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November 9, 2016

Joseph J. Triarsi, Esq.
Triarsi, Betancourt, Wukovits & Dugan, LLC
186 North Avenue, East
Cranford, NJ 07016

**Re: In the Matter of the Township of Clark, County of Union, Docket No.
UNN-L-2441-15**

Dear Mr. Triarsi:

This letter memorializes the terms of an agreement reached between the Township of Clark (the Township or "Clark"), 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

The Township 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. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Evening Realty Co., Inc., and K&K Developers, Inc. intervened in this matter by orders dated April 1, 2016 and April 1, 2016, respectively. FSHC and the Township appeared before the Court for pretrial motions and case management conferences on August 11, 2015, October 21, 2015, December 8, 2015, January 25, 2016, April 6, 2016; June 30, 2016 and September 30, 2016. Through that process, the Township 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 lower-income households. Evening Realty Co., Inc., and K&K Developers, Inc. also participated in negotiations with the Township, as facilitated by the Special Master, and have settled with the Township.

Settlement terms

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan ("the Plan") that is consistent with the chart attached hereto as Exh. A, and through 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. 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 the

municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Clark hereby agree that Clark's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	53
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	93
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	170

4. The Township's efforts to meet its present need include the following: implementation of a Township sponsored rehabilitation program to supplement the Union County rehabilitation program. This is sufficient to satisfy the Township's present need obligation (or rehabilitation share) of 53 units.

5. As noted above, the Township has a Prior Round prospective need of 93 units, which will be met through the following compliance mechanisms:

Rezoning of nine (9) sites to allow for high density multifamily dwelling units, per Exhibit A.

6. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 170 units:

Rezoning of nine (9) sites to allow for high density multifamily dwelling units, per Exhibit A.

7. The Township intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Map #	Site Name	Block/Lot
1	Woodcrest at Clark (A/R)	57/2, 3, 4, 8, 10
2	Westfield and Terminal	57/6.01
3	Raritan Gas Station	34/25
4	Westfield and Raritan	63/45, 47, 49, 51
5	Schlieferstein Site	36/13, 14, 15
6	Jack's Tavern (DTV)	77/11-15, 17, 18
7	A&P Site (DTV)	105/2, 6, 8, 13-16, 19-22, 26.01
8	DTV (Downtown Village District)	Entire District Excluding #'s 6&7
9	Temple Site	127/5, 23, 30.01
10	Walnut Site	155/7, 10
	Group Homes	various

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, July, 2015.

The Walnut Site shall be developed with an inclusionary development totaling 168 residential units, including 27 affordable units. A possible layout of the Walnut Site is depicted in the concept plan attached hereto as Exhibit B. The Township shall adopt zoning ordinances to enable the approval of an inclusionary development as-of-right 168 residential units, including 27 affordable units on the Walnut Site within 180 days of the Court's approval of this Agreement. The inclusion of accommodating the Walnut Site (Block 155, Lots 7, 10) in the Clark Township Fair Share Plan, has satisfied the requirements of third-party intervenor, Evening Realty Co., Inc., and K&K Developers, Inc. Accordingly, the third-party intervenor shall be a party to the execution of this agreement.

8. The Township 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:

All proposed inclusionary development will be as of right and no overlay zones will be implemented or proposed.

9. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed or subject to preliminary or final site plan approval as of July 1, 2008, 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:

See Clark Township Summary of Proposed Fair Share Plan, Exhibit A, attached hereto.

10. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 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 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 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 Prospective Need in total must be available to families.
- e. The Township 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.

11. 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), FSHC (510 Park Blvd, Cherry Hill, NJ); the Latino Action Network (PO Box 943, Freehold, NJ 07728); East

Orange NAACP (PO Box 1127, East Orange, NJ 07019); Newark NAACP (PO Box 1262, Newark, NJ 07101); Morris Co. NAACP (PO Box 2256, Morristown, NJ 07962); Elizabeth NAACP (PO Box 6732, Elizabeth, NJ 07206), and the Supportive Housing Association, 15 Alden St # 14, Cranford, NJ 07016, 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 Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

12. 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, 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 the affordable units in such projects shall be required to be at 30 percent of median income. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH and the timetable established by the Court to ensure that this provision is satisfied.
13. All new construction units shall be adaptable in conformance with P.L.2005, c.350 and all other applicable law.
14. As an essential term of this settlement, within one hundred eighty (180) days of the Court's approval of this Settlement Agreement, the Township shall adopt a Housing Element and Fair Share Plan that conforms with Exh. A and introduce and adopt an ordinance providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.
15. The parties agree that if a decision of a court of competent jurisdiction in Union 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 Township 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 Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. 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 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 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 carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

16. The Township shall, as part of the preparation of its HEFSP, prepare a development fee ordinance and spending plan. The parties to this agreement agree that such ordinance and spending plan should be approved by the Court, and that the expenditures of funds contemplated under the agreement 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 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 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.
17. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Township 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.
18. The Fair Housing Act 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. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township 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 Township 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.

19. 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.
20. 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 Township 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.
21. 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.
22. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
23. 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.
24. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
25. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
26. 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.

27. 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.
28. 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.
29. 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.
30. 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.
31. No member, official or employee of the Township 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.
32. 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.
33. 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 TOWNSHIP:

Joseph J. Triarsi, Esq.
Triarsi, Betancourt, Wukovits & Dugan, LLC
186 North Avenue, East
Cranford, NJ 07016
Phone: (908) 709-1700
Telecopier: (908) 272-4477
Email: jjt@tbwdlaw.com

TO K&K Developers, Inc., and Evening Realty, Inc.:

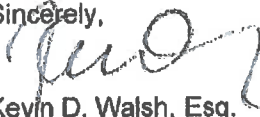
Robert A. Kasuba, Esq.
Bisgaier Hoff
25 Chestnut Street Suite 3
Haddonfield NJ 08033

WITH A COPY TO THE
MUNICIPAL CLERK:

Eddie Merkel, 430 Westfield Avenue, Clark, NJ 07066
Ph: 732-388-3600; email: clerk@ourclark.com

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 Township of Clark with the authorization
of the governing body and Planning Board:


Salvatore Bonaccorso, Mayor
Dated: 11-9-16

On behalf of the Township of Clark with the authorization
of the governing body and Planning Board:


Edith L. Merkel, Clerk
Dated: 11-9-16

On behalf of Evening Realty Co., Inc., K&K Developers, Inc.:

Meri Schachter Bodoff
Dated: 12/5/16 Meri Schachter Bodoff

On behalf of K&K Developers, Inc.:

Anthony DiGianni
Dated: 12/5/16