281-26

AFFORDABLE HOUSING AGREEMENT

THIS Affordable Housing Agreement ("Agreement")**,** made this 13th day of October, 2026 (the "Effective Date"), by and between:

The **TOWNSHIP OF WEST ORANGE**, a municipal corporation of the State of New Jersey, County of Essex, having an address at 66 Main Street, West Orange, New Jersey 07052, (hereinafter the "Township" or "West Orange").

and

DAUGHTERS OF ISRAEL, INC., a not-for-profit entity formed under the laws of the State of New Jersey, with offices located at 1155 Pleasant Valley Way, West Orange, New Jersey 07052, together with any current owner(s) of the Property defined below, and its/their permitted successors and assigns (collectively, "**Daughters**" and, with the Township, collectively referred to herein as the "Parties").

and

And, for purposes of Paragraph 1.3, *infra*, only, **FAIR SHARE HOUSING CENTER**, a non-profit entity formed under the laws of the State of New Jersey, with offices located at 510 Park Boulevard, Cherry Hill, New Jersey 08002 ("FSHC").

RECITALS

WHEREAS, the Township of West Orange is a municipal corporation of the State of New Jersey located in Essex County; and

WHEREAS, the Township filed a declaratory judgment action in the Superior Court of New Jersey, Law Division, Essex County, bearing Docket No. ESX-L-886-25, seeking a court-managed path to compliance with its Fourth-Round affordable housing obligations pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq*., as amended by P.L. 2024, c. 2, Administrative Directive #14-24, and N.J.S.A. 52:27D-313; and

WHEREAS, the Court fixed the Township's Fourth Round affordable housing obligations at a rehabilitation/present need obligation of 409 units and a prospective need obligation of 660 units, and the Township's current draft Fourth Round Housing Element and Fair Share Plan ("Fourth Round HEFSP" or "Housing Plan") identifies an RDP of 0 and an unmet need of 660 units; and

WHEREAS, Daughters is the long-term lessee of certain real property located at 1155 Pleasant Valley Way also known as Block 171, Lot 12 on the Township's tax map (hereinafter the "Property"); and

WHEREAS, the Property was previously included in the Township's fourth round housing element Fair Share plan; and

WHEREAS, the Property is currently owned by the Jewish Community Foundation of Greater MetroWest NJ, Inc. (the "Foundation") which is a registered Not for profit entity, and the Foundation intends to transfer title of the Property to Daughters, subsequent to the Daughters' receipt of all necessary approvals for the Inclusionary Project, *infra*, and Daughters are authorized by the Foundation to enter into this Agreement in connection therewith; and

WHEREAS, the Property consists of approximately 344,124 square feet, or approximately 17 acres, and is located in the Township's R-2 Zone; and

WHEREAS, Daughters have, since 1962, served the needs of the aging and the larger community in the Township by providing health and social-related services to the elderly and others in need, regardless of their ability to pay. Daughters have long utilized their existing facility located on the subject Property and provided short-term rehabilitation for sub-acute care and temporary respite stays, long-term skilled nursing and memory care, as well as a broad array of specialty programs and services. Daughters existing services also include Meals on Wheels to Township residents, quality transportation for health and social services, and use of the existing facility as a training site for the Essex County College School of Nursing for student clinical on-site rotation, the 1199J Pace (Youth Train to Work) program, and the Essex County College C.NA. and Nursing program, and the Morris County Vocational Technology School of Nursing for LPNs; and

WHEREAS, Daughters' existing facility on the Property is becoming obsolete and must be redeveloped as a Continuing Care Retirement Community ("CCRC") facility to enable Daughters to continue their not-for-profit mission and provide long-term care to its seniors, including Medicaid recipients who rely upon Daughters' critical services; and

WHEREAS, absent a prompt rezoning and redevelopment, Daughters will have no choice but to shut down its operations in the Township, sell the Property, and construct a CCRC facility in another community; and

WHEREAS, consistent with the foregoing, Daughters previously filed, in November 2021, and presented a development proposal to the Township's Zoning Board of Adjustment (the "Zoning Board"), seeking approval for a Continuing Care Retirement Community ("CCRC") facility, ultimately consisting of 311 total units, which application was denied by the Zoning Board following 11 hearings on the application; and

WHEREAS, Daughters challenged the Zoning Board's denial by filing an action in lieu of prerogative writs, bearing Docket No. ESX-L-4045-23, which action is currently pending before the Appellate Division under Docket No. A-000164-24 (the "Zoning Board Litigation"); and

WHEREAS, Daughters filed a builder's remedy / exclusionary zoning action against the Township and Planning Board, bearing Docket No. ESX-L-5603-25 (the "Builder's Remedy Action"; and

