Amended Housing Element and Fair Share Plan

Township of Toms River
Ocean County, New Jersey

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Prepared for:
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Introduction

In 2005, the Planning Board adopted a document entitled Master Plan Housing Element and Fair Share Compliance Plan of the Township of Dover, Ocean County, New Jersey (2005 Housing Element and Fair Share Plan), which was prepared by The Metro Company, LLC and dated November 7, 2005. The 2005 Housing Element and Fair Share Plan was adopted by the then-Dover Township Planning Board on November 21, 2005, and subsequently endorsed by resolution of the then-Dover Township Council on November 22, 2005. The 2005 Housing Element and Fair Share Plan addressed the Township’s entire Fair Share obligation, including the rehabilitation share, the prior round obligation, and future obligation in accordance with prevailing Council on Affordable Housing (COAH) regulations. The 2005 Housing Element and Fair Share Plan was submitted to COAH with a petition for substantive certification in December 2005, but was never acted upon by COAH due to a subsequent, 2007 Appellate Division decision that stayed COAH from reviewing any plans as part of a petition for substantive certification. This 2007 Appellate Division decision resulted in a remand of the original COAH third round rules that became effective on December 20, 2004 back to COAH in order to revise them to be consistent with the Appellate Division decision. COAH adopted new (i.e., revised) third round rules effective June 2, 2008 and October 20, 2008.

The Township removed itself from COAH’s jurisdiction on September 5, 2007, when it filed a Complaint for Declaratory Judgment pursuant to N.J.S.A. 52:27D-312(a). The Township was granted the right to seek the review of its Compliance Plan from the Superior Court of New Jersey, Ocean County, Law Division. The Township has continuously been under the jurisdiction of the Superior Court, and the immunity it provides, since that time.

On December 17, 2008, the Planning Board adopted an amended Housing Element and Fair Share Plan (2008 Amended Housing Element and Fair Share Plan) that addressed its cumulative affordable obligation in accordance with COAH’s new third

The Township's 2008 Housing Element and Fair Share Plan included two Regional Contribution Agreements (RCAs) with Lakewood Township, which had been approved as required by COAH on March 25, 2008. Fair Share Housing Center, Inc. filed a legal appeal of both the COAH approval of the RCAs, and the Superior Court decision after “fairness hearing” on the RCAs with Lakewood Township. The legal appeals were consolidated and a Settlement Agreement and Release were signed on November 17, 2009. The Settlement Agreement and Release provided that the Township adopt a number of amendments to its Housing Element and Fair Share Plan. The Planning Board subsequently adopted an amendment to its Housing Element and Fair Share Plan on July 7, 2010 that addressed the conditions of the November 17, 2009 Settlement Agreement and Release.

On October 8, 2010, the Appellate Division invalidated COAH's 2008 third round rules, and the “growth share” methodology upon which they were based. On September 26, 2013, the New Jersey Supreme Court upheld and modified the Appellate Division's 2010 decision that invalidated COAH’s third round rules.

Notwithstanding the substantial period of time during which there were no third round rules or a definitive third round affordable housing obligation, the Township continued to pursue and foster affordable housing opportunities resulting in the creation of a substantial number of additional affordable units, and adopted an amended Housing Element of the Master Plan on October 2, 2014.

The New Jersey Supreme Court, in its decision in March of 2015, In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), transferred the evaluation of municipal compliance with the Mount Laurel doctrine from COAH to the trial courts. On July 7, 2015, the Township filed a motion for a Declaratory Judgment (IMO Township of Toms River, County of Ocean, Docket No. OCN-L-001867-15) seeking the declaration of the Court of its compliance with the Mount Laurel doctrine and
the Fair Housing Act (N.J.S.A. 53:27D-301 et seq.) in accordance with the Court’s Mount Laurel IV decision. Fair Share Housing Center, Inc. (FSHC) and Dover Shopping Center Associates, LLC (Dover) were granted intervenor status in separate Orders of the Court.

After the filing of the Declaratory Judgment action, the Township and FSHC participated in numerous conferences, motions, appeals, and other proceedings, and with the assistance of the Court’s Special Master, Philip Caton, PP, FAICP, ultimately reached a settlement agreement that was also accepted by the intervenor, Dover Shopping Center Associates, LLC. The Settlement Agreement, dated November 3, 2016 and signed by all parties, is attached hereto as Appendix A and sets forth the Township’s Second and Third Round fair share obligations and a compliance plan to address the obligations.

The Settlement Agreement, and the preliminary compliance plan for the period from 1987 to 2025 that is contained therein, were the subject of a Fairness and Preliminary Compliance hearing before the Honorable Mark A. Troncone, J.S.C., on December 16, 2016. Based upon the testimony of the Court Master and the recommendations set forth in his report entitled Master’s Report for a Mount Laurel Fairness and Preliminary Compliance Hearing, Township of Toms River, Ocean County, New Jersey, IMO Application of the Township of Toms River, Docket No. OCN-L-1867-15, Judge Troncone issued an Order, dated December 31, 2016 (attached hereto as Appendix B). The Order approved the Settlement Agreement, the obligations established, and compliance mechanisms therein, and contained a further finding that the Township’s preliminary compliance plan is “facially constitutionally compliant and provides a fair and reasonable opportunity for Toms River to meet its obligation under Mount Laurel IV”, subject to the “Court’s approval by way of a Final Compliance Hearing.”

This Amended Housing Element and Fair Share Plan is intended to: demonstrate satisfaction of the Township’s affordable housing obligations, and the other provisions and conditions established pursuant to the November 3, 2016 Settlement
Agreement and Judge Troncone’s December 31, 2016 Order; and, following a Final Compliance hearing, receive Final Judgment of Repose for the period 1987 to 2025.

**Analysis of Demographic, Housing and Employment Characteristics**

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

**Demographic Data**

At the time of the 2000 US Census, the Township of Toms River had a population of 89,706 residents (Table 1). This figure represents a 17.5 percent increase over the 76,371 residents that were counted at the time of the 1990 US Census. The Township of Toms River continues to grow, as evidenced by the US Census Bureau’s 2010 population estimate of 91,239 residents, which represents a 1.7 percent increase in population in the Township between 2000 and 2010. By 2025, it is projected\(^1\) that the Township's population will reach 104,335 residents, which represents an increase of 14.4 percent over the 2010 population.

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>76,371</td>
<td>89,706</td>
<td>91,239</td>
<td>104,335</td>
<td>17.5</td>
<td>1.7</td>
<td>14.4</td>
</tr>
</tbody>
</table>

Source: US Census Bureau (1990, 2000 and 2010); JDM Planning Associates, LLC (2025)

According to the 2010 US Census, the Township’s population is composed of 34,760 households (Table 2). It is noted that the Township’s percentage of population that

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\(^1\) This projection is obtained by annualizing the increase between the 2010 US Census population of 91,239 and the NJTPA’s 2040 projection of 117,430, and applying the annual increased to the fifteen-year period from 2011 through 2025.
is 65 years or older, 17.3 percent, is less than the percentage that is represented at the County level, but substantially more than the percentage that is represented at the State level. The median household income of Toms River Township, which at the time of the 2010 US Census was estimated to be $74,108, is significantly higher than the estimated median household income at the County and State levels. The median age of 43.0 years that describes Toms River’s residents is higher than at the County and State levels.

<table>
<thead>
<tr>
<th>Township of Toms River</th>
<th>Number of Households</th>
<th>Average Household Size</th>
<th>Median Age</th>
<th>% of Population ≥ 65 years</th>
<th>Median Household Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ocean County</td>
<td>221,111</td>
<td>2.58</td>
<td>42.6</td>
<td>21.0</td>
<td>$59,565</td>
</tr>
<tr>
<td>New Jersey</td>
<td>3,214,360</td>
<td>2.68</td>
<td>39.0</td>
<td>13.5</td>
<td>$69,400</td>
</tr>
</tbody>
</table>

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

With regard to the age-structure of the Township’s population, the 2010 US Census reported that there were 4,611 pre-school age children in Toms River, which was 5.1 percent of the total population (Table 3). School age children accounted for 17,051 residents, or 18.8 percent of the total population. Working age individuals accounted for 53,795 residents, or 59.0 percent of the total population. Finally, those aged 65 years or older accounted for 15,782 residents, which equated to 17.3 percent of the 2010 population.
Table 3: Population by Age, 2010

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-School Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 5 Years</td>
<td>4,611</td>
<td>5.1</td>
</tr>
<tr>
<td>School Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 to 9 Years</td>
<td>5,081</td>
<td>5.6</td>
</tr>
<tr>
<td>10 to 14 Years</td>
<td>5,897</td>
<td>6.5</td>
</tr>
<tr>
<td>15 to 19 Years</td>
<td>6,073</td>
<td>6.7</td>
</tr>
<tr>
<td>Working Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 to 24 Years</td>
<td>4,980</td>
<td>5.5</td>
</tr>
<tr>
<td>25 to 29 Years</td>
<td>4,943</td>
<td>5.4</td>
</tr>
<tr>
<td>30 to 34 Years</td>
<td>4,742</td>
<td>5.2</td>
</tr>
<tr>
<td>35 to 39 Years</td>
<td>5,449</td>
<td>6.0</td>
</tr>
<tr>
<td>40 to 44 Years</td>
<td>6,601</td>
<td>7.2</td>
</tr>
<tr>
<td>45 to 49 Years</td>
<td>7,298</td>
<td>8.0</td>
</tr>
<tr>
<td>50 to 54 Years</td>
<td>7,476</td>
<td>8.2</td>
</tr>
<tr>
<td>55 to 59 Years</td>
<td>6,354</td>
<td>7.0</td>
</tr>
<tr>
<td>60 to 64 Years</td>
<td>5,952</td>
<td>6.5</td>
</tr>
<tr>
<td>Senior Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65 Years and Older</td>
<td>15,782</td>
<td>17.3</td>
</tr>
</tbody>
</table>

Source: US Census Bureau

Toms River’s Housing Stock

According to the 2010 US Census, Toms River had a total of 43,334 housing units (Table 4). This was an increase of 2,218 units since the 2000 US Census. Of the total number of housing units in existence at the time of the 2010 US Census, 34,760 units, or 80.2 percent, were listed as occupied; owners occupied 82.2 percent of these units, while renters occupied 17.8 percent. The percentage of renter-occupied units is lower than at the County level, where 18.9 percent of all occupied housing units are occupied by renters.

The 2010 US Census reported an average household size in Toms River Township of 2.58 persons, and an average family size of 3.10 persons. This average household size is the same as the corresponding figure for the County, but the average family size is lower. Of the total number of households, family households accounted for
24,353, or 70.1 percent, and non-family households\(^2\) accounted for 10,407, or 29.9 percent.

A total of 25.1 percent of the Township's housing stock was estimated to have been constructed before 1960, and the estimated median year of construction was 1972. The median year of construction is not as recent as that of the County and more recent than that of the State, where it is 1977 and 1965, respectively.

In addition to the above, it is noted that the Township's housing stock is in fair condition. This is evidenced by the fact that the rehabilitation share of old, overcrowded and deficient housing that COAH has assigned to Toms River Township is just 92 units, which represents slightly more than two-tenths of one (0.2) percent of all housing units. Further evidence of the fair condition of the Township's housing stock is provided by the fact that the 2010 US Census estimated that only 132 units lacked complete plumbing facilities, and that only 336 units lacked complete kitchen facilities. It is also noted that only about 1.3 percent of all occupied units reported overcrowded conditions (1.01 occupants or more per room) in 2010, according to US Census Bureau estimates.

Regarding housing values, it is noted that the median value of the owner-occupied housing units in Toms River during 2010 was estimated to be $315,200. This is greater than the County median value of $285,800, but less than the State median value of $350,300. Toms River Township's median gross rent of $1,428 is higher than the County and State median gross rents of $1,279 and $1,108, respectively.

\(^2\) A non-family household is present when a householder lives alone, or when the householder shares the home exclusively with people to whom he or she is not related.
Table 4: Housing Characteristics, 2010

<table>
<thead>
<tr>
<th>Housing Units</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Units</td>
<td>43,334</td>
<td>100.0</td>
</tr>
<tr>
<td>Occupied Housing Units</td>
<td>34,760</td>
<td>80.2</td>
</tr>
<tr>
<td>Vacant Housing Units</td>
<td>8,574</td>
<td>19.8</td>
</tr>
<tr>
<td>Number of Units (2000)</td>
<td>41,116</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Occupancy/Household Characteristics</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Households</td>
<td>34,760</td>
<td>100.0</td>
</tr>
<tr>
<td>Persons Per Household</td>
<td>2.58</td>
<td>N/A</td>
</tr>
<tr>
<td>Family Households</td>
<td>24,353</td>
<td>70.1</td>
</tr>
<tr>
<td>Non-Family Households</td>
<td>10,407</td>
<td>29.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Structure Built*</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005 or Later</td>
<td>1,073</td>
<td>2.6</td>
</tr>
<tr>
<td>2000 to 2004</td>
<td>2,246</td>
<td>5.4</td>
</tr>
<tr>
<td>1990 to 1999</td>
<td>4,977</td>
<td>12.0</td>
</tr>
<tr>
<td>1980 to 1989</td>
<td>6,694</td>
<td>16.2</td>
</tr>
<tr>
<td>1970 to 1979</td>
<td>7,563</td>
<td>18.3</td>
</tr>
<tr>
<td>1960 to 1969</td>
<td>8,449</td>
<td>20.4</td>
</tr>
<tr>
<td>1950 to 1959</td>
<td>6,739</td>
<td>16.3</td>
</tr>
<tr>
<td>1940 to 1949</td>
<td>2,352</td>
<td>5.7</td>
</tr>
<tr>
<td>1939 or Earlier</td>
<td>1,299</td>
<td>3.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition of Units*</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lacking Complete Plumbing Facilities</td>
<td>132</td>
<td>0.4</td>
</tr>
<tr>
<td>Lacking Complete Kitchen Facilities</td>
<td>336</td>
<td>1.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Home Value (Owner-Occupied Units)*</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,000,000 or More</td>
<td>57</td>
<td>0.2</td>
</tr>
<tr>
<td>$500,000 - $999,999</td>
<td>4,553</td>
<td>16.8</td>
</tr>
<tr>
<td>$300,000 - $499,999</td>
<td>9,986</td>
<td>36.9</td>
</tr>
<tr>
<td>$200,000 - $299,999</td>
<td>8,273</td>
<td>30.6</td>
</tr>
<tr>
<td>$150,000 - $199,999</td>
<td>1,554</td>
<td>5.7</td>
</tr>
<tr>
<td>$100,000 - $149,999</td>
<td>688</td>
<td>2.5</td>
</tr>
<tr>
<td>$50,000 - $99,999</td>
<td>1,001</td>
<td>3.7</td>
</tr>
<tr>
<td>$0 - $49,999</td>
<td>957</td>
<td>3.5</td>
</tr>
<tr>
<td>Median Value</td>
<td>$315,200</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Median Rent ***</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median Rent</td>
<td>$1,428</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: US Census Bureau

Note: (*) 2010 1-Year Estimate; (**) Detail of value distribution unavailable.
Housing units that have a monthly cost of less than 30 percent of gross household income are considered to be affordable. In the Township of Toms River, a total of 58.5 percent of all owner-occupied housing units and 33.9 percent of renter-occupied housing units were estimated to be affordable (Table 5).

<table>
<thead>
<tr>
<th>Selected Monthly Owner Costs</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 20%</td>
<td>4,821</td>
<td>25.3</td>
</tr>
<tr>
<td>20% to 24%</td>
<td>3,322</td>
<td>17.4</td>
</tr>
<tr>
<td>25% to 29%</td>
<td>3,002</td>
<td>15.8</td>
</tr>
<tr>
<td>30% or More</td>
<td>7,899</td>
<td>41.5</td>
</tr>
<tr>
<td>Not Computed</td>
<td>59</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gross Rent</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 15%</td>
<td>809</td>
<td>14.0</td>
</tr>
<tr>
<td>15% to 19%</td>
<td>364</td>
<td>6.3</td>
</tr>
<tr>
<td>20% to 24%</td>
<td>511</td>
<td>8.8</td>
</tr>
<tr>
<td>25% to 29%</td>
<td>279</td>
<td>4.8</td>
</tr>
<tr>
<td>30% or More</td>
<td>3,828</td>
<td>66.1</td>
</tr>
<tr>
<td>Not Computed</td>
<td>618</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: US Census Bureau 2010 1-Year Estimates

Employment Characteristics

The 2010 American Community Survey (ACS) estimates that 49,659, or 67.0 percent, of Toms River Township’s residents aged 16 and over were employed in the civilian labor force (Table 6). Of those who are employed in the civilian labor force: 37.2 percent are in management, professional, and related occupations; 20.1 percent are in service occupations; 24.0 percent are in sales and office occupations; 9.9 percent are in natural resources, construction, extraction, and maintenance occupations; and, 8.7 percent are involved in production, transportation, and material moving occupations.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management, Professional, Related Service</td>
<td>16,788</td>
<td>37.2</td>
</tr>
<tr>
<td>Sales, Office</td>
<td>9,075</td>
<td>20.1</td>
</tr>
<tr>
<td>Natural Resources, Construction, Extraction, Maintenance</td>
<td>10,818</td>
<td>24.0</td>
</tr>
<tr>
<td>Production, Transportation, Material Moving</td>
<td>4,463</td>
<td>9.9</td>
</tr>
<tr>
<td></td>
<td>3,930</td>
<td>8.7</td>
</tr>
</tbody>
</table>

Source: US Census Bureau 2010 1-Year Estimates
In 1999, the median household income in Toms River was $54,776. The US Census Bureau has estimated that in 2010, the Township of Toms River’s median household income had risen to $74,108. At first glance this may seem like a significant increase. However, it is noted that when these values are inflation-adjusted to 2010 dollars\(^3\), the increase has only been about $2,414 or 3.4 percent.

<table>
<thead>
<tr>
<th>Median Household Income (Dollars)</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $10,000</td>
<td>1,277</td>
<td>3.8</td>
</tr>
<tr>
<td>$10,000 to $14,999</td>
<td>1,241</td>
<td>3.7</td>
</tr>
<tr>
<td>$15,000 to $24,999</td>
<td>3,116</td>
<td>9.3</td>
</tr>
<tr>
<td>$25,000 to $34,999</td>
<td>1,554</td>
<td>4.6</td>
</tr>
<tr>
<td>$35,000 to $49,999</td>
<td>3,410</td>
<td>10.2</td>
</tr>
<tr>
<td>$50,000 to $74,999</td>
<td>6,433</td>
<td>19.2</td>
</tr>
<tr>
<td>$75,000 to $99,999</td>
<td>5,174</td>
<td>15.5</td>
</tr>
<tr>
<td>$100,000 to $149,999</td>
<td>6,905</td>
<td>20.6</td>
</tr>
<tr>
<td>$150,000 to $199,999</td>
<td>2,703</td>
<td>8.1</td>
</tr>
<tr>
<td>$200,000 or More</td>
<td>1,665</td>
<td>5.0</td>
</tr>
<tr>
<td>Median Household Income (Dollars)</td>
<td>$74,108</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: US Census Bureau

With regard to the number of jobs that are located within the Township, it is noted that the New Jersey Department of Labor and Workforce Development indicates that there was an average of 40,128 public and private sector jobs located within the municipality during 2015, which is the latest data available. This represents a 3.8 percent decrease as compared to the 2005 average of 41,722 local jobs. The Department of Labor and Workforce Development’s basis for this information is the number of jobs that are covered by public unemployment and disability insurance.

\(^3\) The 1999 median household income of $54,776 had the same purchasing power as $71,694 in 2010.
**Fair Share Obligation**

Pursuant to the November 3, 2016 Settlement Agreement approved by Judge Troncone’s December 31, 2016 Order, the Township’s fair share obligation for the period from 1987 through July 1, 2025 is comprised of three components, as follows:

- Rehabilitation Obligation: 243 units
- Prior Round (1987-1999) Obligation: 1,735 units
- Third Round (1999-2025) Obligation: 1,285 units

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

**Compliance Plan**

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

**Rehabilitation Obligation**

Per the Court-approved Settlement Agreement, the Township's present need (i.e., rehabilitation obligation) is 243 units. Present need is determined as of April 1, 2010, which is the date of the latest US Census. The Township has maintained an active low- and moderate-income rehabilitation program for many years. The program is funded under the Township’s HUD Community Development Block...
Grant (CDBG) program. Low- and moderate-income households in the Township are also eligible to participate in the Ocean County CDBG-funded HUD-HOME housing rehabilitation program. Rental units have historically, and continue to be, eligible for funding under the Township’s rehabilitation program.

From April 1, 2010 through December, 2016, a total of 78 low- and moderate-income units have been rehabilitated, or are in the process of rehabilitation, within Toms River under the Township’s program, and one low- or moderate-income unit has been rehabilitated under the Ocean County HOME housing rehabilitation program. The combined average hard cost of the total of 79 units rehabilitated under the Township’s and Ocean County’s programs during this period is $14,368.

N.J.A.C. 5:97-4.5(d) provides that the Township may receive crediting for units rehabilitated or under contract for rehabilitation after June 2, 2008 provided that, among other requirements, the units were subject to ten-year affordability controls, and the average capital cost is at least $10,000. Of the 78 units participating in the Township’s CDBG funded rehabilitation program since April 1, 2010, 65 were subject to six-year affordability controls based upon program guidelines consistent with HUD requirements, but inconsistent with ten-year COAH crediting requirement, until June 23, 2015, when program guidelines were changed to require 10-year affordability controls. The remaining 13 units participating in the program initiated since June 23, 2015 are subject to ten-year affordability controls.

The Township seeks a waiver from the ten-year affordability control requirement contained in N.J.A.C. 5:97-4.5 for 65 of the 78 units rehabilitated under the Township’s Program during the period from April 1, 2010 to the present.

In support of the Township’s waiver request above, the Township’s participation in the Reconstruction, Rehabilitation, Elevation, and Mitigation (RREM) program clearly demonstrates satisfaction of any rehabilitation obligation well beyond the 243 units assigned pursuant to the Settlement Agreement.

