

SETTLEMENT AGREEMENT

**In the Matter of the Application of the Township of Cranbury in Middlesex County
Docket No. MID-L-3960-15**

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into this 19th day of August, 2016, by and between the TOWNSHIP OF CRANBURY, a municipal corporation of the State of New Jersey, having an address of 23A North Main Street, Cranbury, New Jersey 08512 (the "Township") and FAIR SHARE HOUSING CENTER, a nonprofit organization, with an address of 510 Park Boulevard, Cherry Hill, New Jersey 08002 ("FSHC").

WITNESSETH:

WHEREAS, on July 8, 2015, the Township filed an action for declaratory judgment in the Superior Court of New Jersey, Law Division, Middlesex County, entitled *In the Matter of the Application of the Township of Cranbury in Middlesex County*, bearing Docket No. MID-L-3960-15 (the "Action"), seeking a judgment of immunity and repose and a declaration of the compliance with the Mount Laurel Doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. pursuant to the March 10, 2015 decision of the New Jersey Supreme Court in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"); and

WHEREAS, having obtained third round substantive certification from the Council on Affordable Housing ("COAH") in 2010, pursuant to Mount Laurel IV, the Township was deemed to be a "certified" municipality before the court; and

WHEREAS, pursuant to Mount Laurel IV, FSHC is a Court-designated interested party in the Action; and

WHEREAS, the Court having determined that the Township made good faith efforts to satisfy its constitutional housing obligation so as to warrant the grant of initial immunity, by Order entered July 30, 2015, granted the Township's motion for an initial period of immunity from Mount Laurel actions for a period of five months; and

WHEREAS, Elizabeth C. McKenzie, PP, was appointed by the Court to be the Special Master; and

WHEREAS, the Court actively managed the Action, and by subsequent Orders, granted extensions of the Township's period of temporary immunity; and

WHEREAS, during the pendency of the proceedings, FSHC filed with the court a report entitled *New Jersey Low and Moderate Income Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology*, prepared by its expert, David N. Kinsey, PhD., FAICP, PP of Kinsey & Hand, dated April 16, 2015 and revised July 2015 (the “*Kinsey Report*”); and

WHEREAS, the Township does not contest the Township’s third round obligation calculated by Dr. Kinsey as set forth in the *Kinsey Report*; and

WHEREAS, on November 9, 2015, the Township filed a “Summary of Plan for Total Fair Share Obligation” and “Plan Narrative” prepared by the Township’s affordable housing planning consultant, Mary Beth Lonergan, PP/AICP of Clarke Caton Hintz, that demonstrated the Township’s ability to satisfy its affordable housing obligation set forth in the *Kinsey Report*; and

WHEREAS, on motion and by Order dated December 2, 2015, Michael and Anna Protinick, the owners of certain real property located on Dey Road and Petty Road in the Township, known and designated as Lot 1 in Block 25 on the Cranbury Township Tax Map (the “Protinick Property”), were granted leave to intervene in the Action as party-defendants; and

WHEREAS, the Township and Protinicks engaged in mediation and good faith negotiations and were able to amicably resolve and the settle the challenges raised by the Protinicks in the Action and entered into a separate settlement agreement that provides for an overlay re-zoning of the Protinick Property that will permit the construction of an age-restricted residential development for which an affordable housing contribution in lieu payment will be made to facilitate the production of affordable housing units as set forth in the Township’s plan; and

WHEREAS, at a status conference held by the court on February 22, 2016, the court was notified that the Parties had reached a settlement of all issues and the court set a Fairness Hearing for April 18, 2016 to review the terms of the settlement agreements and evaluate the Township’s affordable housing plan; and

WHEREAS, the Township undertook preparation of its “Amended Third Round Housing Element and Fair Share Plan” dated March 25, 2016 (the “Fair Share Plan” or “Plan”), which was adopted by the Cranbury Township Planning Board on April 7, 2016 and endorsed by the Cranbury Township Committee on April 11, 2016; and

