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March 22, 2018

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MAR 23 2018

CITY OF CLIFTON
LAW DEPT.

Re: Congregation Shomrei Torah of Passaic/Clifton

Dear Sirs:

My law firm represents Congregation Shomrei Torah of Passaic/Clifton (the "Congregation"), and I write to provide official notice that the conduct of the City of Clifton (the "City"), the City of Clifton Zoning Board of Adjustment (the "Zoning Board"), and the City of Clifton Planning Board (the "Planning Board") with respect to the Congregation violates the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc *et seq.* The City's, Zoning Board's, and Planning Board's actions, which prevented the Congregation from establishing a house of worship of more than 12,250 square feet, constitute a substantial burden on the Congregation's religious exercise, for which the City, Zoning Board, and the Planning Board have no compelling interests that satisfy federal law.

The Congregation is an Orthodox Jewish congregation that began the process of building a temple at 360 Dwasline Road nearly a decade ago, originally putting forth plans for a house of worship measuring 16,340 square feet, including a mikvah, or ritual bath. The Congregation's intent was to construct a house of worship within walking distance of members, whose sincere religious beliefs forbid work on the Sabbath and other holidays, including driving; many families must walk to attend synagogue services in Passaic. The Planning Board refused to hear the Congregation's application before the

Planning Board, resulting in several years of litigation against the City and the Planning Board in the case styled *Congregation Shomrei Torah of Passaic/Clifton, Inc. v. The Planning Board of the City of Clifton and The City of Clifton*, Superior Court of N.J., Passaic Cty., Case No. PAS-L-4266-15 (the "Lawsuit").

As you are aware, the parties to the Lawsuit entered into a consent decree, so-ordered by the Court on July 14, 2017 (the "Consent Decree"). Pursuant to the Consent Decree, the Planning Board agreed to final site plan approval for the Congregation's house of worship, the size of which was to be no more than 12,250 square feet, and with only limited use of the mikvah. The Congregation was forced to decrease its initial proposal of 16,340 square feet down to 14,250 square feet to accommodate a fire lane. Having already made this concession, the Congregation was forced to decrease the size of its house of worship yet again to 12,250 square feet, as a result of the City's persistent and arbitrary demand that the house of worship be no more than 7,000 square feet. Pursuant to the Consent Decree, the Congregation reserved its rights to pursue litigation against the City of Clifton and its various boards, officers and employees for a violation of RLUIPA.

Indeed, the City's, Zoning Board's, and Planning Board's obstruction of the Congregation's efforts to construct the house of worship and mikvah facially violated RLUIPA, which provides:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly or institution –

(A) is in furtherance of a compelling government interest; and

(B) is the least restrictive means of furthering that compelling government interest.

42 U.S.C.A. § 2000cc-1(a). RLUIPA additionally states:

(1) Equal terms.

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusion and limits

No government shall impose or implement a land use regulation that –

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C.A § 2000cc-1(b).

The City's, Zoning Board's, and Planning Board's actions to obstruct the construction of the Congregation's house of worship and mikvah as sought by the Congregation is contrary to the plain text of RLUIPA, and the rights of this Congregation, and its congregants, to be treated on equal terms with others and without unreasonable limits on its structures. *See Lighthouse Institute for Evangelism v. Long Branch*, 510 F.3d 253, 272-73 (3d Cir. 2007) (finding ordinance violated equal terms provision of RLUIPA where it treated religious assemblies on less than equal terms with non-religious assemblies that caused equivalent harm to its governmental objectives); *Chai Center for Living Judaism, Inc. v. The Zoning Board of Adjustment for the Township of Millburn*, No. ESX-L-9244-11 (N.J. Superior Court 2013) (same); *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 2014 WL 4652510 (2d Cir. Sept. 19, 2014) (finding RLUIPA's substantial burden imposed where government made "individualized assessments" of synagogue's request to modify its property uses); *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, NY*, 280 F. Supp. 3d 426 (S.D.N.Y. 2017) (finding that defendant village's facially neutral ordinances preventing plaintiffs from establishing a rabbinical college "were passed to infringe on religious practices because of their religious motivation," and violated several provisions of RLUIPA).

