

IV. APPENDICES



APPENDIX A:
SCARCE RESOURCE REPORT PREPARED BY THE TOWNSHIP ENGINEER,
PAUL FERRIERO, PE, DATED SEPTEMBER 11, 2018



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME
Mark S. Denisiuk, PE, CME, LEED AP
Joseph S. Kosinski, PG, CFM, LEED AP
Dennis W. O'Neal, PE, PP, CME
C. Richard Quamme, PE, CME
Jess H. Symonds, PE

September 11, 2018

Edward J. Buzak, Esq.
150 River Rd # N4
Montville, NJ 07045

Re: Water Supply Capacity Analysis
Randolph Township

Dear Mr. Buzak:

An analysis has been completed of the Randolph Township water supply system to determine its capacity to provide water for development in the Township. The analysis was completed by determining the total water demand and allocating that demand to its residential and non-residential customers. The current demand was compared to the available firm capacity and the balance was considered to be the available water capacity. In order to determine how much of this capacity was available for new residential development, there were some subtractions made from this figure. The first was for development projects that are currently approved as outlined in Table A of the Scarce Resource Order. These are land use applications that are pending or have been approved and currently under construction or waiting to start construction. Next, a reservation was made for the potential connection of properties with failing wells and for small individual connections. The remaining figure is the net available water capacity (NAWC) which can be used for future development in the Township. The NAWC was distributed to residential and non-residential uses in the same proportion as used by the current customer base. The available residential capacity was then allocated to a mix of affordable and market housing units to determine the maximum number of affordable housing units that can be supported by the existing water capacity in the Township.

Water Capacity

The Randolph Township water utility obtains 100% of the water in its system from the Morris County Municipal Utility Authority (MUA).¹ The contract between the Township and the MUA sets the maximum amount of water the Township has to distribute. The contractual peak daily flow (Firm Capacity) is 3.12 millions of gallons per day (MGD). The available water capacity for any water system is defined by the NJDEP as the Firm Capacity minus the sum of the peak daily demand plus the committed peak. The peak daily demand is defined as the highest average daily demand from the prior 60 months. The committed peak is the sum of all approved NJDEP

¹ A small portion of Randolph Township is served by the Dover Water System which is owned, operated and maintained by the Town of Dover. Since the Dover Water System is controlled by Dover, that system is not included in this analysis.

Re: Water Supply Capacity Analysis
Randolph Township

permits or connections not requiring DEP permits that have been approved by the Township. The peak daily demand is based on the month of August 2015 and is 2.368 MGD. The total committed peak is 0.060 MGD. Based on this, the available Firm Capacity as calculated by the NJDEP is 0.692 MGD.

Pending Water Connections

Randolph Township has a number of pending connections to its water system that are not currently listed in the “Committed Peak” figure on the NJDEP web site. These are detailed in “Table A” as appended to the Scarce Resource Order issued by the Court to Randolph Township. The total of these pending connections is 0.367 MGD.

Well Failure/Small Connection Allocation

There are a significant number of single family homes in Randolph Township that are currently served by on site individual wells. Over time, these wells can fail due to aquifer depletion, groundwater contamination or other issues. The Scarce Resource Order allows for the connection of these types of single family dwellings in addition to other similarly sized “small connections.” Since the exact size or number cannot be determined in advance, it is assumed that the connection size will be one Equivalent Dwelling Unit (EDU) as established by the Township. This is 350 GPD per connection and it is further assumed that in the future there could be up to 30 of these connections in the future. This results in an allowance of 0.011 MGD.

Net Available Water Capacity

As noted above, the Township’s total firm capacity is 3.120 MGD. Based on the figures outlined above, the following table provides the NAWC for the Township’s water supply:

Net Available Water Capacity Calculation

Component	Flow (MGD)
Contract Limit	3.120
Peak Demand	2.368
Committed Capacity	0.060
Net Firm Capacity	0.692
Table “A” Demand	0.367
Well Failure/Sm. Conn.	0.011
NAWC	0.314

The water capacity available in the Township is 0.314 MGD or 314,000 gpd.

Re: Water Supply Capacity Analysis
Randolph Township

Residential vs. Non-Residential Flow

The customer billings for the water utility were analyzed to determine the proportion of residential demand versus non-residential water demand. The separation of the two components of the demand is important since any future residential development in the Township will result in a proportional increase in the non-residential demands. Simply put, it should be anticipated that future residents of the Township should be expected work, shop and go to church in patterns substantially similar to those that exist today. The services that exist in the Township must be expected to expand to support the future populations of the Township or those new residents will not be able to find employment, go to the grocery store, see a doctor or attend a house of worship in the town in which they live. A review of the last two years' worth of billing records indicate that the residential versus non-residential use is split in an 94.6% versus 5.4% distribution. Based on the number of residential customers in the Township, this highly residentially weighted ratio is expected.

Using these ratios, the water capacity that is available for development would be divided between residential and non-residential uses with 0.297 MGD for residential development and 0.017 MGD for non-residential development.

Future Single Family Detached Residential Water Allocation

It is reasonable to anticipate that single family detached residential development patterns will continue in the Township. Based on data from the Construction Department, 84 permits for detached single family homes have been issued in the last 10 years. Using the 10 year time frame from 2015 through 2025, it is reasonable to assume that there will be another 84 permits. The demand for each dwelling based on the NJDEP standards reflected in the Residential Site Improvement Standards in N.J.A.C. 5:21, assuming 4 bedrooms, is 395 gallons per day per dwelling. The total demand for the 84 dwellings is therefore 33,180 gpd, or 0.099 MGD using the NJDEP peaking factor for permits. These homes are anticipated to generate 1 to 2 school age children per dwelling. Given the small number of these students, the educational component of the flow is small enough that the figure is beyond the significant digits of the Firm Capacity Calculations and is being ignored for this report.

Future Inclusionary Residential Development Water Allocation

In order to determine the distribution of the available residential capacity between affordable and market units, there are a number of assumptions that were made. First, the affordable set aside ratio will be 20%. Secondly, the bedroom distribution of the affordable units will be 20% for 1 bedroom units, 60% for 2 bedroom units and 20% for 3 bedroom units. The next assumption is that all market units will have three bedrooms. The table below provides the demand for each unit based on the NJDEP standards reflected in the Residential Site Improvement Standards in N.J.A.C. 5:21:

Re: Water Supply Capacity Analysis
Randolph Township

Water Demand by Unit Size

Unit Type	Flow (gpd)
1 BR (aff.)	125
2 BR (aff.)	150
3 BR (aff.)	210
3 BR (mar.)	210

In addition to the demand that is generated by the residences themselves, each unit will generate some number of school children who will create additional demand at the schools. The latest analysis of this is a report published in July 2018 by the Rutgers Center for Real Estate entitled “School-Age Children in Rental Units in New Jersey: Results from a Survey of Developers and Property Managers” written by Davis, Frame, Ladell and Tantleff. It should be noted that this report is an analysis of rental units and not for sale units. In general, most experts opine that rental units will generate lower numbers of school children than for sale units so the figures presented herein can be considered lower than might be expected from for sale units. The table below contains information from Table 1 in the Executive Summary of the report referenced above. It is assumed that all market units will be low rise structures with an average household income in excess of \$100,000. It should be noted that this is the unit type/income level that produces the lowest number of school age children.

School Age Children per 100 Units

Unit Size	Affordable	Market
1 BR	10.3	-
2 BR	72.1	-
3 BR	108.9	61.8

The demand per student under the NJDEP standards is 15 gal/student/day assuming the school has a cafeteria but no showers.

Residential Capacity Allocation Table

	AH Units	Ratio	Total units	Total Res flow	Student Ratio	Education			
						Students	GPD/S	GPD	
	65	0.2	325						
1 BR (20%)	13			125	0.002	0.103	1.339	15	20.09
2 BR (60%)	39			150	0.006	0.721	28.119	15	421.79
3 BR (20%)	13			210	0.003	1.089	14.157	15	212.36
Market			260	210	0.055	0.618	160.68	15	2,410.20
				0.066			Total MGD	0.004	

Re: Water Supply Capacity Analysis
Randolph Township

As this table shows, an affordable housing unit count of 65 results in a total unit count of 380 of which 325 are market units. The table also shows that based on the unit mix and NJDEP design criteria, the 65/260/325 affordable/market/total unit count results in an additional residential daily demand of 0.066 MGD. Based on the NJDEP peaking factor for permitting, this figure, as well and the non-residential demand, must be multiplied by 3. The total water residential demand is therefore $3 \times 0.066 = 0.198$ MGD plus the education demand component of 0.004 MGD for a total of 0.202 MGD. This marginally exceeds the available capacity of 0.199 MGD identified above.

In conclusion, the NAWC of the Township of Randolph limits the level of all future new development in the Township. With minimal allocation (5.4%) of the NAWC to future non-residential development to service the expansion of the residential base and a similar minimal allocation to single family detached units (8.4/year), there remains sufficient NAWC to accommodate the demand of an aggregate 325 multifamily residential units, consisting of 65 units available to low and moderate income households and 260 market units.

Please contact me if you have any questions or require further information.

Very truly yours,



Paul W. Ferriero, PE, CME
Township Engineer

APPENDIX B:
COURT ORDER "CONFIRMING THE SATISFACTION OF THE
PRIOR ROUND OBLIGATION", DATED OCTOBER 19, 2016

FILED

OCT 19 2016

TERENCE C. MANNION, JR.

Keli (RAND-2004A)
RAND Motion Order
083016

Keli L. Gallo, Esq. - ID No. 079672000
THE BUZAK LAW GROUP, LLC
Montville Office Park
150 River Road, Suite N-4
Montville, New Jersey 07045
(973) 335-0600
Attorney for Plaintiff/Petitioner, Township of Randolph

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

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

DOCKET NO.: MRS-L-1640-15

CIVIL ACTION
(Mount Laurel)

**ORDER CONFIRMING THE
SATISFACTION OF PRIOR
ROUND OBLIGATION**

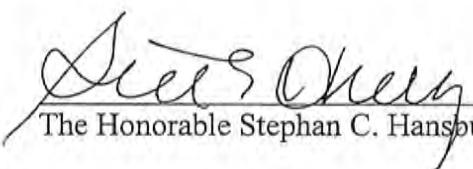
THIS MATTER having been opened to the Court by The Buzak Law Group, LLC, attorneys for Plaintiff/Petitioner, Township of Randolph, on notice to all parties on the attached service list and notice list, by way of Motion to confirm satisfaction of prior round (1987-1999) affordable housing obligation; and the Court having considered the pleadings on file and the argument of the parties; and for the reasons set forth on the record by the Court at the motion hearing; and for good cause shown

IT IS, therefore, on this 19 day of October 2016, ORDERED as follows:

1. The Township of Randolph's Motion to confirm the satisfaction of its prior round (1987-1999) affordable housing obligation is granted; and it is further

2. The Township of Randolph satisfied its entire 261 unit prior round (1987-1999)
as of 2005
affordable housing obligation, and it is further

3. A copy of the within Order shall be served upon all parties on the Service List within
days from the date of entry of this Order. *in causa*


The Honorable Stephan C. Hansbury, P.J. Ch.

APPENDIX C:

1. AMENDED CONSENT ORDER (INCLUDES TABLE A) IMPOSING SCARCE WATER RESOURCE RESTRAINTS, DATED JUNE 6, 2018

EJB (RAND-2004A)
Amended Consent Order Imposing Scarce Resource Restraints (w/Table A)
041818

052118 Blacklined
052418
052418-1/060518 Amended w/Table A

Edward J. Buzak, Esq. - ID No. 002131973

THE BUZAK LAW GROUP, LLC

Montville Office Park
150 River Road, Suite N-4
Montville, New Jersey 07045
(973) 335-0600

Attorney for Plaintiff/Petitioner, Township of Randolph

FILED

JUN 06 2018

Maryann L. Nergaard
J.S.C.

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

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

DOCKET NO.: MRS-L-1640-15

CIVIL ACTION
(Mount Laurel)
AMENDED CONSENT ORDER
(INCLUDES TABLE A)
IMPOSING SCARCE WATER
RESOURCE RESTRAINTS

This matter having been opened to the Court by Defendants/Intervenors LYS Realty Associates, LLC and Sporn Realty & Management Corp., by and through its attorneys, Fox Rothschild LLP, by way of motion for an Order Imposing Scarce Water Resource Restraints, in which Defendant/Intervenor Canoe Brook Development LLC, joined, by and through its attorneys, Bisgaier Hoff, LLC; and Petitioner, Township of Randolph, by and through its attorneys, The Buzak Law Group, LLC, having opposed the entry of the Order Imposing Scarce Water Resource Restraints in the form as set forth by said Defendants/Intervenors; and the parties having met with the Special Master and having arrived at a mutually agreeable form of Order and for good cause shown

It is on this 6 day of June, 2018 **ORDERED** as follows:

1. Except as set forth in Paragraph 2 below, there is hereby imposed a scarce water resource restraint requiring the Township of Randolph to withhold and reserve all remaining water supply for projects which assist the Township in satisfying its constitutional affordable housing obligation, until further Order of this Court as set forth hereinafter.

2. As of the date of this Order, no new connections to the water system or allocations of water for developments shall be authorized or approved by the Township of Randolph except for the following exemptions ("Exemptions") : (i) single family homes that are not part of a development or uses with a service level no greater than a single family home ; (ii) existing single family homes whose individual water supply fails, becomes contaminated or otherwise non-potable, or is unable to meet the needs of said residents; and (iii) all projects as set forth in Table A attached hereto and made a part hereof. At six (6) month intervals, beginning December 1, 2018, the Township shall submit to the Special Master and to all signatories of this Consent Order a list of connections made to the water system of the Township of Randolph in the categories set forth in this Paragraph 2 of this Consent Order.

3. The Planning Board, and the Zoning Board of Adjustment (collectively "Boards"), shall advise all applicants filing any application for development after the date of the entry of this Order that any Board action or approval will not confer "vested rights" for allocation of public potable water service upon the applicant without the Court's review and approval. Only after an Order has been entered releasing an application from the restraints imposed by this Order will an applicant acquire "vested rights" for water allocation.

4. The Township and any agency of the Township that is authorized to issue water service connection permits are hereby restrained from issuing any new or expanded water service connections except as otherwise provided in Paragraph 2 of this Order.

5. Any applicant for development approval from the Boards, or any party or person affected or potentially affected by the restraints imposed by this Court Order may apply to the Special Master, Philip Caton, with notice to all parties for relief from this Order at any time in the form of a letter with appropriate supporting documentation. The Special Master shall render a decision in writing on said request for relief within fifteen (15) business days of receipt of the aforesaid application. If the Special Master determines that relief from the restraints imposed herein is appropriate, he shall authorize the relief from the restraints in writing with a copy to the Court and all parties and the Applicant may then pursue the connection of their development or project, or premises to the potable water system of the Township. If the Special Master fails to timely decide the request or declines to authorize the relief sought, or if any party objects to the Special Master's decision, application shall be made to the Court within ten (10) days of the receipt of the written decision of the Special Master, on notice to the Special Master and all interested parties to this litigation who originally received notice of the request for relief.

6. Pending any further Order from this Court, the restraints and Exemptions in this Order will remain in effect for 90 days from its date of entry and shall be automatically extended for periods of 60 days thereafter, unless otherwise modified by the Court upon application of any party.

7. Notwithstanding anything to the contrary, upon the issuance of a Judgment of Compliance and Repose to the Township of Randolph, unless otherwise previously dissolved by the Court, this Order shall automatically be dissolved, simultaneously with the entry of the Judgment of Compliance and Repose.

8. Counsel for the Petitioner shall serve a copy of this Order upon all counsel within seven (7) days of receipt hereof.

Maryann L. Nergaard
Honorable Maryann L. Nergaard

The following parties and interested parties in this litigation consent to the form and entry of this Consent Order:

THE BUZAK LAW GROUP, LLC
Attorneys for Township of Randolph

By _____
Edward J. Buzak, Esq.

FOX ROTHSCHILD LLP
Attorneys for LYS Realty Associates, LLC and
Sporn, Realty & Management Corp.

By _____
Henry Kent-Smith, Esq.

BISGAIER HOFF, LLC
Attorneys for Canoe Brook Development LLC

By _____
Robert Kasuba, Esq.

INGLESINO, WEBSTER, WYCISKALA & TAYLOR, LLC
Attorneys for American Properties

By _____
Derek W. Orth, Esq.

LASSER HOCHMAN, LLC
Attorneys for KAB Associates

By _____
Bruce Snyder, Esq.

FAIR SHARE HOUSING CENTER

By _____
Joshua Bauers, Esq.

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By _____
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Attorneys for KAB Associates

By _____
Bruce Snyder
Bruce Snyder, Esq.

FAIR SHARE HOUSING CENTER

By _____
Joshua Bavers, Esq.

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Attorneys for American Properties

By _____
Derek W. Orth, Esq.

LASSER HOCHMAN, LLC
Attorneys for KAB Associates

By _____
Bruce Snyder, Esq.

FAIR SHARE HOUSING CENTER

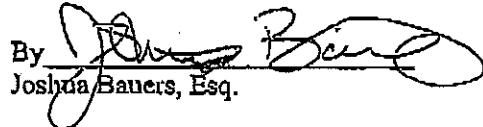
By 
Joshua Bauers, Esq.

Table A - Existing Short Term Demand

Site	Location	Use type	U/M	Unit demand	No. Units	Total Demand	Peak Demand
Rose of Sharon	Dover Chester Rd	single family	lot	300	2	600	1,800
Kozak	Middlebury Blvd	commercial	SF	0.125	35,000	4,375	13,125
Randolph Diner	Rt 10/Center Grove	commercial	SF	0.125	2,335	292	876
Gordon Randolph MAB	Route 10	commercial	SF	0.125	13,580	1,698	5,094
Collinson subdivision	South Road	single family	lot	300	2	600	1,800
Laborzno	Jubilee Lane	single family	lot	300	3	900	2,700
Kahn	Dover Chester Rd	retail	SF	0.125	3,885	486	1,458
		apartment	each	300	1	300	900
Jepar	West Hanover Ave	retail	SF	0.125	6,050	756	2,268
1.01 Aspen Dr	Aspen Dr	commercial	SF	0.125	51,085	6,386	19,158
Skylands	Route 10	Hotel	room	75	74	5,550	16,650
Gangemi	Hilltop Rd	single family	lot	300	1	300	900
Heritage 55	Calais Road	age restr TH unit		225	30	6,750	20,250
Heller	Sussex Turnpike	retail	SF	0.125	63,300	7,913	23,739
SJC Elds	Route 10	office/daycare	SF	0.125	24,560	3,070	9,210
Elbaum Homes	Route 10	medical office	SF	0.125	22,000	2,750	8,250
Envision Prop	Route 10	retail	SF	0.125	20,875	2,609	7,827
Gourmet Dev	Dover Chester Rd	retail	SF	0.125	4,970	621	1,863
		apartment	each	300	1	300	900
Promise School	Middlebury Blvd	daycare	student	10	194	1,940	5,820
Dickerson	Dover Chester Rd	medical office	SF	0.125	12,516	1,565	4,695
Randolph Mountain		single family	lot	300	34	10,200	30,600
Mt Freedom 1	Harvey/Carellen	single family	lot	300	29	8,700	26,100
Mt Freedom 2	Woodlawn/Shuman	single family	lot	300	15	4,500	13,500
Weady's	Route 10	restaurant	est	5,000	1	5,000	15,000
Sussex Turnpike redev	Sussex Turnpike	mixed use	est	8,000	1	8,000	24,000
Randolph Realty	Brookside	townhouses	unit	300	105	31,500	94,500

TABLE A (1 of 2)

Progress Properties Cap	Middlebury Blvd office	SF warehouse persons/shift	0.125	12,880	1,610	4,830
Heller Group	West Hanover Ave retail	SF	0.125	20	500	1,500
Sussex/Millbrook LLC	Sussex Turnpike Route 10 West	mixed use office	SF 0.125	8,400 12,540	1,050 1,568	3,150 4,704
Elbaum Homes			0.125	3,863	483	1,449
			Total projected demand		122,872	368,616

TABLE A (2 of 2)

APPENDIX C:

2. OUTLINE OF PROTOCOL FOR WAIVER FROM ED BUZAK TO PHILLIP B. CATON, SPECIAL
MASTER, DATED DECEMBER 15, 2017.



THE BUZAK LAW GROUP, LLC

Attorneys at Law

EDWARD J. BUZAK
(MEMBER OF N.J. & D.C. BAR)
KELI L. GALLO
(MEMBER OF N.J. & N.Y. BAR)
SCOTT H. PRINGLE
(MEMBER OF N.J. & N.Y. BAR)

JACQUELIN P. GIOIOSO
OF COUNSEL

December 15, 2017

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Re: In the Matter of the Application of the Township of Randolph
Docket No. MRS-L-1640-15
OUTLINE OF PROTOCOL FOR WAIVER

Dear Mr. Caton:

In accordance with the directions of Judge Nergaard at our December 1, 2017 Case Management Conference (“CMC”) in the above captioned Declaratory Judgment action, this letter shall serve as an outline of the criteria that the Township of Randolph (“Township” or “Randolph”) proposes be considered with regard to its request for relief from the use of its entire water capacity resources in addressing its municipal housing obligation. This protocol derives from N.J.A.C. 5:93-4.5, part of the Second Round Rules related to adjustments in municipal housing obligations. Although the regulation is directed to the Council on Affordable Housing (“COAH”) entertaining these requests, under the current circumstances, it is the Court to which the request will be directed in conjunction with the Township’s Declaratory Judgment proceeding. This submission is not intended to represent the motion that will ultimately have to be made and considered by the Court. Instead, it is to begin to set a context by which the request will be considered.

As abovementioned, N.J.A.C. 5:93-4.5(a)1 provides the general framework for municipalities to request a waiver from “. . .[t]he use of an entire resource (land, water, sewer) in addressing the municipal housing obligation. . . .”. The section goes on to establish three criteria **in the alternative** to be evaluated in the consideration of such a request. In pertinent part they read:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. . . . To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; **or**

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation." (emphasis added).

The above regulation must be read in the context in which it was proposed and adopted as part of the Second Round regulations. At the time, the First Round of COAH operation was coming to a close and the administrative protocol was in its infancy. We are now almost 25 years since the beginning of the Second Round and much has happened in the intervening time period that should be taken into account in interpreting and applying this Rule in the present context. Just by way of example, the first criteria listed involves an evaluation of the municipality's past inclusionary practices and measures them by certain components of the allocation methodology utilized by COAH. Now that municipalities such as Randolph have participated in the COAH process going into the fourth decade, it is submitted that the history of activity and the successful fulfillment of its past affordable housing obligations becomes a more relevant factor than the makeup of the municipality in terms of the specific allocation criteria.

It is also important to note that all three of the criteria do not have to be met. Instead, the regulation is introduced with the phrase that the request ". . . shall include **one** or more of the following. . . ." (emphasis added).

With that in mind, the following sets forth a list of steps that we suggest be taken in order to explore the need and justification for the waiver request. Please be advised that although these steps are listed in sequence, it may well be that after further discussion the sequence is changed and expanded or contracted. With those limitations in mind we propose the following outline:

A. Establishment of the scarcity of the resource.

- (i) Review and critically evaluate the capacity analysis provided by the Morris County Municipal Utilities Authority ("MCMUA") to the Township of Randolph.
- (ii) Review water usage over the last five years in accordance with New Jersey Department of Environmental Protection ("NJDEP") requirements to determine demand on a daily, monthly and yearly basis and peak demands on the same basis.

- (iii) Review the NJDEP regulations related to the fluctuation in the capacity calculations and the formula utilized by the NJDEP to monitor adequate capacity.
 - (iv) Determine the available firm capacity as calculated by the NJDEP and utilized for permitting (thus construction) purposes.
- B. Establish a base line of demand against the capacity and the fluctuation of that demand.
- C. Evaluate the impact of the fluctuation on the determination of the exhaustion of water resources.
- D. Establish the demand of each of the intervenor developments for the purposes of NJDEP permitting.
- E. Evaluate the impact of those permitting demands on the remaining capacity provided by the MCMUA and the firm capacity as calculated by the NJDEP for permitting purposes..
- F. Determine the range of remaining capacity if all the proposed intervenor developments obtained permits from the NJDEP and the capacity remaining for other Township development.
- G. Review the Township's 2015 Water Master Plan prepared by Hatch Mott MacDonald (now Mott MacDonald).
 - (i) Review capacity analysis and bring it to date, if necessary.
 - (ii) Review demand analysis and bring it to date, if necessary.
 - (iii) Review future demand to build-out, the basis for its calculation, and adjustments that may be necessary to bring it to date by calculating the impact of activities that have taken place since the Master Plan report was prepared.
 - (iv) Examine projected demands on the system and water projects that will impact the water capacity available for future development, including, without limitation, public water to replace contaminated or unproductive existing or future private wells
 - (v) Update any other elements of the Water Master Plan that are pertinent to the exhaustion of the Township's water resource.
- H. Chronicle the Township's activity with regard to the promotion of affordable housing.

- (i) Review pre-COAH activity of the Township related to affordable housing.
- (ii) Review the Township's post COAH activity, participation in and satisfaction of First Round obligations.
- (iii) Review the Township's participation in and satisfaction of Second Round obligations.
- (iv) Review actual construction and provision of affordable housing and Township's past commitment to satisfying affordable housing obligations.
- (v) Review and evaluate the Township's Master Plan and continued amendments and updates as related to requiring low and moderate income housing related to residential and non-residential development.
- (vi) Evaluate specifically the Township's current proposed Housing Element & Fair Share Plan ("HEFSP"), particularly as related to its historical activities and its future development.

- I. Establish criteria for allocating remaining water capacity among competing uses.
- J. Establish criteria for evaluating the public good realized by allocating water resources to competing or other uses in the Township beyond satisfaction of the Township's affordable housing obligation.
- K. Review the condition of Randolph's water infrastructure and the need for infrastructure improvements to allow intervenors to utilize any portion of the allocated water capacity.
- L. To the extent necessary, establish criteria for evaluating adjustments in the intensity of development to match the available water resources allocated to the development.
- M. Examine the ability for the Township to obtain additional capacity from the MCMUA and chronicle the efforts of the MCMUA to obtain additional capacity for potential allocation to Randolph and other contract holders with the MCMUA.
- N. Establish a schedule for the above exercise and the method of evaluation of the results.
- O. Determine and establish the limitations on the Township's affordable housing obligation as a result of the limitations on water supply.

The foregoing is intended to establish the broad parameters of topics and issues to be considered in formulating the procedure for evaluating the Township's request. We look forward to comments on and refinements of the above outline. Please recognize that the foregoing is submitted without prejudice to the Township's position on this issue and without prejudice to adjustments to its position upon further consideration of the relevant issues.

Very truly yours,

THE BUZAK LAW GROUP, LLC

Edward J. Buzak

EJB:fd (ltr to Philip Caton re: Rand Outline of Protocol for Waiver)

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Henry L. Kent-Smith, Esq. E-Mail
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APPENDIX C:

3. PLANNING REPORT ON WAIVER REQUEST FOR SCARCE RESOURCE, PREPARED BY ROBERT MICHAELS, TOWNSHIP PLANNER, DATED FEBRUARY 2018

**TOWNSHIP OF RANDOLPH
MORRIS COUNTY, NEW JERSEY**

**TOWNSHIP OF RANDOLPH
ACTIVITY WITH REGARD
TO THE PROMOTION OF
AFFORDABLE HOUSING
1970 - 2018**

February 2018

PREPARED BY:

/s/ Robert A Michaels
Robert A. Michaels, P.P., AICP
License No. 2585

The Original Document is Signed and Sealed pursuant to N.J.A.C. 13:41-1.3

In the Matter of the application of the Township of Randolph
Docket No. MRS-L-1640-15
Potable Water Waiver Request

Randolph Township's activity with Regard to the Promotion of Affordable Housing.

As is catalogued below, the Township of Randolph has a long history of addressing its affordable housing obligation. This history extends before the establishment of the Council on Affordable Housing (COAH). It continued through the first and second rounds of the COAH regulations and the Township was pro-active during the period of uncertainty since the end of Round 2 to seek opportunities to increase the community's inventory of affordable housing.

(i) Pre-COAH Activity

The Township of Randolph was the home of numerous summer bungalow colonies and hotels. The first establishments started in the early twentieth century and reached their zenith in the 1940's. They attracted patrons from Newark, New York City and Brooklyn looking for a respite from the heat and congestion of the cities who found rest and recreation in Mount Freedom. The popularity of those facilities began to wane in the 1950's and one by one they closed, with the final hotel closing in 1978.

This history relates to affordable housing in that some of these establishments were converted or renovated and provided affordable housing opportunities prior to COAH. Specific examples of this pre-COAH activity are as follows (The resolutions are included in the appendix):

- An application was made to the Board of Adjustment in 1976 for the Ackerman's Hotel to seek permission for some of their rooms to be used as a "boarding home for sheltered care guests receiving S.S.I. benefits." They applied to the respective State and Federal agencies for funding under the S.S.I. and a designation as a boarding home for sheltered care. Approval for this request was granted on March 25, 1976.
- In 1977 the Roman Catholic Diocese of Paterson applied to the Zoning Board of Adjustment to convert six cottages located at 162 Morris Turnpike in what was known as "The Lake Cherokee Camp" into two-bedroom apartments. The proposal was to winterize the cottages by installing heat, insulation, storm windows and kitchen units. The units would be rented at below market rates to graduate students who were employed and seeking degrees. The students would also be involved in a "Campus Ministry" of the Diocese of Paterson. This application was approved by the Board with an expiration date of 1982. Subsequent extended approvals were granted in 1982 and 1985.
- The Board of Adjustment granted approval in 1982 for the continuing use of a five (5) family dwelling on a year round basis for property located at 6 Harvey Terrace.

It was noted in the application that the rents for the apartments were substantially below other rents charged in the area and that the dwelling was registered with the State of New Jersey Multiple Dwelling Law since 1975.

(ii) History of Randolph's COAH Participation

The Township adopted a Housing Element and Fair Share Plan (HE&FSP) in January 1987. That was reviewed by COAH and received substantive certification on November 16, 1987 and again on March 3, 1988. That plan was further amended in 1990 and was incorporated into the 1992 Master Plan by reference. Those plans addressed the Township's obligation for low and moderate income housing through the first round of housing obligations for the period from 1987 to 1993.

The 1995 Housing Element and Fair Share Plan initially addressed the second round affordable housing obligation pursuant to the regulations published by COAH in 1994. In response to a request for additional information and a report from COAH, dated November 9, 2000, the Township prepared an amendment to the Housing Plan and submitted it to COAH with other supporting information dated July 24, 2001. The Township further updated its Housing Plan on March 18, 2003 and August 19, 2004. The 2005 Housing Element was prepared pursuant to rules adopted on December 20, 2004. In 2007 the Appellate Division struck down significant portions of the COAH's rules and required COAH to adopt major changes to its rules. Those rule changes were adopted in June 2008 and again amended in September 2008. Additionally, the legislature passed significant changes to the Fair Housing Act in the summer of 2008, which was later signed into law by the Governor.

A further complication that impacts Randolph's housing plans was created by the Highlands Water Protection and Planning Act. Randolph is located in the Highlands, with about ten (10%) percent of the Township in the preservation area and ninety (90%) percent in the planning area. On September 5, 2008 the Governor signed Executive Order #114, which among other directives ordered the Highlands Council to work with COAH to review the third round growth projections for consistency with the Highlands Regional Master Plan and assist COAH with developing adjusted growth projections within the Highlands region. It also called for the coordination of deadlines for revision of municipal master plans and third round fair share plans to be in conformance with both the Highlands Act and the Fair Housing Act, including a reasonable extension of deadlines. The executive order also included a requirement that the Highlands Council and COAH enter into a joint Memorandum of Understanding (MOU) as soon as practicable but no later than sixty 60 days from the effective date of the Governor's Executive Order. The MOU was signed at the end of October 2008 and extended the deadline for submission of Housing Plans to COAH initially to December 8, 2009 and further to June 8, 2010 for communities that expressed their nonbinding intent to conform to the Regional Master Plan (RMP). The MOU also established a scarce resource order on all municipalities in the Highlands Region under COAH's jurisdiction in order to preserve scarce land, water and sewer resources and to dedicate these resources on a priority basis for the production of affordable housing.

Randolph's Township Council passed nonbinding resolutions to conform the local Master Plan and development regulation to the RMP. Studies were undertaken by the Township to assess the impact of conformance on the community. A HE&FSP was prepared in 2010 and submitted to COAH for substantive certification. Due to challenges to its regulations COAH did not conduct a substantive review of that plan and no substantive certification was received. That plan sought a vacant land adjustment and a reduction in its third round or growth share obligation pursuant to the Highlands rules, since Randolph is located in both the Planning and Preservation areas.