WHEREAS, by Order entered on April 10, 2026, the Builder's Remedy Action was consolidated with the Township's declaratory judgment action, Docket No. ESX-L-886-25, for purposes of mediation and discovery, without prejudice to any party making an application to have all issues tried at the same time, and Elizabeth McManus was designated to continue as Special Adjudicator; and

WHEREAS, following discussions among the Township and Daughters, the Parties reached an agreement to which Daughters agreed to withdraw its Builder's Remedy Action and settle the Zoning Board Litigation, and the Parties agreed, subject to finalization of this written settlement agreement and required implementing municipal action, that the Property would be included in the Township's Fourth Round HEFSP and related implementing measures for the provision of **7** affordable housing units, discussed *infra*; and

WHEREAS, the Parties desire to resolve the Builder's Remedy Action, settle the Zoning Board Litigation, avoid further litigation, provide certainty regarding the development of the Property, and provide the Township with affordable housing credits that may be applied toward the Township's Fourth Round affordable housing obligation; and

WHEREAS, Daughters seek to develop the Property with a rental inclusionary CCRC facility consisting of 311 total units with a maximum building height of five floors (including 163 independent living units, 64 assisted living units, and 84 skilled nursing units), approximately 347 parking spaces, and various site improvements, all intended to be consistent with the concept plan **attached hereto as Exhibit A** (the "Concept Site and Elevation Plans") and the zoning ordinance **attached hereto as Exhibit B** (the "Ordinance"). As noted subsequently, the CCRC facility will include 41 Medicaid eligible beds, but only 7 of the assisted living beds shall be affordable housing creditable in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), the Fair Housing Act, applicable Court orders, and the Township's Court approved affordable housing plan (the "Inclusionary Project" or "Project"); and

WHEREAS, the Project shall include no fewer than 347 on-site parking spaces; and

WHEREAS, as set forth in greater detail in Paragraph 1.3, supra, and subject to the

conditions enumerated therein, a material consideration for settlement by the Township is that the Daughters' Property and CCRC facility, as proposed herein, will generate a 0 realistic development potential ("RDP") for the Township while also providing 7 affordable housing credits towards the Township's satisfaction of its 25% unmet need obligation pursuant to N.J.S.A. 52:27D-310.1; and

WHEREAS, another material consideration for settlement by the Township is that, in the event the Property is sold or operated by a for-profit entity, as set forth in Paragraph ___, *supra*, the set-aside for the Project will require 20% of the units to be deed restricted and creditable towards the Township's Fourth Round obligation; and

WHEREAS, the Parties wish to enter into this Affordable Housing Agreement which sets forth the terms, conditions, responsibilities and obligations of the Parties relative to the Inclusionary Project and the affordable housing units to be provided on the Property.

NOW, THEREFORE, in consideration of the promises and the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree to the terms set forth as follows:

ARTICLE I – BASIC TERMS AND CONDITIONS

1.1 Purpose

The purpose of this Agreement is to resolve the disputes between the Parties, including Daughters' Builder's Remedy Action and the Zoning Board Litigation, and to create and maintain a rental Inclusionary Project on the Property in which 7 assisted living beds or the percentage of units set forth in accordance with Paragraph 1.8 of this agreement (if triggered), shall be shall be affordable housing creditable in accordance with UHAC standards, the Fair Housing Act, the Mount Laurel doctrine, and the Township's Court approved Fourth Round HEFSP.

The development will be substantially consistent with the Concept Plan dated 9/18/26 and the Ordinance attached hereto as exhibits A & B respectively.

The Parties intend that the Affordable Units to be constructed as part of the Inclusionary Project shall be included in the Township's Fourth Round HEFSP and related implementing measures and shall be applied toward the Township's Fourth Round affordable housing obligation, subject to approval by the Court, Special Adjudicator, Affordable Housing Dispute Resolution Program, or other reviewing authority, as applicable.

1.2 Affordability Controls to Run with the Land

As a critical and non-severable component of this Agreement, the affordability controls applicable to the affordable units in the inclusionary project, including without limitation recorded deed restriction(s), restrictive covenants, and any other recorded affordability instruments required by UHAC, the Fair Housing Act, the Township's affordable housing ordinances, or any Court approved compliance plan, shall run with the land. The obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership, limited liability company, or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement.

Daughters' obligations with respect to the Affordable Units shall continue during Daughters' ownership or operation of the Property and shall be assumed by any successor owner for the full affordability control period, subject to the express conditions set forth herein.

