



State of New Jersey
Council on Affordable Housing

101 SOUTH BROAD STREET
PO BOX 813
TRENTON NJ 08625-0813
(609) 292-3000

CHRIS CHRISTIE
Governor

CHARLES A. RICHMAN
Acting Commissioner
LUCY VANDENBERG
Executive Director

January 21, 2010

The Honorable Rick Klauber
Manalapan Township
120 Rte 522
Manalapan, NJ 07726

Dear Mayor Klauber:

Congratulations! We are pleased to enclose a Council on Affordable Housing (COAH) Compliance Report recommending approval of your municipality's petition for third round substantive certification.

Please be advised that there will be a 14-day comment period on the COAH Compliance Report and on the attached COAH Mediation Report, during which time comments will be accepted at the COAH office. Comments must be received by 12:00 Noon on February 4, 2010. COAH expects to approve your petition at its February 10, 2010 meeting. We welcome you to attend the meeting to receive your grant of substantive certification.

If you have any questions or need further information, please call Maria Connolly, COAH planner, at (609) 292-4317. We look forward to working with you to implement your third round growth share plan.

If you would like to be contacted via email regarding the future information/correspondence for Manalapan Township, please provide COAH with your email address.

Sincerely,

A handwritten signature in black ink that reads "Lucy l Vandenberg".

Lucy Vandenberg, PP, AICP
Executive Director

cc: Attached Service List
Sean Thompson, COAH manager of planning
Kathy McGlinchy, COAH monitor
Maria Connolly, COAH planner
Dennis Funaro, COAH supervisor

The Honorable Rick Klauber
Mayor
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Ronald D. Cucchiaro, Esq.
Weiner Lesniak
629 Parsippany Rd
PO Box 438
Parsippany, New Jersey 07054-0438

Daniel J. McCarthy, Esq.
Rogut McCarthy Troy LLC
37 Alden St
Cranford, New Jersey 07016-2106

Rose Ann Weeden
Municipal Clerk
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Richard S. Cramer, Jr., PP, AICP
T & M Associates
11 Tindall Rd
Middletown, New Jersey 07728

Tara L. Lovrich
Municipal Administrator
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Donald Holland
Planning Bd Member
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Andrew Lucas
Committee Member
Township of Manalapan
120 Route 522
Manalapan, New Jersey 07726

Michelle Roth
Planning Board Member
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Eleanor Ruggiero
Planning Board
Township of Manalapan
120 Rte 522
Manalapan, New Jersey 07726

Gregory Valesi
CME Associates
1460 Route 9 South
Howell, New Jersey 07731-1194

Jacqui Adam
Allies, Inc.
1262 White Horse-Hamilton Sq Rd
Bldg A, Ste 101
Hamilton, New Jersey 08690

Mary Barrett, Esq.
Stark & Stark
P.O. Box 5315
Princeton, New Jersey 08543-5315

Art Bernard, PP
Bernard & Nebezahl
77 N Union St
Lambertville, New Jersey 08530

Robin J. Bynoe
Enable, Inc.
13 Roszel Rd
Ste B110
Princeton, New Jersey 08540

David Cohen
Monmouth County Human Relations Comm.
1 E Parkway Place
Holmdel, New Jersey 07733

A. Christopher Florio, Esq.
Stark & Stark
PO Box 5315
Princeton, New Jersey 08543-5315

Craig M. Gianetti, Esq.
Giordano, Halleran & Ciesla
PO Box 190
Middletown, New Jersey 07748

Adam Gordon, Esq.
Staff Attorney
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

Karl Hartkopf
Office of Smart Growth, Dept of Community Affairs
101 S Broad St
PO Box 204
Trenton, New Jersey 08625

Alex Katz, Esq.
Westminster Realty Corporation
26 Columbia Turnpike
Florham Park, New Jersey 07932

Lewis Kurland, Esq.
Legal Counsel
K. Hovnanian Homes
5 Commerce Way
Ste 200
Hamilton, New Jersey 08691

Kenneth E. Meiser, Esq.
Hill Wallack LLP
202 Carnegie Center
CN 5226
Princeton, New Jersey 08543-5226

Evan Podel
Hamilton Properties Group LLC
1360 Clifton Ave
Ste 240
Clifton, New Jersey 07712

James M. Reynolds
General Counsel
The Ingerman Group
725 Cuthbert Blvd
Cherry Hill, New Jersey 08002

Lara Schwager
The Ingerman Group
725 Cuthbert Blvd
Cherry Hill, New Jersey 08002

Elizabeth Semple
NJ Dept of Environmental Protection
PO Box 402
Trenton, New Jersey 08625

Suzanne Smith
Paralegal
Hill Wallack LLP
202 Carnegie Ctr
PO Box 5226
Princeton, New Jersey 08543

Olivia Sparks
P.O. Box 208
Manalapan, New Jersey 07726

Jon Vogel
Development Director
AvalonBay Communities, Inc.
517 Rte 1 S
Ste 5500
Iselin, New Jersey 08830

Monmouth County Planning Board
Hall of Records
1 E Main St
Freehold, New Jersey 07728

Estate of Nola Pearson
224 Longwood Drive
Manalapan, New Jersey 07726

Hearthstone Multi-Asset Entity
781 Lincoln Ave
Ste 300
San Rafael, California 94901

Stephen Eisdorfer, Esq.
Hill Wallack
202 Carnegie Center
CN 5226
Princeton, New Jersey 08543

Jeffrey L. Kantowitz, Esq.
Day Pitney LLP
PO Box 1945
Morristown, New Jersey 07962

John J. Ploskonka, PE, PP
Concept Engineering Consultants, PA
227 Rte 33
Bldg 2, Unit 7
Manalapan, New Jersey 07726



***Council on Affordable Housing
Compliance Report
January 21, 2010***



Municipality: Manalapan Township
County: Monmouth County

COAH Region: 4
Planning Area: 2, 4B
Special Resource Area: None

Housing Element and Fair Share Plan Adopted: 12/11/2008
Petition for 3rd Round Substantive Certification: 12/30/2008
Completeness Determination: 1/9/2009
Date of Publication: 2/25/2009

Objections Received: Yes

1. Fair Share Housing Center (subsequently withdrawn on September 25, 2009)
2. Triplet Square, LLC
3. John Ploskonka
4. Boulder at Manalapan, LLC

Mediation Commenced: September 8, 2009
Mediation Concluded: September 29, 2009

Petition Includes:

VLA: No
GPA: No
Waiver: No

Date of Site Visit: July 31, 2009

History of Approvals:

	COAH	JOC	N/A
First Round:	4/11/1986		
Second Round:	10/23/1996		
Extended Certification:	5/11/2005		

Plan Preparer: Richard Cramer, P.P., AICP – T&M Associates
Municipal Housing Liaison: Rose Ann Weeden, Township Clerk

Recommendation: Grant Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	36
Prior Round Obligation	706
Projected Growth Share Obligation (Net)	277

ACTUAL GROWTH and GROWTH SHARE through September 2008¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
1,218	243.6	437	27.3	271

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 36 units				
Program(s)	Rehabilitation credits	36		36
Rehabilitation Subtotal				36
NEW CONSTRUCTION:				
Prior Round: 706 units				
Credits	Prior Cycle	6		6
	Post-1986	698		698
Proposed Mechanism(s)	Municipally Sponsored 100 percent affordable projects	2		2
Prior Round Subtotal				706
Growth Share: 277 units				
Proposed Mechanism(s)	Municipally Sponsored 100 percent affordable projects	-	208	208
Growth Share Bonus(es)	Rental	-	69	69
Growth Share Subtotal				277

¹ Does not include exclusions permitted under N.J.A.C. 5:97-2.4, which may lower actual growth share.

