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November 14, 2014

Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 970
Trenton NJ 08625-0970

Re: Pending Motion in aid of litigant's rights in:

In the Matter of the Adoption of N.J.A.C. 5:96 and N.J.A.C. 5:97 by the New Jersey Council on Affordable Housing, Docket No. 67,126

To the Honorable the Chief Justice and Associate Justices of the New Jersey Supreme Court:

Appellant-Respondent New Jersey Builders Association (hereinafter "NJBA") submits this letter brief in lieu of more formal brief in response to the motion by the Fair Share Housing Center ("FSHC") in aid of litigant's rights.

The NJBA supports the motion of the FSHC. For the reasons set forth below, the remedy is particularly appropriate. It should be implemented in a manner that best effectuates its purposes. Among other things, it should not be undermined by the addition of terms or conditions that have the effect of

granting widespread immunity to municipalities that have sheltered themselves under the protective umbrella of COAH jurisdiction, in many instances for as long as a decade, without actually providing additional affordable housing during that period.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

The factual and procedural background underlying the present proceeding is carefully set forth in the opinions of the Appellate Division at 416 N.J. Super. at 472-76, and of this Court at 215 N.J. at 589-98. The motion brief of the FSHC also carefully sets forth a concise summary of the 15-year long procedural and factual background underlying this matter. A summary of the proceedings most pertinent to the pending motion follows.

On or about December 17, 2013, the FSHC filed a motion with the Appellate Division seeking relief to litigant and, by way of Order dated March 7, 2014, the Appellate Division granted that motion. On or about February 26, 2014, the Office of the Attorney General filed a motion with this Court, on behalf of the Council on Affordable Housing ("COAH"), seeking an extension of the five-month time period for promulgation of new regulations that was previously established by this Court. 215 N.J. at 589-98. By way of Order dated March 14, 2014, this Court decided those motions, granting COAH a generous extension of time, but setting forth specific deadlines for COAH's rulemaking activities, including adoption of new rules by

October 22, 2014, to be published in the November 17, 2014 New Jersey Register. That Order further provided:

> It is further ORDERED that in the event that the Council does not adopt Third Round Rules by November 17, 2014, then this Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builder's remedy" challenges…
>
> ***
>
> It is further ORDERED that from this date the Court is retaining jurisdiction for the sole purpose of entertaining any and all future applications to enforce the judgment of this Court requiring the adoption of new Third Round Rules as prescribed in our decision in In re Adoption of N.J.A.C. 5:96 and 5:97 and the terms of this Order…
>
> (Ma1-9; emphasis added)[1]

As noted in the FSHC motion brief, COAH failed to adopt such new regulations by October 22, 2014. Under the procedures of the Office of Administrative Law, it is foreseeably impossible for COAH to publish adopted rules in the New Jersey Register by November 17, 2014. Thus, COAH has failed to abide by this Court's Order. Under the Court's order, this failure triggers the right to seek further relief. The FSHC has now

[1] "Ma" references herein are to the Appendix of the FSHC accompanying its pending motion.

moved to seek precisely the relief specified in this Court's March 14, 2014 Order.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD GRANT THE FSHC'S REQUEST FOR A REMEDIAL RULING RETURNING MT. LAUREL COMPLIANCE TO THE COURTS.

As noted above, this Court's March 14, 2014 Order provided that, upon COAH failing to meet the rulemaking deadlines set forth in that Order:

> [T]his Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builder's remedy" challenges…

The FSHC has filed just such a motion and, for the reasons advanced in FSHC's motion brief, its motion should be granted. While the NJBA has nothing to add to the FSHC arguments in support of granting the relief the FSHC seeks, the NJBA does wish to offer the following comments as to trial court proceedings should this Court grant the FSHC request to return exclusionary zoning disputes to the trial courts.

POINT II

THE RELIEF SOUGHT BY FSHC IS PARTICULARLY APPROPRIATE BECAUSE IT FOLLOWS FROM THE TERMS OF THE FAIR HOUSING ACT.

The Court should now put an end to the paralyzing uncertainty that has surrounded Mt. Laurel compliance for the past 15 years. Low and moderate income households needing housing, the ultimate victims of COAH's inaction, have been in constitutional "limbo" throughout all these years.

They have been victimized because municipalities have been unwilling to approve inclusionary projects, for fear that they might accommodate "too much" housing for low and moderate income households and permit "too many" poor people to move into town. They have been victimized because, in the absence of valid and constitutional regulations, there has been no forum to determine municipal housing obligations and adjudicate municipal compliance. They have been victimized because their natural advocates – both builders and civil rights organizations – have been stymied by the fact that municipalities have been able to shelter themselves from exclusionary litigation under the jurisdiction of COAH, in many instances for more than a decade,

without having to actually provide any additional low or moderate income housing.