1.3 RDP Calculation of the Property and Unmet Need Provision

Fair Share Housing Center and the Township agree that, in the context of global settlement agreement with FSHC, the Project and the Property shall not contribute to West Orange's realistic development potential ("RDP"). Instead, the Project shall be considered as a "realistic" redevelopment opportunity site, which is specifically rezoned, and for which the 7 associated affordable housing credits count towards the Township's obligation to address the "at least 25% of its unmet need by identifying sites likely to redevelop and adopting realistic zoning" language of N.J.S.A. 52:27D-310.1

In the event that FSHC and the Township do not reach an omnibus agreement, then both FSHC and the Township reserve all rights as it pertains to the RDP of the Property and the Township's obligation to zone for this obligation if deemed to exist by a Court with competent jurisdiction. The foregoing notwithstanding, the Township shall proceed with its rezoning obligations contained herein and this Agreement with Daughters shall be submitted to the Court for review at a fairness hearing, which FSHC shall support. In the event the Township does not settle its Fourth-Round case with FSHC and the matter is instead litigated between FSHC and the Township, the Court's ultimate decision on this limited issue shall have no impact on the rezoning of the Property or the Parties' obligations hereunder.

FSHC's rights under this Agreement are limited to the within paragraph.

1.4 Project Description

The Inclusionary Project shall consist of the following, subject to final site plan approval, outside agency approvals, and consistency with the Ordinance:

a. 311 total units, including 163 independent living units, 64 assisted living units, and 84 skilled nursing units;

b. No independent commercial component;

c. 7 assisted living beds that shall be designated as affordable housing creditable;

d. No fewer than 347 on-site parking spaces

g. stormwater management, landscaping, lighting, trash/recycling, facade, circulation, and other improvements substantially consistent with the Concept Plan dated 9/18/26 attached here to as Exhibit A. and/or as may be approved by the Planning Board; and

h. such other improvements as are reasonably necessary to construct and operate the Inclusionary Project in accordance with applicable law.

1.5 Exhibits

The following exhibits are incorporated into and made part of this Agreement:

a. Exhibit A – Concept Plan / Site Plan dated 9/18/26 and Conceptual Elevations dated____ for the Inclusionary Project

b. Exhibit B – Ordinance _____.

ARTICLE II – DEVELOPER'S OBLIGATIONS

1.6 Obligation to Resolve All Pending Litigation and Withdraw Opposition

Upon the latter of the execution of this Agreement, the non-appealable Court approval of this Agreement at a fairness hearing, and the non-appealable adoption of the Ordinance attached as Exhibit B, Daughters shall file voluntary a stipulation of dismissal with prejudice of the Builder's Remedy Action and the Zoning Board Litigation Such stipulations shall be filed within five (5) business days after the later of the foregoing events, unless another date is agreed to in writing by the Parties or ordered by the Court.

Daughters shall execute and file, or consent to the filing of, any stipulation, consent order, withdrawal, dismissal, or other document reasonably required by the Township, the Planning Board, Zoning Board of Adjustment the Special Adjudicator, or the Court to effectuate the stay, withdrawal, and dismissal of the Builder's Remedy Action and Zoning Board Litigation (both without costs to any party) in accordance with this Agreement.

Daughters shall withdraw, and shall not refile, renew, support, fund, or otherwise pursue, any objection to the Township's Motion for Temporary Immunity / Interim Restraints, the Township's Fourth Round declaratory judgment action, the Township's request for compliance certification, the Township's request for repose, or the Township's Fourth Round Housing Element and Fair Share Plan, except solely to enforce the express terms of this Agreement.

Pending the final dismissal of the Builder's Remedy Action, Daughters shall consent to a stay of the Builder's Remedy Action and shall not take any action inconsistent with the stay, the Township's pending immunity/repose/compliance applications, or this Agreement.

This Agreement is subject to the Court's approval at a duly noticed fairness hearing. Should the Court approve this Agreement at the fairness hearing then, upon the expiration of the appeal period associated with that Court approval, the Parties shall dismiss, with prejudice, the pending Zoning Board Litigation.

The Parties shall exercise good faith, cooperate, and assist each other in preparing and filing the stipulations of dismissal and any related documents required to implement this Section, and approval of the form of such documents shall not be unreasonably withheld, conditioned, or delayed. Nothing herein shall be construed to require the Township, the Planning Board, the Governing Body, or any Township official to approve any application, ordinance, variance, waiver, permit, or other governmental approval except in accordance with applicable law.