The Congregation has been forced to jump through countless hoops put in place by the City, Zoning Board, and Planning Board, meeting with the Planning Board on twenty-five separate occasions between March 2013 and October 2015, and the Zoning Board on seven separate occasions between November 2008 and January 2013. These numbers do not include the numerous occasions when the Planning Board and Zoning Board discussed the Congregation's case internally, and made resolutions pertaining to the status of its application. By comparison, other properties within the City were not

subjected to such rigorous scrutiny, despite, in some cases, requiring variances. For example, People's Baptist Church, located on 14 Joyce Lane, obtained a variance to permit an existing one family home to be used for Sunday school classes and other Bible classes, youth activities, storage and church offices, as ancillary to the use of the adjacent church property. The Zoning Board approved this variance in a single meeting without requiring additional parking. This approval came in spite of objections from neighbors, who claimed that the variance would cause traffic and parking problems. Similarly, the Iglesia Manantial de Vida en Clifton, located on 371 Lakeview Avenue, applied and was granted a variance to convert the property from a funeral home and apartments to a church, yet was only required to appear before the Zoning Board on two occasions. Likewise, the Planning Board approved an application for a subdivision by St. George Greek Orthodox Church, the only other house of worship to come before the Planning Board. The Planning Board approved this subdivision for St. George, a congregation of over 700 families, after a single meeting. Despite the fact that a house of worship with 700 members would normally require 175 parking spaces, St. George's application was approved with only 91 parking spaces and no interior lot landscaping.

During the public portions of many of these meetings, members of the public aired their grievances against the Congregation and the larger Orthodox Jewish community of Clifton. During the Zoning Board meeting on March 16, 2011, one citizen stated, "I know how you feel about Gentiles. Okay? You have a condescending attitude towards Gentiles. And by the way this is in the Old Testament," to which Chairman Zecchino replied, "I understand where you're going, but you need to ask the Rabbi just the Rabbi questions. I follow what you're saying, but please just ask the Rabbi. We really need to get off of Gentiles." These public comments help to explain why the City, Planning Board, and Zoning Board subjected the Congregation to continued obstruction, while sparing other properties within Clifton of the same. City leadership often sided with dissenting members of the public; during an August 28, 2014 meeting of the Planning Board, Mayor Anzaldi stated, "I just think it's the neighborly thing to do. If it's not the law thing to do, it's the neighborly thing to do, make it a little smaller. Make everybody happy. Come on." Even some members of Clifton governance acknowledged how nonsensical the approval process had become; with Commissioner Abill stating at an April 6, 2011 meeting, "Can we try to keep the question to not be the same questions over and over in different angles and different ways from different people?...He's given the answer. We're here an hour over what we should be because we've allowed people to constantly ask the same questions...It is absolutely ludicrous that we allow this to go on!"

The United States District Court for the District of New Jersey has outlined the types of available damages recoverable under RLUIPA, including real estate taxes, attorney's fees, damages from loss of funding, and civil rights damages against the municipality. See *Lighthouse Inst. for Evangelism v. City of Long Branch*, No. CIV 00-3366 (WHW),

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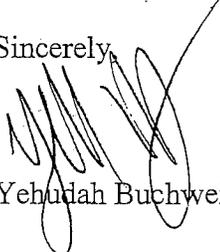
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2010 WL 1491079, at *5 (D.N.J. Apr. 13, 2010). The Congregation has incurred substantial costs in its effort to construct its house of worship and mikvah, exacerbated by decade-long delays, resultant excess construction costs, and lost opportunities from which the Congregation could have otherwise benefitted. Accordingly, as a remedy for the City's, Zoning Board's, and Planning Board's unlawful discrimination, the Congregation seeks its attorneys' fees and costs in connection with the Lawsuit, in the amount of \$12.5 million.

Please let us know by no later than the close of business on April 10, 2018 in writing whether you will agree to the Congregation's demand; otherwise we will have no choice but to seek relief in court. We look forward however to working together with you to resolve this issue amicably. Please do not hesitate to contact me directly.

Sincerely,



Yehudah Buchweitz

cc: David Gross
Robert Gross
David Yolkut