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Attorney for Plaintiff

JACOB HABERMAN,

Plaintiff,

v.

THE PLANNING BOARD OF THE BOROUGH
OF HAMPTON, THE COUNCIL OF THE
BOROUGH OF HAMPTON, and THE MAYOR
OF THE BOROUGH OF HAMPTON,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-HUNTERDON COUNTY
(MOUNT LAUREL II)
DOCKET NO. L-6527-81

Civil Action

**FINAL JUDGMENT OF COMPLIANCE AS
TO BOROUGH OF HAMPTON**

This matter having come before the Court on the joint application of Plaintiff, Jacob Haberman and Defendants, Borough of Hampton and Council of the Borough of Hampton, for the entry of a Final Judgment of Compliance as to the Borough of Hampton based upon the March 23, 2015 Litigation Settlement Agreement between the parties; and

WHEREAS, the Court entered an Order on February 11, 2015 determining that the March 23, 2015 Litigation Settlement Agreement had sufficient merit to justify a fairness hearing pursuant to Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super 108 (App. Div. 1988); and

WHEREAS, the Court entered an Order dated March 23, 2015 setting procedures for said fairness hearing; and

WHEREAS, Plaintiff provided an Affidavit of Service and Publication showing proof of compliance with the pre-hearing procedures required by the March 23, 2015 Order; and

WHEREAS, the Court held a fairness hearing on May 29, 2015, June 10, 2015, June 11, 2015 and June 19, 2015, at which time the documents listed in Exhibit "A" were marked into evidence; and

WHEREAS, the Court received expert testimony at the fairness hearing on behalf of Plaintiff by Edward Kuc; David Krueger; Raymond Tully; Theodore Cassera; Adam Stern and Creigh Rahenkamp, and testimony on behalf of objectors to the Settlement Agreement, by Amy Greene and Jeffrey Goll; and

WHEREAS, on May 21, 2015, Adam M. Gordon, Esq. submitted a letter with certification of Dr. David N. Kinsey on behalf of the Fair Share Housing Center (F.S.H.C.), objecting to entry of a Final Judgment of Compliance based upon the March 23, 2015 Litigation Settlement Agreement, said objection being primarily that the Agreement provided only 33 lower income units towards the 72 unit fair share for Hampton Borough as calculated by Dr. Kinsey; and

WHEREAS, the portion of the fairness hearing which concerned the suitability of the Haberman North Lot was concluded on June 19, 2015; and

WHEREAS, the parties negotiated and executed an Amended Litigation Settlement Agreement dated October 26, 2015, (last signature dated November 2, 2015), which Amended Litigation Settlement Agreement, attached hereto as Exhibit "B", increased the setaside on the Haberman North Lot from 33 units to 45 units, all to be offered as rental units, allowed 50 of the market units to be offered as rental units and required Mr. Haberman to fund the rehabilitation of all of the 12 dilapidated units constituting Hampton Borough's present need, and these provisions for setaside and housing rehabilitation are acceptable to the F.S.H.C.; and

WHEREAS, Plaintiff provided an Affidavit of Service and Publication showing proof of pre-hearing notice for the November 16, 2015 continued hearing; and

WHEREAS, the Court continued the fairness hearing on November 16, 2015, at which time testimony was received from Plaintiff's expert professional planner, Creigh Rahenkamp, on the potential fair share numbers for Hampton Borough, the provision of the 72 unit fair share calculated by the F.S.H.C. by the mechanisms set forth in the October 26, 2015 Amended Litigation Settlement Agreement, the resulting 17% setaside (21.6% if rental bonus credits are included) and the lack of radical transformation; and

WHEREAS, the exhibits marked into evidence at the November 16, 2015 hearing are listed on Exhibit "C"; and

WHEREAS, the Court Appointed Master Eugene D. Serpentelli (retired Assignment Judge of the Superior Court), submitted a report dated November 11, 2015, recommending approval of the October 26, 2015 Amended Litigation Settlement Agreement, said report attached as Exhibit "D" hereto, and Judge Serpentelli testified and was subject to cross-examination on November 16, 2015 concerning his November 11, 2015 report; and

WHEREAS, on February 10, 2016 the Court issued a Decision Conditionally Approving Housing Plan, which Decision is attached hereto as Exhibit "E"; and

NOW, THEREFORE, be it Ordered on this ____ day of _____, 2016, that a Final Judgment of Compliance is hereby entered confirming the provision of 72 units of low and moderate income housing credits which satisfies the highest calculation to date of Hampton Borough's fair share, the within Final Judgment to supersede the 1991 Final Judgment on Compliance. Hampton Borough is hereby granted repose from Mt. Laurel litigation for 10 years from February 10, 2016, the date of the Court's Decision. The October 26, 2015 Amended Litigation Settlement Agreement attached as Exhibit "B" hereto is hereby approved. Entry of this Final Judgment of Compliance is conditioned upon conformance with the following terms and conditions:

1. Within 60 days of entry of this Judgment, the Hampton Borough Planning Board shall adopt an amendment to its 2010 Housing Element and Fair Share Plan as necessary to support the development on the Haberman North Lot provided for in the October 26, 2015 Amended Litigation Settlement Agreement and proposed Amended AH Zone Regulations Ordinance included in Schedule A to the October 26, 2015 Amended Litigation Settlement Agreement.

2. The Hampton Borough Council shall adopt the Amended AH Zone Regulations Ordinance within 60 days of entry of this Final Judgment of Compliance. In the event that the Planning Board of the Borough of Hampton fails to adopt the amendment to the 2010 Housing Element and Fair Share Plan required by paragraph 1 above, the Borough Council shall adopt the proposed Amended AH Zone Regulations Ordinance by majority vote in accordance with the procedure required by N.J.S.A. 40:55D-62(a).

3. Prior approval by the Highlands Council of the Amended AH Zone Regulations Ordinance shall not be required and, instead, Borough Council's adoption of this Ordinance shall be conditioned upon future conformance approval, map adjustment and/or center designation of the Haberman North Lot by the Highlands Council.

4. a. At the same Council meeting at which the Amended AH Zone Regulations Ordinance is adopted by the Borough Council, the Borough Council shall also adopt the ordinance attached as Schedule C to the October 26, 2015 Amended Litigation Settlement Agreement entitled "An Ordinance of the Borough of Hampton, County of Hunterdon, State of New Jersey, Providing Administrative Provisions for Affordable Housing Projects and Supplementing Section 157-53 AH-Affordable Housing Zone Provisions".

b. Within 45 days of the adoption of the two ordinances required hereunder, Plaintiff shall transfer \$96,000 to Hampton Borough, to be deposited into an Affordable Housing Trust Fund Account and designated for the rehabilitation of dilapidated units occupied by low and moderate income households. Hampton Borough shall provide written notice to each recipient that The Haberman Group was the provider of the rehabilitation funds.

c. Article III, Section 26 of the draft ordinance attached as Schedule C to the October 26, 2015, Amended Litigation Settlement Agreement provides that the Developer (i.e., Jacob Haberman/Hampton Farm, LLC) shall contract with an Administrative Agent from the list of DCA/COAH approved Administrative Agents. This language means that the Developer shall choose and hire the Administrative Agent, who will work at the Developer's cost and expense.

5. Within 60 days of receipt of draft Highlands Council documents provided by Plaintiff for submission of an amendment to Hampton Borough's conformance petition as required by paragraph 1 of Schedule B of the October 26, 2015 Amended Litigation Settlement Agreement, Hampton Borough shall finalize said documents and submit same to the Highlands Council. In order to assure conformance with the Borough's obligations pursuant to the October 26, 2015 Amended Litigation Settlement Agreement, Hampton Borough shall provide all correspondence to and from the Highlands Council to Plaintiff and shall coordinate with Plaintiff any necessary responses to comments or inquiries by the Highlands Council. Plaintiff shall be given adequate advance notice of any meetings with the Highlands Council or staff to allow attendance by Plaintiff at all meetings.

6. The remaining municipal actions to facilitate development on the Haberman North Lot, as listed on Schedule B to the October 26, 2015 Amended Litigation Settlement Agreement, shall be expeditiously pursued by Hampton Borough as agreed upon in the Amended Litigation Settlement Agreement. Plaintiff Jacob Haberman shall be responsible for providing at his own costs, all necessary plans, documents and application, forms/fees to support the necessary municipal applications.

7. As provided for in the October 26, 2015 Amended Litigation Settlement Agreement, the back-up well shall be completed by Hampton Borough no later than one year from issuance of all permits and approvals for construction of the Haberman project or three years after execution of the October 26, 2015 Amended Litigation Settlement Agreement, whichever occurs first. Hampton Borough shall utilize diligent efforts to secure the DEP permits for the back-up well but shall not be deemed in default if for reasons beyond the Borough's control, the DEP permits are not obtained. Plaintiff is responsible for payment of his pro-rata share of the cost of the construction of the well as set forth in Section 8 of the Amended Litigation Settlement Agreement. Such payment from Plaintiff to Hampton Borough is due upon the first subdivision or site plan approval for the Haberman project.

8. The municipal development process shall proceed with reasonable dispatch and the Hampton Borough Planning Board shall judge any submitted land development application for Plaintiff's site based upon the ordinance requirements approved by this Court.

9. Plaintiff Jacob Haberman shall commission within 30 days of entry of the within Judgment, all plans and reports necessary to file an application to the N.J. Department of Environmental Protection, and, upon completion of those plans and reports, shall submit, no later than 90 days from entry of the within Judgment, an application for DEP Flood Hazard Area verification for the North Lot.

10. Special Master Serpentelli shall continue his appointment as the Court-Appointed Monitor, and in that role shall be responsible for monitoring the progress of the parties with respect to permits and approvals required for the inclusionary development on the Haberman North Lot, including the back-up well. Special Master Serpentelli shall submit monitoring reports to the parties and to the Court every three months, the first report due three months from the date of entry of this Judgment of Compliance. The cost of monitoring shall be borne by

Plaintiff. The Special Master/Monitor shall upon request of plaintiff or defendant, have the right to grant reasonable extensions of any deadline in this Final Judgment.

11. Special Master Serpentelli shall have the authority to employ a Permit Coordinator to represent the public interest in assuring development of the inclusionary housing development on the Haberman North Lot pursuant to this Judgment of Compliance and to participate, as necessary, in any governmental approval process to assure that municipal, county and State agencies understand and implement the intent and terms of this Final Judgment of Compliance. The cost of work done by the Permit Coordinator employed by the Special Master shall be the responsibility of Plaintiff.

12. This Judgment may be enforced by R.1:10-3 motion in aid of litigant's rights.

13. This Judgment is hereby certified to be a Final Judgment and is thus a complete adjudication of all the rights and liabilities asserted in the pending litigation.