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Manalapan's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Manalapan Township has a rehabilitation share of 36 units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. Manalapan has a prior round obligation of 706 units.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, Manalapan has a residential projection of 1,531 units and a non-residential projection of 2,089 jobs, which results in an initial projected growth share obligation of 437 affordable units. However, after subtracting the allowable exclusions itemized in Worksheet A (attached as

Attachment 1), the Township's residential projection is reduced to 734. Therefore, the Township's total projected growth share for the period 1999-2018 is 277 affordable units consisting of a 146.8-unit projected residential growth share and a projected non-residential growth share of 130.6.²

SUMMARY OF FAIR SHARE OBLIGATION

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II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Manalapan Township's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

A. Plan to Address Rehabilitation Share

Rehabilitation Share Credits

Manalapan is requesting credit for its entire rehabilitation obligation. Since April 1, 2000, 58 units have been rehabilitated through the Monmouth County Housing Improvement Program.

² The Township's residential projection of 734 is divided by 5 to yield 146.8 units and the nonresidential projection of 2,089 jobs is divided by 16 to yield 130.56 units. The Township's total projected growth share is therefore 277 units (146.8 + 130.56).

In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Rehabilitation Credits

Rehabilitation Program	# Credits
County Rehab Program	36
TOTAL	36

B. Plan to Address Prior Round Obligation

Prior Round Credits

Manalapan is addressing its prior round obligation with six prior cycle credits and 698 post-1986 credits, totaling 704 credits and bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Prior Cycle Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Total Units/Bedrooms
Alexandria Drive ARC group home	1985	Supportive/Special Needs Housing	6	6
TOTALS			6	6

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Church Lane ARC group home	1987	Supportive/Special Needs Housing	6	Rental	6	12
Knox Lane group home	1991	Supportive/Special Needs Housing	4	Rental	4	8
Sandpiper Drive group home	1992	Supportive/Special Needs Housing	3	Rental	3	6
Knob Hill inclusionary	2001	Family For-Sale	100	-	-	100
Samaritan Center inclusionary	2001	Family For-Sale	67	-	-	67
Tracy Station Woods inclusionary	2001	Family For-Sale	28	-	-	28
Four Seasons (Heritage Village)	2008	Age-Restricted Rentals	100	Rental	29	129
Villages of Manalapan (Meadow Creek)	2008	Family For-Sale	26	-	-	26
Hightstown RCA	2003	RCA	41	-	-	41
Lawrence Township RCA	2005	RCA	62	-	-	62
Red Bank RCA ³	2005	RCA	100	-	-	100
Trenton RCA ⁴	2005	RCA	119	-	-	119
TOTALS			656		42	698

Proposed Affordable Housing Mechanisms

Manalapan proposes to address the remaining two-unit prior round obligation through the following mechanism:

³ Partial transfer: Manalapan is transferring funds in accordance with the approved RCA schedule.

⁴ Partial transfer: Manalapan is transferring funds in accordance with the approved RCA schedule.

Lewis Street

Manalapan Township's previously certified Housing Element and Fair Share Plan included a proposed development known as Lewis Street (Ploskonka). The site, located on Wood Avenue (Block 48/Lot 8.04), consists of one acre and was to produce two affordable family for sale units. The development received its preliminary approval from the zoning board on January 1, 1991, and its final approval on January 28, 1993. The development was never constructed. On March 11, 2009, COAH received an objection from Stephen Eisdorfer, Esq. on behalf of the owner of the property, John Ploskonka. The letter indicated that the property was not available for two affordable housing units, and instead requested that the property be rezoned to allow for 22 condominium units, with a 20 percent set-aside. Mediation between the Township and Mr. Ploskonka was held on September 8, 2009. As a result of mediation and further discussions among the parties, a mediation agreement was executed on January 13, 2010. The mediation agreement provides that the Township will purchase the site from Mr. Ploskonka for the development of affordable housing in exchange for Mr. Ploskonka withdrawing his objection.

Manalapan, in conjunction with the Affordable Housing Alliance (AHA), is proposing to construct 10 affordable for-sale townhouse units on the site. Manalapan has submitted a draft developer's agreement with the AHA. The developer's agreement provides that ownership of the property will be transferred to the AHA. The developer's agreement must be executed within 45 days of substantive certification. The AHA will also be the administrator of the project. Manalapan has also submitted a draft overlay zone for the property (Affordable Housing Overlay Zone-2). The zoning ordinance must be adopted within 45 days of substantive certification and submitted to COAH.

Pursuant to N.J.A.C. 5:97-6.7(d)6, Manalapan has submitted a pro forma for the project. The AHA proposes to fund the project with a construction loan, bridge loan/equity, Balanced Housing/County HOME funds, a deferred developer fee and municipal funds. The developer's agreement indicates that the AHA will first attempt to secure outside funding sources for the project before municipal resources will be used. Manalapan's amended spending plan allocates \$250,000 for the purchase of the property. Manalapan has submitted a resolution of intent to bond in the event of a shortfall in funding that was adopted on October 19, 2009.

In addition, the Township has submitted a construction schedule. The construction schedule indicates that construction will begin within 17 months of the predevelopment preparations, which is within two years of substantive certification pursuant to N.J.A.C. 5:97-6.7(b)3.

Pursuant to N.J.A.C. 5:97-3.13, the site is suitable. The site is located in Planning Area 2 and there are no environmental constraints on the property. The site will be served by public water and sewer.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Manalapan must submit the required items pursuant to N.J.A.C. 5:97-6.7(e). Two units will be used to address the Township's prior round obligation and the remaining eight units will be carried forward to the growth share obligation. [**2 family for-sale units**]

Proposed Growth Share Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Lewis Street Municipally Sponsored 100% Affordable Project	Family For-sale	2	-	-	2
TOTALS		2		-	2

Prior Round Obligation Parameters

Manalapan Township has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:⁵ 175 Units

Development/Project Name	Type of Affordable Unit	# Units
Church Lane group home	Supportive/Special Needs	6
Knox Lane group home	Supportive/Special Needs	4
Sandpiper Drive group home	Supportive/Special Needs	3
Four Seasons	Age-Restricted Rentals	100
Lawrence Township RCA	Rental RCA	62
TOTAL		175

Prior Round Age-Restricted Maximum:⁶ 100 Units

Development/Project Name	Type of Affordable Unit	# Units
Four Seasons	Age-restricted Rental	100
TOTAL		100

⁵ Rental Obligation: $.25$ (Prior Round Obligation-Prior Cycle Credits) or $.25(706-6) = 175$ N.J.A.C. 5.97-3.10(b)1

⁶ Age-Restricted Maximum= $.25$ (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Transferred RCA Units Addressing the Prior Round Obligation) or $.25(706+36-6-36-322) = 95$ units. N.J.A.C. 5:97-3.10(c)1. However, the Township received a waiver on February 9, 2005, as part of an amendment to its second round substantive certification, from the formula regarding the maximum number of age-restricted units for which a municipality may receive credit when the plan also contains an RCA, in order to utilize the 100 age-restricted units in addressing its prior round obligation. Pursuant to N.J.A.C. 5:97 4.1(c), COAH will honor the number of age-restricted credits included in the previously certified plan if the mechanism that were included in that certification still presents a realistic opportunity. Therefore, Manalapan's age-restricted cap is 100.

