

AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF HIGHLAND PARK AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.

**In the Matter of the Borough of Highland Park, County of Middlesex,
Docket No. MID-L-3926-15**

THIS SETTLEMENT AGREEMENT ("Agreement") made this 19th day of December, 2017, by and between:

BOROUGH OF HIGHLAND PARK, a municipal corporation of the State of New Jersey, County of Middlesex, having an address at 221 S. Fifth Avenue Highland Park, NJ 08904 (hereinafter the "Borough" or "Highland Park");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

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

WHEREAS, the Borough simultaneously sought and ultimately secured an Order protecting Highland Park from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by Highland Park remains in place as of the date of this Agreement; and

WHEREAS, the trial court appointed a "Special Master", as is customary in a Mount Laurel case, to assist the Court; and

WHEREAS, more specifically, the Court initially appointed Elizabeth McKenzie, P.P to serve as the Special Master and ultimately appointed Shirley Bishop, P.P. to serve as the Special Master;

WHEREAS, Highland Park and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court, 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.

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

Settlement Terms

Fair Share Issues

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

1. Highland Park's "Rehabilitation" obligation is 121.
2. Highland Park's "Prior Round" obligation is 0.
3. Highland Park's Round 3 obligation, which includes the so-called "gap" obligation and the prospective need obligation, is 173.
4. FSHC and the Borough agree that Highland Park does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 173-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May, 2016, calculation of the Borough's Gap (1999-2015) and Third Round (2015-2025) fair share obligations.

Compliance Issues

5. **Satisfaction of the Rehabilitation Obligation:** The Borough has a 121-unit rehabilitation obligation. The Borough has participated in and will continue to participate in a number of rehabilitation programs including the Middlesex County Rehabilitation Program, a prior Neighborhood Preservation ("NPP") Rehabilitation funded by the New Jersey Department of Community Affairs as well as to continue to implement the Highland Park Home Improvement Program (HIP) which was created by the Borough's appropriation of a \$500,000 bond to assist properties occupied by low or moderate income households to correct existing interior and exterior health, safety and code violations. The Borough will continue to work with these programs as mechanisms to address this component of its Fair Share. The Housing Authority's continuing maintenance and renovation of rental units addresses the Borough's obligation with regard to the rehabilitation of renter-occupied units.
6. **Satisfaction of the Prior Round Obligation:** The Borough has a 0-unit Prior Round obligation, and has thus satisfied its Prior Round obligation.
7. **Satisfaction of the Round 3 obligation:** The Borough has a 173-unit Round 3 obligation and will satisfy that obligation as set forth on the chart attached hereto as Exhibit A and incorporated herein by reference subject to the following qualification. The "Proposed Inclusionary Developments" identified on the chart show a total of 25 affordable units being generated through four projects that are in various stages of the development process and,

therefore, it is possible that problems may be encountered that would impede what the Borough hopes to achieve on those sites. The Borough acknowledges that although the four projects may ultimately produce less than 25 affordable units, the Borough must produce a minimum of an additional 11 family affordable units under the terms of this settlement agreement by way of the "Proposed Inclusionary Developments." During the compliance phase of this matter, the municipality shall demonstrate how a realistic opportunity will be provided for this 11-unit component of its obligation through the Proposed Inclusionary Developments or other mechanisms that provide credits for affordable family housing in accordance with applicable law. The plan components shown in Exhibit A fully satisfy the minimums and maximums for the Round 3 obligation, inclusive of maximum age-restricted units (25% of total obligation), minimum rental units (25% including at least half available to families), and maximum rental bonus credits (equal to rental obligation), including maximum rental bonus credits for age-restricted units (50% of rental obligation).

The Borough anticipates that it will have a 13-unit very-low income obligation from 95 to 98 ($98 \times 0.13 = 12.74$, round up) existing and proposed post-2008 units, of which 7 units must be addressed with very-low family units. The Borough intends to address the family unit portion of its obligation with four (4) very-low income units from the Kaplan/Castle site, one (1) very-low income unit at 11 S. 2nd Avenue (Reformed Church); one (1) very-low income unit from the Pulte-Overlook site, and one or more (1+) unit(s) generated from the proposed inclusionary redevelopment as is required by the UHAC and the Fair Housing Act. During the compliance phase of the litigation, the municipality will identify how the one additional family very low income unit will be provided. Additionally, the Borough is committed to be compliant with the very-low income family requirement by the first 3-year anniversary of the Judgement of Compliance and Repose, as required by the FHA and paragraph 22.b of this agreement. The remaining 6 units of its very-low income obligation will be addressed with any six (6) of the 20 other very-low income units at the Reformed Church's Irayna Court, Veterans Housing, or 114 S. 2nd Avenue units, the nine (9) ARC of Middlesex County units, or the 18 SERV supportive/special needs units.

