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Attorney for Declaratory Plaintiff,  
Township of South Brunswick

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY</p> <p>DOCKET NO.:</p> <p>CIVIL ACTION – <i>MOUNT LAUREL</i></p> <p>CERTIFICATION OF MARY BETH LONERGAN, PP, AICP, IN SUPPORT OF DECLARATORY JUDGMENT ACTION AND MOTION FOR TEMPORARY IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>
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I, Mary Beth Lonergan, PP, AICP, of full age, do hereby certify as follows:

1. I am a licensed Professional Planner in the State of New Jersey and an Associate Partner at Clarke Caton Hintz, a planning, architecture and urban design firm which has served as the Township of South Brunswick's ("Township") planner on matters relating to affordable housing since May 2005.

2. I have extensive experience in the Mount Laurel arena. I have twenty-seven (27) years of experience as a professional planner, including twenty (20) years of experience on affordable housing matters: eight (8) years with the New Jersey Council on Affordable Housing ("COAH") and, most recently, twelve (12) years at Clarke Caton Hintz as an affordable housing planning expert on behalf of various municipalities and developers. Also, I have been privileged to serve as a Court-appointed Special Master in Mount Laurel cases involving 10 municipalities, and I assist Philip Caton, PP, FAICP, in his role as Special Master in over 50 municipalities.

3. This certification is made in support of the Township's Declaratory Judgment action, including the Township's Motion for Temporary Immunity, prepared pursuant to

N.J.S.A. 52:27D-313 to address the N.J. Supreme Court's March 10, 2015 decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015). As the Township's affordable housing planner, I am fully familiar with the facts set forth below as they relate to this matter.

4. The Township has demonstrated a long-standing commitment to comply voluntarily with its Mount Laurel fair share obligations. As described in detail below, the Township has fully addressed its known first and second round new construction obligation and has provided surplus existing affordable housing credits, approved affordable units and COAH-approved affordable housing programs towards a future third round fair share obligation once determined. The Township will also address its revised third round present need (third round rehabilitation share) based on the 2010 census once determined by the NJ Superior Court.

5. Regarding the Township's known fair share obligation, pursuant to the Appellate Court's October 8, 2010 decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2008), certif. granted, 205 N.J. 317 (2011), the Court requires a review of the municipality's satisfaction of its third round present need (third round rehabilitation share) and prior round obligations (first and second round new construction obligations combined), as well as a review of the municipal efforts towards meeting an unspecified third round prospective need obligation.

6. The Township has voluntarily complied with its fair share obligations since the establishment of the NJ Fair Housing Act in 1985 and with COAH's initial adoption of affordable housing regulations for the first round.

7. In the first round (1987-1993), the Township adopted a housing element and fair share plan addressing a 669-unit precredited need (603 new construction/66 rehabilitation), petitioned COAH and received first round substantive certification from COAH on August 3, 1987 (SBa 1-4)<sup>1</sup>.

8. On March 6, 1995, the Township petitioned COAH with its adopted 1987-1999 cumulative Second Round Housing Element and Fair Share Plan (SBa 5-62).

9. On February 4, 1998, the Township received Second Round Substantive Certification from COAH (SBa 67-84).

10. The Township's 1987-1999 cumulative Second Round obligation, as determined by COAH per N.J.A.C. 5:93, consisted of a 937-unit pre-credited need (842 new construction/95 rehabilitation).

11. Historically, after each census and as part of COAH's rule making, COAH updates municipal rehabilitation obligations. For South Brunswick, as part of COAH's 2008

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<sup>1</sup> SBa – Refers to South Brunswick's Appendix attached to its Brief in support of the Motion for Temporary Immunity.

third round regulations, COAH updated the second round 95-unit rehabilitation share (which had been based on the 1990 census) to a 36-unit initial third round rehabilitation share based on the 2000 census. This 36-unit initial third round rehabilitation share is to be determined and updated once again based on the 2010 census pursuant to the NJ Supreme Court’s 2015 decision.

12. To address its second round rehabilitation share, the Township sought and was granted a waiver by COAH to satisfy its second round rehabilitation share with new construction pursuant to N.J.A.C. 5:93-5.1.

13. In addition to new construction, the Township sought to satisfy its second round rehabilitation share through participation in the Middlesex County Urban Housing Preservation Program which provides funds to low- and moderate-income households to provide for rehabilitation. The Township continues this partnership with the County today to address its third round rehabilitation share.

14. To address its known 842 unit prior round obligation and the initial third round rehabilitation share of 36 (reduced from the 95-unit second round rehabilitation share, the Township previously provided crediting documentation to COAH as part of its first round, second round and both third round submissions (2005 and 2008) to COAH.

15. The Township’s affordable housing crediting documentation has been addressed in COAH’s crediting lists found on COAH’s webpage at <http://www.nj.gov/dca/services/lps/hss/transinfo/reports/units.pdf>. This COAH crediting list is dated March 2011 and although it reflects a partial report on the status of the Township’s affordable housing credits, it is not complete. The details in this certification more fully update the Township’s affordable housing crediting status through today.

16. Pursuant to COAH’s Second Round rules at N.J.A.C. 5:93, et seq., the Township is entitled to the following credits/bonuses for units actually built:

<u>Development</u>	<u>Units</u>
Deans Apartments	40 (prior cycle credits)
Charleston Place I	54 (prior cycle credits)
Regal Point	5 (affordable family sales)
Monmouth Walk	43 (affordable family sales)
Nassau Square	49 (affordable family sales)
Woodhaven	80 (affordable family rentals)
Charleston Place II	30 (affordable senior rentals)
Summerfield	70 (affordable family sales)
Deans Pond Crossing	20 (affordable family sales)
Southridge/Southridge Woods	124 (affordable family rentals)
CIL-Wynwood	7 (alternative living arrangements)
CIL Woods	16 (alternative living arrangements)
Wheeler Rd Group Home	3 (alternative living arrangement)
Major Rd Group Home	3 (alternative living arrangement)

Oak Woods	73	(affordable senior rentals)
Buckingham Place	23	(affordable senior rentals)
ARC of Middlesex County	15	(alternative living arrangements)
Dungarvin/Eclipse	8	(alternative living arrangements)
Community Options	8	(alternative living arrangements)
Triple C Housing	6	(alternative living arrangements)
REACH (Market to Affordable)	18	(affordable family sales)
Rental Bonuses (Prior Round)	<u>187</u>	
<b>TOTAL CREDITS</b>	<b>882</b>	

17. The Township’s crediting of 187 prior round rental bonuses is based on COAH’s certification reports as well as based on COAH’s second round regulation at N.J.A.C. 5:93-5.15, which permits a 2-for-1 rental bonus for built non-senior affordable rentals up to the municipal prior round rental obligation.<sup>2</sup>

18. Accordingly, the Township has fully addressed its 842-unit prior round (combined first and second rounds new construction obligation) plus its updated 36-unit initial third round rehabilitation share with 882 built affordable units, leaving a credit of 4 units to be applied to the as yet unknown Third Round prospective need obligation.

19. The Township petitioned COAH for third round certification on December 16, 2005 under COAH’s original third round rules at N.J.A.C. 5:94; however, the Township’s petition had not been certified by COAH prior to the issuance of the Appellate Court’s January 25, 2007 decision overturning portions of COAH’s ‘growth share’ methodology and regulations.

20. Subsequently, to address COAH’s revised third round regulations amended effective October 2008 at N.J.A.C. 5:97, the Township again adopted a new third round housing element and fair share plan and petitioned COAH for third round certification on December 31, 2008.

21. Although COAH began to conduct a substantive review of the Township’s 2008 plan, it had not certified the Township’s third round plan prior to the Appellate Division’s October 8, 2010 decision which invalidated COAH’s third round ‘growth share’ methodology and portions of COAH’s third round regulations.

22. On September 26, 2013, the N.J. Supreme Court invalidated all of COAH’s third round ‘growth share’ regulations and ordered COAH to develop new third round regulations similar to its first and second round methodologies.

23. Despite the fact that COAH never certified the Township’s Third Round Plan, the

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<sup>2</sup> Pursuant to N.J.A.C. 5:93-5.15(d), the Township is eligible for prior round rental bonuses up to its prior round rental obligation of 187 rentals. The prior round rental obligation is based on COAH’s formula at N.J.A.C. 5:93-5.15(a) which sets a rental obligation at 0.25 [municipal precertified need – prior cycle credits (1980 – 1986 credits) – the impact of the 20 percent cap – the impact of the 1,000 unit limitation – the rehabilitation component, thus, for South Brunswick  $0.25((842 + 36) - 94 - 0 - 0 - 36) = 187$ .

Township proceeded to take steps to produce affordable housing.

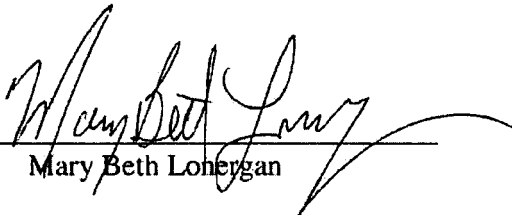
24. The Township is entitled to the following Third Round credits, reductions and bonuses for units that have actually been built and/or approved:

<u>Development</u>	<u>Units</u>
Woodhaven Terr (Deans Apts) Extension of Controls <sup>3</sup>	40 (affordable family rentals)
Sassman development	1 (affordable family sales)
Menowitz development	8 (affordable senior sales)
Dungarvin/Eclipse	4 (alternative living arrangements)
REACH (Market to Affordable)	128 (affordable family sales/rentals)
Wilson Farm Redevelopment	280 (affordable senior rentals)
Wilson Farm Redevelopment	20 (alternative living arrangements)
Prior Round Excess credits	4
Rental Bonuses (Third Round)	86
Redevelopment Bonuses	<u>13</u>
TOTAL CREDITS	584

25. In summary, the Township fully addressed its prior round obligation and its initial third round rehabilitation share with built affordable units and has surplus credits, approved units and firm commitments for up to 584 additional affordable units and bonuses towards a future third round prospective need fair share.

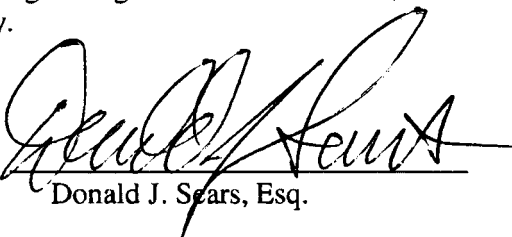
26. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 1, 2015

By:   
Mary Beth Lonergan

As permitted by R. 1:4-4(c), affiant's signature affixed hereto is a copy of the original signature transmitted to me electronically via Portable Document Format (PDF). I certify that I will provide the original document, with affiant's original signature affixed thereto, if requested by the Court, the Special Master or a party.

Dated: July 1, 2015

By:   
Donald J. Sears, Esq.

<sup>3</sup> Extensions of expiring control programs were specifically upheld in the NJ Supreme Court's March 10, 2015 decision.