THE HONORABLE PETER A. BUCHSBAUM, J.S.C.
Retired, on Recall

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EXHIBIT A

Exhibit A to Hampton Borough Judgment of Compliance
Exhibits In Evidence At May 29, 2015 – June 19, 2015 Fairness Hearing

Plaintiff's Exhibits

- P-1 - Affidavit of Publication and Service
- P-2 - 1991 Final Judgment and 1988 Settlement Agreement
- P-3 - March 3, 2015 Litigation Settlement Agreement
- P-4 - 2/9/15 Hampton Borough Council Minutes
- P-8 - Wetlands/State Open Waters Delineation Map, Lot 1, Block 23, Hampton Borough, dated July 30, 2012
- P-9 - September 27, 2012 New Jersey DEP letter of interpretation: line verification, File No. 1013-12-0001.1
- P-13 - Hampton Borough Water System Map, by Orland Eng. Assoc. (large map mounted on board)
- P-14 - Map prepared by Amy S. Greene Environmental Consultants entitled 2012-2013 Aerial Photograph Map, Block 23, Lot 1, Hampton Borough
- P-15 - Map prepared by Amy S. Green Environmental Consultants entitled Hunterdon County Soil Survey Map, Block 23, Lot 1, Hampton Borough
- P-16 - Map marked 1978 NRCS
- P-17 - Letter of Interpretation map marked with photo locations and mounted on board
- P-18 - Mounted board with 12 photographs as located on P-17
- P-23 - Concept plan for 333 dwellings on Haberman tract, prepared by Creigh Rahenkamp & Associates and JLM Design Group dated April 13, 2015
- P-24 - Borough of Hampton Ordinance No. 10-____, an Ordinance of the Borough of Hampton... providing administrative provisions of affordable housing projects...
- P-25 - Preliminary concept plan prepared by Creigh Rahenkamp and JLM Design Group dated March 17, 2015

Objector's Exhibits

- H-2 - Map prepared by Amy S. Green Environmental Consultants entitled Regulated Waters and Upstream Drainage Basin Map, Block 23, Lot 1
- H-3 - Map prepared by Amy S. Green Environmental Consultants entitled Riparian Zone Map, Block 23, Lot 1, Hampton Borough, Hunterdon County

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AMENDED LITIGATION SETTLEMENT AGREEMENT

THIS AMENDED LITIGATION SETTLEMENT AGREEMENT is made this 26th
~~day of September~~^{October}, 2015, by and between the BOROUGH OF HAMPTON, a municipal
corporation of the State of New Jersey, the COUNCIL OF THE BOROUGH OF HAMPTON
(hereinafter designated as "Hampton Borough"), and JACOB HABERMAN, and Hampton
Farm, LLC (both hereinafter designated as "Haberman").

WHEREAS, prior Mount Laurel litigation initiated by Haberman and docketed as L-
6527-81 was resolved by the execution of a Settlement Agreement dated August 15, 1988 (the
"1988 Settlement Agreement"), which 1988 Settlement Agreement was approved, after a
fairness hearing, by entry on November 18, 1991, of a Final Judgment on Compliance (the "1991
Final Judgment") as to the Borough of Hampton; and

WHEREAS, the 1988 Settlement Agreement provided for the rezoning of both Lot 1,
Block 23 (the "North Lot") and Lot 2, Block 24 (the "South Lot") but required all permitted
dwellings to be constructed on the South Lot;

WHEREAS, the 1988 Settlement Agreement did not set a deadline for construction of the
permitted dwellings authorized therein; and

WHEREAS, the caption of the pending litigation docketed L-6527-81 continues to show
Jacob Haberman as Plaintiff, however, title to the North Lot and South Lot have been transferred
to Hampton Farm, LLC; and

WHEREAS, subsequent to entry of the 1991 Final Judgment various events have
interfered with the ability of Haberman to construct the authorized dwellings on the South Lot,

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said events including adoption of the Highlands Water Protection and Planning Act, Hampton Borough's voluntary compliance with the Highlands Regional Master Plan, changes in statewide affordable housing fair share methodology and changes in the housing market; and

WHEREAS, calculations of Hampton Borough's fair share since entry of the 1991 Final Judgment have varied, the most recent calculation by the Council on Affordable Housing in the agency's proposed rules having set Hampton Borough's fair share at 37 units and the April 2015 calculations by the Fair Share Housing Center have set Hampton Borough's fair share at 72 units (present need = 12 units; prior round obligation = 2 units; Third Round prospective need = 58 units); and

WHEREAS, the April 2015 calculations by the Fair Share Housing Center have been questioned in other pending declaratory judgment actions and have not yet been reviewed or judicially approved as provided for in *In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing*, 221 N.J. 1 (2015); and

WHEREAS, on July 8, 2010, Hampton Borough filed a Motion for Relief From Final Judgment on Compliance, which Motion was subsequently withdrawn with prejudice pursuant to the January 17, 2013, Consent Order Permitting Withdrawal of Counsel, Appointing Master and Setting Other Pretrial Proceedings; and

WHEREAS, on December 13, 2012, Haberman filed opposition to Hampton Borough's Motion for Relief From the Final Judgment and filed a Cross-Motion for Modification of the Final Judgment and for Other Relief (the "Haberman Motion"), said Haberman Motion remaining pending, undecided as of the date of this Amended Litigation Settlement Agreement; and

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WHEREAS, the Haberman Motion documents demonstrate that the North Lot is affected by carbonate rock geology and other physical conditions substantially the same as those affecting the South Lot and similar to Highlands resources in other Highlands area municipalities for which the Highlands Council has approved center designations; and

WHEREAS, the parties have engaged in extensive negotiations in attempts to settle the pending litigation, said negotiations occurring under the auspices of the Court-appointed Master, the Honorable Eugene D. Serpentelli, (Retired); and

WHEREAS, the parties have reached an agreement on March 3, 2015 on the terms and conditions for settlement of the pending litigation (hereinafter, "March 3, 2015 Litigation Settlement Agreement"), said settlement being contingent upon approval by Superior Court after a fairness hearing pursuant to the procedures set forth in *Morris County Fair Housing Council v. Boonton Township*, 197 N.J. Super. 359 (Law Div. 1984); and

WHEREAS, a fairness hearing was held before the Honorable Peter A. Buchsbaum, J.S.C. (retired, on recall) on May 29, 2015, June 10, 2015, June 11, 2015 and June 19, 2015, and continued to November 16, 2015 and the parties have agreed to an amended settlement intended to assure that Hampton Borough provides the fair share calculated by the Fair Share Housing Center and is entitled to full repose via a Judgment on Compliance.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and terms and conditions hereinafter provided, it is agreed by and between Hampton Borough and Haberman as follows:

1. Due Deliberation. This Agreement is reached after due deliberation by the parties, and is based upon the considered judgment of the parties that it is in the best interests of the public good and welfare to settle this litigation upon the terms and conditions contained in

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this Amended Litigation Settlement Agreement in order to fully provide for Hampton Borough's fair share obligation and to otherwise finally and fully resolve the dispute between the parties.

2. Inclusionary Development. The entire Haberman property, ie., the North Lot and the South Lot, shall remain in the AH zone. A total of 333 dwelling units shall be permitted on the North Lot. Of these 333 units, 288 units will be market rate units and 45 units will be affordable and deed restricted for occupancy by low and moderate income households. Twenty-three (23) of the 45 affordable units shall be priced and deed restricted to occupancy by low income households and the other twenty-two (22) shall be priced and deed restricted to occupancy by moderate income households. All of the affordable units shall be rentals and fifty (50) of the market rate units may, at the sole discretion of Haberman, be rental units. The remaining 238 market rate units shall be offered for sale. This 13.5 percent (13.5%) affordable housing set-aside of 45 units is a substitution for the 1988 Settlement Agreement requirement for a financial contribution for housing rehabilitation. Said financial contribution obligation is eliminated by this Amended Litigation Settlement Agreement, however, a new housing rehabilitation contribution is provided for in paragraph 9 herein.

The affordable units shall be constructed as follows:

<u>Certificates of occupancy for market units</u>	<u>Low income units – total</u>	<u>Moderate income units – total</u>
72	0	0
73	3	2
144	12	11
213	17	17
259	23	22

3. Approvals Required. Site plan, subdivision and other necessary land development approvals by the Borough of Hampton Planning Board and all other necessary outside governmental approvals are required. Residential development shall conform as much as

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possible with the amended AH Zone standards contained in Schedule A hereto; however the Planning Board may grant variances, exceptions and waivers as permitted by the Municipal Land Use Law. There shall be no restriction on the number of bedrooms in any dwelling except as necessary for compliance of the low and moderate income units with state bedroom mix requirements.

4. Commercial Development. In addition to the 333 dwelling units, 6,000 square feet of commercial/retail space shall be permitted on the North Lot in accordance with the standards set forth in attached Schedule A.

5. South Lot. The South Lot may be used for open space or recreational facilities in conjunction with the development of the North Lot, or, in Haberman's discretion, may be dedicated in whole or in part to Hampton Borough for open space or recreation facilities or may be retained by Haberman for agricultural purposes.

6. Timing of Construction. The timing of construction shall be at Haberman's discretion.

7. Necessary Infrastructure. Haberman shall be responsible for the design, permitting and construction of all infrastructure improvements that are necessitated or required for development of the North Lot. This construction requirement replaces all infrastructure requirements and contributions contained in the 1988 Settlement Agreement, which infrastructure requirements and contributions are eliminated by this Amended Litigation Settlement Agreement. Required infrastructure improvements will be designed in connection with the preliminary site plan and subdivision application(s). Review of proposed infrastructure improvements by Hampton Borough professionals shall be funded through the escrow account requirements of the Municipal Land Use Law for such applications. To the extent any

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infrastructure improvement will not be located on the Haberman property, Hampton Borough shall secure easements therefore, if necessary, at Haberman's expense.

8. Back-Up Well. Haberman will contribute his pro rata share towards Hampton Borough's cost of constructing a back-up well. Haberman's pro rata share shall be based upon the water demand of the Haberman project as compared to the sum of Hampton Borough water demand and the water demand of the Haberman project. Haberman's contribution shall be due and payable upon the first subdivision or site plan approval for the Haberman project. The back-up well shall be sized to accommodate existing development in Hampton Borough plus water supply needs of the proposed 333 units and 6,000 square feet of commercial/retail space proposed on the North Lot. Haberman shall be provided with the request for proposal for the well, the contract awarded for well construction and progress prints of the well's design. Hampton Borough shall complete construction of the back-up well by the earlier of (a) one (1) year following Haberman's having obtained all permits and approvals necessary for construction of the Haberman project or (b) three (3) years following execution of this Amended Litigation Settlement Agreement.

9. Haberman Payment For Housing Rehabilitation. Within 45 days of adoption by Hampton Borough of both the Ordinance attached as Schedule A hereto and the administrative ordinance attached hereto as Schedule C, Haberman shall transfer \$96,000. to Hampton Borough, which funds shall be deposited to an Affordable Housing Trust Fund Account and designated solely for rehabilitation of dilapidated units occupied by low or moderate income households in Hampton Borough. The rehabilitation program shall be administered by the administrative agent designated pursuant to section 26 of the Schedule C ordinance, in conformance with N.J.A.C. 5:99-6.1 as proposed on June 2, 2014, and where applicable, the

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Uniform Housing Affordability Controls, N.J.A.C. 5:80-26. Hampton Borough shall provide written notice to each recipient that The Haberman Group was the provider of the rehabilitation funds.