The most recent HE&FSP was dated March 14, 2016 and was prepared in accordance with the applicable provisions of (i) the Highlands Water Protection and Planning Act and its rules, regulation and guidance documents (Highlands Act and Regulations), and (ii) the rules, regulations and guidance documents of the applicable portions of the New Jersey Council on Affordable Housing (COAH) and the decision of the New Jersey Supreme Court in their decision of March 9, 2015.

(iii) Randolph's Affordable Housing Obligations and Production for Rounds One and Two.

The Township of Randolph's affordable housing obligation for Rounds One and Two from 1987 until 1999 was 261 dwelling units. A total of 300 affordable units were constructed in the Township to satisfy this obligation. Of these one hundred (100) units received prior cycle credits (India Brook Senior Housing), 134 were rental housing (including alternative or special needs housing projects) and 66 units of affordable sales housing.

The amount of rental bonuses allowed to be credited to the first and second rounds obligation is based on 25 percent of those obligations minus the 100 units of prior cycle credits $((261-100) \times 0.25)$, which is 40 bonus credits. The obligation of 261 units was satisfied as follows:

India Brook Senior Housing (Prior Cycle Credit)	100 Units
Rental Construction	55 Units
Sales Construction	66 Units
Rental Bonuses	<u>40</u> Units
Total	261

The actual units and projects that comprised the above numbers are shown on Table 13 of the 2016 HE&FSP which is reproduced here. There was a surplus of 79 rental units that were constructed and can be applied to the Township's third round obligation.

Table 13

Fair Share Housing Summary, Randolph Township, New Jersey

Map #	Property	Block / Lot	Owner	Acres	Density / Acre	Total New Units	Total Affordable Units	Units for Sale or Rent	Status
						Low	Moderate	Sale	Rent
1	Canfield Mews	42/1 & 1.01	Canfield Mews Assoc., LLC	45.7	4.2	192	19	19	0
2	Arrowgate	42/122.01	Jackson Brook Assoc.	33.38	4.9	164	14	13	137
3	Boulder Ridge	184/1 & 1.20	Baker Residential LTD Partnership	12.38	6.9	98	8	9	98
4	Bennet Ave. Family Housing	195/3 & 4, 191/7,8,1,12 & 13	MCHA	2.92	10.9	32	16	16	0
5	Peer Group Housing	17/18	United Cerebral Palsey Morris/Somerset	N/A	N/A	4	2	2	0
6	India Brook Senior Housing	93/56.01	MCHA	12.7	12.7	100	50	50	0
7	Woodmont	119/109.11	Segal & Morel	28.7	7	201	20	20	201
8	Brookside Village Apts.	224/79.01	M. Barria	10.9	3.6	40	5	5	0
9	Much Dignity House	176/82	ARC	N/A	N/A	6	6	0	0
10	Skylands Group Home	50/6	Skylands Center Offeing Autism Programs, Inc.	N/A	N/A	4	4	0	4
11	High Ave. House	53/44	ARC	N/A	N/A	4	4	0	4
12	Morris County Affordable Housing Corp.	191/14 & 15	MCAHC	0.6	10	6	0	6	0
13	School House Group Home	82/30	Development Resources Corp.	N/A	N/A	5	5	0	0
14	Habitat House	59/15	Morris Habitat	N/A	N/A	1	1	0	1
15	Habitat House	134/3.02	Morris Habitat	N/A	N/A	2	1	1	1
16	Habitat House	134/9	Morris Habitat	N/A	N/A	1	0	1	1
17	Our House	35/28	Our House	N/A	N/A	3	3	0	0
	Totals					863	158	142	445
									418

(iv) Affordable Credits that can be Applied to the Third Round.

The Township has undertaken numerous actions to provide for the opportunity to provide additional dwelling units that can help satisfy the municipality's Third Round obligation. The HE&FSP that was dated March 14, 2016 was based on a Third Round obligation of 139 affordable units. Using that obligation rental bonuses were calculation on the basis of twenty-five (25%) percent of the prospective need obligation which is 35 (139 x 0.25). Additionally the Township has extended the controls for affordability for the forty (40) sales units within the Woodmont development.

Therefore the following credits can be applied to the Township's Third Round Obligation at a minimum. These credits represent projects either constructed, approved, extended and bonus credits assumed.

Remaining Rental Units Constructed	79 Units
Rental Bonuses	35 Units
Grecco Realty (Approved Inclusionary Development)	5 Units
Rose of Sharon (Approved Inclusionary Development)	1 Unit
Woodmont (Extension of Controls)	40 Units
Sunrise Assisted Living (Medicaid Certificates)	8 Units
Brightview Gardens (Medicaid Certificates)	<u>6</u> Units
 Total Units, Credits and Bonuses	 174

(v) Additional Affordable Units Included in the Housing Plan.

Although the existing and approved projects noted above more than satisfied the assumed affordable housing obligation of the Township, there were additional projects that were included in the 2016 plan. These were ongoing efforts that are described below:

E.A. Porter Site – Habitat for Humanity, Block 195, Lot 10, Sponsored Housing

This is a 2.5 acre tract that was a former industrial site that is owned by the Township. The Township has entered into an agreement with Habitat for Humanity to donate the property for the construction of twenty-five (25) homes for sale to low and moderate income families. This will be a one hundred (100%) percent affordable project (Agreement Attached). The Township is conducting a clean-up of the site funded by the Housing Trust Fund.

Randolph Mountain, Appio Drive, Block 199, Lots 6 & 9, Court Mandated Inclusionary Development

The Randolph Mountain Site has been the subject of litigation for many years. Per the Court's decision, the site is required to be included in the Township's Housing Plan. The site is approximately 24.5 acres in area and is to be developed pursuant to the parameters of the R-2 zone with a twenty (20%) percent set-aside for low and moderate income housing.

Given these parameters it is estimated that the site can be developed with 34 dwelling units, of which seven (7) would be available to low and moderated income households.

Morris County Housing Authority 172 Franklin Road, Block 191, Lot 11

The Morris County Housing Authority (MCHA) currently owns the above referenced property and it is located in the Residential – Government Assisted Housing Zone (R-GAH). They are currently seeking a grant to assist in the construction of two (2) affordable units on the property. The parcel is 7,500 square feet in area. It is in proximity to other affordable housing sponsored by MCHA. There is water and sanitary sewer service available for the development proposed.

Gateway Apartments, Block 77, Lots 30 and 31, Dover-Chester Road

This is an existing rental multi-family development located in the R-4 Zone District in which multi-family development is permitted. The owner has expressed an interest in constructing additional dwellings on the site and would be willing to provide a set-aside for additional low and moderate income units and some very low income units. The new units would be provided as market rate and fifteen (15%) percent of that number would be affordable dwellings. The developer could provide the affordable from the existing inventory of apartments. These would be rental units that would be eligible for a rental bonus. It is anticipated that 96 new units would be provided and fifteen (15) affordable units would be created. This has slightly increased since the 2016 HE&FSP.

The above projects are summarized in Table 14 which has been modified from the table included in the 2016 HE&FSP. It is important to note that three of the sites noted in the Housing Plan, the Habitat for Humanity site, the Morris County Housing Authority site and the Gateway Apartment site all are served with potable water from the Dover Water Company.

(vi) Additional Affordable Units Subsequent to Housing Plan.

The Planning Board adopted a Master Plan Reexamination and Update dated June 15, 2016. Among other things the report proposed an update to the Mount Freedom Plan that was part of the 2006 Master Plan. The Reexamination Report recommended that mixed residential and commercial use in the Mount Freedom area include an affordable housing set-aside.

A Mount Freedom Planning Study Update dated September 6, 2017 was adopted by the Planning Board. That document reiterated and expanded upon the recommendations in the Reexamination Report. It called for an affordable housing set-aside in the Specialty Shop/Village Office (SS/VO) zone in circumstances where more than six (6) dwelling units were proposed in one project. These were envisioned where residential units would be above commercial or behind the commercial uses. The commercial uses along with the higher density residential development would help to subsidize the affordable dwellings.

TABLE 14 TOWNSHIP OF RANDOLPH HOUSING PLAN SUMMARY					
Project	Block	Lots	Acreage	Total Units	Affordable Units
Habitat for Humanity	195	10	2.5	25	25
Randolph Mountain	199	6 & 9	24.5	34	7
MCHA	191	11	0.17	2	2
Gateway Apartments	77	30 & 31	43	96	15
Total Units				157	49

The plan also included the recommendation that there be an affordable component in developments in the Village Center Residential (VCR) zone. It also recommended that the density of the zone be increased in order support the provision of affordable housing.

(vii) Housing Plan as Related to Historical Activities and Future Development.

Randolph Township has continued its long history of providing the opportunity for its fair share of low and moderate income housing. Although the affordable housing obligation calculated at the time of the preparation of the HE&FSP was already met, the plan included additional sites to provide more opportunity. This included a significant contribution from the Township's Housing Trust Fund to prepare the site donated to Habitat for Humanity for 25 new affordable dwellings. It is also important to note that the bulk of the new units proposed in the Housing Plan will obtain their water supplies from the Dover Water Company, thus not impacting the limitations of the MCMUA,

APPENDIX C:

4. ENGINEERING REPORT PREPARED BY PAUL FERRIERO, TOWNSHIP ENGINEER,
DATED MARCH 1, 2018



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM
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Water Capacity Analysis

Randolph Township Water System

March 1, 2018

Prepared by:

A handwritten signature in black ink, appearing to read 'Paul W. Ferriero'.

Paul W. Ferriero
NJPE 32978

• • •

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Re: Water Capacity Analysis
Randolph Township Water System

Randolph Township water supply is limited by the NJDEP approved contract with the Morris County Municipal Utility Authority (MCMUA). These contractual limits are based on the fact that the NJDEP invalidated the prior Randolph Township contract which ensured an unlimited supply of water. The NJDEP approved contract limited the amount Randolph could purchase to 3.120 million gallons per day (MGD), 87.341 million gallons per month (MGM) and 916.515 million gallons per year (MGY). Without additional water allocation from the NJDEP, MCMUA will not be able to increase the contractual limits to Randolph Township.

The MCMUA has made attempts to increase its water allocation without success. Resolution 15-71 adopted by the MCMUA on November 10, 2015 outlines 18 years worth of efforts at an expense in excess of \$2,000,000 to drill an additional well to increase the MCMUA allocation from the NJDEP. The resolution describes how they were rebuffed at every turn by the NJDEP in their attempt to obtain permits to drill a new well in the Rockaway River Basin to increase their allocation. The efforts by the MCMUA included acquisition of property by Eminent Domain, drilling of a test well and a production well and a detailed analysis of the plume from some off site contamination. The DEP raised numerous concerns ranging from consumptive use of the water to impacts on the Jersey City reservoir. Finally the efforts were abandoned after the Highlands Council determined that the well was in a watershed that was in a deficit in accordance with the analysis by the Highlands Council and they therefore would not endorse the proposal. Without that endorsement, the NJDEP would not approve the well and associated increase in the water allocation for the MCMUA.

In addition to their efforts to drill a new supply well to increase their allocation, the MCMUA also made an application to the NJDEP to use the Scrub Oaks Mine as a water source. Over a period of at least two years, the MCMUA went through the process to obtain the additional allocation through the use of the mine. Once again, the NJDEP indicated that they would only approve the increase in the allocation if the MCMUA addressed the issues raised by the Highlands Council. By letter dated March 24, 2017 from their consultant, the MCMUA outlined the concerns raised by the Highlands Council and meetings at which the proposal was discussed. In summary, the MCMUA was again rebuffed in its attempts to increase its water allocation based on the negative comments of the Highlands Council and NJDEP. The MCMUA concluded the letter by withdrawing their request for increased allocation.

The 2015 resolution by the MCMUA and the 2017 letter from their consultant are both attached and they clearly outline infeasibility of increasing their allocation based on the various regulations and policies adopted by the State agencies responsible for the allocation of water. Effectively, the State has determined that the MCMUA service area is "built out" to the extent that no additional water allocation will be permitted. The MCMUA has been denied the ability to increase its allocation from the NJDEP and since its current allocation is completely committed under its various contracts, it is not possible for Randolph to obtain additional water supply from the MCMUA.

Any project requiring a permit from the NJDEP Bureau of Safe Drinking Water (BSDW) for the extension of water service must demonstrate that the supply has adequate firm capacity. In the event that firm capacity does not exist, the NJDEP will not issue the permit for the water main extension. The firm capacity calculation is primarily based on the contractual limit (supply) and the peak usage (demand). The difference between these figures is the available firm capacity against which any new permit is measured. The peak demand is based on the highest recorded monthly usage in the last five years. This peak month is from August 2015 with a peak demand of 73.415 MGM. This equates to 2.368 MGD. The peak year is 2015 with an annual total of 610.919 MGY. Since the annual total is based on the summation of all months, with some having a relatively low demand, the peak daily demand is the controlling factor.

Re: Water Capacity Analysis
 Randolph Township Water System

The attached Table A below provides the estimated flows for developments in the Township that are at various points in the approval process. It should be noted that these projects have already been approved by the Township although some approval conditions may be outstanding, the projects may be under construction or partially occupied. In addition to the projects approved by the Township, there are several large scale project proposed by intervenors in the Township's ongoing affordable housing litigation. The projects are outlined in tables 4, 5 and 6 in the January 2018 report by Suburban Consultants for the MCMUA and summarized in table B.

Tables C and D are from data contained in the Randolph Township Water Master Plan dated July 2015 prepared by Hatch Mott MacDonald. Table C provides the demands required by existing residential development in the Township that is currently served by individual wells and does not have public water for fire protection and domestic use. Providing service to these dwellings has been and continues to be a high priority for the Township. Table D provides the demands from undeveloped parcels in the Township that are in the water service area. This table includes an analysis of existing undeveloped or underdeveloped lands in the Township in accordance with the current zoning. Table D excludes the OL zone area since this is one of the intervenor sites included in table B. The table includes the potential build out of the RLD and VCR zones. It should be noted that the VCR zone is served by public water and Table C is based on the density of 3 units per acre.

The chart below provides a breakdown of the Township's allocation, Firm Capacity and current and future demands and is a summary of the attached tables. As can be seen, the current demands exceed the allocation and no capacity exists to serve the future build out or intervenor demands. All flows are peak flows expressed in MGD.

Allocation		3.120 MGD
Peak usage	2.368 MGD	
“Committed” flow (per NJDEP)	0.060 MGD	
Total		2.428 MGD
Available Firm Capacity (per NJDEP)		0.692 MGD
Current Demand		
Approved projects (Table A)	0.368 MGD	
Total		0.368 MGD
Available Firm Capacity (after current demand)		0.324 MGD
Future Demand		
Intervenor Sites (Table B)	0.329 MGD	
Existing development (Table C)	1.170 MGD	
Build out (Table D)	0.104 MGD	
Total		1.603 MGD
Available Firm Capacity (after future demand)		-1.279 MGD

This table shows that the Township does not have sufficient firm water capacity to provide service to its existing and future demands. NJDEP permits for water main extensions will not be approved for projects that exceed the Township's firm capacity.

Table A – Existing Short Term Demand

Site	Location	Use type	U/M	Unit demand	Units	No.	Total Demand	Peak Demand
Rose of Sharon	Dover Chester Rd	single family	lot	300	2	600	1,800	
Kozak	Middlebury Blvd	commercial	SF	0.125	35,000	4,375	13,125	
Randolph Diner	Rt 10/Center Grove	commercial	SF	0.125	2,335	292	876	
Gordon Randolph MAB	Route 10	commercial	SF	0.125	13,580	1,698	5,094	
Collinson subdivision	South Road	single family	lot	300	2	600	1,800	
Lubrano	Jodilee Lane	single family	lot	300	3	900	2,700	
Kahn	Dover Chester Rd	retail	SF	0.125	3,885	486	1,458	
		apartment	each	300	1	300	900	
Japar	West Hanover Ave	retail	SF	0.125	6,050	756	2,268	
1.01 Aspen Dr	Aspen Dr	commercial	SF	0.125	51,085	6,386	19,158	
Skylands	Route 10	Hotel	room	75	74	5,550	16,650	
Gangemi	Hilltop Rd	single family	lot	300	1	300	900	
Heritage 55	Calais Road	age restr TH	unit	225	30	6,750	20,250	
Heller	Sussex Turnpike	retail	SF	0.125	63,300	7,913	23,739	
SJC Bldrs	Route 10	office/daycare	SF	0.125	24,560	3,070	9,210	
Elbaum Homes	Route 10	medical office	SF	0.125	22,000	2,750	8,250	
Envision Prop	Route 10	retail	SF	0.125	20,875	2,609	7,827	
Gourmet Dev	Dover Chester Rd	retail	SF	0.125	4,970	621	1,863	
		apartment	each	300	1	300	900	
Primrose School	Middlebury Blvd	daycare	student	10	194	1,940	5,820	
Dickerson	Dover Chester Rd	medical office	SF	0.125	12,516	1,565	4,695	
Randolph Mountain		single family	lot	300	34	10,200	30,600	
Mt Freedom 1	Harvey/Carellen	single family	lot	300	29	8,700	26,100	
Mt Freedom 2	Woodlawn/Shuman	single family	lot	300	15	4,500	13,500	
Wendy's	Route 10	restaurant	est	5,000	1	5,000	15,000	
Sussex Turnpike redev	Sussex Turnpike	mixed use	est	8,000	1	8,000	24,000	
Randolph Realty	Brookside	townhouses	unit	300	105	31,500	94,500	

Re: Water Capacity Analysis
Randolph Township Water System

Progress Properties Grp	Middlebury Blvd	office	SF	0.125	12,880	1,610	4,830
		warehouse	person/shift	25	20	500	1,500
Heller Group	West Hanover Ave	retail	SF	0.125	8,400	1,050	3,150
Sussex/Millbrook LLC	Sussex Turnpike	mixed use	SF	0.125	12,540	1,568	4,704
Elbaum Homes	Route 10 West	office	SF	0.125	3,865	483	1,449
				Total projected demand		122,872	368,616

Table B – Intervenor Site Demands

Concept Plan	Water Demand (GPD)
Canoe Brook	37,745
Village at Randolph	28,253
American Property	43,650
Total Daily (GPD)	109,648
Peak Demand (MGD)	0.329 MGD

Table C – Existing Development to be Served

Demand Source	Number of Units	Unit Demand	Total Demand (GPD)
Existing dwellings	1,300	300	390,000
Total Daily (GPD)			390,000
Peak Daily (MGD)			1.117 MGD

Table D –Build Out Demands

Demand Source	Number of Units	Unit Demand	Total Demand (GPD)
RLD Zone (80k sf/lot)	53	300	15,900
VCR Zone (3 unit/acre)	63	300	18,900
Total Daily (GPD)			34,800
Peak Daily (MGD)			0.104 MGD

Appendix A – Suburban Consultants Contract/Peak Flow Summary

MCMUA Water Sold to Randolph
Actual Usage Compared to Current Allocation and Capacity

Table 1. Total Water Sold to Randolph [MG]

	2012	2013	2014	2015	2016	2017	
January		48.443	37.994	40.847	39.004	42.031	
February		36.619	30.375	38.862	41.713	35.001	
March		37.484	38.733	48.849	38.360	40.421	
April		36.799	39.817	41.981	41.235	40.289	
May		49.618	45.209	62.492	54.788	55.376	
June		49.674	56.465	53.875	65.768	63.278	
July		65.037	57.189	56.964	72.144	55.775	
August		49.369	65.640	73.415	49.307	54.063	
September		50.126	56.829	64.161	53.050	51.123	
October		45.525	42.716	45.469	48.558	46.784	
November		40.851	42.037	40.290	38.489	38.965	
December		36.886	43.626	43.714	41.829	42.276	
Peak (MGM)		65.037	65.640	73.415	72.144	63.278	73.415
Total (MGY)		546.431	556.630	610.919	584.245	565.382	610.919

Table 2. Randolph Firm Capacity [MG]

	2012	2013	2014	2015	2016	2017	
Peak Daily		2.098	2.117	2.368	2.327	2.109	
Contract Daily		3.131	3.131	3.131	3.131	3.131	
Surplus Daily		1.033	1.014	0.763	0.804	1.022	
Peak Monthly	58.443	65.037	65.640	73.415	72.144	63.278	
Contract Monthly	87.341	87.341	87.341	87.341	87.341	87.341	
Surplus Monthly	25.201	22.304	21.701	13.926	15.197	24.063	
Peak Yearly		546.431	556.630	610.919	584.245	565.382	
Contract Yearly		916.515	916.515	916.515	916.515	916.515	
Surplus Yearly		370.084	359.885	305.596	332.270	351.133	

* Peak Daily = Peak Monthly / # Days in the Month

Table 3. Contract Committed Amounts [MG]

Day	Month	Year
3.131	87.341	916.515

As quantified in Table 1 above, August 2015 has the largest recorded peak month within the past 5 years of 73.415 MGM. Should any upcoming month resulting a larger peak value greater than August 2015, that would become the new peak monthly demand. Currently, the next largest peak would be July 2016 with 72.144 MGM. Surplus values would be calculated as such for the new change in peak values.

MCMUA
Randolph Expansion Development Proposed Usage

Table 4. Canoe Brook Concept Plan

Residential Water Demand (Daily)	# of Units	Water Demand/Unit	Water Demand [GPD]
1 Bedroom Apartment	71	120	8,520
2 Bedroom Apartment	167	175	29,225
Total [GPD]			37,745

Note: Water Demand per Unit is based off 1 Bedroom Garden Apartment for the "1 Bedroom Apartment" and 2 Bedroom Garden Apartment for the "2 Bedroom Apartment."

Table 5. Village Square at Randolph Concept Plan

Residential Water Demand (Daily)	# of Units	Water Demand/Unit	Water Demand [GPD]
Affordable Units	34	150	5,100
Market Rate Units	132	150	19,800
Pool	1		3,353
Total [GPD]			28,253

Note: Water Demand per Unit is based off 2 Bedroom Townhouse for both the "Affordable Units" and the "Market Rate Units."

Table 6. American Property Apartment Concept Plan

Residential Water Demand (Daily)	# of Units	Water Demand/Unit	Water Demand [GPD]
Apartments	183	-	-
Affordable Housing Apartments	33	-	-
Total [GPD]			43,650

Note: Total water demand is based off of given value of 43,650 gpd as per the

All Water Demand per Unit numbers are based off N.J.A.C 5:21-5.2 (e) Table 5.1.

**All pool calculations are based off 10 Gallons per resident per day as per N.J.A.C 7:10-12.6 (b)
Table 1. Resident calculation is based off N.J.A.C 5:21-5.2 (e) Table 5.1.**

MCMUA
Randolph Expansion Development Proposed Usage

Table 7. Future Demands at Current Location

Site	Location	Use type	U/M	Unit demand	No. Units	Total Demand [GPD]
Rose of Sharon	Dover Chester Rd	single family	lot	300	2	600
Kozak	Middlebury Blvd	commercial	SF	0.125	35,000	4,375
Randolph Diner	Rt 10/Center Grove	commercial	SF	0.125	2,335	292
Gordon Randolph MAB	Route 10	commercial	SF	0.125	13,580	1,698
Collinson subdivision	South Road	single family	lot	300	2	600
Lubrano	Jodilee Lane	single family	lot	300	3	900
Kahn	Dover Chester Rd	retail	SF	0.125	3,885	486
		apartment	each	300	1	300
Japar	West Hanover Ave	retail	SF	0.125	6,050	756
1.01 Aspen Dr	Aspen Dr	commercial	SF	0.125	51,085	6,386
Skylands	Route 10	Hotel	room	75	74	5,550
Gangemi	Hilltop Rd	single family	lot	300	1	300
Heritage 55	Calais Road	age restr TH	unit	225	30	6,750
Heller	Sussex Turnpike	retail	SF	0.125	63,300	7,913
SJC Bldrs	Route 10	office/daycare	SF	0.125	24,560	3,070
Elbaum Homes	Route 10	medical office	SF	0.125	22,000	2,750
10 East Realty	Route 10	car dealer	SF	0.125	57,479	7,185
Envision Prop	Route 10	retail	SF	0.125	20,875	2,609
Gourmet Dev	Dover Chester Rd	retail	SF	0.125	4,970	621
		apartment	each	300	1	300
Primrose School	Middlebury Blvd	daycare	student	10	194	1,940
Dickerson	Dover Chester Rd	medical office	SF	0.125	12,516	1,565
Randolph Mountain		single family	lot	300	34	10,200
Mt Freedom 1	Harvey/Carellen	single family	lot	300	29	8,700
Mt Freedom 2	Woodlawn/Shuman	single family	lot	300	15	4,500
Wendy's	Route 10	restaurant	est	5,000	1	5,000
Sussex Turnpike redev	Sussex Turnpike	mixed use	est	8,000	1	8,000
Randolph Realty	Brookside	townhouses	unit	300	105	31,500
KAB Mt. Freedom		Apartments	Units	150	85	14,875
				Total projected demand		139,719

Note:

1. The NJDEP Firm Capacity Calculations lists 0.060 MGD as already committed. It is not possible to determine whether this comes from any of the above projects.
2. The flow for Wendy's is estimated since there is not a representative figure in the state regulations for a fast food restaurant.
3. There is an estimated increase allotted above for redevelopment along Sussex Turnpike due to the availability of sewer.
4. All Water Demand per Unit numbers are based off N.J.A.C 5:21-5.2 (e) Table 5.1

MCMUA
Randolph Expansion Development Proposed Usage

Table 8. Water Availability Summary

Concept Plan	Water Demand [GPD]
Canoe Brook Concept Plan [GPD]	37,745
Village at Randolph Concept Plan [GPD]	28,253
American Property Concept Plan [GPD]	43,650
Future Demands at Current Location [GPD]	139,719
Total [MGD]	0.249

Table 9. Firm Capacity Analysis

Value	Description	Amount
A	Current Peak Daily Demand [MGD]	2.368
B	Future Peak Daily Demand [MGD]	0.748
C	Total Peak Daily [MGD]	3.116
D	Allocated/Contracted Peak Daily Demand [MGD]	3.131
E	Total Anticipated Peak Daily Demand Deficit/Surplus [MGD]	0.015
F	Current Peak Monthly Demand [MGM]	73.415
G	Future Peak Monthly Demand [MGM]	11.596
H	Total Peak Monthly [MGM]	85.011
I	Allocated/Contracted Peak Monthly Demand [MGM]	87.341
J	Total Anticipated Peak Monthly Demand Deficit/Surplus [MGM]	2.330
K	Current Peak Yearly Demand [MGY]	610.919
L	Future Peak Yearly Demand [MGY]	91.019
M	Total Peak Yearly [MGY]	701.938
N	Allocated/Contracted Peak Yearly Demand [MGY]	916.515
O	Total Anticipated Peak Yearly Demand Deficit/Surplus [MGY]	214.577

Current Peak Daily Demand (Value A): August 2015 Peak Daily Demand

*Future Peak Daily Demand (Value B): 3 * Daily Total from Water Demand Concept #*

Total Peak Daily (Value C): (Value A) + (Value B)

Total Anticipated Peak Daily Demand (Value D): Daily Contract Committed Amount

Total Anticipated Peak Daily Demand Deficit/Surplus (Value E): (Value D) – (Value C)

Current Peak Monthly Demand (Value F): August 2015 Peak Monthly Demand

*Future Peak Monthly Demand (Value G): 46.5 * Daily Total from Water Demand Concept #*

Total Peak Monthly (Value H): (Value F) + (Value G)

Total Anticipated Peak Monthly Demand (Value I): Monthly Contract Committed Amount

Total Anticipated Peak Monthly Demand Deficit/Surplus (Value J): (Value I) – (Value H)

Current Peak Yearly Demand (Value K): August 2015 Peak Yearly Demand

*Future Peak Yearly Demand (Value L): 365 * Daily Total from Water Demand Concept #*

Total Peak Yearly (Value M): (Value K) + (Value L)

Total Anticipated Peak Yearly Demand (Value N): Yearly Contract Committed Amount

Total Anticipated Peak Yearly Demand Deficit/Surplus (Value O): (Value N) – (Value M)

Appendix B – MCMUA Resolution Regarding New Well

- On Monday, October 16, staff spoke with the owner of Junk-A-Haulics, whose truck load was written up because of corrugated in the load.
- On Monday, October 26, two loads of recyclables, one with glass bottles and the other with corrugated boxes, were delivered from Fosterfields park to the transfer station, after a wine festival. Arrangements had been made by the Park Commission to sort the material and unfortunately, the hauler, Interstate Waste, delivered it all to the transfer station.

Event Containers – During October, the MCMUA's event containers for recycling and garbage were lent for the following event:

- Making Strides Against Breast Cancer Walk in Parsippany on October 18.

Miscellaneous Presentations/Meetings/Conference Calls/Correspondence

- On Friday, October 9, staff participated as an exhibitor at the Morris County Wellness Fair for County employees.
- On Wednesday, October 14, staff attended the ANJR (Association of New Jersey Recyclers) Annual Symposium and Awards Luncheon held in Neptune.
- On Friday, October 16, staff gave a presentation to the Morris County Council of Older People at the Human Services building on West Hanover Avenue. In attendance were representatives from approximately 15 senior citizen organizations, including Denville, East Hanover, Hanover and Rockaway Borough.
- On Tuesday, October 20, staff gave a tour of the Recycling and Solid Waste facilities. It had been planned that a few of the staff from Pequannock were going to join the tour, however, they had to cancel at the last minute. We plan to reschedule a time to take them on a tour of ReCommunity.
- On Tuesday, October 27, staff gave a presentation to the Randolph Senior Citizen Club. There were about 45 people in attendance. Staff was asked to speak to the Randolph Club by the club president who was in attendance at the October 16 meeting.
- Also, on Tuesday, October 27, staff gave a presentation to a team of the First Lego League Trash Trek Challenge. First stands for "For Inspiration and Recognition of Science and Technology." The Trash Trek Challenge teams: 1) Identify a problem with the way we make or handle trash, 2) Design an innovative solution to the problem the team selects, and 3) Share the problem and solution with others. Many teams have been contacting the MCMUA for information and presentations.

PUBLIC PORTION:

There being no comment from the Public, this portion of the meeting was closed.