The State of New Jersey has allocated $1.1 billion in federal funds, under the HUD Community Development Block Grant – Disaster Recovery (CDBG – DR) program to
assist eligible homeowners to repair or rebuild their Superstorm Sandy-impacted homes. The RREM Program provides grant awards of up to $150,000 for activities to restore the storm-damaged, primary residences of homeowners, including reconstruction, rehabilitation, elevation and mitigation activities. The program targets low- and moderate-income homeowners, and requires 70 percent of the participants to be of low- or moderate-income. The Township anticipates that over 1,000 homeowners will participate in the program, thereby resulting in many hundreds of low- and moderate-income homeowners receiving assistance. Notwithstanding the program’s lack of resale restrictions (i.e., affordability controls), hundreds of low- and moderate-income homes will be upgraded from a substandard condition under this program.

The Township will continue to provide rehabilitation assistance under its CDBG-funded rehabilitation program through 2025, toward and beyond the 243-unit rehabilitation obligation. The Township anticipates completing approximately 18 units per year, which, when coupled with the Ocean County HOME program, would satisfy the remaining rehabilitation obligation by 2025.

Prior Round Obligation
Per the Court-approved Settlement Agreement, the Township's prior round (i.e., 1987 to 1999) obligation is 1,735 units. Appendix C, Prior Round Compliance Plan Summary, lists the various elements of the Township's Prior Round Compliance Plan.

The individual items comprising the Township's Prior Round Compliance Plan are discussed in detail in the following subsections:

Prior Cycle Credits

Credits Without Control
Per the April 20, 2005 COAH Pre-mediation Report, COAH staff has verified the Township’s claim to 176 prior cycle credits pursuant to N.J.A.C. 5:93-3.2.
Highland Plaza (Block 537, Lot 23)
This project-based, Section 8, age-restricted, low- and moderate-income development was constructed in 1983, and contains 110 rental units. Per the April 20, 2005 COAH Pre-mediation Report, COAH staff has verified the Township’s claim to 110 prior cycle credits for this project.

Winteringham Village (Block 548, Lot 1)
This HUD Section 221-funded Project contains 183 project-based, Section 8 family rental units. The project was issued certificates of occupancy between June and October 1980. Per the April 20, 2005 COAH Pre-mediation Report, COAH staff has verified the Township’s claim to 183 prior cycle credits for this project.

Alternative Living Arrangements (ALAs)
Per the April 20, 2005 COAH Pre-mediation Report, COAH staff has verified the Township’s claim for 21 prior cycle credits for the following four facilities occupied between 1980 and 1986: ARC group home (2127 Church Street), which provides five bedrooms/credits; 21 Plus group home (Old Freehold Road), which provides six bedrooms/credits; 21 Plus group home (Sapling Court), which provides four bedrooms/credits; and, AMIB Residence (1912 Water’s Edge Drive), which provides six bedrooms/credits. The Township claims an additional credit for the 21 Plus facility, which is located on Block 390, Lot 28; a total of seven bedrooms are claimed, while six bedrooms were previously verified by COAH.

Regional Contribution Agreements (RCAs)
The Township entered into two RCA agreements with Lakewood Township on December 13, 2007. The first agreement provided $45,000 per unit in funding for 72 units of new construction in Phase I of Lakewood Commons. The project, developed by NJ Hand, also received NJDCA Neighborhood Balanced Housing Program funding. The second agreement provided $35,000 per unit for 72 units of scattered site housing rehabilitation.

By resolution dated March 25, 2008, COAH recommended to the Court approval, with conditions, of both RCAs. By Order dated April 4, 2008, the Court approved the
December 13, 2007 RCA for the 72 new construction units within Phase I of the Lakewood Commons project. The Order also reserved approval of the RCA for the scattered site rehabilitation pending an additional compliance hearing on the remainder of its Prior Round Compliance Plan. Fair Share Housing Center, Inc. filed an appeal of the Superior Court decision related to both RCAs. The appeals were subsequently consolidated and a Settlement Agreement and Release was reached between the parties and subsequently signed on November 17, 2009. Per the Settlement Agreement and Release, the Township agreed to make a number of changes to its Housing Element of the Master Plan, including withdrawal of its claim for 72 credits for the “rehabilitation” RCA with Lakewood Township. The December 2009 Amendment to the Housing Element adopted the changes set forth in Settlement Agreement and Release, including the withdrawal of the claim for the 72-unit “rehabilitation” RCA with Lakewood Township. The Settlement Agreement and Release left intact the Township’s claim of 72 units of credit for the “new construction” RCA with Lakewood Township.

Post-1986 Credits (Built)

*Alternative Living Arrangements (ALAs) – Verified*

Appendix A of the 2008 Housing Element and Fair Share Plan detailed the Township’s claim of a total of 81 credits for the 81 bedrooms contained in the 25 alternative living facilities in scattered locations throughout the Township that were occupied between 1986 and 2008.

In October 2013, the Township conducted an update of special needs housing facilities within the Township since 2008. A total of four additional facilities were identified and completed the requisite supportive and special needs housing survey forms. Based upon the information submitted, the Township claims an additional 19 alternative living arrangement credits. The following additional facilities have been identified: Community Options, Inc., 170 Village Road (Block 171, Lot 13), which provides four bedrooms/credits; 21 Plus, Inc., 301 Twin Oaks Drive (Block 443.5, Lot 183), which provides six bedrooms/credits; Willowglen Academy, 1857 Old
Freehold Road (Block 390, Lot 28), which provides five bedrooms/credits; and, Opportunity Knocks, Inc., 809 Donegal Court (Block 443.04, Lot 22), which provides four bedrooms/credits.

Based upon the above, the Township is entitled to 100 credits toward its prior round obligation for alternative living arrangement units in Township.

Site No. 2 – North Pointe Hollow (Block 37, Lot 1)
This inclusionary, for-sale project was part of the Township’s 1992, Court-approved Compliance Plan. The project, as completed and occupied, contained 89 low- and moderate-income units with 20-year affordability controls. Per the April 20, 2005 Pre-mediation Report, COAH has verified the Township’s entitlement to 89 credits for this project.

AS Developers/Walnut Grove (Block 591, Lot 7.09)
This three-unit, for-sale project was likewise part of the Township’s 1992, Court-approved Compliance Plan. The project has been completed and occupied, and has 20-year affordability controls in place. COAH’s 2005 Pre-mediation Report verified the Township’s entitlement to three credits for this project.

Site No. 25 – Woods at Massachusetts Avenue (Block 166, Lot 1)
The Woods at Massachusetts Avenue site was part of the Township’s 1992 Compliance Plan. The project is an inclusionary, 68-unit, for-sale, multi-family development that contains 14 affordable units with 20-year affordability controls.

Habitat for Humanity (927 Malcolm Street)
As cited in the Township’s November 7, 2005 Plan, Habitat for Humanity has constructed a detached single-family residence on a municipally donated property, and subsequently sold same to an income-qualified family. The property has 30-year affordability controls in place. The Township claims one credit for this unit.

Site No. 31–Dover Chase/Massachusetts Avenue (Block 164, Lot 3)
This site is located on the east side of Massachusetts Avenue, to the immediate north of the Hickory Street intersection. It has been included in the Township’s
Compliance Plan continuously since the November 2001 amendment to the Housing Element and Fair Share Plan. The project, developed by AST Development, is an inclusionary, multi-family, rental development that contains a total of 110 units, of which 22 are set-aside as affordable units with 30-year affordability controls. The project is complete and occupied. The Township claims 22 credits for this project.

103 Walnut Street (Block 609.02, Lot 8)
The Planning Board originally approved this project as a 12-unit, market-rate, multi-family development. Homes For All, with the cooperation of the Township, sought and received $1.5 million in Balanced Housing funding for this project. Coupled with a $28,000 per-unit contribution from the Township’s Affordable Housing Trust Fund, Homes For All constructed 12 affordable (50 percent low/50 percent moderate), for-sale, multi-family units with 30-year affordability controls. The units were completed and occupied in 2009. The Township claims 12 credits for this project.

Site No. 6 – Hope’s Crossing (Block 135.01, Lot 4)
This 100-percent affordable family rental project was also part of the Township’s 1992 Court-approved Compliance Plan. As completed and occupied, the project contains 125 affordable units with 30-year affordability controls. Per the April 20, 2005 Pre-mediation Report, COAH has verified the Township’s entitlement to 125 credits for this project.

Site No. 10 – The Fairways at Bey Lea (Block 571, Lot 89)
The Fairways at Bey Lea project was part of the Township’s 1992 Compliance Plan. The original project was an inclusionary family rental project with a total of 288 units, of which 43 (i.e., 15 percent) were set aside as affordable units and carried 20-year affordability controls. COAH’s 2005 Pre-mediation Report verified the Township’s entitlement to 43 credits for this project.

Per the 2009 Amended Housing Element, the Township claimed additional crediting as a result of a planned 242-unit expansion of the project. On February 4, 2009 the Planning Board granted approval of the 242-unit expansion, conditioned upon the
Amended Housing Element and Fair Share Plan
February 3, 2017

set-aside of 20 percent of the total number of units in the project (i.e., 106 affordable units). The entire project is complete and occupied. The Township claims a total of 106 credits for this project.

Site No. 15 – Walnut Hollow/Caucino (Block 609, Lot 1)
This site was part of the Township’s 1992 Compliance Plan. As built and occupied, the project is an inclusionary, 38-unit, family rental project containing six affordable units with 20-year affordability controls. The 2005 COAH Pre-mediation Report verifies the Township’s entitlement to six credits for this project.

Site No. 34 – Leone (Block 658.01, Lots 32 and 33)
This built and occupied family rental development, located in the downtown area at 34-38 Main Street, received a use variance to permit the construction of 12 multi-family rental units, two of which were required to be affordable (one low- and one moderate-income unit) as a condition of said approval. The Township claims two credits for these units.

Site No. 29 – Toms River Crescent (Block 120, Lot 2)
This site, located on the west side of State Highway Route 70 between Dover Pines Avenue and Evan Avenue, has been included in the Township’s Compliance Plan continuously since the November 2001 amendment to the Housing Element and Fair Share Plan. The property is owned and has been developed by Toms River Crescent, LLC, with Community Investment Strategies Inc. (CIS) as the managing member. The project is a 120-unit, all-affordable, family rental project that utilizes nine-percent Low Income Housing Tax Credits (LIHTCs) and Home Express Balanced Housing funding. The project includes 36 three-bedroom units and 84 two-bedroom units. Twelve units are to be reserved for households with incomes at less than 30 percent of median income (very low-income). All units have 30-year affordability controls. The project is built and occupied. The Township claims 120 credits for this project.
Site No. 11 – Villages at Bey Lea (Block 571.64, Lot 58.01)
The Villages at Bey Lea site was part of the Township’s 1992 Compliance Plan. As built and occupied, this inclusionary, 235-unit project contains 48 age-restricted rental units with 20-year affordability controls. COAH’s 2005 Pre-mediation Report verified the Township’s entitlement to 48 credits for this project.

Site No. 28 – Presbyterian Homes (Block 414, Lot 9.03)
This project was first added to The Township’s Compliance Plan as part of the amendment to the Housing Element and Fair Share Plan that was adopted by the Planning Board in November 2001, and has remained in the Township’s Compliance Plan in all subsequent revisions. This all-affordable, 85-unit, age-restricted rental project, developed by Presbyterian Homes with HUD Section 202 funding, has been built and occupied. The project has 40-year affordability controls. The Township claims 85 credits for this project.

Brentwood Assisted Living (Block 231, Lot 6; 1657 Silverton Road)
Brentwood Assisted Living is an existing, 120-licensed bed assisted living facility that was constructed in 2005. The facility is licensed by the New Jersey Department of Health and Senior Services and has a ten percent Medicaid waiver bed requirement. Based upon the provisions of N.J.A.C. 5:97-6.11, the Township claims 12 credits for this facility.

Magnolia Gardens Assisted Living (Block 172, Lot 28.01; 1935 Lakewood Road)
Magnolia Gardens is an existing, 120-licensed bed assisted living facility that was constructed in 2001. The facility is licensed by the New Jersey Department of Health and Senior Services and has a ten percent Medicaid bed waiver requirement. The Township claims 12 credits for this facility.

The Residence at Toms River Assisted Living (Block 135, Lot 3.05; 2145 Whitesville Road)
The Residence at Toms River Assisted Living Facility is an existing, 144-licensed bed assisted living facility that was constructed in 2000. The facility is licensed by the New Jersey Department of Health and Senior Services and has a ten percent Medicaid bed waiver requirement. The Township claims 14 credits for this facility.
Brandywine Assisted Living (Block 393, Lot 3; 1587 Old Freehold Road)

Brandywine Assisted Living is an existing, 110-licensed bed assisted living facility that was constructed in 2004. The facility is licensed by the New Jersey Department of Health and Senior Services, and has a ten percent Medicaid bed requirement. The Township claims 11 credits for this facility.

Rental Bonus Credits

Pursuant to the Court-approved Settlement Agreement and the preliminary compliance plan included therein, the number of rental units eligible for municipal rental bonus credits toward the prior round obligation is established according to the following formula: Rental Bonus Cap = 25 percent (prior round obligation, minus prior cycle credits (credits without controls), minus the impact of 20-percent cap, minus the impact of 1,000-unit cap) or 390 units (2,233 – 176 – 0 – 498 = 390). As depicted in Appendix C, the Township claims one-for-one crediting for a total of 390 rental units as follows: Alternative Living Arrangements, which provide 49 units (i.e., bedrooms); Site No. 31 – Dover Chase, which provides 22 units; Site No. 6 – Hope’s Crossing, which provides 125 units; Site No. 10 – The Fairways at Bey Lea, which provides 66 units; Site No. 15 – Walnut Hollow/Caucino, which provides 6 units; Site No. 34 – Leone, which provides 2 units; and, Site No. 29 – Toms River Crescent, which provides 120 units).

Regional Contribution Agreements (RCAs)

The maximum number of units a municipality may transfer via regional contribution agreement in the prior round is established by the formula set forth in N.J.A.C. 5:97-3.10(d)1, as follows: RCA Maximum = 50 percent (prior round obligation plus rehabilitation share, minus prior cycle credits, minus rehabilitation credits, minus the impact of 20-percent cap, minus the impact of 1,000-unit cap) or 622 units (2,233 + 92 – 491 – 92 – 0 – 498 = 622). As detailed above, the Township’s Compliance Plan includes 72 RCA units, which is well below the permitted maximum.
Age-Restricted Units

The maximum number of credits for age-restricted units the Township may claim towards its prior round obligation is set by the formula established by N.J.A.C. 5:97-3.10(c)(1), as follows: Age-Restricted Maximum = 25 percent (prior round obligation plus rehabilitation share, minus prior cycle credits minus rehabilitation credits, minus the impact of 20 percent cap, minus the impact of 1,000 unit cap, minus RCA units) or .25 (2,233 + 92 – 491 – 92 – 0 – 498 – 72) = 293 units.

As shown in Appendix C, Prior Round Compliance Plan Summary, the Township’s Plan includes a total of 182 age-restricted units, as follows: Site No. 11 – Village at Bey Lea, which provides 48 units; Brentwood, Magnolia Gardens, The Residence at Toms River and Brandywine Assisted Living Facilities, which provide a combined total of 49 units; and, Site No. 28 – Presbyterian Homes, which provides 85 units. The Township’s Prior Pound Compliance Plan meets the 293-unit, age-restricted unit cap established pursuant to N.J.A.C. 5:97-3.10(c)(1).

Rental Obligation

The Township’s rental obligation established at N.J.A.C. 5:97-3.10(b)(1) is calculated according to the following formula: Rental Requirement = 25 percent (prior round obligation, minus prior cycle credits, minus the impact of 20-percent cap, minus the impact of 1,000-unit cap) or 311 units (2,233 – 491 – 0 – 498 = 311).

Per Appendix C, Prior Round Compliance Plan Summary, the Township’s Compliance Plan includes 663 rental units toward its rental obligation, including the following projects: Scattered site alternative living arrangements, which provide a combined total of 100 units; Site No. 31 – Dover Chase, which provides 22 units; Site No. 6 – Hope’s Crossing, which provides 125 units; Site No. 10 – The Fairways at Bey Lea, which provides 106 units; Site No. 15 – Walnut Hollow, which provides 6 units; Site No. 34 – Leone, which provides 2 units; Site No. 29 – Toms River Crescent, which provides 120 units; Site No. 11 – Village at Bey Lea, which provides 48 units; Site No. 28 – Presbyterian Homes, which provides 85 units; and, Assisted Living Facilities (viz., Brentwood, Magnolia Gardens, The Residence At Toms River, and
Brandywine), which provide a combined total of 49 units. The 663 rental units in these projects far exceed the Township’s prior round rental obligation.

**Third Round Obligation**

Per the Court-approved Settlement Agreement, the Township’s Third Round (i.e., 2015–2025) affordable housing obligation is 1285 units. Appendix D, Third Round Compliance Plan Summary sets forth the Township’s plan to fully satisfy its future this affordable housing obligation.

The individual elements of the Township’s third round obligation compliance plan are detailed below as follows:

*Site No. 25A – Freedom Village (Block 164, Lot 4) (Family rental Component and Alternative Living Arrangement Component)*

This ten-acre site has been included in the Township’s Compliance Plan continuously since the November 2001 amendment of the Housing Element and Fair Share Plan. The site is located on Massachusetts Avenue, immediately to the north of the Hickory Street intersection. The Township subsequently purchased the property and entered into an agreement with Project Freedom, a registered 501(c)3 non-profit organization, to develop the site with 54 family rental units, and an 18-unit, 32-bedroom, non-age-restricted special needs housing component. The bedroom distribution of the 72 total dwelling units is as follows: 14 one-bedroom units; 40 two-bedroom units; and 18 three-bedroom units. The 18 specials needs units are to have the following bedroom distribution: eight one-bedroom units; six two-bedroom units; and four three-bedroom units. Project funding included: a substantial Township financial contribution and land donation; $5,000,000 in CDBG funding; and, Federal Home Loan Bank funding. The project is built and occupied having received its Certificates of Occupancy in the Fall of 2015. The Township claims 54 credits towards its Third Round obligation for the 54 family rental units, and 32 credits for the 32 bedrooms in the special needs housing component of the project.
Site No. 35 – Lotano (Block 657, Lots 15-18)
On October 11, 2007, the Toms River Board of Adjustment granted a use variance and preliminary and final major site plan approvals to permit 24 apartments, and office, bank, commercial, and retail uses in a five-story, mixed-use building, and a two-story parking garage located between Main and Hyers Streets at Legion Court. The applicant (River City Investments, LLC) subsequently submitted an amended use variance application for 55 family rental apartment units with no commercial component. The application was approved on October 11, 2012. A 20-percent set-aside is required as a condition of the approval; consequently, the project will yield 11 affordable units. The project received Site Plan approval on February 14, 2013.

Site No. 36 – Nobility Crest (Block 166, Lots 3, 4, 9, and 15)
The subject property is a 34-acre tract located at the northwest corner of the intersection of Route 9 and Cox Cro Road. The Toms River Board of Adjustment granted a use variance to permit the development of 26 acres of the subject property as a 250-unit, family rental project. As a condition of the use variance approval, 50 affordable units are required to be set-aside within the proposed project. Construction of the project has commenced, but was suspended pending the developer confirming and assuring the method of satisfaction, and providing details, of the affordable component of the project. NJHMFA has recently confirmed funding for the affordable component of the project and resumption of construction is anticipated.

Site No. 37 – JSM Route 166 (Block 404, Lot 79)
This approximately 11-acre property is located on Route 166 to the north of Route 37, and has been rezoned to MF-8 in accordance with a recently-adopted amendment to the Master Plan. The resulting development is expected to yield 132 family rental units, of which 20 percent (i.e., 27 units) would be required to be affordable. The Township claims 27 credits towards its third round obligation for the family rental units in this project. Site plan approval has been granted by the Planning Board.
Site No. 42 - TAS/Krupnick

The Township has had settlement discussions with the owners of former affordable housing sites nos. 7 and 8, and a substantial portion of Site No. 42. As part of a settlement agreement, the Township would study the site as to its qualification as an area in need of redevelopment under the Local Redevelopment and Housing Law, and approval of a redevelopment plan permitting a mixed-use development of the site with a substantial affordable housing component. The area in need of redevelopment designation and subsequent adoption of a redevelopment plan would facilitate the assemblage of the out parcels, the vacation of paper streets and the eventual redevelopment of the property.

It is the Township’s position that it is including this site in this compliance strategy as a redevelopment/affordable housing site to be developed by the owner of affordable housing sites nos. 7 and 8 in exchange for its abandonment of claims to rights to develop the properties as affordable housing sites.

Public sewer and water facilities are available on the site. Substantial portions of the site are free of environmental constraints, although an apparent wetland exists in a small portion of the site. The site is located in the Toms River Coastal Center and underlying Planning Area 2.

The Township anticipates that the redevelopment plan will include a 60-unit, 100-percent affordable family rental component. Consistent with Settlement Agreement and given the preliminary nature of the project, no crediting for this project is claimed at this time.

Site No. 38 – Autumn Ridge/Homes for All (Family Rental Component)

This project, located on Route 9 opposite Riverwood Drive, consists of a total of 74 units (incl., 25 family rental units and 49 for-sale townhomes), and a small commercial component. The 25 family rental units included five affordable units. The 49 townhomes included ten affordable for sale units. Construction of all units has been completed and occupied. The Township claims 15 credits towards its third round obligation for the affordable units in the project.
Site No. 39 – Hyers Street/Legion Court (Block 659, Lot 1)
This project is located at the southwest corner of Hyers Street and Legion Court, and is to contain a total of 18 multi-family rental units, of which 20 percent, or four units, are to be set aside as affordable units. The project received use variance and site plan approval on April 11, 2013. The Township anticipates claiming four family rental credits toward its third round obligation for the affordable units within this project.

Site No. 40 – Meadow Green Apartments (Block 164, Lot 2)
This ten-acre site (Block 164, Lot 2) is located on the east side of Massachusetts Avenue, to the immediate north of Site No. 31 (Dover Chase). The project is to include 80 age-restricted, multi-family rental units, all of which are to be affordable. The property is currently zoned to permit the project as proposed. An application for Low-Income Housing Tax Credits (LIHTC) financing has been approved by NJHMFA. The Township Council has authorized a Payment in-Lieu of Taxes (PILOT) agreement for the project. Construction of the project has commenced. The Township anticipates 80 credits towards its third round obligation for the 80 age-restricted units in this project.