10. Hampton Borough Actions to Facilitate Inclusionary Development. Hampton Borough shall facilitate development of the 333-unit residential development and 6,000-square-foot commercial/retail development on the North Lot by adopting an ordinance that is substantially consistent with the ordinance contained in the attached Schedule B, with such modifications as may be required by the Highlands Council, provided that these modifications permit the development of 333 dwellings and 6,000 square feet of commercial/retail space. After adoption, said ordinance shall not be changed with respect to the Haberman property without the prior written approval of Haberman. Additionally, Hampton Borough shall support, submit or endorse, as necessary, any required application to the Highlands Council, DEP or other government agency, including but not limited to those applications listed on the attached Schedule B. Where State agency regulations or policies require the application to be submitted by Hampton Borough, Haberman shall, at his option, either provide all necessary application documents or reimburse Hampton Borough for the cost of preparing such documents. Haberman shall also reimburse Hampton Borough for its expenses in connection with processing the required applications.

11. Court Approval and Judgment of Repose. This Amended Litigation Settlement Agreement is contingent upon final approval and entry of a Judgment on Compliance by the Court granting Hampton Borough not less than ten (10) years repose consistent with the Fair Housing Act, N.J.S.A. 52:270-313a., after a fairness hearing and any other necessary proceedings pursuant to the requirements of *Morris County Fair Housing Council v. Boonton*,

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197 N.J. Super. 359 (Law Div. 1984). Haberman has prepared a brief and other documentation in support of the joint request of the parties for a new Judgment on Compliance approving the March 3, 2015 Litigation Settlement Agreement and granting repose and shall prepare and submit any additional documents which may be required by the Court in support of this Amended Litigation Settlement Agreement. In the event that the Superior Court determines that additional terms or conditions are required or that any provision of this Amended Litigation Settlement Agreement must be modified or eliminated, Haberman, in his sole discretion, may accept such additional terms and conditions or reject such terms and conditions. If Haberman rejects such terms and conditions or if the Court declines to approve the within Amended Litigation Settlement Agreement and grant repose by entry of a new Judgment on Compliance, this Amended Litigation Settlement Agreement shall be null and void and Haberman shall advise the Court of the need to reschedule the hearing on the Haberman Motion.

12. Supersession of 1988 Settlement Agreement. Upon the entry of a new Final Judgment on Compliance approving the within Amended Litigation Settlement Agreement and granting repose to Hampton Borough, the within Amended Litigation Settlement Agreement shall supersede and replace the 1988 Settlement Agreement between the parties.

13. Appeals. In the event an appeal is filed by a third party from entry of the new Final Judgment on Compliance or from any other action taken pursuant to this Amended Litigation Settlement Agreement, Hampton Borough shall enter an appearance in the action and Haberman shall draft all papers required for Hampton Borough to appear in the appeal. Haberman shall have the right to defend the action, intervening if necessary to do so. Hampton Borough shall also defend in any appeal from adoption of the AH Zone Amendments as well as in any appeal where Haberman is not permitted by the Court to intervene with full rights to brief

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and argue the appeal. In that case, Haberman shall draft all papers required for Hampton Borough to defend in the appeal. Haberman shall also have the right to appeal any decision of DEP or the Highlands Council if Haberman determines such decision will detrimentally affect development of the inclusionary development proposed under this Amended Litigation Settlement Agreement. Hampton Borough will not take a position in such appeal by Haberman unless said position supports Haberman.

14. Agreement Binding and Enforceable. Upon execution, this Amended Litigation Settlement Agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns. This Amended Litigation Settlement Agreement shall be enforceable in the Law Division of Superior Court.

Attest:

Linda Leiden
Linda Leiden RNC
Deputy Clerk

BOROUGH OF HAMPTON COUNCIL

By: James O'Garra
James O'Garra, Mayor
Dated: 10/20/15

Witness:

Arthur Bernbaum

Jacob Haberman
Jacob Haberman
Dated: 11/2/15

Witness:

Arthur Bernbaum

Hampton Farm, LLC

By: Jacob Haberman
Jacob Haberman, Managing Member
TREASURER MANAGER

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SCHEDULE A

PROPOSED AMENDED AH ZONE REGULATIONS

§157-53. AH Affordable Housing Zone

- A. Purpose. The intent of this district and Article XI is to provide a realistic opportunity for the construction of a variety of housing types in the Borough and to provide for the construction of a 13.5% set aside of low- and moderate-income households on the Haberman property, Block 23, Lot 1 and Block 24, Lot 2, by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mount Laurel II. In accordance with the requirements of the Municipal Land Use Law as interpreted in *Pizzo-Martin v. Randolph Township*, 137 N.J. 216(1994), site plan and subdivision applications shall be reviewed solely for compliance with the standards contained in these Amended AH Zone Regulations as adopted by Ordinance _____ on _____ and Article III (subdivision) or Article V (site plan), except for such sections as may be made not applicable by these Amended AH Zone Regulations.
- B. Application procedure.
1. The applicant shall submit required plans and documents to the Planning Board for review and approval. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to Borough agencies which normally review development plans.
 2. Within 30 days of a submission of an application for development in this zone, the Planning Board will either determine the application complete or render a detailed report identifying the specific deficiencies that must be addressed prior to the start of the hearing process. Upon a determination of completeness or a failure to issue a completeness determination within the 30 day period, the Planning Board shall schedule and hold a hearing on the application within 45 days.
- C. Use regulations. Permitted principal and accessory uses shall be as follows:
1. Residential development at a maximum net density of 10 dwelling units per acre, including any combination of multi-family, townhouses, other attached units, single-family detached and two-family dwellings shall be permitted, provided that:
 - a. The maximum gross density does not exceed 2.4 dwelling units per acre, but in no event shall the total number of housing units in the AH Zone exceed 333 units.
 - b. A total of 13.5% of the housing units shall be affordable to low and moderate income households in accordance with applicable Council on Affordable Housing regulations or case law requirements.

SCHEDULE A

- c. The mix of permitted building types (multi-family, townhouse, and other attached, single-family detached and two-family dwellings) shall be at the discretion of the applicant. Supportive and special needs housing for the developmentally disabled shall also be a permitted residential use.
 - d. 6,000 square feet of commercial/retail uses shall be permitted in accordance with the requirements of the HC Zone.
- D. Schedule of area and bulk requirements for multi-family, townhouse and other attached dwellings in the AH Zone
 - 1. Building spacing:
 - a. The minimum distance between structures shall be as follows:
 - i. Front to front: 50 feet.
 - ii. Rear to rear: 50 feet.
 - iii. End to end: 25 feet.
 - b. Upon request, the Planning Board shall reduce the above distances by up to 1/3 if there is an angle of 20° or more between buildings and if landscaping or buffers are placed between buildings.
 - c. Any building wall to internal street right-of-way: 10 feet.
 - d. Any building wall to collector street right-of-way: 40 feet.
 - e. Any building wall to arterial street right-of-way: 50 feet.
 - f. Any building wall to parking area curbs: 10 feet.
 - 2. Minimum off-street parking requirements: as per RSIS, N.J. A.C. 5:21-1 et seq.
 - 3. The maximum number of dwelling units per structure shall not exceed 48.
 - 4. The maximum length of a residential structure shall not exceed 280 feet.
 - 5. The maximum building height shall be the greater of 3 ½ stories or 35 feet. Building height shall be measured from post-construction grade to the midpoint of the building eave.

SCHEDULE A

Area and Bulk Requirements For Single-Family Detached and Two-Family Dwellings

E. Schedule of Area and Bulk Requirements For Single-Family Detached and Two-Family Dwellings in the AH Zone.

		Detached Single-Family Residential Dwellings	Two-Family Dwellings
1	Minimum lot size	5,000 sq. ft.	2,500 sq. ft. (per d.u.)
2	Minimum lot width	50 feet	25 feet
3	Minimum lot depth	100 feet	100 feet
4	Minimum yard setback: principal building		
	Front	20 feet	20 feet
	Side, one	5 feet	0 feet
	Side, other	5 feet	5 feet
	Rear	15 feet	20 feet
5	Minimum yard setback: accessory structure		
	Side, one	5 feet	0 feet
	Side, other	5 feet	5 feet
	Rear	5 feet	5 feet
6	Maximum permitted height: principal building		
	Stories	2 ½	2 ½
	Feet	35	35
7	Maximum permitted height: accessory structure		
	Stories	1	1
	Feet	10	10
8	Parking (as per RSIS, N.J.A.C. 5:21-1 et seq.)		
9	Two-family dwellings may be constructed in either the duplex dwelling or twin dwelling form.		

- F. Open space. At least 45 % of the entire development tract must be dedicated irrevocably as open space or common open space or utilized for agriculture. No on-site recreational facilities or contributions to off-site facilities shall be required but recreational and community facilities and structures may be included within said area at the developer's option. Utilities, access roads and stormwater basins/facilities may be located within open space areas.

SCHEDULE A

G. Engineering and construction design.

1. Drainage: as per RSIS, N.J.A.C. 5:21-1 et seq. and stormwater management rules, N.J.A.C. 7:8-1 et seq. The provisions of Article VII shall not apply.
2. Lighting.
 - a. Streetlighting shall be provided for all street intersections and along all collector and local streets, parking areas and anywhere else deemed necessary for safety reasons.
 - b. Any outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, roads and traffic safety from glare, reflection and overhead sky glow in order to recommend steps needed to minimize these impacts.
 - c. Specific lighting requirements. The maximum intensity of lighting permitted on roadways shall be as follows:

Type of Roadway	Average Maintained Horizontal Illumination for Residential Areas (footcandles)
Collector	0.6
Local	0.4

3. Sanitary sewers. The developer shall design and construct such facilities in accordance with the New Jersey Department of Environmental Protection permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development. When said treatment and collection system is included as part of a development application, the developer shall install sewers, including connections to each home to be constructed.
4. Street standards. RSIS, N.J.A.C. 5:21-1 et seq. shall govern.
5. Carbonate Rock. The following design and construction techniques will be utilized in carbonate rock geology:
 - a. Areas with sinkholes or which are susceptible to sinkhole formation should be improved with construction techniques recommended by a qualified professional engineer. Examples of such techniques include excavation and placement of grout or graded filler, deep dynamic

SCHEDULE A

compaction and piping of grout to fill voids.

- b. Storm drain pipes shall be constructed with water-tight gaskets to prevent leakage. Roof drains shall be piped and directed to the storm system in sealed pipes or discharged to an impervious swale to prevent recharge. Clean crushed stone should not be used as pipe bedding and utility backfill should consist of silty and clayey soils.
- c. During construction, the site shall be graded to divert water runoff away from construction areas. Installation of the storm drainage system in the early stages of construction is necessary and any temporary swales shall be properly graded to prevent water from ponding. Permanent swales shall be lined with impervious materials to prevent recharge and construction excavations shall be dewatered promptly.
- d. Where necessary, buildings shall be designed to be supported by reinforced foundations which can temporarily span a predetermined loss of support should ground subsidence occur. Pile foundation systems may be used to bypass poor soils or voids in the subsurface.

H. Resource Protection Standards.

- 1. Freshwater wetlands, wetlands transition areas, State open waters, flood hazard areas, riparian zones and well-head protection areas shall be protected pursuant to NJDEP regulations and permit programs.
- I. Water Supply. Water mains shall be constructed in such a manner as to make adequate water service available to each lot or building within the development. The system shall be designed and constructed in accordance with the requirements and standards of the agency or authority having water supply jurisdiction.
- J. Waivers. Notwithstanding any provisions set forth elsewhere in this section, the Planning Board may waive any engineering and construction design requirements contained in this section in order to achieve the objectives of the AH Zone, provided that the Planning Board is satisfied that such a waiver does not jeopardize the public health and safety.

