FAIR SHARE
HOUSING CENTER

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October 30, 2020

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Four Gateway Center
100 Mulberry Street
One Gateway Center
Newark, NJ 07102

Re: In the Matter of the Township of Livingston, County of Essex
Docket No. ESX-L-4849-15

Dear Ms. Weiner and Mr. Hall:

This letter memorializes the terms of an agreement reached between declaratory judgment plaintiff the Township of Livingston (the "Township" or "Livingston") and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in the within declaratory judgment action filed by Livingston on July 8, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and the 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, 221 N.J. 1, 30 (2015) (Mount Laurel IV) (the "DJ Action"). The Township and FSHC have agreed to request approval by the trial court with jurisdiction over this matter, recognizing that the amicable resolution of Mount Laurel proceedings is favored because it avoids delays and the expense of trial and results more quickly in the construction of residences for lower-income households.

Agreement Terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through adoption of a Housing Element and Fair Share Plan consistent with the terms of this Agreement (the "HEFSP") and through the implementation of the HEFSP 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. FSHC and Livingston hereby agree that Livingston does not accept the methodology or calculations proffered by FSHC, and the parties agree to the terms of this Agreement solely for purposes of settlement. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive

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at a settlement regarding a municipality's Third Round Obligation instead of pursuing a definitive judicial determination through plenary adjudication of the Third Round Obligation.

3. FSHC and Livingston hereby agree for purposes of settlement that Livingston's affordable housing obligations are as follows:

Rehabilitation Share (per 2016 Kinsey Report)	23
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	375
Third Round (1999-2025) Unadjusted Obligation (per Mercer County Decision)	765

4. For purposes of this Agreement, the unadjusted Third Round Obligation shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015 and June 30, 2025.

5. The Township's actions to meet its Rehabilitation Share consist of continued participation in the Essex County Home Improvement Program as well as the municipally sponsored Livingston Home Improvement Program, which is consistent with the provisions of former N.J.A.C. 5:93-5.2. These actions are sufficient to satisfy the Township's Rehabilitation Share obligation of 23 units.

6. As stated above, the Township has a Prior Round (new construction) Obligation of 375 units, which has been met consistent with a Final Judgment entered in prior judicial proceedings on June 11, 2011, a copy of which is attached hereto as Exhibit A, through the following compliance mechanisms:

Name of Development	Type of AH Unit	# of AH units/ bedrooms	Comments/Notes
The Fairways/Rosedale Manor	Family Rental	32	Completed
Cedar Street Commons	Age-restricted rental	33	Completed
Pulte Homes (JKHA)	Family Rental	44	Approved; initial market rate component under construction
TMB	Family Rental	12	Completed
The Hillside Club	Family Rental	16	Completed
ParkVue at Livingston (Squiretown)	Family Rental	45	Completed
Care One at Livingston	Assisted Living	8	Completed

Supportive Housing Units at Various Locations	Group Homes	55	All built/occupied and deed restricted; a complete listing has been provided to FSHC and more details are provided in the HEFSP
Regency Club RCA	RCA with City of Linden	53	Fully performed
Hillside Heights RCA	RCA with City of Linden	11	Fully performed
Rental Bonus Credits		93	Fairways: 32; Pulte: 44; TMB: 6; Cedar Street Commons: 11.
	Total	402	
Surplus Credits		27	

7. As noted above, it is agreed for purposes of this Settlement Agreement, that the Township has an unadjusted Third Round (new construction) Obligation of 765 units. This Obligation has been reduced through a vacant land adjustment prepared based on prior COAH regulations, resulting in a realistic development potential (RDP) of 151 units, as calculated in the Vacant Land Analysis ("VLA") prepared by Township, dated March 1, 2020, as summarized in Table 18 in the proposed HEFSP. A copy of the VLA is attached as Exhibit B. As described in greater detail in the HEFSP, this RDP will be satisfied as follows:

Name of Development	Type of Affordable Housing ("AH")	# of AH units/ bedrooms	Comments/Status
Care One at Livingston	Assisted Living	1	Completed; one unit additional credit that was inadvertently omitted from the 2011 HEFSP that addressed the Prior Round Obligation
Pulte Homes (JKHA)	Family Rental	6	6 affordable units for development in the 2011 HEFSP that were added later; initial market units under construction
Cider Mill (Block 7600 Lots 7, 8, 9, and 16)	Family for-sale	12	Under construction