Highland Plaza (Extension of Controls)
This 110-unit, age-restricted affordable housing project is located at the southeast corner of the intersection of Highland Parkway and Colfax Street. The project was developed in 1983 under the HUD Section 8 program. The Section 8 certificates were project based, and the New Jersey Housing and Mortgage Finance Agency (NJHMFA) financing provided for 30-year affordability controls. As the project was developed after April 1, 1980, but prior to December 15, 1986, the Township is entitled to claim 110 prior cycle credits. The Township's prior round compliance plan includes this crediting. The 30-year affordability controls expired in 2014 and were extended in January, 2014. The Township Council has agreed to a 20-year extension of the PILOT agreement, and has worked with the current owners to extend the affordability controls on the units for an additional 20 years for a total of
50 years. Pursuant to N.J.A.C. 5:97-6.14(a), the Township is entitled to claim crediting towards its third round obligation for extension of affordability controls on units qualifying for prior cycle crediting. Prior cycle units require 20-year affordability controls, and units seeking crediting for extension of expiring controls require 30-year controls for a total of 50 years. Given the cumulative 50-year controls, the Township seeks 110 credits towards its third round obligation for extension of the expiring controls for units within the age-restricted Highland Plaza development, notwithstanding that the expiring controls are extended for only 20 additional years.

*Site No. 32 – JSM at Hickory Street/Gabrielle Run (Block 164, Lot 7)*

This 34-acre site is located on the west side of State Highway Route 9 and to the north of Hickory Street. The project is an inclusionary multi-family, non-age-restricted development with a total of 340 units, with 20 percent (i.e., 68) units to be set aside for low- and moderate-income households. The project has received final approvals and construction is currently underway. The Township claims 68 credits towards its third round obligation for the 68 affordable multi-family rental units in this project.

*Site No. 41 – Colfax Street (Block 537, Lots 49, 97, 100, and 101)*

The subject property is a 1.37-acre vacant tract located on Colfax Street, just to the west of Main Street in the downtown portion of Toms River.

The Toms River Board of Adjustment granted a use variance and preliminary and final major site plan approval by resolution dated February 28, 2008 to permit the construction of nine multi-family dwelling units on the site, with two of the units required to be set aside as affordable units. The Township anticipates two credits for the affordable, for-sale, multi-family units to be built within this project.

*Site No. 30 – Toms River Senior Apartments (Block 166, Lots 2 and 10) (100-percent affordable/age-restricted)*

The Toms River Senior Apartments site, formerly known as Cornerstone Commons, has been included in the Township’s compliance plan continuously since the
November 2001 amendment to the Housing Element and Fair Share Plan. This 11-acre parcel is located at the northeast corner of the intersection of Massachusetts Avenue and Cox Cro Road. The property was purchased by the Township for the development of affordable housing. The project consists of 102, all-affordable, age-restricted apartments. The Township has entered into an agreement to sell the property to a qualified and experienced affordable housing developer. The developer and the Township have entered into a PILOT agreement. The developer has filed an application with the New Jersey Housing and Mortgage Finance Agency (NJHMFA) for funding under the Low Income Housing Tax Credit (LIHTC) program. Approval has been granted by NJHMFA and construction is currently underway.

Site No. 47 – Dover Summit (Block 410.01, Lots 28, 29 and 42)

This site recently received a special reasons variance to develop 175 multifamily units with a 20-percent set aside, which will yield 35 units. No development application for site plan approval has been filed to date.

Winteringham Village (Extension of Controls)

In July, 2015, Michaels Development extended controls on this 100-percent affordable, 183-unit family rental development consistent with the provisions of N.J.A.C. 5:97-6.14 (a). The Township claims 183 credits towards its third round obligation.

Site No. 48 – Dover Shopping Center Associates, LLC (Block 410, Lot 25)

This project, located on Route 9 opposite Clayton Road, will consist of a total of 150 units (family rental units) and a commercial component on a site of 22.48 acres. The family rental units are to include a 20-percent affordable housing requirement (i.e., 30 affordable units and would be sited to the rear on approximately 18.6 acres). The commercial component would occupy approximately 3.7 acres of the site with direct frontage on Route 9. The property is to be rezoned to permit the development as proposed. A draft of the ordinance rezoning the property is attached hereto as Appendix E. The new zoning district will be a modification of the existing Rural Highway Business (RHB) Zone to create “RHB-AH9” for Rural Highway Business –
Affordable Housing Route 9, with most of the changes related to the Planned Unit Development (PUD) requirements. The Township claims 30 credits towards its third round obligation for the 30 family rental affordable units in this project.

Woods at Massachusetts (Site No. 25) (Extension of Controls)

Fourteen units in this development have controls that will expire before 2020. The Township intends to unilaterally extend affordability controls on these units. To date, affordability controls on two units have been extended an additional 30 years. The Township claims crediting for these two units towards its third round obligation.

Site No. 49 – 1580 and 1606 Lakewood Road, LLC – Gefner (Rt. 9 south of Church Road) (Block 364, Lots 24, 26.01 and 65.01)

This site is approximately 35 acres and situated along 1,000 feet of frontage along southbound New Jersey State Highway 9 (Lakewood Road), approximately 60 feet to the south of the Church Road intersection. It is located in a Rural Highway Business (RHB) Zone, where Planned Unit Developments (PUD) are permitted on sites of 20 acres or more. The easterly portion of the site (Lots 26 and 65) are developed with the Victoria Plaza Retail Center and the Jonathan Plaza shopping center, consisting of a total of seven commercial buildings. Lot 24 is currently improved with a one-family home set back approximately 70 feet from the Route 9 ROW. The home was constructed in 1939, according to Township property records.

On February 19, 2016, the Township received an application for Preliminary and Final Major Site Plan and Minor Subdivision approval, with revised plans submitted on December 13, 2016. The application involves an inclusionary development of 141 family rental apartments to be developed behind the two shopping centers. The 20-percent affordable housing set-aside would provide for 28 affordable units and 28 rental credits for a total of 56 credits.
Site No. 43 – Hovnanian Enterprises (Bimini Drive off Route 37 West)  
(Block 506.01, Lots 1.01 – 1.07)  
This site is approximately 23 acres on Bimini Drive and lies in the Rural Highway Business (RHB) Zone. The Township will rezone the property to permit mixed use development with a residential component of 140 total units of which 20 percent (28 units) are to be set aside as low- and moderate-income family rental units. A draft of the zoning amendment so zoning the property is included herein as Appendix F. The Township claims 28 credits for the family rental units in this development. The new zoning district will be a modification of the existing Rural Highway Business (RHB) Zone to create “RHB-AH37” for Rural Highway Business – Affordable Housing Route 37, with most of the changes related to the Planned Unit Development (PUD) requirements.

Site No. 44 – Arya, Massachusetts Avenue (Block 135.01, Lot 7)  
This 37-unit townhouse development received Planning Board approval on August 17, 2016. The approval requires the set aside of 20 percent of the units (i.e., eight units) as affordable family for sale units.

Site No. 45 – Michaels Development (Block 145.01, Lot 1.02)  
This is a 49-unit, 100-percent affordable LIHTC project that applied for financing through NJHMFA as a family rental development. It has received Planning Board approval and a Resolution of Need has been adopted by Township Council along with an approval to enter into a PILOT agreement.

Site No. 46 – Kaplan (Seacourt Pavilion) (Block 608, Lot 2.01 and part of Lot 2.02)  
The owner of this property sought and recently received rezoning to permit multifamily dwellings on this site. No development application has been filed to date, however, it is expected to yield 140 units, of which 28 (i.e., 20 percent) would be affordable.

North Pointe Hollow (Site No. 2) (Extension of Controls)  
This is a condominium development that was originally built with 89 affordable units. Due to foreclosures, three units were lost resulting in a net of 86 units that
continue to have affordability controls. The Township intends to unilaterally extend affordability controls on all owner-occupied units. To date, affordability controls on 18 units have been extended for an additional 30 years. The Township claims 18 credits towards its third round obligation for these 18 units.

Water Street Redevelopment

The Water Street Redevelopment Area is located in the southernmost portion of the Township, between the downtown portion of Toms River and the waterway known as Toms River, which forms the southern boundary of the Township. The Water Street Redevelopment Area includes the following properties designated on the Tax Maps of Toms River Township: all of Blocks 566.01, 566.02, 566.03, 566.04, 567, 566, 567,569, 570, 658.01; and, Block 658, lots 25, 47, 48, and 58. The redevelopment area is located within the Toms River Coastal Center. On November 5, 2008 the Toms River Township Planning Board approved a resolution designating the Water Street Redevelopment Area as an area in need of redevelopment pursuant to the New Jersey Redevelopment and Housing Law. The Toms River Council adopted the Planning Board's recommendation on December 3, 2009. Block 658.01 was added to the redevelopment area after a redevelopment area investigation sponsored by the Toms River Business Improvement District (TRBID) in 2011.

Existing land uses in the redevelopment area include: a mix of commercial uses along West Water Street; Government Facilities (incl., a post office and MUA facility); industrial uses; and, the New Jersey Transit Park and Ride Bus Terminal.

A Draft Redevelopment Plan for the Phase 1 Water Street Redevelopment Area was prepared in 2011 after Block 558.01 was added to the redevelopment area. The Phase 1 area extends along Water Street from the Garden State Parkway to the west, north to Herflicker Street and east to Main Street. The redevelopment plan yielded a residential component of approximately 500 total units. The Township's redevelopment parameters are anticipated to include requirements that a minimum of 20 percent of all new dwelling units within the redevelopment area be affordable,
a minimum of 50 percent of the affordable units to be family rental units, and 13 percent of the affordable units are to be very low income units. Based upon the foregoing, the Planning Board finds that the Water Street Redevelopment Area is a “suitable site” for affordable housing as defined by COAH regulations. The Water Street Redevelopment Area is anticipated to yield approximately 500 total units, 20 percent (i.e., 100) of which are to be affordable units.

Consistent with the Settlement Agreement, and given the preliminary nature of this project, no crediting for potential affordable units in the Water Street Redevelopment Area are sought at this time.

Third Round Age-restricted Units

Utilizing N.J.A.C. 5:97–3.10(c)2 as the basis for determining the maximum number of age-restricted units the Township may claim towards its third round obligation, the Township can claim up to a maximum of 315 age restricted units. Age-restricted maximum = .25(third round new construction obligation) = .25 (1285) = 321 units. The Township’s third round plan includes 182 age-restricted units: Site No. 30 – Toms River Apartments, which provides 102 units; and, Site No. 40 – Meadow Green Apartments, which provides 80 units. Thus, the township is in compliance with the maximum number of age-restricted units that it can claim toward its third round obligation.

Third Round Rental Obligation

Utilizing N.J.A.C. 5:93-5.15 the Township’s rental obligation is calculated as follows: .25 (calculated need-rehab component) = .25 (1258 + 243 – 243) = 321 units. The Township’s third round compliance plan includes 601 rental units, and therefore exceeds the minimum rental requirement. The total of 601 rental units excludes the extension of controls on the 293 rental units in the Highland Plaza and Winteringham Village projects. Of the 601 total rental units, 182 (30.3 percent) are age-restricted and 419 (69.7 percent) are family rental units.
Third Round Rental Bonus Credits

Utilizing N.J.A.C. 5:93, the Township may claim rental bonus credits for rental units up to its rental obligation of 321 units. As detailed in Appendix D the Township claims one for one rental bonus credits for 321 of the 419 family rental units in the third round plan.

Third Round Very Low Income Housing Requirement

The July 2008 amendments to the Fair Housing Act (P.L. 2008, C.46) provide that a minimum of 13 percent of the low and moderate income units developed in a municipality shall be “reserved for occupancy by very low income households.”

Excluding the 313 existing units for which crediting is claimed for extension of affordability controls, the Township’s third round compliance plan includes 651 new affordable units and, thus, an 85 unit very-low income affordable housing requirement, half of which (43 units) are to be available to families. An analysis of projects built, or currently approved, indicates that a total of 167 of the affordable units to be produced would be very low income units, of which 64 units (75 percent of the very low income requirement) would be available to families. The projects and the number of very low income units provided, or to be provided, are as follows: Toms River Crescent (Site No. 29), which provides 12 family units; Project Freedom (Site No. 25A), which provides ten family units; Project Freedom (Site No. 25A), which provides ... units of credit for special needs housing; Presbyterian Homes (Site No. 28), which provides 85 age-restricted units; Michaels Development (Site No. 45), which provides five family units; Nobility Crest (Site No. 36), which provides five family units; Meadow Green Apartments (Site No. 40), which provides eight age-restricted units; and, Toms River Senior Apartments (Site No. 30), which provides ten age-restricted units. The Township’s third round compliance strategy satisfies the very low income requirements of P.L. 2008, C.46 and the Court-approved Settlement Agreement.
Additional Fair Share Plan Components

The following sections set forth additional components intended to implement the Township's compliance plan and Court approved Settlement Agreement as set forth herein.

*Draft Ordinance Rezoning Site No. 48 Dover Shopping Center Associates, LLC*

Appendix E is a draft ordinance rezoning Site No. 48 to permit the mixed-use development of the site to include a total of 150 family rental units, 20 percent of which (i.e., 30 units) are to set-aside for low- and moderate-income families.

*Draft Ordinance Rezoning Site No. 43 Hovnanian Enterprises*

Appendix F is a draft ordinance rezoning Site No. 43 to permit the mixed-use development of the site to include a total of 140 family rental units, 20 percent of which (i.e., 28 units) are to be set aside for low and moderate income units.

*Spending Plan*

Appendix G is the Township's Spending Plan, as approved by the Court by an Order dated July 8, 2016.

*Amendments to Affordable Housing Ordinances*

Appendix H is a draft ordinance amending the Township’s affordable housing ordinances to reflect the provisions of the Court-approved Settlement Agreement.

*Reporting Requirements*

Per the Settlement Agreement, on November 3, 2017 and every November 3 thereafter through 2025 the Township is required to provide an annual report of the affordable housing trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with copy to Fair Share Housing Center, Inc., and posted on the municipal website.
Per the Settlement Agreement, on March 30, 2018 and every March 30 thereafter through March, 2025, the Township will prepare a report on the status of all affordable housing activity within the Township. Such report is to be posted on the Township website.

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

Per the Settlement Agreement, within 30 days of November 3, 2019 and every third year thereafter, the Township shall prepare a status report, and post same on their website, as to satisfaction of its very low income requirements, as set forth in N.J.S.A. 52:27D-329.1 and addressed in this Housing Element and Fair Share Plan.
Appendices
Appendix A: Settlement Agreement
October 20, 2016

Steven A. Kunzman, Esq.
DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.
15 Mountain Blvd.
Warren, NJ 07059

Re: In the Matter of the Township of Toms River, County of Ocean,
Docket No. OCN-L- 001867-15

Dear Mr. Kunzman:

This letter memorializes the terms of an agreement reached between the Township of Toms River ("Township" or "Toms River"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), which was permitted to intervene by court order dated September 15, 2015, and with Dover Shopping Center Associates, LLC ("Dover") which permitted to intervene by court order dated October 7, 2015.

Background

Toms River filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Township participated in numerous conferences, motions, appeals, and other proceedings since the filing of the action. Through that process, the Township, FSHC, and Dover, agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

The parties recognize that the prospective need obligation, including any "gap period" obligation, of Toms River, under any reasonable interpretation of Mount Laurel IV and other applicable law, is likely to be impacted by the 1000 unit cap. At this point in litigation, there are a number of uncertain factors about how that cap will be applied. In
accordance with In re Adoption of Housing Element for Tp. Of Monroe, 444 N.J. Super. 163 (Law Div. 2015) the Township's obligation for the period 1999-2025 would be 1533; however, under the February 18, 2016 interlocutory decision in In re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Filed Pursuant to the Supreme Court's Decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), Docket No. OCN-L- 2640-15 (Consolidated Action), the obligation for the same period would be 1,000, inclusive of the "present need." The parties have agreed for the purposes of settlement that the credits as set forth in Ex. A and B demonstrate the Township's prior round obligations and address the prospective need obligation of the Township through June 30, 2025, while reserving their rights as to the future application of such credits for future rounds after June 30, 2025 as detailed further herein.

Settlement terms

The Parties hereby agree to the following terms:

1. FSHC and Dover agree that the Township, through the adoption of a Housing Element and Fair Share Plan ("the Plan") which will incorporate the zoning, credits and other aspects of the Township's plan as set forth in Exhibits A and B and with the implementation of the Plan, and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. The parties hereby agree that the Township's affordable housing obligations are as follows:

<table>
<thead>
<tr>
<th>Obligation Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rehabilitation Share (per Kinsey Report¹)</td>
<td>243</td>
</tr>
<tr>
<td>Prior Round Obligation (pursuant to N.J.A.C. 5:93)</td>
<td>1735</td>
</tr>
<tr>
<td>Third Round (1999-2025) Prospective Need (per ¹)</td>
<td></td>
</tr>
</tbody>
</table>

4. The Township's efforts to meet its present need include continuing its active low- and moderate-income rehabilitation program, which is funded by the Township's HUD Community Development Block Grant Program (CDBG), the Ocean County HUD-HOME program. The Township shall more specifically set forth in the revised HEFSP to be adopted pursuant to this Agreement a more detailed plan to meet its rehabilitation obligation of 243 by 2025 through this program.

5. As noted above, the Township has a Prior Round prospective need of 1735 units, which is met through the compliance mechanisms as set forth on Exhibit A.

6. The Township has implemented or will implement the mechanisms to address its Third Round prospective need of 1285 units as set forth on Exhibit B.

7. The Township agrees to require 13% of all affordable units referenced in the Plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of that date, to be very low income units, with half of the very low income units being available to families. The municipality has complied or will comply with those requirements as follows:

292 units in Exhibit B have been occupied since July 1, 2008 in the Township, generating a very low income requirement of 38 units, including 19 family units. The Township has satisfied this obligation as follows: 12 units in Toms River Crescent are deed-restricted as affordable to very-low-income families, 10 family units in Project Freedom have project-based Section 8 subsidies for very-low-income families, 32 bedrooms in Project Freedom are available for very-low-income people with special needs, and 85 units in the Presbyterian Homes development are affordable to very-low-income seniors. The Township will comply with these requirements going forward through mechanisms including requiring that 13 percent of all affordable units in all rental projects in the Township approved after this settlement is approved at a fairness hearing are affordable to families at or below 30 percent of median income pursuant to paragraph 10 of this Agreement; in addition, the Karen and Nobility Crest sites per NJ HMFA
requirements will have 5 very low income family units each and Meadow Green and Toms River Senior sites will have 8 and 10 very low income senior units, respectively.

8. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:

   a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).

   b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

   c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

   d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

   e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

   f. FSHC and Toms River entered into a settlement agreement on or about November 17, 2009, attached hereto as Exhibit C, resolving earlier litigation challenging the approval by the trial court in Ocean County of a Regional Contribution Agreement between Toms River and Lakewood Township. As part of this Agreement, the parties agree to modify the November 17, 2009 settlement agreement as follows, subject to the approval of the trial court at the fairness hearing:
i. Paragraph 4(a) of the November 17, 2009 settlement agreement, as amended by the first addendum to that agreement, envisioned the provision of affordable units equivalent to 25 percent of the total market units provided as part of the Nobility Crest site in the form of special needs bedrooms. Instead, these units shall be provided in the form of 50 affordable family rental units as otherwise provided for in this plan, which provision shall be deemed to satisfy in full the requirements of Paragraph 4(a) as amended.

ii. Paragraph 4(b) of the November 17, 2009 settlement agreement imposed certain requirements with regard to the approval of units subject to Toms River Ordinance 4182-09 which created an option in the R-150, RHB, and MF-4 zones in the Township allowing for multifamily non-age-restricted residential development that had not previously been permitted. The parties agree that these requirements are fully satisfied through the following sites in the Housing Element and Fair Share Plan being approved as part of this settlement agreement, as reflected in the attached crediting charts: Dover Summit (Site #47), Dover Shopping Associates (Site #48), 1606 Lakewood Rd., LLC (Site #49), and Hovnanian Ent. (Site #43) The parties agree that the Township shall amend as necessary and maintain zoning permitting the construction of these four sites according to the specifications including the market-rate and affordable unit counts as set forth in the attached crediting charts. The parties further agree that the Township is under no obligation to maintain the provisions of Toms River Ordinance 4182-09 for any sites besides the sites specified here and may in its sole discretion repeal all or part of that ordinance as applied to any other sites upon approval of this Agreement at a fairness hearing. The ordinances necessary to accomplish the yields set forth in the attached crediting charts shall be acted upon by the Township Council within one hundred and twenty (120) days of Court approval of this Agreement.

iii. Paragraph 4(c) of the November 17, 2009 settlement agreement referenced approvals granted on the Fairways at Bay Lea. These units have now been built which fully satisfies the terms of Paragraph 4(c).

iv. Paragraphs 4(d) and 4(e) of the November 17, 2009 settlement agreement references adoption of an updated fair share plan incorporating very-low-income units. The parties agree that these Paragraphs are fully satisfied by the provisions regarding adoption of an updated Housing Element and Fair Share Plan and very-low-income units contained elsewhere in this Agreement.
v. Any remaining challenge by FSHC to the crediting of 72 units for the new construction Toms River-Lakewood RCA shall be dismissed with prejudice upon approval of this agreement at a fairness hearing, and the Township shall be entitled to such credits as shown in the crediting charts attached to this settlement agreement.

g. The Township agrees to maintain the Water Street Redevelopment in the Third Round HEFSP with an anticipated 500 units, 20% of which are to be set aside for affordable housing; however, due to the nature and extent of site conditions, the time which may be required to complete remediation of the property in accordance with applicable Technical Requirements for Site Remediation, N.J.A.C.7:26E, and other applicable laws may extend beyond 2025, therefore, the credits for this property will not counted in the Third Round, but may be used to address obligations for any future rounds.

h. The Township agrees to maintain property referred to as TAS/Krupnick (Site #42), in the Third Round HEFSP, with an anticipated development that will yield 60 affordable units; however, due to the uncertainty of the owner's intentions and plans for development of the site, the credits for this property will not be counted in the Third Round, but may be used to address obligations for any future rounds.

i. The Township shall maintain Township Ordinance_4243-10, until at least June 30, 2025 and shall include the maintenance of such ordinance in the Third Round HEFSP.

j. The Township reserves its right to modify its Third Round HEFSP to include additional developments that are approved during the Third Round, including, those set forth in 8.g, 8.h, and in accordance with Township Ordinance 4243-10, and claim additional bonus credits that may be permitted in accordance with those developments, this Agreement, and applicable standards. These developments and credits shall be in addition to all of the other developments required by this Agreement and reflected in Exhibit C and not substitute for those developments.
9. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, 14 Clifton Ave. S., Lakewood, NJ 08701, the Latino Action Network, PO Box 943, Freehold, NJ 07728, NAACP Toms River Branch, PO Box 5144, Toms River 08754, and NAACP Ocean County/Lakewood Branch, PO Box 836, Lakewood, NJ 08701, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to provide this list of organizations to any other entities, including developers or persons or companies retained to do affirmative marketing, so that those entities will be able to comply with this paragraph.

10. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township, as part of its HEFSP, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

11. All new construction units shall be adaptable in conformance with P.L.2005, c.350 and all other applicable law.

12. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Township shall introduce an ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.

13. The parties agree that the obligations set forth in this agreement and steps taken to fulfill these obligations meet all the need that the Township is required to
address pursuant to the Mount Laurel Doctrine and Fair Housing Act through June 30, 2025. The parties anticipate that future decisions of a court of competent jurisdiction in Ocean County, including but not limited to decisions of the Appellate Division or Supreme Court and/or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, will establish fair share obligations for the Third Round and the application of the 1000-unit cap during the Third Round, including whether portions of the obligation above the capped amount must be satisfied in future rounds. In view of the unsettled nature of those issues now, the parties have elected not to enter into a settlement regarding whether there may be an obligation deferred to future housing cycles arising from the manner in which the cap is applied during the Third Round. The parties reserve all rights to address how such obligations will be calculated or addressed, including any arguments as to the potential carrying over of any extra credits to future rounds in conformance with the then-applicable law. Notwithstanding any change in law or other circumstance, the Township shall not have an obligation to be satisfied in the period through 2025 beyond the mechanisms set forth on Exhibit C; however, the Township shall be obligated to implement all terms of this settlement agreement and its Fair Share Plan, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling the fair share obligation as established herein. The reduction of the Township’s obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1.

14. The Township has prepared a spending plan that is attached hereto as Exhibit D that was approved by the Court by an Order entered on July 8, 2016, annexed hereto as Ex. E. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Township agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of
Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

15. On March 30 after first anniversary of the execution of this agreement, and every March 30 thereafter through the end of this agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

16. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this agreement. The Township agrees to comply with those provisions as follows:

   a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

   b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such
posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

17. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

18. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

19. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Ocean County.

20. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses
or provisions hereof. If any section of this Agreement shall be adjudged by a court
to be invalid, illegal, or unenforceable in any respect, such determination shall not
affect the remaining sections.

21. This Agreement shall be governed by and construed by the laws of the State of
New Jersey.

22. This Agreement may not be modified, amended or altered in any way except by a
writing signed by each of the Parties.

23. This Agreement may be executed in any number of counterparts, each of which
shall be an original and all of which together shall constitute but one and the same
Agreement.

24. The Parties acknowledge that each has entered into this Agreement on its own
volition without coercion or duress after consulting with its counsel, that each party
is the proper person and possess the authority to sign the Agreement, that this
Agreement contains the entire understanding of the Parties and that there are no
representations, warranties, covenants or undertakings other than those expressly
set forth herein.

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

26. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a
part of this Agreement by this reference thereto. Any and all Exhibits and
Schedules now and/or in the future are hereby made or will be made a part of this
Agreement with prior written approval of both Parties.
27. This Agreement constitutes the entire Agreement between the Parties hereto and
supersedes all prior oral and written agreements between the Parties with respect
to the subject matter hereof except as otherwise provided herein.

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

29. Anything herein contained to the contrary notwithstanding, the effective date of this
Agreement shall be the date upon which all of the Parties hereto have executed
and delivered this Agreement.

30. All notices required under this Agreement ("Notice[s]") shall be written and shall be
served upon the respective Parties by certified mail, return receipt requested, or by
a recognized overnight or by a personal carrier. In addition, where feasible (for
example, transmittals of less than fifty pages) shall be served by facsimile or e-
mail. All Notices shall be deemed received upon the date of delivery. Delivery
shall be affected as follows, subject to change as to the person(s) to be notified
and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO DOVER:

Dover Shopping Center Associates, LLC
c/o First Montgomery Group
John Cranmer, Esq.
222 Haddon Avenue, Suite 301
Haddon Township, N.J. 08108-2827
856-985-1777
icranmer@fmgni.com
Copy to: Richard J. Hoff, Jr., Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, N.J. 08033
rhoff@bisgaierhoff.com

TO THE TOWNSHIP: John J. Lynch, P.P #19
Township Planner and
Municipal Housing Coordinator
33 Washington Street
Toms River, New Jersey 08753
jlynnch@tomrsrivertownship.com

WITH A COPY TO THE MUNICIPAL CLERK: Mark Mutter, Township Clerk
33 Washington Street
Toms River, New Jersey 08753
jmmutter@tomrsrivertownship.com

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Township of Toms River, with the authorization
of the governing body

Dated: ____________________________

On behalf of the Dover Shopping Center Associates, LLC
By: Dover Shopping Center Associates, Inc.

Michael C. Haydinger, President

Dated: November 3, 2016
## TOWNSHIP OF TOMS RIVER

### PRIOR ROUND (1987-1999) NEW CONSTRUCTION COMPLIANCE PLAN SUMMARY

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Type</th>
<th>Total Number of Units</th>
<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
<th>Total Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. PRIOR CYCLE CREDITS (PRE-1986)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Credits without Controls</td>
<td>Township-wide</td>
<td>Credits</td>
<td>N/A</td>
<td>176</td>
<td>0</td>
<td>176</td>
</tr>
<tr>
<td>B. Highland Plaza</td>
<td>Highland Parkway</td>
<td>Age-Restricted Rentals</td>
<td>110</td>
<td>110</td>
<td>0</td>
<td>110</td>
</tr>
<tr>
<td>C. Winteringham Village</td>
<td>Route 166/South Dakota Dr.</td>
<td>Family Rentals</td>
<td>183</td>
<td>183</td>
<td>0</td>
<td>183</td>
</tr>
<tr>
<td>D. Alternative Living Arrangements</td>
<td>Township-wide</td>
<td>Alternative Living Arrangements</td>
<td>N/A</td>
<td>22</td>
<td>0</td>
<td>22</td>
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<tr>
<td><strong>II. REGIONAL CONTRIBUTION AGREEMENTS (RCAs)</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>A. Lakewood RCA</td>
<td>Lakewood Township</td>
<td>Regional Contribution Agreement</td>
<td>72</td>
<td>72</td>
<td>0</td>
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<tr>
<td><strong>III. POST 1986 CREDITS-BUILT</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>A. Alternative Living Arrangements</td>
<td>Township-wide</td>
<td>Alternative Living Arrangements</td>
<td>N/A</td>
<td>100</td>
<td>49</td>
<td>149</td>
</tr>
<tr>
<td>B. North Point Hollow (Site #2)</td>
<td>Whitesville Rd./Schley Ave.</td>
<td>Inclusionary - For-Sale</td>
<td>446</td>
<td>89</td>
<td>N/A</td>
<td>89</td>
</tr>
<tr>
<td>C. AS Developers/Walnut Grove</td>
<td>Walnut St./Old Freehold Rd.</td>
<td>Inclusionary - For-Sale</td>
<td>3</td>
<td>3</td>
<td>N/A</td>
<td>3</td>
</tr>
<tr>
<td>D. Woods at Massachusetts Ave., (Site #25)</td>
<td>Massachusetts Ave./Hickory St.</td>
<td>Inclusionary - For-Sale</td>
<td>68</td>
<td>14</td>
<td>N/A</td>
<td>14</td>
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<tr>
<td>E. Habitat for Humanity</td>
<td>Malcolm St.</td>
<td>For-Sale</td>
<td>1</td>
<td>1</td>
<td>N/A</td>
<td>1</td>
</tr>
<tr>
<td>F. Dover Chase (Site #31)</td>
<td>Massachusetts Ave.</td>
<td>Inclusionary - Family Rental</td>
<td>110</td>
<td>22</td>
<td>22</td>
<td>44</td>
</tr>
<tr>
<td>G. 103 Walnut St., (Site #33)</td>
<td>Walnut St.</td>
<td>For-Sale</td>
<td>12</td>
<td>12</td>
<td>N/A</td>
<td>12</td>
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<tr>
<td>H. Hope's Crossing (Site #6)</td>
<td>Massachusetts Ave./Cox Cro Rd.</td>
<td>Family Rentals</td>
<td>125</td>
<td>125</td>
<td>125</td>
<td>250</td>
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<tr>
<td>I. The Fairways at Bay Lea (Site #10)</td>
<td>Bay Lea Rd.</td>
<td>Inclusionary - Family Rental</td>
<td>530</td>
<td>106</td>
<td>66</td>
<td>172</td>
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<tr>
<td>J. Caucino (Site #15)</td>
<td>Walnut St./Old Freehold Rd.</td>
<td>Inclusionary - Family Rental</td>
<td>38</td>
<td>6</td>
<td>6</td>
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<tr>
<td>K. Leone (Site #34)</td>
<td>34-36 Main St.</td>
<td>Inclusionary - Family Rental</td>
<td>12</td>
<td>2</td>
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<tr>
<td>L. Toms River: Crescent (Site #29)</td>
<td>Route 70</td>
<td>Family Rentals</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>240</td>
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<td>M. Village at Bay Lea (Site #11)</td>
<td>Bay Lea Rd.</td>
<td>Age-Restricted Rentals</td>
<td>235</td>
<td>48</td>
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<td>N. Presbyterian Homes (Site #23)</td>
<td>Oak Ave.</td>
<td>Age-Restricted Rentals</td>
<td>85</td>
<td>85</td>
<td>0</td>
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<tr>
<td>O. Brentwood</td>
<td>1657 Silverton Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
<td>12</td>
<td>0</td>
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<tr>
<td>P. Magnolia Gardens</td>
<td>1935 Lakewood Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
<td>12</td>
<td>0</td>
<td>12</td>
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<tr>
<td>Q. The Residence at Toms River</td>
<td>2145 Whitesville Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
<td>14</td>
<td>0</td>
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<tr>
<td>R. Brandywine</td>
<td>1587 Old Freehold Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
<td>11</td>
<td>0</td>
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<td><strong>TOTALS</strong></td>
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<td>2,150</td>
<td>1,345</td>
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10/27/2015
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<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Status</th>
<th>Project Type</th>
<th>Total Number of Units</th>
<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
<th>Total Credits</th>
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</thead>
<tbody>
<tr>
<td>A. Project Freedom (Site 15A)</td>
<td>Massachusetts Avenue</td>
<td>Built</td>
<td>Family Rental (Units Earlier Forwarded from Prior Round)</td>
<td>54</td>
<td>34</td>
<td>24</td>
<td>104</td>
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<tr>
<td>B. Project Freedom (Site 25A)</td>
<td>Massachusetts Avenue</td>
<td>Built</td>
<td>Alternative Living Arrangements</td>
<td>52</td>
<td>32</td>
<td>20</td>
<td>64</td>
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<tr>
<td>C. Neptune Court (Site #38)</td>
<td>Linford Court</td>
<td>Approved</td>
<td>Inclusionary - Family Rental</td>
<td>55</td>
<td>35</td>
<td>20</td>
<td>112</td>
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<tr>
<td>D. JSM Route 16 (Site #37)</td>
<td>Route 166 Lots 3, 4, 5 and 6</td>
<td>Under Construction</td>
<td>Inclusionary - Family Rental</td>
<td>132</td>
<td>27</td>
<td>27</td>
<td>154</td>
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<tr>
<td>E. TD/Keupitch (Site #42)</td>
<td>Route 9</td>
<td>Intervenor Status</td>
<td>Family Rental</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>100</td>
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<tr>
<td>F. Homes for All (Site #38)</td>
<td>Route 9</td>
<td>Built</td>
<td>Inclusionary - Family Rental</td>
<td>24</td>
<td>6</td>
<td>6</td>
<td>36</td>
</tr>
<tr>
<td>G. Ocean Street / Leighton Court (Site #39)</td>
<td>Ocean Street / Leighton Court</td>
<td>Approved</td>
<td>Inclusionary - For Sale</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>8</td>
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<tr>
<td>H. Meadow Green Apartments (Site #40)</td>
<td>Block 154, Lot 2</td>
<td>Approved</td>
<td>Age-Restricted Rental</td>
<td>80</td>
<td>80</td>
<td>80</td>
<td>160</td>
</tr>
<tr>
<td>J. Highlands Plaza</td>
<td>Highland Parkway</td>
<td>Complete</td>
<td>Extension of Controls (Age-Restricted Rental)</td>
<td>110</td>
<td>110</td>
<td>110</td>
<td>110</td>
</tr>
<tr>
<td>K. JSM at Hicks Street/Caprielle Run (Site #31)</td>
<td>Hicks Street / Route 8</td>
<td>Under Construction</td>
<td>Inclusionary - Family Rental</td>
<td>56</td>
<td>56</td>
<td>56</td>
<td>168</td>
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<tr>
<td>L. Tom's River Senior Apartments (Site #30)</td>
<td>Coffee Street</td>
<td>Approved</td>
<td>Inclusionary - Family Rental</td>
<td>9</td>
<td>6</td>
<td>6</td>
<td>15</td>
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<tr>
<td>M. Dover Summit (Site #47)</td>
<td>Rt. 55/Little Rd.</td>
<td>Approved</td>
<td>Family Rental</td>
<td>17</td>
<td>17</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>N. Wittenberg Village</td>
<td>Wittenberg Village</td>
<td>Complete</td>
<td>Extension of Controls (Family Rental)</td>
<td>183</td>
<td>183</td>
<td>183</td>
<td>366</td>
</tr>
<tr>
<td>O. Cove Pointe Center Associates, LLC (Site #48)</td>
<td>Rt. 9 opposite Clayton Rd.</td>
<td>To Be Zoned</td>
<td>Inclusionary - Family Rental</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>P. Woods at Massachusetts Ave. (Site #25)</td>
<td>Massachusetts Avenue</td>
<td>Partially Complete</td>
<td>Extension of Controls (For Sale)</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
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<tr>
<td>Q. 1500 Waterside Rd., LLC (Site #49)</td>
<td>Rt. 3 south of Church Rd.</td>
<td>Approval Application Pending</td>
<td>Inclusionary - Family Rental</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td>56</td>
</tr>
<tr>
<td>R. Mountain View (Site #4)</td>
<td>Blunt Drive</td>
<td>To Be Zoned</td>
<td>Inclusionary - Family Rental</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>S. Arvigo (Site #44)</td>
<td>Massachusetts Avenue</td>
<td>Approved</td>
<td>Inclusionary - For Sale</td>
<td>17</td>
<td>17</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>T. Kean (Site #45)</td>
<td>Rt. 70 (towards Mass Ave.)</td>
<td>Approved</td>
<td>All Affordable - Family Rental</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>98</td>
</tr>
<tr>
<td>U. Xebian (Site #46)</td>
<td>Trebleham/Columbia</td>
<td>Zoned</td>
<td>Inclusionary - Family Rental</td>
<td>34</td>
<td>34</td>
<td>34</td>
<td>68</td>
</tr>
<tr>
<td>V. North Pointe Village</td>
<td>Rt. 327</td>
<td>Partially Zoned</td>
<td>Extension of Controls (Family For Sale)</td>
<td>56</td>
<td>56</td>
<td>56</td>
<td>112</td>
</tr>
<tr>
<td>W. Water Street Redevelopment</td>
<td>Downtown</td>
<td>Proposed</td>
<td>Inclusionary</td>
<td>80</td>
<td>80</td>
<td>80</td>
<td>160</td>
</tr>
</tbody>
</table>

**Total:** 2060 | 984 | 321 | 2365

Note: C. 343-3.12.A to retain provisions adopted by Ord 4343-10 mandating 20% minimum setasial for low/moderate households for all multifamily developments over 3 units per acre.
Appendix B: December 31, 2016 Order of Judge Troncone
IN THE MATTER OF THE TOWNSHIP OF TOMS RIVER FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
DOCKET NO.: OCN-L-001867-15
(MOUNT LAUREL)

Civil Action

ORDER ON FAIRNESS AND PRELIMINARY COMPLIANCE HEARING

THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Township of Toms River (hereinafter referred to as “Toms River”), Steven A. Kunzman, Esq., appearing, in the presence of Joshua Bauers, Esq., attorney for Interested Party and Intervenor, Fair Share Housing Center, Inc. (hereinafter “FSCH”) and Richard Hoff, Esq., of Bisgaier Hoff, attorney for Interested Party and Intervenor, Dover Shopping Center Associates, LLC (hereinafter “Dover”), by way of Fairness and Preliminary Compliance Hearing held pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984); and the Court having considered the testimony of the Court-appointed Special Master,
Philip B. Caton, and the Court having considered the Settlement Agreement entered into between Toms River and FSHC and Dover dated October 20, 2016, including Toms River’s draft summary Housing Element and Fair Share Plan referenced therein and other exhibits presented by Toms River in support thereof; and the Court having considered the testimony and presentations of Interested Parties at the time of the hearing; and good cause having been shown;

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

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

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

3. A Final Compliance Hearing is hereby scheduled for April 12, 2017 at 1:30 p.m., by which time Toms River shall have complied with the above-referenced conditions, shall have submitted to the Special Master for review and comment Toms River’s Housing Element and Fair Share Plan and all Resolutions and Ordinances required to implement the Housing Element and Fair Share Plan, and shall have provided for the Planning Board of the Township of Toms River to finalize and adopt the Housing Element and Fair Share Plan and the Toms River
Township Council to endorse same and to adopt all necessary effectuating Resolutions and
Ordinances; and

4. The temporary immunity previously granted to Toms River herein is hereby
extended until and through the day following the completion of the Final Compliance Hearing
herein scheduled and the entry of an Order granting a Final Judgement in this matter; and

5. A copy of this Order shall be served upon all parties on the service list in this
matter with 7 days of Toms River's receipt thereof.

HONORABLE MARK A. TRONCONE, J.S.C.
Appendix C: Prior Round Compliance Plan Summary
### Appendix C:
Prior Round Compliance Plan Summary

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Type</th>
<th>Total Number of Units</th>
<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
<th>Total Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Prior Cycle Credits (Pre-1986)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Credits without Controls</td>
<td>Township-wide</td>
<td>Credits</td>
<td>N/A</td>
<td>176</td>
<td>0</td>
<td>176</td>
</tr>
<tr>
<td>B. Highland Plaza</td>
<td>Highland Parkway</td>
<td>Age-Restricted Rentals</td>
<td>110</td>
<td>110</td>
<td>0</td>
<td>110</td>
</tr>
<tr>
<td>C. Winteringham Village</td>
<td>Route 166/ South Dakota Dr.</td>
<td>Family Rentals</td>
<td>183</td>
<td>183</td>
<td>0</td>
<td>183</td>
</tr>
<tr>
<td>D. Alternative Living Arrangements</td>
<td>Township-wide</td>
<td>Alternative Living Arrangements</td>
<td>N/A</td>
<td>22</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td><strong>II. Regional Contribution Agreements (RCAs)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Lakewood RCA</td>
<td>Lakewood Township</td>
<td>Regional Contribution Agreement</td>
<td>72</td>
<td>72</td>
<td>0</td>
<td>72</td>
</tr>
<tr>
<td><strong>III. Post 1986 Credits-Built</strong></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>A. Alternative Living Arrangements</td>
<td>Township-wide</td>
<td>Alternative Living Arrangements</td>
<td>N/A</td>
<td>100</td>
<td>49</td>
<td>149</td>
</tr>
<tr>
<td>B. North Point Hollow (Site No. 2)</td>
<td>Whitesville Rd./ Schley Ave.</td>
<td>Inclusionary – For-Sale</td>
<td>446</td>
<td>89</td>
<td>0</td>
<td>89</td>
</tr>
<tr>
<td>C. AS Developers/Walnut Grove</td>
<td>Walnut St./ Old Freehold Rd.</td>
<td>Inclusionary – For-Sale</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>D. Woods at Massachusetts Ave. (Site No. 25)</td>
<td>Massachusetts Ave./ Hickory St.</td>
<td>Inclusionary – For-Sale</td>
<td>68</td>
<td>14</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>E. Habitat for Humanity</td>
<td>Malcolm St.</td>
<td>For-Sale</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
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</table>
### Appendix C:
Prior Round Compliance Plan Summary

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Type</th>
<th>Total Number of Units</th>
<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
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<tr>
<td>III. Post 1986 Credits-Built (Continued)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F. Dover Chase (Site No. 31)</td>
<td>Massachusetts Ave.</td>
<td>Inclusionary – Family Rental</td>
<td>110</td>
<td>22</td>
<td>22</td>
<td>44</td>
</tr>
<tr>
<td>G. 103 Walnut St. (Site No. 33)</td>
<td>Walnut St.</td>
<td>For-Sale</td>
<td>12</td>
<td>12</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>H. Hope's Crossing (Site No. 6)</td>
<td>Massachusetts Ave./Cox Cro Rd.</td>
<td>Family Rentals</td>
<td>125</td>
<td>125</td>
<td>125</td>
<td>250</td>
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<tr>
<td>I. The Fairways at Bey Lea (Site No. 10)</td>
<td>Bey Lea Rd.</td>
<td>Inclusionary – Family Rental</td>
<td>530</td>
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<td>66</td>
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<td>J. Walnut Hollow/Caucino (Site No. 15)</td>
<td>Walnut St./Old Freehold Rd.</td>
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<td>38</td>
<td>6</td>
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<tr>
<td>K. Leone (Site No. 34)</td>
<td>34-36 Main St.</td>
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<td>12</td>
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<tr>
<td>L. Toms River Crescent (Site No. 29)</td>
<td>Route 70</td>
<td>Family Rentals</td>
<td>120</td>
<td>120</td>
<td>120</td>
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<td>M. Village at Bey Lea (Site No. 11)</td>
<td>Bey Lea Rd.</td>
<td>Age-Restricted Rentals</td>
<td>235</td>
<td>48</td>
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<td>N. Presbyterian Homes (Site No. 28)</td>
<td>Oak Ave.</td>
<td>Age-Restricted Rentals</td>
<td>85</td>
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<tr>
<td>O. Brentwood</td>
<td>1657 Silverton Rd.</td>
<td>Assisted Living</td>
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<td>12</td>
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### Appendix C: 
Prior Round Compliance Plan Summary

