

IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
WOODBIDGE, MIDDLESEX
COUNTY, NEW JERSEY, FOR A
DECLARATORY JUDGMENT,

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:MIDDLESEX COUNTY

DOCKET NO.: MID-L-03862-15

CIVIL ACTION
Mount Laurel Action

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement"), dated as of _____, 2015 (the "Effective Date"), is entered into by and between the Petitioner **TOWNSHIP OF WOODBRIDGE** (the "Township"), a body corporate and politic of the State of New Jersey with offices at 1 Main Street Woodbridge, New Jersey, 07095, Intervenor **FAIR SHARE HOUSING CENTER**, a non-profit organization, with an address of 510 Park Boulevard, Cherry Hill, New Jersey, 08002 ("FSHC") (singularly, a "Party," collectively referred to as "the Parties").

W-I-T-N-E-S-S-E-T-H:
Recitals

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) (*Mount Laurel IV*), citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (*Mount Laurel I*), 67 N.J. 151,

179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing,” Ibid., citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 92 N.J. 158, 205 (1983),(together with *Mount Laurel I*, the *Mount Laurel Doctrine*).

WHEREAS, the Township has long engaged in the judicial process and administrative process before the Council on Affordable housing (COAH) established under the Fair Housing Act, N.J.S.A. 52:27D-1 et seq., to obtain approval of its affordable housing plan as in compliance with its obligations under the *Mount Laurel Doctrine*; and

WHEREAS, the Township has long addressed its affordable housing obligation under the *Mount Laurel Doctrine* since at least June 17, 1999 when, in the consolidated matters of Mocci v. Township of Woodbridge, Docket No. L-7843-91 and Pirates Cove Marina v. Township of Woodbridge, Docket No. L-7847-91, the Court awarded the Township a conditional Judgment of Repose granting the Township immunity from litigation challenging affordable housing compliance for a period of six years beginning in February 1999 and terminating on February 19, 2005, thereafter extended until December 20, 2005, retroactive to February 19, 2005; and

WHEREAS, the Township first filed a petition for substantive certification from COAH on December 20, 2005, together with its Housing Element and Fair Share Plan (“the 2005 HE/FSP); and

WHEREAS, thereafter the Township adopted a further 2008 Housing Element and Fair Share Plan (“the 2008 HE/FSP”) consistent with COAH’s newly adopted third round rules; and

WHEREAS, due to COAH's inaction, on December 30, 2008 the Township filed a Complaint for Declaratory Judgment at In the Matter of The Township of Woodbridge, Docket No. L-17-09 seeking approval of the Township's 2008 HE/FSP; and

WHEREAS, upon COAH's adoption of further rules, the Township adopted an Amended Housing Element and Fair Share Plan ("the 2012 HE/FSP") consistent with COAH's then-effective regulations which allocated municipal affordable housing obligations upon a "growth share" methodology; and

WHEREAS, the Court thereafter transferred jurisdiction over the 2012 HE/FSP transferred to the Department of Community Affairs, Council on Affordable Housing; and

WHEREAS, the Township has been within the jurisdiction of the Council on Affordable Housing and the Township has been a "participating" municipality before that agency; and

WHEREAS, the New Jersey Supreme Court, in *Mount Laurel IV* determined that "the administrative forum [before COAH] is not capable of functioning as intended by the [Fair Housing Act] due to the lack of lawful Third Round Rules assigning constitutional obligations to municipalities," and, consequently "the Courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations;" and

WHEREAS, *Mount Laurel IV* accordingly provided for a judicial mechanism for municipalities to seek a declaratory judgment that they have complied with the *Mount Laurel Doctrine* and are entitled to immunity from exclusionary zoning lawsuits; and

WHEREAS, *Mount Laurel IV* established a judicial process to determine a municipal affordable housing obligation and obtain review and approval of municipal housing plans to address that obligation; and

WHEREAS, on July 1, 2015, the Township filed a declaratory judgment action under the

procedures established by the Supreme Court in *Mount Laurel IV* encaptioned In the Matter of the Application of the Township of Woodbridge, Middlesex County, New Jersey for a Declaratory Judgment, Docket No. MID-L-03862-15 (“the Declaratory Judgment Action”); and

WHEREAS, by Order entered by the Court on August 20, 2015 (“the August 20 Order”), FSHC was granted leave to intervene in the Declaratory Judgment Action; and

WHEREAS, the August 20 Order also imposed upon the Township “scarce resource restraints” (“the Restraints”) enjoining the Township, among other things, from granting land development approvals with “vested rights,” and otherwise restricted municipal land use actions.