OLD BUSINESS:

Mr. Schweizer asked for the Board's approval of the following Resolution:

RESOLUTION NO. 15-71
RESOLUTION TO ABANDON FURTHER EFFORTS BY MCMUA
TO SEEK A WATER ALLOCATION PERMIT FROM NJDEP
FOR THE ROCKAWAY BASIN WELL LOCATED AT BLOCK 10, LOTS 38 AND 39
IN ROXBURY TOWNSHIP AND BLOCK 602, LOT 7 IN WHARTON BOROUGH

WHEREAS, in 1997 the Morris County Municipal Utilities Authority ("MCMUA") commenced the process to locate the placement of a well or wells, as a ground water source in furtherance of a directive from the New Jersey Department of Environmental Protection ("NJDEP") to locate a well within the Rockaway (Passaic) River Basin in conformance with NJDEP's policy against inter-basin transfer of water, which was designed to encourage that water be used in the same watershed from which it was extracted; and

WHEREAS, as part of this process, in 1997 the MCMUA became interested in potentially acquiring an approximate 35.28 acre tract of land located south of West Dewey Avenue and lying primarily in Roxbury Township and partially in Wharton Borough in Morris County, New Jersey as a potential source of potable water. The subject property is irregularly shaped and is designated as Block 10, Lots 38 and 39 in Roxbury Township and Block 602, Lot 7 in Wharton Borongh ("Rockaway Basin Well"). The bulk of the subject property lies in Roxbury and only approximately 0.92 acres lies in Wharton. The subject property was then owned by a Mrs. Grace Marino; and

WHEREAS, the MCMUA sought permission from the property owner to drill a test well on the subject property, but such permission was refused unless the MCMUA agreed to purchase the property for \$1,500,000. The MCMUA declined to do so and drilled a test well on a neighboring property, which when drilled did not produce an adequate supply of water. Ultimately, after Mrs. Marino had passed away, in the fall of 1999 the Executrix of her estate permitted the MCMUA to drill test wells on the property. The first well produced little more than mud. The second well yielded more positive results; and

WHEREAS, in or around 1997, Mrs. Marino listed the subject property for sale with a local real estate broker. The listing price for the subject property was \$1,500,000. She was unable, however, to sell the property at that price and the property remained on the market for more than a year. The Farleys were interested in purchasing the subject property, but not at the listing price; and

WHEREAS, in June 1998, the Farleys executed a contract to purchase the subject property for the purchase price of \$825,000. The sale was ultimately completed on March 30, 2000. The purchase was negotiated with the intent to build an 110,000 square foot industrial/warehouse facility on the subject property; and

WHEREAS, prior to the Farleys' acquisition of title, William Farley had contacted the MCMUA and stated that the Farleys were planning to develop the subject property for a trucking station/warehouse facility. Mr. Farley showed the MCMUA a site plan depicting the location of the proposed facility. He asked the MCMUA to relocate its test well on the subject property in order to accommodate the location of the planned warehouse building. Because the preliminary results of the testing were positive, the MCMUA declined to move its test wells; and

WHEREAS, on March 27, 2000, the MCMUA advised Mrs. Marino's Executrix and the

Farleys that due to the positive initial results from the test well, the MCMUA was interested in acquiring all or part of the subject property; and

WHEREAS, in June 2001, the MCMUA decided to proceed with negotiating an acquisition of the subject property. The MCMUA authorized its Executive Director to obtain an appraisal, negotiate with the Farleys for the purchase of the subject property and, if negotiations were not successful, to acquire the property by eminent domain; and

WHEREAS, subsequently, the MCMUA obtained an appraisal and entered into negotiations with the Farleys' as required by the Eminent Domain Act. The parties were not, however, able to reach agreement. On November 7, 2003, the MCMUA filed a Verified Complaint to condemn the subject property. On January 22, 2004, the MCMUA filed a Declaration of Taking, deposited the estimated just compensation in the amount of \$820,000, and acquired title to the subject property pursuant to the Eminent Domain Act. The parties engaged in a Suydam hearing, and the Court withheld approximately \$200,000 due to the onsite contamination; and

WHEREAS, following internal discussions, and discussions with NJDEP representatives, it was decided that MCMUA should proceed with a testing protocol to develop the information needed to support a Water Allocation Permit application; and

WHEREAS, in furtherance of the Water Allocation Permit application the MCMUA:

- a. drilled an 8" test well down 700 feet;
- b. performed a step pump test;
- c. drilled a 16" production well down 700 feet;
- d. performed an aquifer pump test;
- e. tested the water quality;
- f. analyzed the data and produced a report

WHEREAS, among things sought to be demonstrated by these tests was a minimum impact on surrounding wells and properties through the draw down of water by the well.

MCMUA was also obliged to address impact on the flow of the Rockaway River and the potential to draw contamination from area pollution sources; and

WHEREAS, while the Rockaway Basin Well project was the first implemented at the property, there were additional uses long planned, and preceding acquisition by the filing of the Declaration of Taking. Chief among these is the Scrub Oaks Mine Project which calls for the use of this site as a part of that project; and

WHEREAS, since 1997, the MCMUA had attempted to identify a site suitable for a mine water storage facility; and

WHEREAS, in May of 2000, the Farley property was identified as a logical site for the location of facilities to be a component part of the mine storage at the nearby Scrub Oaks mine. This project called for the pumping of water from the MCMUA's Flanders and Alamontong Wellfields to the site, as well as the drawing of water out of the Rockaway River purchased from the City of Newark and released by Newark from its upstream watershed. This water would then be pumped from the subject property to the nearby abandoned Scrub Oaks Mine for storage, treatment and release to the MCMUA System during summer months; and

WHEREAS, a meeting occurred on August 9, 2000 at the Farley property with Mr. Robert Canace of the New Jersey Geological Survey ("NJGS") who encouraged use of the nearby Scrub Oaks Mine and a project concept was developed between August 9, 2000 and February 8, 2001 together with meetings with representatives of the Bureau of Water Allocation and NJGS at NJDEP in Trenton; and

WHEREAS, as the result of these consultations with NJDEP, MCMUA instituted a program of mine investigation. On June 5, 2002 the MCMUA Engineer met with Mr. John Crimi (owner of the Scrub Oaks Mine property) to locate the mine entrance preparatory to the drilling of access through the mine entrance cap. On November 21, 2002, the MCMUA cored a hole into the mine and on December 17 and 18, 2002 remotely operated cameras were introduced into the mine. On September 16, 23 & 24 an air shaft into the mine was cored and another camera probe utilized; and

WHEREAS, on December 30, 2003 MCMUA Staff met at NJDEP with Michele Putnam, Director of the Division of Water Resources and Vince Monaco from the Bureau of Safe Drinking Water to discuss various topics including to review the status of the Scrub Oaks Mine project; and

WHEREAS, subsequent to acquisition of the Farley property and during 2004 the MCMUA Staff again met with Ms. Putnam and all of the relevant Bureau Chiefs to discuss regulatory approvals; and

WHEREAS, at the time the water harvesting facilities to be built at the Farley site represented an approach favored by the NJDEP, and as a result MCMUA Staff and officers were

invited to meet with NJDEP Commissioner Campbell who authorized a matching grant of \$500,000 to MCMUA to further the project; and

WHEREAS, the potential success of the Scrub Oaks Mine project may have negated the need for the Rockaway Basin Well; and

WHEREAS, upon further investigation, NJDEP deemed the safe yield much less than would economically make sense to proceed with the Scrub Oaks Mine project and is unfeasible at this time; and

WHEREAS, on December 6, 2006, however, the MCMUA received from the Bureau of Water Allocation a Draft Report recommending denial of the MCMUA's permit for the proposed Rockaway Basin Well based upon various findings including that the Property is not suitable for a groundwater well due to environmental contamination considerations related to the Picatinny Arsenal contamination plume, the adjacent Roxbury Auto Wreckers property and proximity to several other sites which are on the NJDEP's inventory of Contaminated Sites lying within a mile of the Property; and

WHEREAS, an additional concern cited in the Draft Report included a depletion of the water supplying the Boonton Reservoir, the source of water for Jersey City; and

WHEREAS, on December 14, 2006 the MCMUA requested additional time to submit comments to the Draft Report and an opportunity to meet in person with members of the NJDEP regarding the basis for the recommendations; and

WHEREAS, on January 9, 2007 the NJDEP denied the MCMUA's request for a meeting but extended the comment period to February 16, 2007; and

WHEREAS, following consultations with Robert Canase at NJGS on February 9, 2007 the MCMUA determined that its response to the Draft Report will be to pursue a possible amendment to the MCMUA application, reducing the requested rate from 800 gpm to 400 gpm; and

WHEREAS, this amended application would require pump tests and modeling at this reduced rate to determine if it would create the same potential to draw contamination from the Picatinny Arsenal, the Roxbury Auto Wreckers site adjacent to the subject property and other properties in the area; and

WHEREAS, in addition to this testing, the MCMUA would propose to meet with Jersey City officials to determine whether the reduced amount will impact their downstream use in an

unacceptable way; and WHEREAS, the goal of the additional testing and modeling was to determine if the reduced amount would simply reduce the negative impacts cited in the Draft Report or eliminate those concerns entirely; and

WHEREAS, another of the concerns cited in the Draft Report was the determination that there is a connection between the groundwater and surface water in the area near the historic contamination found at the Roxbury Auto Wreckers site adjacent to the subject property; and

WHEREAS, this connection was of concern because it could lead to migration of contamination found in the surface water or soil into the groundwater from which a well on the property would draw water; and

WHEREAS, it was expected that as a result of the concern of this connection between ground and surface water, as part of any revised application and modeling, the NJDEP would require that a monitoring well be installed between the site of the proposed well and the Roxbury Auto Wrecker's site to determine if in fact contamination would be drawn into the groundwater; and

WHEREAS, the MCMUA recognized that if the negative impacts are only reduced, and not eliminated and if Jersey City is not satisfied that its allocation will not be adversely impacted or the pumping results in the migration of contamination from surface water to groundwater at the Roxbury Auto Wrecker's site, then it would be unlikely that the MCMUA would receive approval of an amended application; and

WHEREAS, pending the results from the proposed testing to be done in support of the revised proposed allocation amount, there was no way to determine what the actual impact of the reduced amount will be and thus no way to predict the NJDEP's decision on a revised application; and

WHEREAS, one of the factors considered by the NJDEP in considering a water allocation permit was whether and to what extent the proposed use is consumptive of the water covered by the allocation, which means what amount is removed (diverted) without returning it to the basin from which it was removed; and

WHEREAS, many of the customers that would be supplied with the new diversion proposed by the MCMUA are connected to the Rockaway Valley Regional Sewerage Authority; and

WHEREAS, in systems with this type of customer base, residential and commercial users, approximately 80-85% of the diverted amount is ultimately discharged back into the system, either via on-site septic systems or discharged as treated effluent by the Sewerage Authority; and

WHEREAS, consequently, the MCMUA argued that the vast majority of the diverted water will be returned to the basin from which it would be removed, and would not be viewed as a 100% consumptive use; and

WHEREAS, formal denial of the Allocation Permit for the Rockaway Basin Well was received in August 2007 and cited impacts on the safe yield of the Jersey City reservoir and regional contamination plumes as the grounds for denial the Rockaway Basin Well allocation; and

WHEREAS, thereafter NJDEP advised the MCMUA that should it work out an arrangement with Jersey City Municipal Utilities Authority (“JCMUA”) regarding the use of a small portion of its capacity the NJDEP may look favorable on the permitting and development of the well; and

WHEREAS, based on NJDEP’s hydrogeologic analysis of the Rockaway Basin Well that results in a consumptive/depletive impact by the well upon the JCMUA Boonton Reservoir, the MCMUA successfully negotiated an agreement with JCMUA on April 30, 2013 to purchase and utilize 220 MGY of water volume which equals the consumptive/depletive impact; and

WHEREAS, thereafter additional modeling was requested by NJDEP to address its concerns with the migration of contamination at Picatinny Arsenal and the Roxbury Auto Wreckers sites; and

WHEREAS, the MCMUA contracted with Legette Brashears & Graham (“LBG”) to perform a model study, including a particle tracking report, of the Rockaway Basin Well’s impact on the contaminated sites at Picatinny Arsenal and Roxbury Auto Wreckers; and

WHEREAS, the LBG study determined that diversions from the proposed Rockaway Basin Well would not significantly affect local surface waters or contamination plumes; and

WHEREAS, NJDEP Bureau of Water Allocation and Well Permitting still had concerns that the proposed diversion could impact the nearby contaminated sites because drawdown was observed in the deep and shallow aquifer wells at the southern boundary of Picatinny Arsenal; and

WHEREAS, the Bureau advised that there is no known plans to contain the contamination plume, and that the Bureau is unable to approve any new diversions that would accelerate the migration of any contamination; and

WHEREAS, the proposed diversion would require a consistency determination from the New Jersey Highlands Council (the "Highlands Council"); and

WHEREAS, the Highlands Council identified that the HUC 14 in which the well is located has a water supply deficit, and that the Highlands Council is not permitted to issue a consistency determination for a diversion that would create or increase a water supply deficit; and

WHEREAS, in spite of these extensive efforts over a period of 18 years and the expenditure of more than Two Million Dollars, the NJDEP has not granted approval of the Rockaway Basin Well.

NOW, THEREFORE, BE IT RESOLVED by Morris County Municipal Utilities Authority as follows:

1. Based on the foregoing facts, which occurred over a course of nearly two decades, the MCMUA has made and has exhausted every possible effort to obtain permitted water allocation use from NJDEP of the Rockaway Basin Well situated in the Township of Roxbury and NJDEP has not permitted the use of the same.

2. MCMUA shall abandon any further efforts to seek a water allocation permit for the Rockaway Basin Well at this time.

3. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Morris County Municipal Utilities Authority at the Regular Meeting held on November 10, 2015

MORRIS COUNTY MUNICIPAL
UTILITIES AUTHORITY

By: _____
Christopher Dour, Chairman

ATTEST:

Marilyn Regner, Secretary

MOTION: Dr. Nusbaum made a Motion to adopt Resolution No. 15-71 to abandon further efforts by the MCMUA to seek a Water Allocation Permit from NJDEP for the Rockaway Basin Well Located At Block 10, Lots 38 and 39 In Roxbury Township and Block 602, Lot 7 In Wharton Borough and Ms. Szwak seconded the Motion.

As an update, Mr. Schweizer mentioned that we got some feedback after this was forwarded to the Board Members, and the following modifications were made to the resolution: On Page 1 we further identified the exact location of the well just in case another Rockaway Basin well surfaces; on page 5 there was a better connection between the Scrub Oaks Mine Project and the Rockaway Well relationship to bridge those concepts and a provision added on the second to last page just to make a reference to the dollars expended by the M.U.A. in its efforts to develop the well.

ROLL CALL: AYES: 7 NAYES: NONE ABSTENTIONS: NONE

Mr. Schweizer mentioned that the County abandoned its interest with developing the solar project on M.U.A.'s Alamontong Wellfield essentially because of the uncertainty involving the wetlands on that property.

There being no further Old Business, this portion of the meeting was closed.

NEW BUSINESS:

Mr. Schweizer asked for the Board's approval of the following Resolutions:

RESOLUTION NO. 15-72
RESOLUTION AUTHORIZING CONSERVATION PARTNERSHIP AGREEMENT
BY AND BETWEEN THE MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY
AND THE BOROUGH OF MENDHAM AND THE CONTRIBUTION OF \$111,250
FROM THE MCMUA SHARE OF THE MORRIS COUNTY OPEN SPACE FUND

WHEREAS, the Morris County Municipal Utilities Authority ("MCMUA") having been established by the Morris County Board of Chosen Freeholders pursuant to N.J.S.A. 40:14b-1 et seq., is empowered to take such steps as it deems necessary and appropriate to protect and preserve the water resources of the County of Morris; and

WHEREAS, in keeping with the implementation of such goals, the MCMUA seeks to enter into partnerships with other public entities and non-profit organizations in order to acquire land for such conservation and preservation purposes; and

WHEREAS, the Borough of Mendham desires to purchase a tract of land comprised of approximately 10.6 acres known as the Scott Farm property, to be protected in accordance with the terms and conditions of the Conservation Partnership Agreement by and between the Morris County Municipal Utilities Authority and the Borough of Mendham, in substantially the same form attached hereto (the "Protected Property"); and

WHEREAS, the parties acknowledge that the acquisition and conservation of the Protected Property is necessary and desirable given that it contains a headwaters stream to, and a section of, the North Branch of the Raritan River; and

WHEREAS, the parties acknowledge that the acquisition and conservation of the Protected Property will conserve the woodlands, exceptional resource value wetlands, and riparian values of the Protected Property; and

WHEREAS, the parties desire to retain the Protected Property in its natural state; and

WHEREAS, the MCMUA determines that it is in the best interest of the residents of Morris County and it is in furtherance of the purpose of the MCMUA to contribute the sum of \$111,250 (One Hundred Eleven Thousand Two Hundred Fifty Dollars) from its share of the Morris County Open Space Trust Fund toward the acquisition of the Protected Property, subject to this Resolution

Appendix C – Suburban Consultants Letter to NJDEP



March 24, 2017

State of New Jersey
Department of Environmental Protection
Mail Code 401-04Q
Bureau of Water Allocation & Well Permitting
401 E. State Street – P.O. Box 420
Trenton, New Jersey 08625-0420

Attn.: Carolyn Olynyk, Environmental Specialist 4

Re: Township of Randolph, County of Morris, State of New Jersey
Morris County Municipal Utilities Authority
Scrub Oaks Mine Well
SCRUB OAKS – Water Allocation Permit – Modification
Our File No.: SCE-R08266.011

Dear Ms. Olynyk:

This letter is being provided as a status report following our February 22, 2017 meeting held in Trenton at the New Jersey Department of Environmental Protection (NJDEP). The meeting was convened at the request of the Highlands Council (HC) as an opportunity to review our recent response to the technical and environmental concerns expressed by the HC during their review of the Scrub Oaks Well Allocation Permit Application. The HC has undergone several staff changes, and the makeup of the review team now is different than when the application was submitted. The NJDEP has suspended their review of the Allocation permit application in deference to the HC. As such, the HC is responsible for reviewing and rendering a determination concerning its consistency with the HC regulations prior to NJDEP review and approval.

At the May 2015 meeting with the NJDEP and HC, all parties expressed reasonable concerns regarding the creation of a new water supply source from the Scrub Oaks mine and noted that the application would have to address the typical parameters associated with permitting a new source. The HC specifically discussed the need for the application to align with the goals of the HC regulations, but the HC representatives did not identify any areas of concern for the Scrub Oaks Mine well that would prevent the new source from being permitted as initially proposed. That initial proposal was for a maximum diversion of 100 million gallons per year with the maximum withdrawal rate of 1 million gallons per day.

The tenor of the February 22, 2017 meeting was found to be far less supportive than that which was experienced back in 2015. During this meeting, we discussed the four (4) major areas of concern expressed by the HC in the consistency determination review. The HC representatives



also presented additional concerns that were not identified in previous correspondence and meetings. The additional concerns expressed were:

- Due to the nature of this project, a full HC approval is required as well as a public hearing.
- HC was concerned about potential impacts to Mine Hill, Wharton, and political implications of this project with local government offices.
- HC questioned the availability of water from Southeast Morris County Municipal Utilities Authority (SMCMUA) and the opportunity to purchase additional allocation. This would need to be addressed in a thorough alternatives analysis.

The following concerns expressed by the HC were discussed at the meeting:

- I. ***Need for the water*** – The HC did not find the information provided in SCE's written response sufficient to demonstrate the need for additional Water supply in Morris County. Surprised by that response, SCE polled all attendees and asked if anyone in the room disagreed with the notion that additional water supply is needed with in Morris County. To that question, no objections were voiced, however, HC representatives still requested more information. Additional information requested included an extensive list of projects including the location, schedule, projected water demands, and why additional allocation is necessary, as well as an extensive alternatives analysis to more completely demonstrate the need for a new source. The HC questioned the availability and opportunity to purchase additional allocation from SMCMUA to meet the needs of Morris County Municipal Utilities Authority (MCMUA). SCE reminded the HC that MCMUA currently has agreements for the purchase of allocation from SMCMUA and, to our knowledge, SMCMUA does not have an excess allocation available for purchase. Nevertheless, the MCMUA has and will continue to discuss future agreements with SMCMUA.
- II. ***Mitigation strategies to address net water availability deficit*** – To this point, SCE presented some operating scenarios that could be implemented whereby the net water availability assessment for the Rockaway/Stephens Brook sub watersheds would not be impacted, thereby demonstrating MCMUA can effectively mitigate the new diversion from a deficit watershed. HC representatives were more interested in MCMUA's approach on how they might compel customers to implement other mitigation strategies such as water conservation and enhanced recharge through stormwater management, even advocated modification of existing contracts, SCE reminded the HC that MCMUA has no authority or enforcement mechanism over municipal ordinances and water users. This point appears to be lost on the HC reviewers, and they are more interested in a Water Use Conservation and Management plan being prepared by the MCMUA as a tool for mitigation. HC referenced that grant monies are available to their conforming municipalities for the preparation of

such a plan, however, no further direction, support or confirmation was provided, leaving MCMUA to shoulder this additional burden.

III. *Characteristics of recharge to the mine* – SCE acknowledged that other than the January through April 2007 mine diversion and recharge test, there is no further data or evidence to support recharge rates that may occur at other times of the year. SCE suggested to the HC that limited operating diversions and recharge events could be initially undertaken to further provide evidence and build a basis on which greater diversions and recharge could be allowed under the Allocation permit conditions. This discussion provided the HC no better information, and it was observed there was no willingness on their part to advance the Allocation Permit application with such conditions. We discussed the proposed operation scenarios which would utilize the Scrub Oaks Mine during the winter months allowing a reduction of diversions from the Alamatong wells. This operating scenario would require the modification of the existing Water Allocation Permit. Representatives from NJDEP Water Allocation expressed concerns and the inability to revise those existing permits, citing existing wastewater treatment facilities in the area would be impacted, and meeting Total Maximum Daily Load (TMDL) limits in the Drakes Brook would cause strain on those facilities. The discharge from those facilities requires a certain amount of ground water to account for dilution, and modification of current diversion rates would impact those calculations. SCE questioned this practice but was advised obtaining a modification to the existing Water Allocation Permit from the Alamatong Well Field would be difficult.

IV. *Structural condition of the mine* – SCEs pointed out the extensive structural analysis that was conducted in the original report concluding that mine levels two through twelve are structurally stable and that the only area of concern was level one, which resides primarily under the powerline right-of-way approximately 150 feet below the surface. A much more significant and costly structural analysis and conclusions as to the level one stability during water withdrawal and recharge would be necessary to be provided to satisfy these concerns. The HC expressed concern on behalf of the Mine Hill municipality that such unknowns could be problematic, especially if brought up during the HC consistency determination public hearing process and or the NJDEP Allocation hearing process. NJDEP did advise that their response to any concerns about mine structural integrity is that they do not regulate such areas of concern.

We discussed and described an alternative interim approach as an opportunity to operate the well and obtain additional information on the performance and conditions of the Scrub Oaks Mine. These alternatives include pumping into the Rockaway River to provide an emergency drought response operation. The NJDEP water allocation representatives indicated they would not

March 24, 2017



consider any withdrawal of water or operation of the Scrub Oaks Mine until a favorable consistency determination was granted by the HC.

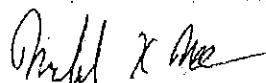
Overall, this meeting was particularly concerning as there were several representatives from NJDEP branches present as well as representatives from the HC, all of which are highly respected water industry professionals gathered to discuss a solution to the water supply constraints affecting Morris County. The responses consisted of efforts focused on proving this option was not feasible or aligned sufficiently with the multitude of conflicting policies and regulations. It appears that MCMUA is the only entity attempting to plan for the future needs of our service area. The need for a statewide water supply master plan was reiterated by MCMUA, and its delinquency is a painful reminder of what the water industry is up against in attempting to meet the needs of a growing population.

To the extent that our response to these four (4) major areas of concern has failed to satisfy the HC representatives, who play a pivotal role in the success of the Allocation Permit application, SCE cannot in good faith recommend MCMUA invest any additional resources toward the Scrub Oaks Mine Well Supply project. The level of cooperation and assistance demonstrated at this meeting should be looked upon as an indicator of what can be expected moving forward. I have no confidence that a successful diversion from the Scrub Oaks Mine well can be obtained.

On behalf of the MCMUA, we are withdrawing our Water Allocation Permit Application at this time and will not be pursuing the use of the Scrub Oaks Mine Well as a new water supply source.

If you have any questions or wish to further discuss this, please contact me.

Very truly yours,
SUBURBAN CONSULTING ENGINEERS, INC.

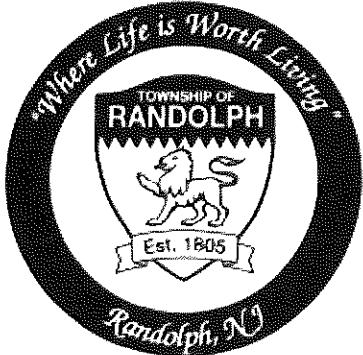


Andrew S. Holt, PE
Principal Engineer

Enclosures: Meeting Sign-In Sheet

cc: Glenn Schweizer, MCMUA Executive Director

Appendix D – Randolph Township Short Term Demand Update



Township of Randolph

Municipal Building

Millbrook Avenue, Randolph, NJ, 07869-3709

MEMORANDUM

DATE: February 2, 2018

TO: Paul Ferriero, Township Engineer

FROM: Darren Carney, Planning and Zoning Administrator *PC*

SUBJECT: Randolph Township Declaratory Judgment Action

I have reviewed Table 3.2-Potential Buildout Water Demands Projections from the Water Master Plan. The estimated public water demand in the OL zone is for Block 44, Lot 4 (LYS/Sporn/Toll intervener site) vacant property only. The American Properties (Block 44, Lot 13) and Canoe Brook (Block 44, Lot 25) intervener sites are not included in the OL public water demand calculation. The table also lists the vacant properties in the VCR zone as being served by private well however public water is available in this zone district.

When calculating short term future water demands, the 10 East Realty project should not be included as the application was dismissed last year for failure to prosecute. The following recently approved projects should be included:

Progress Properties Group, LLC
Block 18.01, Lot 1.11
Office/warehouse building (33,005sf)

The Heller Group, LLC
Block 119.03, Lot 1
Retail building (8,400 sf)

Sussex- Millbrook LLC d/b/a America Animal Hospital
Block 101, Lots 5,6,7
Convert existing animal hospital to kennel and construct addition (3,400 sf), construct new animal hospital (7,140 sf), construct new retail building (2,000 sf)

Elbaum Homes
Block 137, Lot 12
Office building (3,865sf)

APPENDIX D:
MANDATORY SET-ASIDE ORDINANCE
(DRAFT, UNADOPTED)

TOWNSHIP OF RANDOLPH, MORRIS COUNTY

ORDINANCE No. _____

AN ORDINANCE OF THE TOWNSHIP OF RANDOLPH TO ENSURE THAT ANY SITE THAT BENEFITS FROM A REZONING, VARIANCE OR REDEVELOPMENT PLAN APPROVED BY THE TOWNSHIP OR A TOWNSHIP LAND USE BOARD THAT RESULTS IN MULTI-FAMILY RESIDENTIAL DEVELOPMENT OF FIVE (5) DWELLING UNITS OR MORE PRODUCES AFFORDABLE HOUSING AT A SET-ASIDE RATE OF 20% FOR FOR-SELL AFFORDABLE UNITS AND AT A SET-ASIDE RATE OF 15% FOR RENTAL AFFORDABLE UNITS.

Section 1. Purpose

This Ordinance is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Township or a Township Land Use Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. This Ordinance shall apply except where inconsistent with applicable law. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Township of Randolph to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

Section 2. Mandatory Set-Aside Ordinance

If the Township or a Township Land Use Board permits the construction of multi-family or single-family attached residential development, the Township or the Township's Land Use Board shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Ordinance to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Township's Land Use Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. Nothing in this paragraph precludes the Township or the Township's Land Use Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15 percent. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Township's Settlement Agreement dated XX, 2019, or in the Township's Housing Element and Fair Share Plan, to be heard by the Township Planning Board for adoption on XX, 2019 and to be heard for endorsement by the Township Council on XX, 2019, for which density and set-aside standards shall be governed by the specific standards set forth therein.

Furthermore, this section shall not apply to developments containing four (4) or less dwelling units. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section. Where a developer demolishes existing dwelling units, and builds new dwelling units on the same site, or expands an existing building, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.

Section 3. Repealer

The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

Section 4. Inconsistent Ordinances

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

Section 5. Severability

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

Section 6. Effective Date

This Ordinance shall take effect upon its passage and publication according to law.

INTRODUCED the _____ day of _____, 2019.

ADOPTED the _____ day of _____, 2019.

ATTEST:

Donna Luciani, Township Clerk

James B. Loveys, Mayor

APPENDIX E:
AFFORDABLE HOUSING ORDINANCE
(DRAFT, UNADOPTED)

TOWNSHIP OF RANDOLPH, MORRIS COUNTY

ORDINANCE No. _____

AN ORDINANCE TO REPEAL §15-20.5, -20.6, and -20.7 IN ARTICLE III (ZONING) OF CHAPTER XV (LAND DEVELOPMENT ORDINANCES) OF THE TOWNSHIP OF RANDOLPH, AND TO ENACT ARTICLE IX (15-108 AFFORDABLE HOUSING) IN CHAPTER XV (LAND DEVELOPMENT ORDINANCES) OF THE ORDINANCES OF THE TOWNSHIP OF RANDOLPH

WHEREAS, in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), the Township of Randolph filed an action for declaratory judgment requesting that the Court declare that Randolph has complied with its constitutional obligation to provide a realistic opportunity for the development of housing that is affordable to low- and moderate-income families and individuals; and

WHEREAS, in order to carry out such Constitutional obligation, the Ordinances of the Township of Randolph are to be amended to include provisions addressing Randolph's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to provide assurances 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 those units; and

WHEREAS, this Ordinance shall apply except where inconsistent with applicable law; and

WHEREAS, the Randolph Township 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.; and

WHEREAS, the Housing Element and Fair Share Plan have been endorsed by the governing body; and

WHEREAS, this Ordinance implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985;

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Randolph as follows:

SECTION 1. §15-20.5 (Income eligibility requirements for housing in the R-5 residential district), §15-20.6 (Affirmative marketing program), and §15-20.7 (Controls on affordability) of 15-20 (R-5 Multi-Family Residential Zone) in Article III (Zoning) of Chapter XV (Land Development Ordinances) of the Ordinances of the Township of Randolph are hereby repealed.

SECTION 2. Article IX (Affordable Housing) in Chapter XV (Land Development Ordinances) of the Ordinances of the Township of Randolph is hereby enacted as follows:

Section 1. Purpose

The purpose of this Ordinance is to provide for and regulate affordable housing in the Township.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

“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.) as has been subsequently amended.

“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, applicable COAH regulations and the Uniform Housing Affordability Controls (UHAC)(N.J.A.C. 5:80-26.1 et seq.)

“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 by COAH in its applicable regulations or an equivalent controlling New Jersey state agency; 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 housing development” means a development included in the Township’s Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in the Township’s Fair Share Plan prepared or implemented to address the Township’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to applicable COAH regulations, the FSHC Settlement Agreement, or an order of the Court.

“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 percent 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.

“Alternative living arrangement” means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

“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 New Jersey Council on Affordable Housing.

“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.

“Inclusionary development” means a development containing both affordable units and market rate units. Inclusionary developments must have a twenty (20) percent set aside of affordable units if the development has five or more units and is a for-sale project, or a fifteen (15) percent set-aside if the development is a rental project. 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 percent 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 the Department.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent 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 percent of the regional median as defined by the Department’s adopted Regional Income Limits published annually by the Department.

“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 UHORP 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 percent 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. Applicability

- (a) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Randolph pursuant to the Township's 2019 Third Round Housing Element and Fair Share Plan.
- (b) Moreover, the provisions of this Ordinance shall apply to all developments that contain very low-, low-, and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units, which shall comply with the income and bedroom distribution requirements of this Ordinance.

Section 4. Affordable Housing Programs

- (a) **Phasing.** Inclusionary developments shall be subject to the following schedule, except where an alternate phasing schedule has been incorporated into a development or redevelopment agreement:

Minimum Percentage of Low- and Moderate-Income Units Completed	Maximum Percentage of Market-Rate Units Completed
0%	25%
10%	25% + 1 Unit
50%	50%
75%	75%
100%	90%

- (b) **Fractional Units.** If 15 or 20 percent of the total number of units in a development (or the set-aside, as applicable) results in a fraction or decimal, the developer shall be required to provide an additional affordable unit on site.

Example: an 8-unit development requiring an affordable housing set-aside of 1.6 units is proposed. The developer is required to provide two on-site affordable units.

- (c) **Integration of Affordable Units.** In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market rate units.

(d) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 5. New Construction

The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

(a) 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.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units. If there is only one affordable unit it must be a low income unit.
3. Thirteen percent (13%) of all affordable units in the Township, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, shall be designated as very-low income households at 30% of the median income, with at least fifty percent (50%) of all very-low income units being available to families. Very-low income units shall be considered low-income units for the purposes of evaluating compliance with the required low/moderate income unit splits, bedroom distribution, and phasing requirements of this ordinance.
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units are two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units, if any, 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.

(b) 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.
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:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
 - v. 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
 - vi. 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, or evidence that the Township of Randolph has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:
 - a. 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.
 - b. To this end, the builder of restricted units shall deposit funds within the Township's Affordable Housing Trust Fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.
 - c. The funds deposited under paragraph b. above shall be used by the Township of Randolph 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.
 - d. 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 Township.
 - e. 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 that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund and appropriately earmarked.
 - f. 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.

(c) 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 the New Jersey Department of Community Affairs (DCA) or other agency as required by the Court.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent 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.
 - a. At least thirteen percent (13%) of all low- and moderate-income dwelling units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent 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 used:
 - a. A studio 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 used:
 - a. A studio 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 percent 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 percent 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 percent 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 very-low, 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 very-low, 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 nine percent in any one 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. Utilities. 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 6. Affirmative Marketing Requirements

- (a) The Township of Randolph shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented. The initial Affirmative Marketing Plan shall include the following community and regional organizations: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, East Orange NAACP, Newark NAACP, Morris County NAACP and Elizabeth NAACP.
- (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 Housing Region 2 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 Housing Region 2.

- (d) The Administrative Agent designated by the Township of Randolph shall assure the affirmative marketing of all affordable units 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 Township.

Section 7. 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 separate bedrooms for adults and children;
 3. Provide children of different sex with separate bedrooms; and
 4. 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 8. 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, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Township of Randolph elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.

- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) 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.
- (f) 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 9. 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 10. 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 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. Very low income units shall be reserved for households with a gross household income of less than 30 percent of median income.
- (b) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit a moderate-income purchaser

to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

- (c) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (d) The 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 percent of the household's certified monthly income.

Section 11. 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 percent 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 12. 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, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Township of Randolph elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, et. al, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, et al as may be amended and supplemented, for at least 30 years.
- (b) 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 Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

(c) 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 13. 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 five percent 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 14. 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 percent of median income.
2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent 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 percent (40 percent 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 percent (40 percent 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 percent (40 percent 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 15. Administration

(a) The position of Municipal Housing Liaison (MHL) for the Township of Randolph is established by this ordinance. The Township shall make the actual appointment of the MHL by means of a resolution.

1. The MHL must be either a full-time or part-time employee of Randolph.
2. The person appointed as the MHL must be reported to the Court and thereafter posted on the Township's website.
3. The MHL must meet all the requirements for qualifications, including initial and periodic training, if such training is made available by COAH or the DCA.
4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Randolph, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the Township's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.

(b) The Township of Randolph shall designate by resolution of the Township Council, subject to the approval of the Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.

(c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

(d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18

thereof, and shall have authority to take all actions necessary and appropriate to carry out its responsibilities, which includes:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ);
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, though the ultimate responsibility for retaining controls on the units rests with the municipality.

Section 16. 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 municipality 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 municipality 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:
 - i. A fine of not more than \$2,000.00 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;
 - ii. 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 Township of Randolph Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. 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.

1. The municipality 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 municipality, 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 municipality 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 municipality 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 municipality 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 municipality 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 municipality 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 municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

(e) Foreclosure by the municipality 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 municipality 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 municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, 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 17. Alternative Living Arrangements

- (a) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- (b) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- (c) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

Section 18. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed with the Superior Court of New Jersey, Morris County.

Section 19. Repealer

The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

Section 20. Inconsistent Ordinances

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

Section 21. Severability

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

Section 22. Effective Date

This Ordinance shall take effect upon its passage and publication according to law.

INTRODUCED the _____ day of _____, 2019.

ADOPTED the _____ day of _____, 2019.

ATTEST:

Donna Luciani, Township Clerk

James B. Loveys, Mayor

APPENDIX F:
AFFIRMATIVE MARKING PLAN RESOLUTION
(DRAFT, UNADOPTED)

RESOLUTION OF THE TOWNSHIP OF RANDOLPH, COUNTY OF MORRIS, STATE OF NEW JERSEY ADOPTING AN AFFIRMATIVE MARKETING PLAN FOR THE TOWNSHIP OF RANDOLPH

WHEREAS, in accordance with applicable Council on Affordable Housing (“COAH”) regulations, the New Jersey Uniform Housing Affordability Controls (“UHAC”) (N.J.A.C. 5:80-26., et seq.), and the Township’s Declaratory Judgment action entitled In the Matter of the Application of the Township of Randolph for Declaratory Judgment, Docket No. MRS-L-1640-15, which was filed in response to Supreme Court decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (“Mount Laurel IV”), the Township of Randolph is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by rehabilitation, are affirmatively marketed to low and moderate income households, particularly those living and/or working within Housing Region 2, which encompasses the Township of Randolph.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Township of Randolph, County of Union, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

- A. All affordable housing units in the Township of Randolph shall be marketed in accordance with the provisions herein unless otherwise provided in N.J.A.C. 5:93-1, et seq.
- B. The Township of Randolph has a Third Round obligation. This Affirmative Marketing Plan shall apply to all developments that require an Affirmative Marketing Plan or will contain low and moderate income units, including those that are part of the Township’s current Housing Element and Fair Share Plan, and those that may be constructed in future developments not contemplated in the Township’s Housing Element and Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for identified rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent under contract to the Township of Randolph. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developer/seller/owner of the affordable unit(s).
- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Township, shall undertake all of the following strategies:
 1. Publication of one advertisement in a newspaper of general circulation within the housing region.
 2. Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.
 3. At least one additional regional marketing strategy using one of the other sources listed below.

E. 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 or sponsor 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 Housing Region 2 in which the Township is located and covers the entire period of deed restriction for each restricted housing unit.

F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:

1. All newspaper articles, announcements and requests for application for low and moderate income units shall appear in the Randolph Reporter and the Daily Record.
2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Township's Administrative Agent.
3. The advertisement shall include a description of the:
 - i. Location of the units;
 - ii. Direction of the units;
 - iii. Range of prices for the units;
 - v. Size, as measured in bedrooms, of units;
 - vi. Maximum income permitted to qualify for the units;
 - vii. Location of applications;
 - viii. Business hours when interested households may obtain an application; and
 - ix. Application fees.
4. Newspaper articles, announcements and information on where to request applications for low and moderate income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented weekly newspapers within the region, one of which shall be circulated primarily in Morris

County and the other two of which shall be circulated primarily outside of Morris County but within the housing region.

5. Four or more of the following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:

Cable Television Stations

- i. 2 WCBS-TV - CBS Broadcasting Inc.
- ii. 3 KYW-TV - CBS Broadcasting Inc.
- iii. 4 WNBC - NBC Telemundo License Co. (General Electric)
- iv. 5 WNYW - Fox Television Stations, Inc. (News Corp.)
- v. 7 WABC-TV - American Broadcasting Companies, Inc (Walt Disney)
- vi. 9 WWOR-TV - Fox Television Stations, Inc. (News Corp.)
- vii. 11 WPIX - WPIX, Inc. (Tribune)
- viii. 13 WNET - Educational Broadcasting Corporation
- ix. 25 WNYE-TV - New York City Dept. of Info Technology & Telecommunications
- x. 31 WPXN-TV - Paxson Communications License Company, LLC
- xi. 41 WXTV - WXTV License Partnership, G.p. (Univision Communications Inc.)
- xii. 47 WNJU - NBC Telemundo License Co. (General Electric)
- xiii. 50 WNJN - New Jersey Public Broadcasting Authority
- xiv. 52 WNJT - New Jersey Public Broadcasting Authority
- xv. 54 WTBY-TV - Trinity Broadcasting Of New York, Inc.
- xvi. 58 WNJB - New Jersey Public Broadcasting Authority
- xvii. 62 WRNN-TV - WRNN License Company, LLC
- xviii. 63 WMBC-TV - Mountain Broadcating Corporation
- xix. 68 WFUT-TV - Univision New York LLC

- xx. 22 WMBQ-CA - Renard Communications Corp.
- xxi. 66 WFME-TV - Family Stations of New Jersey, Inc.
- xxii. 21 WLIW - Educational Broadcasting Corporation
- xxiii. 60 W60AI - Ventana Television, Inc

Regional Radio Stations (AM)

- i. WMCA 570
- ii. WNYC 820
- iii. WCBS 880
- iv. WPAT 930
- v. WWDJ 970
- vi. WINS 1010
- vii. WEPN 1050
- viii. WKMB 1070
- ix. WBBR 1130
- x. WLIB 1190
- xi. WMTR 1250
- xii. WADO 1280
- xiii. WNSW 1430
- xiv. WJDM 1530
- xv. WQEW 1560
- xvi. WWRU 1660
- xvii. WCTC 1450

Regional Radio Stations (FM)

- i. WBGO 88.3

- ii. WSOU 89.5
- iii. WKCR-FM 89.9
- iv. WFMU 91.1
- v. WNYE 91.5
- vi. WSKQ-FM 97.9
- vii. WBAI 99.5
- viii. WDHA -FM 105.5
- ix. WCAA 105.9
- x. WBLS 107.5
- xi. WPRB 103.3
- xii. WMGQ 98.3
- xiii. WCTO 96.1

6. Applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

- i. Township Municipal Building
520 Millbrook Avenue, Randolph, NJ 07869
- ii. Randolph Township Public Library
28 Calais Road, Randolph, NJ 07869
- iii. Township Website
<http://www.randolphnj.org/>
- iv. Developer's Sales/Rental Office
- v. Morris County Administration Building
10 Court Street, Morristown, NJ 07960

Applications shall be mailed by the Administrative Agent to the prospective applicants upon request. Also, applications shall be made available at the developer's sales/rental office and shall be mailed to prospective applicants upon request.

7. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Essex, Morris, Union, and Warren Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers (See Attachment A).

i. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

Union County Board of Realtors

Morris County Board of Realtors

Essex County Board of Realtors

Warren County Board of Realtors

ii. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies in the counties of Essex, Morris, Union, and Warren:

Welfare or Social Service Board

Rental Assistance Office (local office of DCA)

Office on Aging

Housing Authority Community

Action Agencies

Community Development Departments

iii. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all the major employers within the region as listed on Attachment A in accordance with the Region 2 Affirmative Marketing Plan.

iv. Quarterly informational circulars, applications, and copies of press releases and advertisements of the availability of low and moderate income housing shall be sent to the following additional community and regional organizations:

Fair Share Housing Center

New Jersey State Conference of NAACP

The Latino Action Network

East Orange NAACP

Newark NAACP Morris

County NAACP

Elizabeth NAACP

Morris County NAACP

Supportive Housing Association

New Jersey Housing Resource Center of the NJ HMFA

8. A random selection method to select occupants of low and moderate income housing will be used by the Administrative Agent in conformance with N.J.A.C. 5:80-26.16(l). The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2 comprised of Essex, Morris, Union, and Warren Counties.
9. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify low and moderate income households; to place income eligible households in low and moderate income units upon initial occupancy; to provide for the initial occupancy of low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26.1, et seq.
10. The Administrative Agent shall provide or direct qualified low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
11. All developers/owners of low and moderate income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.
12. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance

of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all low income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary.

13. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq. and the Order granting the Township a Final Judgment of Compliance and Repose.

Donna Luciani
Township Clerk

Attachment A

Employer Outreach: Names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing

Essex County

Continental Airlines
1 Newark Airport
Newark, NJ 07102

Newark Liberty International Airport
Newark Airport
Newark, NJ 07102

Verizon Communications
540 Broad St
Newark, NJ 07102

University of Medicine/Dentistry
Office of Marketing & Media Relations
150 Bergen Street, Room D347
Newark, NJ 07103

Public Service Enterprise Group
80 Park Plz
Newark, NJ 07102

Prudential Insurance & Prudential Financial
751 Broad St
Newark, NJ 07102

Horizon Blue Cross & Blue Shield of NJ
3 Raymond Plz W
Newark, NJ 07102

Horizon Blue Cross & Blue Shield of NJ
540 Broad St
Newark, NJ 07102

Morris County

Atlantic Health System-Morristown
Memorial Hospital
100 Madison Avenue
Morristown, NJ 07962

AT&T
295 N Maple Ave
Basking Ridge, NJ and
180 Park Ave, Florham Park, NJ

Pfizer
5 Woodhollow Rd
Parsippany and
175 Tabor Rd
Morris Plains

US Army Armament R&D
21 Picatinny Arsenal
Picatinny Arsenal, NJ

Lucent Technologies
67 Whippany Rd
Whippany, NJ and
475 South St
Morristown, NJ and
5 Wood Hollow Rd
Parsippany, NJ and
24 Mountain Ave
Mendham, NJ

Novartis Pharmaceutical
59 State Route 10
East Hanover, NJ

Mennen Sports Arena
161 E Hanover Ave
Morristown, NJ

Kraft foods
200 Deforest Ave
East Hanover, NJ and
7 Campus Dr
Parsippany, NJ

A&M Industrial Supply Co
1414 Campbell St
Rahway, NJ

Bristol-Myers Products Research &
Development
1350 Liberty Ave
Hillside, NJ

Cede Candy Inc
1091 Lousons Road
PO Box 271
Union, NJ

Comcast Network
800 Rahway Ave
Union, NJ

HoneyWell Inc.
1515 West Blancke Street
Bldgs 1501 and 1525
Linden, NJ

Union County College
1033 Springfield Ave, Cranford, NJ

Honeywell
101 Columbia Rd
Morristown, NJ 07960

St. Clare's Hospital
130 Powerville Road
Boonton Township, NJ 07005 and
25 Pocono Road
Denville, NJ 07834 and
400 West Blackwell Street
Dover, NJ 07801 and
3219 Route 46 East, Suite 110
Parsippany, NJ 07054

Union County

IBM Corporation
27 Commerce Drive
Cranford, NJ

Howard Press
450 West First Ave
Roselle, NJ

Lucent Technologies
600 Mountain Ave
Murray Hill, NJ

Merck & Co. Inc
1 Merck Drive
PO Box 2000 (RY60-200E)
Rahway, NJ

Rahway Hospital
865 Stone Street
Rahway, NJ

Rotuba Extruders, Inc
1401 Park Ave South
Linden, NJ

Warren County

Masterfoods USA
800 High Street
Hackettstown, NJ

Warren Hospital
185 Roseberry St
Phillipsburg, NJ

Roche Vitamins
206 Roche Drive
Belvidere, NJ

Hackettstown Hospital
651 Willow Grove St.
Hackettstown, NJ

Pechiney
191 Route 31
North Washington, NJ

Lopatcong Care Center
390 Red School Lane
Phillipsburg, NJ

Mallinckrodt/Baker, Inc
222 Red School Lane
Phillipsburg, NJ

DRAFT

**APPENDIX G.:
AMENDED DEVELOPMENT FEE ORDINANCE
(DRAFT, UNADOPTED)**



TOWNSHIP OF RANDOLPH, MORRIS COUNTY

ORDINANCE No. _____

AN ORDINANCE AMENDING §15-91.3 (DEVELOPMENT FEES FOR LOW AND MODERATE INCOME HOUSING) OF ARTICLE VII (ADMINISTRATION, ENFORCEMENT, AND FEES) OF THE CHAPTER 15 (LAND DEVELOPMENT ORDINANCES) OF THE TOWNSHIP ORDINANCES CODE, BY REPEALING AND REPLACING EXISTING SECTION 91.3 IN ITS ENTIRETY

BE IT ORDAINED, by the Mayor and the Township Council of the Township of Randolph, in the County of Morris, State of New Jersey, that Section 15-91.3 of Article VI of Chapter 15 of the Township Ordinances, entitled "Development Fees for Low and Moderate Income Housing" is hereby amended as follows:

SECTION I. Existing Section 15-91.3 is hereby repealed and replaced in its entirety with the following new Section 15-91.3 to be entitled "Affordable Housing Development Fees" which shall read as follows:

Chapter 15-91.3. AFFORDABLE HOUSING DEVELOPMENT FEES

1. Purpose

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's(COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordanceP.L.2008, C.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

2. Basic requirements

- a) This ordinance shall not be effective until approved by the Court pursuant to N.J.A.C.5:93-8.1(b).
- b) The Township of Randolph shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.9.

3. Definitions

- a. The following terms, as used in this ordinance, shall have the following meanings:
 - i. "*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 percent affordable development.
 - ii. "*Court*" or "*Court approved entity*" means the entity that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State pursuant to the Supreme Court decision issued in Mount Laurel IV on March 10, 2015.
 - iii. "*Development fee*" means money paid by a developer for the improvement of property as permitted in NJ.A.C. 5:93-8.
 - iv. "*Developer*" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
 - v. "*Equalized assessed value*" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
 - vi. "*Green building strategies*" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

4. Residential Development Fees

- a) Imposed fees
 - i. Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5) percent of the equalized assessed value for residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
 - ii. When an increase in residential density pursuant to N.J .S.A. 40:55D-70d(5)(known as a "d" variance) has been permitted, developers may be required to pay a development fee of six (6) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the

base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
 - i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
 - iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
 - iv. Developers of residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.

5. **Non-Residential Development Fees**

- a) Imposed fees
 - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5) percent

shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

- b) Eligible exactions, ineligible exactions and exemptions for non-residential development
 - i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
 - ii. The two and one-half (2.5) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - iii. Non-residential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
 - iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
 - v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township of Randolph as a lien against the real property of the owner.

6. Collection Procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the zoning officer official responsible for coordinating with the State Construction Office for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDE "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor

shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within ninety (90) days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within ten (10) business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should the Township of Randolph fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) Appeal of development fees
 - i. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of Randolph. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - ii. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Randolph. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing Trust Fund

- a) A Development Fee Ordinance creating a dedicated revenue source for affordable housing was adopted by the Township on December 23, 2008, by way of Ordinance No. 30-2008; and subsequently amended on July 6, 2010, by Ordinance No. 10-2010. Said Development Fee Ordinance established the Township's Affordable Housing Trust Fund. All development fees and interest generated by the fees are deposited in a separate interest-bearing Affordable Housing Trust Fund at Provident Bank, located at 1185 Sussex Turnpike, in Randolph Township, for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow and is to be maintained by the Chief Financial Officer.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - i. Payments in lieu of on-site construction of affordable units;
 - ii. Developer contributed funds to make ten (10) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - iii. Rental income from municipally operated units;
 - iv. Repayments from affordable housing program loans;
 - v. Recapture funds;
 - vi. Proceeds from the sale of affordable units; and
 - vii. Any other funds collected in connection with the Township of Randolph's affordable housing program.
- c) In the event of a failure by the Township of Randolph to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services, to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Randolph, or, if not practicable, then within the County or the Housing Region.
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

8. Use of Funds

- a) The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of Randolph's fair share obligation and maybe set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or

purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving, and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16 and specified in the approved spending plan.

- b) Funds shall not be expended to reimburse the Township of Randolph for past housing activities unless authorized by the Court.
- c) At least thirty (30) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30) percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - ii. Affordability assistance to households earning thirty (30) percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30) percent or less of median income.
 - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) The Township of Randolph may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to

the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

- a) The Township of Randolph shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Township), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Township owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with the Township's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

10. Ongoing Collection of Fees

- a) The ability for the Township of Randolph to impose, collect and expend development fees shall expire with the expiration of the repose period granted by the Court unless the Township of Randolph has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance and Repose from the Court or substantive certification or its equivalent from an appropriate State administrative agency, and has received approval of its development fee ordinance. If the Township of Randolph fails to renew its ability to impose and collect development fees prior to the expiration of its repose period or substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The Township of Randolph shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Township of Randolph retroactively impose a development fee on such a development.

DATE: _____

Donna Luciani
Township Clerk

APPENDIX H:
AMENDED SPENDING PLAN
(DRAFT, UNADOPTED)

TOWNSHIP OF RANDOLPH
AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

I. INTRODUCTION

The Township of Randolph, Morris County, has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301). A Development Fee Ordinance creating a dedicated revenue source for affordable housing was initially approved by COAH on May 6, 1992, and adopted by the municipality on June 4, 1992. The Township amended this Ordinance after its initial adoption, by Ordinance No. 6-00 on March 2, 2000 and by Ordinance No. 31-05, on July 7, 2005. The most recent Development Fee Ordinance was approved by COAH on February 24, 2011. The ordinance establishes the Township of Randolph affordable housing trust fund for which this spending plan is prepared. Said Development Fee Ordinance established the Township's Affordable Housing Trust Fund. Finally, this Spending Plan has been prepared as part of the Housing Element and Fair Share plan.

As of May 1, 2019, the Township had a balance of \$649,032.58 in the Affordable Housing Trust Fund, which is resulting from a cumulative collection of \$2,411,933.75 and an expenditure of \$1,762,901.17 from 1992 to present. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing Affordable Housing Trust Fund at Provident Bank, located at 1185 Sussex Turnpike in the Township of Randolph, for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the Third Round prospective need period (2015-2025), the Township considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Currently, there are no actual or committed payments in lieu of construction from any developer, although such payments may be collected in the future.

(c) Other funding sources:

Funds from other sources have not been collected.

(d) Projected interest:

Interest on the projected revenue in the municipal Affordable Housing Trust Fund at the current average interest rate 0.50% simple interest.

2. REVENUE PROJECTION

The Township of Randolph, as reported by the New Jersey Department of Community Affairs (NJDCA) Construction Code Reporter, issued sixty-six (66) permits authorizing the new construction of 1 and 2 family housing units during 2017; as well as, building permits for 2,256 square feet of Group A-2 type building space and 72 square feet of Group A-3 type building space. Additionally, in 2016, the Township issued thirty (30) permits authorizing the new construction of 1 and 2 family housing units; as well as, building permits for 12,627 square feet of new construction office space and 584 square feet in addition to existing office space; 2,669 square feet of Group A-3 type building space; 12,238 square feet of institutional use; and 4,800 square feet of storage use; and 8,251 square feet of institutional use.

The Township anticipates issuing permits authorizing approximately one hundred (100) units over the balance of the prospective third round period (2019-2025). This estimated projection is based on the fact that in the preceding 10 year period (2006-2015), the Township issued permits authorizing the new construction of 165 housing units that were largely related to 1 and 2 family and mixed-use housing projects.

The projection of development fees realized from residential development requires the application of the Township's equalization rate and establishment of an average equalized assessed value for housing. The Township's equalization rate for 2019 was 95.16% and the average residential assessment in the Township is \$487,500. Dividing the average value of housing by the equalization rate yields the average equalized assessed value for housing, being thusly \$512,295 (\$487,500/0.9516). As this plan assumes the approximate development of an estimated 100 units over the prospective remainder of the Third Round period, the Township may potentially realize a development fee collection of \$768,442 – this is based on the multiplication of average equalized housing value of \$678,487 x 100 units x the residential development fee of 1.5% of equalized assessed value.

The Township may also receive nonresidential development fees pursuant to N.J.S.A. 40:55D-8.1 et. seq, under which a fee equal to (i) 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or (ii) 2.5% of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes, is to be paid.

While the Township has collected non-residential development fees since the initial adoption of its Development Fee Ordinance in 1992, more recent date from 2014 to 2018 was used to determine projections for non-residential development fees. The basis for utilizing these years is because they are more recent, and because non-residential development fees were not collected between 2010 and 2013 and the Stimulus Act refunded fees in 2009. Since 2014, non-residential development fees in the amount of \$12,317.30 have been collected, which represents an average of \$2,463.46 per year. It is anticipated that the Township will therefore collect \$14,780.76 through 2025. Any such funds will be used to help fund (i) the Township's Rehabilitation Program, (ii) future affordable housing projects, including future group homes, (iii) Affordability Assistance, and (iv) Administrative costs.

The Township, as of May 2019, had an amount of \$649,032.58 in the Affordable Housing Trust Fund. When adding the potential development fee collection amount of \$783,222.76 and account interest of \$3,916.11 (assuming a 0.50% fixed interest rate), a projected total development fee revenue of \$787,138.87 results. Combined with the existing funds, this results in a total of \$1,436,171.45.

TABLE 1: PROJECTED REVENUES HOUSING TRUST FUND TOWNSHIP OF RANDOLPH, MORRIS COUNTY, NEW JERSEY									
SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND – JUNE 1, 2019 THROUGH JUNE 30, 2025								
	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development fees (existing):	\$649,032								\$649,032
1. Approved Development									
2. Development Pending Approval									
3. Projected Development		\$119,681	\$239,362	\$239,362	\$239,362	\$239,362	\$239,362	\$119,680	\$783,222
(b) Payments in Lieu of Construction									
(c) Other Funds									
(d) Interest *		\$326	\$653	\$653	\$653	\$653	\$652	\$326	\$3,916
Total	\$649,032	\$120,007	\$240,015	\$240,015	\$240,015	\$240,015	\$240,014	\$120,006	\$1,436,171

*Table assumes a 0.50% fixed interest rate

The Township of Randolph projects a potential total of \$1,436,171 in revenue collected between June 1, 2019 and June 30, 2025. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

3. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of Development Fee revenues shall be followed by the Township of Randolph:

(a) Collection of Development Fee Revenues:

Collection of Development Fee revenues shall be consistent with the Township of Randolph's Development Fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

Pursuant to a development approval by the board having jurisdiction, the municipal clerk will notify the construction official of the approval. At the time of construction permit application, the construction official will notify the tax assessor and request an initial calculation of the equalized assessed value (EAV) of the proposed development and the resulting fee to be posted. One-half of the fee will be due at the time of issuance of the first building permit. For non-residential development only, the developer will be provided a copy of Form N – RDF "State of New Jersey Non-Residential Development Certification/Exemption". This form will be used by the tax assessor to verify exemptions and to prepare estimated and final assessments.

At the time of request for the final inspection, the construction official will notify the tax assessor and request confirmation of, or modification of, the initial (EAV) as the case may be. The final (EAV) will be provided to the developer within ten (10) days of the request for final inspection. Payment of the fee will then become a condition of issuance of the certificate of occupancy.

(b) Distribution of Development Fee Revenues:

A general description of the distribution of revenues is provided below:

The Municipal Housing Liaison forwards a requisition of affordability assistance and administrative costs (routine expenditures) and rehabilitation expenditures and costs for municipally sponsored 100% affordable housing development (significant expenditures) and accessory apartments to the Finance Department recommending the expenditure of development fee revenues as set forth in this spending plan. The Finance Department reviews the request for consistency with the spending plan.

Once a request is approved by the Finance Department, the request is presented to the Township Council for approval. After receiving Township Council approval, the Township of Randolph Planning and Zoning Administrator releases the requested revenue from the trust fund for the specific use.

4. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**(a) Rehabilitation Projects N.J.A.C. 5:93-8.16(a)**

The Township's rehabilitation obligation is 33 units. In the past, the Township has participated in the Morris County Department of Community Affairs HOME program for owner-occupied housing rehabilitation. The program uses Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) funding.

The Township will continue to work with the Special Master to evaluate whether a rental rehabilitation program must be administered by the Township. Based on the percentage of renter-occupied housing, the number of rental rehabilitations would be approximately 7 units of the total 33-unit obligation. The Special Master shall evaluate if a dedicated program is necessary based on the 7-unit rental rehabilitation share. If a Rehabilitation Program is determined to be required, the Township of Randolph will dedicate \$70,000 as hard costs for the rehabilitation of up to 7 rental units. The Township will continue to participate in the Morris County Housing Rehabilitation Program and Morris County HOME Consortium for the rehabilitation of owner-occupied units.

Total Rehabilitation Program Expenditure:	\$70,000.00
7 units @ \$10,000/unit	

(b) Costs Associated with the New Construction 100% Affordable Project(s) (N.J.A.C. 5:93-8.16(a))

The Township of Randolph will dedicate \$900,000 to the new construction of a project known as the Habitat for Humanity 100% Affordable project located at Block 195, Lot 10, otherwise known as the E.A. Porter Site. This shall include all costs associated with new construction, including, but not limited to, due diligence associated with site acquisition, acquisition of land, preparation of site plans, and development of the site(s). The Township intends to expend all allocated funding towards the projected new construction mechanisms. The Township has worked with Habitat for Humanity previously in the funding and construction of affordable projects within Randolph.

New Construction Project(s) Expenditure:	\$900,000.00
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(d) **Affordability Assistance N.J.A.C. 5:93-8.16(c)**

Projected minimum Affordability Assistance requirement:

TABLE 2: PROJECTED MINIMUM AFFORDABILITY ASSISTANCE REQUIREMENTS TOWNSHIP OF RANDOLPH, MORRIS COUNTY, NEW JERSEY		
Actual Development Fees through 05/01/2019		\$2,411,933.75
Development fees projected 2019-2025	+	\$783,222.76
Interest projected 2019-2025	+	\$3,916.11
Less housing activity expenditures through 05/01/ 2019	-	\$1,667,678.56
	TOTAL	= \$1,531,394.06
30 percent requirement	x 0.30 =	\$459,418.22
Less Affordability assistance expenditures through 05/01/2019	-	\$250,000.00
PROJECTED MINIMUM Affordability Assistance Requirement 05/01/2019 through 6/30/2025	=	\$209,418.22
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 05/01/2015 through 6/30/2025	÷ 3 =	\$69,806.07

The Township of Randolph will dedicate \$209,418.22 from the Affordable Housing Trust Fund to render units more affordable. Of this amount, \$69,806.07 will be utilized to encourage private sector provision of low- and moderate-income units through the offering of a subsidy for the development of said units or will be utilized to create very-low income units from existing or new low- and moderate-income units. The Township reserves the right to use even more of its affordability assistance funds to help subsidize these units. In addition, the Township will utilize such funds for any emergency repairs of older affordable units in the Township, should that be necessary.

It is anticipated that the Township will utilize Affordability Assistance funds to help subsidize the development of low- and very-low income units within the new construction of 100% affordable projects, such as a E.A. Porter Site. Additionally, examples of other forms of assistance that may be part of the Affordability Assistance program, and subsequent manual to be prepared, for this site and the Township as a whole, are as follows:

- i. Creating new very-low income units;
- ii. Rental assistance;
- iii. Security deposit assistance;
- iv. Low interest loans;

Total Affordability Assistance Expenditure: \$209,418.22

(e) **Administrative Expenses N.J.A.C. 5:93-8.16(e)**

The Township of Randolph projects that up to \$643,422 are allowed to be used for administrative purposes from the Affordable Housing Trust Fund. However, the Township has expended \$95,222.61 to date, and thus \$548,199.91 in funds are available for additional administrative costs.

TABLE 3: PROJECTED MAXIMUM ADMINISTRATIVE EXPENSES TOWNSHIP OF RANDOLPH, MORRIS COUNTY, NEW JERSEY		
Development fees/interest collected to date		\$2,411,933.75
Payment-in-lieu of construction through July 17, 2008	+	\$18,040.00
Development fees projected 2019-2025	+	\$783,222.76
Interest projected 2019-2025		\$3,916.11
Less RCA Expenditures	-	\$0.00
TOTAL	=	\$3,217,112.62
20 percent maximum permitted administrative expenses	$\times 0.20 =$	\$643,422.52
Less administrative expenditures through to date	-	\$95,222.61
Projected allowed administrative expenditures	=	\$548,199.91

Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- 1) Personnel wages, salaries and benefits for administering affordable housing activities;
- 2) Consulting fees for the preparation of Housing Element/Fair Share Plans, assisting in rehabilitation programs and other affordable housing activities including, but not limited to, professional planner and professional engineer consultant fees;
- 3) Fees for other consulting activity as may be found necessary supportive of affordable housing provision, including office supplies;
- 4) Legal fees; and
- 3) Fees for the administration of Affordability Assistance programs by qualified entities retained by the Township of Randolph.

For the purposes of this Spending Plan budgeting, \$256,753.23 have been dedicated for the Township's administrative costs. However, the remaining allowable expenditures are still capped up to \$548,199.91, unless in the future additional development fees are collected.

Total Administrative Expenses Expenditures Through 2025: \$256,753.23

5. EXPENDITURE SCHEDULE

The Township of Randolph intends to use Affordable Housing Trust Fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the proposed implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows in Table 4.

TABLE 4: PROJECTED EXPENDITURE SCHEDULE 2017 - 2025
TOWNSHIP OF RANDOLPH, MORRIS COUNTY, NEW JERSEY

Program [Individually list programs and projects e.g. Rehab, Accessory Apartments, for-sale and rental municipally sponsored, etc.].	Number of Units Projected	Funds Expended and/or Dedicated	PROJECTED EXPENDITURE SCHEDULE 2015 - 2025								
			2015-2025	2019	2020	2021	2022	2023	2024	2025	Total
Rehabilitation	7	\$70,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$70,000
100% Affordable New Construction	25	\$900,000	\$300,000	\$300,000	\$300,000	--	--	--	--	--	\$900,000
Total Programs		\$970,000	\$310,000	\$310,000	\$310,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$970,000
Affordability Assistance		\$209,419	\$29,917	\$29,917	\$29,917	\$29,917	\$29,917	\$29,917	\$29,917	\$29,917	\$209,419
Administration		\$256,752	\$36,679	\$36,679	\$36,679	\$36,679	\$36,679	\$36,679	\$36,679	\$36,679	\$256,753
Total		\$1,436,171	\$376,596	\$376,596	\$376,596	\$76,596	\$76,596	\$76,596	\$76,596	\$76,596	\$1,436,171

6. EXCESS OR SHORTFALL OF FUNDS

The Township of Randolph acknowledges that the actual amount of the Development Fees collected may be less than what is projected in this spending plan for a variety of reasons, including, but not limited to: (a) a moratorium on collection of fees may be imposed by law; (b) the actual amount of development in the Township may be less than what is anticipated; and (c) developers may choose to provide inclusionary developments in lieu of Development Fees. The Township has already provided more than enough units to satisfy its Prior Round obligation through already constructed and/or approved projects (as set forth in the Housing Element and Fair Share Plan). Likewise, the Township has set aside further funding towards its Rehabilitation Obligation and municipally sponsored program; and in the event of a shortfall of funds, any shortfall will first be deducted from the Rehabilitation Program.