Other Issues

8. FSHC and the Borough agree that the Borough shall also adopt an overlay ordinance to permit the zoning of the site of the intervenor (JSM at Highland Park, LLC ("JSM")) located at the end of South 6th Street and in between small lot residential properties that front on South 5th and South 7th Streets for inclusionary housing to permit 75 units. The Borough may impose reasonable bulk, height, environmental and design standards. Any development shall be subject to a 15% set aside for low and moderate income households if the project is rental (up to 12 total affordable units) or a 20% set aside if the project is for-sale (up to 15 total affordable units). In either event, the zoning ordinance that permits the construction of an inclusionary project of up to 75 units and shall require that the affordable units shall comply with all UHAC requirements, COAH regulations, and statutory law except that 13 percent of the affordable units shall be reserved for very low income households as defined by the Fair Housing Act.. The Parties acknowledge that this proposed zoning is not required in order for the Borough to meet any of its affordable housing obligations for the Prior Round or Round 3 pursuant to this Agreement. The Parties also acknowledge that nothing in this provision, or in any future zoning of the site, shall serve as an acknowledgement that the site is suitable for inclusionary development as that term is defined in COAH's rules. The Borough does not rely

upon this site to comply with its Prior Round or Round 3 new construction obligations and is not claiming credits for this site towards achieving those obligations. Thus, the extent to which the zoning of this site creates or fails to create a realistic opportunity for the construction of low and moderate income households shall have no impact on the Borough's ability to comply with its Prior Round or Round 3 affordable housing obligations now or in the future. If, for any reason, the Borough is unable to meet its Round 3 new construction obligation in the manner articulated in this agreement, the Borough shall have the right to update or modify its plan with any compliance technique of its choosing and it shall not be required to rely upon this site to meet its obligations.

9. The Borough's Round 3 obligations shall not be revisited by FSHC or any other interested party except as in the manner provided for in Paragraph 19 of this agreement.

10. The Borough agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

11. Highland Park will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

12. At least 50 percent of the units addressing the Borough's Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

13. At least twenty-five percent of the Borough's Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

14. At least half of the units addressing the Borough's Third Round Prospective Need in total must be available to families. Not including the 25 units from the "Proposed Inclusionary Developments" identified on Exhibit A, the Borough has 54 confirmed family affordable units, whereas it is required by this paragraph to provide 65 family affordable units (173 - 44 rental bonuses = 129 units x 0.5 = 64.5, round up to 65). The Borough will remedy this 11 family affordable unit shortfall by any combination of the Proposed Inclusionary Developments and/or other mechanisms as may be necessary.

15. The Borough agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

16. The Borough and/or its Administrative Agent shall add the following entities 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 (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), the Middlesex County NAACP, Middlesex Urban League, and Middlesex County Housing Coalition. As part of its regional affirmative marketing strategies during implementation of its Housing Element and Fair Share Plan, the Borough and/or its

administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

17. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), 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 affordable to households earning at or below 30 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to Paragraph 12 herein, and all other applicable law. 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. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, 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. The parties acknowledge that the 13 percent at 30 percent of median income requirement referenced in this paragraph does not apply to for-sale units, and the Borough's compliance with its very low income obligations pursuant to paragraph 10 of this Agreement in a manner other than imposing such a requirement on for sale developments shall be deemed not to constitute a violation of this agreement. The Borough nevertheless must ensure that 13 percent of all units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, are very low income units, with half of the very low income units being available to families.

18. Upon full execution of this Agreement, Highland Park shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Highland Park will place this Agreement on file in the Borough's municipal building and file a copy with the Court 45 days prior to the Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard 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); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 45 days in advance of the Hearing. Within 180 days of the approval of this Agreement by the Court after a Fairness Hearing, Highland Park will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all ordinances required to be adopted as part of this Agreement. The Borough will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Highland Park's adopted Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan") and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, Highland Park shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. As long as the Affordable Housing Plan complies with the terms set forth herein, FSHC shall support the Borough's application for approval of its Affordable Housing Plan at the Compliance Hearing. If the Court approves this Agreement after a Fairness Hearing, the parties hereto agree not to appeal the Court's approval. If the Court approves the Affordable Housing Plan following a Compliance Hearing, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or

substantive certification. The parties further agree that the JOR shall insulate the Borough and its Planning Board from, among other things, exclusionary zoning litigation through July 2, 2025.

19. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Highland Park's Round 3 obligation is decreased to 139 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Housing Element and Fair Share Plan prepared, adopted and endorsed as a result of 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, maintaining all mechanisms to continue to address the remaining portion of the Borough's Round 3 obligation, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Round 3 obligation, the Borough may carry over any resulting surplus credits to Round 4.

20. The Borough shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and FSHC agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of applicable law. Upon approval of its Spending Plan, the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC 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.

21. On the first anniversary of the Judgment of Compliance and Repose, and every anniversary thereafter through the end of this Agreement, the Borough 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

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

- a) For the midpoint realistic opportunity review due on July 6, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, 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. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced. Subject to paragraph 8, 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 the Judgment of Compliance and Repose, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, 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 FSHC on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
- c) In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

23. This Agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Middlesex County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

24. The Borough shall pay the sum of \$4,000.00 to FSHC for payment of fees and costs incurred by Fair Share Housing Center within 10 days of the approval of this Agreement by court order following a Fairness Hearing.

25. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, 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 by 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 return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

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

27. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable except as to paragraph 1 through 8, which is non-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 except as to paragraph 1 through 8. If any section of this Agreement other than paragraph 1 through 8, shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

28. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Borough and FSHC.

29. 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.

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

31. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

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

33. 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.

34. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

35. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC 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
Email: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Michael J. Edwards, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: MJE@Surenian.com

WITH A COPY TO THE
BOROUGH ADMINISTRATOR:

Teri Jover, Administrator
Borough of Highland Park
221 S. Fifth Ave.
Highland Park, NJ 08904

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.

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:



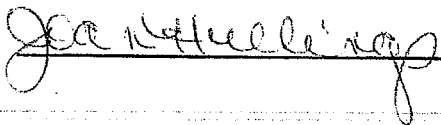
FAIR SHARE HOUSING CENTER:

By: 

Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

Dated: 12/22, 2017

Witness/Attest:



BOROUGH OF HIGHLAND PARK:

By: 

Gayle Bill Mittler, Mayor
On Behalf of the Borough of Highland Park