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August 16, 2016

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

**Re: In the Matter of the Town of Dover Complaint for Declaratory
Judgment Demonstrating Municipal Compliance with Constitutional
Mount Laurel Obligation
Docket No. MRS-L-001696-15**

Dear Mr. Walsh:

This letter memorializes the terms of an agreement reached between the Town of Dover ("Dover"), 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

Dover filed the above-captioned matter on July 8, 2015, seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. On August 21, 2015, the Court entered a Consent Order granting a temporary period of immunity through January 7, 2016 among other relief granted in the Order. On November 2, 2015, the Court extended immunity through April 6, 2016 and established a schedule by which Dover was required to submit a report to the Court regarding Dover's fair share obligation as well as submitting a Housing Element and Fair Share Plan to the Court on or before April 4, 2016. The Court further entered an Order on February 10, 2016 which stated in relevant part "Each municipality shall select the amount for its obligation based upon the expert it chooses." Thereafter, the Court issued a clarifying letter dated February 10, 2016 which similarly required Dover to pick the number it deems appropriate to submit its Housing Element and Fair Share Plan by April 4, 2016 as the Order of November 2, 2015 contemplated. The Court further held "Clearly, the number chosen by each municipality may not be the number to be fixed by the Court after an appropriate Trial." The Court further entered an Order on April 15, 2016 stating "The Court having determined preliminarily that there is sufficient merit to schedule a further proceeding upon notice, at which time the Court will consider any comments and determine if final judgment may be entered granting substantive certification and a period of immunity or repose from the builder's remedy litigation", the Court thereafter scheduled a hearing for June 16, 2016 in regard to this matter. The Court further extended the period of temporary immunity until further order of the Court. FSHC sought to

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engage Dover in settlement discussions which occurred on June 8, 2016. As a result of those settlement discussions, Dover and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for low and moderate-income households. The Trial Court conducted a Fairness/Compliance Hearing on June 16, 2016 at which time the settlement was placed on the record. Thereafter, on June 16, 2016, the Court entered an Order Granting Substantive Certification and a Judgment of Compliance and Repose.

Settlement Terms

Dover and FSHC hereby agree to the following terms:

1. FSHC agrees that Dover, through the adoption of the attached draft Housing Element and Fair Share Plan ("the Plan"), dated March, 2016, as amended and supplemented with the representations made on the Record by Marcia Shiffman, AICP, PP, LLA of Maser Consulting, P.A., 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. 53:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. In Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986), Judge Skillman held that the most troublesome issue in Mount Laurel litigation is the determination of fair share. Furthermore, the Court expressed a desire to encourage voluntary compliance with the constitutional obligation by providing a realistic opportunity for housing and not litigation. 197 N.J. Super. at 366, 367. 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 Dover's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. For settlement purposes only, Dover and FSHC hereby agree that Dover's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	312
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	6

¹David 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, April 16, 2015, revised July 2015, revised May 2016.

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Third Round Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	178
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4. Dover has and continues to act in good faith in order to comply with its constitutional obligation to provide a realistic opportunity for producing Dover's fair share of the regional present and prospective need for housing low and moderate income families. In that regard, in order to address and in satisfaction of Dover's affordable housing obligation, Dover submits a summary of its housing obligation and credits dated June 16, 2016 and prepared by Marcia R. Shiffman, P.P., AICP, LLA from Maser Consulting P.A., a copy of which is attached hereto as Exhibit A² and incorporated herein by reference.
5. In accordance with the Fair Housing Act pursuant to N.J.S.A. 52:27D-329.1, Dover agrees to require 13% of all units referenced in this plan, 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.
6. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93 (i.e. one bonus credit per family rental unit up to the 25 percent maximum).
7. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
8. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
9. Dover 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 Dover 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.
10. Dover 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), FSHC 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. Dover also agrees

² Exhibit A consists of Prior Round (1987-1999) Obligation-6 units; Third Round Prospective Need Obligation (1999-2025)-178 units; and Recent Need (Rehabilitation Obligation)-312 units.

to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

11. 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, and all other applicable law. Dover, 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.
12. As an essential term of this settlement, within sixty (60) days of the June 16, 2016 Court Order Granting Substantive Certification and a Judgment of Repose or at such other additional time as approved by the Court, Dover shall introduce an ordinance providing for the amendment of Dover's Housing Element and Fair Share Plan and Land Use Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.³
13. The parties agree that if a decision of a court of competent jurisdiction in Morris County, at the appellate level or the Supreme Court, 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 Dover 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 (i.e.: determined to be 178 units or less), and if that calculation is memorialized in an unappealable final judgment, Dover may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, Dover 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 Dover'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 Dover prevails in reducing its prospective need for the Third Round, Dover may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.

³ The Dover Planning Board and the Mayor and Board of Alderman have already adopted Resolutions confirming that the Housing Element and Fair Share Plan and implementing Ordinances will be adopted if approved by the Court.