§157-53J. Contrary to Hampton Borough Ordinance Section 157-8, no appeals of any approval in the AH zone shall be filed with or heard by the Borough Council. Appeals shall be filed only with the Law Division of Superior Court.

§157-53K. Section 157-12 shall not be applicable.

§157-53L. Sketch plat submission pursuant to Sections 157-18, 157-69.2 or 157-70 shall be optional and in the discretion of the developer.

§157-53M. Sections 157-24 and 157-27A shall not be applicable

SCHEDULE A

§157-53N. Any section of Article III or Article V which is pre-empted by the RSIS shall not be applicable.

§157-53O. In lieu of Section 157-30, the requirements of the Hunterdon County Soil Conservation District shall apply.

§157-53P. In lieu of Sections 157-32, 157-33, and 157-73, posting of a performance guarantee in the form required by the RSIS shall be a condition of final approval, said guarantee to be posted immediately prior to any pre-construction meeting. In lieu of Section 157-34, a maintenance guarantee pursuant to the requirements of the Municipal Land Use Law shall be posted.

§157-53Q. Sections 157-75 and 157-76 shall not be applicable.

§157-53R. Sections 157-103 through -106 shall not be applicable.

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Schedule B

Necessary Hampton Borough Actions to Allow Development of Haberman Property

The following applications would have to be submitted and pursued. Haberman will provide, at his own cost, all necessary plans, documents and application forms/fees to support these applications:

1. Highlands Council application for amendment to Hampton Borough's conformance petition, the amended petition to include:
 - (a) Center designation and map adjustment to Existing Community Zone for the North Lot, proposing on-site sewer and water service from the Borough's system;
 - (b) AH Zone ordinance amendments standards as per Schedule A to the Amended Litigation Settlement Agreement;
 - (c) Revised Housing Element and Fair Share Plan and Highlands Council plans to allow the Haberman development.
2. Wastewater Management Plan amendment (if applicable, site specific amendment) to place Haberman property in a sewer service area to allow onsite discharge to groundwater and a sewage treatment plant;
3. Endorsement signatures on Haberman applications for NJPDES and TWA permits for groundwater disposal/sewage treatment system and if applicable, a TWA permit for water line extension.
4. If deemed necessary by DEP, applications for modification of Hampton Borough's water allocation permit to increase pumpage and allocation limits of main and back-up wells;
5. Hampton Borough construction and authorization to operate back-up well;

Schedule B

6. DEP Bureau of Safe Drinking Water application to allow construction of water lines and any other water facilities needed for service to the Haberman property, as well as an application to DEP for connection of Haberman property to water system.

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Schedule C

BOROUGH OF HAMPTON
COUNTY OF HUNTERDON

ORDINANCE NO. 10-____

AN ORDINANCE OF THE BOROUGH OF HAMPTON, COUNTY OF
HUNTERDON AND STATE OF NEW JERSEY PROVIDING
ADMINISTRATIVE PROVISIONS FOR AFFORDABLE HOUSING
PROJECTS AND SUPPLEMENTING SECTION 157-53, AH
AFFORDABLE HOUSING ZONE PROVISIONS

WHEREAS, the New Jersey Council on Affordable Housing ("COAH") has promulgated rules, set forth at N.J.A.C. 5:96 and 5:97, concerning the substantive and procedural requirements for obtaining third round substantive certification of the Borough's Housing Element and Fair Share Plan; and

WHEREAS, a Litigation Settlement Agreement dated March 3, 2015 was executed by Jacob Haberman and Hampton Borough ("the Borough"), said Agreement having been reviewed by the Honorable Peter A. Buchsbaum, J.S.C., such review resulting in the entering of an Order dated February 11, 2015; and

WHEREAS, the February 11, 2015 Order required review of the Ordinance attached as Schedule A to the Litigation Settlement Agreement by the Court-Appointed Master, the Honorable Eugene D. Serpentelli, A.J.S.C. (retired); and

WHEREAS, the Court Appointed Master has reviewed the Schedule A Ordinance and determined that it should be supplemented with standard affordable housing administrative provisions, specifically the affordable housing administrative provisions contained in Appendix G on the COAH website and as required by the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Hampton, County of Hunterdon and State of New Jersey, that the "Code of the Borough of Hampton" ("Code") is hereby amended as follows:

Section 1. Article XI entitled "Housing Rehabilitation Assistance" is hereby supplemented. Where a provision of this Ordinance governing housing rehabilitation conflicts with any provision of Article XI, this Ordinance shall govern.

Chapter
AFFORDABLE HOUSING

ARTICLE I
General Program Purposes, Procedures

Section __-I. Affordable Housing Obligation.

- A. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with applicable affordable housing administrative provisions contained in N.J.A.C. 5:97 *et seq.*, the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 *et seq.*, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in the Fair Housing Act, N.J.S.A. 52:27D-329.1.
- B. This Ordinance is intended to assure that low and moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- C. The Hampton Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, *et seq.* The Plan has also been endorsed by the Borough Council of the Borough of Hampton. The Fair Share Plan describes the ways the Borough shall address its fair share for low and moderate income housing consistent with the 2015 Final Judgment.
- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97 and UHAC as may be amended and supplemented.
- E. The Borough shall file monitoring reports with the Court-Appointed Master if required by the Master or the 2015 Final Judgment. All monitoring reports shall be available to the public at the Hampton Borough Municipal Building, 1 Wells Avenue Hampton, New Jersey.

Section __-2. Definitions.

As used herein the following terms shall have the following meanings:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301, *et seq.*).

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, as appointed pursuant to Section 26 of this Ordinance.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low and moderate income households.

"Affordable" means, a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, *et seq.*).

"Age-restricted unit" means a housing unit designed to meet the needs of and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Certified household" means a household that has been certified by an Administrative Agent as a low income household or moderate income household.

"COAH" means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 *et seq.*

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:97-3.

"Group Home for Developmentally Disabled Persons" shall mean such facilities provided for under N.J.A.C. 5:97-6.10.

"Housing Element" means the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:97-2.3 and establishes the Borough's fair share obligation.

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

"Low income household" means a household with a total gross annual household income equal to 50% or less of the median household income.

"Low income unit" means a restricted unit that is affordable to a low income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

"Market-rate units" means housing not restricted to low and moderate income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable county, as adopted annually by COAH.

"Moderate income household" means a household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

"Moderate income unit" means a restricted unit that is affordable to a moderate income household.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (*e.g.*, by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHROP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 *et seq.*

"Very low income household" means a household with a total gross annual household income equal to 30% or less of the median household income.

"Very low income unit" means a restricted unit that is affordable to a very low income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section ___-3. New Construction.

The following requirements shall apply to all new or planned developments that contain low and moderate-income housing units.

- A. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units <u>Completed</u>	Minimum Percentage of Low And Moderate income <u>Units Completed</u>
25	0
25+1	10
50	50
75	75
90	100

- B. Design. In inclusionary developments, to the extent possible, buildings containing low and moderate income units shall be integrated with buildings containing the market units.
- C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.
- D. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- E. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
1. The fair share obligation shall be divided equally between low and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit, unless a different split between low and moderate income units is required by the Litigation Settlement Agreement and approved by the 2015 Final Judgment.

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low income units, unless the low and moderate income split provided for in the Litigation Settlement Agreement and approved by the 2015 Final Judgment precludes this distribution.
3. At least 13% of the total number of affordable units (i.e., 27% of the required low income units) shall be affordable to very low income households.
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low and moderate income units;
 - (b) At least 30% of all low and moderate income units shall be two-bedroom units;
 - (c) At least 20% of all low and moderate income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low and moderate income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

F. Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3-14.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;

- (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a *et seq.*) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3-14, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the Borough of Hampton's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable unit that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph (2) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Hampton.
 - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Hampton's affordable housing trust fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

G. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low and moderate income units shall be affordable to households earning no more than 52% of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income and moderate income units.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate income ownership units must be available for at least three different prices for each bedroom type, and low income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;

- (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 9. The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
 10. The rent of low and moderate income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in anyone year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
 11. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section __-4. Condominium and Homeowners Association Fees.

For any affordable housing unit that is part of a condominium association and/or homeowners association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

Section __-5. Group Homes For Developmentally Disabled Persons.

Group homes for developmentally disabled persons shall comply only with the provisions set forth in N.J.A.C. 5:97-6.10.

Section __-6. Reserved.

Section __-7. Reserved.

Section __-8. Reserved.

Section __-9. Reserved.

ARTICLE II Affordable Unit Controls and Requirements

Section __-10. Purpose.

The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low and moderate income housing units.

Section __-11. Affirmative Marketing.

- A. The Administrative Agent shall implement an Affirmative Marketing Plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 3 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 3, comprised of Hunterdon, Middlesex and Somerset Counties.
- D. The Administrative Agent shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

- G. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Hampton.

Section __-12. Occupancy Standards.

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
1. Provide an occupant for each bedroom;
 2. Provide children of different sex with separate bedrooms; and
 3. Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

Section __-13. Selection of Occupants of Affordable Housing Units.

- A. The administrative agent shall use a random selection process to select occupants of low and moderate income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 *et seq.*

Section __-14. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years.
- B. Rehabilitated owner-occupied single family housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- E. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the

applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section __-15. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low and moderate income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section __-16. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low income household or a moderate income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

Section __-17. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that

unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

Section __-18. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Hunterdon. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section __-19. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section __-20. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

1. Very low income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 2. Low income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 3. Moderate income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low income, low income household or a moderate income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section __-21. Conversions.

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

Section __-22. Reserved.

Section __-23. Reserved.

Section __-24. Reserved.

ARTICLE III Administration

Section __-25. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the Borough of Hampton is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Council and be subject to the approval of COAH.
- B. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Hampton.
- C. The Municipal Housing Liaison must meet COAH's requirements for qualifications, including initial and periodic training.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Hampton, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - 2. Monitoring the status of all restricted units in the Borough of Hampton's Fair Share Plan;
 - 3. Compiling, verifying and submitting annual reports as required by COAH;
 - 4. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

Section __-26. Administrative Agent.

- A. Developer shall contract with an Administrative Agent from the list of DCA/COAH approved Administrative Agents. The Administrative Agent shall administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- B. An Operating Manual shall be provided by the Administrative Agent. This Operating Manual shall conform with COAH's Model Operating Manual (June, 2008). The Operating Manual shall be available for public inspection in the Office of the Municipal Clerk and in the office of the Administrative Agent.
- C. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the

Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 18 and 18 thereof, which includes:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the Borough.
9. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section __-27. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low or moderate income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units, the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- (a) A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an Owner who has rented his or her low or moderate income unit in violation of the regulations governing affordable housing units, payment into the Borough of Hampton Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an Owner who has rented his or her low or moderate income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- 2. The Borough may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low and moderate income unit.
- C. Such judgment shall be enforceable, at the option of the Borough by means of an execution sale by the Sheriff, at which time the low and moderate income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low and moderate income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the Borough for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the Owner or forfeited to the Borough.