WHEREAS, 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 low and moderate-income households; and

WHEREAS, the Township and FSHC have agreed to settle this litigation by entering into this Agreement and requesting that the Court find that this Agreement, and the Township’s affordable housing plan to address its *Mount Laurel* obligations, as detailed herein, are fair to the interests of low and moderate-income persons and entitle the Township to absolute protection from *Mount Laurel* litigation for a period of ten years under an Order entered by the Court approving this Agreement; and

WHEREAS all Parties acknowledge that this Agreement must be reviewed by the Court in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (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 (App. Div. 1996), and that, in order to approve the settlement, the Court must find that it adequately protects the interests of low and moderate-income persons in obtaining affordable housing; and

WHEREAS, the Township has prepared a fair share plan to address its Present, Prior Round and Third Round obligations that provide a realistic opportunity for the creation of housing affordable to low and moderate-income households, including families, people with special needs, very-low-income households including very-low-income families, and seniors; and

WHEREAS, because at the time of this Agreement no definitive methodology has been established under the standards set forth by the Supreme Court in *Mount Laurel IV* to determine municipal affordable housing obligations, it is appropriate within the context of this litigation for the Parties to arrive at a settlement of those obligations using a mutually agreed upon process for rather than resorting to litigation to resolve those obligations; and

WHEREAS, the Parties agree, subject to Court approval, that in view of the Township's affordable housing plan to address its *Mount Laurel* obligation, it is appropriate that the Court vacate the Restraints; and

WHEREAS, the Parties agree, subject to Court approval, that the Township's plan to expend sums from its affordable housing trust fund, as set forth in the Township's Spending Plan, is appropriate and should be approved by the Court: and

WHEREAS, in order to amicably resolve this matter, in a way that all Parties agree complies with the *Mount Laurel Doctrine*, the Parties have agreed to the terms that follow,

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and for the benefit of the Parties hereto and general public, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein and made a part hereof.

2. **Purpose of Agreement.** The purpose and intent of this Agreement is to settle the Declaratory Judgment Action on terms that are fair to low and moderate-income households in accordance with the requirements of *Mount Laurel IV* and the *Mount Laurel Doctrine* through the provision of a realistic opportunity for the creation of affordable housing on the terms set forth herein.

3. **Establishment of Fair Share Obligation.** The Parties agree that the municipal affordable housing obligation is comprised of the Present Need Obligation, the Prior Round Obligation (for the period 1987-1999) and a Prospective Need Obligation (for the period 1999-2026, which includes any “Gap Period” obligation for the period 1999-2015). In accordance with Morris County Fair Housing Council, supra, 197 N.J. Super. at 364, the Parties agree upon the following as to the Township’s affordable housing obligation:

a. The Present Need Obligation, as agreed upon by the Parties based upon implementing the directives of *Mount Laurel IV* using 2010 Census data, is 381 housing units

b. The Prior Round Obligation, as originally determined by COAH in 1994 for the period 1987-1999 is 955 housing units

c. The Prospective Need Obligation is the subject of dispute between the Parties in the Declaratory Judgment Action where, based upon expert opinion, the Township contends the obligation is 67 housing units and FSHC contends the obligation is 1012 units. Because the Parties acknowledge there is no mathematical certainty in the methodology for the calculation of affordable housing obligations, and since the

obligation has been the subject of mediation overseen by the Court-appointed Special Master, the Parties agree to each compromise their position, to obtain a resolution of the Declaratory Judgment Action in accordance with the directives of *Mount Laurel IV*, and agree that the Township's Prospective Need Obligation is 607 housing units.