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<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Type</th>
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<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
<th>Total Credits</th>
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<tr>
<td>P. Magnolia Gardens</td>
<td>1935 Lakewood Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
<td>12</td>
<td>0</td>
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<tr>
<td>Q. The Residence at Toms River</td>
<td>2145 Whitesville Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
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<tr>
<td>R. Brandywine</td>
<td>1587 Old Freehold Rd.</td>
<td>Assisted Living</td>
<td>N/A</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
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<td><strong>1,345</strong></td>
<td><strong>390</strong></td>
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TOTAL 2,150 1,345 390 1,735
Appendix D: Third Round Compliance Plan Summary
### Appendix D:
Third Round Compliance Plan Summary

<table>
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<tr>
<th>Project Name</th>
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<th>Project Type</th>
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<tr>
<td>A. Project Freedom (Site 25A)</td>
<td>Massachusetts Avenue</td>
<td>Built</td>
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<td>54</td>
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<td>Alternative Living Arrangements</td>
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<tr>
<td>B. Lotano (Site No. 35)</td>
<td>Legion Court</td>
<td>Approved</td>
<td>Inclusionary – Family Rental</td>
<td>55</td>
<td>11</td>
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<tr>
<td>C. Nobility Crest (Site No. 36)</td>
<td>Block 166, Lots 3, 4, 9 and 15</td>
<td>Under Construction</td>
<td>Inclusionary – Family Rental</td>
<td>250</td>
<td>50</td>
<td>50</td>
<td>100</td>
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<tr>
<td>D. JSM Route 166 (Site No. 37)</td>
<td>Route 166</td>
<td>Approved</td>
<td>Inclusionary – Family Rental</td>
<td>132</td>
<td>27</td>
<td>27</td>
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<tr>
<td>E. TAS/Krupnick (Site No. 42)</td>
<td>Route 9</td>
<td>Intervenor Status</td>
<td>Family Rental</td>
<td>60</td>
<td>TBD</td>
<td>TBD</td>
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<tr>
<td>F. Autumn Ridge/Homes for All (Site No. 38)</td>
<td>Route 9</td>
<td>Built</td>
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<td>24</td>
<td>5</td>
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<td></td>
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<td></td>
<td>Inclusionary – For Sale</td>
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<td></td>
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<td></td>
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<tr>
<td>G. Hyers Street/ Legion Court (Site No. 39)</td>
<td>Hyers Street/ Legion Court</td>
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<td>Inclusionary – Family Rental</td>
<td>18</td>
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<tr>
<td>H. Meadow Green Apartments (Site No. 40)</td>
<td>Block 164, Lot 2</td>
<td>Approved</td>
<td>Age-Restricted Rental</td>
<td>80</td>
<td>80</td>
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## Appendix D:
### Third Round Compliance Plan Summary

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Location</th>
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<th>Rental Bonus Credits</th>
<th>Total Credits</th>
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<tbody>
<tr>
<td>I. Highland Plaza</td>
<td>Highland Parkway</td>
<td>Complete</td>
<td>Extension of Controls (Age-Restricted Rental)</td>
<td>110</td>
<td>110</td>
<td>0</td>
<td>110</td>
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<tr>
<td>J. JSM at Hickory Street / Gabrielle Run (Site No. 32)</td>
<td>Hickory Street/Route 9</td>
<td>Under Construction</td>
<td>Inclusionary – Family Rental</td>
<td>340</td>
<td>68</td>
<td>68</td>
<td>136</td>
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<tr>
<td>K. Colfax Street (Site No. 41)</td>
<td>Colfax Street</td>
<td>Approved</td>
<td>Inclusionary – Family Rental</td>
<td>9</td>
<td>2</td>
<td>2</td>
<td>4</td>
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<tr>
<td>L. Toms River Senior Apartments (Site No. 30)</td>
<td>Cox Cro Road/ Massachusetts Ave</td>
<td>Under Construction</td>
<td>Age-Restricted Rental</td>
<td>102</td>
<td>102</td>
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<tr>
<td>M. Dover Summit (Site No. 47)</td>
<td>Rt. 9/Whitty Rd.</td>
<td>Approved</td>
<td>Family Rental</td>
<td>175</td>
<td>35</td>
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<tr>
<td>N. Winteringham Village</td>
<td>Rt. 166</td>
<td>Complete</td>
<td>Extension of Controls (Family Rental)</td>
<td>183</td>
<td>183</td>
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<tr>
<td>O. Dover Shopping Center Associates, LLC (Site No. 48)</td>
<td>Rt. 9 opposite Clayton Rd.</td>
<td>To Be Zoned</td>
<td>Inclusionary – Family Rental</td>
<td>150</td>
<td>30</td>
<td>30</td>
<td>60</td>
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<tr>
<td>P. Woods at Massachusetts Ave. (Site No. 25)</td>
<td>Massachusetts Avenue</td>
<td>Partially Complete</td>
<td>Extension of Controls (For Sale)</td>
<td>14</td>
<td>2</td>
<td>0</td>
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<tr>
<td>Q. 1606 Lakewood Rd., LLC (Site No. 49)</td>
<td>Rt. 9, south of Church Road</td>
<td>Approval</td>
<td>Inclusionary – Family Rental</td>
<td>141</td>
<td>28</td>
<td>28</td>
<td>56</td>
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### Appendix D: Third Round Compliance Plan Summary

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Location</th>
<th>Project Status</th>
<th>Project Type</th>
<th>Total Number of Units</th>
<th>Number of Affordable Units or Credits</th>
<th>Rental Bonus Credits</th>
<th>Total Credits</th>
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<tbody>
<tr>
<td>R. Hovnanian Ent. (Site No. 43)</td>
<td>Bimini Drive</td>
<td>To Be Zoned</td>
<td>Inclusionary – Family Rental</td>
<td>140</td>
<td>28</td>
<td>28</td>
<td>56</td>
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<tr>
<td>S. Arya (Site No. 44)</td>
<td>Massachusetts Avenue</td>
<td>Approved</td>
<td>Inclusionary – For Sale</td>
<td>37</td>
<td>8</td>
<td>0</td>
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<tr>
<td>T. Michaels Development (Site No. 45)</td>
<td>Rt. 70, east of Massachusetts Avenue</td>
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<td>All Affordable – Family Rental</td>
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<td>49</td>
<td>49</td>
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<tr>
<td>U. Kaplan (Site No. 46)</td>
<td>Seacourt/Caudina</td>
<td>Zoned</td>
<td>Inclusionary – Family Rental</td>
<td>140</td>
<td>28</td>
<td>28</td>
<td>56</td>
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<tr>
<td>V. North Pointe Hollow</td>
<td>Rt. 527</td>
<td>Partially Complete</td>
<td>Extension of Controls (Family For-Sale)</td>
<td>86</td>
<td>18</td>
<td>0</td>
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<tr>
<td>W. Water Street Redevelopment</td>
<td>Downtown</td>
<td>Proposed</td>
<td>Inclusionary</td>
<td>500</td>
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<td>TBD</td>
<td>TBD</td>
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<tr>
<td><strong>TOTAL</strong></td>
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<td></td>
<td><strong>964</strong></td>
<td><strong>321</strong></td>
<td><strong>1,285</strong></td>
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Appendix E: Draft Ordinance for Site No. 48
Chapter 348. Land Use and Development Regulations

§ 348-10.27. RHB-AH9 Rural Highway Business Zone- Affordable Housing- Route 9.

A. Purpose. This zoning district was created in compliance with a Settlement Agreement arising from the Petition for Declaratory Judgement filed by the Township of Toms River with the Ocean County Vicinage of the Superior Court and approved by order of the court. It provides for modifications to the Rural Highway Business Zone (RHB) to enable an inclusionary affordable housing development at Route 9 opposite Clayton Road (Block 410, Lot 25) to advance, which otherwise would have required relief from one or more provisions of the general RHB regulations. This ordinance is specifically recommended in the amended Housing Element and Fair Share Plan of the Township of Toms River, as adopted by the Toms River Planning Board on February 15, 2017.

B. Permitted uses. Uses within the following categories shall be permitted uses within the Rural Highway Business Affordable Housing Route 9 Zone unless otherwise specified in Subsection D as a use requiring a conditional use.

(1) Retail and wholesale stores, shops and markets, provided that:
   (a) All goods or products fabricated or processed incidental to such use shall be sold on the premises or distributed from the premises.
   (b) Such fabricating or processing that is done on the premises shall not include a processing activity which would involve a physical or chemical process that would change the nature and/or character of the product and/or raw material.
   (c) Such fabricating or processing shall be confined to the first floor and basement of the premises, and no supplies, materials or goods shall be stored out-of-doors, except in conformance with the requirements of § 348-5.20 and 348-8.6.

(2) Personal service establishments, such as but not limited to barbershops, beauty shops and tailoring and dressmaking shops.

(3) Business and professional offices and banks and financial institutions.

(4) Restaurants, lunchrooms, bars and other eating and drinking establishments.

(5) New and used automobile and mobile home sales agencies.

(6) Art, dancing, music, gymnastics and other similar instructional schools.

(7) Schools for vocational instruction.
(8) Scientific or research laboratories devoted to research, design and/or experimentation, and processing and fabricating incidental thereto, provided that no materials or finished products shall be manufactured, processed or fabricated on said premises for sale, except such as are incidental to said laboratory activities or are otherwise permitted in this zone.

(9) Publication of newspapers and periodicals.

(10) The offices, showrooms, warehouses and garages of contractors in the building trade.

(11) Essential services.

(12) Funeral homes, including one dwelling unit.

(13) Medical service facilities, including but not limited to health care facilities, continuing-care retirement communities and developments and long-term residential health care facilities.

(14) Shopping centers.

(15) Hotels and motels.

(16) Child-care centers.

(17) Motor vehicle repair garages.

(18) Motor vehicle service stations.

(19) Quasi-public, private club and commercial recreation areas.

(20) Mini warehouse facilities, including one dwelling unit.

(21) Car washes.

(22) Adult-care centers.

(23) Multifamily and townhouse dwellings in accordance with the provisions of the MF-4 Multifamily Zone established by § 348-10.17.4, except that such uses shall only be permitted under the planned unit development standards established by § 348-10.27F.

(24) Single-family dwellings in accordance with the provisions of the R-100 Residential Zone, except that such uses shall only be permitted under the planned unit development standards established by § 348-10.27F.

(25) Veterinary clinics or hospitals.
C. Required accessory uses.

(1) Off-street parking subject to the provisions of § 348-8.20.

(2) Off-street loading subject to the provisions of § 348-8.19.

D. Permitted accessory uses.

(1) Fences subject to the provisions of § 348-8.13.

(2) Signs subject to the provisions of § 348-8.26.

(3) Bulk storage subject to the provisions of § 348-8.6.

(4) Other customary accessory uses and buildings which are clearly incidental to the principal use and building.

(5) Tents subject to the provisions of § 348-8.37.

(6) Outdoor display of goods subject to §§ 348-5.20 and 348-5.37.

(7) Bulk storage of fuel, provided that the storage area is used solely in conjunction with a retail or wholesale outlet and that the storage containers are built below the ground or in accordance with the regulations adopted by the State of New Jersey.

(8) The temporary outdoor bulk storage of retail goods, which are available for sale may be permitted in front of a grocer or other retail store without the need to provide screening or a fencing blocking the goods from view. Such temporary storage areas shall be shown on an approved site plan and the size and location of such areas are subject to site plan approval.

E. Conditional uses subject to the provisions of Article IX of this chapter.

(1) Public utilities (§ 348-9.6).

(2) Boatyards and marinas (§ 348-9.10).

(3) Animal care facilities, other than veterinary clinics or hospitals.

(4) Farmers’ markets or auction markets (§ 348-9.20).

(5) Billboards (§ 348-9.23) along the frontage of properties on U.S. Route No. 9 only.

(6) Churches and places of worship on sites that are a minimum of 10 acres in size and have frontage on a street classified in the Traffic Circulation Element of the Master Plan as a major collector, minor arterial or major arterial roadway.

(7) Private and parochial schools not operated for profit on sites that are a minimum of 10 acres in size and have frontage on a street classified in the Traffic
Circulation Element of the Master Plan as a major collector, minor arterial or major arterial roadway.

F. Area, yard and building requirements.

(1) Minimum lot area: one acre.

(2) Minimum lot width: 150 feet for commercial uses and 50 feet for residential uses, when done in connection with a PUD.

(3) Minimum lot frontage: 150 feet for commercial uses and 50 feet for residential uses, when done in connection with a PUD.

(4) Minimum lot depth: 200 feet.

(5) Minimum front setback.

(a) Principal and accessory buildings: 100 feet, except along Route No. 9, 120 feet.

(b) Parking areas and vehicular circulation aisles: 35 feet, except along Route No. 9, 50 feet.

(6) Minimum rear yard setback for principal and accessory buildings: 30 feet.

(7) Minimum side yard setbacks:

(a) Principal buildings: 20 feet with two combined side yards not less than 50 feet.

(b) Accessory buildings: 20 feet.

(8) Maximum building height: 40 feet, subject to the provisions of § 348-5.12. In any event, the building shall not contain more than three usable floor levels counted vertically at any point in the building above the grade level as determined by the average grade elevation of the corners of the building.

(9) Maximum lot coverage by buildings: 20%.

(10) Minimum unoccupied open space: 20%. Maximum impervious service coverage: 75%.

G. Planned unit development. In accordance with the regulations of this section, multifamily, townhouse and single-family residential uses may be developed only in combination with related commercial uses under the provisions set forth below. It is a requirement of this section that such residential uses are only permitted if developed as part of a planned unit development.
(1) Planned unit developments shall only be permitted on parcels having a minimum area of 20 acres. The nonresidential component of a planned unit development shall occupy a minimum of 15% of the total area of the site.

(2) All nonresidential and accessory uses permitted in the RHB Rural Highway Business Zone are permitted in a planned unit development. Buffering, screening and landscaping shall be incorporated into the design as a means of either separating or integrating the uses into a cohesive design, in accordance with the standards set forth in § 348-8.4. Buffers can be provided on either the residential side or the commercial side of the internal proposed uses of the PUD.

(3) Conditional uses listed in this district shall not be permitted in a planned unit development.

(4) The residential component of the planned unit development shall not exceed 85% of the total site area. The number of dwelling units in the entire development shall not exceed the product of the land area of the residential component multiplied by the maximum density of the residential component of 7.2 units per acre, plus any applicable permitted rental bonus, but in no case shall it be less than 150 units. The applicant shall submit detailed floor plans for each unit type proposed, and the site plan and building plan shall specify the location of each unit type within the proposed buildings. Any change in the floor plan of a dwelling unit type or the location of dwelling unit types after the approval of a site plan shall require the administrative approval of the Planning Board prior to the issuance of a building permit. Wetland transition areas may be included in the calculation of allowable residential units, but wetland areas as regulated and defined by the New Jersey Department of Environmental Protection shall not be included in the calculation of allowable residential units.

(5) Within a planned unit development, residential uses may be integrated into the nonresidential portion of the site, provided that the overall number of dwelling units in the entire development does not exceed the calculation set forth in Subsection F(4) above. In addition, the bedroom count shall average no more than 2.0 bedrooms per unit for the entire development, except that single-family dwellings shall not be included in the overall calculation of average bedroom density.

(6) At least 20% of the residential units shall be affordable to low- and moderate-income households, as set forth in § 348-11.2. If the low- and moderate-income units are rentals, the overall residential yield may be increased by 15% as an incentive to develop such rental affordable housing.

(7) In designing a planned unit development, residential uses shall be placed in locations that can serve as transitional areas to nearby residential zoning districts and shall meet the fifty-foot buffer requirement as set forth in § 348-8.4A. Similarly, nonresidential uses may be functionally integrated into the overall development so they will be convenient to the nearby residents and accessible
from the existing arterial highway system. The phasing of the construction of the residential and nonresidential sections of the PUD will be set forth in a developer’s agreement executed between the developer and the Township.

(8) Open space, pedestrian, vehicular and bicycle networks shall be coordinated with the circulation and open space objectives of the Township, with particular attention given to areas that may lie in centers as may be designated by the State Planning Commission through the plan endorsement process.

(9) Building height may be increased to three stories, provided the density, impervious surface, floor area ratio and building coverage limitations established in this zoning district are not exceeded. Building Length may be a maximum of 200 feet in length.

(10) The 20% minimum open space requirement shall be applied to the overall PUD. Sections that have less than 20% unoccupied open space shall be compensated by other Sections with greater than 20% unoccupied open space. Open space shall be created within the planned unit development suitable for passive or active recreation uses and may include wetlands bioretention basins, rain gardens and forested areas that are valuable for the protection of the natural environment. Stormwater management basins that are fenced or otherwise have no access for open space use and/or are not designed for water quality and planted with mixed vegetation to provide wildlife habitat or other environmental value are excluded from the usable open space calculation.

(11) Any development approval of a planned unit development by the approving authority shall contain a condition mandating a deed restriction to enforce the requirements set forth in this section.

(12) For a proposed multifamily site, at least one outdoor refuse storage area of at least 100 square feet for each 20 dwelling units, or an equivalent alternative utilizing a single trash compactor shall be required.

(13) Recreation. Passive recreation areas, such as pathways, natural woods and fields, seating areas and lawns, shall be provided, and suitably arranged, throughout any multifamily site. In addition, an active recreation area or areas shall be provided at the rate of at least twenty five (30) square feet per dwelling unit. Active Recreation Areas, which may include clubhouses, shall be installed of a sufficient size and nature to service the occupants of the project. If a swimming pool area or areas are to be installed, they are to include a pool of a size at least 500 square feet. An auxiliary building or buildings providing for lavatories and storage, which may be located in the clubhouse, shall also be erected in conjunction with pools. Swimming pools shall be subject to the provisions of § 348-8.8 of this chapter.

(14) Signage. Due to the size and nature of a property being developed as part of a PUD, it is recognized that reasonable signage shall be required in order to allow
for development. As such, property being developed as part of a PUD shall be entitled to the same signage as if the property was located on New Jersey Route 37, east of the Garden State Parkway as set forth in §348-8.26.

(15) In the event of any discrepancy between this §348-10.27 and other provisions of the township ordinances with respect to density, signage, uses, bulk and area standards or any other provision, this PUD ordinance shall control.
Appendix F: Draft Ordinance for Site No. 43
Chapter 348. Land Use and Development Regulations

§ 348-10.27. RHB-AH37 Rural Highway Business Zone- Affordable Housing Route 37

A. Purpose. This zoning district was created in compliance with a Settlement Agreement arising from the Petition for Declaratory Judgement filed by the Township of Toms River with the Ocean County Vicinage of the Superior Court and approved by order of the court. It provides for modifications to the Rural Highway Business Zone (RHB) to enable an inclusionary affordable housing development at Route 37 and Bimini Drive (Block 506.01, Lots 1.01 through 1.07) to advance, which otherwise would have required relief from one or more provisions of the general RHB regulations. This ordinance is specifically recommended in the amended Housing Element and Fair Share Plan of the Township of Toms River, as adopted by the Toms River Planning Board on February 15, 2017.

B. Permitted uses. Uses within the following categories shall be permitted uses within the Rural Highway Business Affordable Housing Route 37 Zone unless otherwise specified in Subsection D as a use requiring a conditional use.

(1) Retail and wholesale stores, shops and markets, provided that:

   (a) All goods or products fabricated or processed incidental to such use shall be sold on the premises or distributed from the premises.

   (b) Such fabricating or processing that is done on the premises shall not include a processing activity which would involve a physical or chemical process that would change the nature and/or character of the product and/or raw material.

   (c) Such fabricating or processing shall be confined to the first floor and basement of the premises, and no supplies, materials or goods shall be stored out-of-doors, except in conformance with the requirements of § 348-5.20 and 348-8.6.

(2) Personal service establishments, such as but not limited to barbershops, beauty shops and tailoring and dressmaking shops.

(3) Business and professional offices and banks and financial institutions.

(4) Restaurants, lunchrooms, bars and other eating and drinking establishments.

(5) New and used automobile and mobile home sales agencies.
(6) Art, dancing, music, gymnastics and other similar instructional schools.

(7) Schools for vocational instruction.

(8) Scientific or research laboratories devoted to research, design and/or experimentation, and processing and fabricating incidental thereto, provided that no materials or finished products shall be manufactured, processed or fabricated on said premises for sale, except such as are incidental to said laboratory activities or are otherwise permitted in this zone.

(9) Publication of newspapers and periodicals.

(10) The offices, showrooms, warehouses and garages of contractors in the building trade.

(11) Essential services.

(12) Funeral homes, including one dwelling unit.

(13) Medical service facilities, including but not limited to health care facilities, continuing-care retirement communities and developments and long-term residential health care facilities.

(14) Shopping centers.

(15) Hotels and motels.

(16) Child-care centers.

(17) Motor vehicle repair garages.

(18) Motor vehicle service stations.

(19) Quasi-public, private club and commercial recreation areas.

(20) Mini warehouse facilities, including one dwelling unit.

(21) Car washes.

(22) Adult-care centers.

(23) Multifamily and townhouse dwellings in accordance with the provisions of the MF-4 Multifamily Zone established by § 348-10.17.4, except that such uses shall only be permitted under the planned unit development standards established by § 348-10.27F.

(24) Single-family dwellings in accordance with the provisions of the R-100 Residential Zone, except that such uses shall only be permitted under the planned unit development standards established by § 348-10.27F.
(25) Veterinary clinics or hospitals.

C. Required accessory uses.

(1) Off-street parking subject to the provisions of § 348-8.20.

(2) Off-street loading subject to the provisions of § 348-8.19.

D. Permitted accessory uses.

(1) Fences subject to the provisions of § 348-8.13.

(2) Signs subject to the provisions of § 348-8.26, except as modified herein.

(3) Bulk storage subject to the provisions of § 348-8.6, except as modified herein.

(4) Other customary accessory uses and buildings which are clearly incidental to the principal use and building.

(5) Tents subject to the provisions of § 348-8.37.

(6) Outdoor display of goods subject to §§ 348-5.20 and 348-5.37.

(7) Bulk storage of fuel, provided that the storage area is used solely in conjunction with a retail or wholesale outlet and that the storage containers are built below the ground or in accordance with the regulations adopted by the State of New Jersey.

(8) The temporary outdoor bulk storage of retail goods, which are available for sale may be permitted in front of a grocer or other retail store without the need to provide screening or a fencing blocking the goods from view. Such temporary storage areas shall be shown on an approved site plan and the size and location of such areas are subject to site plan approval.