WHEREAS, on April 14, 2016, the Township filed a copy of the Fair Share Plan with the Court and all parties to the Action; and

WHEREAS, by report dated April 17, 2016, Special Master McKenzie found that, in light of FSHC's concurrence with the terms of the Township's Plan, the interests of low and moderate income households would be advanced by the court's approval of the Plan; and

WHEREAS, the Court conducted a Fairness Hearing on April 18, 2016 and reviewed the terms of the settlements reached between the Township and FSHC and the Township and Protinicks, reviewed the Township's Plan, and received the report of the Special Master, and found that the criteria established by East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) were satisfied and that the interests of low and moderate income households were advanced by the court's approval of the settlements; and

WHEREAS, the Court's approval was conditioned upon the Township's satisfaction of the conditions set forth in the April 17, 2016 report of the Special Master; and

WHEREAS, a Compliance Hearing is currently scheduled to be held on August 22, 2016 for the court to review the Township's satisfaction of the conditions of approval; and

WHEREAS, this Settlement Agreement is being entered into by the Parties for the purposes of memorializing the settlement reached between the Township and Fair Share and approved by the Court; and

WHEREAS, the Parties recognize 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, terms and conditions set forth herein, intending to be legally bound hereby, the Township and FSHC agree as follows:

1. Incorporation of Recitals. The Parties incorporate the foregoing recitals as incorporated herein and made a part hereof.
2. Purpose of Agreement. The purpose and intent of this Agreement is to settle the pending Action on terms that address the needs of 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 affordable housing on the terms set forth herein.

3. Establishment of Fair Share Obligation.

- a. At this time and at this point in the process resulting from the Court's Mount Laurel IV decision, when fair share obligations have yet to be determined, it is appropriate for parties to arrive at a settlement regarding a municipal Third Round obligation instead of doing so through a plenary adjudication of the present and prospective need.
- b. As set forth in COAH's Rules, N.J.A.C. 5:93-2.16 and detailed in the *Kinsey Report*, under COAH's Second Round methodology, "a municipality's prospective need may not exceed a cap defined as 20% of the municipality's occupied housing." Because the Township's net prospective need calculated in the *Kinsey Report* exceeds the Township's 20% cap obligation, the 20% cap is the adjusted net prospective need for the Township.
- c. FSHC and the Township hereby agree that the Township's Third Round affordable housing obligations, as set forth in the *Kinsey Report*, are as follows:

Present Need / Rehabilitation Share	10
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	217
Third Round Prospective Need	260
- d. FSHC agrees that the Township, through the adoption of the Fair Share Plan attached hereto as Exhibit A, and the implementation of that plan and this Agreement, satisfies the Township's cumulative third round obligations under the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. (the "FHA").
- e. As detailed in the Plan, summarily, the Township has/will satisfy its Third Round obligations as follows:
 - i. Present Need / Rehabilitation Share – 10 Units. The Township will utilize Middlesex County's housing rehabilitation program to satisfy its 10 unit rehabilitation obligation.
 - ii. Prior Round Obligation – 217 Units. The Township has a prior round obligation of 217 units, which has been met through the following compliance mechanisms:

Prior Round Compliance Mechanism	Credits	Bonus	Total
<i>Regional Contribution Agreements (funds transf.)</i>	110	---	110
<i>Completed Affordable Units (by CHA)</i>			
Family aff. rentals – Bergen, Danser Parkside / Bennett	26	26	52
Family aff. sale units – Bergen, Danser, S. Main	30	---	30
Senior aff. rentals – Park Place West	20	---	20
Family aff. rentals – Old Cranbury Rd (18 of 20)	18	18	36
<i>Completed Alternative Living Arrangements</i>			
SERV Group Home – Dey Road (6 br.)	6	6	12
SERV Shared Supportive Living (5 br.)	5	5	10
<i>Prior Round Substantial Compliance Reduction</i>	13	---	13
Total	228	55	283
Surplus (Credits)	---	---	66

- iii. Third Round Prospective Need – 260 Units. The Township has and will implement the following mechanisms to address its Third Round prospective need of 260 units:

Township's Third Round Compliance Mechanisms	Credits	Bonus	Total
<i>Prior Round Surplus</i>	66	---	66
<i>100% Affordable Housing Projects</i>			
CHA family rentals – Old Cranbury Rd (2 of 20)	2	2	4
CHA family rental – Gristmill – completed	1	1	2
CHA family rentals – Applewood Court (approved / construction pending)	32	32	64
Ingerman/Paul's Auto family rentals – proposed	24	24	48
Ingerman/Paul's Auto - senior (49) / special needs (17) rentals (proposed)	66	---	66
<i>Inclusionary Developments / Redevelopment</i>			
High Point Cheney/Haggerty/Kushner Redev. Family affordable rentals (approved)	7	6	13
Toll Bros./Protinick – Payment In Lieu (proposed)	---	---	---
Total	198	65	263

The Fair Share Plan attached hereto as exhibit A specifies for the Third Round Prospective Need obligation that the following standards agreed to by the parties are met: at least twenty five percent of the obligation will be

met through rental units, including at least half rental units available to families; at least half of the units in total will be available to families; at least half of the units will be for low-income households including at least 13 percent of the units made available since the passage of N.J.S.A. 52:27D-329.1 in 2008 must be available to people who are very-low-income consistent with N.J.S.A. 52:27D-329.1, including at least half for very-low income families; and a maximum of twenty-five percent of the units are age-restricted.

- f. Further details regarding the Township's compliance mechanisms, including, but not limited to project descriptions, property information, financing mechanisms, timeline for construction of 100% affordable housing projects, and administrative summaries, are provided at length in the Fair Share Plan attached hereto as Exhibit A.
- g. The parties agree that if a court of competent jurisdiction in Middlesex County, or an administrative agency responsible for implementing the FHA, calculates an obligation for the Township for the period 1999-2025 that is lower by more than twenty (20%) percent of 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. Notwithstanding any such reduction, the Township shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zone changes made or continued in connection with the plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of 100% affordable developments referenced herein; and otherwise fulfilling fully the fair share obligations 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 carryover any resulting extra credits to future rounds in conformance with the then-applicable law.

4. Controls on Affordability. 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. ("UHAC") and other applicable laws, except that in lieu of the requirement that 10 percent of affordable rental units shall be affordable to households earning 35 percent or less of median income, there shall be a requirement that 13 percent of affordable rental units shall be affordable to households earning 30 percent or less of median income. The Township, as part of its Plan 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 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, the New Jersey State NAACP, and the Latino Action Network, and shall, as part of its regional affirmative marketing strategies during the period of Repose, provide notice to these organizations of all available affordable housing units.

5. Spending Plan. The Township has prepared a spending plan that is attached hereto as Exhibit B. The parties to this agreement agree that this spending plan is valid and should be approved by the court. The Parties further agree, and will ask for approval by the court, 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 to the FHA.

- a. On an annual basis beginning with the first anniversary of the entry of the Order granting a Final Judgment in this matter, the Township shall report all activity in connection with its Affordable Housing Trust Fund to the New Jersey Department of Community Affairs (either the 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 previously developed for this purpose by the New Jersey Council on Affordable Housing. The reporting shall include the sources and

amount of funds collected and the amounts and purposes for which funds have been expended.

- b. ~~The parties recognize that the expenditure of trust fund fees on administrative costs is capped at 20%. The parties further recognize that in all filings before the Court, the Township filed to affirmatively comply with the Third Round obligation, and no legal or planning expenses by the Township were created in an effort to avoid its obligation, litigate the appropriateness of a site for inclusion in the plan, or the like. As such, the Parties agree that the Township may charge all legal and planning expenses spent in pursuing its Third Round plan approval to its affordable housing trust fund subject only to the 20% cap.~~

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6. Annual Monitoring Reports. On an annual basis beginning with the first anniversary of the entry of the Order granting a Final Judgment, the Township shall report on the status of all affordable housing activity within the municipality through an update of the COAH CTM system and 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.