In the event that the shortfall exceeds the amount devoted to the Rehabilitation Program, any shortfall in funds necessary to fund the Rehabilitation Program shall be supplemented through the Township's participation in Morris County's Home Improvement Grant Program. The Township will take the steps necessary to apply for and obtain funds from the Morris County Home Improvement Grant Program in the amount necessary to cover any shortfall in funds collected through the Development Fees, which are needed to satisfy the Township's rehabilitation obligation as set forth in the Housing Element and Fair Share Plan.

Should there be a shortfall of funds; the Township agrees that in no event shall it utilize more than 20% of the Development Fees collected for administration.

II. SUMMARY

The Township of Randolph intends to spend Affordable Housing Trust Fund revenues pursuant to N.J.A.C. 5:93-8.16 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan.

The Township of Randolph had a balance of \$649,032.58 as of May 2019 and anticipates an additional \$783,222.75 in revenues over the Third Round prospective need period with interest in the amount of \$3,916.11, for a total of \$1,436,171.45. The municipality will dedicate: a) \$70,000 towards a Rehabilitation Program and Emergency Repairs of Rental Affordable Units if determined to be necessary in addition to participation in the County Rehabilitation Program; b) \$900,000 towards the new construction of 100% Affordable project(s); c) \$209,418.22 to render units more affordable – which represents additional funding from the \$250,000 spent to date; d) and \$256,753.23 to cover administrative costs – which represents a lower amount than the total permitted 20%, or \$548,199.91. Any shortfall of funds for the rehabilitation program will be offset by the Township's participation in the Morris County Housing Rehabilitation Program and Morris County HOME Consortium. The municipality anticipates that the balance of revenues collected less expenses from 2019 to 2025 will be as close to zero dollars (\$0) as possible, whereas any excess funds as described below would be dedicated toward supplementing the Rehabilitation and Affordability Assistance Programs described herein.

TOWNSHIP OF RANDOLPH*Third Round HE&FSP Spending Plan*

TABLE 5: SPENDING PLAN SUMMARY		
TOWNSHIP OF RANDOLPH, MORRIS COUNTY, NEW JERSEY		
Balance as of 05/01/2019		\$649,032.58
PROJECTED REVENUE 05/01/2019 – 6/30/2025		
Development fees	+	\$783,222.75
Payments in lieu of construction	+	\$00.00
Other funds	+	\$00.00
Interest	+	\$3,916.11
TOTAL REVENUE		= \$1,436,171.45
EXPENDITURES		
Funds Used for Rehabilitation & Emergency Repairs	-	\$70,000.00
Funds Used for 100% Affordable Habitat for Humanity Project	-	\$900,000.00
Affordability Assistance	-	\$209,418.22
Administration	-	\$256,753.23
TOTAL PROJECTED EXPENDITURES		= \$1,436,171.45
REMAINING BALANCE		= \$00.00

APPENDIX I:
1. MORRIS COUNTY HOME PROGRAM
INTERLOCAL SERVICES AGREEMENT

**AGREEMENT BETWEEN THE COUNTY OF MORRIS AND CERTAIN
MUNICIPALITIES LOCATED THEREIN ESTABLISHING A COOPERATIVE
MEANS OF CONDUCTING CERTAIN COMMUNITY DEVELOPMENT AND
HOME ACTIVITIES PROGRAM**

WHEREAS, Title I of the Housing and Community Development Act of 1974, as amended, and Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 provides for substantial Federal funds being made available to certain urban counties for use therein; and

WHEREAS, the Emergency Shelter Grant Program ("ESG") provided through Subtitle B of the McKinney-Vento Homeless Assistance Act permits for substantial federal funds allocated to prevent homelessness and to enable homeless individuals and families to move toward independent living; and

WHEREAS, these Acts established certain criteria which must be met in order for a county to be the recipient of said funding; and

WHEREAS, as required by Federal guidelines, the Morris County Counsel has determined the terms and provisions of this agreement are fully authorized by State and local law and that the agreement provides the County of Morris with full authority consistent with authority delegated by Federal law; and

WHEREAS, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1 et seq.) provides a mechanism through which counties and municipalities may enter into agreements for the provision of joint services; it is therefore agreed by the County of Morris and the Township of Randolph as follows:

A. Planning Process

1. Nature and Extent of Service

a. Purpose

The purpose of this agreement is to establish a legal mechanism through which the county government may apply for, receive and disburse Federal funds available to eligible urban counties under Title I of the Housing and Community Development Act of 1974, as amended, commonly known as Community Development Block Grant (CDBG) Entitlement Program; and, funds available under Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, commonly known as the HOME Investment Partnership Program; and to take such actions in cooperation with the participating municipalities as may be necessary to participate in the benefits of these programs. Federal funds received by the County shall be for such functions as urban renewal, water and sewer facilities, neighborhood facilities, public facilities, open space, housing and such other purposes as are authorized by these Acts. Nothing contained in this agreement shall deprive any municipality or other unit of local government of any powers of zoning, development control, or other lawful authority which it presently possesses, nor shall any participant be deprived of any state or federal aid to which it might be entitled in its own right, except as herein provided.

b. Establishment of Committee

There is hereby established a cooperative Community Development Committee, consisting of two representatives from each participating municipality and two representatives of county government, each to be appointed for one-year periods coinciding with the calendar year. The governing body and the chief executive officer of each participating agency shall make one appointment each.

Responsibilities of Committee

- (1) The committee may choose to elect a chairperson and shall take formal action only upon a two-thirds vote of the full membership thereof.
- (2) The Director of the Office of Community Development designated as the Administrative Liaison Officer, shall be accountable and subject to the supervision of the Division of Community & Behavioral Health Services. He or she shall, within the limits of resources available, provide technical and administrative support to the Committee.
- (3) The Committee shall meet promptly after its establishment and thereafter as often as required. It shall establish rules of procedures as may be required.
- (4) The Committee shall study and discuss the community development and housing needs of the county which affect the participating local governments and shall determine the most effective and acceptable utilization of CDBG and HOME funds available to the county government. It shall recommend to the Board of Chosen Freeholders applications for participation in Federal funding, and towards that end it shall, in the manner herein prescribed, be authorized to develop required plans and such documents and certifications of compliance as are required by the Federal Government for participation by the County in the programs. Funds applied for may be those available for urban counties for CDBG, and participating jurisdictions for the Home Program.
- (5) The Committee shall develop, in full consultation with the Office of Community Development and all affected agencies of the local governments involved, priorities for the actual utilization of such funds as are made available from the Federal Government under these Titles. The Committee shall recommend for each project or activity to be carried out with these funds a specific means of accomplishment. This may be for the County to carry out the project or function, for a municipality to receive the monies to carry it out, or for some other combination of local or State agencies. Such implementation mechanism shall be established either by means of a separate contract entered into between the County government and the municipality or municipalities in which the activities or functions are to take place, pursuant to the provisions of the Interlocal Services Act, or by inclusion of such information in Section C of this agreement, subject to the same approvals. The implementation mechanism shall be established before submission of the application to HUD, and any relevant documents become part of this agreement and should be submitted to HUD with it.
- (6) Every municipality participating in the Community Development Block Grant and HOME Programs may request participation in the expenditure of Federal funds, comment on the overall needs of the County which may be served through these funds, and otherwise take part in the proceedings of the Committee through its members of the Committee. No project shall be undertaken or services

provided in any municipality without prior notification to the governing body of the municipality and the opportunity for comment by the same body.

Standards of Performance

Every Shared Services Agreement established pursuant to the agreement shall contain standards of performance as required by the applicable federal regulations.

Performance reports shall be prepared for the Committee annually, and they shall be submitted to the Board of Chosen Freeholders as may be required for submission to the Federal Government.

County and all other cooperating cities shall take all actions necessary to assure compliance with the urban county's certification under Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the National Environmental Policy Act of 1969, the Uniform Relocation Act, the Americans with Disabilities Act of 1990, Title VI of The Civil Rights Act of 1964, the Fair Housing Act, affirmatively furthering fair housing, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, the Fair Housing Act, Section I 09 of Title I of the Housing and Community Development Act of 1974 (which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975), and other applicable laws. Use of urban county funds for activities in, or in support of, any cooperating city that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification shall be prohibited. Pursuant to 24 CFR 570.501(b), City is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement as described in 24 CFR 570.503. County, City, all other cooperating cities, metropolitan cities, urban counties, units of general local government, Indian tribes, and insular areas that directly or indirectly receive funds provided under Title I of the Housing and Community Development Act of 1973 as amended, may not sell, trade, or otherwise transfer all or any portion of such funds to another such entity in exchange for any other funds, credits, or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

2. Estimated Cost and Allocation Thereof

The amount of Federal funds involved shall be the amount applied for by the Board of Chosen Freeholders pursuant to the recommendation of the Committee, subject to any modifications made by HUD. Any Federal funds received by letter of credit or otherwise shall be placed in County Trust Funds established and maintained pursuant to regulations promulgated by the Director of the Division of Local Government Service in the New Jersey Department of Community Affairs. These funds shall be in separate bank accounts subject to the control of the County government, which shall be the designated recipient of the funds provided under the Federal Act. Upon authorization by the County and in compliance with State law and promulgated regulations, funds may be expended from the County Trust Funds by the County or by payment to a particular municipality pursuant to a specific contract. Neither the Committee, the County government, nor any participating local government may expend or commit funds except as may be authorized pursuant to this agreement and in full compliance with State and Federal laws and regulations. No participant under

this contract may in a way be obligated to expend funds of its own except as may be mutually agreed in a lawful manner.

3. Duration of Contract

This contract will be effective, starting with the three Federal Fiscal Years 2018, 2019 and 2020 appropriations and will remain in effect until the CDBG (and HOME, where applicable) funds and program income received with respect to activities and all successive qualification periods under this agreement are expended and the funded activities completed.

This agreement will automatically be renewed for participation in successive three-year qualification periods. The County and the participating unit of local government may not terminate or withdraw from the agreement while the agreement remains in effect for each three year qualification period. The County or the municipality may elect not to participate in a new qualification period in three-year intervals, provided written notice is given. A copy of the notice must be sent to the HUD Field Office. By the date specified in HUD's urban county qualification notice for the next qualification period, the urban county will notify the participating unit of general local government in writing of its right not to participate. A copy of the county's notification to the jurisdiction must be sent to the HUD Field Office by the date specified in the urban county qualification notice.

Failure by either party to adopt any amendment to the agreement incorporating changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable for the subsequent three-year urban county qualification period, and to submit such amendment to HUD as provided in the urban county qualification notice will void the automatic renewal of such qualification period.

By executing the CDBG cooperation agreement, the cooperating unit of general local government understands that it:

- (a) May not apply for grants from appropriations under the State CDBG Program for fiscal years during the period in which it participates in the urban county's CDBG program; and
- (b) May receive a formula allocation under the HOME Program only through the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments. (Note: This does not preclude the urban county or a unit of government participating with the urban county from applying to the State for HOME funds, if the state allows. An existing renewable agreement need not be amended to add this Note. It is included here only for purposes of clarification.); and
- (c) May receive a formula allocation under the ESG Program only through the urban county. (Note: This does not preclude the urban county or a unit of government participating with the urban county from applying to the State for ESG funds, if the state allows. An existing renewable agreement need not be

amended to add this Note. It is included here only for purposes of clarification.)

4. Designation of General Agent

The Administrative Liaison Officer, Director of Community Development, is hereby designated as the administrative agent of the Board of Chosen Freeholders for purposes of compliance with statutory and regulatory responsibilities.

B. Qualifications as Urban County

In addition to such assurances and agreements as may have been made by previously executed ordinances in order to meet the criteria for funding eligibility as an “urban county,” the parties hereto agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities. This agreement shall be effective when a sufficient number of municipalities have signed the contract so that 200,000 population is represented and when all other Federal eligibility criteria for designation as an “urban county” under the Act have been satisfied. In the event that sufficient municipalities to meet these criteria should not sign this agreement within the time period set forth by the United States Department of Housing and Urban Development, the Freeholder Director shall so notify all signators, and the agreement shall thereupon be null and void.

In order to comply with Federal requirements, the County government, through its Board of Chosen Freeholders, shall be the applicant for Community Development and HOME funds and shall take responsibility as applicant and shall have the final responsibility for selecting projects and submitting annual Action Plans. The County shall also have the authority to carry out activities which may be funded starting with Fiscal 2018, 2019 and 2020 appropriations, and for renewal periods thereafter, and from any other program income generated from the expenditure of such funds.

C. Agreement as to Specific Activities (Interlocal Service Agreement)

1. Activities

The municipality hereby agrees to cooperate with the County of Morris in conducting those activities included on Attachment A. Specific projects are set forth in the applications submitted to HUD. The municipality also agrees to the use by the County of certain of the funds to be applied for county planning and administrative costs as also indicated on the accompanying lists.

2. Identification of Participants

a. County

The municipality agrees that the County, as the applicant, takes full responsibility and assumes all obligations of an applicant under the Housing and Community Development Act of 1974, as amended, and the Cranston-Gonzalez National Affordable Housing Act. This responsibility will also extend to parts of the planning and management process, including the analysis of needs, the setting of objectives, the development of the Consolidated Plan and Annual Action Plans, and all

assurances of certifications of compliance with Federal and State requirements necessary under Federal and State laws. The responsibility of the County shall apply to all Community Development and HOME projects whether or not the County or locality carries out directly an activity or activities included in the application.

b. Municipality

As appropriate, certain activities are to be undertaken by the participating municipalities, specifically to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities. A separate grant agreement between the County and municipality must be executed for these projects. The chief executive officer of each municipality is responsible for the implementation of these projects. The municipality further agrees to cooperate with the County in complying with the requirements of the Housing and Community Development Act of 1974, as amended, and the Cranston-Gonzalez National Affordable Housing Act of 1990. Pursuant to 24 CFR 570.501(b), the municipality is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement as set forth in 24 CFR 570.503.

3. Costs

a. Costs of Activities

The cost of Community Development and HOME activities shall be set forth in the applications submitted to HUD. In addition, the municipality may apply for additional funds from other sources and/or appropriate municipal funds, as it deems necessary to successfully carry out the projects.

b. Payment

Payments for the conduct of activities to be carried out by individual municipalities will be made to the municipality on the basis of vouchers signed by the approving authority of the municipality. Such payments will be made to the municipality upon submission by the municipality of appropriate County vouchers and supporting documentation and authorization by the County.

c. Program Income

The municipality must inform the County of any income generated by the expenditure of Community Development Block Grant and HOME funds received. Program income must be paid to the County unless it is agreed in writing that the municipality may retain the income. All program income must be used for eligible activities in accordance with all CDBG requirements as applicable. The County has the responsibility for monitoring and reporting to HUD on the use of any program income received thereby requiring appropriate record keeping and reporting by the municipality as may be needed for this purpose. Any program income on hand or received subsequent to project close-out or change in status of the municipality shall be paid to the County.

4. General Standards of Performance

Activities to be carried out under this agreement shall be performed in accordance with Federal, State and local laws and regulations. In carrying out the activities, the

County will be responsible for contact with other local, State and Federal agencies to prevent duplication of effort and to foster coordination of related activities.

Activities to be carried out by individual municipalities shall be based on detailed work proposals and budget outlines submitted to the County for review. The County Administrative Liaison Officer and other County staff members as may be necessary shall examine the project data submitted to the County and shall grant approval prior to the commencement of any work involved.

The parties hereto agree to take any and all actions pursuant to proper legal means in order to carry out the specific project, the Community Development Program, the HOME Program, the approved Consolidation Plan and to meet all other requirements of the CDBG and HOME Programs and other applicable laws.

5. Standards Applicable to Real Property Acquired or Improved With CDBG Funds
The following standards apply to real property acquired or improved in whole or in part using CDBG funds that is within the control of the municipality:
 - a. The municipality must notify the County of any modification or change in the use of real property from that planned at the time of acquisition or improvement, including disposition;
 - b. The municipality shall reimburse the County an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under CDBG regulations; and
 - c. Program income generated from disposition or transfer of property prior to or subsequent to close-out or a change in status or termination of the Cooperation Agreement between the County and municipality must be paid to the County unless otherwise agreed pursuant to Paragraph C.3.c. herein.
6. Time Period
Work on the activities to be carried out directly by municipalities shall commence only upon notification by the County that the funds have been released by HUD. In accordance with HUD regulations, activities included in the annual applications shall be completed or underway in accordance with the respective grant agreement for the project.
7. Availability of Records for Audit
Required records of progress of activities carried out by the County and by individual municipalities will be maintained according to the enabling federal legislation and accompanying regulations, the New Jersey Division of Local Finance and other applicable requirements. All records shall be kept in a manner prescribed by these regulations and shall be available for audit by the proper authorities. Records of activities carried out by the County shall be maintained by the Administrative Liaison Officer of the County, and records of activities carried out by individual municipalities shall be maintained by the municipal clerk of the municipality carrying out the activity. CDBG and HOME funds received by the municipality shall be

audited as part of the municipality's annual audit in accordance with standards applicable to the Single Audit Act.

D. Signators

This contract shall be executed in similarly worded counterparts each of which shall be signed by the Freeholder Director and the chief executive officer of an individual municipality. Each such signator agency agrees to cooperate with all other signators and be bound as if all had signed the same agreement.

E. Modifications

1. Modification of Activity

Should it become necessary to modify or amend the activity of a specific project within the specified costs, or in the event that a modification is requested by a municipality participating in or carrying out an activity, the County, in compliance with the by-laws of the Community Development Committee, may make modifications to a project with the approval of HUD and the concurrence of the municipality or municipalities involved. In the case of alteration of a regional or countywide project, approval of all municipalities in the region or County may be required. Such local approval may take the form of a letter from the chief officer or a resolution of the governing body.

2. Limitation of Modification

Modification of an activity shall not include deletion of a project, substitution of one project for another, or change of the location of a project unless such changes are required by HUD, Federal regulation or State law. Any such modification and/or amendment to the Application for Federal Assistance shall require approval per the by-laws of the Community Development Committee, by the governing body of the municipality, and by resolution of the Board of Chosen Freeholders when required by HUD regulation.

F. Severability

In the event that any portion of this agreement shall be made inoperative by reason of judicial or administrative ruling, the remainder shall continue in effect.

G. Certification

The parties hereto certify that they shall, and they so agree, to take all required actions necessary to assure compliance with the urban county's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.

The parties hereto agree that funding hereunder is prohibited for activities in or in support of any cooperating unit of general local government that does not affirmatively further

fair housing within its own jurisdiction or that impedes the County's actions to comply with its fair housing certification.

The parties hereto agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities.

The parties have adopted and are enforcing:

1. A policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within the jurisdiction.

H. Supersession

This agreement shall supplement any previous agreements on this subject and shall replace and supersede any previously agreed upon provisions only to the extent of conflict of purpose.

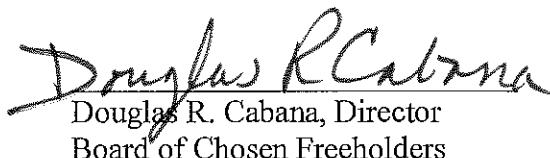
IN WITNESS WHEREOF, the parties have hereunto, pursuant to authorization from properly adopted resolution, executed this agreement on this 18th day of May, 2017.

ATTEST

COUNTY OF MORRIS



Diane M. Ketchum, Clerk



Douglas R. Cabana, Director
Board of Chosen Freeholders

ATTEST



Donna M. Luciani, Municipal Clerk



Christine Carey, Mayor

ATTACHMENT A

ELIGIBLE COMMUNITY DEVELOPMENT BLOCK GRANT ACTIVITIES

- Property acquisition and disposition
- Construction, reconstruction, rehabilitation or installation of publicly owned facilities and improvements including: senior centers, parks, centers for the handicapped, neighborhood facilities, fire protection facilities, parking facilities, street improvements, water & sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways, flood and drainage facilities, solid waste disposal facilities, others
- Clearance activities
- Public services
- Completion of Urban Renewal projects
- Relocation
- Removal of architectural barriers
- Construction, reconstruction, rehabilitation or installation, or acquisition of privately-owned utilities
- Rehabilitation of public residential structures, public housing, modernization, and rehabilitation of private properties
- Acquisition for the purpose of rehabilitation
- Rehabilitation financing
- Planning and urban design activities
- Code enforcement
- Historic preservation
- Economic Development activities
- Activities by private non-profit entities, local development, corporations, or small business investment companies, neighborhood-based non-profit organizations

ATTACHMENT A

ELIGIBLE HOME INVESTMENT PARTNERSHIP (HOME) ACTIVITIES

PER TITLE II OF THE NATIONAL AFFORDABLE HOUSING ACT

HOME funds may be used to provide incentives to develop and support affordable rental housing and home ownership through:

- Acquisition of improved or unimproved property, including standard housing units
- New construction
- Reconstruction on existing foundation
- Moderate rehabilitation less than \$25,000 per unit
- Substantial rehabilitation more than \$25,000 per unit
- Site improvements for housing development
- Conversion from non-residential to residential use
- Demolition when associated with construction
- Tenant Based Rental Assistance
- Soft costs in relation to above activities
- First-Time Homebuyers Assistance
- Administrative activities

APPENDIX I:
2. MORRIS COUNTY HOUSING REHABILITATION PROGRAM
REFERENCE MANUAL

Morris County Housing Rehabilitation Program

Reference Manual

June 16, 2000

Revised June 26, 2002

Revised August 1, 2004

Revised March 1, 2005

Revised April 2, 2013

Revised June 26, 2017

Revised September 11, 2018

Revised October 17, 2018

INTRODUCTION

The Morris County Housing Rehabilitation Program was created by the Morris County Board of Chosen Freeholders in 1975. The Housing Rehabilitation Program is funded by the Community Development Block Grant Program from the U.S. Department of Housing & Urban Development (HUD).

GOAL

The purpose of the Housing Rehabilitation Program is to provide decent housing for low and moderate-income homeowners who reside within the participating municipalities of the Morris County Consortium. In addition, the goal of the Housing Rehabilitation Program is to maintain Morris County's affordable housing stock by correcting code violations and substandard housing conditions. This interest free deferred loan is designed to assist low and moderate-income homeowners rehabilitate their homes and enable them to remain in their affordable housing situation.

This Reference Manual serves as a guide to assist in the administration of the Housing Rehabilitation Program. Amendments may be added due to revisions in regulations and/or procedures.

GENERAL PROGRAM REQUIREMENTS

- The applicant must be a resident of Morris County (except Dover and Parsippany).
- The homeowner must have owned and occupied the house for which they are requesting assistance for a minimum of **one year**.
- The house must have integrity and be in sound condition.

ELIGIBILITY

The eligibility criteria for assistance through the Housing Rehabilitation Program is a two step process. The **first step** is to determine the Income/Ownership eligibility of the proposed **applicant/household**. The **second step** is to determine the eligibility of the proposed **rehabilitation improvements**.

STEP I: APPLICANT ELIGIBILITY CRITERIA

A. LOW/MODERATE INCOME REQUIREMENTS:

In order to be eligible for program participation, an applicant's total household income must be verified to be equal to or less than the current Section 8 low-income limits established by HUD for an equivalent household size.

Household: A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other.

- The household could consist of a single person, a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.
- Adult children who reside with their parents are considered to be part of the family and their income must be counted in determining the total household income.
- A dependent child who is living outside of the home (e.g. college students) is considered to be part of the family and counted as a household member.

Since all of the persons who reside in the housing unit will benefit from the Housing rehabilitation assistance to the unit and all of the occupants' resources could be brought to bear with respect to paying for the improvements, **the regulations require that the income of all household members must be considered to determine the low/moderate income status of the household.**

HUD SECTION 8 INCOME LIMITS FOR MORRIS COUNTY (revised annually)

Family Size	Moderate Income	Low Income
1	\$50,350	\$33,400
2	\$57,550	\$38,200
3	\$64,750	\$42,950
4	\$71,900	\$47,700
5	\$77,700	\$51,530
6	\$83,450	\$55,350
7	\$89,200	\$59,150
8	\$94,950	\$63,000

Revised: 2018

Income Determination: Income eligibility for this program is determined using HUD's Adjusted Gross Income method. Income earned by all members residing in the household 16 years of age and over must be considered. This includes income received by adults on behalf of minor children for their benefit. The annual household income will be calculated on all household members' and their current incomes at the time of application, based on a 12-month period. Per this definition:

Income Includes: (But is not limited to)

- Gross pre-taxed wages, salaries, tips, commissions, recurrent overtime, bonuses, raises, COLA's, etc.
- Self-employment net business income (after expenses), including proprietorships and partnerships.
- Income from assets such as:
 - Interest received or credited to checking/savings account, money market funds, certificates of deposits, individual retirement accounts (IRAs), KEOGH retirement plans and government bonds.
 - Dividends received, credited or reinvested from ownership of stocks or mutual funds.
 - Net profit from royalties or rental of land, buildings or real estate or roomers or boarders.
 - 6% of asset imputed income of produces little or no interest.
- Social Security or railroad retirement (before Medicare deductions).
- Supplemental Security Income, AFDC, or other Public Assistance payments.
- Retirement, survivor, or disability pensions received on a regular basis. Includes regular income from annuities, IRAs or KEOGH retirement plans - per IRA regulations. ("regular" income refers to a typical, current annual distribution sum that may be equal to or greater then the minimum IRA distribution amount.)
- Any other sources of income received regularly, including:
 - VA pensions.
 - Unemployment compensation.
 - Alimony or child support payments.
 - Regular contributions from persons not living in the household.

- Educational grants and scholarships.
- Other income received on a regular basis (e.g. foster care payments, military family allotments, and foreign pensions).
- Welfare is counted as income
- Penalties or fees for converting financial holdings
- Cash value of an asset

INCOME EXCLUDES:

- Non-cash income such as Food Stamps, rent free housing, health benefits.
- Profit (or loss) of incorporated businesses owned by the applicant.
- Rebates or credits received under Federal or State Home Energy Assistance Programs.
- Income of live-in attendants.
- Refunds or rebates of any kind.
- Withdrawals from savings of any kind counted as an asset for 2 years.
- Capital gains (or losses) from the sale of homes, shares of stock, etc. will not be considered to be less than the fair market value.
- Lump-sum additions to family assets such as inheritances, one-time lottery winnings; insurance settlements.
- Any type of loan, e.g. student loans.
- Casual, sporadic or irregular gifts.

Income Verification: Based on the above definition of income, eligibility will be verified through documents provided by the applicant, as well as third party verification. Household members 18 years of age or over not receiving income must provide documentation of current status. All pertinent documents will be included in the applicant's file.

Potential applicants must submit the following items as verification of their income:

- a) Six current consecutive pay stubs or a letter from their employer stating present salary (please use form provided for third party verification)
- b) A copy of the most recent Federal and/or State Income Tax 1040, W-2 and 1099 forms, including all schedules and pages.

- c) A most recent letter, appropriate reporting form, copies of monthly checks or direct deposit bank statements (6 months worth) verifying benefits, including but not limited to, social security and/or pension. (When the previous year's Social Security 1099 form is provided, the current cost of living increase will be applied to the gross annual amount – including Medicare.)
- d) Current financial institution statements (6 months worth) or 1099 forms verifying interest income from assets. (Current HUD interest rate will be applied when no rate is noted).
- e) A copy of a statement showing current IRA/401K retirement account balances. (Current HUD interest rate will be applied when no rate is noted).
- f) A copy of the Separation/divorce agreement or copies of support checks.
- g) Copies of unemployment compensation, Welfare, disability, workmen's compensation, or other assistance checks.
- h) A copy of rental checks, Lease Agreement or a letter from tenant(s).
- i) A letter or appropriate reporting forms verifying any other sources of income claimed by applicant.

In addition, **Form 4506**, "Request for a copy of Transcript of Tax Form" will be mailed out with every application should Community Development need to verify income with the IRS.

Income Analysis: All applicants' household income will be reviewed for income eligibility based upon the documentation they submitted with their application plus any additional verification that may be requested.

- When calculating income eligibility, emphasis will be on the household members' current pay stubs, in addition to the most recent Income tax return submitted will serve as further validation of their annual income.
- If an applicant's current income differs drastically from their income tax return, the applicant must submit ample proof to substantiate their current income situation.
- *Overtime* earnings that are a predictable component will be included in determining an applicant's annual income. When *overtime* earnings are sporadic, only the actual

current, year to date overtime earned will be counted in figuring an applicant's annual income.

- An income analysis will be performed to determine eligibility and will forward the application to the Director of Community Development Programs for review.

Allowable Deductions:

- IRA deduction
- Medical savings account deductions
- Moving expenses
- $\frac{1}{2}$ of self-employment taxes
- Self-employment health insurance deductions
- Keogh and Self Employment SEP and SIMPLE plans
- Penalties on early withdrawal of savings
- Paid alimony
- If disabled \$400 deduction
- If elderly over 62, \$400 deduction
- Under age 18 years \$480 from annual income.
- If full-time college student, \$480 deduction from annual income

B. OWNERSHIP REQUIREMENTS:

1. Clear Ownership: Potential applicants must be the owner for over one year and the occupant of the housing unit to be rehabilitated. A copy of the recorded Deed to the property must be submitted with their application as proof of ownership.

- Additional owners of the property who are listed on the Deed but who do not reside in the housing unit must submit proof they do not reside in the unit.

Verification shall include, but not be limited to:

- A copy of the death certificate if the co-owner is deceased.
- A copy of the Divorce/Separation Settlement Agreement stating the ownership status of the housing unit.
- Proof of absentee co-owners' different residence.

- A copy of a probated Will must also be submitted if a Deed transfer cannot verify the potential applicant's ownership.
- In addition, co-owners not residing in the housing unit must sign an "Absentee Homeowner Waiver" form provided by our office. This waiver gives the co-owners' permission for work to be done on the property and releases the co-owners from any financial liability.
- The applicants' ownership in the property must be unrestricted, without evidence of any pending foreclosure proceedings, tax liens or other encumbrances.

2. Primary Residence: The applicant's housing unit must be the owners' principal residence. When proof of primary residence is relevant, a copy of the applicant's Federal Income Tax return will determine their primary residing jurisdiction.

3. Dwelling Unit Requirements: The housing structure to be rehabilitated can be a single or a multi-family (one-to-four unit) privately owned, pre-existing structure.

- Individually owned condominium units, cooperative units and manufactured homes are eligible.
- Mobile homes are not eligible for assistance unless the unit and land are formally "deeded" to the owner.
- The housing unit must be a residential dwelling unit. Mixed-use commercial/residential properties are not eligible for Housing Rehabilitation assistance.
- Rental units of an income eligible, owner occupied 2 – 4 unit structure can be assisted if the tenants' meet income guidelines or the rent is set at an affordable low/moderate income level. Generally, a rent that is 30% or less of the tenants' gross income is considered affordable. If a rental unit is not eligible for assistance, improvements specific to that rental unit cannot be funded through this program except for common area and system wide improvements to the structure. The percentage of the cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner.

- **C. APPLICANT APPROVAL:**

Applications that have been received by the Housing Rehabilitation Program will be reviewed for completeness in accordance with the above guidelines. Additional documentation will be requested when needed to make the application complete. A complete, potentially eligible application will be submitted for review and final Step I approval. Upon approval by the Director, a letter will be sent to the homeowner advising them of their income eligibility and their placement on the waiting list for a property inspection by our office to determine work eligibility. Income approved homeowners with **emergency situations** will immediately proceed to Step II, for further eligibility determination.

Eligible applicants are not guaranteed they will obtain funding through the Housing Rehabilitation Program.

STEP II: PROPERTY REHABILITATION ELIGIBILITY CRITERIA

A. SUBSTANDARD PROPERTY REQUIREMENTS:

In order to qualify for Housing Rehabilitation assistance, the housing unit must be determined to be substandard.

Substandard: A housing unit is considered *substandard* when health and safety code violations exist and that abating those code violations requires that one or more major system must be replaced or extensively repaired.

Major Substandard Determination: Substandard eligibility for this program is determined by the presence of deficiencies in at least one major system. Per this definition, substandard deficiencies must exist in one or more of the following major systems: (but is not limited to).

- Roof
- Electrical
- Plumbing (including wells)
- Sanitary Plumbing (including septic systems)
- Heating
- Load bearing Structural Systems
- Handicapped Accessibility
- Lead Paint
- Energy Conservation (insulation/deteriorated windows or no storm windows)
- Overcrowding or health hazards
- Severely deteriorated siding, porches or steps.

Rehabilitation needs of a lesser or secondary priority may **only** be considered subsequent to substandard determination.

Property inspections: All approved applicants will be required to submit their properties to an on-site inspection by the Housing Rehabilitation Supervisor. An appointment will be made by the Housing Rehabilitation Supervisor to complete an inspection of the applicant's home. This inspection will ascertain the existence of substandard deficiencies in at least one major system of the home.