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14. Dover 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. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, Dover 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 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. 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.
15. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, Dover 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 as approved by the Court.
16. The Fair Housing Act includes two provisions regarding action to be taken by Dover during the ten-year period of protection provided in this agreement. Dover 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, Dover 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 and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to Dover, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the 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, Dover 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

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interested party to submit comments to Dover and FSHC on the issue of whether Dover has complied with its very low income housing obligation under the terms of this settlement.

17. 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.
18. Prior to becoming effective, 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). Dover presented its plamer as a witness at the June 16, 2016 Fairness/Compliance hearing. FSHC did not to challenge the attached Plan (Exhibit A) at the fairness hearing. The Court approved this proposed settlement, and Dover was granted "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 for ten (10) years from the date of the Court Order of June 16, 2016.
19. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris County.
20. 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.
21. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
22. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
23. 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.

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24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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

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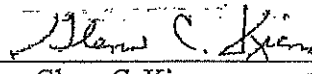
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TO DOVER: Marge Verga, Town Clerk
Town of Dover
37 N. Sussex Street
Dover, New Jersey 07801
Phone: (973)366-2200 ext. 1113
Telecopier: (973)328-6524
E-mail: mverga@dover.nj.us

Please sign below if these terms are acceptable.

Very truly yours,

WEINER LESNIAK LLP
Attorney for the Town of Dover

By: 
Glenn C. Kienz
A Member of the Firm

Kevin D. Walsh, Esq.

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

On behalf of the Town of Dover, with the Authorization of the Mayor and Board of Alderman
and Planning Board.

ATTEST:

TOWN OF DOVER

Marge Verga, Clerk

James P. Dodd, Mayor

Date: _____

Date: _____

**PLANNING BOARD OF THE TOWN OF
DOVER**

Paul McGrath, Chairman

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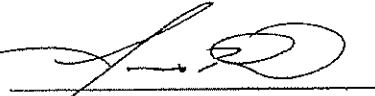
Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Town of Dover, with the Authorization of the Mayor and Board of Alderman
and Planning Board.

ATTEST:


TOWN OF DOVER

Maria Coppinger Deputy Municipal
Marge Verga Clerk *Maria Coppinger* Clerk
Date: 9/30/2016



James P. Dodd, Mayor
Date: 9/30/2016

**PLANNING BOARD OF THE TOWN OF
DOVER**



Paul McGrath, Chairman

PRIOR ROUND (1987 - 1999) OBLIGATION 6 UNITS

Mechanism	Credit Type	Credit	Bonus	Total
Community Hope I, 533 Berry Street, B2016, L6, AL/NAR/RL	Prior-Cycle	5	0	5
Community Hope 2, 93-94 Berry Street, B2016, L127, AL/NAR/RL	100% Affordable	6	2	8
Habitat For Humanity, 32 Spring Street, B514, L14.04, G01, NAR/S	100% Affordable	1	0	1
Habitat For Humanity, 30 Spring Street, B514, L14.04, G02, NAR/S	100% Affordable	1	0	1
Habitat For Humanity, 14 Baker Street, B712, L8, G02, NAR/S	100% Affordable	1	0	1
Habitat For Humanity, 263 Ann Street, B403, L12, NAR/S	100% Affordable	1	0	1
Spruce Street Housing, B11, L116, AR/RL	100% Affordable - Senior Rental	90		90
Granny Brook Apartments, B202, L6, NAR/RL (all moderate units)	Inclusionary	5		5
Total Built Affordable Units		110	2	112
Prior Round Obligation				6
Surplus Built Affordable Unit Credits To Carryover to Future Rounds				106

Third Round Prospective Need Obligation (1999-2025) = 178 units

Mechanism	Credit Type	Credit	Bonus	Total
Habitat For Humanity, Harding Avenue, B2205, E101, P02, P2, NAR/S	100% Affordable	4	0	4
Habitat For Humanity, 23 Monmouth Street, B1214, L2, NAR/S	100% Affordable	1	0	1
Penrose Properties Veterans Housing Redevelopment Area, B1219, L2, (NAR, RL)	100% Affordable	71	45	116
Subtotal Proposed Affordable Units		76	45	121
Carryover Surplus Family Housing Credits				16
Carryover Senior Credits				45
Total Affordable Unit Credits				182
Third Round Prospective Need Obligation				178
Surplus Third Round Obligation Credits				4
Carryover Surplus Senior Credits from Prior Round				45
Total Surplus Credits to be Used to Address Present Need Obligation				49

Present Need (Rehabilitation) Obligation - 218

Mechanism	
Town Rehabilitation Program - Rehabilitation Units Completed	27
Estimated Rehabilitation Units To Be Completed by 2025	62
Surplus Carryover Credits	49
Total Rehabilitation + Surplus Credits	138
Rehabilitation Obligation	218
Deficit - Remaining Rehabilitation Obligation	80

312

218 312
 (80) (-124)