7. Plan Progress Reporting. The FHA 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. Pursuant to N.J.S.A. 52:27D-313, the Township shall, on July 1, 2021, report on the continuing realistic opportunity provided by any inclusionary zoning sites or other affordable housing mechanisms in its Plan that have not been implemented. Such reporting shall be in the form of a posting on the municipal website, with a copy provided to Fair Share Housing Center. The reporting shall consist of a status report as to the Township's implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity or should be replaced. Such posting shall invite any interested party to submit comments to the Township and to Fair Share Housing Center on the issues of whether any unbuilt inclusionary zoning sites or other affordable housing mechanisms no longer present a realistic opportunity for affordable housing and should be replaced.

b. Pursuant to N.J.S.A. 52:27D-329.1, the Township shall, within 30 days of the third anniversary of the entry of the Order granting a Final Judgment in this matter, and every third year thereafter, 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 housing requirement, including the family very low income requirement, referenced herein. Such posting shall invite any interested party to submit comments to the Township and to Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation as set forth in the Settlement Agreement.

8. Party Status. It is hereby acknowledged and agreed that FSHC shall be granted as part of any final judgment party status in this matter and shall be deemed to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading.

9. Court Approval. The terms of the settlement memorialized herein have been approved by the court at the April 18, 2016 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) and East/West Venture v. Borough of Fort Lee, 286 N.J.Super. 311, 328-29 (App. Div. 1996). FSHC agrees that the municipality may receive the “judicial equivalent of substantive certification” in accordance with the Supreme Court’s decision in Mount Laurel IV, 221 N.J. at 30.

10. Duty to Defend. 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.

11. Enforcement. This settlement agreement may be enforced through a motion to enforce litigant’s rights or a separate action filed in Superior Court of New Jersey, Middlesex County.

12. 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.

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

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

15. 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.

16. 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 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.

17. 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 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.

18. Exhibits and Schedules. 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.

19. 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.

20. Effective Date. 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.

21. 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 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 THE TOWNSHIP: Denise Marabello, Township Administrator / CFO
Township of Cranbury
23A North Main Street
Cranbury, NJ 08512
Phone: (609) 395-0900
Email: dmarabello@cranbury-nj.com

With Copies To:

Kathleen Cunningham, RMC, Township Clerk
Township of Cranbury
23A North Main Street
Cranbury, NJ 08512
Phone: (609) 395-0900
Email: twpclerk@cranbury-nj.com

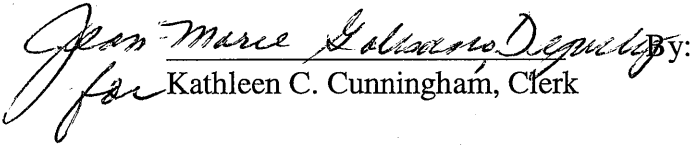
Kevin A. Van Hise, Esq.
Mason, Griffin & Pierson, PC
101 Poor Farm Road
Princeton, NJ 08540
Phone: (609) 436-1209
Facsimile: (609) 683-7978
Email: k.vanhise@mgplaw.com

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and attested to as dated below.

ATTEST

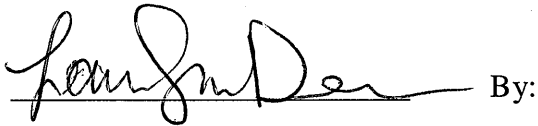
THE TOWNSHIP OF CRANBURY

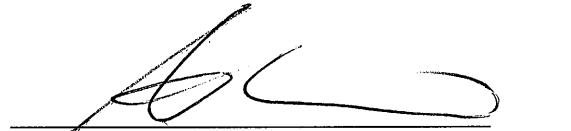

for Kathleen C. Cunningham, Clerk

Dated: August 8, 2016


Daniel P. Mulligan, III, Mayor

FAIR SHARE HOUSING CENTER, INC.

 By:


Adam M. Gordon, Esq., Associate Director

Dated: August 19, 2016