Regional Contribution Agreement (RCA) Maximum:⁷ 350 Units

Receiving Municipality(s)	Type of Affordable Unit	# Units
Hightstown RCA	RCA	41
Lawrence Township RCA	Rental RCA	62
Red Bank RCA	RCA	100
Trenton RCA	RCA	119
TOTAL		322

Prior Round Rental Bonus Maximum:⁸ 175 Units

Development/Project Name	Type of Bonus	# Bonuses
Church Lane ARC group home	Rental	6
Knox Lane group home	Rental	4
Sandpiper Drive group home	Rental	3
Four Seasons	Age-Restricted Rental	29
TOTAL		42

C. Plan to Address Projected Growth Share

Proposed Affordable Housing Mechanisms

The Township proposes to address its 277-unit projected growth share obligation through the following mechanisms:

⁷ RCA Maximum: $.50(\text{Prior Round Obligation} + \text{Rehabilitation Share} - \text{Prior Cycle Credits} - \text{Rehabilitation Credits})$ or $.50(706+36-6-36) = 350$ N.J.A.C. 5:97-3.10(d)1

⁸ No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation or 175 N.J.A.C. 5:97-3.5

Lewis Street

As described above under Section II, Part B, of this report, two units of the 10 proposed affordable family for-sale units at the Lewis Street 100 percent municipally sponsored affordable project will be used to address a portion of Manalapan's prior round obligation. The remaining eight affordable family for-sale units will be used to address a portion of the Township's growth share obligation. **[8 family for-sale units]**

Municipally Sponsored 100 percent Affordable Developments

Manalapan's third round plan initially proposed to utilize Block 66.21, Lot 1 to provide 208 units through a municipally sponsored project. The site is 16.03 acres and is municipally owned. It was acquired from K. Hovnanian as part of the Meadows and Four Seasons approvals. The Township indicates that the parcel is devoid of wetlands and floodplains and 79 percent of the site is unconstrained by steep slopes. The Township was proposing to partner with a non-profit or other affordable housing provider for the development of the site. The development was to contain a total of 208 units, including 104 family rentals units, 69 age-restricted rental units and 35 special needs units for the developmentally disabled. In addition, 19 of the units were to be available to very-low income families. In the plan, the Township noted that it reserved the right to substitute this site for a different site if a more suitable site was identified.

On July 31, 2009, Manalapan submitted a letter to COAH and the Township's service list indicating that it will utilize Block 47, Lot 17 for a 110-unit municipally sponsored 100 percent affordable project. The project will be developed and managed by the Ingerman Group, which is an affordable management and development company. The Township had submitted a draft overlay zone for the site, a pro-forma and construction schedule from the Ingerman Group and a housing trust fund agreement between the Township and Ingerman that was executed on September 9, 2009, for the 110 units. However, subsequently, the number of units that would be produced on the site was reduced to 80 affordable rental units.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the Ingerman site is suitable. The Ingerman site is located in the western part of the Township at 48 Wood Avenue. The site will have frontage along Route 522/Wood Ave. The site is owned by 522 Enterprises, Inc.,

which has a contract for sale with MBI Development Company. MBI is part of the Ingerman Group of companies. The site is 26.32 acres and is located in the Township's R-40/20 zoning district. The site is surrounded by residential and light industrial uses. The site was rezoned (Affordable Housing Overlay Zone-1) on December 16, 2009, to accommodate the 100 percent affordable project.

The Ingerman site is located in Planning Area 2. The site contains 16.80 acres (out of 26.32 total acres) of wetlands on the northern (back) portion of the site, leaving the already disturbed portion on Wood Avenue unencumbered, which is where the proposed development will take place. An unnamed tributary of the Matchaponix Brook, which is identified as a Critical Environmental Site (CES), transverses the wetlands in the northern portion of the site. A small portion of the site is in the flood hazard area that is associated with the Brook (.61 acres), which is also in the wetlands area. There are some steep slopes on the site, but the Township indicates that these are a result of prior site disturbance and can be excavated. The site was previously used by Monmouth Petroleum. The Township and Ingerman Group are aware of an oil spill that occurred on the property. However, the Township and Ingerman indicate that this can be remediated prior to the development of the property in accordance with NJDEP requirements. A Phase I study was conducted in 2006; however, a new Phase I and/or Preliminary Assessment will need to be completed. The buildings that are currently on the property will be demolished.

The development will be served by public water and sewer. The Township indicates that the site is located within the existing and planned sewer service area of the Western Monmouth Utilities Authority. The site is also located within the public water service area of the Gordons Corner Water Company.

Ingerman has submitted a revised financing study and a rental income analysis for the project based on the 80 units. Ten (10) of the units will be available to very-low income families. In addition, Ingerman has submitted a development schedule. The construction schedule indicates that building permits are anticipated to be issued in March 2011, which is within two years of substantive certification pursuant to N.J.A.C. 5:97-6.7(b)3 . The schedule also includes cleanup of the contamination.

The Ingerman Group proposes to fund the project with NJHMFA low-income housing tax credits, a deferred development fee, NJHMFA permanent financing, equity and a construction loan. Ingerman anticipates applying for tax credits in Spring 2010. Pursuant to an amended affordable housing trust fund agreement, that was authorized by the Township on December 16, 2009, and executed by the parties on January 12, 2010, Manalapan is also providing \$1,650,000 to Ingerman as a loan for the project. The Township has included this expense in its amended spending plan. Manalapan has submitted a resolution of intent to bond in the event of a shortfall in funding that was adopted on October 19, 2009.

Manalapan is requesting 69 rental bonuses for the affordable units. The Township should note that in the event the units are not constructed in accordance with the construction schedule, Manalapan may lose the rental bonuses pursuant to N.J.A.C. 5:97-3.6(a)3ii.

Manalapan will continue to utilize Block 66.21, Lot 1 for a future municipally sponsored 100 percent affordable project(s) for the Township's remaining 120-unit projected growth share obligation. However, the Township continues to reserve the right to substitute another site(s) for all or part of the balance of the obligation in the future. The Township is proposing to partner with another non-profit or other affordable housing provider for the development of the site. The development(s) will contain 35 family rentals, 50 age-restricted rentals and 35 special needs units for the developmentally disabled, for a total of 120 units. The project(s) will also contain four very-low income family units. The Township's spending plan allocates approximately \$3,832,778 for future municipally sponsored projects.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided a revised implementation schedule for the proposed 120 units that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.10(e), with certificates of occupancy being issued in March 2016, requiring that supporting documentation be submitted to COAH in November 2012, two years before construction begins. The Township anticipates that a request for proposals will be issued by the Township in March 2012, and that building permits will be issued in November 2014.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Manalapan must submit the required items pursuant to N.J.A.C. 5:97-6.7(e). **[80 family rental units & 69 rental bonuses for Ingerman; 35 family rental units, 50 age-restricted rental units & 35 supportive/special needs units for future municipally sponsored project(s)]**

