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June 21, 2018

Edward T. Rogan, Esq.
One University Plaza – Suite 607
Hackensack, NJ 07601

**Re: In the Matter of the Borough of Closter, County of Bergen, Docket
No. BER-L-6372-15**

Dear Mr. Rogan:

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

Background

Closter filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Borough have engaged in a mediation process under the supervision of the court-appointed Special Master. Through that process, the Borough, FSHC and the Borough's sole intervenor, The Corner Farm 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.

Settlement terms

The Borough, FSHC and The Corner Farm hereby agree to the following terms:

1. FSHC agrees, and The Corner Farm will not object, that the Borough, through the adoption of a Housing Element and Fair Share Plan that complies with this agreement, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and the Borough hereby agree, and The Corner Farm does not object, that Closter's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	110
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	347

*See Paragraph 5 below.

4. For purposes of this agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. FSHC and the Borough agree, and The Corner Farm does not object to the fact that Closter 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 347-unit Third Round obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects the 30% reduction of Dr. Kinsey's calculation of Closter's Third Round Fair Share obligation.
6. The Borough's efforts to meet its present need include the following: The Borough's Present Need/Rehabilitation Share is 0 units and so no mechanisms are needed.
7. As noted above, the Borough has a Prior Round prospective need of 110. This number is reduced by the adjustment previously approved by the Council on Affordable Housing (COAH) based upon the lack of available vacant and developable land within the Borough as established in the Borough's Prior Round Vacant Land Inventory and Analysis ("VLA"). The Prior Round RDP of 62 units is met through the following compliance mechanisms:

Spectrum for Living	16
Vantage	3
AH/Z	1
Bonus Credits	16
RCA Credits	26
Total	62 units

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

The Borough's Prior Round Prospective Need of 110 units minus its RDP of 62 units leaves an unmet need of 48 units.

8. The Borough since 1983 is home of the original Spectrum for Living. This facility consists of 52 living units for very low income residents. In a previous round, it was erroneously identified as a hospital, however, is clearly not a facility where one resides temporarily, but rather is a permanent home for 52 of Closter's residents. If applied under current regulations, it would eliminate all of Closter's unmet need. The Borough does not at this time seek any credit or offset for its historical efforts, but wishes to memorialize the Borough's long-standing policy of providing for very low income residents.
9. The Borough and FSHC agree and The Corner Farm does not object that based upon the Borough's Third Round VLA, the Borough has a Third Round RDP of 45 units. That RDP will be satisfied as follows:

Vantage (Supportive Housing)	16
Village School (Family Rental)	35
Accessory Apartments (Family Rentals)	10
Bonus Credits	12
Total	73

The RDP of 45, subtracted from the Third Round obligation of 347 units, results in an unmet need of 302 units for the Third Round. The unmet need from the Prior Round of 48 units plus the unmet need from the Third Round of 302 equals a combined unmet need of 347 units. This shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:

RDP Surplus-to be used for unmet need	28 units
Zone #4	Potential for 43 units
Zone #5	Potential for 67 units
Business Zone District	Potential for 27-36 units

10. To address its unmet need, the Borough will adopt overlay zoning on the following sites:
 - A. See Description of overlay zoning as outlined in the attached March 22, 2018 Memorandum to Special Master Michael Bolan, P.P., AICT attached and made a part hereto. (See attached "Exhibit A")
 - B. The Corner Farm is a site located at 515 Piermont Road, Closter, New Jersey, more specifically identified on the Closter Tax Map as Block 1605, Lot 17 in District No. 1 in the Residential A Zone and contains approximately 3.2 acres. The site will be rezoned to permit an overlay zone with 17 percent of the total development set aside for affordable housing. The overlay density of 3.75 units

(per acre) will permit three (3) stand alone, detached quadruplex structures (4 units per structure), or a total of twelve (12) two (2) and three (3) bedroom units ranging in size from 900 sq. ft. up to 1,500 sq. ft., including two (2) affordable units (one low income two bedroom and one moderate income three bedroom), to be constructed on the site. The building coverage of each building may not exceed 2,600 square feet. The overlay ordinance would include specific standards, including, but not limited to, (i) providing buffers for adjoining residential uses, (ii) maintaining a residential architectural scale, design, and treatment similar to the residential uses located to the east and north of the site, (iii) prohibiting parking in front of any building located along Piermont Road, and (iv) establishing the maximum front yard setback along Piermont Road at 40 feet or less with appropriate landscape buffering.