E. Conditional uses subject to the provisions of Article IX of this chapter.

(1) Public utilities (§ 348-9.6).

(2) Boatyards (§ 348-9.10).

(3) Animal care facilities, other than veterinary clinics or hospitals.

(4) Farmers’ markets or auction markets (§ 348-9.20).

(5) Churches and places of worship on sites that are a minimum of 10 acres in size and have frontage on Route 37.

(6) Private and parochial schools not operated for profit on sites that are a minimum of 10 acres in size and have frontage on Route 37.
F. Area, yard and building requirements.

(1) Minimum lot area: one acre.

(2) Minimum lot width: 150 feet.

(3) Minimum lot frontage: 150 feet.

(4) Minimum lot depth: 200 feet.

(5) Minimum front setback.

(a) Principal buildings: 100 feet. Accessory structures: 65 feet.

(b) Parking areas and vehicular circulation aisles: 35 feet.

(6) Minimum rear yard setback for principal and accessory buildings: 30 feet.

(7) Minimum side yard setbacks:

(a) Principal buildings: 20 feet with two combined side yards not less than 50 feet.

(b) Accessory buildings: 20 feet.

(8) Maximum building height: 40 feet, subject to the provisions of § 348-5.12. In any event, the building shall not contain more than three usable floor levels counted vertically at any point in the building above the grade level as determined by the average grade elevation of the corners of the building.

(9) Maximum lot coverage by buildings: 20%.

(10) Minimum unoccupied open space: 20%.

(11) Maximum impervious service coverage: 75%

G. Planned unit development. In accordance with the regulations of this section, multifamily, townhouse and single-family residential uses may be developed only in combination with related commercial uses under the provisions set forth below. It is a requirement of this section that such residential uses are only permitted if developed as part of a planned unit development.

(1) Planned unit developments shall only be permitted on parcels having a minimum area of 20 acres. The nonresidential component of a planned unit development shall consist of a minimum of 150 square feet of gross floor area for each dwelling unit in the planned unit development.

(2) All nonresidential and accessory uses permitted in the RHB Rural Highway Business Zone are permitted in a planned unit development. Buffering, screening
and landscaping shall be incorporated into the design as a means of either separating or integrating the uses into a cohesive design, in accordance with the standards set forth in § 348-8.4, except as modified herein. Buffers can be provided on either the residential side or the commercial side of the internal proposed uses of the PUD.

(3) Conditional uses listed in this district shall not be permitted in a planned unit development.

(4) The number of dwelling units in the entire development shall not exceed the product of the land area of the residential component multiplied by the maximum density of the residential component of 12 units per acre. The applicant shall submit detailed floor plans for each unit type proposed, and the site plan and building plan shall specify the location of each unit type within the proposed buildings. Any change in the floor plan of a dwelling unit type or the location of dwelling unit types after the approval of a site plan shall require the administrative approval of the Planning Board prior to the issuance of a building permit. Wetland transition areas may be included in the calculation of allowable residential units, but wetland areas as regulated and defined by the New Jersey Department of Environmental Protection shall not be included in the calculation of allowable residential units.

(5) Within a planned unit development, residential uses may be integrated into the nonresidential portion of the site, provided that the overall number of dwelling units in the entire development does not exceed the calculation set forth in Subsection F(4) above. In addition, the bedroom count shall average no more than 2.0 bedrooms per unit for the entire development, except that single-family dwellings shall not be included in the overall calculation of average bedroom density.

(6) At least 20% of the residential units shall be affordable to low- and moderate-income households, as set forth in § 348-11.2, as amended. If the low- and moderate-income units are rentals, the overall residential yield may be increased by 15% as an incentive to develop such rental affordable housing.

(7) In designing a planned unit development, residential uses shall be placed in locations that can serve as transitional areas to nearby residential zoning districts and shall meet the fifty-foot buffer requirement as set forth in § 348-8.4A. Similarly, nonresidential uses may be functionally integrated into the overall development so they will be convenient to the nearby residents and accessible from the existing arterial highway system. The phasing of the construction of the residential and nonresidential sections of the PUD will be set forth in a developers agreement executed between the developer and the Township.

(8) Open space, pedestrian, vehicular and bicycle networks shall be coordinated with the circulation and open space objectives of the Township, with particular
attention given to areas that may lie in centers as may be designated by the State Planning Commission through the plan endorsement process.

(9) The 25% minimum open space requirement shall be applied to the overall PUD. Sections that have less than 25% unoccupied open space shall be compensated by other Sections with greater than 25% unoccupied open space. Open space shall be created within the planned unit development suitable for passive or active recreation uses and may include wetlands, bioretention basins, rain gardens and forested areas that are valuable for the protection of the natural environment. Stormwater management basins that are fenced or otherwise have no access for open space use and/or are not designed for water quality and planted with mixed vegetation to provide wildlife habitat or other environmental value are excluded from the usable open space calculation.

(10) Any development approval of a planned unit development by the approving authority shall contain a condition mandating a deed restriction to enforce the requirements set forth in this section.

12. Recreation. Passive recreation areas, such as pathways, natural woods and fields, seating areas and lawns, shall be provided, suitably arranged, throughout any multifamily site. In addition, an active recreation area or areas shall be provided at the rate of at least twenty five (30) square feet per dwelling unit. Active Recreation Areas, which may include clubhouses, shall be installed of a sufficient size and nature to service the occupants of the project. If a swimming pool area or areas are to be installed, they are to include a pool of a size at least 500 square feet. An auxiliary building or buildings providing for lavatories and storage, which may be located in the clubhouse, shall also be erected in conjunction with pools. Swimming pools shall be subject to the provisions of § 348-8.8 of this chapter.

13. For a proposed multifamily site, at least one outdoor refuse storage area of at least 100 square feet for each 20 dwelling units, or an equivalent alternative utilizing a single trash compactor shall be required.

14. Signage. Due to the size and nature of a property being developed as part of a PUD, it is recognized that reasonable signage shall be required in order to allow for development. As such, property being developed as part of a PUD shall be entitled to the same signage as if the property was located on New Jersey Route 37, east of the Garden State Parkway as set forth in §348-8.26. In the event of any discrepancy between this §348-10.27 and other provisions of the township ordinances with respect to density, signage, uses, bulk and area standards or any other provision, this PUD ordinance shall control.
Appendix G: Approved Spending Plan
DRAFT

AFFORDABLE HOUSING SPENDING PLAN
July 2015
Rev. January 2016

Township of Toms River
Ocean County

AFFORDABLE HOUSING TRUST FUND

Prepared by:

[Signature]
Jay Lynch, PP #19
Township Planner
Municipal Housing Liaison
INTRODUCTION

The Township of Toms River has prepared a Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the affordable housing regulations of the New Jersey Department of Community Affairs (the Department) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by the Department and adopted by the municipality in 1992. The ordinance establishes the Township of Toms River affordable housing trust fund for which this spending plan is prepared.

1. REVENUES FOR CERTIFICATION PERIOD

As of December 31, 2014, Toms River Township has collected $6,445,519.28 and expended $5,291,781.86, resulting in a balance of $1,148,737.42. 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 in TD Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of third round substantive certification, Toms River 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.
   4. Construction activity from January 1, 2013 through December 31, 2015 has been largely influenced by rebuilding related to Superstorm Sandy. However, in the interest of furthering the reconstruction process, no residential development fees have been charged on homes that are more than 50% damaged, which represents a total of about 4,000 homes in the Township. Homes that were not in flood areas, or were rebuilt in flood areas and added more than 200 square feet of floor area, were all subject to development fees based on 1.5% of the increase in property value. Over the 30 months starting January 1, 2013 the Township has collected a net $518,369.46 in development fees, an average of $17,278.98 in monthly...
receipts over that period. For forecasting purposes, it would be reasonable to assume a conservative average of $15,000 per month in revenue from development fees over the next six years or so.

(b) Payment in lieu (PIL):
Actual and committed payments in lieu (PIL) of construction from developers as follows:
The Township does not anticipate receiving any in lieu payments, except to the extent fractional payments are made in inclusionary developments.

(c) Other funding sources:
The Trust Fund is receiving $50 per week as the result of a settlement of money owed on a unit acquired by the Township through foreclosure. Those payments will continue throughout the projection period.

(d) Projected interest:
Interest on the projected revenue in the municipal affordable housing trust fund is based on the current average interest rate.

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>PROJECTED REVENUES-HOUSING TRUST FUND - 2015 THROUGH 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Development fees:</td>
<td>$180,000</td>
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<tr>
<td>(b) Payments in Lieu of Construction</td>
<td>$0</td>
</tr>
<tr>
<td>(c) Other Funds (Specify source(s))</td>
<td>$2,600</td>
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<tr>
<td>(d) Interest</td>
<td>$1,000</td>
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<tr>
<td><strong>Total</strong></td>
<td>$183,600</td>
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Toms River Township projects a total of $1,285,200 in revenue to be collected between January 1, 2015 and December 31, 2021. This projected amount, when added to Toms River’s trust fund balance of $1,148,737.42 as of December 31, 2014, results in an anticipated total revenue of $2,433,937.42 available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Toms River Township:

January 2016
(a) **Collection of development fee revenues:**

Collection of development fee revenues shall be consistent with Toms River’s development fee ordinance for both residential and non-residential developments in accordance with the Department’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).

(b) **Distribution of development fee revenues:**

Development fees are expended based on approved spending plans, which in the case of Toms River include partial payment of salaries and other administrative costs. Other housing related expenditures continue to be made from the Housing Trust Fund as authorized by resolutions of Township Council.

### 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

**Rehabilitation program:** No funds will be dedicated for this purpose as the Township runs a rehabilitation program as an entitlement community through the use of HUD CDBG funds.

**New construction project(s):** The following expenditures are anticipated for new construction projects, with project descriptions and the rationale for the expenditures identified:

1. Freedom Village is a recently completed 72 unit family rental located at the intersection of West Hickory Street and Massachusetts Avenue on Block 164, Lot 4. The development is financed through NJHMFA utilizing Low Income Housing Tax Credit financing for this 100% affordable project. It is designed to serve special needs, with all units accessible and with support services on-site. The ten acre site on which it is built was owned by the Township and conveyed to the nonprofit at no cost. The Township acquired the property for $600,000 in 2003. It was appraised in 2013 as part of the NJHMFA procedure and it showed a value of $1,080,000. The cost basis of the property, including closing costs, legal fees, and interest on the bonds through the end of 2015, is $774,761.45. See attached spreadsheet. One additional cost for which reimbursement is sought is for the required Rental Housing Inspection Fee of $100 per unit. Those inspections have been completed by the Township and it is awaiting payment from the Housing Trust Fund in the total amount of $7,220.
(2) Toms River Senior Housing, also known as Cornerstone Commons, is a 102 unit Low Income Housing Tax Credit project that has all local and NJHMFA approvals and started construction in the last quarter of 2015. It is located at the intersection of Cox Cro Road and Massachusetts Avenue on an 11 acre site owned by the Township, but conveyed to the developer prior to the start of construction. The agreed upon price for the project was $750,000, which is the maximum amount the rental proceeds would support. The Township acquired the parcel in 2003 at a cost of $1,150,000 for the purpose of reserving it for affordable housing for seniors. On a cost basis, the Township has also expended $294,283.28 in interest on the bonds, as shown on the attached spreadsheet. The appraisal that was submitted to NJHMFA as a part of the application for financing shows a land value as of November 2014 of $1,610,000. To the extent revenues in the Housing Trust Fund permit, the Township seeks reimbursement for all direct costs in excess of the $750,000 reimbursement that was paid at the time of closing. That additional reimbursement would be $694,283.28. The total cost basis for the property is $1,444,283.28, which is well below the appraised value of $1,610,000.

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

<table>
<thead>
<tr>
<th>AFFORDABILITY ASSISTANCE CALCULATION</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Actual fees thru 12/31/2014, including interest</td>
<td>$6,445,519</td>
</tr>
<tr>
<td>Projected Development Fees &amp; other revenues, 2015 thru 2021</td>
<td>+</td>
</tr>
<tr>
<td>Projected Trust Fund Interest, 2015 thru 2021</td>
<td>+</td>
</tr>
<tr>
<td>Less housing Activity thru 12/31/2014</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>30% Requirement</td>
<td>x 0.30</td>
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<tr>
<td>Less Affordability assist. expenditures thru 12/31/2014</td>
<td>-</td>
</tr>
<tr>
<td>Projected Min. Afford Asst, 1/1/2015 thru 12/31/2021</td>
<td>=</td>
</tr>
<tr>
<td>Proj Min Afford. Asst for Very Low Income, 2015 thru 2021</td>
<td>x 1/3</td>
</tr>
</tbody>
</table>

Through the end of 2014, Toms River Township has dedicated at least $1,367,365.67 from the affordable housing trust fund to render projects more affordable, including the following specific expenditures:

Springpoint Senior Housing on Oak Avenue is a HUD Section 202 low income 85 unit nonprofit development built on land purchased for $950,000 through the Housing Trust Fund, and sponsored by Presbyterian Homes of New Jersey. The land was
conveyed at no cost to the project in order to assure project feasibility. Due to unforeseen delays related to a water supply moratorium, the amount committed to the project in the Fund Reservation was insufficient to build the project unless the land was provided at no cost. The project is built and occupied.

A 12 unit 100% affordable for sale project on Walnut Street was granted $28,000 per unit from the Housing Trust Fund in order to assure affordability, resulting in an expenditure of $336,000 for project feasibility. The project is built and occupied.

Freedom Village is a 72 family rental Tax Credit development with 100% of the units accessible to handicapped persons. Construction is complete. The target population for this development is households with special needs, including handicapped and developmentally disabled persons. Housing Trust Fund expenditures for this projects through the end of 2014 have been $81,365.67. Since the development is built on land formerly owned by the Township, an additional Housing Trust Fund expenditure will compensate the Township for the cost of the land and related fees and interest in the amount of $774,761.45. It is anticipated that most of the households in this development will have incomes below 30% of the regional median income.

Similarly, Cornerstone Commons will require a net compensation to the Township, as described earlier herein, in the amount of $694,238.28 to ultimately be paid from the Housing Trust Fund, which is the cost basis in excess of the affordable reimbursement built into the NJHMFA financing.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

<table>
<thead>
<tr>
<th>ADMINISTRATIVE EXPENSE CALCULATION</th>
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</thead>
<tbody>
<tr>
<td>Actual fees and interest thru 12/31/2014</td>
<td>$ 6,445,519</td>
</tr>
<tr>
<td>Projected Development Fees and interest 2015 thru 2021</td>
<td>+ $ 1,267,000</td>
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<tr>
<td>Payments-In-Lieu of construction and other deposits thru 12/31/2014</td>
<td>+ $ 18,200</td>
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<tr>
<td>Less RCA expenditures thru 12/31/21</td>
<td>- $ (295,021)</td>
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<td>Total For Administration, Calculation, 1/1/2015 to 12/31/2021</td>
<td>= $ 7,435,698</td>
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<tr>
<td>20% Maximum for Admin Expense</td>
<td>x .20 $ 1,487,140</td>
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<tr>
<td>Less Admin thru 12/31/2014</td>
<td>- $ 957,317</td>
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<tr>
<td>Available for Admin 1/1/2015 Thru 12/31/2021</td>
<td>= $ 529,923</td>
</tr>
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</table>

The Township estimates that $529,923 will be available from the affordable housing trust fund to be used for administrative purposes through 12/31/2021. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

January 2016
1. Consulting, legal and Special Master fees related to securing administrative approval of the Township’s Housing Element and Fair Share Plan: $125,000-$150,000.

2. Office supplies and other administrative costs: $25,000-$30,000.

3. Personnel, including allocations for the Township Planner, Assistant Township Planner, and Administrative Assistant: $280,000-$320,000.

4. EXPENDITURE SCHEDULE

Toms River intends to continue to expend funds on eligible activities over the seven year period 2015-2021. To the extent revenues will support the expenditures identified below. As noted earlier in this Spending Plan, the Housing Trust Fund had a balance at the end of 2014 of $1,148,737, and an estimated revenue of $1,285,200 through 2021, for a total of $2,433,937 available for eligible activities. Anticipated expenditures include the following:

1. Administration – range up to: $500,000
2. Freedom Village $ to Township $774,761
3. Freedom Village Rental Housing Inspection $7,200
4. Cornerstone Commons land to Twp. $694,283
5. Highland Plaza Extension of Controls $51,047

Total known expenses $2,027,291

Administration. See Section 3 herein for details.

Freedom Village. See attached spreadsheet and description in Section 3 herein.

Cornerstone Commons. See attached spreadsheet and description in Section 3 herein.

Highland Plaza. In 2013, Highland Plaza applied for and received an extension of its agreement to make Payments in Lieu of Taxes to the Township. The PILOT agreement went into effect in 1983 and its expiration coincided with the terms of its 30 year mortgage. The extension is for an additional 20 years with an option to renew ten more years past that date. In total, therefore, the entire period of coverage is 50 years with a ten year option at the end of the 50 years, thereby providing the same length of controls that should qualify it for additional credits based on the extension. Highland Plaza consists of 110 age restricted units, so the Township is anticipating full 110 unit credit for the extension, and an additional 37 rental bonus credits. The basis for charging the Housing Trust Fund $51,047 is due to HUD refinancing criteria that required the owners to reduce
the size of the project reserve, which HUD determined to be excessive under current criteria, and in so doingHUD withheld Rental Assistance Payments in the amount of $729,241. Under the PILOT formula, HUD Rental Assistance Payments are taken into account in the payment formula, but not liquidated reserves. This is a one-time event and the money is needed by the Township as it anticipated in its adopted budget the normal full PILOT payment. The calculated $51,047 payment to the Township for Highland Plaza is based on 7% of $729,241.

5. EXCESS OR SHORTFALL OF FUNDS

In the event of any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the plan, the Township of Toms River has committed to address such shortfall with an intent to bond.

In the event more funds than anticipated are collected, projected funds exceed the amount necessary to implement the Fair Share Plan, or Toms River is reserving funds for affordable housing projects to meet a future affordable housing obligation, these excess funds will be used in accordance with the approved Housing Element and Fair Share Plan.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with Toms River’s Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.
<table>
<thead>
<tr>
<th>Year</th>
<th>Item</th>
<th>Principal Balance</th>
<th>Cost/ Fees &amp; Interest</th>
<th>Notes &amp; Adjustments</th>
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</tr>
</thead>
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<td>$ 600,000.00</td>
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<tr>
<td>2003-04</td>
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<td>Related to acquisition and closing costs</td>
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<td>$ 6,600.00</td>
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<td>Interest @ 2.75%</td>
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<td>Total land cost</td>
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1/28/2016
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<td>$29,797.08</td>
<td>Principal reduction of 2.89% on original amount</td>
<td>$33,235.00</td>
</tr>
<tr>
<td>2007</td>
<td>Interest @ 2.75%</td>
<td>$1,050,295.00</td>
<td>$28,883.11</td>
<td>Principal reduction of 2.89% on original amount</td>
<td>$33,235.00</td>
</tr>
<tr>
<td>2008</td>
<td>Interest @ 2.75%</td>
<td>$1,007,285.00</td>
<td>$27,700.34</td>
<td>Principal reduction of 3.74% on original amount</td>
<td>$43,010.00</td>
</tr>
<tr>
<td>2009</td>
<td>Interest @ 2.75%</td>
<td>$964,275.00</td>
<td>$26,517.56</td>
<td>Principal reduction of 3.74% on original amount</td>
<td>$43,010.00</td>
</tr>
<tr>
<td>2010</td>
<td>Interest @ 3.00%</td>
<td>$910,455.00</td>
<td>$27,313.65</td>
<td>Principal reduction of 4.68% on original amount</td>
<td>$53,820.00</td>
</tr>
<tr>
<td>2011</td>
<td>Interest @ 3.00%</td>
<td>$855,600.00</td>
<td>$25,668.00</td>
<td>Principal reduction of 4.77% on original amount</td>
<td>$54,855.00</td>
</tr>
<tr>
<td>2012</td>
<td>Interest @ 3.00%</td>
<td>$796,835.00</td>
<td>$23,905.05</td>
<td>Principal reduction of 5.11% on original amount</td>
<td>$58,765.00</td>
</tr>
<tr>
<td>2013</td>
<td>Interest @ 3.00%</td>
<td>$738,070.00</td>
<td>$22,142.10</td>
<td>Principal reduction of 5.11% on original amount</td>
<td>$58,765.00</td>
</tr>
<tr>
<td>2014</td>
<td>Interest @ 3.00%</td>
<td>$679,305.00</td>
<td>$20,379.15</td>
<td>Principal reduction of 5.11% on original amount</td>
<td>$58,765.00</td>
</tr>
<tr>
<td>2015</td>
<td>Interest @ 3.00%</td>
<td>$620,540.00</td>
<td>$18,616.20</td>
<td>Principal reduction of 5.11% on original amount</td>
<td>$58,765.00</td>
</tr>
<tr>
<td></td>
<td>Total land cost</td>
<td></td>
<td>$1,444,283.28</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minus sale price</td>
<td></td>
<td>$(750,000.00)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Net cost to Township</td>
<td></td>
<td>$694,283.28</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1/28/2016
Appendix H: Affordable Housing Ordinances
§ 348-11 ARTICLE XI: Affordable Housing Provisions.

This ordinance is amended in accordance with a Settlement Agreement approved by an Order On Fairness And Preliminary Compliance Hearing entered by Judge Mark A. Troncone, JSC, on December 31, 2016.

§ 348-11.1 Purpose and definitions.

A. This section of the Township of Toms River Code sets forth regulations regarding low- and moderate-income housing units in Toms River Township that are consistent with the provisions of N.J.A.C. 5:93 et seq., as effective on June 6, 1994. These rules are pursuant to the Fair Housing Act of 1985 and Toms River Township's constitutional obligation to provide for its fair share of low- and moderate-income housing.

B. Terms defined. The following terms are defined in accordance with Council on Affordable Housing (COAH) rules:

AFFORDABLE HOUSING ADMINISTRATOR (AH ADMINISTRATOR)

The Township Planner of the Township of Toms River, other municipal official(s) and/or designee(s) appointed or contracted by the Township Council of the Township of Toms River to administer the compliance and/or implementation of the Township's affordable housing plan.

DEVELOPER'S AFFORDABLE HOUSING PLAN

A plan submitted by the developer and approved by the Affordable Housing Management Service of the State of New Jersey, Department of Community Affairs, which shall identify the manner in which the developer plans to develop, price, market and restrict the low- and moderate-income dwelling units in accordance with this article.