Proposed Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Lewis Street Municipally Sponsored 100% Affordable Project	Family For-sale	8	-	-	8
Ingerman - Municipally Sponsored 100% Affordable Project	Family Rental	80	Rental	69	149
Future Municipally Sponsored 100% Affordable Project	Family Rental	35	-	-	35
Future Municipally Sponsored 100% Affordable Project	Age-restricted Rental	50	-	-	50
Future Municipally Sponsored 100% Affordable Project	Supportive/ Special Needs	35	-	-	35
TOTALS		208		69	277

Growth Share Parameters

Manalapan Township has satisfied the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:⁹ 70 Units

Development/Project Name	Type of Affordable Unit	# Units
Future Municipally Sponsored 100% Affordable Project	Family Rental	35
Future Municipally Sponsored 100% Affordable Project	Supportive/ Special Needs	35
TOTAL		70

Growth Share Family Rental Requirement:¹⁰ 35 Units

Development/Project Name	Type of Affordable Unit	# Units
Ingerman - Municipally Sponsored 100% Affordable Project	Family Rental	80
Future Municipally Sponsored 100% Affordable Project	Family Rental	35
TOTAL		115

Growth Share Minimum Family Requirement:¹¹ 104 Units

Development/Project Name	Type of Affordable Unit	# Units
Ingerman - Municipally Sponsored 100% Affordable Project	Family Rental	80
Lewis Street Municipally Sponsored 100% Affordable Project	Family For-sale	8
Future Municipally Sponsored 100% Affordable Project	Family Rental	35
TOTAL		123

⁹ Projected Growth Share Rental Obligation: $.25(\text{Projected Growth Share})$ or $.25(277)= 69.25$ or 70 units - N.J.A.C. 5:97-3.10(b)3

¹⁰ Projected Growth Share Family Rental Requirement: $.5(\text{Projected Growth Share Rental Requirement})$ or $.5(70)= 35$ units N.J.A.C. 5:97-3.4(b)

¹¹ Projected Growth Share Family Requirement: $.5 (\text{Units Addressing the Growth Share Obligation})$ or $.5(208)= 104$ units N.J.A.C. 5:97-3.9

Very Low Income Minimum Requirement:¹² 27 Units

Development/Project Name	Type of Affordable Unit	# Units
Future Municipally Sponsored 100% Affordable Project	Supportive/ Special Needs	35
Ingerman - Municipally Sponsored 100% Affordable Project	Family Rental	10
Future Municipally Sponsored 100% Affordable Project	Family Rental	4
TOTAL		49

Age-Restricted Maximum:¹³ 69 Units

Development/Project Name	Type of Affordable Unit	# Units
Future Municipally Sponsored 100% Affordable Project	Age-restricted Rental	50
TOTAL		50

Bonus Maximum:¹⁴ 69 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
Ingerman - Municipally Sponsored 100% Affordable Project	Family Rental	69
TOTAL		69

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At

¹² Growth Share Very Low Income Requirement: $.13(\text{Units Addressing the Growth Share Obligation})$ or $.13(208)=27.04$ or 27 units N.J.S.A. 52:27D-329.1

¹³ Projected Growth Share Age Restricted Maximum: $.25(\text{Projected Growth Share})$ or $.25(277)=69.25$ or 69 units N.J.A.C. 5:97-3.10(c)2

¹⁴ Projected Bonus Maximum: $.25(\text{Projected Growth Share})$ or $.25(277)=69.25$ or 69 units N.J.A.C. 5:97-3.20

plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, Manalapan has issued certificates of occupancy for 1,218 housing units and also for the nonresidential square footage equivalent of 437 jobs, yielding an actual growth share obligation through September 30, 2008, of 271 affordable units.¹⁵

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 36 Units

Program Name	# Units
County Program rehab credits	36
TOTAL	36

¹⁵ The number of residential COs (1,218) is divided by 5 to yield 243.6 units and the number of jobs (437) is divided by 16 to yield 27.3 units. Manalapan's total estimated actual growth share is therefore 271 units (243.6+27.3). **Note:** this estimate does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

PRIOR ROUND SUMMARY

Prior Round Obligation: 706 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	Alexandria Drive ARC group home	6			6
Post-1986 Credits	Church Lane ARC group home	6	Rental	6	12
	Knox Lane group home	4	Rental	4	8
	Sandpiper Drive group home	3	Rental	3	6
	Knob Hill inclusionary	100	-	-	100
	Samaritan Center inclusionary	67	-	-	67
	Tracy Station Woods inclusionary	28	-	-	28
	Four Seasons	100	Age- restricted Rental	29	129
	Meadows	26	-	-	26
	Hightstown RCA	41	-	-	41
	Lawrence Township RCA	62	-	-	62
	Red Bank RCA	100	-	-	100
	Trenton RCA	119	-	--	119
Subtotal		662		42	704
Proposed Mechanisms	Lewis Street Municipally Sponsored 100% Affordable Project	2	-	-	2
Subtotal		664		42	706
TOTAL					706

GROWTH SHARE SUMMARY

Projected Growth Share Obligation: 277 Units

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Proposed Mechanisms	Lewis Street Municipally Sponsored 100% Affordable Project	8	-	-	8
	Ingerman - Municipally Sponsored 100% Affordable Project	80	Rental	69	149
	Municipally Sponsored 100% Affordable Project(s)	120	-	-	120
	Subtotal	208		69	277
TOTAL					277

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

Manalapan's certified plan included a development fee ordinance that was approved by COAH on July 12, 1995, and adopted by the Township on August 8, 1995. COAH granted the Township approval of amendments to its development fee ordinance on August 2, 2006, and December 15, 2008.

B. Third Round Spending Plan

Manalapan's prior round spending plan was approved by COAH on July 29, 1996. A revised third round spending plan was submitted by Manalapan with the Township's third round petition for COAH's review and approval. The spending plan was approved by COAH on September 3, 2009. An amended spending plan was submitted to COAH on January 15, 2010.

The amended spending plan includes the \$250,000 for the purchase of the Lewis Street site and changes the allocation for the Ingerman project. The amended spending plan will be reviewed in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

Manalapan Township has an adopted affordable housing ordinance for its prior round obligation. Manalapan has submitted a revised draft affordable housing ordinance that comports with the requirements of the UHAC, which was amended on December 20, 2004, including compliance with the barrier free sub code of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

A resolution appointing a municipal housing liaison was adopted by the Township on January 14, 2009. Manalapan has submitted a draft ordinance establishing the position of a municipal housing liaison. The ordinance must be adopted within 45 days of substantive certification.

Manalapan is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Township and must identify an experienced administrative entity for that purpose by the contract, agreement or letter. Pursuant to N.J.A.C. 5:97-6.7(e), prior to marketing the affordable units in the municipally sponsored projects, Manalapan must submit the following to COAH:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
2. An affirmative marketing plan in accordance with UHAC; and
3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. 5:96-18

Manalapan utilizes the Affordable Housing Alliance of NJ (AHA) as its administrative agent. The group homes are administered by the special needs providers. Manalapan has submitted its most recent contract with the AHA.

D. Affirmative Marketing Plan

Prior to marketing the affordable units in the municipally sponsored projects, Manalapan must submit an affirmative marketing plan that comports with the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.* and ensures the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Township within 45 days.