Maramark (Block 5100, Lots 31 and 32)	Family for-sale	2	Approved
Forest Park Commons (Block 1703 Lot 7)	Family for-sale	2	Completed
AH Zone (Block 107, Lot 8.01	Family	10	Proposed
Kearney Terrace (Block 3304, Lot 23)	Family	2	Proposed
Sunrise Development	Assisted Living	13	Under construction
Brandywine Senior Living	Assisted Living	12	Completed
Health Resources	Assisted Living	15	Under construction
32 Dickinson Lane	Family	8	Proposed
Livingston Corporate Park	Family rental	25	Settlement agreement approved by the Superior Court after fairness hearing on 10/2/20 (See Ex. D); zoning adopted
Northfield Baptist Church	Family	4	Overlay zoning adopted; approval process started
457-461 S. Livingston Ave	Family rental	5	Proposed
11 Grand Terrace (Habitat)	Family for-sale	1	Completed
24 Burnett Street (Habitat)	Family for-sale	1	Under construction
191 Laurel Avenue	Supportive Housing	4	Completed
7 Beacon	Supportive Housing	4	Completed
3 Dellmead Drive	Supportive Housing	4	Completed
Prior round Excess Credits		27	
Rental Bonus Credit		39	Pulte: 6; Livingston Corp. Park: 25 Group Home: 8
	Total	197	
	Excess credits against RDP	46	

8. All developments listed in the above Table as Completed, Under Construction or Approved will be described in the Livingston HEFSP. The sites listed in the above Table that have not yet been rezoned are more specifically described as follows:

    a. AH Zone (Block 107, Lot 8.01) – Rezoning of this 6.67-acre property to permit up to 48 total residential units subject to a 20% set-aside of 10 affordable housing units.

    b. Kearney Terrace (Block 1304, Lot 23) – Rezoning of this 2.73-acre property to permit up to 2 affordable housing units.

    c. 32 Dickinson (Block 6101 Lot 2) – Overlay rezoning of this 6.5-acre property to permit up to 39 total residential units subject to a 20% set-aside of 8 affordable housing units.

    d. 457-461 South Livingston Avenue (Block 2700, Lots 62 and 63) – Overlay rezoning of this 1.79-acre property to permit mixed-use development including up to 26 dwelling units, subject to a 20% set-aside of 5 affordable housing units.

9. The calculated RDP of 151 units as set forth in the VLA subtracted from the agreed upon unadjusted Third Round Obligation of 765 units results in an Unmet Need of 614 units, which will be addressed through the following mechanisms, as more fully described in the HEFSP:

    a. Excess units for properties addressing RDP – 46 (per Paragraph 7 Table).

    b. Township agrees to introduce for adoption in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., overlay zoning on the following areas/properties permitting inclusionary development, which may include mixed use:

        i. Former Gibbs College Site (Block 100, Lot 3) – Overlay mixed-use zoning of this 16 acre property to permit up to a total of 300 residential units to be developed on not less than 8.7 acres of the site, subject to a 20% set-aside for affordable housing, with 13% of the affordable units being restricted for very low income households. The parties recognize that approximately 7.3 acres will be retained for institutional/educational use to be occupied and operated as the Spectrum Lower School. The Township agrees to adopt a zoning ordinance that provides for both the continuing use of the school building as a school for individuals with special needs as well as inclusionary residential.

        ii. 70 South Orange Avenue (Block 6100, Lot 5) – Overlay zoning permitting development at net density of 15 du/ac subject to a 20% set-aside for affordable housing, providing up to 100 total dwelling units including 20 affordable units.

        iii. 651 Old Mount Pleasant Avenue (Block 6001, Lot 2) – Overlay zoning permitting residential development at net density of 14 du/ac subject to a 20% set-aside for affordable housing, providing up to 45 total dwelling units including 9 affordable units.

iv. Former Lexus Dealership Site (Block 101, Lots 3 & 4) – Overlay zoning permitting mixed use development up to 12 du/ac subject to a 20% set-aside to provide up to 10 affordable housing units.