1.7 Obligation to Provide and Maintain Creditworthy Affordable Units

Daughters shall ensure that the Project maintains the affordability controls such that all Affordable Units are creditworthy against the Township's affordable housing obligation pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*, any applicable COAH regulations, UHAC, the Mount Laurel doctrine, the Township's Housing Element and Fair Share Plan, and any applicable Court order, pursuant to a deed restriction and related affordability controls.

For purposes of this Agreement, "Affordable Unit(s)" means the affordable units identified in Paragraph 1.1 and 1.8 (if triggered) of this Agreement and compliant with UHAC for creditworthiness under the Fair Housing Act and the Mount Laurel doctrine.

Daughters shall be responsible to ensure that each Affordable Unit is created, marketed, priced, leased, operated, and maintained in compliance with UHAC, the Fair Housing Act, any applicable COAH regulations, the Township's affordable housing ordinances, the Township's Court approved affordable housing plan, the recorded deed restriction(s), this Agreement, and all applicable federal, state, county, and local law.

1.8 Obligation to Satisfy Full Affordable Housing Set Aside, Including Any Fractional Obligation

The Parties agree that the Inclusionary Project shall yield 7 creditable affordable housing units and this shall be the Affordable Housing set-aside for the Daughters' Inclusionary Project.

However, in the event that title to the Property is transferred to or operated by a for-profit entity, the Daughters do not construct the Inclusionary Project or if the project ever ceases to operate as a CCRC, as defined in the ordinance attached hereto as Exhibit 'B" or otherwise cease to provide any services that are a component thereto at any point in time, during the 40 year deed restriction period, restricting the use of affordable units specified in this agreement then a modified set-aside shall be imposed for the balance of the fourth round term and subject to all applicable regulations as if these units were designated upon the inception of the fourth round. In particular, the Project shall contain a 10% deed restricted set aside on all assisted living units and a 20% deed restricted set-aside of all independent living housing units for the balance of said period. All such units shall be deed restricted in accordance with all applicable UHAC regulations necessary to qualify the same as creditable , and the developer/owner of the Project shall satisfy any fractional affordable housing obligation by making a payment in lieu to the Township's Affordable Housing Trust Fund, calculated on the basis of $180,000.00 per each affordable unit (on a fractional basis). Such fractional payment in lieu shall be payable as a condition of, and no later than, issuance of the first residential certificate of occupancy for the non-Daughters' project. To ensure compliance with this condition, Daughters shall, upon the later occurrence of the conditions referenced in Paragraph 1.6, *supra*, cause a memorandum of settlement to be recorded in the chain of title as an additional deed restriction for the Property that references this Agreement. Moreover, said deed restriction shall expressly waive any and all rights to challenge and/ or to interpose and defense to the same.

Moreover, in the event the Daughters seek and obtain approval for an Inclusionary Project in excess of 311 total units, then the affordable set-aside on the units in excess of 311 shall be 20%. No Temporary Certificate of Occupancy, Certificate of Occupancy, Rental Certificate, or other occupancy authorization for any residential unit shall issue unless and until the deed restrictions set forth in paragraphs 1.2 and 1.12 of this agreement are duly filed. No temporary certificate of occupancy, certificate of occupancy, rental certificate, or other occupancy authorization for any residential unit shall issue unless and until the deed restriction and additional has been recorded.

No waiver, reduction, alternate satisfaction, payment-in-lieu, or rounding methodology shall be effective unless expressly set forth in this Agreement, the Ordinance, or other Township implementing ordinance and approved by the Court or other reviewing authority to the extent required.

1.9 Obligation to Bear All Expenses Associated with Creating and Maintaining Creditworthy Units

Other than as specified in this Agreement, the Township shall have no financial obligations under this provision to assure that the Affordable Units are creditworthy, and all associated expenses, except as set forth herein to the contrary, shall be solely borne by Daughters, its

successors, or assigns. Daughters shall pay all associated costs of the Administrative Agent which are incurred in connection with the Inclusionary Project.

Daughters shall also be responsible for all professional escrow deposits, application fees, review fees, inspection fees, recording fees, administrative agent fees, and other fees or charges lawfully imposed in connection with the Project, the Affordable Units, the development application, and the administration and monitoring of the Affordable Units.

1.10 Obligation to Cooperate with the Township in Its Efforts to Monitor the Units

The Parties acknowledge that the Township has the obligation from time to time to generate information necessary to demonstrate that units are creditworthy. Daughters and its successors or assigns, at their own expense, shall cooperate and provide all reasonable and necessary information to the Township, the Township's Municipal Housing Liaison, and the Administrative Agent regarding monitoring and reporting requirements.