The harm has extended to the entire economy of New Jersey. Under COAH's now-invalidated "growth share" methodologies, all development, both residential and nonresidential, potentially created housing obligations, and all development was therefore affected by this cloud of uncertainty. Because they could not know what affordable obligations their projects might trigger, developers have been unable to rationally plan for any residential or nonresidential development. Moreover, municipalities have been reluctant to approve any residential or non-residential development for fear that it will trigger additional housing obligations. It is high time to end that uncertainty, and thereby to move toward actual creation of realistic housing opportunities, and elimination of this damper on the State's economy.

The remedy suggested in this Court's March 14, 2014 Order ("actions may be commenced on a case-by-case basis before the Law Division or in the form of 'builder's remedy' challenges"), sought through the FSHC motion, would accomplish this purpose.

A. BECAUSE THERE IS NO "REVIEW AND MEDIATION PROCESS" TO BE EXHAUSTED UNDER THE FAIR HOUSING ACT, EXCLUSIONARY ZONING CASES CAN PROPERLY PROCEED FORWARD IN THE TRIAL COURTS.

The remedy described in this Court's March 14, 2014 Order is the simplest and most natural remedy under the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"). That statute already recognizes the continuing role of the judiciary in resolving exclusionary zoning disputes. For example, municipalities have been free, during the past 15 years, to file declaratory judgment actions in the trial courts asking the court to address issues related to compliance with municipal Mt. Laurel obligations, N.J.S.A. 52:27D-313, if those declaratory judgment actions were filed within two years of the filing of a housing element with COAH. Many municipalities have done so. The towns that have chosen instead to remain within COAH's "protective umbrella" have not done so.[2]

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[2] See map of sites in various categories, including municipalities with exclusionary zoning court cases at http://www.nj.gov/dca/services/lps/hss/transinfo/reports/statusmap.pdf. See also spreadsheet of such "court towns" at http://www.nj.gov/dca/services/lps/hss/archive.html (Municipal Participation in the Third Round, court town tabs (from COAH website, last visited November 13, 2014).

Further, the FHA allows for exclusionary zoning suits by builders and other housing advocates in a variety of contexts. For example, even municipalities that have been granted substantive certification by COAH (i.e., approval of a housing element and fair share plan), are subject to suit in the trial courts per the FHA. N.J.S.A. 52:27D-317. And as noted above, towns that filed housing plans with COAH, but did not file petitions for substantive certification within two years, are likewise subject to suit. N.J.S.A. 52:27D-313(a).

Indeed, even towns that have filed plans with COAH and petitioned for substantive certification may be sued in the trial courts per the FHA, but the statute imposed an exhaustion of administrative remedy requirement, N.J.S.A. 52:27D-316, the notion being that COAH would adopt lawful regulations and then conduct a "review and mediation" process to analyze fair share plans, and resolve objections concerning such plans. As made clear by the FSHC motion, that is not happening, and COAH has declined to adopt rules within its Court-ordered timeframe. Thus, the question is whether parties remain obligated to exhaust the alleged administrative remedy before COAH or, conversely, may those parties now file exclusionary zoning

complaints without regard to any such exhaustion requirement, so that the Mt. Laurel obligation can be satisfied in the trial courts.

The Court should clarify that parties need not exhaust the review and mediation process of COAH prior to proceeding to trial, as otherwise provided in N.J.S.A. 52:27D-316(b), because that administrative remedy is futile. More specifically, this Court should confirm that all parties - nonprofit housing organizations, builders, and municipalities alike - are now free to seek municipal compliance with Mt. Laurel obligations in the courts without regard to COAH. This remedy would move in a direct way toward lifting the parties out of their protracted constitutional limbo. It would foster the actual creation of low and moderate income housing.