IV. SUMMARY OF MEDIATION

A. Objections

COAH initially received five objections to Manalapan's third round plan: Stephen Eisdorfer Esq., of Hill Wallack, on behalf of Mr. John Ploskonka; Jeffrey Kantowitz Esq., of Day Pitney LLP on behalf of Triplet Square, LLC; Art Bernard, PP, on behalf of Boulder at Manalapan, LLC; Adam M. Gordon Esq., on behalf of Fair Share Housing Center (FSHC); and Four Seasons at Manalapan Homeowners Association, Inc. (The Association). The Association was issued an incomplete letter and was given 14 days to cure its objection pursuant to N.J.A.C. 5:96-4.2(b). The Association chose not to cure the objection. The objections and municipal response from Manalapan are summarized in COAH's August 28, 2009 Pre-Mediation Report Requesting Additional Information. FSHC subsequently withdrew its objection on September 25, 2009, because it was satisfied with the steps the Township had taken with regard to the Ingerman project.

B. Mediation

Mediation between the Township and representatives for Mr. John Ploskonka took place in COAH's offices in Trenton on September 8, 2009. Manalapan and Mr. John Ploskonka executed a mediation agreement on January 13, 2010. The mediation agreement provides that the Township will purchase the Lewis Street site from Mr. Ploskonka for the development of affordable housing in exchange for Mr. Ploskonka withdrawing his objection.

Mediation between the Township and Triplet Square and Boulder took place in COAH's offices in Trenton on September 29, 2009. The mediation session did not result in an agreement between the parties.

Mediation concluded on September 29, 2009. The Mediation Report, dated January 21, 2010, is attached hereto as Attachment 2. The mediator concluded that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law. The developer's agreement between the Township and Mr. John Ploskonka is an attachment to the Mediation Report.

V. MONITORING

Manalapan must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify Manalapan in writing and the Township may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Manalapan's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in Manalapan and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, Manalapan is not adhering to its implementation schedules pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the Township to amend its plan to address the shortfall.

VI. RECOMMENDATION

COAH staff recommends that Manalapan Township be granted third round substantive certification. Manalapan must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption. This includes the ordinance establishing the position of a municipal housing liaison, the affordable housing ordinance and the zoning ordinance for the Lewis Street site. In addition, the agreement between the AHA and Manalapan must be executed within 45 days after the grant of substantive certification and submitted to COAH.

Attachment 1

Workbook A: Growth Share Determination Using Published Data
 (Using Appendix F(2), *Allocating Growth To Municipalities*)

<p>COAH Growth Projections Must be used in all submissions</p>

Municipality Name: Manalapan Township

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2) *	1,531	2,089
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	Click Here to enter Prior Round Exclusions	
built or projected to be built post 1/1/04		
Inclusionary Development	126	
Supportive/Special Needs Housing	0	
Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	0	
Assisted Living	0	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	671	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	0	
Associated Jobs		0
4 Net Growth Projection	734	2,089
5 Projected Growth Share (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	146.80 Affordable Units	130.56 Affordable Units
6 Total Projected Growth Share Obligation		277 Affordable Units

* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

Affordable and Market-Rate Units Excluded from Growth

Municipality Name: Manalapan Township

Prior Round Affordable Units NOT included in Inclusionary Developments Built post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	<input type="text"/>
Accessory Apartments	<input type="text"/>
Municipally Sponsored and 100% Affordable	<input type="text"/>
Assisted Living	<input type="text"/>
Other	<input type="text"/>
Total	0

Market and Affordable Units in Prior Round Inclusionary Development Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Meadow Creek (a.k.a. Meadows)	N	572	546	26	104
Four Seasons	Y	792	692	100	567
		0			0
		0			0
		0			0
Total		1,364	1,238	126	671

Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
Total	0	0

[Return To Workbook A Summary](#)

Attachment 2

MANALAPAN MEDIATION REPORT

Manalapan Township. Monmouth County

By,

Matthew H. Rudd Esq.

January 21, 2010

The first mediation session was held on September 8, 2009. Manalapan Township was represented by COAH Special Counsel Ronald Cucchiaro, Councilman Andrew Lucas, Councilwoman and Planning Board Member Michelle Roth and Township Engineer Rich Cramer. These individuals also represented the Township on September 29, 2009, except for Mr. Lucas. On September 8, 2009, Stephen Eisdorfer Esq., Hill Wallack and Engineer Bhaskar Halari, appeared on behalf of objector John Ploskonka. The parties also met on September 29, 2009 and numerous phone conversations were held between the parties and COAH staff.

On September 29, 2009, representatives appeared for two objectors, Boulder at Manalapan, L.L.C. (Boulder) and Triplet Square, LLC (Triplet). Boulder was represented by Art Bernard PP, Principals of the company Gary Schecher, Albert Bresnick and John Vagalia. Triplet was represented by Jeffrey Kantowitz Esq., Pitney Day, Creigh Rahenkamp PP, Principal of the company Nicholas Campanella and builder and developer from Windsor Companies David Meiskin.

Fair Share Housing Center (FSHC) had filed a timely objection but subsequently withdrew its objection prior to mediation. In correspondence on September 25, 2009 withdrawing its objection, FSHC noted that “[T]he addition of the Ingerman site and the commitment to providing 14 very-low-income units and an additional 41 low-income units on that site resolve FSHC’s objections to Manalapan’s Fair Share Plan filed on April 17, 2009.” Four Seasons at Manalapan Homeowners Association, Inc. (Four Seasons) also filed correspondence objecting to Manalapan’s Plan, however, the objection was deemed incomplete and Four Seasons was provided notice to cure. Four Seasons chose not to cure the objection.

MEDIATION

Ploskonka’s representatives presented alternative proposals for inclusion in the fair share plan. Subsequent to mediation, the Township and Ploskonka entered into a mediation settlement agreement, whereby Manalapan agreed to purchase the Ploskonka site for \$250,000. The Ploskonka site will be used for the construction of 10 affordable housing units with no other construction on the site. The Affordable Housing Alliance (AHA) will develop and manage the site.

With respect to Boulder, the two main issues discussed at mediation were the inclusion of the Ingerman site for the Township’s 100 percent affordable project and Boulder’s desire for the Township to consider its site for inclusionary housing in the HE/FSP.

As to inclusion of the Ingerman project, Boulder takes exception to the T&M Associates site suitability report prepared for the Township for Block 47, Lot 17. This report, issued in July, 2009, seeks to include the Ingerman site for a 110-unit municipally sponsored project. Boulder contends that the Township must re-petition to include this site. Boulder notes there is no Township Planning Board resolution amending the Housing Element Fair Share Plan (HEFSP) to include Block 47, Lot 17 and there has been no opportunity for public comment. In response, the Township noted that the HEFSP has always included, albeit without a specific site, two 100% affordable housing municipally sponsored mechanisms that were to be phased. The Township argued that it should not be penalized for the fact that the Township has designated a site for its 100 percent affordable housing project well before designation of a site was called for in the implementation schedule.

Boulder provided and reviewed a layout drawing for the Boulder property. After much discussion, the Township made clear that although it was not interested in adding the site to the fair share plan, the Township agreed to entertain for discussion purposes only, a proposal for the site. The Parties agreed to discuss the matter and the Township would review any plan submitted over the next two weeks.

Triplet also presented two issues to discuss at mediation: the inclusion of the Ingerman project and its desire for the Township to include its site for inclusionary development in the HE/FSP.

Jeffrey Kantowitz, on behalf of Triplet, noted in his correspondence of September 28, 2009, that the recent inclusion of the Ingerman project necessitates a re-petition under N.J.A.C. 5:96-3.4. As noted above, the same arguments and rebuttal were put forth in the Boulder mediation session. Issues were also raised about the environmental status of the Ingerman site. The Township advised that Ingerman has a Phase 1 environmental report for the site. The Township agreed to provide COAH staff and Triplet a copy of the report within two weeks, which was done.