4. **Fair Share Compliance.** A proposed Housing Element and Fair Share Plan to address the Township's affordable housing obligation is attached hereto as **Exhibit A**. The Housing Element and Fair Share Plan will be considered by the Township Planning Board and Governing Body in accordance with the Schedule set forth in Paragraph 7. The Parties agree as an essential term in this Agreement, that the Housing Element and Fair Share Plan meets, and that the municipality shall continue to meet, the following requirements:

a. For the Present Need Obligation, the Township will meet its obligation pursuant to a rehabilitation program in accordance with the rules and requirements of N.J.A.C. 5:93, to be specified in further detail in the Housing Element and Fair Share Plan.

b. For the Prior Round Obligation, **Exhibit A** summarizes the Township's compliance with its Prior Round Obligation of 955 units in accordance with the rules and requirements of N.J.A.C. 5:93 except that as a condition of settlement the Parties agree that both the bonus and age restricted cap shall be calculated irrespective of prior cycle credits and applied to the full obligation as is reflected in **Exhibit A**.

c. For the Prospective Need Obligation the Township shall meet its 607 unit obligation as summarized in **Exhibit A**, which exhibit is in accordance with the following standards as agreed to be the Parties:

i. At least twenty five percent of the obligation will be met through rental units, including at least half rental units available to families.

ii. At least half of the units in total must be available to families.

iii. At least half of the units must be for low-income households.

Within that, 13 percent of the units must be available to people who are very-low-income, half of those to very low income families consistent with N.J.S.A. 52:27D-329.1.

iv. A maximum of 25 percent of the housing may be age-restricted.

v. In the context of settlement, FSHC will waive its claims that only Third Round bonus standards apply and agree to the bonus approach adopted by Hon. Mary Jacobson, the Mount Laurel judge for the Mercer County Vicinage, in an opinion dated November 19, 2015, annexed hereto as **Exhibit B**, whereby a municipality can choose either Prior Round or Third Round bonus standards, capped at 25 percent of prospective need obligation. As reflected in the attached **Exhibit A**, the Township in the context of this settlement has elected to use the Prior Round bonus standards for its prospective need obligation, capped at 25 percent of the 607 unit obligation to be addressed for 1999-2026.

d. All units shall 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, and all other applicable law. The Township as part of its Housing Element and Fair Share Plan shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by the Council on Affordable Housing to ensure that this provision is satisfied.

5. **Spending Plan.** The Parties acknowledge that The Fair Housing Act was amended effective July 17, 2008 (“the 2008 Amendments”) to provide, among other things, that a municipality which has petitioned COAH for a substantive certification of its Fair Share Plan may be authorized by the Council to adopt a Development Fee Ordinance to impose and collect development fees. N.J.S.A. 52:27D-329.2a. The 2008 Amendments also provided that a municipality may not spend or “commit to spend” any affordable housing development fees without first obtaining COAH’s approval of the expenditure. Ibid. Woodbridge has long maintained a development fee ordinance, and affordable housing trust fund, approved by the Court and COAH, authorizing the imposition, collection and expenditure of affordable housing trust funds. Woodbridge currently maintains an affordable housing trust fund balance and has prepared a Spending Plan that is part of the Housing Element and Fair Share Plan. The Parties agree, and will ask Court approval, that the proposed expenditure of amounts from the affordable housing trust fund is consistent with and authorized by the Fair Housing Act and that such funds have been timely “committed for expenditure” as required, if at all, by the 2008 Amendments.

6. **Change in Law.** The Parties agree that if there is a final, published judicial decision of the Superior Court-Appellate Division, or a decision of the N.J. Supreme Court, (either, a “Change in Law”) which results in a determination that reduces the Township’s affordable housing obligation in any respect, that the Township is entitled to such a reduction in its affordable housing obligation. FSHC expressly waives any right to seek an increase in any aspect of the Township’s affordable housing obligation which may result from such a Change in Law were it to be applied and that the Court’s entry of a Final Judgment of Repose in this matter may not reopened. The Parties acknowledge and agree that FSHC’s waiver is a material term of this Agreement and a substantial inducement for the Township to enter unto this Agreement.

7. **Process for Agreement to Become Final; Notice and Fairness Hearing.**

In accordance with the Case Management Order entered in this matter March 9, 2016:

- a. The Township submitted a draft proposed Housing Element and Fair Share Plan (the “Plan”) to the Court, Special Master and FSHC on March 23, 2016.
- b. The Court shall conduct a “Fairness and Compliance Hearing” (the “Hearing”) on Wednesday, April 27, 2016, beginning at 10:00 A.M., to determine whether the terms of the within Agreement are fair and reasonable to low income and moderate income persons and whether the Township’s proposed Housing Element and Fair Share Plan (the “Plan”) satisfies the Township’s obligation to provide a realistic opportunity for the creation of affordable housing pursuant to its constitutional responsibilities under the *Mount Laurel Doctrine*.
- c. The Township shall provide notice of the Hearing in the form attached hereto as **Exhibit C**, in accordance with the procedures recognized by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) no later than March 27, 2016.
- d. The Planning Board shall conduct a public hearing on the proposed amendment to the Housing Element and Fair Share Plan of the Master Plan as required by N.J.S.A. 40:55D-28 and NJSA 40:55D-10(a). The Planning Board of the Township shall consider the Plan, an implementing Ordinance and the within Agreement on or before April 6, 2016.
- e. The Governing Body shall consider the Plan, an implementing Ordinance and the within Agreement on or before April 19, 2016. If the Governing Body does not approve the Agreement, this Agreement is null and void and all Parties shall

continue with the litigation and shall not be prejudiced in any way by the terms of this Agreement.

- f. The Special Master shall provide her review of the Plan, implementing Ordinance and the within Agreement and any comments received to the Court no later than _____, 2016.
- g. The Court shall consider the Plan, implementing Ordinance and the within Agreement and any comments received at the Hearing on April 27, 2016.
- h. If the Court upon review of the Plan, implementing Ordinance and the within Agreement finds that it is fair and consistent with East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), the Parties anticipate that the Court will enter a Judgment of Compliance with any conditions necessary for the Court to enter a Judgment of Repose in accordance with Mount Laurel II and Mount Laurel IV, granting, among other things, to the Township absolute immunity from builder's remedy or constitutional compliance lawsuits until July 1, 2026.

8. **Effective Date of Agreement and Duty to Defend.** The terms set forth in this Agreement shall become effective upon the completion of the Hearing and the entry of a Judgment approving this settlement. If an appeal is filed of the Court's approval or rejection of this agreement, the Parties agree to defend this 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 this Agreement if this 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.

9. **Affirmative Marketing Requirement.** 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 Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP, and the Latino Action Network, and shall as part of its regional affirmative marketing strategies during the period of its judgment of repose provide notice to those organizations of all available affordable housing units.

10. **Severability.** 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.

11. **Successors Bound.** The provisions of this Agreement and 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 or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

13. **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

14. **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.

15. **Voluntary Agreement.** 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 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.

16. **Preparation.** 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 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.

17. **Exhibits.** Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement.

18. **Entire Agreement.** 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.

19. **Conflict Of Interest.** No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

20. **Notices.** 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) Notices shall be served by 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 THE TOWNSHIP:

Robert Landolfi
Township Administrator
Township of Woodbridge
Town Hall
1 Main Street
Woodbridge, New Jersey 07095

WITH A COPY TO:

Edward J. Boccher, Esquire
DeCotiis Fitzpatrick & Cole, LLP
500 Frank W. Burr Blvd.
Suite 31
Teaneck, NJ 07666
eboccher@decotiislaw.com

TO FSHC:

Adam Gordon, Esquire
510 Park Blvd.
Cherry Hill, NJ 08002

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 the successor.

IN WITNESS WHEREOF, the Petitioner and Intervenor hereto have caused this Agreement to be properly executed and attested to this ____ day of _____, 2016.

ATTEST:

Petitioner Township of Woodbridge

By: _____
Mayor _____

Dated: _____

Dated: _____

Intervenor Fair Share Housing Center, Inc.

By: _____
Kevin D. Walsh, Esq.
Executive Director

Dated: _____

Dated: _____