11. As an additional mechanism to address unmet need, the Borough will provide realistic opportunity for the development of additional affordable housing by adoption of a Mandatory Set-Aside Ordinance.
 - a. **Mandatory Set-Aside Ordinance** – The establishment of a requirement that 20% if the affordable units are for sale and 20% if the units are for rent, for all new multi-family residential development of five (5) or more units that become permissible through either a use variance, density variance increasing the permissible density on a site, a rezoning permitting multi-family residential housing where not previously permitted or new or amended redevelopment plan. This does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Closter to grant such rezoning, variance, or other relief.
12. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Village School – the Borough is in the process of purchasing the Village School property and anticipates a closing date of on or about July 15, 2018, in order to turn it over to an affordable housing developer to develop a 100% affordable re-use project. In order to receive credit for this project and comply with the terms of this Agreement, the Borough must have the property under contract and have an affordable housing developer in place before the final compliance hearing. (See attached “Exhibit B”, Contract of Sale and Bergen County Housing Development Corporation Resolutions 2017-07 and 2017-11).

The Borough has to date obtained an Order dated October 31, 2017 permitting the Borough of Closter to utilize up to \$900,000.00 of its Affordable Housing Trust Fund monies toward the purchase of the property located at 511 Durie Avenue, Closter, New Jersey. See attached “Exhibit C”. The Borough has further pursuant to the terms and conditions of the Contract to Purchase the property deposited \$800,000.00 into the Trust Account of David M. Watkins, Esq. and has secured that amount by virtue of a first Mortgage and Note filed on the property. (See attached “Exhibit D”). The Borough has adopted the statutory required Ordinance permitting the purchase of real property at its meeting of November 8, 2017. (See attached “Exhibit E”). The Borough has also adopted a Bond Ordinance in the amount of \$2,800,000.00 at its meeting of November 20, 2017. (See attached “Exhibit F”), in order to satisfy a balance that would be due at time of closing.

A Contractor was retained by the Seller of the property and permits obtained, all asbestos removed and partial demolition has been completed.

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality and/or its developer, Bergen County Housing Development Corporation will provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or developer project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved within a reasonable time. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing.

13. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:
 - a. Vantage. All 16 of the Vantage units are very low income.
 - b. 13% of units at Village School
 - c. 13% of units developed as a result of the overlay zones and set-aside ordinance as required by Ordinance.

14. The Borough shall meet its Third Round RDP and Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:
 - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round RDP and Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the Third Round RDP and Prospective Need shall be 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 RDP and Prospective Need in total must be available to families.
 - e. The Borough 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 fair share obligation as set forth in Paragraph 7 above
15. The Borough 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 Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
 16. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough 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.
 17. 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.
 18. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
 19. The parties agree that if a decision of a court of competent jurisdiction in Bergen 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 Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the

development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough'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 Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

20. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan 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 Borough 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.
21. On the first anniversary of the execution of this agreement, 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 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.
22. The Fair Housing Act includes two provisions regarding action 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 1, 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 Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
- The Borough agrees to pay \$5,000.00 to FSHC, payable within ten (10) days of judicial approval of this Agreement pursuant to a duly-noticed Fairness Hearing.
24. 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 Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
25. 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.
26. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
27. 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.

28. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
29. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH: Edward T. Rogan, Esq.
One University Plaza, Suite 607
Hackensack, NJ 07601
Phone: (201)342-6404
Telecopier: (201)342-6658
Email: office@rogan-lawfirm.com

TO THE CORNER FARM: Frank Petrino, Esq.
2000 Lenox Drive, Suite 203
Lawrenceville, NJ 08648
Phone: (609)989-5029
Telecopier: (609)392-7956
Email: fpetrino@eckertseamans.com

WITH A COPY TO THE MUNICIPAL CLERK: Loretta Castano, Borough Clerk
295 Closter Dock Road
Closter, NJ 07624
Phone: (201)784-0600
Email: lcastano@closternj.us

Please sign below if these terms are acceptable.

Sincerely,

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

On behalf of the Borough of Closter, with the authorization
of the governing body:

Borough of Closter

John C. Glidden, Jr., Mayor
Dated: _____

On behalf of The Corner Farm:

Dated: _____

follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

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

TO THE BOROUGH: Edward T. Rogan, Esq.
One University Plaza, Suite 607
Hackensack, NJ 07601
Phone: (201)342-6404
Telecopier: (201)342-6658
Email: office@rogan-lawfirm.com

TO THE CORNER FARM: Frank Petrino, Esq.
2000 Lenox Drive, Suite 203
Lawrenceville, NJ 08648
Phone: (609)989-5029
Telecopier: (609)392-7956
Email: fpetrino@eckertseamans.com

WITH A COPY TO THE MUNICIPAL CLERK: Loretta Castano, Borough Clerk
295 Closter Dock Road
Closter, NJ 07624
Phone: (201)784-0600
Email: lcastano@closternj.us

Please sign below if these terms are acceptable.

Sincerely,

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

On behalf of the Borough of Closter, with the authorization
of the governing body:

Borough of Closter


Alissa J. Latner, Council President

John C. Glidden, Jr., Mayor

Dated: June 21, 2018