v. Mark Built (Block 6101, Lots 25 & 26) – Overlay zoning of this 3.57-acre site to permit inclusionary residential development at 20 units per acre to provide up to 72 total units including a 20% setaside of 14 affordable housing units.

vi. 389-405 East Mount Pleasant (Block 2100,, Lots 22 to 25 & 35.01 to 35.03) – Overlay zoning of this approximately 14 acre site (after netting out 1.75 acres to be retained for church use) a gross density of 16 units per acre resulting in a maximum of 224 units subject to a 20% affordable housing setaside of 45 units. Development would be adult senior housing requiring head of household 55 years of age or older and no person under 19 years of age for more than 90 days year, requiring affordable units to be credited against the Township's unmet need obligation due to the cap on percentage of age-restricted affordable units in the Township's RDP. The Township agrees to introduce an ordinance the same or substantially similar to the draft ordinance attached as Exhibit E.

vii. If any of the above identified projects cannot be zoned for the number of units stated above, the Township shall be obligated to offset and replace any shortfall in affordable units, either through increasing the density and unit totals of one or more of the other sites identified above and/or by identifying one or more additional sites to provide affordable units. Any such replacement shall be through an amendment to this agreement with the consent of FSHC and approval of the court following the recommendation of the Special Master.

c. Overlay zoning of the Livingston Mall properties (D-S Designed Shopping Center District, consisting of Block 6200, Lots 1, 1.01, 2, 3, 8 and 9) to permit mixed use development in the event that the Mall or a substantial portion thereof should close or be proposed for major repurposing due to changes in market and/or economic conditions. The residential component of new development would include inclusionary housing subject to an affordable housing set-aside of 20%, with 13% of the affordable units being restricted for very low income households. The zoning will encourage phased development to maintain a balance between residential and nonresidential development. There will be no requirement for demolition of all existing Mall structures.

d. The Township will adopt an ordinance requiring a mandatory affordable housing set-aside for all new multifamily residential developments of five (5) units or more. The set-aside for rental developments will be fifteen percent (15%) and the setaside for for-sale developments will be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of 5 or more. The form of the Ordinance will be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master, and representatives of the Township.

e. Other inclusionary development and/or affordable housing in response to future redevelopment opportunities that may arise.

10. Consistent with N.J.S.A. 52:27D-329.1 of the Fair Housing Act, 13% of the aggregate total number of all affordable units constructed or granted preliminary or final site plan approval after July 1, 2008, including units on future rezoned sites, will be very low income units, with half of the very low income units being available to families, as set forth in Table 22 in the HEFSP.

11. The Township will address its Third Round Obligation in accordance with the following standards as agreed to by the Parties and reflected in the HEFSP:

    a. Third Round bonuses will be applied consistent with former N.J.A.C. 5:93-5.15(d).

    b. At least 50 percent of the units addressing the Third Round Obligation will be affordable to very-low-income and low-income households with the remainder being affordable to moderate-income households.

    c. At least 25 percent of the Third Round Obligation will 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 Prospective Need in total must be available to families.

    e. The HEFSP will be consistent with the current age-restricted cap of 25% and will not include a claimed credit toward the Township's current fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet the cumulative Prior Round and Third Round fair share obligation. Any such "excess" age-restricted affordable housing units may be credited against any future obligation.

12. The list of community and regional organizations in Township's previously approved affirmative marketing plan pursuant to N.J.A.C. 5:80-26.15(f)(5) includes or will include Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, East Orange NAACP, Newark NAACP, Morris County NAACP, Elizabeth NAACP, and Supportive Housing Association.

13. All affordable units shall include the required bedroom distribution (for family units) and 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"), or any successor regulations, 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 rental projects shall be required to be at 30 percent of median income, and in conformance with all other applicable law. The Township, in connection with implementation of its HEFSP, will adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed previously by COAH. Limits for all units that are part of the HEFSP and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 will be consistent with the table of 2020 Affordable Housing Regional Income Limits by Household Size prepared by the Affordable Housing Professionals of New Jersey, dated April 24, 2020, a copy of which is attached hereto as Exhibit C, as may be updated or superseded by similar calculations consistent with former COAH regulations and UHAC.