There would be nothing extraordinary about this course of action. It is well-established that there is no need to exhaust administrative remedies if the pursuit of those remedies would be "futile or illusory." See AMG Associates v. Township of Springfield, 65 N.J. 101, 109 (1974); Verona, Inc. v. Mayor of the Borough of West Caldwell, 49 N.J. 274, 285 (1967); Deal Gardens, Inc. v. Board of Trustees, 48 N.J. 492, 497 (1967);

Rumana v. County of Passaic, 397 N.J. Super. 157, 174 (App. Div. 2007). Pursuit of an administrative remedy is futile if the purported remedy is not "certainly available, clearly effective and completely adequate to right the wrong complained of." See Brunetti v. New Milford, 68 N.J. 576, 589 n. 12 (1975)(emphasis added); Matawan Borough v. Monmouth County Board of Taxation, 51 N.J. 291, 297 (1968); Patrolman's Benevolent Association v. Montclair, 128 N.J. Super. 59, 63 (Ch. Div. 1974).

It is also well-established that the futility doctrine is applicable to State agencies. See Rumana, supra, 397 N.J. Super. at 174-75 (holding that exhaustion of administrative remedies through the Department of Community Affairs, Division of Local Government Services and Local Finance Board, would be futile and was not required before judicial review of whether approval of Passaic County's budget violated the Local Budget Law); East Cape May Associates v. New Jersey Department of Environmental Protection, 300 N.J. Super. 325, 339 (App. Div. 1997) (holding that "no further resort to administrative remedies would be useful and none is therefore necessary" concerning a New Jersey Department of Environmental Protection regulation, as it existed at the time of appeal).

A ruling from this Court as to the exhaustion of administrative remedy issue would remove any asserted procedural bar to judicial proceedings. Cf. Wayne Property Holdings, L.L.C. v. Wayne, 427 N.J.Super. 133 (App. Div. 2012); K. Hovnanian at Cedar Grove IV, LLC, v. Tp. of Cedar Grove, Dkt No. A-0425-12T3 , 2014 WL 2560600 (App. Div. June 9, 2014), certif. denied, 219 N.J. 629 (2014), opinion archived at http://njlaw.rutgers.edu/collections/courts/appellate/a0425-12.opn.html.

The Wayne and Cedar Grove cases, while requiring exhaustion of administrative remedies, were decided at such time as COAH offered a possible (or at least theoretical) administrative remedy. Indeed, the linchpin of the Appellate Division opinion in Cedar Grove was COAH's introduction of new rules immediately prior to oral argument in that matter. Said the Appellate Division in its Cedar Grove opinion:

> We note that on April 30, 2014, COAH adopted proposed rules, thus indicating that COAH is a functioning administrative agency, despite plaintiff's claims to the contrary. At the present time, we have no reason to assume COAH will not meet the Supreme Court's deadline for final adoption of the revised third-round rules and proceed with mediation and review of housing plans in light of those rules. We therefore reject plaintiffs' argument that it should not be required to

exhaust its administrative remedies before COAH. [emphasis added]

Since that time, COAH has declined to adopt the regulations that had been introduced, or any other regulations.

In sum, COAH does not have compliant regulations and is therefore incapable of engaging in a review of municipal housing plans to determine whether they conform to its regulations. Thus, any attempt to exhaust the agency's "review and mediation process" would in fact be futile under these standards. Exclusionary zoning disputes can only be resolved in the trial courts.

B. ANY BLANKET REQUESTS FOR "IMMUNITY" SHOULD BE REJECTED, AND ALL CASE MANAGEMENT DECISIONS SHOULD BE LEFT TO THE TRIAL COURTS.

When FSHC previously sought this remedy, municipal parties argued before this Court that, if exclusionary zoning matters are to be addressed by the courts, municipalities should be issued "immunity" from lawsuits on a blanket basis. For example, in its brief dated June 30, 2014, filed with this Court, the League of Municipalities suggested an initial period of complete, blanket immunity for 90 days, within which a town could decide whether it wished to file a declaratory judgment

complaint, followed by an indefinite, possibly perpetual, period of immunity upon filing a declaratory judgment complaint requesting a judgment of repose as a form of relief. Granting such widespread immunity would simply perpetuate and extend the 15 year period of delay that has already surrounded the process. Any such requests for blanket immunity should be rejected.

In support of the concept that immunity from suits is lawful and prudent, municipalities have cited the unpublished opinion in the case of K. Hovnanian Shore Acquisitions, L.L.C. v. Tp. of Berkeley, Dkt. No. A-594-01T1, 2003 WL 23206281 (App. Div. July 1, 2003) That opinion notes (at pp. 5, 10) that the "temporary immunity" granted in 2000 was, per court order, to last until one year after COAH's adoption of third round rules, which was then envisioned in 2003. Thus, unless that order was subsequently modified, that order of "temporary immunity," sometimes called a "90 day immunity order," has now been in effect for nearly 15 years. We seriously question whether that "temporary immunity order" would have been issued, or survived appellate scrutiny in 2003, if the courts knew then what they know now - that COAH would fail to do its job for 15 years.

Municipalities have argued, and will presumably again argue, that it would be unfair to "punish" them for their decision to remain within COAH's "protective umbrella" for 15 years without addressing their obligations. Municipalities have asserted that because they engaged in "paper compliance," i.e., they have prepared and filed fair share plans with COAH, ostensibly complying with the illegal regulations COAH has adopted over the years, they should be indefinitely (or perpetually) "immunized" against lawsuits so that the period of limbo can continue in another forum, regardless of whether they have actually created additional housing opportunities.

As this Court held in Mt. Laurel II, fair share housing obligations arise year by year. Towns that are actually required to address their Mt. Laurel obligations after the 15 year hiatus would not be "punished." Complying with the Constitution is not a punishment.

Indeed, towns that truly wished to address their constitutional obligations had obvious options besides remaining under the COAH protective umbrella for 10 years or more, while engaging in nothing more than paper compliance, filing useless "plans" pursuant to illegal rules. Indeed, towns truly wishing

to achieve compliance have always had the option of seeking judicial review of their housing plans by filing declaratory judgment actions in the Law Division, as expressly provided for by the FHA, N.J.S.A. 52:27D-313 (providing that such declaratory judgment actions can be filed if municipalities do so within two years of filing a housing element with COAH). Those proceedings would have resulted in a judgment of compliance. Some towns did just that.

Moreover, even towns that chose not to affirmatively seek judicial review of their plans could have created additional realistic opportunities for low and moderate income housing. Over the past 15 years there has been no dispute over the magnitude of the municipal "prior round" portion of Mt. Laurel obligations, i.e., municipal obligations for the period 1987-99. Indeed, the courts have provided municipalities with limited judgments of compliance based upon their satisfying their prior round obligations. See sampling of such trial court Orders, in NJBA's Appendix, annexed hereto, at NJBAMa1 through 12.

Beyond prior round obligations, municipalities could have acted prudently on the conservative assumption that their fair share housing obligations would increase year by year at the

same annual rate as they had under the first and second COAH rounds, and could have formulated housing plans based upon this conservative assumption. As documented in the FSHC motion brief, legitimate third round obligations utilizing the prior round methodology have been calculated for years by consultants not operating within the COAH confines. Municipalities willing to go beyond this conservative assumption could have planned on the basis of the housing obligations determined under these methodologies. Some such towns have gone well beyond prior round obligations and met all or part of their third round obligations. NJBAMa1 through 12.

However, those municipalities that chose to stay within the COAH "protective umbrella" chose not to actually achieve compliance, preferring instead to remain nestled within COAH, free of any concerns regarding the actual provision of lower income housing.

This Court should therefore be skeptical of the claim that such towns operated "in good faith," always being willing to "voluntarily comply," only to be frustrated by COAH's failure to lawfully undertake its mission. Towns that truly wished to come into compliance with their Mt. Laurel obligations could have

done so voluntarily and sought protection through court proceedings, and some towns did do so.

On a practical level, the past 15 years have confirmed that, where there is nobody scrutinizing a municipality's alleged efforts to come into compliance with the Mt. Laurel doctrine, it simply does not get done. Builders and other litigants with a potential stake in the outcome are incentivized to provide the scrutiny and oversight that will once again require towns to come into compliance with their constitutional obligations. Indeed, this Court recognized that builders have such a useful role in Mt. Laurel proceedings. Mt. Laurel II, 92 N.J. at 279-281.

It must further be stressed that, simply because a builder files a builder's remedy complaint does not mean that a builder acquires a builder's remedy. Such decisions are left up to trial courts. However, a ruling by this Court providing that municipalities are all immunized against Mt. Laurel litigation brought by builders and others would guarantee that there will not be parties with any stake or interest in the outcome, which would itself guarantee nothing but a continuation of the delay

the regulated community has seen for 15 years before COAH, with the only change being the forum in which the delay takes place.

CONCLUSION

The NJBA respectfully urges the Court to grant FSHC's motion in aid of litigant's rights, and NJBA further requests that the Court's Order be consistent with the suggestions provided above.

More specifically, NJBA supports the issuance of the relief suggested in this Court's March 14, 2014 Order, which relief has been requested by the FSHC on its pending motion.

All exclusionary zoning disputes should now be handled by the trial courts. No "exhaustion of administrative remedies" requirements should bar exclusionary zoning litigation, and no "blanket immunity" should be issued to municipalities.

Any and all such case management decisions, including decisions relating to adoption of a third round fair share

methodology per this Court's prior guidelines, should be left to the trial courts.

Respectfully submitted,
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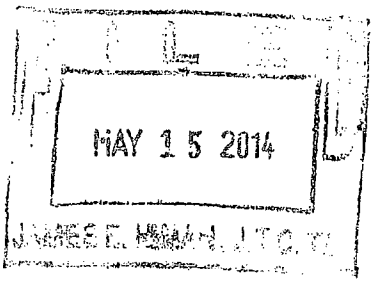

IN THE MATTER OF THE APPLICATION OF THE CITY OF ABSECON FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM MOUNT LAUREL LAWSUITS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO.: ATL-2636-12

CIVIL ACTION – *MOUNT LAUREL*

ORDER GRANTING A PRIOR CYCLE JUDGMENT OF COMPLIANCE AND REPOSE FROM LITIGATION AND A STAY OF ADDITIONAL THIRD ROUND OBLIGATIONS

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, Jeffrey R. Surenian, Esq., appearing, on behalf of Declaratory Plaintiffs, City of Absecon; and the City having adopted Resolution 73-2012 on April 5, 2012 formally committing to comply with its Mount Laurel obligations; and, on April 9, 2012, the City having filed the above-captioned Declaratory Complaint seeking, among other things, (a) immunity from exclusionary zoning lawsuits; and (b) a Second Round Judgment of Compliance and Repose following judicial approval of the City's Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan;" and, on May 11, 2012, Honorable James E. Isman, J.S.C. ("Judge Isman") having entered an Order permitting the Absecon Planning Board to intervene in the City's Declaratory Action;

and Michael Malinsky, Esq. and Michael Fitzgerald, Esq. appearing on behalf of intervening Declaratory Plaintiffs Planning Board of the City of Absecon; and, on November 9, 2012, Judge Isman having issued an Order appointing Hon. L. Anthony Gibson, J.S.C. (ret.) as the Special Master; and, on February 18, 2014, and, the Court having entered a "Consent Order Reflecting Settlement" which, among other things, scheduled a Mount Laurel Fairness and Compliance Hearing (hereinafter "Hearing") to take place on March 20, 2014; and said Consent Order being incorporated herein; and the City having provided sixty (60) days public notice of the Hearing (a) by publishing notice of the Hearing on January 20, 2014 in *The Press of Atlantic City*, the City's legal newspaper of regional circulation; (2) by providing actual notice of the Hearing to a thorough list of COAH Region 6 affordable housing advocates including, but not limited to, Fair Share Housing Center ("FSHC"); (3) by providing actual notice of the Hearing to the current owners of units located on the Visions site; and (4) by providing actual notice of the Hearing to the affordable housing providers in the City's Affordable Housing Plan; and, pursuant to such notice, one interested party having filed an objection to the proposed Settlement; and no interested parties having objected to the City's Affordable Housing Plan; and the Special Master having reviewed the Settlement and the City's Affordable Housing Plan and, on March 18, 2014, having issued a "Master's Report – Fairness and Compliance Hearing – City of Absecon, Atlantic County, New Jersey" (hereinafter "Report") evaluating the fairness of the Settlement and the compliance of the City's Affordable Housing Plan; and the Master having concluded in his Report that the Settlement is fair and reasonable to the region's low and moderate income households; and the Master having further recommended in his Report for the Court to approve the City's Affordable Housing Plan and issue a Prior Cycle Judgment of Compliance and Repose; and the City having provided the Court and the Special Master with all relevant

documents prior to the Hearing and in conjunction with its efforts to secure approval of the Settlement and the Affordable Housing Plan; and the Court having conducted the Hearing on March 20, 2014, for the purpose of considering the following questions:

1. Whether the terms of an agreement settling Mount Laurel builder's remedy litigation (hereinafter "Settlement Agreement") between AB Visions at Absecon, LLC, (hereinafter "Visions" or "plaintiff") and the City of Absecon and the Planning Board of the City of Absecon (hereinafter collectively "the City") are fair and reasonable to the region's low and moderate income households; and

2. Whether Absecon's adopted and endorsed Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), as amended, addresses the City's obligation to provide a realistic opportunity to satisfy its fair share of the regional need for housing affordable to low and moderate income households pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the substantive regulations of the New Jersey Council On Affordable Housing ("COAH") and other applicable laws for COAH's first and second housing cycles.

and members of the public, including Laura Smith-Denker, Esq. appearing on behalf of FSHC, having attended the Hearing; and Ms. Denker having participated in the Hearing and having expressly supported the City's Affordable Housing Plan as advancing the interests of the region's low and moderate income households; and the Special Master having testified in support of the conclusions set forth in his Master's Report and to clarify questions posed by the Court; and the Court having marked the Master's Report evidence thereby making it part of the record; and this document being further identified as Exhibit C-1 attached and incorporated hereto; and the Court having marked the two binders of documents provided by the City into evidence thereby making these documents part of the record; and these documents being further identified as Exhibits C-2 and C-3 attached and incorporated hereto; and the Court having considered the documents on the record and the Special Master's testimony; and, as a result of the foregoing, the Court having made at the conclusion of the Hearing various findings of fact

and determinations of law as set forth on the record; and, specifically, the Court having found that the City's Housing Element and Fair Share Plan indeed created a realistic opportunity for sufficient affordable housing credits to satisfy the City's Rehabilitation and Prior Cycle obligations; and the Court having further found that, subject to submission of additional proofs, the City is entitled to a maximum of thirteen (13) "credits without controls;" and the Court having further found that the City's Housing Element and Fair Share Plan creates a realistic opportunity for up to sixty (60) affordable housing credits that may be applied to the City's Round 3 affordable housing obligations, once determined; and the Court having further found that the City and its Planning Board are entitled to remain immune from any and all exclusionary zoning lawsuits concerning its Rehabilitation and Prior Cycle obligations for a period of ten (10) years from the date of this Order; and the Court having further found that, under the facts and circumstances of this matter, the City and its Planning Board are entitled to a stay of any obligation to plan for or address any Round 3 obligation until such obligations are determined by COAH or the Legislature; and good cause appearing that the City is entitled to a Prior Cycle Judgment of Compliance, Repose from Mount Laurel Litigation, and a temporary Stay of any additional Round 3 obligations; and good cause therefore appearing:

IT IS on this _____ day of May, 2014 **ORDERED** as follows:

General Provisions

1. The Court declares that the City published sufficient notice of the Fairness and Compliance Hearing which took place on March 20, 2014, which (a) provided all interested parties with a sufficient opportunity to meaningfully submit comments, objections, or support for the proposed City's Affordable Housing Plan in advance of the Hearing; and (b) provided interested parties with the opportunity to participate in the Hearing at the discretion of the Court.

2. The Court hereby approves the "Housing Element and Fair Share Plan – City of Absecon" adopted by the Planning Board on July 23, 2013 and endorsed by the City Council on September 5, 2013, and the "Amendment "Housing Element and Fair Share Plan – City of Absecon" adopted by the Planning Board on January 14, 2014 and endorsed by the City Council on January 16, 2014.

3. The City of Absecon is hereby granted a Judgment of Compliance and Repose as to its 29-unit Rehabilitation obligation and 144-unit Prior Round obligation (cumulative first and second round obligations).

4. The City and its Planning Board are hereby granted repose from any and all Mount Laurel lawsuits concerning its rehabilitation and Prior Cycle obligations for a period of ten (10) years from the date of this Order.

5. The City and its Planning Board are hereby also granted continued temporary immunity from any and all Mount Laurel lawsuits concerning its undetermined Round 3 obligation, which shall remain in force until the date established by regulation, statute, or decision of a court with appropriate jurisdiction for the filing of a Round 3 compliance plan.

6. Due to the surplus credits to be applied to the City's undetermined Round 3 obligation as recited below, the City is hereby also granted a temporary stay of the obligation to engage in any actions associated with complying with the City's undetermined Round 3 obligations, including the provision of very low income units, subject to compliance with any related terms, conditions, and/or directives included herein.

7. Assuming the City properly files its Round 3 Affordable Housing Plan on or before the deadline referred to in Paragraph 5 above, the City and its Planning Board shall retain immunity from Mount Laurel lawsuits for a period to be determined by the Court and subject to

any applications to divest such immunity by interested parties. Such extended immunity is intended to avoid unnecessary Mount Laurel litigation and to provide the City and its Planning Board with sufficient time to devise a plan to address any additional obligations and to demonstrate to the Court that its Round 3 Affordable Housing Plan is worthy of judicial approval and a subsequent Judgment of Compliance and Repose for its Round 3 Plan.

8. The three exhibits entered into evidence by the Court at the Fairness and Compliance Hearing and marked as "C-1," "C-2," and "C-3" (including the Special Master's Report and the two binders provided to the Court by the City in advance of the Fairness and Compliance Hearing) are incorporated by reference herein and made part of the record as if attached hereto.

The City's Rehabilitation Obligation

9. The Council on Affordable Housing ("COAH") assigned the City an indigenous need rehabilitation obligation of twenty-nine (29) units. The City is entitled to eleven (11) credits for units previously rehabilitated through an agreement with the Atlantic County Improvement Authority (ACIA).

10. By the end of 2018, the City will address its remaining eighteen (18) unit rehabilitation obligation, subject to any adjustments to the obligation set forth either by administrative regulations, statute, or ruling by a court of competent jurisdiction.

11. Within ninety (90) days of this Order, the City shall provide the Court and the Special Master with a copy of the executed agreement between the City and ACIA demonstrating that the City's rehabilitation program includes rehabilitation opportunities for renter-occupied units.

The City's Prior Round Obligation

12. COAH assigned the City a Prior Round obligation of one hundred forty four (144) units. The City is entitled to a total of two hundred fifteen (215) credits as follows:

a. Six (6) prior cycle credits for the existing group home located at 637 Weiler Lane owned and operated by the Arc of Atlantic County.

b. Four (4) credits for the existing group home located at 610 Seminole Avenue owned and operated by Caring Inc.

c. Four (4) rental bonus credits for the existing group home located at 610 Seminole Avenue owned and operated by Caring Inc.

d. Four (4) credits for the existing group home located at 703 Highland Boulevard owned and operated by Community Quest.

e. Four (4) rental bonus credits for the existing group home located at 703 Highland Boulevard owned and operated by Community Quest.

f. Thirteen (13) credits for the group homes to be located at 805 Seaside Avenue, 640 Ohio Avenue, and 206 Wynnewood Drive owned and operated by Caring Inc.

g. Thirteen (13) rental bonus credits for the group homes to be located at 805 Seaside Avenue, 640 Ohio Avenue, and 206 Wynnewood Drive owned and operated by Caring Inc.

h. Twelve (12) credits for the development located at Block 161, Lot 1 known as "Absecon Gardens."

i. Twenty four (24) credits for the special needs development to be located at Block 200, Lots 1 and 2 (Site 1) and Block 237, Lots 18, 18.01, 18.02, and 18.03 (Site 2) as proposed by Community Quest, Inc.

j. Seventy one (71) credits for the 100 percent affordable non-age-restricted development to be located at Block 289, Lots 2, 3, and 11 as proposed by Conifer Realty, Inc.

k. Sixty (60) credits for the inclusionary development to be located at Block 9.02, Lot 3.02 as proposed by AB Visions at Absecon, LLC and pursuant to the settlement agreement approved by this Court on March 20, 2014.

13. In light of the above, the City has satisfied its 144-unit Prior Round obligation.

Credits To Be Applied To The City's Undetermined Round 3 Obligation

14. In addition to satisfying its 144-unit Prior Round obligation, the City is entitled to seventy one (71) surplus credits which may be carried forward and applied to any additional obligations the City may be assigned.

15. Upon satisfaction of the conditions set forth below, the City is also entitled to a maximum of an additional thirteen (13) credits for units constructed between April 1, 1980 and December 15, 1986, commonly known as "credits without controls."

16. To perfect these credits, Philip B. Caton, P.P., F.A.I.C.P. shall review the survey forms previously submitted to COAH's Executive Director and subsequently forwarded to the Special Master, and provide the Court with a concise report stating whether any or all of the survey forms and additional information collected demonstrate that the City is entitled to the requested credits without controls pursuant to the relevant COAH rules and policies.

17. Upon written request to Mr. Caton with a copy to the City and the Special Master, Fair Share Housing Center may review the thirteen survey forms as redacted by Mr. Caton to preserve the confidentiality promised to the survey form responders.

18. Within seven (7) calendar days of receipt of Mr. Caton's report, FSHC may file a response contesting or otherwise commenting on the conclusions set forth therein. If FSHC does not file a response within the deadline set forth above, the Court will issue a ruling and order confirming the number of credits without controls to which the City is entitled, if any.

19. If FSHC contests Mr. Caton's conclusions in any way, within seven (7) days of receipt of FSHC's response, the City may file a reply thereto, and the Court will issue a ruling and Order on the papers confirming the number of credits without controls to which the City is entitled, if any.

20. If the City is entitled to all thirteen (13) of the proposed credits without controls, the City shall be entitled to a total of eighty four (84) surplus credits (71 existing credits plus 13 additional credits without controls) which may be carried forward and applied to any obligations established in the future.