- E. Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low and moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the Borough may acquire title to the low and moderate income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low and moderate income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- G. Failure of the low and moderate income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the Borough, with such offer to purchase being equal to the maximum resale price of the low and moderate income unit as permitted by the regulations governing affordable housing units.
- H. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 28. Appeals.

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

Section 2. Repealer. All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 3. Severability. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any Court of competent jurisdiction that any such portion of this Ordinance is unconstitutional, void or ineffective for any cause or reason, shall not affect any other portion of this Ordinance.

Section 4. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law.

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Hampton, in the County of

Hunterdon, State of New Jersey, held on (Insert Date). It will be further considered for final passage, after public hearing thereon, at a meeting of the Borough Council to be held in the meeting room of the Municipal Building, 1 Wells Avenue, Hampton on (Insert Date) at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's Office to the members of the general public who shall request the same.

12365391v1

Cathy Drummond, R.M.C., Clerk

EXHIBIT C

Exhibit C To Hampton Borough Judgment Of Compliance

Exhibits in Evidence At November 16, 2015 Fairness Hearing

- P-26 - Affidavit of Service and Publication dated October 27, 2015
- P-27 - Amended Litigation Settlement Agreement dated October 26, 2015
- P-28 - Borough of Hampton Resolution #82-2015, adopted October 26, 2015
- P-29 - Report prepared by David N. Kinsey for Fair Share Housing Center dated April 16, 2015, revised July 2015, entitled New Jersey Low and Moderate Income Housing Obligations For 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology
- P-30 - Appendix A to P-29, consisting of 38 Excel spreadsheets, other documents
- P-31 - Report by Art Bernard dated October 2015 and entitled Response to September 24, 2015 Econsult Report
- C-1 - November 11, 2015 letter report of Special Master, Judge Eugene D. Serpentelli, A.J.S.C. (retired), to Judge Peter A. Buchsbaum, J.S.C.

EXHIBIT D



JUDGE EUGENE D. SERPENTELLI, A.J.S.C.,
Retired

November 11, 2015

The Honorable Peter A. Buchsbaum, J.S.C.
Hunterdon County Superior Court
Justice Center -- 65 Park Avenue
Flemington, NJ 08822

Re: Haberman v. The Planning Board
of the Borough of Hampton, et al.

Special Master's Report

Dear Judge Buchsbaum:

Pursuant to your directive, the following is my report concerning the Amended Litigation Settlement Agreement entered into by the parties dated October 26, 2015.

By Order dated January 17, 2013, I was appointed as Special Master to review the positions of the parties on the Plaintiff's (hereinafter referred to as "Haberman" or "Plaintiff") motion to modify the Final Judgment on Compliance and Defendant's (collectively referring to the Hampton Planning Board, Hampton Council and Mayor as "Defendant" or as "Hampton") motion to declare it void, to prepare a report to the Court concerning any terms and conditions of modification, if appropriate, and to perform any additional tasks assigned by the Court. In subsequent conversations with Your Honor, I was advised that in light of the fact that the Defendant was not represented by counsel in the proceedings as a result of your Order of January 17, 2013, I should evaluate the Plaintiff's motion in the context of all factors including its compatibility with the public interests of the Borough of Hampton.



As your Honor is aware, this case has had a very long and tortured history. There is no need to describe the past in depth but, to the extent that history has some bearing on the parties' position in this matter, a brief review is appropriate.

On September 30, 1981, the Plaintiff filed an Action in Lieu of Prerogative Writs seeking to invalidate the Defendant's zoning ordinance on Mount Laurel grounds. South Burlington County NAACP v. Mt. Laurel, 92 N.J. 158 (1983). At the conclusion of the trial, Judge Skillman entered an order on July 7, 1985 invalidating the Defendant's ordinance, directing the Defendant to adopt an ordinance to provide for the construction of affordable housing and establishing Hampton's fair share of affordable housing at 27 units. The decision was appealed but while the appeal was pending, the parties entered into a settlement agreement.

That document, dated August 15, 1988, provided that Hampton's 27 unit fair share responsibility would be satisfied off premises through the rehabilitation of existing units in the Borough. In that regard, Haberman agreed to pay \$270,000 or \$10,000 a unit into a Rehabilitation Housing Assistance Fund to satisfy the fair share obligation. In return, the Defendant agreed to rezone the Haberman tract consisting of approximately 144 acres and known as Block 23, Lot 1 and Block 24, Lot 2 on the Borough tax map as an Affordable Housing Zone. The agreement permitted the construction of not more than 300 market rate townhouse units as well as a small commercial development. The new units were to be built on Block 24, Lot 2, the part of the property south of Valley Road.

The agreement recognized the need for infrastructure improvements necessitated by the development. Haberman agreed to contribute \$730,000 toward the improvement of the water



JUDGE EUGENE D. SERPENTELLI, A.J.S.C.,
Retired

supply system. In addition, Plaintiff agreed to undertake other improvements including a "loop" of the water main in the vicinity of his property, the construction of a water storage facility to serve his property and other improvements but at a cost not to exceed \$450,000, subject to an adjustment pursuant to the Consumer Price Index.

At a hearing held on September 6, 1991, Judge Skillman considered the Settlement Agreement and the amended zoning ordinance. He concluded that the agreement and ordinance were in compliance with Hampton's Mt. Laurel obligation. Thereafter, on November 18, 1991, Judge Skillman entered a Final Judgment on Compliance.

As your Honor knows, the property was never developed. The parties have conflicting opinions as to the reason that the site has not been improved. Both agree that some conditions have changed since the Judgment was entered which impact the 1988 Agreement and the 1991 Judgment. That, of course, precipitated the Defendant's motion to void the 1988 Agreement and the Plaintiff's cross-motion to modify the Final Judgment on Compliance.

In its motion filed on June 30, 2010, the Defendant referred the Court to several changes which it argued impeded development of the site including the modification of DEP regulations which Hampton argued made it more difficult to provide sewer capacity to large projects, the creation of COAH and its reduction in Hampton's fair share number, the adoption of the Highlands Water Protection and Planning Act which Hampton argued eliminated for all practical purposes the use of Block 24, Lot 2 (the south parcel) for development and the federal designation of the Musconetcong River as a wild and scenic river which Defendant argued limits the ability to develop Block 23, Lot 1 (the north parcel) adjacent to the river. The



Defendant also cited eight environmental concerns which it argued would impede the Plaintiff moving its development to the north parcel.

Notwithstanding these arguments, the parties consented to an Order dated January 17, 2013 by which the Defendant withdrew its motion with prejudice and retained only the right to oppose the Plaintiff's cross-motion to modify the 1991 Final Judgment.

That motion has never been decided. Instead, after the entry of the order, the parties agreed to undertake mediation to see if their differences could be resolved. Over a period of more than two years, I became intimately involved in virtually every aspect of the settlement negotiations. While it would be inappropriate for me to disclose any confidences from that process, I believe it is appropriate for me to say that I was provided with a comprehensive understanding of the parties concerns and positions as well as a clearer picture of many of the issues of law and fact involved in the dispute. I have utilized the knowledge gained from that process in my evaluation of the issues which the Court asked me to address, first in my initial report of February 5, 2015 and now in this report.

As noted in my first report, my starting point is the recognition that Hampton Borough has had a long standing affordable housing obligation which has gone unfilled. The record before me does not demonstrate any movement to satisfy that obligation beyond the 1988 Agreement and Judgment of Compliance. This is not an issue of placing blame. Hampton has argued that Haberman sat on his approvals and it was waiting for him to satisfy the Borough's full obligation by providing the funds for rehabilitation of 27 units. Haberman has an opposite take on the issue. Whatever the reason or reasons for delay, the fact is that not a single unit has



been built or rehabilitated as a fair share credit to my knowledge since Hampton's ordinances were found inadequate to meet the constitutional requirements of the Mt. Laurel decision. It is clearly time to get on with the satisfaction of the affordable housing mandate.

Next, it must be recognized that the quantification of the fair share of all municipalities in the State has been in flux since the Legislature assumed responsibility for that task by the creation of the Council on Affordable Housing (hereinafter "COAH"). Through the various iterations of the fair share methodologies adopted by COAH and then their invalidation, Hampton's number, like most other municipalities, has fluctuated significantly. In the agreement now before the Court, Hampton has opted to accept the fair share number as delineated in the recently published Kinsey Report rather to litigate the appropriateness of that number. That has allowed this matter to reach settlement more expeditiously.

Additionally, the Court can recognize from the record that Hampton is a small community with little to no available land beyond the Haberman parcel which can accommodate the satisfaction of the fair share number through new construction. Given the absence of any other developable land and the fact that this single parcel will provide for the entire fair share of the community, I am fully satisfied that Hampton Borough has met its fair share by virtue of the Amended Litigation Settlement Agreement and is entitled to repose.

As noted in my prior report, while it is comforting that the Haberman development can satisfy Hampton's entire fair share obligation, it must be conceded that there is a difficult road ahead for the Plaintiff to travel before housing will appear on his site. The Defendant's motion seeking to void the 1988 Agreement discussed above detailed the obstacles which the Plaintiff



will face, including the sewer and water issues to be addressed by the DEP, the Highlands process and the designation of the Musconectcong River as a wild and scenic river and more. The Defendant listed eight environmental issues which may be additional hurdles the Plaintiff will have to clear before starting construction. They are:

1. Block 23, Lot 1 was categorized by the Highlands as a Conservation Zone requiring open space and agricultural resources.
2. The lot is near the well protection area of the Hampton municipal well
3. The Musconectcong River is a Class 1 stream that supports trout. The classification requires a 300-foot buffer for any construction and prohibits septic discharge or treated sewage to the stream.
4. There is an alleged need for the Plaintiff to obtain permits from the Environmental Protection Agency under the Federal Clean Water Act.
5. There is limestone on the site which is susceptible to sink holes and the discharge of septic water to the ground could aggravate the collapse of sink holes. (This assumes septic water will be discharged to the ground.)
6. Block 24 is in the preservation area and also in the recharge area of the municipal well (though as noted, the Plaintiff has abandoned development on that parcel).
7. Both of Plaintiff's lots are mapped by Hunterdon County as an area of endangered species. Both also have prime agricultural soils "of statewide significance."
8. There are issues of groundwater nitrate concentrations in the Borough which would allegedly prevent the construction on Plaintiff's lots.

The hearings before Your Honor addressed many of these issues and other concerns presented by members of the public. Pursuant to Your Honor's direction, the parties were given the opportunity to submit findings of fact concerning all of those issues. I have read all of the submissions as part of my preparation of this report. Obviously, I have also taken into account



the extensive testimony before the Court relating to the environmental issues and many of other planning, site development and site suitability issues. Also included in that consideration were the expert reports provided to Court.

I do not feel it is necessary for me to summarize the testimony before the Court, the documentation provided to it and the submissions made at the close of the proceedings. That would extend this report by innumerable pages. Suffice it to say that the record before the Court highlights the many challenges which the Plaintiff will have before ever bringing the matter to the site plan review, no less to actual construction. The members of the public appeared before Your Honor, gave testimony and presented exhibits and some have submitted findings of fact after the close of the record. They are all to be commended for their interest, their diligence and preparation in focusing the Court on their areas of concern. However, as the Court repeatedly said, many of the issues which they addressed are not within jurisdiction of this tribunal.