- After the property inspection, the Housing Rehabilitation Supervisor will prepare a Property Inspection Report, work write-up and cost estimate.
- The Property Inspection Report will define the rehabilitation work to be undertaken to correct the major substandard deficiencies, as well as other eligible improvements necessary to bring the unit up to code within the program guidelines.

B. REHABILITATION APPROVAL:

The Housing Rehabilitation Supervisor will create the work write-up. Documentation from Municipal Building Officials, Health Officers, Homeowner Insurance Agencies, Public Utility Companies and other agencies may assist in determining rehabilitation eligibility when necessary. Upon Step II approval by the Housing Rehabilitation Supervisor, a case will follow the outlined program procedures to provide for rehabilitation of the housing unit.

C. LEAD BASED PAINT REGULATIONS:

All homeowners will be given the Federal booklet entitled “Protect Your Family From Lead In Your Home” at the first inspection from the Rehab Supervisor. During the on-site inspection, the Supervisor will ascertain and note whether the proposed rehabilitation work will be disturbing any areas of painted surfaces.

Rehabilitation Work Not Disturbing Painted Surfaces (EXEMPT):

Rehabilitation work that will not be disturbing any painted surfaces is **EXEMPT** from the lead-based paint regulations and can proceed normally as outlined in the “General Program Procedures.”

Rehabilitation Work that Will be Disturbing Painted Surfaces:

- a) As determined by the Rehab Supervisor, if the proposed rehabilitation work will disturb less than then the de minimis, the work is **EXEMPT** from the lead-based paint regulations.
- b) If the proposed work is under \$5,000 but it will disturb over the de minimis of painted surfaces, the Lead-based Paint Regulations and Strategies must apply.

- c) As determined by the Housing Rehabilitation Supervisor, if the proposed rehabilitation work is over \$5,000 and is disturbing painted surfaces, the Lead-based Paint Regulations and Strategies outlined below must be followed.

Lead Based Paint Strategies:

- a) The Housing Rehabilitation Supervisor prepares a Property Inspection Report.
- b) The Housing Rehabilitation Supervisor forwards a copy to a lead-based paint risk assessor to arrange for a lead-based paint inspection/risk assessment.
- c) The Housing Rehabilitation Supervisor contacts the lead-based paint risk assessor to coordinate with the homeowner for an on-site assessment/inspection of their property.
- d) A written report that specifies areas that need to be addressed is provided to the Housing Rehabilitation Supervisor by the lead-based paint risk assessor.

Note: *If the assessment determines there are **no** lead-based paint hazards present, the rehabilitation work is **exempt**.*

- e) The Housing Rehabilitation Supervisor prepares a revised Property Inspection Report that incorporates lead-paint based hazard areas that must be corrected. Generally, the lead-based paint hazard work is the first priority on the Property Inspection Report, unless an emergency code violation is present.
- f) Copies of the revised Property Inspection Report are reviewed by the Housing Rehabilitation Supervisor and mailed to the homeowner for them to secure three (3) written estimates on the non lead-based paint proposed work.
- g) A copy of the Safe Work Practice contractor list will be attached to the revised Property Inspection Report to assist the homeowner in obtaining at least three (3) written estimates from Safe Work Practice contractors to address the lead-based paint scope of work.
- h) A specific "Safe Work Practice Contract" will be used for all construction jobs dealing with lead-based paint effected jobs.
- i) The Safe Work Practice contractor is responsible to assure his/her workers conform to all safe work practices on the site.

- j) Once the Safe Work Practice contractors have finished the job and properly cleaned the site, Community Development will call for a “Clearance Inspection” to be performed by the risk assessor.
- k) The cost of the first clearance inspection will be paid by Community Development.
- l) If the work-site/unit fails the first clearance inspection, the cost for subsequent clearance inspections will be deducted from the contractor’s final payment due from Community Development.
- m) Once the lead-based paint hazard work has been addressed and received clearance, the remaining non lead-based paint work can proceed as normal.
- n) Contractors first time working with “safe practices” will be allowed a one time waiver for the cost of a second clearance.

GENERAL PROGRAM PROCEDURES

A. PROPERTY INSPECTIONS AND WORK WRITE-UPS:

Upon the on-site inspection of the eligible property, the Housing Rehabilitation Supervisor will prepare an organized typed property inspection report, which will precisely define the rehabilitation work to be undertaken. The write-up will include the required technical specifications and will specify the construction needed to correct deficiencies and health hazards.

The property inspection report will include the qualifying substandard rehabilitation work, as well as, other eligible rehabilitation improvements.

Eligible Improvements: Priority will be health and safety problems affecting:

1. Plumbing	4. Roof
2. Heat-energy	5. Structural Repairs
3. Lead-based paint hazards	6. Electrical

Rehabilitation needs of a lesser or secondary priority may include:

1. Exterior painting	4. Floors
2. Insulation	5. Other
3. Windows/doors	

Ineligible Improvements: Certain improvements are not eligible through the Housing Rehabilitation Program. Generally, ineligible improvements are repairs that are not health or safety related. Additionally, ineligible improvements include, but are not limited to:

1. Strictly cosmetic and aesthetically related improvements.
2. The purchase of free-standing appliances (not including stoves).
3. The payment of local assessment or connection fees associated with authorized utility connections.
4. Nonessential premise repairs such as driveways, fencing, landscape structures and plantings.
5. Improvements considered being routine maintenance items.

At the time of the on-site inspection, the cost estimator will also perform a visual Environmental review to assess if the property is located in a Flood Zone, is impacted by excessive noise, or may be historically significant. The Supervisor's findings will be corroborated by the National Flood Plain maps and the Morris County Heritage Commission's listing of historical properties. Both reference sources are maintained in the Office of Community Development office. The cost estimator's findings will be noted in each case file.

B. COST ESTIMATING:

Subsequent to the property inspection and work write-up the Supervisor will develop a professional estimate of reasonable cost, based on the scope of work as is the case work write-up.

C. BIDDING REQUIREMENTS:

The income approved homeowner will be advised by the Supervisor to obtain three written proposals based upon the scope of work outlined in the property inspection report.

- It is the homeowner's responsibility to contact contractors of their choice, solicit estimates and submit the estimates to our office.
- The Housing Rehabilitation Program cannot solicit estimates on behalf of a homeowner.
- The Housing Rehabilitation Program can assist the homeowner in securing estimates by providing the homeowner with a list of contractors who have satisfactorily participated in our Housing Rehabilitation Program.
- Any qualified contractor can participate in our program provided they:
 - a.) carry liability and workmen compensation insurance
 - b.) are licensed as required by local code (if applicable)
 - c.) are not on the federal debarred list
 - d.) provide their Federal Identification number along with a W-9 for tax purposes.
- When an approved homeowner is unable to solicit contractor bids, staff will try to arrange third party intervention to assist the homeowner in getting bids.
- The homeowner will be required to submit at least three (3) estimates per phase of rehabilitation work proposed. A minimum of two (2) estimates will be accepted in emergency or hardship situations, upon supervisory approval.
- Upon approval for the homeowner to perform the labor and the Housing Rehabilitation Program to pay for the materials, the homeowner must submit three (3) estimates for the materials needed. If the approved materials needed are less than \$999 the homeowner can purchase the materials without securing estimates and submit the receipts to the program for reimbursement.
- The Housing Rehabilitation Program may reject any and all contractor bids if the bids received exceed the Supervisor's assessment by 20% or more, or if collusion is suspected.

D. CONTRACTOR SELECTION:

Once the bid documents from two or more contractors are received, the homeowner will be counseled with respect to selecting the low bidder. Generally, the lowest responsible bidder shall be selected. If the homeowner desires a higher bidder, the

homeowner will be responsible to pay the amount over and above the lowest bidder's quote.

Construction Agreement: A construction agreement will be written up by the cost estimator and will be given to the homeowner. The contract documents are to be signed by and between the homeowner and the contractor. The Housing Rehabilitation Program acts an administrative agent to provide technical assistance through the construction period.

- The construction agreement will stipulate the contract price, the time of performance, the payment schedule, the holdback and final payment, procedures for termination of contract, as well as reference to the contractor's original bid specifications and warranties.
- The Housing Rehabilitation Supervisor must approve any revisions to the original scope of work under contract. Change orders will be required for work that results in an increase or decrease in the contract amount.

E. CONSTRUCTION INSPECTIONS:

If warranted, the Housing Rehabilitation Supervisor will conduct an onsite pre-construction conference with the homeowner and the contractor to discuss the scope of work and the terms and conditions of the contract.

- Once the construction agreement and the lien agreement are signed, the contractor may begin construction.
- It will be the contractor's responsibility to obtain all required permits and to arrange for all necessary inspections with the local building inspector.
- It is the homeowner's responsibility to let our office know at least two days in advance when the contractor is scheduled to begin the job.
- The Housing Rehabilitation Supervisor will make periodic inspections to monitor the progress of the property improvements.
- The contractor must notify the Housing Rehabilitation Program of any changes that may occur during construction **BEFORE** the work is done. The Housing Rehabilitation Supervisor will attempt to conduct emergency inspections to verify and approve major revisions.

- When emergency inspections are not possible, the Supervisor may approve change orders upon proof the revisions were necessary and were done.
- The Housing Rehabilitation Supervisor will perform a final inspection to certify the required property improvements are complete. He/she will also determine if the structure has been brought up to program, municipal and Section 8 Minimum Property Standards and will note each case file accordingly.
- The local construction official may also conduct final inspections and approvals when mandated by local code, or as required by supplemental funding programs.

F. PAYMENTS:

- Payment in the form of a dual party check to the Homeowner/Contractor will be made, as provided in the Construction Agreement, with a minimum 10% retained. (Safe Work Practice construction agreements require a 50% retainage until final lead-based paint hazard clearance is obtained).
- The check will be given to the homeowner for disbursement to the contractor.
- Final payment to the homeowner/contractor will be made upon all necessary local inspections and approvals.

G. FINAL INSPECTIONS:

The Housing Rehabilitation Supervisor will conduct a final inspection to certify that the required property improvements are complete. The Director of Housing and Community Development Programs will conduct site visits of completed cases, if necessary. At the final inspection, determination will be made whether the structure has been brought up to program, municipal and Section 8 Minimum Property Standards. The determination will be noted on each case file.

H. COMPLAINT RESOLUTION PROCEDURES:

Attempts to resolve property homeowner and rehabilitation contractor complains/disputes will be mediated by the staff.

- Minor complaints may be directed to the Housing Rehabilitation Supervisor for intervention or resolution.

- Major complaints/disputes should first be directed to the Rehabilitation Supervisor for mediation.
- If not satisfactorily resolved, the complaint should proceed to:

First The Director of Housing and Community Development
Development Programs
Second HUD Area Office in Newark, NJ.

Every attempt will be made to resolve complaints and disputes in an equitable manner.

I. GRANT AMOUNTS AND ADDITIONAL FUNDING SOURCES:

The maximum Community Development Housing Rehabilitation Program assistance to any one unit may not exceed **\$30,000.00**. An activity that involves Lead Safe Work Practices is capped at **\$24,999.00** for the Lead Safe Work Practices portion of the job. If additional dollars are required to complete necessary code related work the program will try to secure supplemental funding. The following steps must be taken to seek additional funding:

1. The Housing Rehabilitation Supervisor must approve the need for additional funding.
2. Requests for other funding sources should be directed to the Housing Rehabilitation Supervisor.
3. The Housing Rehabilitation Supervisor will research other funding sources which may assist the homeowner.

J. UTILITY WATER/SEWER HOOK-UPS

Community Development can provide financial assistance toward the cost of water/sewer hook-ups from the main line in the street to individual eligible applicants' homes. Community Development cannot provide assistance toward the cost of water/sewer assessment or connection fees.

Community Development will provide a grant of 100% of the cost of hook-up to eligible very low, low/moderate income applicants whose incomes fall below 80% of the HUD Section 8 income limits.

K. RECORD KEEPING:

Separate files will be maintained on all approved Housing Rehabilitation clients. The Housing Rehabilitation Supervisor will be responsible for maintaining the client files.

Mandatory records kept in each client file will include:

Original homeowner application	Construction Agreements
Income verification documentation	Copies of checks
Copy of the deed	Progress Report Form
Income determination form	Environmental Assessment Form
Work write-ups with costing	Lead-based paint notification form
Contractor estimates and change orders	Lien agreement
	Case memo log form

In addition to the hard copy records and documents the identical data will be kept on a computerized record keeping database system. Computerized database records will also be kept on the number of intakes to the program and the number of ineligible or inactive clients served.

SECUREMENT OF FUNDS

Lien Criteria: Funding through the Morris County Housing Rehabilitation Program will be in the form of a deferred payment loan and will be secured by a lien on the homeowner's property. All liens will be recorded in the Deed Book of the Morris County Clerk's Office once the final payment has been disbursed. The date of the final check is considered the close out date of the file. The term for each lien begins with the Morris County Clerk's Office recorded date.

The term of each lien is based on the loan amount given, as follows:

Up to \$1,000.	No lien necessary
\$1,001- \$5,000.	6 Year lien
\$5,001. and over	10 Year lien

The loan will be forgiven completely if the homeowner resides in the unit for the term of the loan, and the lien will be formally discharged of record. If the property is sold or transferred within the term of the lien, the loan shall become payable in full upon the date of such sale or transfer. There are no per diem interest or fees should be property be sold prior to the term of the lien. The amount due and payable will be reviewed and based on the dollar amount of the work completed to bring the property up-to-code.

Subordination of Liens: The Housing Rehabilitation Program will postpone or subordinate our lien status to subsequent mortgages under the following circumstances:

- The proceeds of the new loan are required to make additional major repairs to the property; consolidate debts; refinance for more favorable terms; or to avert foreclosure proceedings.
- The homeowner continues to occupy the home as their primary residence.
- There remains sufficient equity in the home to satisfy our lien repayment.
- The homeowner must contact the Office of Community Development Housing Rehabilitation Program to verify the integrity of the new mortgage loan.
- The Housing Rehabilitation Program will agree to subordinate the same lien a maximum of three (3) times within the life of the lien. Afterward, the homeowner will be required to repay the Community Development grant in order to secure subsequent mortgages.

Legal Document Preparation: All legal documents pertinent to the Office of Community Development will assure securing of grant funds. Original recorded lien documents will be securely stored in this same office.

- **Lien Agreements** will be prepared by our office and must be signed by the homeowner(s) and notarized. The Acknowledgement and Receipt of Grant Proceeds And Consent To Imposition of Lien will be recorded at the Morris County Clerk's Office.

- ***Release*** and ***Postponement of Liens*** will be prepared by the Office of Community Development and forwarded to the Morris County Counsel with a copy of the applicable recorded lien and a Resolution for their execution by the Morris County Board of Chosen Freeholders. Upon execution by the Freeholders, the executed documents will be recorded with the Morris County Clerk's Office.
- Liens prepared will self destruct when they expire, without necessity of preparing, executing and recording formal Lien Releases.

SOURCE OF FUNDING

The source of funding, requirements and usage are listed below:

<u>Source of funds:</u>	<u>Requirements:</u>	<u>Usage of Funds:</u>
<i>Morris County</i>		
<i>Community Development</i>		

Grant monies are awarded yearly from the Department of Housing and Urban Development (HUD) for the Housing Rehabilitation Program.	<ol style="list-style-type: none"> 1. Income/ownership eligible per program guidelines. 2. One major code Code violation must be evident, per programs. 	Individual client funds are vouchered directly by the Office of Community Development for payment through the Housing Rehabilitation account set-up with the Morris County Treasurer's Office. Rehab Vouchers will be reviewed and signed by the Director Of Housing and Community Development Programs.
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APPENDIX J:
CREDITING DOCUMENTATION FOR BRIGHTVIEW AND OUR HOUSE



**Department of Community Affairs
Council on Affordable Housing
Assisted Living Residence Survey**

Municipality: RANDOLPH TOWNSHIP County: MORRIS
 Sponsor: _____ Developer/ Owner: BY RANDOLPH, LLC
 Block: _____ Lot: _____ Street Address: _____
 Facility Name: BRIGHTVIEW RANDOLPH

Type of Facility (choose one):	CO Date: _____
<input checked="" type="checkbox"/> Assisted Living Residence <input type="checkbox"/> Comprehensive Personal Care Home ¹	Licensed by State Department of Health and Senior Services (DHSS): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Initial License Date: <u>10/2/15</u> Current License Date: <u>10/1/18</u>
<u>Complete for separate apartments:</u>	Date units to become affordable: _____
# of apartments in the facility: <u>68</u>	HMFA financed project? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
# of <u>affordable</u> apartments in the facility: _____	Is the facility accessible (in accordance with NJ Barrier Free Subcode)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
# Affordable Studios: _____ # Affordable 1 BR Units: _____ # Affordable 2 BR Units: _____	Is the facility Medicaid approved? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will two-bedroom units be restricted to unrelated individuals? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (if "yes," # of units to be restricted to two unrelated individuals: _____)	# of beds reserved for individuals receiving Medicaid Waivers: <u>10%</u>
<u>Complete for separate bedrooms:</u>	# of bedrooms reserved for individuals receiving Medicaid Waivers: <u>10%</u>
# of bedrooms in the facility: _____	<input checked="" type="checkbox"/> provide copy of license
# of <u>affordable</u> bedrooms in the facility: _____	<input checked="" type="checkbox"/> provide letter signed by the facility administrator stating that the facility meets the requirements of C.26:2H-12.16.
# of affordable beds in the in the facility: _____	NOTE: The smallest unit eligible for credit is the bedroom.
NOTE: The smallest unit eligible for credit is the bedroom.	Required Documentation provided (check all that apply):
Affordability Controls on Facility? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Operating manual that includes a description of the program procedures and administration in accordance with UHAC
Length of Controls: _____ years	<input type="checkbox"/> Designation of an Administrative Agent
Effective Date of Controls: _____	<input type="checkbox"/> DHSS Medicaid Waiver List
Expiration Date of Controls: _____	<input type="checkbox"/> Affirmative Marketing Plan approved by the Council's Executive Director
<u>Select One:</u>	<input type="checkbox"/> MOU between the municipality and HMFA
<input type="checkbox"/> 50% of affordable units/beds designated for low-income households OR	NOTE: MOU may be substituted for Administrative Agent and Affirmative Marketing requirements.
<input type="checkbox"/> All units designated for households at 60% of median income	

The following verification is attached (check all that apply):

Copy of Recorded Rental Deed Restriction on Facility
 If applicable, Memorandum of Understanding between municipality and HMFA Date Executed: _____

CERTIFICATIONS

I certify that the information provided is true and correct to the best of my knowledge and belief.

Certified by:

Owner

6/13/19

Date

Certified by:

Municipal Housing Liaison

Date

¹ Comprehensive Personal Care Homes include Class "C" Boarding Homes and Residential Health Care Facilities that were built before December 20, 1993 when the Assisted Living Regulations were adopted and chose to convert to licensing under assisted living regulations (Subchapter 17 of Chapter N.J.A.C. 8:36, the Assisted Living Standards for Licensure).



June 12, 2019

To Whom It May Concern:

This letter is to certify that Brightview Randolph is approved for participation in the New Jersey Medicaid Program as an Assisted Living Provider. We comply with the standards and requirements for licensure.

Sincerely,

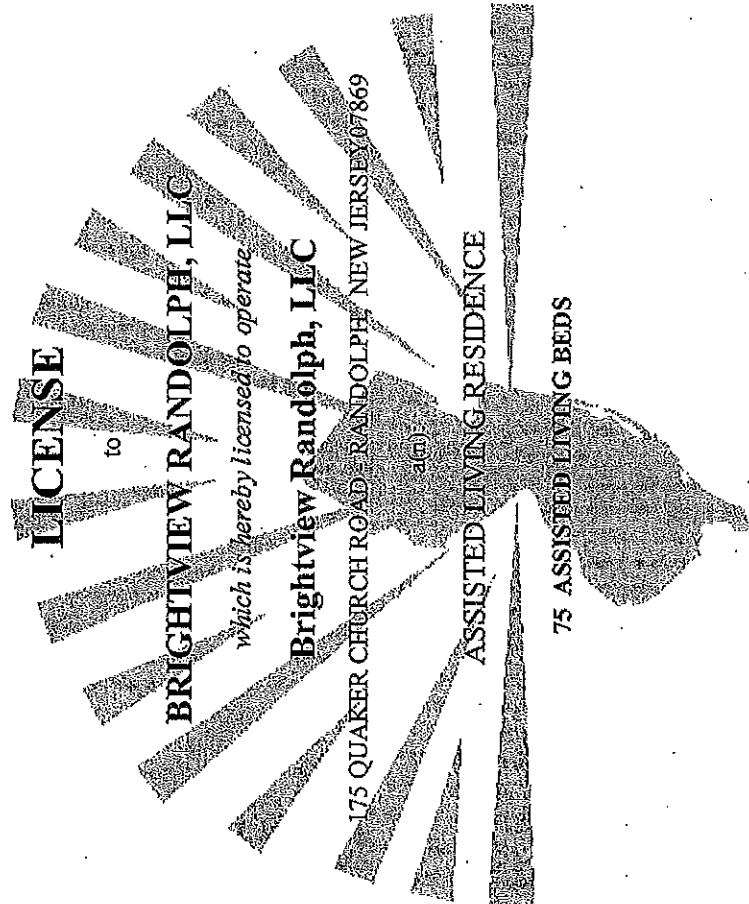
Marie Milano

Marie Milano, LNHA, CDP, CDAL
Executive Director

NEW JERSEY DEPARTMENT OF HEALTH
DIVISION OF CERTIFICATE OF NEED AND LICENSING

Presents, pursuant to N.J.S.A. 26:2H-1 et seq.,

this



License #: 60A013

Effective: 10/01/2018

Expires: 09/30/2019

Issued: 08/22/2018

MUST BE POSTED IN A CONSPICUOUS PLACE IN THE FACILITY
THIS LICENSE IS NOT TRANSFERABLE, APPLIES ONLY TO THE ABOVE LOCATION, AND TERMINATES ON NOTICE BY THE DEPARTMENT




Shereef M. Elnahal, MD, MBA
Commissioner

**Department of Community Affairs
Local Planning Services
Supportive and Special Needs Housing Survey**

Municipality: Randolph _____ County: Morris _____

Sponsor: Our House, Inc. _____ Developer: Our House, Inc. _____

Block: 35 Lot: 18 Street Address: 17 Pamela Drive _____

Facility Name: Pamela Drive Group Home _____

<p>Section 1: Type of Facility:</p> <p><input checked="" type="checkbox"/> Licensed Group Home <input type="checkbox"/> Transitional facility for the homeless (not eligible for credit as affordable housing after June 2, 2008) <input type="checkbox"/> Residential health care facility (licensed by NJ Dept. of Community Affairs or DHSS) <input type="checkbox"/> Permanent supportive housing <input type="checkbox"/> Supportive shared housing <input type="checkbox"/> Other – Please Specify: _____</p>	<p>Section 2: Sources and amount of funding committed to the project :</p> <p><input type="checkbox"/> Capital Application Funding Unit: _____ <input checked="" type="checkbox"/> HMFA RLW: _____ <input type="checkbox"/> Balanced Housing – Amount \$ _____ <input type="checkbox"/> HUD – Amount \$ _____ Program _____ <input type="checkbox"/> Federal Home Loan Bank – Amount \$ _____ <input type="checkbox"/> Farmers Home Administration – Amount \$ _____ <input type="checkbox"/> Development fees – Amount \$ _____ <input type="checkbox"/> Bank financing – Amount \$ _____ <input checked="" type="checkbox"/> Other – Please specify: Randolph \$250K ODD spriders alarms</p> <p><input type="checkbox"/> For proposed projects, please submit a pro forma <input type="checkbox"/> Municipal resolution to commit funding, if applicable <input type="checkbox"/> Award letter/financing commitment (proposed new construction projects only)</p>
<p>Section 3: For all facilities other than permanent supportive housing:</p> <p>Total # of bedrooms reserved for: Very low-income clients/households _____ Low-income clients/households _____ Moderate-income clients/households _____ Market-income clients/households _____</p>	<p>Section 4: For permanent supportive housing:</p> <p>Total # of units 4 _____, including:</p> <p># of very low-income units _____ # of low-income units _____ # of moderate-income units _____ # of market-income units _____</p>
<p>Section 5:</p> <p>Length of Controls: _____ years Effective Date of Controls: ____/____/_____ Expiration Date of Controls: ____/____/_____ Average Length of Stay: _____ months (transitional facilities only)</p>	<p>Section 6:</p> <p>CO Date: 8/28/2014 For licensed facilities, indicate licensing agency: <input checked="" type="checkbox"/> DDD <input type="checkbox"/> DMHS <input type="checkbox"/> DHSS <input type="checkbox"/> DCA <input type="checkbox"/> DCF <input type="checkbox"/> Other _____ Initial License Date: 6/19/15 YCS licenses Current License Date: 5/31/19 - 5/31/20</p>
<p>Section 7:</p> <p>Has the project received project-based rental assistance? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No; Length of commitment: NA _____ Other operating subsidy sources: _____; Length of commitment: NA _____ Is the subsidy renewable? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No NA</p>	
<p>Section 8: The following verification is attached:</p> <p><input type="checkbox"/> Copy of deed restriction or mortgage and/or mortgage note with deed restriction (30-year minimum, HUD, FHA, FHLB, UHAC deed restriction, etc.) <input type="checkbox"/> Copy of Capital Application Funding Unit (CAFU) or DHS Capital Application Letter (20 year minimum, no deed restriction required)</p>	
<p>Section 9:</p> <p>Residents 18 yrs or older? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Population Served (describe): developmentally disabled _____</p> <p>Age-restricted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Accessible (in accordance with NJ Barrier Free Subcode)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	



Section 10: Affirmative Marketing Strategy (check all that apply):

DDD/DMHS/DHSS waiting list
 Affirmative Marketing Plan approved by the Council's Executive Director

CERTIFICATIONS

I certify that the information provided is true and correct to the best of my knowledge and belief.

Certified by:

Diane Daniels

6-7-19

Project Administrator

Date 6/10/19

Certified by:

Donna C.

Date

Municipal Housing Liaison

Record and Return to:

Gloria Mehnert, Paralegal
New Jersey Housing and Mortgage
Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

**Pamela Supportive Housing at Randolph
HMFA #02933
SNHPLP#48**

FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT

between

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

and

OUR HOUSE, INC.

Prepared by:


Kellie L. Kiefer Pushko
Deputy Attorney General

Construction and Permanent Financing
Special Needs Housing
Partnership Loan Program

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Schedule A. Legal Description

THIS FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT (this "Agreement"), made and entered into as of this 18th day of October, 2013 by and between the **NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY** (the "Agency" or "Lender"), a body politic and corporate and an instrumentality exercising public and essential governmental functions of the State of New Jersey and **OUR HOUSE, INC.** ("Owner" or "Borrower"), a non-profit corporation organized and existing pursuant to the laws of the State of New Jersey and duly authorized to transact business in the State of New Jersey.

W I T N E S S E T H

In consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Agency and the Owner hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings set forth below:

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended from time to time, P.L. 1983, c. 530, N.J.S.A. 55:14K-1 et seq., and the regulations promulgated thereunder, as amended from time to time.

"Architectural Contract" means the agreement by and between the Owner and Architecture Plus, PC (the "Architect") dated October 18, 2012, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project.

"Assignment of Leases" means the Assignment of Leases by and between the Owner and Lender of even date herewith.

"Commitment" means, collectively, the commitment approval letter signed by the Executive Director of the Agency dated August 15, 2013, and the financing commitment approval recommendations of the Special Needs Housing Partnership Loan Program loan committee members in the request for consideration dated August 15, 2013, together with all amendments thereto.

"Construction Contract" means the agreement between the Owner and Nicholas Longo Construction Co., Inc. dated August 9, 2013, or any other agreement executed by the Owner and approved by the Agency, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project approved by the Agency.

"Construction Period" means the period of time as defined in the Construction Contract.

"Day" or "Days" whether or not the word is a capitalized term, shall mean calendar day or day(s) unless otherwise specified.

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

"DDD" means the Division of Developmental Disabilities within the DHS.

"DHS" means the State of New Jersey, Department of Human Services.

"Event of Default" means any of the events set forth in Section 28 of this Agreement.

"First Mortgage" or **"Mortgage"** means the first mortgage and security agreement of even date herewith that will constitute a first lien on a fee simple interest in the Project and Land, given by the Owner to the Agency to secure the First Mortgage Loan.

"First Mortgage Loan" or **"Loan"** means the loan made to the Owner by the Agency to finance a portion of the cost of the development, rehabilitation and/or construction of the Project that will be located on the real property described in Schedule A attached hereto, as evidenced by the First Mortgage Note and secured by the First Mortgage.

"First Mortgage Note" or **"Mortgage Note"** or **"Note"** means the non-interest bearing, non-recourse promissory note that contains the promise of the Owner to pay the sum of money stated therein at the times stated therein and that evidences the obligation of the Owner to repay the First Mortgage Loan.

"Guidelines" means the Special Needs Housing Partnership Loan Program Guidelines as approved by the Agency's Board on March 1, 2012, as may be amended from time to time.

"Improvements" means the building together with all fixtures and utility improvements, easements and rights of way that are owned by the Owner and located on the Land.

"Land" means the real property described in Schedule A attached hereto, on which the Project is located.

"Loan Documents" means and includes this Agreement, the Mortgage Note, the Mortgage, the UCC-1 Financing Statements and the Assignment of Leases.

"Low-Income Tenants" means families that have income of **50%** or less of the area median gross income adjusted for family size.

"Permitted Encumbrances" means the Mortgage:

- (i) Mortgage;
- (ii) Utility, access and other easements and rights of way, restrictions and exceptions that do not, individually or in the aggregate, materially impair the utility or value of the Project or Land for the purposes for which it is intended;

(iii) Liens that are being contested in good faith and for which the Owner has provided security satisfactory to the Agency;

(iv) Liens subordinate to the Mortgage Loan arising due to any monies loaned in connection with the Project or other monies loaned to the Owner, provided such liens are disclosed to and approved by the Agency in writing; and

(v) Any other encumbrances approved by the Agency in writing.

"Project" means the Improvements located on the Land together with the Land to be financed, in part, with the proceeds of the Loan.

State" means the State of New Jersey.

"UCC-1" means the UCC-1 Financing Agreement(s) of even date herewith.

Section 2. Background and Purpose. The Owner owns, or will own, and proposes to construct or rehabilitate, and will operate a Project to be located on the Land. The Lender will hold a first mortgage lien on the Project in the amount of **\$250,000** during the term of the Mortgage at an interest rate of zero (0%) percent. Financing for the Project shall be derived from the Lender's Special Needs Housing Partnership Loan Program ("SNHPLP" or "Program").

In connection with the First Mortgage, the Owner and the Agency have entered into this Agreement.

In connection with its application for the Loan, the Owner has furnished to the Agency various details as to the Project, including the description of Land on which it is to be situated, plans and specifications for the construction/rehabilitation of the Project, the tenant population that shall be housed in the Project, the number of units of each type to be included therein, the estimated costs of providing the Project, details as to the Project income and expenses of the Project once constructed and/or rehabilitated and placed in operation, and arrangements for any tax abatement for the Project.

Section 3. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees that the Project to be known as Pamela Supportive Housing at Randolph will be located at Lot 28 in Block 35 in the Township of Randolph, Morris County, New Jersey. The proposed project involves the acquisition and moderate rehabilitation of an existing ranch home in Randolph, NJ. The home is a four bedroom ranch that will be renovated to meet the needs of 4 individuals with developmental disabilities. Each resident will have their own bedroom and will share attractive common areas including an eat in kitchen, living room, 2 full baths, laundry facilities, deck, attached garage and beautiful backyard. A staff office will be located in the lower level and 24 hour staffing will be provided.

The Affordability Controls will be 100% of the units at less than 50% of the Area Median Income (AMI) and 100% of the units will be set-aside for persons with developmental disabilities.

All of the units in the Project are to be utilized at all times in accordance with the types of use as permitted by the Act and/or the Guidelines and as may be approved by the Agency. All units shall be subject to use and occupancy and/or intake and/or occupancy or lease agreements between the Owner and the tenants/residents.

Section 4. Additional Representations, Covenants and Warranties of the Owner.

The Owner represents, warrants and covenants that:

A. The Owner (i) is non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New Jersey and duly authorized to transact business in the State; (ii) has filed with the Agency a true and complete copy of its Certificate of Incorporation with all amendments, if any, thereto; (iii) has the power and authority to own or lease its properties and assets, including the Project and the Land, and to carry on its business as now being conducted (and as now contemplated), and to borrow the proceeds of the Loan; and (iii) has the power to execute and perform all the undertakings of this Agreement and the other Loan Documents.