Triplet provided and described a layout drawing of the Triplet site. The drawing contained a mixed-use development with store fronts near the road and a large inclusionary residential building in the back. The Township representatives noted that the concept was not in line with the historical nature of the area. After much discussion, the Parties agreed that Triplet may present a revised plan to the Township Planning Board in a work session, based on the comments provided at mediation. The parties also agreed that the review of a revised plan would occur outside of the COAH process, but may help to create affordable housing.

MEDIATION OUTCOME

As noted above, the mediation successfully resulted in a mediation agreement between the Township and objector Ploskonka. The mediation agreement was executed on January 13, 2010, and is attached to this report. Ploskonka and the Township have entered into an agreement pursuant to N.J.A.C. 5:96-8.4(c). The Ploskonka site will be

used for the construction of 10 affordable housing units. The Affordable Housing Alliance (AHA) will develop and manage the site. Manalapan has submitted to COAH a draft developer's agreement with the AHA, a draft zoning ordinance, a pro-forma and a construction schedule for the 100 percent affordable housing development. The Township intends to adopt the zoning ordinance and execute the developer's agreement with the AHA within 45 days of substantive certification.

Objectors Boulder and Triplet both sought to present their respective proposals before the Manalapan's governing body. Both Boulder and Triplet representatives are scheduled to meet with the Township Committee to discuss their respective proposals on January 27, 2010.

Objectors Boulder and Triplet see the addition of a new site for the Ingerman project as grounds to compel the Township to re-petition. Whether the Township has to re-petition due to the inclusion of the Ingerman issue does not create a contested issue of material fact. In that there are no outstanding issues of material fact which require that this matter be referred to the Council to consider those issues or for referral to the Office of Administrative Law, pursuant to N.J.A.C. 5:96:8.4(b) and N.J.A.C. 5:96-9. The mediation report is submitted to the Council for its approval.

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING

In the Matter of the Petition for
Substantive Certification filed by the
Township of Manalapan, Monmouth
County

MEDIATION AGREEMENT

**MEDIATION AGREEMENT BETWEEN JOHN PLOSKONKA AND THE
TOWNSHIP OF MANALAPAN**

JOHN PLOSKONKA ("the Objector/Seller") and the Township of Manalapan ("the Township/Buyer") being desirous of resolving the dispute raised by the objection filed by the Objector with the New Jersey Council on Affordable Housing (hereinafter "COAH") to the Petition for Substantive Certification filed by The Township/Buyer and the Planning Board without the cost, burden, and uncertainty of further proceedings before the COAH, stipulate and agree as follows:

1. **Purpose.** This agreement is intended to settle amicably an objection filed by the Objector to the Petition for Substantive Certification filed with the COAH by Manalapan Township without the risk, burden, or expense of further contested administrative proceedings or litigation by providing for transfer by the Objector/Seller to the Township/Buyer of certain property, which the Township may in its discretion elect to utilize for development of low or moderate income housing, in exchange for consideration, namely the payment of \$250,000 and the Objector/Seller's withdrawal of his objection, which has various benefits to the Township/Buyer.
2. **Sale.** The Objector/Seller hereby agrees to sell and convey to the Township/Buyer, who hereby agrees to purchase from the Objector/Seller, all that certain tract of land of approximately 1 acres situated in the Township of Manalapan, County of Monmouth, State of New Jersey, more particularly described on Exhibit "A" attached hereto (the "Property"), designated as Block 48, Lot 8.01 on the official tax map of the Township of Manalapan, Monmouth County, New Jersey.
3. **Purchase Price.** The purchase price (the "Purchase Price") for the Property shall be TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$250,000.00) DOLLARS.
4. **Other consideration.** Within 7 days after the effective date of this Agreement, the Objector will withdraw his objection to the petition for

substantive certification filed with the New Jersey Council on Affordable Housing.

5. Use of the Property.

a. It is the intention of the Township to rezone the Property for development of low and moderate housing on terms acceptable to the Affordable Housing Alliance, a non-profit entity formerly known as the Monmouth Housing Alliance, to secure development approvals for the development of such housing, and then to transfer the Property to the Affordable Housing Alliance for development and operation of a low and moderate income housing community.

b. The Objector will have no responsibility to the Township for any aspect of the actual development of affordable housing on this property, but nothing in this agreement will preclude the Affordable Housing Alliance from entering into an agreement with him for him to act as a consultant or contractor to the Affordable Housing Alliance on the development.

c. Except as provided in paragraph 10 below, the rights and obligations of the Objector under this Agreement shall not be affected in any manner by any decision, action, or inaction by the Township/Buyer or by the Affordable Housing Alliance as to utilization or non-utilization of the Property for development of low and moderate income housing.

6. Conditions to the Township/Buyer's obligation to complete settlement. The Township/Buyer's obligation to complete settlement under this Agreement is conditioned upon its receipt from the Affordable Housing Alliance of a letter of intent, pro forma, construction schedule and an executed developer's agreement for the construction of low and moderate income housing on the Property in a form acceptable to the New Jersey Council on Affordable Housing.

7. Title.

a. The Property is to be conveyed free and clear of all liens, encumbrances, restrictions, covenants and easements, EXCEPTING HOWEVER, the following: any existing privileges or rights of public service companies, provided same will not materially adversely affect the Township/Buyer's intended development of the Property, and subject to such restrictions, covenants and obligations as may be set forth in the Settlement Agreement (the "Permitted Exceptions"); otherwise title to the Property shall be good and marketable and such as will be insured by such title company of the State of New Jersey selected by the Township/Buyer (the "Title Company"), at such Title Company's regular rates.

b. The Township/Buyer shall promptly order a title report with respect to the Property from the Title Company. The Township/Buyer shall also order a survey of the Property. Within five (5) days after receipt of the title report or the survey, the Township/Buyer shall give the Objector/Seller a copy thereof together with notice of any objections to title and/or the survey or to matters shown thereon. The Township/Buyer may not object to the Permitted Exceptions. If such notice is not given within such period, The Township/Buyer shall be deemed to have waived any exceptions to title in such title report or the state of facts shown on the survey, as the case may be, and shall take title subject thereto. Notwithstanding the foregoing, if the title report or Survey is modified after its issuance, or the title report is updated based upon a title rundown, the Township/Buyer shall, within five (5) days notify the Objector/Seller of any additional objection as a result thereof. The Objector/Seller shall notify the Township/Buyer if The Objector/Seller will not remove any objection raised by the Township/Buyer, it being understood that the Objector/Seller must cure or remove any exception to title which may be eliminated by the payment of a liquidated sum or is a matter to which the Objector/Seller agreed or consented after the date of this Agreement. If the Objector/Seller does not so notify the Township/Buyer within ten (10) days after receipt of the Township/Buyer's objection, the Objector/Seller shall be obligated to remove the objection. Notwithstanding anything to the contrary herein, the Objector/Seller shall be obligated to cure or remove any and all title objections which arise between the date hereof and the Closing provided the same would not constitute a Permitted Exception. The Objector/Seller shall be entitled to reasonable adjournments of the Closing for up to thirty (30) days to remove any objections so raised by The Township/Buyer.

c. Notwithstanding any provision herein to the contrary, in the event the costs, charges and expenses to satisfy and remove any and all exceptions to title exceed the Purchase Price then the Objector/Seller shall have the right to terminate this Agreement and the only obligation of the Objector/Seller as a result of such termination shall be the return of the Deposit to the Township/Buyer and the Township/Buyer shall have no further claim or right to the Property or against the Objector/Seller.

d. In the event the Objector/Seller is unable to give good and marketable title and such as will be insured by the Title Company as set forth above, the Township/Buyer shall have the option (i) of taking such title as the Objector/Seller can convey, with abatement of the Purchase Price in the amount (fixed or ascertainable) of any lien or other encumbrance which can be satisfied with the payment of money on the Property, or (ii) requiring any monies needed to clear title be escrowed by the Objector/Seller with the Title Company whereupon the Objector/Seller shall have the right to contest the lien with the understanding that the money escrowed shall be paid to satisfy the lien if the Objector/Seller's contest is unsuccessful, or (iii) of being repaid the Deposit and in the latter event there shall be no further liability or obligation .

by either of the parties hereunder and this Agreement shall become null and void.