1.11 Administrative Agent

Daughters shall work with the Township's Administrative Agent and special Mount Laurel counsel to ensure that the Affordable Units are administered in accordance with law. Daughters shall be responsible for providing the Township with all information, if any, that it, the Administrative Agent, or other governmental entities may require.

The Administrative Agent shall be selected, designated, or approved by the Township in accordance with UHAC and applicable law. Daughters shall pay all reasonable, actual, and necessary costs charged by the Administrative Agent for administration of the Affordable Units.

1.12 Obligation to Properly Deed Restrict the Inclusionary Project

Daughters shall work with the Township and its Administrative Agent to record a deed restriction that is consistent with UHAC, N.J.A.C. 5:80-26.1 *et seq.*, so that all Affordable Units in the Inclusionary Project shall have affordability controls for not less than **[40]** years because the Project is presently contemplated as a rental project. If the Project is converted to a for sale project by written amendment approved by the Township and the Court to the extent required, the Affordable Units shall have affordability controls for not less than forty (40) years, or such longer period as may be required by applicable law.

Daughters shall record the deed restriction(s) and all related affordability instruments in the Essex County Clerk/Register's Office at its sole cost and expense. Unless otherwise approved in writing by the Township and the Administrative Agent, such deed restriction(s) and affordability instruments shall be recorded prior to issuance of any certificate of occupancy for any residential

unit within the Project.

Property maintenance shall be continuous. The Affordable Units shall comply with all applicable UHAC regulations necessary to maintain credit worthiness. In the event Daughters fails to timely record the required deed restriction(s) or affordability instruments, fails to maintain the Affordable Units in compliance with UHAC, or leases, rents, occupies, transfers, or otherwise permits use of any Affordable Unit in violation of the applicable affordability controls, Daughters shall be responsible for all reasonable costs and expenses incurred by the Township in enforcing this Agreement and the affordability controls, including reasonable attorneys' fees, administrative agent fees, professional fees, and court costs. In addition, to the fullest extent permitted by law and as an equitable remedy for noncompliance, Daughters shall remit to the Township's Affordable Housing Trust Fund any rent, income, or other consideration collected from any Affordable Unit during the period of noncompliance, or, at minimum, the difference between the amount actually collected and the maximum lawful affordable rent permitted under UHAC, as determined by the Township, the Administrative Agent, or the Court.

1.13 Obligation to Lease Units in a Manner That Maintains Their Creditworthiness

Daughters, including its successors and assigns, shall have the continuing responsibility to reserve the 7 Affordable Units in the Inclusionary Project in accordance with applicable federal, state, and local laws, UHAC, and the terms specified in this Agreement for at least 40 years and to maintain the Mount Laurel creditworthiness of the Affordable Units. In the event of any breach of this continuing responsibility, the Township shall have all remedies available in equity and law.

No Affordable Unit shall be leased, occupied, released, transferred, or otherwise made available except to an income qualified household approved by the Administrative Agent, at a rent approved by the Administrative Agent, and pursuant to a lease form approved by the Administrative Agent to the extent required by UHAC.

1.14 Obligation Not to Challenge the Township's Fourth Round Affordable Housing Plan

Daughters or any affiliated entities or successors in interest will cooperate with and support the Township's request for approval of any amendment to the Township's affordable housing plan and the subsequent entry of a judgment of compliance and repose/compliance certification, will support the settled upon fair share plan, and will not otherwise challenge the validity of the Township's affordable housing plan, so long as Daughters' site and this inclusionary project are included within the Fourth Round Affordable Housing Plan. This obligation also specifically requires Developer to support or not object to the Township's Fourth Round Plan (or any subsequent amendment thereto to accommodate the change in affordable units in accordance

with Paragraph 1.8 of this agreement, if triggered)., to the extent the Township seeks approval of its Fourth-Round Plan and Developer's site and this Inclusionary Project are contained within the Fourth-Round Plan.

1.15 Obligation to File Development Applications in Accordance with the Ordinance and Concept Plan

After the Township's adoption of the Ordinance to permit development of the Inclusionary Project and approval by the court of this settlement agreement via a fairness hearing, Daughters shall file development applications consistent with the Concept Plan and the Ordinance. Daughters shall be responsible for obtaining any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, including, but not limited to, the Township, Planning Board, Essex County, Essex County Planning Board, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, applicable soil conservation district, utility providers, and any other governmental authority having jurisdiction.

Daughters shall diligently pursue completeness, hearings, approvals, permits, outside agency approvals, construction permits, and certificates of occupancy in good faith and without unreasonable delay.

1.16 Court Approval / Fairness Hearing Trigger for Development Application

The Parties acknowledge that this Agreement may be subject to approval by the Court following what is commonly known as a fairness hearing. Unless otherwise ordered by the Court, Daughters' development application shall be processed following Court approval of this Agreement after a fairness hearing, to the extent required, and passage/effectiveness of the Ordinance. The adoption of the Ordinance shall not be required to await the outcome of any required fairness hearing unless the Court so orders.

If this Agreement is not approved by the Court following any required fairness hearing, then this Agreement shall be deemed terminated and shall be of no further force and effect, and the Parties shall return to their respective positions as if this Agreement had not been executed by the Parties, subject to any order of the Court.

1.17 Parking, Traffic, Access, and Off-Site Improvements

Daughters shall be responsible, at its sole cost and expense, for satisfying all parking, traffic, access, loading, refuse, utility, stormwater, pedestrian safety, and off-site improvement requirements applicable to the inclusionary project, including those required by the Township, Planning Board, Essex County, any outside agency, or any condition of approval, except as expressly provided otherwise in this Agreement.

Daughters shall implement all parking, traffic, access, and off-site improvement measures agreed upon by the Parties and/or required by any approval, including:

a. A minimum of 347 on-site parking spaces;

b. delivery, loading, trash pickup, private hauler, rideshare, curb management, and similar operational measures required by the Planning Board or outside agencies; and

c. any other traffic, parking, access, utility, or site mitigation measures required by the Planning Board, Township professionals, Essex County, or any outside agency.

d. All under building parking shall be screened in accordance with the Zoning ordinance attached hereto as exhibit B and subject to the reasonable approval of the Township Engineer, so as to minimize and effectively obstruct visibility of the same from neighboring residential properties or public rights of way.

The Township agrees to use reasonable efforts to assist Developer in its undertakings to obtain required approvals for the parking, traffic, access, and off-site improvements described in this Section. If Daughters requests the Township's assistance regarding any required approvals, such assistance will be provided by the Township at Daughters' expense, and any municipal consents or approvals required for such improvements shall not be unreasonably withheld, conditioned, or delayed where the Township has authority to issue same and where issuance is consistent with applicable law.

No temporary Certificate of Occupancy, Certificate of Occupancy, Rental Certificate, or other occupancy authorization shall be issued until all required parking, traffic, access, utility, stormwater, safety, and off-site improvements have been completed, bonded, inspected, or otherwise addressed to the satisfaction of the Township and any outside agency having jurisdiction, to the extent permitted by law and all required deed restrictions are duly recorded.

ARTICLE III - TOWNSHIP OBLIGATIONS

2.1 Obligation to Include Property in Fourth Round HEFSP

The Township acknowledges that, subject to the terms of this Agreement, Court approval to the extent required, and Daughters' full and timely performance of its obligations, the Property and inclusionary project, as described in this Agreement and as depicted in the Concept Plan, shall be included in the Township's Fourth Round Housing Element and Fair Share Plan and related implementing measures for the provision of the Affordable Units and satisfaction of any applicable fractional obligation as set forth herein.

The Township's inclusion of the Property and Inclusionary Project in its Fourth Round HEFSP is expressly conditioned upon Developer's compliance with this Agreement, UHAC, the Ordinance, all

applicable approvals, and all applicable laws.

2.2 Obligation to Rezone or Adopt Implementing Ordinance for the Project

The Township acknowledges and agrees that the zoning ordinance necessary to permit development of the inclusionary project on the Property in accordance with this Agreement is the Ordinance attached hereto as Exhibit B.

The Township shall take all necessary steps to promptly adopt the Ordinance within 60 days of the full execution of this Agreement, including adoption on second reading, and in compliance with all procedural requirements set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq*. Nothing herein shall be construed to require the Township, the Governing Body, the Planning Board, or any Township official to act contrary to applicable law or any order of the Court.

2.3 Obligation to Cooperate

The Township acknowledges that, in order for Daughters to construct its Inclusionary Project, it will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, including, but not limited to: the Township, the Township's Planning Board, Essex County, the Essex County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the applicable soil conservation district, and utility providers, including those approvals set forth in the Township's ordinances and requirements imposed by the Township's land use boards. The Township agrees to use all reasonable efforts to assist Daughters in its undertakings to obtain the required approvals. If Daughters requests the Township's assistance regarding any required approvals, such assistance will be provided by the Township at Daughters' expense.

The Township recognizes that the unit count could be reduced as a result of Daughters securing any and all necessary and applicable agreements, approvals, and permits, but the Inclusionary Project shall nevertheless contain 7 creditable affordable housing units. If the Project contains more than 311 residential units, as referenced in Paragraph 1.8, then Daughters shall be required to make twenty percent (20%) of the units constructed in excess of 311 units as Affordable Units, subject to the fractional obligation provisions of Section 2.3.

2.4 Obligation to Refrain from Imposing Cost Generative Requirements

The Township agrees that the Township will not impose standards and/or requirements that have not been agreed to by the Parties and would otherwise be considered cost generative, to the extent that Daughters maintains the Affordable Units, which are specifically considered to be creditworthy under the Mount Laurel doctrine, entitling the Project to such protections.

2.5 Obligation with Regard to Utilities

The Township agrees to take all actions within its municipal authority, and to cooperate with all applicable utilities and agencies, to provide for and facilitate all utility connections and related off-site improvements required for the Inclusionary Project, including, without limitation, water,

sanitary sewer, stormwater/drainage, electric, gas, and telecommunications, and shall issue all reasonable municipal consents and approvals necessary to do so, provided such consents and approvals are consistent with applicable law.

Daughters shall be responsible, at its sole cost and expense, for all required design, permitting, construction, installation, fees, and restoration associated with such connections, including securing any required third-party easements, unless the Parties expressly agree otherwise in writing.

2.6 Capacity Representation

The Township represents that as of the Effective Date, based solely on information reasonably available to the Township, the Township is not aware of a formal sanitary, sewer, or water moratorium / scarce resource order presently applicable to the Property. In this regard, while the Parties do not anticipate any significant off-tract and/or off-site improvements are necessitated by the construction of the Inclusionary Project, if such improvements are in fact necessitated by the construction of the Inclusionary Project, then the statutory provisions of the Municipal Land Use Law's off tract improvement statute, set forth at N.J.S.A. 40:55D-42, shall govern.

ARTICLE IV – TOWNSHIP PLANNING BOARD (PLANNING BOARD) OBLIGATION

3.1 Obligation to Participate in Zoning Ordinance Approval with Reasonable Diligence

Notwithstanding any other provisions of this Article, the Parties understand that the Planning Board is not a party to this Agreement, but the Parties anticipate that the Planning Board will honor the provisions set forth herein to the extent consistent with the Municipal Land Use Law, the Ordinance, and applicable law. Moreover, the Parties anticipate that the Planning Board will grant and schedule special meetings as necessary, if so requested by Daughters, at the Daughters' sole expense.

3.2 Obligation to Process Developer's Development Application with Reasonable Diligence

The Planning Board shall diligently process Daughters' development applications following Court approval of this Agreement after any required fairness hearing and passage of the necessary zoning ordinance set forth herein, and within the time limits imposed by the Municipal Land Use Law.

3.3 Right to Seek Approval of Variances, Waivers, or De Minimis Exceptions

The Planning Board recognizes that the zoning ordinance approval and this Agreement contemplate development of the inclusionary project, which is an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Daughters shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Nothing shall prevent Daughters from applying for a waiver or bulk variance from any standard imposed by the Ordinance and/or the Township's land use and development ordinance, as applicable, and the standards set forth in the Municipal Land Use Law, the Fourth Round affordable housing regulations, or in this Agreement, or

as otherwise established by law, as applicable, shall determine if Daughters is entitled to this relief or from seeking a waiver or *de minimis* exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Township Council and Planning Board are under no contractual obligation to grant or approve any request for a variance, waiver, or de minimis exception.

ARTICLE V- MUTUAL OBLIGATIONS

4.1 Obligation to Comply with State Regulations

The Parties shall comply with any and all federal, state, county, and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority applicable to the inclusionary project, the Affordable Units, the Property, or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

4.2 Mutual Good Faith, Cooperation, and Assistance

The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the required approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

4.3 Notices

Any notice or transmittal of any document required, permitted, or appropriate hereunder and/or any transmittal between the Parties relating to the Property or this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier, with certified proof of receipt, and by email where an email address is provided below.

TO DAUGHTERS:

Daughters of Israel, Inc.
Attn: Colleen Thompson, Executive Director of Daughters of Israel
1155 Pleasant Valley Way
West Orange, New Jersey 07052

With a copy to:

INGLESINO TAYLOR
Attn: **John P. Inglesino, Esq.**
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054
Email: jinglesino@itfirm.law

and

TO THE TOWNSHIP: Township of West Orange
Attn: Township Clerk
66 Main Street
West Orange, New Jersey 07052
Email: clerk@westorange.org

With a copy to: Semeraro & Fahrney, LLC
Attn: Mark J. Semeraro, Esq.
155 Route 46, Suite 108
Wayne, New Jersey 07470
Email: msemeraro@semerarolaw.com