EXEMPT SALES

Includes the transfer of ownership between husband and wife and transfers of ownership between former spouses as a result of a judicial decree of divorce or a 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 executors deed to a Class A beneficiary and a transfer of ownership by court order.

FAIR MARKET VALUE

The unrestricted price of a low- or moderate-income housing unit if sold at a current real estate market rate.

INCLUSIONARY DEVELOPMENT

A residential housing development in which a percentage of the housing units are reserved for low- and moderate-income households.
LOW-INCOME HOUSING

Housing affordable according to Council on Affordable Housing (COAH) standards for homeownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households the same size within the housing region in which the house is located in and subject to affordability controls.

MODERATE-INCOME HOUSING

Housing affordable according to Council on Affordable Housing (COAH) standards for homeownership and rental costs and occupied or reserved for occupancy by households with a gross household income of more than 50% but less than 80% of the median gross household income for households of the same size within the housing region in which the house is located and subject to affordability control.

PRICE DIFFERENTIAL

The difference between the controlled unit sale price and the fair market value as determined at the date of the proposed contract sale after reasonable real estate broker fees have been paid.

REPAYMENT CLAUSE

Obligation of a seller exercising the repayment option to pay 95% of the price differential to a municipality at closing for use within the municipal housing plan.

REPAYMENT OPTION

The option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:93-9.8 et. seq. at a fair market value subject to compliance with the terms of the repayment clause.

SET ASIDE

The percentage of housing units devoted to low- and moderate-income households within an inclusionary development.

UNIT COMPLETION

The receipt of any temporary or final certificate of occupancy.

§ 348-11.2 Affordable housing sites.

A. Low- and moderate-income housing required. Developers of the affordable housing (AH) sites, as designated on the Zoning Map of the Township of Toms River, Ocean County, New Jersey, shall be required to set aside the number of affordable units specified in any existing valid approval or in accordance with the following schedule:
<table>
<thead>
<tr>
<th>Overlay Zone</th>
<th>Block and Lot</th>
<th>Site Number</th>
<th>Site Number</th>
<th>Site Name</th>
<th>Mandatory Set Aside of Low and Moderate-Income Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>AH</td>
<td>Block 37, Lot 1</td>
<td>2</td>
<td>North Pointe Hollow</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 135.01, Lot 4</td>
<td>6</td>
<td>Hope's Crossing</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 571, Lots 1,3,60</td>
<td>10</td>
<td>The Fairways at Dover</td>
<td>20% (15% rental)</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 571.64, L 58,59</td>
<td>11</td>
<td>Old Freehold Road Site</td>
<td>20% (15% rental)</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 609, Lot 1</td>
<td>15</td>
<td>Walnut Street</td>
<td>20% (15% rental)</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 591, Lot 7.09</td>
<td></td>
<td>As Developers</td>
<td>3 units</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 166, Lot 1</td>
<td>25</td>
<td>Woods @ Mass. Ave</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 164, Lot 4</td>
<td>25A</td>
<td>Santiago (Mass. Ave)</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 414, Lot 9.01</td>
<td>28</td>
<td>Presbyterian Homes</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 164, Lot 3</td>
<td>31</td>
<td>Forgione</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 120, Lot 2</td>
<td>29</td>
<td>Property Regenerators</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 166, Lot 2,10</td>
<td>30</td>
<td>Village Properties</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>AH</td>
<td>Block 164, Lot 7,13</td>
<td>32</td>
<td>Majesky</td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

In addition to the set aside requirements above, the developers of Affordable Housing (AH) sites shall be subject to the requirements of the underlying zoning of the respective site set forth in Article X.

All multifamily residential development, resulting in a density of three dwelling units per acre or greater, shall require the set aside of a minimum of 20% of the total number of dwelling units within the development for low- and moderate-income households.

**B. Affordable housing plan required.**

(1) Each developer of an affordable housing development shall file a developer’s affordable housing plan with the Township Planning Board. Said plan shall be filed at the time of application for final approval for any site plan which includes low- and moderate-income housing units. It shall be a plan that has been approved by the Housing Affordability Service (HAS) of the Division of Housing and Community Resources, Department of Community Affairs, State of New Jersey. Said plan shall
meet all Department of Community Affairs requirements and shall specify in detail the methods, procedures and forms to be used by the developer and comply with provisions of this article. It shall contain the following information as to the proposed development.

(a) Phasing and location of the low- and moderate-income units.

(b) The bedroom mix, proposed unit pricing and specific affirmative marketing plans.

(c) The restrictive covenant and mortgage lien to be used to insure affordability.

(2) The plan shall be in such form and content in which the Township Planning Board may from time to time establish. The Township Planning Board’s approval of the developer's affordable housing plan will be required prior to the issuance of a development permit or the signing of any subdivision plat by the Township. Also, compliance with the affordable housing construction phasing schedule set forth in § 348-11.3D below shall be incorporated in the plan and actual compliance shall be required prior to the issuance of any certificate of occupancy.

C. Planning Board applications expedited and application fees waived. The Toms River Township Planning Board, with the cooperation of the developer, shall expedite, to the maximum extent possible, the processing of applications for development of affordable housing. The township shall, to the maximum extent permitted by the law, waive the Township Land Use fees for submission of applications for only that portion of the development that consists of affordable housing. There shall be no waiver or reduction of fees as to the market rate units included within the application. Additionally, the Planning Board shall consider waiver requests for Township-required design standards that can be shown to generate unnecessary costs.

D. Fee required. Prior to the issuance of a certificate of occupancy for an affordable housing unit, the developer of affordable housing sites shall pay a fee to the Township to offset the costs of the services of the Affordable Housing (AH) administrator. Said fee shall be the prevailing fees charged by the Housing Affordability Service (HAS) of the Division of Housing and Community Resources, Department of Community Affairs, State of New Jersey, for such services.

§ 348-11.3 Low- and moderate-income housing requirements.

A. Building permits. No building permit(s) shall be issued for any development on an Affordable Housing (AH) site unless the developer's Affordable Housing Plan has been approved by the AH administrator.

B. Toms River Township’s fair share obligation will be divided equally between low- and moderate-income households as per N.J.A.C. 5:93-2.20.

C. Except for inclusionary developments constructed pursuant to low income tax credit regulations:

(1) At least half of all units within each inclusionary development shall be affordable to low-income households;

(2) At least half of all rental units shall be affordable to low-income households; and
(3) At least one-third of all units in each bedroom distribution pursuant to N.J.A.C. 5:93-7.3 shall be affordable to low-income households.

D. In conjunction with realistic market information, the following criteria will be used in determining maximum rents and sales prices:

(1) Efficiency units shall be affordable to a one-person household;
(2) One-bedroom, units shall be affordable to 1.5 person households;
(3) Two bedroom units shall be affordable to three-person households;
(4) Three-bedroom units shall be affordable to 4.5 person households;
(5) Median income by household size shall be established by a regional weighted average of the uncapped Section eight income limits published by HUD as per N.J.A.C. 5:93-7.4(b);
(6) The maximum sales prices of low- and moderate-income units within each inclusionary development shall be affordable to households earning no more than 70% of median income. In averaging an affordability range of 55% for sales units, the municipal ordinance shall require moderate-income sales units to be available for at least two different prices and low-income sales units to be available for at least two different prices;
(7) For both owner-occupied and rental units, the low- and moderate-income units shall utilize the same heating source as market units within an inclusionary development;
(8) Low-income units shall be reserved for households with a gross household income equal to 50% of the median income approved by COAH; moderate-income units shall be reserved for households with a gross household income less than 80% of the median income approved by COAH per N.J.A.C. 5:93-7.4(j); and
(9) The regulations outlined in N.J.A.C. 5:93-9.15 and 5:93-9.16 shall be applicable for purchased and rental units.

E. Bedroom distribution. Affordable, non-age-restricted housing units within AH sites shall have the following distribution of bedroom types:

(1) At a minimum, 30% of all low- and moderate-income units shall be two-bedroom units;
(2) At a minimum, 20% of all low- and moderate-income units shall be three-bedroom units;
(3) The combination of efficiency and one-bedroom units shall be at least 10% and no greater than 20% of the total low- and moderate-income units; and
(4) Low- and moderate-income units that are age-restricted may utilize a modified bedroom distribution. At a minimum, the number of bedrooms will equal the number of age-restricted low- and moderate-income units within the inclusionary development.

F. Unit location. Affordable housing units shall be situated on the development tract in locations no less desirable than market priced dwelling units within the development, and shall be equally accessible to common open space, community facilities and shopping facilities.
G. Phasing. Approval of the developer’s Affordable Housing Plan shall be contingent upon the development, whether if developed in one stage or in two or more stages, meeting the following phasing schedule:

<table>
<thead>
<tr>
<th>Minimum Percentage of Low/Moderate-Income Units Completed</th>
<th>Percentage of Market Housing Units Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>10</td>
<td>25 plus 1 unit</td>
</tr>
<tr>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>100</td>
<td>90</td>
</tr>
</tbody>
</table>

H. Occupancy section.

(1) The AH administrator shall designate an application period during which applications to purchase or rent affordable housing units will be accepted.

(2) Applications shall be accepted only if submitted on an application form prepared and/or approved by the AH administrator. Applications shall be completely filled out and notarized. Knowingly or intentionally making any false statement on a form shall be grounds for disqualifying an applicant even if the applicant is otherwise eligible. The following information shall be required:

(a) A copy of IRS Form 1040A or 1040EZ (Tax Computation Form) for each of the three years prior to the date of the application.

(b) A letter from all employers stating present annual income or four consecutive pay stubs dated within 120 days of the interview date.

(c) A letter or appropriate reporting form verifying benefits, including but not limited to social security or pension.

(d) A letter or appropriate reporting form verifying any other sources of income claimed by the applicant household.

(e) Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds.

(f) Reports that verify assets that do not earn regular income such as real estate and savings with delayed earning provisions.

(3) The AH administrator shall determine whether the applicant meets the income and other requirements established in these regulations. The review process for a prospective purchaser shall involve a credit background report. To be an eligible applicant, the applicant shall have an acceptable credit history such that there is a realistic possibility that he will be approved for a mortgage.
(4) Waiting list. The AH administrator may establish a waiting list for the remaining eligible applicants. After all the units are occupied, the AH administrator may choose to accept new applications. If an applicant is deemed eligible, the applicant shall be placed on the waiting list at the bottom of the particular priority classification for which the applicant qualifies. The AH administrator shall periodically recertify the applicants on the waiting list to ensure that the list remains current and that the applicants are still qualified for the units to which they applied.

I. Income eligibility standards.

(1) Income eligibility ceilings for low- and moderate-income units for various sized households shall be established by the AH administrator based upon United States Department of Housing and Urban Development "uncapped median income by family size" for Ocean County and as adopted by COAH. No applicant with a household income in excess of these ceilings shall be eligible to rent or purchase the low- and moderate-income units.

(2) Upon annual adoption of updated income standards by COAH, the legislature or the Courts of New Jersey, the AH administrator shall modify its income eligibility ceilings accordingly.

(3) For purposes of determining income and eligibility, the AH administrator shall consider:

(a) All sources of income, whether taxable or nontaxable, including social security and pensions.

(b) Imputed income. For the purpose of determining eligibility and rents, interest on the present value of real property and extraordinary personal property owned by the applicant shall be imputed and deemed additional income. Interest shall be imputed at the average interest rate on money market accounts in the region as determined by the AH administrator.

(c) The income and assets of all members of the household as well as the income and assets of any individual who is expected to occupy the unit for which the household is seeking to qualify shall be included in the determination of eligibility and of rents. The form used for verification of household income shall include an affidavit attesting that the application contains the complete income of all current or anticipated household members.

J. Initial sales prices. Sales prices shall be considered affordable where the household purchasing the unit will not spend more than 28% of gross household income, after a 5% down payment, including the monthly principal, interest, property taxes (based on the restricted value of the low- and moderate-income unit), insurance, and homeowners' association fees, if any. In making these calculations, the following considerations shall govern:

(1) Property taxes shall be determined by applying the equalized property tax rate in Toms River Township currently in effect to the proposed selling price of the unit;
The developer shall use the best available assumptions to determine the insurance and homeowners' association fees to be applied to the units, subject to the approval of the AH administrator as to reasonableness only for use in this calculation.

Master deeds of inclusionary developments shall regulate condominium or homeowners' associations fees or special assessments of low- and moderate-income purchasers of 100% of those paid by market purchasers. This one-hundred-percent is consistent with the requirements of N.J.A.C. 5:93-7-4(h). Once established with a master deed, the one-hundred-percent will not be amended without prior approval from COAH;

Toms River Township shall follow the general provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sale units as per N.J.A.C. -5-93-9.3; and

Toms River Township shall require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale as per N.J.A.C. 5:93-9.3 (c).

K. Rental prices. For rental units, developers and/or municipal sponsors shall:

(1) Establish one rent for a low-income unit and one for a moderate-income unit for each bedroom distribution;

(2) Gross rent for rental units, including an allowance for tenant-paid utilities, shall be established so as to not exceed 30% of the gross monthly income of the appropriate household size as per N.J.A.C. 5:93-7.4(i). The tenant-paid utility allowance shall be consistent with the utility allowance approved by HUD for use in New Jersey; and

(3) The maximum rents of low- and moderate-income units within each inclusionary development shall be affordable to households earning no more than 60% of mean income. In averaging an affordability range of 52% for rental units, developers and/or municipal sponsors of rental units may establish one rent for a low-income unit and rent for a moderate-income unit for each bedroom distribution.

L. Procedure for resale transaction prior to expiration of controls.

(1) All resale transactions of affordable housing units shall be administered by the AH administrator. From the date on which the AH administrator receives a notice of intent to sell by the owner of a low- and moderate-income unit, the AH administrator shall have the exclusive right to refer prospective purchasers to that unit for a period of 90 days unless waived in writing. In the event that a contract for the unit is executed within the ninety-day period set above and the prospective buyer is unable to close, the period during which the AH administrator shall have the exclusive right to market the unit is automatically extended for a period of 21 days from the date it is notified of the buyer's inability to close.

(2) In the event no contract has been entered into for the unit at the end of a ninety-day period, the owner of the unit may seek approval from the AH administrator to sell the unit directly. The AH administrator may authorize the applicant to sell the unit as follows. However, if the AH administrator determines that the failure to enter into a contract was the result of negligence, absence of good faith effort or lack of cooperation on the part
of the seller, the AH administrator shall require the applicant to attempt to sell the unit for an additional ninety-day period.

(a) In the case of a low-income unit, to a low or moderate income buyer; or

(b) In the case of a moderate-income unit, to a buyer whose income does not exceed 120% of median.

(3) Any subsequent sale shall be fully subject to the resale restrictions contained in these regulations. The deed to the above income purchaser shall specifically contain a deed restriction establishing that it is subject to all the affordability controls outlined in this article.

M. Calculation of resale price. The resale price of the affordable housing unit shall be the base price increased pursuant to Subsection M(1) and (2) below.

(1) Percentage increase in household income. The price approved by the AH administrator at which the seller acquired the property shall be the base price. The base price shall be multiplied by 100% plus the percentage increase in the COAH uncapped median income by family size for Ocean County from the time of acquisition of the property to the date that notice of intent to sell is given to the AH administrator. For example, if the base price is $30,000 and the median income at the time of the initial acquisition is $32,000 and at the time of the resale transaction the median income has increased 25% to $40,000, then the resale price is as follows:

\[
\frac{100 + 25}{100} = 1.25
\]

\[
30,000 \times 1.25 = 37,500
\]

(2) Improvements. In addition, the seller shall be entitled to add to the selling price of the unit the cost of an eligible capital improvement to the affordable housing unit which, pursuant to N.J.A.C. 5:92-12.8, renders the unit suitable for a larger household.

(3) Upon request of an owner of an affordable housing unit, the AH administrator shall consider within 30 days whether to grant prior approval of an improvement and to approve a specific dollar amount up to the amount actually expended for that improvement.

N. Exempt sales.

(1) The following transactions shall be deemed non-sales for the purpose of this article. The owner of the affordable unit shall be entitled to a statement of exemption from the AH administrator upon application.

(a) Transfer of an affordable housing unit between husband and wife.

(b) Transfer of ownership of an affordable housing unit between former spouses as a result of a judicial decree, judgment or order of divorce, but not including sales to third parties.

(c) Transfer of ownership of an affordable housing unit as a result of inheritance.

(d) Transfer of ownership of an affordable housing unit through an order of the Superior Court.
A grant of exemption shall not eliminate the resale control restriction set forth in these regulations.

O. Rental increases. All rerental transactions shall be administered by the AH administrator. The rents of affordable housing units may increase annually based on the percentage increase in median income for the Ocean County housing region as determined from the uncapped Section 8 income limits published by HUD, or other recognized standard adopted by the COAH that applies to the rental housing unit.

P. Rental of low- and moderate-income sales unit. No owner of an affordable housing unit may lease the unit to a tenant without prior written approval of the AH administrator. Such approval shall not be granted except when justified by particular and unusual circumstances. An owner seeking such approval shall submit a written request to the AH administrator setting forth the particular circumstances of the case, including the reasons for the request to rent, the proposed duration of the tenancy and certification that the proposed tenant is a qualified low or moderate income household. In the event the AH administrator approves the request, it shall notify the owner of the unit. The owner shall rent the unit only to a qualified low or moderate income tenant for the period approved by the AH administrator at a rent affordable to a low or moderate income tenant, whichever is applicable.

Q. Conversion of rental units to sales units. Rental units may be converted for sale as condominium, cooperative or fee simple units, but any sale of converted units shall continue to be restricted to persons meeting the income eligibility standards as set forth in this article unless COAH requires otherwise. No rental unit which is part of the rental component of the Township's Housing Element and Fair Share Plan shall be converted to a condominium, cooperative or sale unit without approval of the Court.

R. Exemption from rent control ordinances. All rental units, both market and affordable, shall not be subject to any rent control ordinance which may be adopted in the Township of Toms River during the time period in which affordable housing price controls are effective.

S. Duration of controls.

(1) Except as otherwise provided in these regulations, all units for sale or resale subject to the provisions of this article shall be subject to resale and rental controls for a period of 30 years from the date of acquisition of the unit by the initial purchaser or lessee.

(2) All units for owner-occupied rehabilitation subject to the Toms River Township Housing Rehabilitation Program shall be subject to affordability controls for a period of six years. Renter-occupied rehabilitated housing units that are improved to code standards shall be subject to affordability controls for at least 10 years.

(3) All lower-income dwelling units shall be covered by covenants to ensure that in all initial sales and rentals, and in all subsequent resales and rerentals, the units will continue to remain available and affordable to the lower-income households for which they were intended for the period specified in this subsection in accordance with the requirements and standards established by COAH and the Uniform Housing Affordability Controls (“UHAC”). N.J.A.C. 5:80-26.1 et. seq.
T. Expiration of controls. The restrictive covenant governing the deeds of the low- and moderate-income units shall include an option permitting sale of the affordable unit in accordance with N.J.A.C. 5:93-9.3 through 9.9.

(1) The Township reserves the right, in its sole discretion, to extend affordability controls on any unit which has affordable housing controls that are about to expire, in accordance with UHAC regulations, including N.J.A.C. 5:80-26.1, et. seq., including section 26.21 for the implementation of the 95/5 option.

U. Foreclosure.

(1) A judgment of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by state and/or federal law shall extinguish controls on affordable housing units, provided that there is a compliance with N.J.A.C. 5:93-9.13. Notice of foreclosure shall allow the Township, the Department of Community Affairs, the Housing and Mortgage Finance Agency or a nonprofit organization to purchase the affordable housing unit at a maximum permitted sales price and maintain it as an affordable unit for the balance of the intended period of control.

(2) In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay the Township any surplus funds but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including the cost of foreclosure.

V. Second mortgages. No second mortgage shall be placed upon the property without the prior written approval of the AH administrator. In determining whether to grant an approval for the second mortgage, the AH administrator shall consider the need for the second mortgage and the impact that the second mortgage shall have upon the ability to maintain the unit as a low- and moderate-income unit. Under no circumstances shall a foreclosure of a second mortgage constitute grounds for eliminating the resale controls provided for in this regulation. Prior written approval shall be denied unless second mortgages are specifically authorized by COAH regulations and the application is consistent with those regulations.

W. Capital improvements. Property owners of single-family, owner-occupied housing may apply to the AH administrator for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the AH administrator if an increase in the maximum sales price is sought.

X. Sale of personal items. Items of personal property which are not permanently affixed to the unit (e.g., refrigerator, freezer, washer, dryer) and which were not included when the affordable housing unit was purchased may be the subject of separate negotiations between the parties subsequent to the signing of the contract for the purchase of the house. Any agreed price for the purchase of any item or items of personal property shall be reasonable considering the original cost, nature, age and condition of the item. The price to be paid for items of personal property shall not be used as a mechanism to
avoid or circumvent the limitations on the resale price of unit itself. In no event shall the right to purchase the unit be conditioned upon the buyer's willingness to agree to purchase any item or items of personal properties of the seller.

Y. Certificate of occupancy.

(1) No certificate of occupancy for a low or moderate income unit shall be issued until the developer shall have submitted and have approved by the Township Attorney a deed restriction encompassing all the provisions of these regulations.

(2) No certificate of occupancy shall be issued for the resale of a low or moderate income unit unless the AH administrator shall certify that the resale complies with the terms of these regulations.

(3) No low- and moderate-income unit may be occupied by an initial purchaser or resale purchaser without a certificate of occupancy.

Z. Waiver. In the event of a special hardship or in the event that a minor technical modification of these regulations is necessary to effectively implement the policy of this article, the AH administrator may waive or modify those regulations relating to occupancy selection, sale or resale prices, or income eligibility standards, provided that such waiver of modification is consistent with the intent of these regulations and the Land Use and Development Regulations; and does not violate COAH policy or regulation or any statute.

§ 348-11.4 Affordable accessory apartments.

A. Notwithstanding any provision of the Land Use and Development Regulations Ordinance to the contrary, affordable accessory apartments shall be permitted in the R-800, RR, R-400C and R-400 Zoning Districts. The affordable accessory apartment shall be located within a detached, owner-occupied single-family dwelling and on a lot that otherwise conforms to the bulk requirements of the zoning district which it is located.