Our Land Use statues contemplate that the power of the planning board and zoning board is essentially limited to land use issues and to the extent that these entities are concerned with areas outside of their jurisdiction, they are free to condition any approval upon the applicants obtaining all necessary approvals from any other entity having jurisdiction in the matter. Indeed, had this matter not been before the Court, but rather the planning board, the entire record made before the Court, plus a good deal more, could have been made before the planning board. However, at the completion of those proceedings, the planning board's decision making authority would have been limited to issues of land use such as site suitability, zoning and if it approved the application, to appropriately conditioning its resolution on the satisfaction of other



approvals required by law which may not have been obtained by the time the planning board proceedings take place.

As noted in my prior report, the Plaintiff has produced a substantial record both through testimony and its large binder of expert reports to address many of the concerns of the citizens who appeared before the Court and who filed findings of fact. I have considered all of the testimony and those reports and I am satisfied that the Plaintiff has met all of the objections to its plan with a very arguable, and in some instances on the face of it, rather convincing responses. Only time will tell as the matter proceeds through the various steps of this process, but I am satisfied that nothing has been produced to the Court which could lead to the conclusion that the Plaintiff faces an impossible task and therefore should be precluded from proceeding.

Increasingly, many of the water, sewer, environmental and planning issues seen here are routinely found in other cases involving environmentally sensitive land and in many instances they are overcome through sound professional advice and planning. Put another way, I believe that the Plaintiff should have its opportunity to pursue all of the approvals which will be required by law before construction could occur. By the Court so ruling, the Hampton Planning Board is not stripped of its ability to thoroughly review the application and impose such conditions it deems appropriate if it approves the application nor are Hampton residents prevented from making their views known to all of the entities having jurisdiction in this matter.

In my prior report, I noted that the ordinance proposed to implement the onsite construction of affordable housing units along with the market units needed reworking. I



recommended that Plaintiff's counsel should redraft the ordinance. I am pleased to report that has been done with constant Borough participation in the process. I am satisfied that the substantive and administrative ordinances now before the Court will appropriately accommodate the onsite construction and protect the interests of the Borough as well, if the application is approved.

In my prior report, in accordance with your request, I commented on the compatibility of the Plaintiff's proposed development in terms of its impact on the public interest of the Borough. I noted that it is unlikely that the community is of one mind of this issue. The testimony before the Court has demonstrated that. The Haberman tract is frequently praised for its attractiveness. Indeed, I am sure that there are residents who would like to see it remain vacant or become a Borough park. However, the reality appears to be that it is destined for construction. Whether the specific proposal Haberman has for the parcel will be compatible with the community must await a clearer picture. Site plan review will be the time for a better judgment in that regard. At this time, I find myself in the same position as I did when I submitted my report of February 5, 2015. That is, nothing has been presented to me that could make me definitively conclude that the project will be detrimental to the health, safety and welfare of Hampton Borough.

I am aware of submissions which take issue with that conclusion and which also assert that the development plan could constitute a "radical transformation" as discussed in South Burlington County NAACP v. Mt. Laurel, 92 N.J. 158 (1983). There the Court said:



“The Mount Laurel obligation to meet the prospective lower income housing need of the region is, by definition, one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need. In this sense the affirmative obligation to provide a realistic opportunity to construct a fair share of lower income housing is met by a “phase-in” over those years; it need not be provided immediately. Nevertheless, there may be circumstances in which the obligation requires zoning that will provide an immediate opportunity -- for instance, zoning to meet the region's present lower income housing need. In some cases, the provision of such a realistic opportunity might result in the immediate construction of lower income housing in such quantity as would radically transform the municipality overnight. Trial courts shall have the discretion, under those circumstances, to moderate the impact of such housing by allowing even the present need to be phased in over a period of years. Such power, however, should be exercised sparingly. The same power may be exercised in the satisfaction of prospective need, equally sparingly, and with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation.” 92 N.J. at 219.

That concept was carried over to the Fair Housing Act, when adopted in 1985, by virtue of a provision requiring the Council on Affordable Housing to adopt regulations allowing for the adjustment of a municipal fair share when “[T]he established pattern of development in the community would be drastically altered.” N.J.R.S. 52:27D-307(e), now N.J.S.A. 52:27D-



307(c)(2)(b). COAH adopted a rule which allowed for adjustment of the fair share under two circumstances:

1. When the municipalities' present and prospective fair share exceeded 20% of its total occupied housing stock it was permitted to adjust its fair share to 20% of all occupied housing stock;
2. A thousand unit limitation which is not relevant here.

The Defendant submitted a certification dated June 25, 2010, of Borough Planner, Carl Hintz, in support of its motion to void the 1988 Agreement. Exhibit "D" at page 16 analyses the housing data for the community. Mr. Hintz states that as of the 2000 census there were 574 households in Hampton. The Plaintiff states that as of the 2010 census, Hampton Borough had a total of 570 households (4 households less) in 612 dwelling units. On that basis, the 45 low and moderate income units to be constructed on the Haberman lot constitute less than 8% of the existing households in Hampton Borough or 7% of the existing dwelling units. Under the COAH definition cited above, Hampton would not qualify for an exemption because those numbers are well below the 20% adjustment permitted by the regulation.

The courts have not defined the concept of radical transformation beyond what the Supreme Court said in *Mt. Laurel II*. As used in the *Mt. Laurel II* opinion, the Court was speaking to "radically" transform[ing] the municipality "overnight". In that regard, trial courts were given the discretion to reduce the impact of low and moderate income housing by allowing the even the present and prospective need of development resulting from a builders remedy to be phased in over a period of more than six years. Obviously, the Supreme Court



was aware of the fact that traditional Mt. Laurel development involved a 4 for 1 concept - that is, 4 market units for each affordable unit to be built. That necessitated building far more units than otherwise would be constructed if only affordable housing was located on a site. However, the 4 to 1 concept embodied the notion that all development should provide for at least 20% low and moderate income units as part of the overall project. Put another way, the Court clearly contemplated that there could be larger scale construction in order to provide for the affordable units and that immediate large scale construction could potentially radically transform the municipality "overnight". Thus, it incorporated the concept of phasing in its opinion. It should be noted that in talking about radical transformation the Court was specifically referring to low and moderate housing not the additional and larger scale housing which traditionally accompanied it. I am unaware of any case which has specifically applied the principle to market rate housing though some would argue that it is implied in the language the Court used. It is unlikely that would happen in any event. Mt. Laurel II was decided in the context of previous decades of significant population growth throughout the State and a developing sentiment that something had to be done to exclude that development through very restrictive zoning. The resulting ordinances had the effect of precluding affordable housing in many municipalities. The core of the Mt. Laurel doctrine was an attempt to eliminate that exclusion. Certainly the Court had to know that its decision would generate substantial housing through the State if the market allowed it.

It should be noted that the proposed project is not substantially different in number from the 300 unit plan approved by the Court in 1991. Neither then nor now did the governing body



object to the construction on the basis of it radically transforming the community. It is also worthy to note that under the 1988 Settlement Agreement there were no limitations on the townhouse units being offered as rentals or for sale. Yet, Judge Skillman approved the agreement and accompanying ordinances and granted the Borough a Judgment of Compliance. Additionally, it should be kept in mind that the construction is likely to occur over a long period of time within the assumed 10 year period of repose or beyond so that the impact of the planned construction can be absorbed in a fashion which will not instantaneously be felt. It is fair to assume it will be years before actual construction will occur and much could change in that period. Lastly, we cannot ignore the Supreme Court's clear directive that the power to use the radical transformation concept or phasing must be exercised sparingly and with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation. 92 N.J. at 219. The Court concluded, "[A]s for those municipalities that may have to make adjustments in their lifestyles to provide for their fair share of low and moderate income housing, they should remember that they are not being required to provide more than their fair share. *id.* In short, the record before the Court, in my judgment, does not permit a conclusion at this time that the planned project will cause a radical transformation or the need for phasing.

Finally, the Court will recall that in my previous report I recommended that the Court appoint a Monitor to oversee the progress of this case through the many entities which will be reviewing the Plaintiff's proposal. Both parties to the matter should have some assurance that if the Court approves the settlement it will not be left to linger as it has over the past decades. The function of the Monitor is to see that the case moves efficiently to a conclusion one way or the



JUDGE EUGENE D. SERPENTELLI, A.J.S.C.,
Retired

other. On further reflection I believe it would also be appropriate for the Court to empower the Monitor to employ a Permit Expediter, if needed. It may become necessary for a person intimately familiar with the functioning of the various entities with review authority and with the people within those agencies empowered to make decisions, to actively become involved in attempting to expedite the review process. I see the function of the Monitor as being responsible for the overall supervision of the case and to report to the Court concerning the status of the application process or any other issues which require the Court's attention. The Permit Expediter, if requested to do so, would be there to try to keep a specific application moving through his or her knowledge of the process and the people who make things happen.

As a result of the foregoing analysis, I recommend to the Court that the Amended Litigation Agreement and the proposed ordinances to help implement it should be found to be fair under all of the circumstances, that the Court should issue a Judgment of Compliance and grant the Borough of Hampton repose for a period of 10 years.

Should the Court have any further questions concerning this matter, I would be pleased to respond.

Respectfully yours,

Eugene D. Serpentelli, A.J.S.C.,
Retired

EXHIBIT E



JUDGE EUGENE D. SERPENTELLI, A.J.S.C.,
Retired

cc: Councilman Robert Baker
cc: Lloyd Tubman, Esq.
cc: Guliet Hirsch, Esq.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
HUNTERDON COUNTY
DOCKET NO. L-6527-81

-----)
JACOB HABERMAN,)

Plaintiff,)

-VS-)

BOROUGH OF HAMPTON,)

Defendant.)

DECISION CONDITIONALLY
APPROVING HOUSING PLAN

BEFORE:

THE HONORABLE PETER A. BUCHSBAUM, J.S.C.
(ret.)

This is a Mount Laurel case. The Court has been asked to approve an executed settlement agreement between Hampton Borough and Plaintiff Haberman and/or an LLC which now stands in its place. The proposed settlement, P-27 in evidence, would address the full Mount Laurel obligation of the Borough of Hampton for the second and third rounds of

obligations.

Before the Court sets forth its findings of fact and conclusions of law, a brief historical review is in order. As set forth in the report of the Court Master dated November 11, 2015, Exhibit C-1 in evidence, this matter first was filed on September 30, 1981 even before Mount Laurel II, Southern Burlington County NAACP versus Mount Laurel, 92 N.J. 158 (1983). The parties entered into a settlement agreement on August 15, 1988. That settlement proposed the development of up to 300 market rate housing units and payments for a 27-unit fair share, all to be done through rehabilitation. The units were to be located on Block 24, Lot 2, the so-called Haberman South Tract. The North Tract, Block 23, Lot 1, the subject of the instant proceedings, was to remain vacant. The two tracts together comprise approximately 144 acres. The original settlement agreement provided substantial payments for infrastructure as well. The settlement and the amended zoning ordinance included therein was approved after a hearing held on September 6, 1991 by order of the Superior Court dated November 18, 1991.