8. Settlement.

a. Settlement ("Settlement") shall be made at the offices of the Township/Buyer or Title Company on or by the Closing Date, which shall be the date which is ninety days from the Effective Date of this Agreement or thirty (30) days following the satisfaction of the conditions set forth in Section 6 of this Agreement, whichever comes later. Possession is to be given at the time of Settlement, free of all leases and other occupancy, by bargain and sale deed with covenants against grantor's acts.

b. On the Closing Date, the Objector/Seller shall deliver to the Township/Buyer the following:

- i) A bargain and sale deed with covenants against grantor's acts to convey title to the Property;
- ii) An Affidavit of Title in form reasonably acceptable to the Authority and its Title Company;
- iii) An Internal Revenue Code Section 1445 Affidavit;

c. The Township/Buyer will pay for all recording fees and realty transfer taxes incidental to conveying title to the Authority. It is expressly understood and agreed, however, that and agreed, however, that each party shall be solely responsible for its own attorney fees.

d. The following adjustments are to be made at the Closing as of the end of the Closing Date: (i) real estate taxes on the basis of the fiscal year for which assessed; (ii) water charges; (iii) sewer rents; (iv) gas; (v) electric; (vi) fuel (at the Objector/Seller's cost therefore); and (vii) any other items which shall be appropriate for adjustment. If the Closing Date shall occur before a tax rate is fixed, the apportionment of real estate taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property.

9. Representations of the Objector/Seller. The Objector/Seller represents to the Township/Buyer as follows:

a. The Objector/Seller is the owner in fee simple of the Property herein agreed to be conveyed to the Township/Buyer and, if an individual, is over eighteen years of age.

b. Each party executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the

transaction contemplated hereby on behalf of the Objector/Seller has due and proper authority to execute and deliver same. The Objector/Seller has the full right, power and authority to sell and convey the Property to the Township as provided herein and to carry out its obligations hereunder without the joinder or consent of any other person or entity or governmental body or agency or the order of any court, and the Objector/Seller has due and proper authority to execute and deliver all documents related to the consummation of the transactions.

c. The Property is now and has been held in peaceable and undisturbed possession by the Objector/Seller since said Property was acquired and the title has never been disputed, questioned or rejected to the Objector/Seller's knowledge or belief, nor does the Objector/Seller know any facts by reason of which said possession or title may be disputed or questioned, or by reason of which any claim to any part of the Property or any interest therein adverse to that of the Objector/Seller which might be set up or made.

d. No contract for the sale of the Property has been made and no option to purchase the same has been given to anyone other than the Township/Buyer. The Objector/Seller will not sell, mortgage, encumber or otherwise dispose of the Property or any part thereof prior to the Closing Date, except to the Authority.

e. The Objector/Seller will not permit anyone who is not, as of the Effective Date, a tenant or occupant of the Property to occupy the Property subsequent to the date of this Agreement.

f. No tenants, persons or entities hold or possess any right to use or occupy the Property; (ii) there are no verbal or written leases currently affecting the Property; and (iii) the Objector/Seller does not hold any funds as tenants' security deposits in connection with the Property. The Objector/Seller agrees that the Property shall be delivered at closing vacant and free of any tenancies or other rights of possession.

g. No labor has been performed or material furnished for the Property (i) for which the Objector/Seller has not heretofore fully paid, (ii) for which a Notice of Unpaid Balance and Right to File Lien Claim, construction lien, mechanic's or materialman's lien or liens, or any other lien, can be claimed by any person, party or entity, or (iii) which will not, by the Closing Date, be removed.

h. The Objector/Seller has no knowledge of any pending or threatened legal action of any kind or character whatsoever affecting the Property which will in any manner interfere with the transfer of possession or

title upon consummation hereof, nor has the Objector/Seller knowledge that any such action is presently contemplated.

i. To the best of the knowledge of the Objector/Seller, the execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not conflict with any applicable law, ordinance, regulation, statute, rule, restriction or any judgment, order or decree of any court having jurisdiction over the Objector/Seller or the Property.

j. The Objector/Seller has no actual knowledge of, and has received no notice of, any outstanding violation of, and the Property is currently in compliance with, any governmental law, rule, statute, ordinance, or regulation affecting the Property, including, without limitation, any applicable laws, rules, regulations, ordinances, permits, orders and directives relating to environmental protection. In the event the Objector/Seller receives a notice or notices of any violation(s) subsequent to the date hereof, it will immediately provide the Authority with a copy of same and will expeditiously correct same prior to the Closing Date.

k. The Objector/Seller has received no notice of any pending or threatened condemnation of the Property.

l. There are no insolvency proceedings pending or to the Objector/Seller's knowledge, threatened against it.

m. The amount due on the liens and encumbrances affecting the Property do not now and will not on the Closing Date exceed the Purchase Price.

n. No lien has been attached to any revenues or any real or personal property owned by the Objector/Seller and located in the State of New Jersey, including, but not limited to the Property, as a result of monies being expended out of the New Jersey Spill Compensation Fund to pay for "Cleanup and Removal Costs" as such term is defined in N.J.S.A. 58:10-23.11b(d) arising from an intentional or unintentional action or omission of the Objector/Seller or of any previous owner or operator of said real property.

o. The execution, delivery and performance of this Agreement will not conflict with or result in a breach of any material terms and conditions of, or constitute a default or require consent under the terms of any material agreement to which the Objector/Seller is a party or by which the Objector/Seller may be bound, or to which the Property is subject, and no consent, approval or authorization of any third party is now required for the execution, delivery and performance of this Agreement, except those that have been obtained or made, and are in full force and effect.

10. Environmental Provisions

a. The Objector/Seller represents the following to the best of the Objector/Seller's knowledge and belief, that (i) the Property is in compliance with all applicable local, federal and state statutes or regulations, ordinances, permits, orders, and directives regarding pollutants, contaminants, hazardous waste, materials and/or substances (hereinafter collectively referred to as "contamination") and/or solid waste; (ii) there is no pending or contemplated proceeding or administrative action arising out of the environmental condition of the Property except as provided in subparagraph (c) below, and (iii) the Property has never been remediated.

b. During the ninety (90) day period commencing on the day of receipt of a fully executed copy of this Agreement, the Township/Buyer may inspect, or cause to be inspected, the Property with respect to any issues the Township/Buyer deems relevant, including, but not necessarily limited to: environmental i.e., preliminary assessment and a site assessment, topographic, and engineering issues (the "Due Diligence Investigation"). Buyer, its agents, representatives, subcontractors and the like shall be permitted to enter the Property and conduct soil borings and/or test pits. The Buyer/Township shall return the Property to its current condition upon completion of said activities. Buyer/Township shall indemnify and hold Seller harmless from any and all liability to Seller, Seller's tenants or other third parties, as a result of damages, losses or injuries caused solely by Buyer/Township, Buyer/Township's agents or representatives arising out of any act or omission of the Buyer/Township or others entering the Property on Buyer's behalf and conducting tests and inspections.

