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October 10, 2017

Tracy Siebold, Esq.
Nehmad Perillo & Davis, PC
4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234

Re: In the Matter of the Application of the Township of Mullica County of
Atlantic Docket No. ATL-L-1534-15

Dear Ms. Siebold:

This letter memorializes the terms of an agreement reached between the Township of Mullica (the "Township"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

The Township filed the above-captioned matter on July 8, 2015 seeking a declaration of its compliance with the Mount Laurel Doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Township made several Case Management Conference appearances before the Honorable Nelson Johnson, J.S.C., and mediated with the assistance of the Honorable Stephen Perksie, J.S.C. (now retired), the court-appointed special master. Through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

With the consent of the Township and FSHC, this agreement, which is dated September 26, 2017, replaces in its entirety the earlier agreement executed on behalf of the parties dated August 9, 2017.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption a Housing Element and Fair Share Plan ("the Plan" or HEFSP) that conforms to the terms of this Agreement and through the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel Doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively

determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and the Township hereby agree that the Township's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	40
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	98

4. For purposes of this agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (Jan. 18, 2017).

5. The Township has no rehabilitation obligation. The Township nevertheless agrees to address any rehabilitation needs that may arise through the following: Subject to the availability of funding from county and state sources, and through affordable housing trust funds, if any, the Township will continue to implement its robust housing rehabilitation program of lending funds for qualifying owned and rented units for necessary health, safety and welfare improvements (i.e., roofs, utilities and heating appliances).

6. As noted above, the Township has a Prior Round prospective need of 40 units and a Third Round prospective need of 98 units, which is met through the following compliance mechanisms:

8 group homes	16 credits (8 credits plus 8 rental bonus credits)
16 Mullica Woods	16 credits
Total Credits	32 credits
Unmet need	66 (40+98-32=106)

Mullica is completely located within the Pinelands Protection Area, thus the development density in the Township is regulated by the Pinelands Comprehensive Management Plan (CMP). More than 85% of the total land area in the Township is within the Pinelands Agricultural Production, Preservation Area, Forest Area or Rural Development Area. The mandated minimum lot sizes in these areas range from 3.6 acres to 31 acres. (One acre lot sizes are permitted in the Rural area however the density must still maintain the larger lot size for total development area.)

Only 12% of the Township land area is within a Pinelands Village or Town. These areas permit development at higher densities under the CMP; however these areas do not have public sewer infrastructure. Without the infrastructure, which the parties have determined is not likely to be made available prior to 2025 and is not realistically possible through the extension of sewer

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, July 2015.

from adjoining areas that have public sewer infrastructure, the development intensity cannot occur. The Township has an active Rehabilitation Program funded by the State that it will actively continue to assist existing households in the community. In the event public sewer infrastructure becomes available within the Pinelands Village or Town sections of the Township, the Township agrees to reconsider its HEFSP.

The parties agree that the 16 units of credit for units that are located in the Mullica Woods development must be confirmed by Honorable Stephen Perksie, J.S.C. (now retired), the court-appointed special master. The parties agree to request that the special master review the claim for 16 credits based on applicable law and report regarding the appropriateness of crediting those units, thereby providing a factual predicate for the claim to the credits by the Township.

7. The parties agree and will recommend to the court that Mullica may address part of its affordable housing obligations through the adoption of a resolution requesting up to fifty percent (50%) of its Third Round prospective need be transferred to a Pinelands growth area pursuant to and in accordance with N.J.S.A. 52:27D-329.9(c)(1)-(3). The parties acknowledge that the actual transfer of any fair-share obligation to the Pinelands Commission to be met in a Pinelands growth area would have to be approved by the Court, and Mullica expressly reserves the right to request leave of court to move for such a transfer to be ordered.

8. The Township will provide for the development of affordable housing in the following ways:

The Township has worked with supportive housing groups and non-profit affordable housing developers in the past. The Township had included Habitat for Humanity as an affordable housing provider in their Third Round uncertified plan. The Township agrees to support these entities in terms of providing affordable housing opportunities on single-lot development throughout the municipality through taking affirmative measures to support proposed developments by them, including support for requests for funding from county, state, and federal sources.

Although such a development is not contemplated to occur, in the event a development of five or more units is developed in Mullica, the municipality agrees to require compliance with N.J.S.A. 52:27D-329.9a, which requires developments consisting of newly-constructed residential units located, or to be located, in the Pinelands to reserve for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent this is economically feasible.

9. The Township shall add Fair Share Housing Center to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

10. To the extent that new affordable units are created within the Township, all such units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and

all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances, if any, in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

11. All new construction affordable units shall be adaptable in conformance with N.J.S.A. 52:27D-311a and -311b and all other applicable law.

12. As an essential term of this settlement, within ninety (90) days of Court's approval of this Settlement Agreement, the Township shall introduce and adopt a HEFSP that conforms to the terms of this agreement and introduce and adopt an ordinance, if necessary, providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement.

13. The parties agree that if a decision of a court of competent jurisdiction in Atlantic County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the HEFSP adopted in accordance with this agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The parties agree that any reduction of the Township's obligation below that established in this agreement shall permit the Township to carry over any resulting extra credits, if any, to future rounds in conformance with the then-applicable law.

14. The Township reserves the right to prepare a spending plan. The parties acknowledge that the Township will likely maintain a low balance in its Affordable Housing Trust Fund, should one be established. The Township agrees to prepare a spending plan that is submitted for court approval and that receives court approval prior to spending trust funds or when the balance in the account exceeds \$10,000. When and if a spending plan is approved, on the first anniversary of the court's endorsement of the plan, and every anniversary thereafter through the end of this agreement, the Township agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

15. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

16. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this agreement. The Township agrees to comply with those provisions as follows:

- a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

17. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.

18. This settlement agreement must be approved by the Court following a fairness hearing as required by 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); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its planner as a witness at this hearing, if required by the Court. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

19. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the

Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

20. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Atlantic County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.

21. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

22. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

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

24. 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.

25. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess 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.

26. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

27. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

28. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

29. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

30. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

31. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Tracy A. Siebold, Esq.
Nehmad Perillo & Davis, P.C.
4030 Ocean Heights Road
Egg Harbor Township, NJ 08234
Phone: (609) 927-1177
Telecopier: (609) 926-9721
Email: tsiebold@npdlaw.com

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Kimberly Johnson, CMC, RMC
Township of Mullica
4528 White Horse Pike
Elwood, NJ 08217
Phone: (609) 561-0064
Telecopier: (609) 561-3031
Email: kjohnson@mullicatownship.org

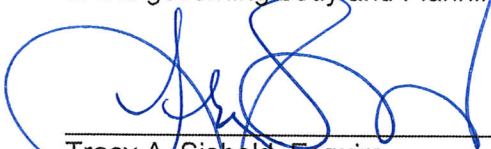
Please sign below if these terms are acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Walsh', with a stylized flourish at the end.

Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Township of Mullica with the authorization
of the governing body and Planning Board:



Tracy A. Siebold, Esquire
Dated: ~~September~~ 31, 2017
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