Subsequent to this action, the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, et seq., was adopted. That Act placed Block 24, Lot 2 was

in the preservation zone which would limit development thereon.

Defendant Hampton accordingly moved to set aside the settlement while Plaintiff Haberman moved to alter the settlement so that development would take place on the North Tract, Block 23, Lot 1 consisting of approximately 70 acres. That tract is in the Highlands Planning Zone which restricts but does not bar significant development. The Borough's motion was eventually withdrawn in 2013 and the case went to a fairness hearing based on a revised settlement agreement which did provide for development of the North Tract and left the South Tract vacant. More specifically, the proposed development provides for 333 total units of which 45 would be low and moderate income rental units. These 45 would merit a rental bonus of 15 units under regulations under Council on Affordable Housing (COAH) regulations which have been sustained. In addition, plaintiff proposes to fund the rehabilitation of 12 units at \$8,000 per unit. The total fair share thus achieved would be 72 units. This number not coincidentally is the number proposed in the so-called Kinsey report, also introduced into evidence, which has been distributed by the Fair Share Housing Center. This court takes judicial notice of the fact

that the Kinsey numbers are at the high end of the spectrum which is being bruited about as setting forth the appropriate fair share in the wake of the Supreme Court decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) which returned jurisdiction of the Mount Laurel cases to the courts. It should be noted that this case was never within COAH's purview.

The Court held fairness hearings on May 29th, June 10th, June 11th, June 19th and November 16th, 2015 with respect to the proposed settlement agreement and the draft ordinances attached to it. These hearings were all on notice as required by In the Matter of N.J.A.C. 5:96 and 97, supra. In fact, two sets of notices were sent out, one for the first group of hearings which concluded in July and a second notice for the final day of hearing on November 16th, 2015. The settlement agreement had previously provided for only 33 actual units but was altered in a revision to make the Mount Laurel units all rentals and increase their number to 45 which resulted in 12 less market units than previously had been proposed. The agreement also provided that 50 of the market units could be rentals. A small commercial development of 6,000 square feet was also authorized by the revised

settlement agreement. In addition it left the south lot vacant.

The agreement additionally provided certain provisions for a backup well for the Borough which are incorporated herein by reference. The Borough agreed to support appropriate amendments to the Highlands map and other regulatory requirements to facilitate the development.

Following the trial, the Court requested Findings of Fact and Conclusions of Law which were submitted by the plaintiff on or about October 31, 2015. On November 2nd, 2015, the Musconetcong Watershed Association through Beth Styler Barry, its Executive Director, submitted findings of fact and proposed conclusions of law with respect to the suitability of the site.

FINDINGS OF FACT AS TO THE SITE.

Most of the issues raised concerned impacts from the proposed development on the environment. Therefore, the Court in its findings of fact will first address the essentially environmental issues raised by way of objection to the suitability of the site and the proposed 333-unit plan. The Court will reiterate, as it did during the trial, that the objections raised by the Musconetcong Watershed

Association, that is Ms. Barry since the Association did not appear through counsel, and by certain individual objectors, such as Alan Hunt and Elizabeth Drew were not mere make weights but were supported by sophisticated testimony of qualified witnesses. Essentially the issues raised by way of objection to the suitability of the site were as follows:

"1. There is a direct hydraulic connection between the ground water on this site and the Musconetcong River which is protected by the N.J. DEP surface water quality standards anti-degradation policies and further protected under the DRBC's special protection waters regulations because it drains to the outstanding basin waters.

"2. Requirements in Schedule A [The Settlement Ordinances] run counter to the storm water regulations: Compliance with storm water regulations will likely prevent the development of the north lot as described in the amended litigation settlement agreement.

"3. Site plans do not account for a tributary to the Musconetcong River; corrected plans featuring the required 300-foot buffer will yield a building area unsuitable for proposed dwelling units and commercial space." Barry factual summary at 1-2.

Essentially the dispute was between David Krueger for the plaintiff who testified as to wetlands and Amy Greene and Jeffery Goll for Objectors Beth Styler Barry, Elizabeth Drew and Alan Hunt. The subject matter of the dispute concerned a feature shown as an intermittent stream on certain DEP and other resource maps but which was excluded from the DEP wetlands delineation that was introduced into evidence in this matter. Ms. Greene argued that this intermittent stream was a regulated water even if it contained no wetlands and that would also function as a tributary to the Musconetcong River which is a Category One body of water. The essence of the dispute was the testimonial disparity between these agency maps and the on-site investigation which Mr. Krueger had undertaken. In his testimony Mr. Krueger described at length that he had examined the supposed intermittent stream feature and found it to be only an erosional feature which dissipated in the farm field 200 feet from the Musconetcong River. On that basis he opined that no flood hazard area regulation of this feature was required. He further opined that the feature did not amount to an open water or a tributary to the Musconetcong River that would require a 300-foot riparian buffer on either side of it.

In evaluating this key testimony, the Court must pay heed to the Appellate Division's decision in *Dowel Associates v. Harmony Township*, 403 N.J. Super. 1, (App. Div.), certif. den. 197 N.J. 15 (2008). That case held that DEP, not a planning board, had primary jurisdiction over, in that situation, wastewater management systems. Here, the Court likewise must find that it is not qualified to make a determination on the wetlands or flood plain/open waters issues per se but only to find, as the Dowel court did, that there was a reasonable prospect that permits would be granted.

In this case the Court finds that there is at least a reasonable prospect that DEP's treatment of this feature will not preclude the development as proposed. The fact that the wetlands delineation found no water feature on the site, while not conclusive as to the flood hazard area or open water issue, certainly suggests that this feature is not very likely to interfere with the implementation of this development.

Second, the Krueger testimony based on actual site visits is strong enough that it gives the Court a reasonable degree of confidence that DEP is certainly capable of finding that the situation on-site will not be devastating to the development as proposed.

It is noted that Ms. Greene suggested that the plaintiff obtain a flood hazard area certification to assure that in fact this intermittent feature will not disrupt the proposed development plan. The Court agrees that such task should be undertaken, and promptly, so that what the Court views as a probability of non-impediment based on flood or open water concerns will soon be determined either in fact to be no barrier or if these issues will be a flat out impediment to the proposed development.

The other major issue related to the storm water system. In brief, Jeffrey Goll criticized the use of lining in the drainage swales to prevent recharge. More specifically, he stated that the use of structural strategies to deal with ground water is not encouraged by DEP and could be a barrier to approval of the project. Non-structural solutions might require far greater recharge area which would affect the proposed site plan for the development. In response, the plaintiff asserted that certain of the storm water management requirements for lining of drainage swales in Hampton's ordinances were subject to a waiver. Further, it appears that the detailed engineering of the site plan with respect to actual drainage structures has not yet taken place. The Court finds

that issues related to drainage will have to be addressed during the site plan review process. The issues raised by the Objectors go to matters of detail that cannot be ascertained at this time. There is no testimony that a drainage system as shown or something similar will fail to protect public health and safety or is contrary to engineering principles, e.g., water not draining. Therefore, at this point, there is insufficient evidence for the Court to determine that any problems with the drainage will interfere with implementation of the development as proposed in any significant fashion. It may well be that appropriate and approvable storm water designs can be fashioned without significant impact on the scale of the proposed development. The evidence at this point does not warrant a finding that the development of the size proposed cannot be serviced by an approvable storm water management system or that the problem is so serious and incapable of resolution that the site must be rejected at once.

There was other environmental testimony concerning carbonate rock geology and its impact on the proposed on-site treatment plant and ground water disposal field. The evidence supporting the findings of fact proposed by the plaintiff on pages 10 through

12 of his findings of fact satisfy the Court that methods exist for dealing with carbonate issues in the event any are found. Further, there is no evidence of sinkholes presently within the site. Again, Dowel Associates, supra, is relevant since it specifically dealt with the DEP's primary jurisdiction over approval of on-site treatment plants. Neither this court nor the planning board should take it upon itself to declare that onsite treatment on this site is not feasible. The testimony by Mr. Tully shows that the carbonate rock related conditions do not preclude development of the site and that testimony is sufficient to satisfy the court that the site cannot be rejected on that basis. Again, time will tell if a detailed design will past muster with DEP. Dowel supra.

The Court is also satisfied and finds that Mr. Cassera's testimony as to the water system was persuasive. The problems on the Hampton water system relating to the lack of a backup well neither stem from or are exacerbated by the proposed development. These requirements exist independently of this development. The Court also has no reason to doubt the testimony that the residential and the 6,000 square feet of commercial development proposed for the north lot could

not be served by the existing well number four subject to the mandate for all of Hampton that there be a backup system.

In addition, concerns were raised about the impact of ground water discharge from the sewerage treatment plant on the water quality of the Musconetcong River and the wellhead protection area surrounding Hampton Borough well number four. As to this issue, there is sufficient testimony from Adam Stern, the plaintiff's expert, that the proposed treatment plant would produce virtually drinking water quality effluent which would then go through recharge beds which would further treat the effluent. The discharge would then become part of the ground water flow system which would further disburse it. And as Adam Stern testified, and also as the Dowel court found, the DEP will be reviewing the quality of the discharge and the ability of the natural system to assimilate it.

Similarly, DEP would ultimately make the evaluation as to impact on the Hampton Borough well number four in connection with the application for water allocation permit allowing additional pumping from well number four to service the Haberman development. Suffice it to say now that the

development is not located in an area where ground water disposal beds are prohibited.

OTHER ENVIRONMENTAL ISSUES.

Other issues relating to the Delaware Basin Commission, wetlands and Wildlife Habitat and the National Park Service as raised by the parties do not warrant disapproval of this site. There is no evidence that such concerns will bar development of the North Tract. Among other things, the land does have a favorable wetlands determination from the DEP and there was adequate testimony from Edward Kuc for plaintiff that the site does not contain critical wildlife habitat. Again, to some extent they may be issues for the DEP or the site plan review process, but they do not render the site unsuitable as a matter of Mount Laurel law.

FACTUAL DETERMINATION: ENVIRONMENTAL ISSUES.

For the above reasons, the Court finds as a fact that this site can be approved as a Mount Laurel site despite the environmental testimony produced at the hearing. The Court specifically adopts as its own finding the following language from pages seven and eight of the report of the Court Master, Eugene Serpentelli:

"Suffice it to say that the record before

the Court highlights the many challenges which the Plaintiff will have before ever bringing the matter to the site plan review, no less to actual construction. The members of the public appeared before your Honor, gave testimony and presented exhibits and some have submitted findings of fact after the close of the record. They are all to be commended for their interest, their diligence and preparation in focusing the Court on their areas of concern. However, as the Court repeatedly said, many of the issues which they addressed are not within jurisdiction of this tribunal.

"Our Land Use statutes contemplate that the power of the planning board and zoning board is essentially limited to land use issues, and to the extent that these entities are concerned with areas outside of their jurisdiction, they are free to condition any approval upon the applicants obtaining all necessary approvals from any other entity having jurisdiction in the matter. Indeed, had this matter not been before the Court, but rather the planning board, the entire record made before the Court, plus a good deal more, could have been made before the planning board. However, at the completion of those proceedings, the planning board's decision-making authority would have been limited...and if it approved

the application, to appropriately conditioning its resolution on the satisfaction of other approvals required by law which may not have been obtained by the time the planning board proceedings take place.