If the results of the Due Diligence Inspection of the Property are unsatisfactory to Buyer/Township as Buyer/Township may in its sole discretion determine, Buyer/Township may terminate this Agreement by giving written notice to the Seller or the Seller's Attorney within ten (10) day after the end of the Due Diligence Period, whereupon all rights and obligations of the Parties hereunder shall be and become null and void.

c. The Objector/Seller further represent(s) that: (i) it has not discharged any hazardous substances or waste on the Property; (ii) it has no knowledge of any discharge of hazardous substances or waste on the Property; (iii) it did not deposit or cause to be deposited solid waste on the Property; and (iv) it has no knowledge of the presence of solid waste.

d. The Objector/Seller represents that there are no underground storage tanks at, under or on the Property. If there are any underground or above ground storage tanks on the Property, Seller shall be responsible to remove such tanks, in accordance with all applicable laws, at Seller's sole cost and expense. This representation shall survive closing.

11. **Inspections, Studies.**

a. Between the time of execution of this Agreement and Settlement, the Objector/Seller agrees that the Township/Buyer, its representatives and consultants shall have the right to enter upon the Property to perform engineering, environmental and such other studies or inspections as Buyer determines in its sole discretion. If the Township/Buyer causes any damage to the Property as a result of its studies or inspections performed pursuant to this Section, and The Township/Buyer does not close title to the Property, The Township/Buyer shall repair such damage at its own cost and expense. This obligation shall survive closing of title and delivery of the deed.

b. In performing its inspections and investigations, or for any other reason that the Township/Buyer and its agents shall enter Seller's Property, the Township/Buyer shall act in a commercially reasonable manner. The Township/Buyer shall provide reasonable notice to the Objector/Seller before commencing any such activities.

12. **Brokerage Commissions.** Each party hereto represents to the other that no finders or brokers have been involved with the introduction of the Township/Buyer and the Objector/Seller or the purchase and sale of the Property. This representation shall survive Closing.

13. **Condemnation; Casualty.**

a. All risk of loss or damage to the Property by casualty of any nature prior to Settlement shall be borne by Objector/Seller.

b. If, prior to Settlement, any material portion of the Property is condemned, the Township/Buyer shall have the option of (i) terminating this Agreement, in which event this Agreement shall be null and void, or (ii) proceeding with the Settlement, in which event the entire condemnation proceeds shall be delivered to the Township/Buyer at Settlement hereunder (and, in connection with the foregoing, Objector/Seller expressly acknowledges and agrees that the foregoing condemnation proceeds shall not be applied to restoration of the Property without Township/Buyer's prior written consent, given or withheld in Township/Buyer's sole discretion), or, if they have not yet been paid, the right to receive such proceeds shall be assigned to the Township/Buyer at Settlement hereunder by instrument acceptable to the Township/Buyer. The Township/Buyer shall exercise its option within fifteen (15) days after it receives notice from Objector/Seller of any such condemnation.

14. **Effective Date.** This Agreement shall become effective upon its execution by all the parties.

15. **Notices.** Any notice required to be given hereunder shall be given in writing and either (i) sent by United States registered or certified mail, with postage prepaid, return receipt requested, (ii) sent by Federal Express or

another nationally recognized overnight courier, (iii) hand delivered, or (iv) sent by facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight courier. All notices shall be deemed to have been given 48 hours following deposit in the United States Postal Service, or upon delivery if sent by overnight courier service, facsimile, courier or hand delivery. All notices shall be addressed to the following address or at such other address as may hereafter be substituted by notice in writing thereof.

To the Township of Manalapan:

Rose Ann Weeden
Municipal Clerk
Manalapan Township Municipal Building
120 Route 522
Manalapan NJ 07726
(732) 446-8314
(732) 446-5796 (fax)
clerk@twp.manalapan.nj.us

With a copy to:

Ronald D. Cucchiaro, Esq.
Weiner Lesniak LLP
PO Box 438
629 Parsippany Road
Parsippany, NJ 07054-3701
(973) 403-1100
(973) 403-0010 (fax)
rcucchiaro@weinerlesniak.com

To John Ploskonka

John Ploskonka
Concept Engineering
227 Route 33
Building 2, Unit 7
Manalapan, NJ 07726
(732) 792-2750
(732) 792-2740 (fax)
jploskonkacec@optonline.net

With a copy to:

Stephen Eisdorfer, Esq.

Hill Wallack LLP
202 Carnegie Center
Princeton, NJ 08543
609/734-6357
609/452-1888 (fax)
sme@hillwallack.com

16. **Entire Agreement.** This Agreement contains the entire agreement between the Objector/Seller and the Township/Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. This Agreement may be amended only by a writing signed by both parties.

17. **Time of Essence.** Except as may be otherwise specifically provided in this Agreement, time is of the essence of this Agreement and each and every provision hereof.

18. **The Township/Buyer's Default.** Should the Township/Buyer fail to perform any of the Township/Buyer's obligations under this Agreement within thirty (30) days written notice from the Objector/Seller (or ten (10) days written notice in the event of a monetary default), then the Objector/Seller may declare this Agreement terminated or pursue any right, power or remedy available to the Objector/Seller at law or in equity or before the Council on Affordable Housing, including the right to specifically enforce this Agreement against the Township/Buyer.

19. **The Objector/Seller's Default.** Should the Objector/Seller violate or fail to fulfill and perform any of the terms or conditions of this Agreement at or prior to Settlement, and if as a result thereof Settlement hereunder shall not occur, then the Township/Buyer shall be entitled to pursue any right, power or remedy available to the Township/Buyer at law or in equity, including the right to specifically enforce this Agreement against the Objector/Seller.

20. **Miscellaneous.**

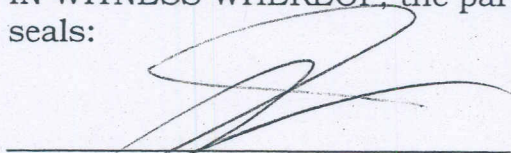
a. This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document.

b. The Township/Buyer and the Objector/Seller agree to cooperate with each other and to take such further actions as may be requested by the other in order to facilitate the timely purchase and sale of the Property.

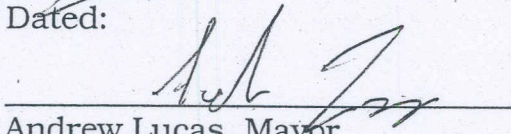
c. If any date on which a time period scheduled to expire herein is a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.

d. This Agreement has been drafted by counsel for both the Objector/Seller and the Township/Buyer, and accordingly, any ambiguities contained herein shall not be interpreted in favor of or against either party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals:



John Ploskonka LS
Dated:



Andrew Lucas, Mayor LS
Township of Manalapan
Dated: