

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF HOLMDEL (MONMOUTH COUNTY) AND THE FAIR SHARE HOUSING CENTER CONCERNING HOLMDEL'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH HOLMDEL SHALL SATISFY SUCH OBLIGATIONS

**Re In the Matter of the Application of the Township of Holmdel ,
County of Monmouth, Docket No. MON-. L-2523-15**

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 8th day of August, 2017, by and between:

TOWNSHIP OF HOLMDEL, a municipal corporation of the State of New Jersey, County of Monmouth, having an address at 4 Crawfords Corner Road, Holmdel, NJ Holmdel (hereinafter the "Township" or "Holmdel");07733

and

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC")(Holmdel and the FSHC shall be collectively referred to herein as the "Parties").

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"), Holmdel filed the above-captioned action (the "Litigation") on July 2, 2015 seeking, among other things, a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter, the "Fair Share Plan") satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, Holmdel simultaneously sought and ultimately secured a temporary immunity Order protecting the Township from all exclusionary zoning lawsuits while it pursued approval of its Fair Share Plan in the Litigation; and

WHEREAS, the FSHC and the Township appeared for Case Management Conferences before the Hon. Jamie S. Perri, J.S.C. and engaged in a mediation overseen and conducted by the Court appointed Special Master, Michael P. Bolan, P.P., A.I.C.P. 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.

WHEREAS, the Supreme Court has recognized that FSHC is an interested party that may participate as a matter of right in all cases filed by municipalities pursuant to the Mount Laurel IV case; and

NOW, THEREFORE, in consideration of the promises and 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, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

Holmdel and FSHC hereby agree to the following terms, subject to any relevant conditions as set forth in more detail below:

1. FSHC and Holmdel agree that the terms and conditions of this Agreement; the adoption of a Fair Share Plan which conforms to this Agreement; and the implementation of this Agreement, satisfies the Township's 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 the 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. **Establishment of Fair Share Obligation.** FSHC and Holmdel hereby agree that Holmdel's affordable housing obligations are as follows:
 - a. Holmdel's Third Round "Present Need" (i.e. Rehabilitation) obligation is 37 units.
 - b. Holmdel's Prior Round obligation is 768 units.
 - c. Holmdel's Third Round "Prospective Need" obligation is 297 units. 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, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, ___ N.J. ___, 2017 WL 192895 (Jan. 18, 2017).
 - d. FSHC and Holmdel agree that Holmdel does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, PP, FAICP, and that the Parties are agreeing to the terms in this Agreement solely for purposes of settlement of this Litigation.
4. **Satisfaction of Rehabilitation Obligation.** The Township will rehabilitate units through a continuation of its agreement with Monmouth County which specializes in the implementation of publicly funded housing rehabilitation programs, for a ten-year period. The Parties agree that this is sufficient to satisfy Holmdel' present need obligation of 37 units.
5. **Satisfaction of Prior Round Obligation.** Holmdel obtained substantive certification from COAH for its Round 2 obligation. The parties agree that Holmdel has met its Prior Round obligation with the following mechanisms:

Inclusionary Zoning

Holmdel Mews (12)

Hidden Woods (16)

Gracewood Glen (9)

Fox Chase (8)

Palmer Square (33)

Orchards (101)

Holmdel Meadows (8)

Holmdel Village (70)

Previously Approved RCA Units

Trenton RCA (71)

Keansburg (313)

Rental Bonuses

Holmdel Mews (8)

Laurel Village (50)

Holmdel Village (23)

Satisfaction of Third Round Prospective Need Obligation. The Township agrees to meet its prospective need obligation of 297 units as depicted in Exhibit A. Nothing in this Agreement shall prejudice or limit Holmdel's right to seek credit in the future for additional units/credits not specifically addressed or identified herein, so long as said credits meet all applicable legal standards and are approved by the court or an administrative agency responsible for implementing the Fair Housing Act with the requisite authority, with FSHC reserving its right to take any position it wishes as to the validity of said credits.

6. The Township will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning for the North Beers Street, Palmer Avenue, the Route 35, and the Middle Road sites within the 120 day period established in paragraph 14. The Township shall provide, no later than the date of the Fairness Hearing to be established in this matter, letters from the owners and/or developers of each of these sites and the Lucent Redevelopment site committing to the number of affordable units to be developed on each of these sites and that those units will be family rentals and thus qualifying these sites for family rental bonuses.

7. The Township has met its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and consistent with the credits displayed in Exhibit A:
 - a. Rental bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d) which shall solely govern application of bonus credits to both the Prior Round and Third Round obligation.
 - b. At least 50 percent of the Third Round Prospective Need Obligation are affordable to very-low-income and low-income households with the remainder affordable to moderate-income households. 13% of all units referenced in this plan, with the exception of units already approved or constructed as of July 1, 2008 are be very low income units (affordable to households earning 30% or less of median income by household size), with half of the very low income units being available to families
 - c. At least twenty-five percent of the Third Round Prospective Need Obligation are met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round Prospective Need Obligation are available to families.
 - e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and Third Round Prospective Need Obligation.
8. The Township shall add 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), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Monmouth County Branch of the NAACP, Senior Citizens United Community Services (SCUCS), the Latino Action Network, STEPS, OCEAN, Inc. and the Supportive Housing Association. As part of its regional affirmative marketing strategies during its implementation of this plan should it produce additional affordable housing, the Township and/or its administrative agent shall also 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.
9. All additional units beyond those already created 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 in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Township's Housing Element and Fair Share Plan and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

(a) Regional income limits shall be established for the region that the Township is located within (i.e. Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

(b) The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

(a) The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the process outlined above. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

(b) The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

10. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
11. The parties recognize that inasmuch as the Township has provided a plan to meet its third round prospective need obligation in this agreement but has not adopted an updated Housing Element and Fair Share Plan since 2008, it must adopt an updated Housing Element and Fair Share Plan reflecting the affordable housing produced consistent with this Agreement which will be submitted to the Court for review and approval within 120 days of the entry of an order by the Court approving this Agreement, along with proposing and adopting any ordinances required to implement this Agreement in that time period. The Township will introduce and adopt within that 120 day time period an ordinance providing for the amendment of the Township's Affordable Housing Ordinance consistent with the terms of this Agreement.
12. The Parties agree that if a decision of a court of competent jurisdiction in Monmouth 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 ten (10%) 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 Fair Share Plan described herein, including by leaving in place any site specific zoning adopted or relied upon in connection with the Fair Share 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 reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
13. The Township shall prepare a spending plan, which will be submitted to the Court for review and approval within 120 days of the entry of an order by the Court approving this Agreement. FSHC may comment on or object to this spending plan. The Township reserves the right to request the Court's approval that the expenditures of funds contemplated under the Agreement constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year

time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). 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 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.

14. 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 FSHC.
15. 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 Fair Share 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 Township has complied with its very low-income housing obligation under the terms of this settlement.

16. FSHC is hereby deemed to have party status in this matter and to have intervened in this Litigation 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.
17. 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. FSHC agrees not to challenge the Township's Fair Share Plan (which is described in narrative form in Exhibit A at the fairness hearing. In the event the Court approves this proposed settlement, the Parties contemplate that the Township 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 Mt. Laurel IV. 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.
18. The Township agrees to pay \$7,500 to FSHC within 10 days of the entry of an order approving this agreement after the fairness hearing referenced above.
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, Monmouth 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 Township 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:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444

Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Andrew Bayer
Gluck Walrath LLP
428 River View Plaza
Trenton, NJ 08611
(609) 278-3900
Telecopier: (609) 278-3901
Email: abayer@glucklaw.com

WITH A COPY TO THE MUNICIPAL CLERK:

Maureen Doloughy
Township of Holmdel
4 Crawfords Corner Road
Holmdel, NJ 07733
Telecopier: (732) 946-0116
Email: mdoloughy@holmdeltownship-nj.com>

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

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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.

Witness/Attest:

FAIR SHARE HOUSING CENTER

By: _____

Adam Gordon, Esq.
on Behalf of Fair Share Housing
Center

Witness/Attest:

Maureen Dolougherty
Maureen Dolougherty, RMC
Township Clerk

TOWNSHIP OF HOLMDEL

By: _____

Gregory Buontempo
Gregory Buontempo, Mayor
Township of Holmdel

Dated: 8-29-2017

EXHIBIT A

| Holmdel's Third Round Compliance Table Third Round Obligation 297 Maximum Bonus 74 Maximum Senior Units 74 | | | |
|---|------------------|-------------------|---------------|
| | Units | Bonus | Total Credits |
| Extension of Existing Controls | 100 units | | 100 |
| Stillwell Group Home | 15 beds | | 15 |
| Meridian Assisted Living | 11 beds | | 11 |
| North Beers Street | 30 units | 30 credits | 60 |
| Middle Road | 10 units | 10 credits | 20 |
| Palmer Avenue | 10 units | 10 credits | 20 |
| Route 35 | 26 units | 24 credits | 50 |
| Lucent Redevelopment | 34 units | | 34 |
| | | | |
| Total | 236 units | 74 credits | 310 |

Obligation **297**
Total Credits **310**
Surplus **13 credits**

Extension of Existing Controls: **(100 units)** – the Township offered the owners of existing units a financial incentive from the trust fund to extend the controls on their units. 100 residents took advantage of the program and the controls were extended and the deeds will be included in our housing element and fair share plan when completed.

Stillwell Group Home: **(15 credits)** – This is an existing occupied Group Home within the Township

Meridian Assisted Living: **(11 credits)** – Meridian Health has an approved Assisted Living Facility which is 110 bed and have agreed to provide us with 11 Medicaid beds toward our obligation.

North Beers Street: **(30 credits)** – This is an inclusionary project on North Beers Street within Holmdel. The proposed project consists of 150 units with a 20% set aside. It's a mix of townhouses and garden apartments. Family rentals

Middle Road: **(10 credits)** – This is an inclusionary project on Middle Road within Holmdel. The proposed project consists of 50 units with a 20% set aside. It's a three story family rental building over parking.

Palmer Avenue **(10 credits)** – This is an inclusionary project on Palmer Avenue within Holmdel. The proposed project consists of 50 units with a 20% set aside. Family Rentals

Route 35 **(26 Credits)** – This is an inclusionary project on Route 35. 170 units with 26 affordable units. This is a proposed family rental project.

Lucent (**34 credits**) – The Township while undergoing the redevelopment of the Alcatel Lucent Property within the Township entered into a Redevelopment Agreement and a Mount Laurel Agreement with Somerset Development, the designated Redeveloper of the property. The agreement requires the construction of 34 units either on-site or off-site. They will be family rentals.

Bonus Credits (**74 credits**)

Total Credits: 310