TO FSHC (as to Paragraph 1.3 only):

Fair Share Housing Center
Attn: Ariela Rutbeck-Goldman, Esq.
510 Park Boulevard,
Cherry Hill, New Jersey 08002
Email: arielarutbeck@fairsharehousing.org

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE VI - MISCELLANEOUS

4.4 No Modification

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

4.5 Counterparts

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

4.6 Voluntary Agreement

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

4.7 Interpretation

In the event of any subsequent dispute or ambiguity involving the interpretation of this Agreement, inasmuch as the Parties and their attorneys have had input into the terms and conditions contained herein, this Agreement shall not be interpreted against the Township, the Planning Board, or any Party by reason of drafting.

4.8 Assignment

Daughters may assign this Agreement with advance notice to the Township, provided, however, that any assignment shall require that the assignee expressly assume in writing Daughters' obligations under Article II and all other obligations applicable to the Property and inclusionary project, and such assignment shall not relieve the assignor of its obligations for acts or omissions occurring prior to the effective date of the assignment unless the Township expressly agrees in writing. The Parties expressly recognize that the Foundation intends to transfer title of the Property to Daughters and such transfer shall be expressly permissible, without notice, and shall not require any approval of the Township. However, as set forth in Paragraph 1.8, in the event that title to the Property is transferred to or operated by a for-profit entity or the Daughters do not construct the Inclusionary Project, then the modified set-aside requirements set forth in Paragraph 1.8 shall be imposed.

4.9 Schedules

Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. The only exhibits to this Agreement are **Exhibit A**, the Concept Plan, and **Exhibit B**, the Ordinance unless the Parties amend this Agreement in writing.

4.10 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, and understandings, whether written or oral, except to the extent expressly incorporated herein.

4.11 Effective Date

Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all Parties execute the same in accordance with the proper legal processes designated by law and the court approves this Agreement or a similar agreement ("Effective Date").

4.12 Captions

The captions and section headings in this Agreement are for convenience only and shall not be used to interpret, expand, or limit the terms of this Agreement.

4.13 Waiver

The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to

challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

4.14 Notice of Actions

The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions, applications, proceedings, appeals, or governmental declarations threatened or pending by third parties of which they are actually aware, which may affect the provisions of this Agreement.

4.15 Governing Law; Jurisdiction; Venue

This Agreement has been entered into and shall be construed, governed, and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, Essex County Vicinage, including Docket No. ESX-L-886-25 and any consolidated or related matters to the extent retained by the Court. Service of any complaint may be effectuated in a manner consistent with the terms hereof for the delivery of Notices. The Parties waive formal service of process.

4.16 Default

In the event that either Party shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by the other Party for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default under this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice to the defaulting Party, and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days or such reasonable period of time as may be appropriate. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief by way of motion to enforce litigants' rights. In the event of any declared default by a Court of competent jurisdiction, the defaulting Party shall reimburse the non-defaulting Party for all reasonable attorneys' fees, costs, and expenses incurred by the non-defaulting Party in enforcing this Agreement, including any application to enforce litigants' rights.

In the event the Township fails to adopt the aforementioned zoning ordinance, Daughters shall, in addition to the rights set forth in the preceding paragraph, have the right upon notice in accordance with this Agreement, to terminate this Agreement under which circumstance, the parties shall have all rights restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the parties.

4.17 Fairness Hearing

The Parties acknowledge that this Settlement Agreement may be subject to approval by the Court following what is commonly known as a "fairness hearing" as set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). If this Settlement Agreement is not approved by the Court, then this Settlement Agreement shall be deemed terminated and shall be of no further force and effect and the Parties shall return to their respective positions as if this Settlement Agreement had not been executed by the Parties. The adoption of the Ordinance and/or development application shall not be required to await such fairness hearing unless the Court so orders.

4.18 Recitals

The recitals set forth above are incorporated into and made part of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this AGREEMENT to be effective as of the Effective Date.

TOWNSHIP OF WEST ORANGE

By: _____
Susan McCartney, Mayor

Date:

WITNESS/ATTEST:

By: _____
Karen J. Carnevale, Township Clerk

Date:

DAUGHTERS OF ISRAEL, INC.

By: _____
[insert name and title of principal]

Date:

_____

Date:

FAIR SHARE HOUSING CENTER (as to Paragraph 1.3 only)

By: _____

Date:

WITNESS/ATTEST:

By: _____

Date:

WITNESS/ATTEST:

By: _____
[insert name and title of witness]

Date:

EXHIBIT A

(CONCEPT PLAN)

EXHIBIT B

(Ordinance)