14. All new construction affordable units shall be adaptable in conformance with P.L.2005, c.350, N.J.S.A. 52:27D-311(a) & (b) and all other applicable law.

15. Within sixty (60) days of Court approval of this Agreement, a proposed HEFSP, including an updated Spending Plan, consistent with the terms of this Agreement will be the subject of a public hearing before the Planning Board and within sixty (60) days thereafter the Township will introduce and adopt an ordinance or ordinances providing for amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein.

16. The parties agree that if a decision of a court of competent jurisdiction, 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 Township for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total unadjusted Third Round 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 to reduce its total unadjusted Third Round Obligation and unmet need figures accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a HEFSP that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the HEFSP adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms set forth herein to address unmet need; and otherwise fulfilling fully the fair share obligations as established in this Agreement. The reduction of the Township's Third Round 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 Third Round Obligation, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

17. The previously approved Township Spending Plan is deemed to be appropriate, and FSHC agrees to cooperate with and support Livingston's request for approval by the Court, including an express judicial determination that expenditures of funds contemplated under the Spending Plan constitute a "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 in this matter that includes approval of the Spending Plan 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 Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Township 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 using forms developed for this purpose by the New Jersey Department of Community Affairs. 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.

18. On the first anniversary of the court approval of this Agreement, and every anniversary thereafter through the end of this Agreement, except as provided in Paragraph 19, the Township agrees to provide annual reporting of the status of all affordable housing activity

within the municipality through posting on the municipal web site, with a copy of such reporting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms previously endorsed by the Special Master or FSHC.

19. For the midpoint realistic opportunity review provided for in N.J.S.A. 52:27D-313, on the third anniversary of Court approval of this Agreement, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to implementation of the HEFSP 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 FSHC, 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.

20. 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 Court approval of this Agreement, the Township will provide to FSHC a status report as to satisfaction of its very low income requirements, including the family very low income requirements referenced herein.

21. FSHC previously was permitted to intervene in this matter as a defendant by Order entered on September 15, 2015.

22. This 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 Township will present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void. In the event the Court approves this Agreement, 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, except as may subsequently be extended by the Court. Upon expiration of the period of protection the Parties shall have no further obligations hereunder absent an amendment approved in writing by both Parties.

23. The Township agrees to provide to FSHC the amount of $25,000 to be used at the discretion of FSHC for the provision of affordable housing opportunities/assistance within sixty (60) days after entry by the Court of an Order approving this Agreement pursuant to a duly-noticed fairness hearing and such Order becoming final and unappealable. The Parties agreed that neither shall request or otherwise make a claim against the other for payment or reimbursement of any legal fees and/or costs incurred in connection with the within Declaratory Judgment Action and/or any related actions or proceedings.

24. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, provided, however, that each Party shall be responsible for its own legal fees for any such proceedings and shall have the sole discretion as to litigation strategy and the extent of resources devoted thereto.

25. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County.

26. 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, provided that Township continues to receive the protection provided for in Paragraph 22.

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

28. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

29. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

30. The 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.

31. 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.

32. 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.

33. No member, official or employee of the Township has or will 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.

34. 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.

35. 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 carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) day notice as provided herein:

TO FSHC:

Adam M. Gordon, Esquire
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
Email: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Barry Lewis, Township Manager
Township of Livingston
357 South Livingston Avenue
Livingston, New Jersey 07039
Phone: (973) 535-7973
Telecopier: (973) 992-7531
Email: blewis@livingstonnj.org

WITH A COPY TO THE TOWNSHIP ATTORNEY:

Sharon L. Weiner, Esq.
Murphy McKeon, P.C.
51 Route 23 South
P.O. Box 70
Riverdale, New Jersey 07457
Phone: 973-835-0100
Telecopier: 973-835-173__________

This will confirm that the terms set forth herein are acceptable to Fair Share Housing Center.

By: ____________________

Fair Share Housing Center

Dated: November 24, 2020

This agreement is authorized by of the Township Council per resolution adopted at a public meeting on November 2, 2020

By: ____________________
Rufino Fernandez, Jr.,
Mayor

Dated: 11/3/2020