B. For the purpose of this section, the definition an "affordable accessory apartment" shall be defined as a self-contained residential dwelling unit with a kitchen, complete sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low- or moderate-income household in accordance with the applicable provisions of the substantive rules of the New Jersey Council On Affordable Housing (COAH) as stated in N.J.A.C. 5:93-1 et seq.

C. Conditions.

(1) All affordable accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes and are subject to all applicable provisions of § 348-11.3 exclusive of § 348-11.3E which requires specific bedroom distributions.

(2) The affordable accessory apartment shall be rented only to a household which is either a low-or moderate-income household at the time of initial occupancy of the unit.
The affordable accessory apartment shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to low- or moderate-income households.

Rents of affordable accessory apartments shall be affordable to low- or moderate-income households in accordance with the applicable provisions as stated in N.J.A.C. 5:93-7.4 of COAH's substantive rules and shall specifically include an allowance for utilities in accordance with N.J.A.C. 5:93-7.4(f).

The maximum number of affordable accessory apartments to be developed in the Township under the provisions of this section shall be 10.

There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the affordable accessory apartment is located running with the land and limiting its subsequent rental or sale within the requirements of Subsections C and D.

Each affordable accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom.

The affordable accessory apartment shall have a separate door with a private entrance.

There shall be a minimum of two on-site parking spaces provided exclusively for the affordable accessory apartment. These spaces will be in addition to the number of required spaces for the existing residential dwelling unit.

The affordable accessory apartment program shall be affirmatively marketed in accordance with the provisions of N.J.A.C. 5:93-11 and § 348-11-7.

In the case of an affordable accessory apartment created illegally or without proper permits which the property owner desires to legitimize as an affordable accessory apartment under this section, all criteria set forth in the section shall apply, except that no subsidy shall be provided by the Township of Toms River.

D. Administration of the affordable accessory apartment program. The designated AH administrator of the Township of Toms River shall administer the affordable accessory apartment program in accordance with the following:

(1) The AH administrator shall be responsible for all administrative aspects of the affordable accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions, monitoring reports and affirmative marketing.

(2) The AH administrator shall only deny an application for an affordable accessory apartment if the project is not in conformance with COAH's requirements and/or provisions of this section. All denials shall be in writing with the reasons clearly stated.
In accordance with N.J.A.C. 5:93-5.9(a)2, the Township of Toms River shall provide $10,000 to subsidize physical creation of an affordable accessory apartment conforming to the requirements of this section. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Township of Toms River ensuring that the subsidy shall be used to create the accessory apartment and the apartment shall meet the requirements of this section and COAH regulations.

E. Application procedures. Each application for the creation of an affordable accessory apartment shall submit the following information to the AH administrator:

1. A sketch of floor plan(s) showing the location, size and relationship of both the affordable accessory apartment and the primary dwelling within the building.

2. Rough elevations showing the modification of any exterior building facade to which changes are proposed.

3. A site development sketch showing the location of the existing dwelling and other existing buildings, all property lines, along with the minimum building setback lines, the required parking spaces for both dwelling units and any natural or man-made condition which might affect construction.

§ 348-11.5 Administration of affordable housing program.

A. Housing Affordability Services (HAS) will be the agency under contract with the Township of Toms River to administer the affordable housing units. HAS maintains the responsibility to advertise, income qualify low- and moderate-income households; to place eligible households in low- and moderate-income units upon initial occupancy; to continue to qualify households for reoccupancy of units as they become vacant and to enforce the terms of the deed restriction. The Township of Toms River and/or HAS will provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord-tenant law. In addition, the Township of Toms River shall designate that the AH administrator and/or a full time housing coordinator to act as liaison between COAH, the municipality and HAS. The municipal liaison will be responsible for tracking the progress of affordable housing, fielding inquiries regarding affordable housing from the public and COAH and complying with COAH monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 5:93-12.1.

B. Developers/builders/sponsors of low- and moderate-income housing units may be required by the Township of Toms River to assist in the advertising of affordable units in their respective developments in accordance with the preceding subsections. Such advertising must be coordinated with HAS and is subject to the approval of the Township of Toms River.

C. The Township of Toms River, in conjunction with HAS, may delegate other specific tasks to a developer/builder/sponsor (such as interviewing applicants, prescreening households, etc.), provided that copies of all applications, income verification documents, sales records, etc., of the low- and moderate-income units are returned to HAS for reporting purposes and to aid with future re-sales.
D. Households who live or work in the housing region of Monmouth, Mercer and Ocean Counties may be given preference for the affordable housing units within the municipality. Applicants living outside the housing region shall have an equal opportunity for units after intraregional applicants have been processed. The Township of Toms River intends to comply with N.J.A.C. 5:93-11.7.  

E. The Housing Affordability Service (HAS) shall comply with monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 5:93-12.1, as well as required in the Settlement Agreement entered into and approved by the Superior Court of New Jersey, Ocean County, on December 31, 2016, In the Matter of the Township of Toms River for a Judgment of Compliance of Its Third Round Housing Element and Fair Share Plan, Docket No. OCN-L-001867-15.  

§ 348-11.6 Affirmative marketing.  

A. The AH administrator shall develop and implement an affirmative marketing program for affordable housing units that shall apply to all developments that contain low- and moderate-income housing units and shall also develop and implement affirmative marketing programs for the accessory apartments program and the write-down/buy-down program.  

B. The affirmative marketing plan is a regional marketing strategy designed to attract income-eligible households of all majority and minority groups, regardless of sex, age or number of children, for the purpose of buying or renting affordable housing units. The plan shall address the requirements of N.J.A.C. 5:93-11. in addition, the plan prohibits discrimination in the sale, rental, financing, etc., on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. The Township of Toms River is in the housing region consisting of Monmouth, Mercer and Ocean Counties. The affirmative marketing plan is a continuing program and shall meet the following requirements:  

1. All newspaper articles, announcements and request for applicants for low- and moderate-income housing shall appear in the following daily regional newspaper(s):  

(a) The Asbury Park Press and Ocean County Observer.  

2. The initial advertising of affordable housing shall take the form of at least one press release and one paid display advertisement in the above newspaper(s). At a minimum, the paid display advertisement shall include the following:  

(a) Street address of units.  

(b) Directions to housing units.  

(c) Number of bedrooms per unit.  

(d) Size of units.  

(e) Prices or rents of units.  

(f) Income range for qualifying households.  

(g) Location of applications.
(h) Telephone number and office hours for obtaining information and requesting applications.

(3) Applications must be mailed to prospective applicants upon request.

(4) Public service announcements shall be made through the use of the following radio and/or cable television stations broadcasting throughout the regions:

(a) Cablevision of Monmouth, Comcast Cablevision and Adelphia Cable.

(5) Announcements, request for applicants and newspaper articles may be placed in the following neighborhood-oriented weekly newspapers, religious publications and organizational newsletters within Monmouth, Mercer and Ocean Counties as needed:

(a) The Co-Star.

(6) The following is the location of applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program, including specific employment centers within the region:

(a) Municipal building.

(b) Municipal library.

(c) Developer's sales/rental office on site.

(d) Senior center.

(e) Ocean, Monmouth and Mercer County Government Complexes.

(7) The following is a listing of community contact person(s) and/or organization(s) in Monmouth, Mercer and Ocean 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 affordable housing within the region:

(a) Ocean County Community Development.

(b) Monmouth County Community Development.

(c) Mercer County Community Development.

(8) Affordable housing applications, brochures, announcements and/or posters will be forwarded to and posted at the following locations:

(a) Developer's sales office.

(b) Municipal building and library.

(c) Monmouth County Library.

(d) Mercer County Library.

(e) Ocean County Library.

(9) Quarterly informational circulars and applications shall be sent to each of the following agencies for publication in their journals and for circulating among their members:

(a) Board of Realtors in Monmouth County.
(b) Board of Realtors in Mercer County.

(c) Board of Realtors in Ocean County.

(10) The following is a description of the random selection method that will be used to select occupants of low- and moderate-income housing: From the list of qualified applicants, names will be drawn randomly and the applicant contacted.

(11) The affirmative marketing plan for new units shall commence 120 days before the issuance of either temporary or permanent certificates of occupancy. Affirmative marketing shall continue until all low- and moderate-income housing units are initially occupied. Affirmative marketing for existing units shall continue on an as needed basis for as long as affordable units are deed restricted.

§ 348-11.7 Affordable Housing Trust Fund.

A. Establishment of fund. There is hereby established in the Township of Toms River an interest-bearing account known as the "Toms River Township Affordable Housing Trust Fund," which shall have as its primary purpose support of low- and moderate-income housing in the Township of Toms River and the region in which it is included, in furtherance of the mandates of the Constitution of the State of New Jersey. Trustees of the fund shall be the Township Committee of the Township of Toms River, and, in accordance with the provisions of N.J.A.C. 5:92-18.17 and 18.18, the Superior Court of the State of New Jersey may, upon notice to the Township Clerk, direct the disbursement of development fees.

B. General provisions.

(1) All moneys generated through the applicable provisions of § 348-11.1 et seq. for the purpose of supporting low- and moderate-income housing shall be paid into the fund.

(2) The Township Committee, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purpose of the fund.

(3) The Township Committee, in the name of the fund, shall provide for the disbursement of funds for the purpose of achieving the purpose set forth in § 348-11.1 above, including but not limited to the implementation and administration of a program and/or program activities which shall provide for the construction of and/or rehabilitation of dwelling units or alternative housing accommodations for persons of low or moderate income.

(4) The Township Committee shall endeavor to provide for the disbursement of said funds in such a manner that, to the extent feasible, controls on affordability shall be consistent with the provisions of § 348-11.3 above, except that, in the case of owner-occupied housing and rehabilitation assistance, affordability shall be presumed based on unit occupancy by a low- or moderate-income household, and controls on continuing affordability and resale shall be consistent with the provisions of § 348-11.3 and the initial pricing of affordable units shall be consistent with § 348-11.3 above.

C. General powers. The Township Committee, acting as trustees of the fund, shall have the following powers:
(1) To appoint a person or organization as Housing Officer to administer the fund on its behalf and at its direction.

(2) To use the money generated from the fund to:

(a) Transfer funds to other municipalities or other public entities in the region to provide for the regional housing needs through any method approved by the court.

(b) Provide funds for costs of administering the fund.

(c) Provide funds for planning and administering any other method of advancing affordable housing.

D. Termination of fund.

(1) The Township may terminate the fund when it is no longer needed for low- and moderate-income purposes. At that time, any funds on hand not needed to retire outstanding debt or to pay outstanding bills shall be transferred to an organization within the State of New Jersey for the purpose of providing low- or moderate-income housing, first, in the region of which Toms River Township is a part, and second, within the state.

(2) Any property owned by the Township which was purchased with funds contributed for low- and moderate-income purposes shall be sold at market rates, and the net proceeds shall be transferred to an organization or agency for the continued benefit of low- and moderate-income families in the region.

§ 348-11.8 Rehabilitated dwelling units.

Assistance provided for the rehabilitation of affordable units shall incorporate controls on continuing affordability and resale/rerental as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Terms and Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner-Occupied One-Family</td>
<td></td>
</tr>
<tr>
<td>Interest rate (accrues years 1 through 6)</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>0%</td>
</tr>
<tr>
<td>Moderate</td>
<td>2%</td>
</tr>
<tr>
<td>Payments</td>
<td>Deferred</td>
</tr>
<tr>
<td>Years 1 through 6 upon sale or rental to other than low- or moderate-income household</td>
<td>100% of principal and accrued interest, if any, is due</td>
</tr>
<tr>
<td>Years 7 through 9 upon sale or rental to other than low- or moderate-income household</td>
<td>75% of original principal and accrued interest, if any, is due in year 7, and an additional 25% is forgiven each year</td>
</tr>
<tr>
<td>Year 10 and beyond sale or rental to other than low- or moderate-income household</td>
<td>No repayment</td>
</tr>
<tr>
<td>Owner-Occupied Two- to Four-Family</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td><strong>Interest rate</strong></td>
<td>0%</td>
</tr>
<tr>
<td><strong>Payments</strong></td>
<td>Deferred</td>
</tr>
<tr>
<td>Years 1 through 6 upon sale or rental to other than low- or moderate-income household</td>
<td>100% of original principal</td>
</tr>
<tr>
<td>Years 7 through 10 upon sale or rental to other than low- or moderate-income household</td>
<td>90% of original principal is due in year 7, and 10% additional is forgiven for each year after year 7 to year 10</td>
</tr>
<tr>
<td>Year 11, upon sale or rental to other than low- or moderate-income household</td>
<td>40% of original principal is due</td>
</tr>
<tr>
<td>Year 12, upon sale or rental to other than low- or moderate-income household</td>
<td>20% of original principal due</td>
</tr>
<tr>
<td>Year 13 and beyond, upon sale or rental to other than low- or moderate-income household</td>
<td>No repayment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investor-Owned Units</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Interest rate (accrues in years 1 through 5)</strong></td>
<td>6%</td>
</tr>
<tr>
<td><strong>Payments</strong></td>
<td>Deferred</td>
</tr>
<tr>
<td>Years 1 through 5, upon sale or rental to other than low- or moderate-income household</td>
<td>100% of original principal and all accrued interest</td>
</tr>
<tr>
<td>Years 6 through 10, upon sale or rental to other than low- or moderate-income household</td>
<td>100% of original principal and 80% of accrued interest is due in year 6, and additional 20% of interest is forgiven for each year after year 6</td>
</tr>
<tr>
<td>Year 11, upon sale or rental or other than low- or moderate-income household</td>
<td>Loan is due, except all interest is forgiven, and allocated portion of proceeds expended on low-income units is forgiven</td>
</tr>
<tr>
<td>Years 12 through 14, upon sale or rental to other than low- or moderate-income household</td>
<td>75% of remaining principal is due in year 12, and an additional 25% is forgiven for each year after year 12</td>
</tr>
<tr>
<td>Year 15 and beyond, upon sale or rental to other than low- or moderate-income household</td>
<td>No repayment</td>
</tr>
</tbody>
</table>
§ 348-11.9 Development fees to fund affordable housing.

A. Purpose.

(1) 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.

(2) Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-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 a COAH-approved spending plan may retain fees collected from nonresidential development.

(3) This section establishes standards for the collection, maintenance and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

B. Basic requirements.

(1) This section shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.

(2) The Township of Toms River shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

C. Definitions. The following terms, as used in this section, shall have the following meanings:

**AFFORDABLE HOUSING DEVELOPMENT**

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 one-hundred-percent affordable development.

**COAH or THE COUNCIL**

The New Jersey Council on Affordable Housing, established under the Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

**DEVELOPER**

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.
DEVELOPMENT FEE

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

EQUALIZED ASSESSED VALUE

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 §§ 1, 5 and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).

GREEN BUILDING STRATEGIES

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.

D. Mandatory residential development fee.

(1) Residential development, except for residential development specifically addressed in Subsection D(2) below, shall pay a fee of 1.5% of the increase in equalized assessed value (EAV) of the residential development; provided, however, in the event an increase in density has been approved pursuant to N.J.S.A. 40:55D-70d(5), or permitted pursuant to a rezoning subsequent to March 9, 2010, a fee of 6% of the equalized assessed value shall be paid for each dwelling unit over the number of units permitted as a matter of right or permitted prior to rezoning. In those cases where new lots are created through the subdivision of land, the increase in EAV shall be based on the raw land value prior to subdivision as compared to the EAV assigned to the land value and improvements on each lot.

(2) Exemptions from residential mandatory development fees. The following types of residential development shall be exempt from the requirement to pay a residential mandatory development fee:

(a) Inclusionary affordable housing developments or one-hundred-percent affordable housing developments.

(b) Developments where the developer is providing for the construction of the affordable units elsewhere in the Township.

(c) Developments where the developer has made a payment in lieu of on-site construction of affordable units.

(d) On an existing lot, either vacant or improved, the new construction, expansion, improvement, renovation, rehabilitation, reconstruction or replacement of an existing detached single-family dwelling resulting in an increased EAV of $50,000 or less, in any two-year period. An exemption from the required development fee of 1.5% pursuant to this subsection shall be calculated on the basis of the increase in the EAV as set forth in § 348-11.9D(1) herein. For increases in EAV of less than $50,000 but greater than $25,000, there shall be a flat-fee payment of $300. For increases in EAV in excess of $50,000, the fee shall be $300 plus 1.5% of the increase that exceeds $50,000.
(e) The repair, reconstruction or replacement of a dwelling unit or dwelling units damaged or destroyed by fire or natural disaster subject to § 348-11.9D(2)(d) herein.

E. Nonresidential development fees.

(1) Imposed fees.

(a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.

(b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development:

(a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the development fee of 2.5%, unless otherwise exempted below.

(b) The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

(c) Nonresidential 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 Nonresidential Development Certification/Exemption form. Any exemption claimed by a developer shall be substantiated by that developer.

(d) A developer of a nonresidential development exempted from the nonresidential 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 nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.

(e) If a property which was exempted from the collection of a nonresidential 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 Toms River as a lien against the real property of the owner.

F. Collection procedures.

(1) 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.

(2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Nonresidential Development Certification/Exemption, to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

(3) 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.

(4) Within 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.

(5) 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.

(6) Within 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.

(7) Should the Township of Toms River fail to determine or notify the developer of the amount of the development fee within 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 § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).

(8) Fifty percent of the development fee shall be collected by the Zoning Officer at the time of issuance of the zoning permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the zoning permit and that determined at issuance of the certificate of occupancy.

(9) Appeal of development fees.

(a) 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 Toms River. 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, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.  

(b) A developer may challenge nonresidential 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 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township of Toms River. 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, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.  

G. Affordable Housing Trust Fund.  

(1) Development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls shall be deposited in the Township of Toms River's existing, COAH-approved affordable housing trust fund maintained by the Chief Financial Officer.  

(2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:  

(a) Payments in lieu of on-site construction of affordable units;  
(b) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;  
(c) Rental income from municipally operated units;  
(d) Repayments from affordable housing program loans;  
(e) Recapture funds;  
(f) Proceeds from the sale of affordable units; and  
(g) Any other funds collected in connection with the Township of Toms River's affordable housing program.  

(3) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Court.  

H. Use of Funds.  

(1) The expenditure of all funds shall conform to a spending plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Township of Toms River's fair share obligation and may be 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 or regional housing partnership programs, conversion of existing nonresidential 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. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.

(2) Funds shall not be expended to reimburse the Township of Toms River for past housing activities.

(3) At least 30% 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 30% or less of median income by region.

(a) 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.

(b) Affordability assistance to households earning 30% 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 30% or less of median income.

(c) 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.

(4) The Township of Toms River 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. 5:96-18.

(5) No more than 20% 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% 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 or the Court'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.

I. Monitoring. The Township of Toms River shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls.
controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans and any other funds collected in connection with the Township of Toms River's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or approved by the Court. All monitoring reports shall be completed on forms designed by COAH.

J. Ongoing collection of fees. The ability for the Township of Toms River to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Township of Toms River has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification and has received COAH's approval of its development fee ordinance. If the Township of Toms River fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification or judgment of compliance, 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 § 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The Township of Toms River 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 Toms River retroactively impose a development fee on such a development. The Township of Toms River shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

§ 348-11.10 Uniform affordable housing production.

A. Residential development. Pursuant to the applicable rules and regulations of COAH, residential developments of six (6) or more lots or units shall be required to build the applicable number of affordable units (as defined by COAH) on site. Any residential application in any zoning district in the Township that involves the development of five or more lots or units, that has not yet received preliminary major subdivision or preliminary site plan approval, shall set aside 20% of for sale units or 15% for rental units, (rounded to the next higher number if .05 or greater) for affordable housing as defined by the applicable standards set forth in applicable COAH regulations. For those residential developments that were approved subsequent to the passage of the Township's Mandatory Development Fee Ordinance, No. 3933-05, but prior to the passage of the instant ordinance, those developments will remain subject to the Mandatory Development Fee Ordinance.

B. Nonresidential development. Any nonresidential development application that has not yet received preliminary major subdivision or preliminary site plan approval will be required to make a contribution in accordance with the Mandatory Development Fee Ordinance, No. 3933-05 at the rate as set forth therein.

C. Division for low and moderate affordable housing. The affordable housing units to be produced pursuant to these regulations shall be allocated as follows: Where only one affordable housing unit is required, that housing unit shall be available to a low-income individual or household; where more than one affordable housing unit is required, the total number of units shall be divided equally between low- and moderate-income individuals or households; and where the total number of affordable housing units
required is an odd number, the last housing unit shall be available to a low-income individual or household.

D. Compliance with COAH rules and regulations. All affordable housing units shall strictly comply with the policies and regulations established by COAH, including but not limited to phasing, bedroom distribution, controls on affordability, range of affordability, affirmative marketing and income qualifications.

E. Affordable housing compliance mechanisms.

(1) All major subdivisions or site plan approvals involving eight or more lots or units of residential development must provide the affordable housing units on site.

(2) For major subdivision or site plan approvals involving seven or fewer lots or units of residential or involving nonresidential development and further provided the applicant obtains advanced written permission from the Toms River Township Council, the applicant may choose to satisfy its affordable housing growth share obligation through the following mechanisms permitted in COAH's rules:

(a) On-site housing production of affordable housing;

(b) Off-site affordable housing production within the Township;

(c) The purchase of an existing market rate home at another location in the Township and its conversion to an affordable price-restricted home in accordance with COAH criteria, regulations and policies; or

(d) Contributing a payment in lieu of providing affordable housing as set forth below:

[1] Payments in lieu of the construction of affordable housing shall be negotiated with the Township Council, but shall in no case be less than $150,000 per unit unless the cost of the Township independently developing an affordable housing unit within the Township is less. Negotiated payments in lieu of construction of affordable housing may exceed $150,000 but shall not exceed the cost of the Township independently developing an affordable housing unit within the Township.

[2] Regardless of the mechanism by which the applicant has been approved to satisfy the required number of affordable housing units, any development or portion thereof that generates a fraction of an affordable housing unit as all or a portion of the obligation shall be required to make a payment in lieu of construction for that fraction of a unit. The payment shall be no greater than the fractional prorated cost of constructing an affordable housing unit in the Township.

F. Developers shall pay 50% of the calculated payment-in-lieu fee to the Township of Toms River at the issuance of building permits. At the issuance of each individual certificate of occupancy (if temporary), 25% of the per unit required fee shall be paid. The balance of the fee shall be paid at issuance of final certificate of occupancy for each unit.