"As noted in my prior report, the Plaintiff has produced a substantial record both through testimony and its large binder of expert reports to address many of the concerns of the citizens who appeared before the Court and who filed findings of fact. I have considered all of the testimony and those reports and I am satisfied that the Plaintiff has met all of the objections to its plan with very arguable, and in some instances on the face of it, rather convincing responses. Only time will tell as the matter proceeds through the various steps of this process, but I am satisfied that nothing has been produced to the Court which could lead to the conclusion that the Plaintiff faces an impossible task and therefore should be precluded from proceeding.

"Increasingly, many of the water, sewer, environmental and planning issues seen here are routinely found in other cases involving environmentally sensitive land and in many instances they are overcome through sound professional advice and planning. Put another way, I believe that the

Plaintiff should have its opportunity to pursue all of the approvals which will be required by law before construction could occur. By the Court so ruling, the Hampton Planning Board is not stripped of its ability to thoroughly review the application and impose such conditions it deems appropriate if it approves the application nor are Hampton residents prevented from making their views known to all of the entities having jurisdiction in this matter." The Master testified in court as to these findings. His testimony under oath tracked the evidence in his report submitted.

The Court agrees with these findings and adopts them as its own, except to the extent that the Master's report could be read to suggest on page seven that the planning board has authority to determine site suitability and zoning the Court would disclaim that any such reading is intended or was testified to. The planning board's authority is limited to issues of compliance with the zoning and other ordinances applicable to the development. *Pizzo Mantin Group v. Township of Randolph*, 137 N.J. 216 (1994).

FINDINGS-FAIR SHARE.

It is generally agreed that in a settlement situation the Court need not find a specific fair share so long as the proposed housing plan sets

forth a reasonable allocation. See Morris County Fair Housing Council v. Boonton, 197 N.J. Super. 159 (Law Div. 1984). In this case the proposed fair share, 72, was supported by the testimony of Creigh Rahenkamp, the plaintiff's planner. The Court also notes that it is equivalent to the number in the proposed Kinsey report which has been regarded as an upper limit in the discussions of fair share that have occurred subsequent to the decision in Mount Laurel IV. Therefore, the Court finds that the proposed fair share is reasonable, and that the techniques used to obtain it, namely 45 rentals, plus 15 unit rental bonus, plus 12 units of rehabilitation, are well within the contemplation of the Mount Laurel decisions and applicable COAH regulations which have survived court scrutiny.

IMPLEMENTING ORDINANCES.

There was testimony by Mr. Rahenkamp and by the Court Master that the proposed ordinance implementing the fair share plan and the housing plan rather which were placed in evidence satisfy the technical requirements for implementing a fair share housing plan. In this regard the Court adopts in total the finding of the Court Master as follows at pages eight and nine:

"In my prior report I noted that the

ordinance proposed to implement the onsite construction of affordable housing units along with the market units needed reworking. I recommended that Plaintiff's counsel should redraft the ordinance. I am pleased to report that has been done with constant Borough participation in the process. I am satisfied that the substantive and administrative ordinances now before the Court will appropriately accommodate the onsite construction and protect the interests of the Borough as well, if the application is approved.

FINDINGS-RADICAL TRANSFORMATION/
COMPATIBILITY.

Claims were made during the hearings that a development of the 333 units would radically transform the small community of Hampton. This Court cannot veto this plan based on such contentions. First, the proposed project does not substantially differ in number from the 300-unit plan approved in 1991. In both cases the amount of development was essentially approved by the governing body which did resolve to approve the instant settlement.

Second, the radical transformation concept as set forth in the Fair Housing Act, N.J.S.A. 52:27D-307(c)(2)(b) as implemented by COAH indicates that radical transformation, one which should result in

a fair share adjustment, would only occur when the fair share exceeded 20 percent of the total occupied housing stock. In this case the fair share of 72 is far less than 20 percent of the total housing stock in Hampton which, as the Court Master found, was 612 dwelling units:

At page 11 the Master wrote:

"The Plaintiff states as of the 2010 census Hampton Borough had a total of 570 households, Four households less...in 612 dwelling units. On that basis the 45 low and moderate income units to be constructed on the Haberman lot constitutes less than 8 percent of the existing households in Hampton Borough or seven percent of the existing dwelling units."

Under the COAH definition cited above Hampton would not qualify for an exemption because those numbers are well below the 20 percent adjustment permitted by the regulation.

The Court also agrees with the Master that the total number of units is not the key to an adjustment but rather the number of fair share units.

In addition, the densities here, something like 2.3 units per acre on the two Haberman tracts overall and the 4.3 units per acre on the North Tract are not out of line for Hampton Borough, which is a fairly, at least for Hunterdon County, densely developed community. The Court can take judicial notice of the Mount Laurel development in nearby Glen Gardner which involves higher density in a town which is about the same size as Hampton.

The Master's further comment is instructive:

"It should be noted that in talking about radical transformation the [Mount Laurel] Court was specifically referring to low and moderate housing not the additional and larger scale housing which traditionally accompanied it. I am unaware of any case which has specifically applied the principle to market rate housing though some would argue that it is implied in the language the Court used... The core of the Mount Laurel doctrine was an attempt to eliminate [the]

exclusion. Certainly the Court had to know that its decision would generate substantial housing through the State if the market allowed it."

Report at page 12. The Court agrees that the concept of radical transformation is inapplicable to this case by virtue of the regulations cited above and also for the reasons set forth in the Master's comments. The Mount Laurel II Court stated that there would be change and that is what is occurring here.

FINDINGS/REGIONAL PLANNING ISSUES.

This site has been committed to Mount Laurel development for a long period of time - over a quarter century. The Court agrees with Mr. Rahenkamp that it should have been mapped as a community zone by the Highlands Council since it was a then extant Mount Laurel development. Clearly a remapping or a center designation request, combined with any necessary proposed amendment for the sewer service area, would obviate the regional planning concerns. Hampton will be obliged and to support the development as proposed in the settlement agreement, notwithstanding any other position it may have previously taken with the Highlands Council.

Additional Comment.

The Court agrees with the Master who stated:

"Additionally the Court can recognize from the record that Hampton is a small community with little or no available land beyond the Haberman parcel which can accommodate the satisfaction of the fair share number through new construction. Given the absence of other developable land and the fact that the single parcel applied for the entire fair share of the community I am fully satisfied that Hampton Borough has met its fair share by virtue of the amended litigation settlement agreement and is entitled to repose."

The key observation here relates to the undisputed lack of any other site in Hampton for satisfaction of its fair share. Were the Court to rule out this site, it would essentially be holding one of two things. Either Hampton's fair share would be extinguished, or the fair share would have to be satisfied on the south site notwithstanding the

Highlands Act. Either of these two alternatives are unpalatable. The fair share obligation is of constitutional dimension. While the environmental concerns set forth are undoubtedly legitimate, in the balance, the Court must follow the constitution and make sure that the fair share obligation even if unpopular is met. It is also the duty of the Court to avoid constitutional confrontations such as might have to occur if this site is vetoed somewhere along the line and there is no alternative land except the South Tract. It is ironic in this case that the South Tract which is in the Highlands preservation area would on its face appear to raise less site specific environmental issues especially since it is also much further from the Musconetcong River. In any event, the consequences of disapproval of the site and the plan could be far more troublesome than the conditional approval. For that reason, among others, the Court will conditionally approve the plan.

CONCLUSIONS OF LAW.

Based on the findings set forth above, the Court finds that the site is suitable as set forth in N.J.A.C. 5:93-1.3 since for the reasons stated it is first of all approvable, even if it is not clear at this point that approvals will actually be obtained.

In addition, the testimony also shows that it is available since the developer wants to develop it. Third, it is developable since it has access to water and sewer infrastructure as set forth above and either is or can become consistent with the area wide wastewater management plan. Finally, it is suitable subject to site plan review and DEP review since it also for the reasons set forth above and in addition because it has been approved as a suitable site for 25 years. For all these reasons the Court finds that the site is a legitimate location for Mount Laurel compliance and that the development as proposed in the revised settlement agreement is approved subject to the conditions set forth below.

APPROVAL WITH CONDITIONS.

Based on the above, the Court hereby issues a judgment of compliance and grants repose from affordable housing litigation for a period of ten years from the date of this opinion conditioned on the following:

One, adoption of the proposed implementing ordinances within 60 days.

Two, expeditious action by the Plaintiff to forward all necessary applications for environmental and other approvals to the appropriate agencies.

Three, full cooperation by the Borough of Hampton in the obtaining of such approvals as, among other thing, signing any necessary applications, providing information needed to process applications and stating support for the applications where requested or where appropriate in public fora.

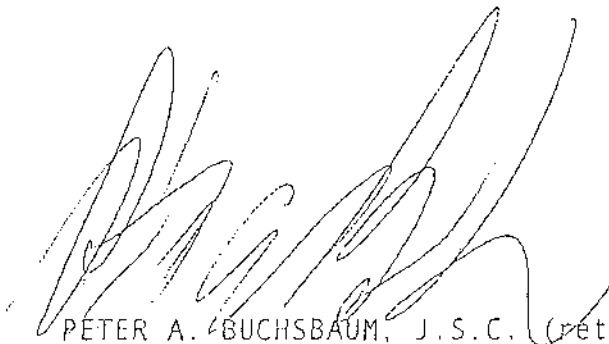
Four, the Court also wants to ensure that the local development process in Hampton proceeds with reasonable dispatch. The Court is aware that such proceedings can frequently turn contentious. While generally the participation of all parties in the fairness hearing was remarkably constructive and to the point, the Court also received correspondence comparing Hampton as it might be changed by this development to Essex County, and complaining about the character of people who might live in the proposed development as being too rich or too prone to crime. As difficult as the job may be, it is expected that the relevant land use board will judge the application on the basis of the ordinance requirements approved by this court. The zoning or the propriety of the essential land use cannot be at issue. In fact, a planning board has no jurisdiction to hear complaints about the zoning even in ordinary cases, let alone cases where the zoning has been specifically approved by a Mount Laurel fairness

hearing. PRB v. Township of South Brunswick Planning Board, 105 NJ 1 (1987); Pizzo Mantin Group, supra, 137 N.J. 216.

Five, in addition to the conditions, the Court also authorizes the Court Master to retain his appointment to ensure that the conditions are met. In addition, the Court Master, who will be given the term Monitor, is empowered to appoint a person familiar with the functioning of the various entities with review authority and with the people within these agencies empowered to make decisions in order to keep abreast of the these review processes. This matter has been pending for a quarter century. The Court will regard it as inconsistent with its obligation to enforce the constitution if it simply stepped aside and found out in five years or more or even perhaps another quarter century that approvals had been delayed or denied. It is the intention of this Court that the processing of this site through approvals both at the local, state and if need be federal levels reach a point of decision as soon as practicable. If for some reason the review processes prove impossible to negotiate, then this matter should expeditiously return to court for examination of alternatives. Accordingly, either the Monitor or any person retained by him shall report to

the Court once every three months as to the progress in implementing the development approved herein.

Plaintiff shall submit an appropriate order.

A large, stylized handwritten signature in black ink, appearing to read 'P. A. Buchsbaum', is written over the printed name.

PETER A. BUCHSBAUM, J.S.C. (ret.)