B. All necessary legal action has been taken to authorize the execution, delivery and performance of the Loan Documents by the Owner.

C. The Loan Documents have been duly executed and delivered by the Owner and constitute the valid and legally binding obligations of the Owner, enforceable against the Owner in accordance with their respective terms.

D. To the best of the Owner's knowledge after due and diligent inquiry, the execution and performance of this Agreement, the Loan Documents and other instruments required pursuant to this Agreement by the Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulations, any order of any court or other agency or government or any provision of any document to which the Owner is a party and (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement or other instrument to which the Owner is a party, or result in the creation or imposition of any lien, charge or encumbrance of any nature other than the Permitted Encumbrances.

E. The Owner has, at the time of execution of this Agreement and subject only to such exceptions as have been disclosed in writing to the Agency and which will not materially interfere with or impact the beneficial use of the Project and Land for purposes of the Project, good and marketable title to fee simple interest in the premises constituting the Land and the Project free and clear of any lien or encumbrance (subject to Permitted Encumbrances and encumbrances created or contemplated pursuant to this Agreement).

F. There is, after due and diligent inquiry, no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted, or as contemplated to be conducted under this Agreement, or would materially adversely affect its financial condition.

G. To the best of the Owner's knowledge after due and diligent inquiry, the operation of the Project in the manner presently contemplated and as described in this Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Owner has caused the Project to be designed in accordance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality and will proceed with due diligence to rehabilitate the Project pursuant to the Architectural Contract or the Construction Contract, as applicable.

Further, the Owner has received or shall obtain all necessary governmental approvals and building permits for construction, rehabilitation and operation of the Project in accordance with the plans and specifications and the Architectural Contract or Construction Contract, as applicable, and shall obtain in a timely manner any and all required extensions of governmental approvals, including, but not limited to, site plan approval.

H. The Owner has filed, caused to be filed by it, or shall file all federal, state and local tax returns which are required to be filed by it, if any, and has paid or caused to be paid all taxes as shown on said return or on any assessment received by it, to the extent that such taxes have become due.

I. To the best of the Owner's knowledge, after due and diligent inquiry, the Owner is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party that may materially affect this Project.

J. The information contained in the Project description provided in the applications for the Loan is accurate in all material respects and does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

K. The Owner shall not during the term of this Agreement sell, transfer or exchange, the Project or the Land (or any part thereof or any interest therein) at any time except in accordance with the terms of the First Mortgage, this Agreement, the Act and the regulations promulgated pursuant to the Act, and unless such sale, transfer or exchange shall have been approved by the Agency. The Owner shall notify in writing and obtain the agreement in writing of any buyer or successor or other person acquiring the Project or Land or any interest therein, in a form acceptable to the Agency that such acquisition is subject to the requirements of this Agreement. This provision shall not act to waive any other restriction on such sale, transfer or exchange.

L. The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof and the First Mortgage, and in any event, the requirements of this Agreement and the First Mortgage are paramount and controlling as to the rights and obligations herein and in the First Mortgage and such requirements shall supersede any other requirements in conflict herewith and therewith.

M. All statements contained in all applications, correspondence or other materials delivered to the Agency by the Owner in connection with its consideration of the Loan to the Owner or relating to the Project are materially true and correct.

N. The representations, covenants and warranties of the Owner contained in this Agreement on the date of its execution are true and shall continue to be true at all times during the term of this Agreement.

O. No event has occurred and no condition exists which constitutes an Event of Default under this Agreement or the First Mortgage or which, but for a requirement of notice or lapse of time, or both, would constitute such an Event of Default.

P. As of the date of this Agreement, the Architectural Contract and the Construction Contract are in full force and effect and no default has occurred thereunder, and a true copy of the entire Architectural Contract and the Construction Contract with all modifications and addenda to date has been filed with the Agency.

Section 5. Covenants to Run With the Land.

A. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth in this Agreement touch and concern the Land in that the Owner's legal interest in the Project and Land is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the Project and Land by enhancing and increasing the enjoyment and use of the Project and the Land by the tenants contemplated under this Agreement and by furthering the public purposes for which the First Mortgage Loan is made. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land. Except as provided in subsection B below, the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and hereof and shall pass to and be binding upon the Owner's assigns and successors in title to the Land or Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project and/or the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project and/or Land are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project and/or Land.

B. Upon termination of this Agreement in accordance with Section 6 hereof, said covenants, reservations and restrictions shall expire and in such event, the Agency shall, at the expense of the Owner, execute any and all instruments reasonably required to evidence of record the satisfaction, cancellation and discharge of this Agreement.

Section 6. Term. This Agreement shall remain in full force and effect until the maturity date as stated in the Note.

Section 7. Construction of Project. The Owner covenants and agrees to comply with all the provisions of the Construction Contract. The Owner covenants and agrees to diligently pursue the construction/rehabilitation of the Project to completion in accordance with the plans and specifications set forth in the Owner's application for the Loan, the Architectural Contract, the Construction Contract and as approved by the Agency.

The Owner shall not approve or allow to occur any material change in the scope of work or plans and specifications for the Project without the express approval of the Agency. Rehabilitation or construction shall at all times be subject to the discretionary inspection, discretionary review, regulation and approval of the Agency and its duly authorized representatives. Any such inspection, regulation, review or approval of the Agency shall be solely for its benefit for the purpose of assuring that the programs and goals of the Project are being fulfilled.

The Owner shall not knowingly do any act which would cause the release, in whole or in part, of the surety bond or bonds issued in connection with the Construction Contract, including, without limitation, deviation from the payment schedule, waiver of any material requirements imposed on the contractor or any subcontractor under the Construction Contract or consent to any major change in the in the scope of plans and specifications or scope of the work, unless such act would not cause any release because the surety has consented thereto.

Section 8. Rehabilitation or Construction and Funding.

A. Rehabilitation or Construction of Project:

The Owner covenants and agrees to comply with all provisions of the Architectural Contract and the Construction Contract. The Owner covenants and agrees to diligently pursue the rehabilitation or construction of the Project to completion, time being of the essence, in accordance with the plans and specifications for the Project as approved by the Agency.

B. Funding:

Upon and subject to the terms and conditions of this Agreement, the First Mortgage and First Mortgage Note, the Agency agrees to advance and disburse the Principal Sum of **\$250,000** only after the Agency has received and approved, subject to its sole discretion, all items required for closing in the Agency's Document Checklist for the SNHPLP and the satisfaction of the conditions set forth in the Commitment.

C. Conditions Precedent to Advance:

The Agency's obligations to make the other disbursements under the First Mortgage shall be subject to the satisfaction of the following conditions precedent, any of which may be waived in whole or part by the Agency.

1. Each of the Owner's covenants, agreements, representations and warranties contained in this Agreement shall continue to be true and shall not be breached.

2. The full amount of all previous advances shall have been expended for Land acquisition, Project costs approved by the Agency, and the discharge of any related lien(s).
3. All work performed and material furnished for the Project shall be in accordance with the plans and specifications for the Project and all work shall have been properly performed to the satisfaction of the Agency.
4. No event shall have occurred and no conditions shall exist that would prevent the advance from becoming a valid first mortgage lien on the Project and the Land or secured by a prior protected security interest on any other collateral mentioned in the First Mortgage. If the Agency shall deem it necessary or desirable, all or part of the advance may be disbursed in escrow to a title insurance company licensed to do business in the State of New Jersey for the purpose of discharging any construction or other lien on the Project and Land or any other security mentioned in the First Mortgage, and the Owner agrees to certify in writing that the foregoing conditions have been satisfied.

Section 9. Insurance; Condemnation. The Owner shall cause the buildings on the premises and the fixtures and articles of personal property covered by the First Mortgage to be insured against loss by fire and against loss by such other hazards as may be required by the Agency for the benefit of the Agency, including, but not by way of limitation, flood insurance if any part of the Project is located in an area designated by or on behalf of the federal government as having specific flood hazard. Such insurance shall be written by such companies in an amount not less than the full insurable value of the Project exclusive of excavations and foundations and in such forms as are satisfactory to the Agency. The Owner shall assign and deliver the policies to the Agency, and the Agency shall be mortgagee, loss payee and additional insured under such policies. Such policies shall provide that the insurer may not cancel the policy and will not refuse to renew the policy except after thirty (30) days written notice to the Agency. If the Agency shall not receive evidence satisfactory to it of the existence of effective insurance coverage as required by the Agency, the Agency may (but shall not be required to) obtain such coverage and the Owner shall reimburse the Agency on demand for any premiums paid for insurance procured by the Agency, and until so reimbursed the amount of such premiums shall be added to the principal sum of the First Mortgage and shall bear interest at the same rate as under the Note. Valid participation by the Owner in a blanket insurance program offered by or through the Agency or approved by the Agency shall be satisfactory evidence of the required insurance for each type or class of coverage.

In the event of substantial damage to the Project by the occurrence of an insured casualty or the taking of a substantial portion of the Project by condemnation, if, in the sole judgment of the Agency (which judgment shall be conclusive): (a) the Project can be replaced or restored in whole or in part, and (b) the Project as so replaced will produce sufficient income to meet the obligations of the Owner under the Loan Documents, the proceeds of insurance or condemnation, together with any other money available for such purpose, if sufficient, shall be made available to the Owner, subject to the approval of the Agency. To the extent the Project is not replaced or restored, the balance of

such proceeds shall be applied to the indebtedness secured thereby. Nothing in this Section shall affect the lien of this Agreement and the obligation of the Owner under the Loan Documents to pay the entire balance of the Loan.

The Owner shall maintain continuously in effect such other insurance coverage of the types and in the amounts specified by the Agency, including workers' compensation insurance and other insurance required by law with respect to employees of the Owner, and liability insurance with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others and a blanket excess liability policy in an amount acceptable to the Agency, protecting the Owner and the Agency against any loss or liability or damage for personal injury or property damage with respect to the Project. Owner shall also maintain use and occupancy insurance covering loss of revenues derived from the Project by reason of interruption, total or partial, of the use of the Project resulting from loss or physical damage thereto in an amount not less than one year's gross rental income. The Owner shall carry fidelity bond insurance covering all employees of the Owner authorized to handle the revenues derived from the Project in an amount equal to one-half times the maximum monthly rent roll.

Section 10. Taxes or Payments in Lieu of Taxes. The Owner covenants and agrees to pay any valid municipal taxes or payments in lieu of taxes, charges, assessments, water charges and/or sewer charges, and in default thereof, the Agency may pay the same. Any such sum or sums so paid by the Agency shall be added to the principal sum secured by the First Mortgage, as determined by the Agency, and shall bear interest at the same rate as under the Note. If the Project is subject to a payments in lieu of taxes agreement with the municipality, the Owner shall not terminate or materially amend such agreement without the prior written approval of the Agency.

Section 11. Liens and Encumbrances. The Owner covenants and agrees to maintain its right, title and interest in the Project, Land and all items enumerated in the Loan Documents, as security for repayment of the First Mortgage Loan, free and clear of all liens, security interests and other encumbrances except for Permitted Encumbrances and those exceptions identified and set forth in a certain title insurance commitment issued to the Agency by Commonwealth Land Title Company Commitment, dated August 7, 2013 and identified as Commitment Number 13-LT-0206, continued to the date of this Agreement, as accepted by the Agency. The foregoing covenant and agreement shall not prevent the Owner from leasing or renting the Project or Land in the manner as otherwise provided in this Agreement. Except with the written consent of the Agency, the Owner will not install any item of tangible personal property as part of the fixtures or furnishings of the Project that is subject to a purchase money lien or security interest.

The Agency may, at its sole option, pay the amount necessary to discharge any lien or other encumbrance, and the Owner shall reimburse the Agency upon demand for any amounts so paid. Until reimbursement of the Agency of any amounts so paid, such amount shall be added to the principal sum of the First Mortgage Note and shall bear interest at the same rate as under the Note.

The Owner covenants and agrees not to sell, lease or otherwise encumber the Project or the Land, or any part thereof, or the rents or revenues thereof without prior written consent of the

Agency, except by leasing to eligible residential tenants as provided by the First Mortgage and this Agreement.

Section 12. Maintenance, Repair and Replacement. The Owner covenants and agrees to maintain the Project and the housing units contained therein and the appurtenant equipment and grounds in good repair and condition so as to provide decent, safe and sanitary housing accommodations.

Following completion of construction or rehabilitation, the Owner will not make any substantial alteration in the Project without the consent of the Agency, nor will the Owner permit the removal of any fixtures or articles of personal property except in connection with the replacement thereof with appropriate property of at least equal value and free of all liens or claims.

The Owner will not permit any waste with respect to the Project or any of its real or personal property without the consent of the Agency, or make any alteration which will increase the hazard of fire or other casualty.

Section 13. Advance Amortization Payments. The Note is pre-payable at any time without a prepayment penalty. However, upon prepayment of the Note, this Agreement will remain in full force and effect until the maturity date set forth in the Note.

Section 14. Compliance with the Program, the Act, the Guidelines, Agency's Regulations and Any Federal or State Subsidy Source. The Owner covenants and agrees to comply with the Program, the Act, the Guidelines and any regulations promulgated pursuant thereto, and with any amendments or supplements to the Program, the Act, the Guidelines or regulations. Throughout the term of this Agreement, the Owner further covenants and agrees to comply with any and all requirements imposed upon it as a condition of any federal or State grant, subsidy or loan.

Section 15. Use of Project - Leasing. Except as otherwise expressly provided in Sections 2 and 3 of this Agreement or as otherwise agreed to in writing by the Agency, and except for facilities approved by the Agency as normally appurtenant to residential projects for non-transients (such as laundry facilities), the Project shall be used solely to provide housing for the residential population and the facilities and the amenities as described in Section 3 hereof, all as approved in the Commitment.

Section 16. Consideration for Lease or Intake and/or Occupancy Agreement. The Owner covenants and agrees not to require as a condition of the occupancy of any dwelling unit in the Project and not to accept or allow any employee or agent to accept any consideration other than the prepayment of the first month's rent or allowable intake and/or occupancy agreement charges, plus a security deposit not in excess of one (1) month's rent or allowable intake and/or occupancy agreement charges to guarantee the performance of the covenants of the lease or intake and/or occupancy agreement.

Section 17. Security Deposit. The Owner covenants and agrees to deposit all moneys, if any, paid to the Owner by any resident as a security deposit for the payment of rent or other allowable intake and/or occupancy charges under any use and occupancy agreement and/or lease in a separate interest-bearing bank account held and maintained in accordance with applicable law.

Section 18. Account for Project Revenues/Operating Account. The Owner covenants and agrees to establish an account for Project Revenues specific to the Project. "Project Revenues" shall mean all rents, intake, occupancy and other revenues of any type whatsoever received in respect of the Project or the Owner, except for Loan disbursements. Project Revenues shall be deposited in such account and all operating expenses should be paid from this account.

Section 19. Inspection of Premises. The Owner covenants and agrees to permit the Agency, its agents or representatives, to inspect the Project at any and all reasonable times with or without notice, pursuant to the provisions of the Act and/or the Guidelines.

Section 20. Books and Records. The Owner covenants and agrees to maintain adequate books and records of its transactions with respect to the Project in the Owner's standard form. Such books and records shall be available for inspection and audit by the Agency or its agents at any time during business hours, with notice, pursuant to the provisions of the Act and/or the Guidelines. The Owner further covenants and agrees to cause the financial affairs with respect to the Project to be audited by independent certified public accountants and shall furnish the Agency with its audit report of such accountants as may from time to time be required by the Agency.

The Owner shall furnish to the Agency such other information and reports respecting the Project as may from time to time be required by the Agency.

Section 21. Management Contract. The Owner may, and if the Agency so elects, shall contract for the services of a firm experienced in real estate management to act as the managing agent for the Project. The selection of any such managing agent, the scope of the agent's duties and the basis of the agent's compensation shall be the subject of a consultation between the Agency and the Owner and any contract for the employment of any managing agent shall provide that such contract may be terminated by the Agency at any time by notice of such determination by the Agency given to the Owner and managing agent.

Section 22. Prohibited Actions. Except with the express approval of the Agency, which approval shall not be unreasonably withheld, the Owner shall not with Project Revenues (as defined in Section 18 hereof), or Loan disbursements:

- A. incur any liabilities, except in connection with the acquisition, rehabilitation or construction and rental of the Project and its operation and maintenance;
- B. engage in any business activity except the ownership and operation of the Project;
- C. enter into contracts for managers, attorneys, accountants or other services without the prior written approval of the Agency;

- D. pay more than fair market value thereof for goods or services; and
- E. pay compensation to any officer, director or partner in such capacity or make any cash distribution to any of the foregoing.

Section 23. Transfers of Ownership Interests. The Owner shall not transfer or sell any interest in the Project, except to another SNHPLP- eligible applicant as set forth in the Guidelines and upon prior written notice to the Agency, or as the Executive Director of the Agency may approve.

Section 24. Statutory Powers and Restrictions. The First Mortgage shall be subject to the restrictions in the Act, and in connection therewith, the Agency shall have the powers set forth in the Act and/or the Guidelines and the regulations now or hereafter promulgated pursuant to the Act, and the Owner hereby consents to such restrictions and agrees to be bound thereby. Such powers and restrictions shall be in addition to and not in limitation of the rights of the Agency expressly set forth in this Agreement.

Section 25. Accounting in Event of Default; Estoppel. Upon the occurrence of an Event of Default and within ten (10) business days of demand therefor by the Agency, and otherwise within ten (10) business days of written demand by the Agency, the Owner will furnish to the Agency in writing a statement of the principal sum remaining due on the Loan, together with a statement of any known defenses which may exist as to any liability of the Owner on the Note or otherwise thereunder.

Section 26. Financing Statements. The Owner hereby irrevocably authorizes the Agency to execute, if applicable, and file on its behalf one or more financing statements or renewals thereof in respect to any of the security interests granted by the First Mortgage.

Section 27. Assignment by Agency. The Owner hereby consents to any assignment of this Agreement by the Agency.

Section 28. Defaults. Each of the following shall be an Event of Default:

- A. failure by the Owner to pay more than thirty (30) calendar days after the due date any installment of principal or interest on the Loan or any other payment required by the Owner to the Agency or any other person pursuant to the terms of this Agreement, the First Mortgage or the other Loan Documents;
- B. commission by the Owner of any act prohibited by the terms of this Agreement, the First Mortgage or any other Loan Document; failure by the Owner to perform or observe in a timely fashion any action or covenant required by any of the terms of this Agreement, the First Mortgage or any other Loan Document, or failure by the Owner to produce satisfactory evidence of compliance therewith;

- C. the filing by the Owner under any federal or state bankruptcy or insolvency law or other similar law of any petition in bankruptcy or for reorganization or composition with creditors or the making of an assignment for the benefit of creditors;
- D. the filing against the Owner of a petition seeking its adjudication as a bankrupt or the appointment of a receiver for the benefit of its creditors which shall not have been dismissed within sixty (60) days of the filing thereof, or the adjudication of the Owner as a bankrupt or the appointment of a receiver for the benefit of its creditors; or the appointment by court order of a custodian (such as a receiver, liquidator or trustee) of the Owner or of any of its property or the taking of possession of the Owner or any of its property for the benefit of its creditors and such order remains in effect or such possession continues for more than sixty (60) days;
- E. the occurrence of substantial destruction of the Project by an uninsured casualty or the inability to replace or restore the Project in accordance with Section 9; or failure to maintain insurance that fully complies with the Agency's insurance requirements set forth at Section 9;
- F. any representation in conjunction with the Loan and the Project by or on behalf of the Owner that is knowingly false or misleading in any respect or warranty of the Owner that is breached;
- G. any breach by the Owner of its obligations or any failure to observe its covenants under this Agreement, and the other Loan Documents;
- H. failure to complete the Project as approved by the Agency; and
- I. failure to comply with the Guidelines, as may be amended from time to time.

The events set forth in the subsections B and G of this Section shall not constitute Events of Default until the prohibited acts, failure to perform or observe, or breaches shall remain uncured for a period of thirty (30) calendar days after the Agency's written notice to the Owner, specifying such prohibited act, failure or breach and requiring that it be remedied, unless the Agency shall agree in writing to an extension of such time prior to its expiration; provided, however, that after the Project Construction Period only, if the prohibited act, failure, or breach stated in each notice is correctable, but cannot be corrected within the 30-day period, the Agency may not unreasonably withhold its consent to an extension of up to 120 days from the delivery of the written notice referred to herein if corrective action is instituted by the Owner within the initial 30-day period and diligently pursued. The Agency will send, simultaneously with sending to the Owner any notices under B and G of this Section, a copy of the aforementioned notices to the Owner's investor limited partner or member, if any; and to the extent such Event of Default is curable, a cure tendered in full pursuant to the terms and conditions of this Agreement and the other Loan Documents by any investor limited partner or member of Owner shall be honored by the Agency.

Section 29. Remedies. Upon the occurrence of any Event of Default, the Agency may at its option take any one or more of the following actions or remedies. No failure to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy:

- A. declare the entire principal sum of the First Mortgage together with any interest and all other liabilities of the Owner under the Note and the other Loan Documents to be immediately due and payable;
- B. cease making disbursements to the Owner of any funds under the Loan or from reserves held by the Agency;
- C. apply any reserves held by the Agency or the balance in the accounts for Project disbursements and revenues, or any combination of these monies, to the payment of the Owner's liabilities hereunder;
- D. foreclose the lien of the First Mortgage on the Project and Land or a portion thereof, including, without limitation, all Improvements existing or hereafter placed in or on the Project and Land. In any action to foreclose, the Agency shall be entitled to the appointment of a receiver of the rents (which shall include all applicable intake and/or occupancy charges) and profits of the Project as a matter of right and without notice, with power to collect the rents, uses and profits of said Project, due and becoming due during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by the First Mortgage without regard to the value of the Project or the solvency of any person or persons liable for payment of the mortgaged indebtedness. The Owner for itself and any such subsequent owner hereby waives any and all defenses to the application for a receiver as above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive the holder of the First Mortgage of any other right, remedy or privilege it may now have under the law to have a receiver appointed. The provisions for the appointment of a receiver of the rents and profits and the assignment of such rents and profits, are made express conditions upon which the Loan hereby secured is made. Upon such foreclosure the Agency shall have the right to have a receiver appointed for the Project and the rents from the Project;
- E. pursuant to its rights under the Act, remove the Project managing agent(s) and/or service providers after consultation with the Owner, or, if the Agency, after consultation with the Owner, decides it is in the best interest of the Project and its tenants and/or residents, the Owner shall deed the Project and Land to the Agency;
- F. take possession of the Project and Land or a portion thereof;
- G. without judicial process, collect all rents, use and occupancy fees and other revenue including federal and State subsidies as the agent of the Owner (which upon the

occurrence of any Event of Default the Agency is deemed to have been irrevocably appointed by the Owner), and apply the same at the Agency's option either to the operation and maintenance of the Project or to the liabilities of the Owner under the Mortgage;

- H. act as landlord of the Project and rent or lease the same on any terms approved by it, or dispossess by summary proceedings or other available means any tenant defaulting under the terms of the lease of a dwelling unit;
- I. take possession of equipment, appliances or other tangible personal property in which a security interest has been granted by this Agreement or the First Mortgage and dispose of the same in any commercially reasonable manner. The Agency shall have the option to dispose of any such equipment and personal property either separately from the Project and Land or in conjunction with a sale of the Project and Land, and the Owner agrees that either method of disposition shall be commercially reasonable;
- J. make effective an assignment of the Architectural Contract and/or Construction Contract by the Owner to the Agency, in which event the Agency is specifically empowered by the Owner to exercise any and all rights of the Owner under the Architectural Contract and/or Construction Contract, and at the option of the Agency to proceed with the rehabilitation or construction of the Project, in which event all payments by the Owner made with respect to the Architectural Contract and/or Construction Contract shall be treated as disbursements on the Loan;
- K. sue the Owner for a mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the First Mortgage or the other Loan Documents. The Owner agrees with the Agency that the Agency's remedy at law for the violation or nonperformance of the Owner's obligations under the First Mortgage or this Agreement or the other Loan Documents is not adequate by reason, among other things, of the Agency's public purpose to provide adequate, safe and sanitary dwelling units Low-Income Tenants;
- L. after consultation with the Owner, sue under the Architectural Contract and/or Construction Contract or on a warranty to recover any amount payable to the Owner pursuant to the Architectural Contract and/or Construction Contract or payable to the Owner pursuant to any such warranty and to settle any such claim or liability and release the same and apply the proceeds of any such suit, settlement or release to the liabilities of the Owner under this Agreement or the First Mortgage;
- M. if the Owner commits a breach or threatens to commit a breach of any of the provisions of the Mortgage or other Loan Documents, the Agency shall have the right, without posting bond or other security, to seek injunctive relief or specific performance, it being acknowledged and agreed that any such breach, or threatened

breach, will cause irreparable injury to the Agency and that money damages will not provide an adequate remedy;

- N. to undertake reasonable maintenance and make reasonable repairs to the Project and to add the cost thereof to the principal sum of the First Mortgage; and/or
- O. notwithstanding the above enumeration of remedies, the Agency shall have available to it all other remedies provided at law or in equity or any other action permitted by law subject to the provisions of Section 37 of this Agreement.

Section 30. Expenses Due to Default. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose the First Mortgage or in exercising any other remedy provided by the First Mortgage or this Agreement or the other Loan Documents, including the curing of any Event of Default, shall be paid by the Owner, together with interest at the then current rate being received by the Agency on its investments as determined in good faith by the Agency. Any such sum or sums and the interest thereon shall be a further lien on the Project, Land and Improvements, and shall be secured by this Agreement and the First Mortgage.

Section 31. Burden and Benefit. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project as permanent supportive housing for the residential population described in Section 3 of this Agreement.

Section 32. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land.

Section 33. Remedies; Enforceability. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times.

Section 34. Amendments; Notices; Waivers. This Agreement and the First Mortgage may be amended only by an instrument in writing executed and acknowledged on behalf of the Agency and the Owner in such manner that the instrument may be recorded.

No waiver by the Agency in any particular instance of any Event of Default or required performance by the Owner and no course of conduct of the parties or failure by the Agency to enforce or insist upon performance of any of the obligations of the Owner under this Agreement, the First Mortgage, or under the other Loan Documents at any time shall preclude enforcement of any of

the terms of this Agreement, the First Mortgage, the First Mortgage Note, or the other Loan Documents thereafter.

Any provisions of this Agreement, the First Mortgage or other Loan Documents requiring the consent or approval of the Agency for the taking of any action or the omission of any action requires such consent by the Agency in writing signed by a duly authorized officer of the Agency. Any such consent or approval, unless it expressly states otherwise, is limited to the particular action or omission referred to therein and does not apply to subsequent similar actions or omissions.

Notice provided for under this Agreement shall be given in writing signed by a duly authorized officer and any notice required to be given hereunder shall be given by recognized private carrier with acknowledgment of delivery, or by confirmed facsimile with a hard copy sent by certified mail, return receipt requested, or by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto.

Agency: **Executive Director**
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue, CN 18550
Trenton, NJ 08650-2085

Owner: **Our House, Inc.**
76 Floral Avenue
Murray Hill, New Jersey 07974

All notices shall be deemed given when received.

Section 35. Severability. The invalidity of any part or provision hereof shall not affect the validity, legality and enforceability of the remaining portions hereof, and to this end the provisions of this Agreement shall be severable.

Section 36. Successors and Assigns. This Agreement and all rights, duties, obligations and interests arising hereunder shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

Section 37. Personal Liability. Notwithstanding any other provision contained in this Agreement, the other Loan Documents or any other document or instrument executed by the Owner in connection herewith or therewith, the Agency agrees, on behalf of itself and any future holder of the Note, that the liability of the Owner, any general or limited partner, trustee, director, officer, agent, representative, member or shareholder of the Borrower, and their respective heirs, representatives, successors and assigns for the payment of its obligations hereunder and under the other Loan Documents, including, without limitation, the payment of principal, interest and other charges due hereunder and thereunder, shall be limited to the collateral pledged under the First Mortgage and the other Loan Documents, and that the Agency shall have no right to seek a personal judgment against the Owner, any general or limited partner, trustee, director, officer, agent,

representative, member or shareholder of the Borrower, and their respective heirs, representatives, successors and assigns individually, except to the extent necessary to subject the collateral (including the Project and Land) pledged under the First Mortgage and the other Loan Documents to the satisfaction of the First Mortgage debt, and provided, however, that the Agency shall retain the right to exercise any and all remedies granted to it under the First Mortgage, this Agreement and the other Loan Documents including, without limitation, the right to sue for injunctive or other equitable relief. The foregoing limitation of liability shall not apply to any party to the extent such party has committed fraudulent, criminal or other unlawful acts or omissions with regard to the Project or the Land and shall not apply to such amounts due to the Lender pursuant to Sections 9, 10, 11, 12 and 30 of this Agreement.

Section 38. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 39. Disclaimer of Warranties, Liability; Indemnification/Defense.

A. The Owner acknowledges and agrees that (i) the Agency has not heretofore and does not make any warranty or representation, either express or implied, as to the value, condition, or fitness for particular purposes of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Agency and its members, directors, officers, agents, servants and employees be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or any of the other Loan Documents or the development of the Project or the existence, functioning or use of the Project or any items or services provided for in this Agreement or the other Loan Documents; and (iii) during the term of this Agreement and the other Loan Documents and to the fullest extent permitted by law, the Owner shall indemnify, defend and hold the Agency harmless against, and the Owner shall pay, any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising (including reasonable attorneys' fees), imposed by law, which the Owner and/or the Agency may sustain, be subject to, or caused or incurred by reason of any claim, suit or action based upon personal injury, death or damage to property or any other damage or loss sustained, whether real, personal or mixed, or upon or arising out of contracts entered into by the Owner, or arising out of the Owner's acquisition, construction, rehabilitation, reconstruction, repair, improvement, ownership, operation, management or maintenance of the Project or Land.

B. It is mutually agreed by the Owner and the Agency that the Agency and its members, directors, officers, agents, servants and employees shall not be liable for any action performed under this Agreement, and that the Owner shall hold them harmless, indemnify and defend them from any claim or suit of whatever nature.

C. Any claims asserted against the Agency shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. While this statute may not be applicable by its terms to claims arising under contracts with the Agency, the Owner agrees that it shall be applicable to claims arising under the Loan Documents. It is acknowledged by the parties that the Agency is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

Section 40. Recording. This Agreement shall be duly recorded in the Office of the Clerk for the county in which the Land is located within ten (10) days following its execution.

Section 41. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. The parties agree that any cause of action that may arise under this Agreement or the Loan Documents shall have jurisdiction and venue only in the Courts of the State of New Jersey in and for the County of Mercer.

Section 42. Further Requirements as to Project. The Owner covenants, represents, and warrants, that occupancy of the Project shall be further restricted to provide supportive housing for the residential population specified in the Commitment and Section 3 hereof.

The Owner further covenants, represents and warrants that it shall provide specialized supportive services to the tenants of the Project. The supportive services provided on-site will include, but not be limited to: case management; entitlement advocacy; support groups facilitated by outside professionals as well as on-site staff; recreation; medical intervention; advocacy and counseling; job-training; and developing skills that will allow them to be self-sufficient; all as specified in the Commitment. Service delivery for all of the on-site support services will remain consistent for the entire length of stay. Transportation will be provided, when needed, by the project for regularly scheduled grocery shopping trips, and as needed for medical visits, outside program participation and recreation.

Failure by the Owner to comply with the above shall constitute an Event of Default, upon which the Agency may at its option take any one or more of the actions or remedies in Section 29 hereof.

Section 43. Equal Opportunity and Non-Discrimination. The Owner covenants and agrees that it will comply with the Agency's guidelines with respect to equal opportunity and non-discrimination in its purchase of goods and services for the operation and maintenance of the Project throughout the term of this Agreement.

Section 44. Owner's Default Under Financing Documents.

A. Upon the occurrence of an Event of Default set forth in this Agreement or in the event of a violation by the Owner of the terms of any agreement between the Agency and the Owner, or in the event of a violation of the rules and regulations of the Agency or in the event that the Agency shall reasonably and in good faith determine that the Loans are in jeopardy of not being repaid, the Agency shall have the right to manage the affairs of the Owner as such affairs relate to the Project or to name a designee to manage the same.

B. The delegation of authority to the Agency shall terminate upon the curing, to the satisfaction of the Agency, of the event giving rise to the delegation.

C. The Agency and its members, designees, agents, officers, or employees shall not be personally responsible for the debts, obligations or liabilities of the Owner.

D. The admission and delegation to the Agency or its designee shall last only for a period coexistent with the duration of the event giving rise to the action hereunder or until the Agency determines in its sole discretion that such an event or one of similar nature will not reoccur.

E. The Agency or its designee shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in discharge of its duties as determined by the Agency.

F. The primary function of the Agency or its designee is to protect the interest of the Agency's Loan and the Low-Income Tenants of the Project and, in the absence of fraud or bad faith, the Agency or its designee shall not be liable for damages to the Owner or any partner, member or stockholder thereof.

G. This Agreement and the admission of and delegation to the Agency shall not be construed as to cause a merger between any of the Loan Documents and the title to the Project.

H. The rights and remedies granted to the Agency under this Agreement are not intended to limit in any way its rights and powers under Section 7(b)(6) of the Act.

Section 45. Applicability and Conflict of Terms and Conditions. The terms and conditions of this Agreement are applicable for the entire term of this Agreement (as set forth in Section 6 hereof) unless otherwise set forth in this Agreement. In the event of any conflict or inconsistency between the terms and conditions of any of the Loan Documents (including this Agreement), the terms and conditions of this Agreement shall prevail. Notwithstanding the foregoing, the Owner agrees that the Agency may render a decision concerning the intent and/or applicability of any term or condition of the Loan Documents, which decision shall be final and binding, unless such decision is found to be arbitrary or capricious by a court of competent jurisdiction.

Section 46. Miscellaneous. Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice-versa, when appropriate. This Agreement and all the terms and provisions thereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS/ATTEST

Eugenia Gore

WITNESS/ATTEST

Darryl D. Applegate, Assistant Secretary

Owner:

OUR HOUSE, INC.

By:

Michelle Wernsing
Michelle Wernsing, Executive Director

Lender:

**NEW JERSEY HOUSING AND
MORTGAGE FINANCE AGENCY**

By:

Laura Shea
Laura Shea
Senior Director of Single Family Program

This Agreement is approved as to form:

John J. Hoffman, Acting Attorney General of the State of New Jersey

By:

Kellie L. Kiefer Pushko
Kellie L. Kiefer Pushko
Deputy Attorney General

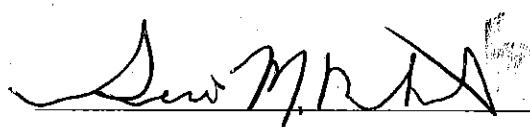
STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on October 18, 2013, Michele Wernsing personally came before me, the subscriber, a Notary Public of the State of New Jersey, and acknowledged under oath, to my satisfaction that (a) she is the Executive Director of Our House, Inc., the non-profit corporation named in this document; and (b) she executed and delivered this document as the voluntary act of said corporation duly authorized by a resolution of its Board of Directors.


Matthew J. Schiller, Esq.
Attorney-at-Law, State of New Jersey

STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on October 18, 2013, Laura Shea, personally came before me, a Notary Public of the State of New Jersey, and acknowledged under oath to my satisfaction that a) he is the Chief Financial Officer of NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, the Agency named in this document, and b) he executed and delivered this document as the voluntary act of the Agency, duly authorized by a proper resolution of its members, on behalf of the Agency.


GLORIA M. MEHNERT
A Notary Public of New Jersey
My Commission Expires DECEMBER 14, 2014

DESCRIPTION

ALL that certain tract or parcel of land and premises, situate, lying and being in the Township of Randolph, in the County of Morris, and State of New Jersey, more particularly described as follows:

BEING known and designated as Lot 8, Block 25-B on a map entitled "Map for Suburban Acres, Inc., Section No. 2, Township of Randolph, Morris County, New Jersey" dated September 1964 and filed in the Morris County Clerk's Office on October 27, 1964 as Map No. 2504, and being more particularly described as follows:

BEGINNING at a point being a capped pin found on a curve in the Southeasterly side line of Pamela Drive (50.00 feet wide), said point being distant 114.32 feet in a Northeasterly direction along the Southeasterly side line of Pamela Drive from its intersection with the Northeasterly side line of Linda Terrace (50.00 feet wide) if both side lines were projected, and from said beginning point running; thence

- (1) Leaving said side line and running South 42 degrees 46 minutes 10 seconds East, a distance of 209.27 feet to a point; thence
- (2) South 28 degrees 09 minutes 50 seconds East, a distance of 100.60 feet to a capped iron pipe found; thence
- (3) North 82 degrees 28 minutes 10 seconds East, a distance of 85.48 feet to a capped iron pipe found; thence
- (4) North 04 degrees 29 minutes 50 seconds West, a distance of 67.60 feet to a capped iron pipe found; thence
- (5) North 33 degrees 29 minutes 45 seconds West, a distance of 300.59 feet to a broken concrete monument found in the Southeasterly side line of Pamela Drive; thence
- (6) Along said side line, South 48 degrees 37 minutes 20 seconds West, a distance of 90.51 feet to a point of curvature; thence
- (7) Continuing along said side line in a general Southwesterly direction on a curve to the right having a radius of 338.60 feet, an arc distance of 44.49 feet, a chord bearing of South 52 degrees 23 minutes 11 seconds West, and a chord distance of 44.46 feet to the point and place of BEGINNING.

The above description is in accordance with a survey drawn by David A. Stires Associates, LLC dated August 13, 2013.

FOR INFORMATION ONLY:

Being known as Lot 28 in Block 35 on the Official Tax Map of the Township of Randolph, in the County of Morris, and State of New Jersey

Being also known as 17 Pamela Drive.

APPENDIX K.

REPORT SUBMITTED BY COURT MASTER, ELIZABETH MCMANUS, PP, AICP
TO THE HONORABLE JUDGE MICHAEL C. GAUS, J.S.C., DATED MAY 31, 2019.



P.O. Box 236
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The Honorable Michael C. Gaus, J.S.C.
Superior Court of New Jersey
Sussex County Courthouse
43-47 High Street, 2nd Floor
Newton, New Jersey 07860

May 31, 2019

**Re: IMO the Application of the Township of Randolph
Docket No: MRS-L-1640-15**

Dear Judge Gaus,

In accordance with your Order dated May 22, 2019, this letter reviews Randolph Township's draft April 10, 2019 Housing Element and Fair Share Plan (hereinafter the "Housing Plan"), related ordinances, the Motions to Revoke Immunity filed by Fair Share Housing Center (hereinafter "FHC"), developer-intervenor LYS Realty Associates and Sport Realty Management Corp. (hereinafter "LYS"), and the municipality's history of efforts to comply with its affordable housing obligation.

The Township's Housing Plan was required to be filed with the Court pursuant to a January 25, 2019 Order issued by the Hon. Maryann L. Nergaard. This Housing Plan, filed on April 30, 2019, addresses the rehabilitation obligation, prior round obligation, and third round obligation with a variety of affordable housing strategies. Subsequent to the Township's April 30, 2019 submittal of the Housing Plan, FHC and LYS on May 8, 2019 filed motions to revoke Randolph Township's immunity.

Please see page 12 herein for a summary of findings and recommendations regarding the Township's Housing Plan.

Randolph's Compliance History

The Township has a history of adopting housing plans and seeking compliance from COAH. The Township received first round substantive certification from COAH in 1987 and 1988. The Township petitioned COAH for second round substantive certification in 1995 and received a report from COAH requesting additional information in 2000. In response, the Township provided an updated plan and information in 2001. The Township later adopted housing plans in 2003 and 2004, with the 2003 housing plan addressing the prior round obligation and the 2004 housing plan addressing COAH's 2004 third round rules. COAH issued a report requesting additional information in 2005. The Township adopted another third round housing plan in 2010 but was unable to receive substantive certification before the applicable substantive rules were overturned by the Court.



Subsequent to the Mount Laurel IV decision, the Township filed a Complaint for Declaratory Judgment on July 2, 2015¹. The Township has four intervenors currently – LYS, Canoe Brook Development LLC, American Properties and KAB Associates. Due to a lack of water supply, the Court imposed a scarce resource restraint in a June 6, 2018 Amended Consent Order Imposing Scarce Water Resources Restraints that sets forth the Township's limited water resources and how it may be allocated.

The Housing Plan was submitted pursuant to an Order dated January 25, 2019 that required the Township to submit a "draft updated Housing Element and Fair Share Plan ("Plan") with all of the supporting information required by law".

Randolph's Housing Plan

As will be more fully detailed in this letter, the Housing Plan addresses the rehabilitation obligation, prior round obligation, and third round obligation with a variety of affordable housing strategies. Integral to the portion of the Housing Plan that addresses the third round obligation, is the Township's prior receipt of a scarce resources order on June 6, 2018 which sets forth the Township's limited water resources and how it may be allocated.

Satisfaction of the Rehabilitation Obligation

The 33-unit rehabilitation obligation cited in the Housing Plan is consistent with the methodology determined by the Hon. Judge Jacobson, A.J.S.C. in her March 2018 decision, In the Matter of the Application of the Municipality of Princeton, Docket. No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018). The obligation was extrapolated and applied to all New Jersey municipalities by Econsult Solutions, in "Statewide and Municipal Obligations Under Jacobson Opinion". The Township must seek settlement of the rehabilitation obligation with FSHC or an adjudication of the obligation should it wish to utilize the 33-unit obligation.

The Township proposes to participate in the Morris County Housing Rehabilitation Program to satisfy this obligation. However, since County programs such as that in Morris County are only available to homeowners, the Township will also be required to establish a municipally-operated rehabilitation program that is available to renter-occupied households (N.J.A.C. 5:93-5.2(f)). Note that the municipality may also satisfy all or a portion of the rehabilitation obligation with "new construction" affordable units (N.J.A.C. 5:93-5.1).

The Township should provide additional detail indicating how the rehabilitation obligation will be satisfied and provide the necessary documentation in support, consistent with the standards in N.J.A.C. 5:93-5.2. The following items are necessary should the obligation be met via participation in the County program and operation of a municipal program:

- Contract with the County for participation in the Morris County Housing Rehabilitation Program;
- Contract with an organization to operate the municipal program; and
- Operating manual for the County and municipal programs.

¹ The "Mount Laurel IV" decision refers to On March 10, 2015 the N.J. Supreme Court delivered In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015)



Satisfaction of the Prior Round Obligation

The Township has a variety of affordable units that contribute toward meeting the prior round obligation. However, the Housing Plan does not indicate how the 261 unit obligation, including the rental obligation, will be satisfied. Instead, it cites an Order issued by the Hon. Stephan C. Hansbury, P. J. Ch. on October 10, 2018 that states, “the Township of Randolph satisfied its entire 261 unit prior round (1987-1999) affordable housing obligation as of 2005”. Notwithstanding reliance on this Order, the Housing Plan acknowledges on page 5 that additional information may be necessary to confirm compliance.

The Order does not appear to absolve Randolph from indicating how the prior round obligation is satisfied now in 2019 since it specifies the obligation is satisfied “as of 2005” and does not make specific findings as to which units shall be reserved for that portion of the obligation. Note that “as of 2005” corresponds to the most recent COAH report addressing the Township’s compliance.

While the Housing Plan does not identify the units proposed to meet the prior round obligation, it does identify all previously constructed or approved projects. The following table *assumes* those units which are proposed to meet the prior round obligation based on projects identified in the Housing Plan that are not proposed for third round credit. This table also *assumes* the Township is eligible for maximum bonus credits, which appears likely given the number of rental affordable units. As shown in the table, it appears the Township has surplus credits that may be carried over to the third round. This should be verified and amended as necessary as part of an updated housing plan.

Satisfaction of the 261-Unit Prior Round Obligation						
Name	Program Type	Unit Type	Sale / Rental	Units	Bonus Credits	Credits
Canfield Mews	Inclusionary Zoning	Family	Rental	38		38
Arrowgate	Inclusionary Zoning	Family	Rental	27		27
India Brook	Prior Cycle Credits	Age-restricted	Rental	100		100
Woodmont	Inclusionary Zoning	Family	Sale	40		40
Brookside Village	Inclusionary Zoning	Family	Rental	10		10
Peer Group Housing	100% Affordable	Special Needs	Rental	4		4
ARC Much Dignity House	100% Affordable	Special Needs	Rental	6		6
Skylands Group Home	100% Affordable	Special Needs	Rental	4		4
School House Group Home	100% Affordable	Special Needs	Rental	5		5



Satisfaction of the 261-Unit Prior Round Obligation

Name	Program Type	Unit Type	Sale / Rental	Units	Bonus Credits	Credits
Bonus Credits	n/a	Family or Special Needs	Rental	0	66	66
				<i>Total</i>	234	66

The Township should provide detail on how the prior round obligation will be satisfied. This should include identification of each project, the number of affordable units and bonus credits for each project proposed to contribute. While COAH's 2005 report does indicate these sites meet COAH criteria, the continued affordability and satisfaction of income and bedroom distribution requirements should be verified for compliance with the applicable standards such as the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1.). Unfortunately, in my experience COAH reports have indicated units are eligible for credit without reviewing such information. It is unclear from the 2005 report if detailed information was reviewed and it does not appear the information was reviewed as part of the 2018 Order. Such verification can be done with the unit and project monitoring information that was required to be submitted to COAH, or similar documentation.

Identification of the Third Round Obligation

The Housing Plan fails to identify a third round obligation that is consistent with the methodology set forth in N.J.A.C. 5:93 or the various court decisions on the topic, most notably and recent the March 2018 decision, In the Matter of the Application of the Municipality of Princeton, Docket. No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018). Instead, the Township suggests the third round obligation should be based on available water *in Randolph and its ability to serve its affordable housing sites*. This is distinguishable from the accepted methodology and direction from the Supreme Court in Mount Laurel IV, which, very generally, calculates the obligation based on the *regional need for low and moderate income housing*.

Rather than utilizing the appropriate methodology and compliance mechanisms, as required by the January 25, 2019 Order, the Housing Plan relies on the scarce resource order and a request for a waiver from using an entire resource of land for addressing its obligation (N.J.A.C. 5:93-4.5). The Housing Plan, on page 26, provides the following additional detail:

Overall, the total obligation is broken down under Table B, which shows that there are: a) one hundred and twenty-five (125) surplus credits from previously constructed units that may be applied to the Third Round obligation; b) twenty-seven (27) rental bonus credits; c) up to forty (40) affordable units from sites in the Dover service area; d) up to seventeen (17) affordable units from sites listed in Appendix A of the SRO; and e) fifty-four (54) units from sites not listed within the SRO. Therefore, the Township has determined that due to its limited water capacity it is able to realistically provide inclusionary zoning revisions that generate a total third round affordable



housing obligation of two-hundred and sixty-three (263) affordable housing units, with the new construction obligation portion of that adjusted number being one-hundred and eleven (111). (Emphasis added)

It appears the Township proposes to provide 263 credits toward the third round obligation; this includes 111 new affordable units and 152 existing or previously approved units. As a result, the Township proposes a 263 unit third round obligation. Note also that the Township is proposing one overlay district and a mandatory set-aside ordinance as additional mechanisms. As stated in the above excerpt, the Housing Plan suggests that the calculation of the third round obligation is based only on the development that can be accommodated given the available water. This method of calculating the third round obligation is inconsistent with COAH's substantive rules (N.J.A.C. 5:93), and therefore the Mount Laurel IV decision since in that decision the NJ Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions that do not apply to this issue.

Identification of the obligation consistent with the prior round methodology and applicable case law is critical to determining if the Township has met its fair share obligation, including sub-components of the obligation such as the rental obligation. It is a detriment to this process and the needs of the region's low and moderate income households that Randolph failed submit a housing plan consistent with accepted methodology, relevant case law, decades of compliance oversight by COAH, and the approximate 200 settlements with FSHC that have occurred since March 2015.

It should also be noted that the calculation of capacity for only 111 new affordable units may be inconsistent with the intent of the June 6, 2018 Amended Consent Order Imposing Scarce Water Resources Restraints. The Order states no new connections to the water system or allocations of water demand are permitted except for certain categories of single-family homes and those projects set forth in Table A. However, a September 11, 2018 from the Township Engineer, Paul Ferriero, PE, which supports the 263 unit obligation also reserves water capacity for nonresidential uses and the school. These reservations are appropriate for the waiver request (see below for more detail on the waiver) and would need to be supported by the waiver criteria set forth in N.J.A.C. 5:93-4.5. Additionally, it appears the Township is proposing to utilize water from the Town of Dover to support 40 affordable units (Gateway Apartments, EA Porter site, and the Morris County Housing Authority site); however, that available water capacity is specifically not addressed in the September 11th Engineer's letter. While it is certainly positive that this water is available for affordable housing construction in Randolph, its availability and use should be confirmed and explored in an amended Engineer's letter.

The 263 credits should be compared to the 643 unit obligation calculated pursuant to the March 2018 decision, In the Matter of the Application of the Municipality of Princeton, Docket. No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018) and to the 1,054 unit and 1,447 unit obligations calculated by FSHC². Since the March 2018 decision many municipalities have settled for the obligation calculated pursuant to that decision, or some upward

2 FSHC commissioned Dr. David Kinsey to prepare a fair share methodology which would calculate the regional need for the 1999-2025 period and allocate that housing need to the constituent municipalities in each housing region. As part of this effort, Dr. Kinsey authored several reports with variations to his methodology that have been submitted to various Superior Courts. The statewide report dated May 2016 allocated Randolph a Third Round obligation of 1,131 units and the statewide report issued in July 2016 stated a third round obligation of 1,447 units.



adjustment of it. As such, Randolph's proposed third round obligation is at least 380 units less than the obligation extrapolated from the March 2018 decision and which it may have the ability to settle upon.

The fact that Randolph does not have adequate water to fulfill its obligation is not unique in New Jersey. There are many municipalities around the state that have been the subject to similar scarce resource orders – including those in the Highlands region. Additionally, such lack of infrastructure is specifically anticipated and accommodated in COAH's rules regarding a durational adjustment, with N.J.A.C. 5:93-4.1(a) stating the following:

Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer.

N.J.A.C. 5:93-4.3(c) goes on to state, "The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available." This section, nor any other portion of COAH's rules, do not permit a municipality to *change* the obligation to reflect the available infrastructure, water in this case. Instead, COAH's rules create a process for the municipality to *defer* the obligation until if or when the infrastructure is available. While, this is referred to as a durational *adjustment*, it is not a permanent adjustment or change of the obligation. There are many municipalities who have received or are seeking a Judgment of Repose (or previously substantive certification) who do not have adequate sewer and/or water to meet their entire obligation, yet are satisfying the third round obligation pursuant to the durational adjustment standards. This applies to municipalities both in and out of the Highlands region. The application of a durational adjustment is fully appropriate and the intended compliance path for a municipality subject to a scarce resource order, such as Randolph.

Instead of eliminating a portion of the obligation, the durational adjustment creates affordable housing mechanisms that maximize use of the available infrastructure for affordable housing and create opportunities for further affordable housing should additional infrastructure (additional water capacity in this instance) become available. The durational adjustment rules (N.J.A.C. 5:93-4.3(d)) require the municipality to "reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis", "endorse all applications to the DEP or its agent to provide water and/or sewer capacity", approve development that includes affordable housing that has been permitted by DEP, and include such sites in the housing plan.

The Township states a waiver, pursuant to N.J.A.C. 5:93-4.5, is requested rather than seeking a durational adjustment. The following is a complete excerpt of this waiver section in COAH's rules:

5:93-4.5 Waivers

- (a) *The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91-12 from municipalities seeking relief from the following requirements:*
 - 1. *The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and*



2. *The requirement to impose development fees on all development within the municipality.*

(b) *The criteria for evaluating such a waiver request shall include one or more of the following:*

1. *Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;*
2. *A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or*
3. *A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.*

The Housing Plan does not address the above cited criteria in support of the waiver request. Regardless, it does not appear the waiver provision has been applied properly. The Township seeks relief from identifying and fulfilling its obligation; however, the waiver provision in N.J.A.C. 5:93-4.5 is available to request relief from having to utilize all available water capacity for the purpose of creating affordable housing; it is not a waiver from the methodology or a waiver to eliminate a portion of the obligation. In receiving approval to provide water to single-family homes, it appears the Township has functionally already received the waiver.

The Township should identify a third round obligation, indicate if durational adjustment is requested, and indicate how the third round obligation will be fully satisfied using existing and planned affordable housing credits as well as a durational adjustment as outlined in N.J.A.C. 5:93-4.3.



Satisfaction of the Third Round Obligation

The Township identified the following 263 credits for the third round obligation.

Credits Contributing Toward the Third Round Obligation						
Name	Program Type	Unit Type	Sale / Rental	Units	Bonus Credits	Credits
Existing Affordable Units						
Woodmont	Extension of Controls	Family	Sale	40		40
Boulder Ridge	Inclusionary Zoning	Family	Sale	17		17
Grecco Realty	Inclusionary Zoning	Age-restricted	Rental	5		5
Rose of Sharon	Inclusionary Zoning	Family	Rental	1		1
Bennet Avenue	100% Affordable	Family	Rental	32		32
Morris County Affordable Housing Corp.	100% Affordable	Family	Rental	6		6
Habitat House (59/15)	100% Affordable	Family	Sale	1		1
Habitat House (134/3.02)	100% Affordable	Family	Sale	1		1
Habitat House (134/9)	100% Affordable	Family	Sale	1		1
High Avenue House	100% Affordable	Special Needs	Rental	4		4
Our House	100% Affordable	Special Needs	Rental	3		3
Sunrise	Assisted Living	Age-restricted	Rental	8		8
Brightview	Assisted Living	Age-restricted	Rental	6		6
Proposed Affordable Units						
Randolph Mountain	Inclusionary Zoning	Family	Sale	7		7
KAB Mount Freedom	Inclusionary Zoning	Family	Rental	10		10



Credits Contributing Toward the Third Round Obligation						
Name	Program Type	Unit Type	Sale / Rental	Units	Bonus Credits	Credits
Canoe Brook	Inclusionary Zoning	Family	Rental	20		20
Elbaum Site	Inclusionary Zoning	Family	Rental	4		4
Avalon Bay	Inclusionary Zoning	Family	Rental	30		30
Gateway Apartments	Inclusionary Zoning	Family	Rental	13		13
EA Porter	100% Affordable	Family	Sale	25		25
Morris County Housing Authority	100% Affordable	Family	Sale	2		2
Bonus Credits	n/a	Family or Special Needs	Rental	0	27	27
			Total	236	27	263

In addition to the above credits, which are proposed to present a realistic opportunity, the Township proposed two additional mechanisms to capture additional affordable housing opportunities that may arise – overlay zoning of Block 196, Lots 2, 3, 4, and a mandatory set-aside ordinance.

Apart from Randolph Mountain at 20% and the Elbaum site at 18.2%, the Township is proposing only 15%-16% affordable housing set-asides for the proposed inclusionary housing projects. The Township should seek set-asides of not less than 20% in order to maximize the amount of affordable housing units that may be created from the limited water availability.

The following identifies the additional information that is necessary to confirm the credits in the above table. The various additional information is required by COAH's rules, N.J.A.C. 5:93, and/or the UHAC rules, N.J.A.C. 5:80-26.1 et seq. The following also identifies any other concerns for each applicable project.

- Existing Units Addressed in COAH's 2005 Report. As stated above for the prior round units, the Township should verify the continued affordability and compliance with income and bedroom distribution requirements. This verification can be done with the unit and project monitoring information that was required to be submitted to COAH, or similar documentation.
- Existing Units Not Addressed in COAH's 2005 Report. This category includes the assisted living facilities and the 100% affordable housing projects, except for Bennet Avenue and Morris County Affordable Housing Corp.
 - Assisted living facilities. The Township must provide the crediting documentation set forth in

N.J.A.C. 5:93-5.16. This includes verification of the license and Medicaid beds, as well as 30 year affordability controls

- **100% Affordable Housing Projects.** The Township must provide evidence of proper administration, affordability controls, affirmative marketing, and compliance with the income and bedroom distribution requirements.
- **Proposed Affordable Units - All.** The Township will need to provide a draft or adopted ordinance for each site, and detail compliance with administration and affirmative marketing requirements.
- **KAB Mount Freedom.** The Township's site suitability discussion should address the Highlands Open Water Buffer which encompasses most of the site. The Highlands RMP, as well as the Township's draft Highlands Area Land Use Ordinance, provides standards for development within the buffer. The buffer's inclusion on the map suggests relevance for the Township's decision making for the site; the Housing Plan should provide detail.
- **Canoe Brook.** The Housing Plan proposes construction of 129 units on the site, whereas 190 units have been proposed by the developer. While mediation often results in settlement with a development smaller than that which was originally proposed by the developer, it is unclear if a reduction of approximately one-third of the units would create a realistic opportunity. It is unclear from the Housing Plan whether the density was limited due to the available water or due to character concerns. It does not appear the site configuration or environmental constraints are limiting factors. Mr. Kasuba, representing Canoe Brook, in a May 24, 2019 letter states the proposed 190 units does not exceed the water allocation for the site if an alternative bedroom distribution is utilized for the market rate units. It goes on to state the Township assumes three-bedroom market rate units but that Canoe Brook's proposal is for a mix of bedrooms with only 30% of the market units having three bedrooms. The Township's engineer should verify this or provide alternative supporting information. Should water be available for the 190 units, the Township should consider the additional development on the site since doing so will increase the supply of affordable housing available to low and moderate income households without increasing the necessary water allocation.
- **The Elbaum Site.** The Township's discussion of this site should address how the proposed zoning creates a realistic opportunity where there are existing uses. Review of tax records indicate that the lots are developed residentially.
- **Avalon Bay.** The Housing Plan proposes construction of 200 units on the site, whereas 300 units have been proposed by the developer. While mediation often results in settlement with a development smaller than that which was originally proposed by the developer, it is unclear if a reduction of one-third of the units would create a realistic opportunity, particularly given the fact that the site is occupied by a catering facility. This concern is in part supported by the May 13, 2019 letter from Mr. Inglesino, representing Avalon Bay, stating the reduction is "unacceptable". Additionally, this May 13th letter outlines how the water capacity assigned to the site does not properly account for the water allocation for the existing use and states the 300 unit project would yield a total peak demand that is less than the current peak demand for the existing and approved facilities on the site. The Township's engineer should verify this or provide alternative supporting information. Should water be available for the 300 units, it seems the Township should provide for additional development on the site since the Housing Plan only identifies water capacity as the factor which should constrain density on the site.



- Gateway Apartments. The Township should increase the set-aside to 15%; with 13 of 88 units reserved for affordable housing the set-aside is only 14.77%. Additionally, the Township should provide site suitability for this proposal. While the site appears suitable for the use since it currently occupied with a multi-family development, site suitability analysis is needed to determine adequate land, road access, parking and any environmental limitations. Additionally, the Township should consider obtaining a letter demonstrating a firm commitment for construction of rental units from the property owner; doing so would make the units eligible for bonus credits.
- Bonus Credits. The Township is taking bonus credits based on 25% of the new 111 affordable units it finds it has water capacity for. These bonus credits presumably reflect the rental obligation the Township believes it must meet. The Housing Plan must identify those specific units proposed for bonus credits in order to determine eligibility for said credits. Additionally, the rental obligation (and therefore eligible bonus credits) should be based on the entirety of the third round obligation (i.e. 25% of 263 pursuant to the Township's Housing Plan).

In addition to simply meeting the total obligation, municipalities are required to meet sub-components of the obligation. Except for the very low income obligation, the Housing Plan does not address these requirements but should be amended to do so. The following lists summarizes these requirements and provides any necessary commentary.

- Minimum Rental Units / Maximum Rental Bonuses: 25% of the obligation, rounded up. While the Township proposed 27 bonus credits and this presumably reflects the proposed rental obligation, these requirements should be specifically addressed in the Housing Plan and should be based on the entire third round obligation.
- Maximum Age-Restricted Units: 25% of the obligation, rounded down.
- Minimum Family Units: Family housing is not specifically required in N.J.A.C. 5:93; however, it is my experience and understanding that all settlement agreements with FSHC provide minimum family housing in the amount of 50% of the third round obligation, 50% of the third round rental obligation and 50% of the very low obligation. The Township should address family housing if it wishes to seek a settlement with FSHC on the obligation and the compliance plan.

Administration and Trust Fund

The Housing Plan states the Township will prepare a new affordable housing ordinance and affirmative marketing plan, as well as a new development fee ordinance and spending plan. These items are required by law and should be included in the next submission unless otherwise indicated by the Court.



Summary of Findings and Recommendations

The following summarizes the finding and recommendations above regarding the Township's Housing Plan. These findings and recommendations should be reflected in an Amended Housing Plan.

1. The Township should provide additional detail indicating how the rehabilitation obligation will be satisfied and provide the necessary documentation in support, consistent with the standards in N.J.A.C. 5:93-5.2. The following items are necessary should the obligation be met via participation in the County program and operation of a municipal program.
2. The Township should indicate how the prior round obligation will be satisfied. This should include identification of each project, the number of affordable units and bonus credits proposed to contribute.
3. The Township should provide the necessary documentation to confirm compliance of the prior round units with the applicable standards such as the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1.).
4. The Township should identify a third round obligation consistent with the prior round methodology and applicable case law and provide justification for it.
5. If the third round obligation cannot be fulfilled due to a lack of water availability, the Township should request a durational adjustment pursuant to N.J.A.C. 5:93-4.3.
6. The Township should seek increased affordable housing set-asides of not less than 20% from the proposed inclusionary housing sites.
7. The Township will need to provide a draft or adopted ordinance for each proposed affordable housing site, and detail compliance with administration and affirmative marketing requirements.
8. The site suitability discussion for the KAB Mount Freedom site should address the Highlands Open Water Buffer.
9. The Township should consider additional density for the Canoe Brook site that can be accommodated given the available water and based on an alternative bedroom distribution for the market units as indicated by the developer.
10. The Housing Plan should provide detail on how the Elbaum site creates a realistic opportunity.
11. The Township should verify the additional water available to the Avalon Bay site and, if verified, the Housing Plan should increase the density to maximize construction of affordable units on the site.
12. The Housing Plan should increase the set-aside and address site suitability for the Gateway Apartments site.
13. The Housing Plan should address subcomponents of the third round obligation such as the rental obligation, maximum senior units, and – if settlement with FSHC is desired – minimum family units.



Motions to Revoke Immunity filed by FSHC and LYS

Both FSHC and LYS state the Township's immunity should be revoked, largely due to the Township's lack of identification of a third round obligation that is consistent with N.J.A.C. 5:93, misuse of the requested waiver, lack of request for a durational adjustment, and lack of fulfilling the third round obligation pursuant to the applicable COAH rules (N.J.A.C. 5:93). These concerns are reflected in the comments above regarding the Township's Housing Plan.

The Supreme Court made it clear that while trial Courts should be "generously inclined" to grant applications for temporary immunity during the review of municipal plans, that review should not be "unreasonably protracted." 221 N.J. at 26. As stated below, the Supreme Court instructed the Trial courts to authorize exclusionary zoning actions seeking a builder's remedy if the municipality is "determined to be constitutionally noncompliant."

The courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy. 221 N.J. at 33 (emphasis added)

A loss of immunity is the most devastating consequence for a municipality involved in this process. While I share these concerns raised about the Township's Housing Plan and recognize its been more than 4 years since the Mount Laurel IV decision, it should also be recognized the Township met the deadline to submit a housing plan imposed by the Court and that the Township appears in all likelihood to qualify for a durational adjustment. Not only does the durational adjustment provide a clear path toward compliance, but the Township should be able to accomplish it quickly given the available data regarding water availability and the proposals to provide affordable housing by the various developers.

An Order issued on May 22, 2019 by Your Honor states the Township shall file a response to this report and the motions to revoke immunity by June 14, 2019, that replies to all shall be filed by FSHC and LYS by June 21, 2019, and that the Motion hearing is scheduled for June 27, 2019. This schedule alone provides the municipality nearly one month to provide the additional information requested herein and to consider the guidance herein that a durational adjustment is the appropriate path for compliance. I recommend that the Township be given a short timeframe (perhaps 30 days) to submit an amended Housing Plan the meets the requirements of N.J.A.C. 5:93 (including identification of an affordable housing obligation consistent with the prior round methodology) as set forth herein to demonstrate compliance in meeting its constitutional obligation and also identification of likely (or perhaps existing at that time) settlement agreements with the various parties.

Additional comments on this topic may be requested and provided upon receipt for the Township's response and replies by FSHC and LYS.



Please do not hesitate to contact me with any question you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth McManus".

Elizabeth McManus, PP, AICP, LEED AP

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 Joshua Bauers, Esq.
 Richard Hoff, Esq.
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