<b>Report of Michael P. Bolan, AICP, PP, dated March 12, 2018</b>	<b>3/20/18</b>
<b>C-2</b>	<b>Report of Michael P. Bolan, AICP, PP, dated February 5, 2018</b>	<b>3/20/18</b>