Post Judgment Actions To Be Taken By The City

21. The Court hereby approves the City's draft Fair Share Ordinance, Development Fee Ordinance, Multi-Unit Rental Development Ordinance, and Train Station Overlay Inclusionary Zoning Ordinance. The City shall adopt the aforementioned ordinances within ninety (90) days of the date of this Order at a public hearing and pursuant to all relevant laws.

22. Upon adoption of said ordinances, the City will submit a true copy of each to COAH along with a copy of this Order.

23. Within ninety (90) days of this Order, and subject to the terms of any agreements executed between the City and any providers of affordable housing, the City shall retain the services of a duly-certified Administrative Agent.

24. Once the City collects affordable housing development fees pursuant to its approved Development Fee Ordinance, the City will establish an Affordable Housing Trust Fund with its banking institution, enter into a three-party escrow agreement, and submit to COAH a duly-adopted spending plan pursuant to the relevant regulations and policies in force at that time.

25. Within ninety (90) days of this Order, the City shall create by ordinance the Municipal Housing Liaison position and thereafter shall select and appoint a person to that position by duly-adopted resolution.

26. Within ninety (90) days of this Order, the City shall provide the Court and the Special Master with copies of the proofs supporting its entitlement to any of the credits identified above.

27. Counsel for the City of Absecon shall serve a copy of this Order upon all counsel of record within seven (7) days of the receipt, and shall further provide a copy of said Order to the New Jersey Council on Affordable Housing.

HON. JAMES E. ISMAN, J.S.C.
Acting P.J.Cv.

OCT 26 2007

FILED

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WILLIAM E. NUGENT, J.S.C.

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The Township Committee of The Township of Hamilton

HARDING HIGHWAY, L.L.C., a New Jersey Limited Liability Company Plaintiff v. TOWNSHIP OF HAMILTON, a municipal corporation of the State of New Jersey located in Atlantic County, New Jersey, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMILTON, the HAMILTON TOWNSHIP PLANNING BOARD, the HAMILTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY, all body politic and corporate of the State of New Jersey, and the D'IMPERIO PROPERTY SITE GROUP, an unincorporated association doing business in the State of New Jersey Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO. ATL-L-155-04 CIVIL ACTION (Mt. Laurel) FINAL JUDGMENT OF COMPLIANCE AND REPOSE

THIS MATTER having been opened to the court by Norman L. Zlotnick, Esquire, of the law firm Mairone, Biel, Zlotnick & Feinberg, attorneys for defendants, the Township of Hamilton and Township Committee of the Township of Hamilton, and the court having conducted a hearing on the First and Second Round COAH Compliance Plan submitted by the Township of Hamilton on May 10, 2007, and, as a result, the court having issued an Order dated May 30, 2007 granting conditional approval of the First and Second Round Compliance Plan of the Township of Hamilton and the Township Committee of the Township of Hamilton, and the court having since received a letter of October 2, 2007 from Philip Caton, P.P., A.I.C.P., appointed Special Master in this matter, advising the

court that the Township had satisfied all of the conditions contained in the May 30, 2007 Order and further recommending an entry of a Final Judgment of Compliance and Repose in this matter; and the court being of the opinion that the Township of Hamilton and the Township Committee of the Township of Hamilton had so complied, and good cause otherwise having been shown;

IT IS, THEREFORE, on this 26th day of October , 2007

ORDERED and ADJUDGED as follows:

1. A judgment is hereby entered approving the First and Second Round COAH Compliance Plan submitted by the Township of Hamilton.

2. Judgment is also entered approving the Township 's Second Round Spending Plan.

3. The Township shall submit its Third Round Compliance Plan within whatever time frame is contained within certain anticipated COAH regulations to be promulgated by that agency with regard to all Third Round Compliance Plans. The court, therefore, retains jurisdiction of this matter to entertain the Township's later submission.

4. A judgment of repose is hereby entered in favor of the Township of Hamilton, a municipal corporation of the State of New Jersey located in Atlantic County, New Jersey, the Township Committee of the Township of Hamilton and the Hamilton Township Planning Board, all body politic and corporate of the State of New Jersey, wherein that in the event any Mount Laurel matters are filed against all or any of said parties, said Mount Laurel matters shall be enjoined from being prosecuted during a period of 5 years from the date of this Order or, at the discretion of the court will be dismissed without prejudice, provided that the Township timely complies with its Third Round obligations. (WEA)

William E. Nugent
WILLIAM E. NUGENT, J.S.C.