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December 16, 2016

Mark R. Peck, Esq.  
Florio Perrucci Steinhardt & Fader, LLC  
235 Broubalow Way  
Phillipsburg, New Jersey 08865

**Re: In the Matter of the Town of Hackettstown, County of Warren  
Docket No. WRN-L-234-15**

Dear Mr. Peck:

This letter memorializes the terms of an agreement reached between the Town of Hackettstown (the "Town" or "Hackettstown"), 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**

Hackettstown filed the above-captioned matter on July 6, 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 Town engaged in mediation via conference call on May 31, 2016 with the appointed Court Master, Elizabeth McManus. An in-person mediation session was held on October 13, 2016 at the Somerset County Courthouse with an appearance before the Hon. Thomas C. Miller, P.J.Cv. Through that process, the Town 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.

#### **Settlement terms**

The Town and FSHC hereby agree to the following terms:

1. FSHC agrees that the Town, through the adoption of a new Housing Element and Fair Share Plan ("the Plan"), to be adopted within 120 days of 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 Hackettstown hereby agree that Hackettstown's affordable housing obligations are as follows:

Rehabilitation Share (per Hackettstown Structural Conditions Survey)	60
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	62
Third Round (1999-2025) Prospective Need (per Kinsey Report <sup>1</sup> , as adjusted through this settlement agreement)	163

4. The Town's efforts to meet its present need include the following:

In accordance with N.J.A.C. 5:93-5.2(a), a Structural Conditions Survey was performed by Hackettstown Construction Official, Richard O'Connor, who is licensed by the State of New Jersey to perform building and/or housing inspections. According to Mr. O'Connor's survey, there are 73 dwelling units in Hackettstown Town that are structurally deficient. According to the FSHC report, the estimated proportion of LMI households within deficient units is 81.82%. Applying that ratio to the 73 surveyed structurally deficient dwelling units, results in a rehabilitation share of 60 units for Hackettstown. Therefore, Hackettstown will address a rehabilitation share of **60 units**.

Warren County has a Housing Rehabilitation Program ("WCHRP") for qualified low and moderate income households that gives homeowners money to fix major systems (such as roofs, heating, structural, well, septic, etc.) of their home. In return for the rehabilitation money, the house must have a lien with 99-year affordability controls placed on the property. Since July 2015, one home has been rehabilitated in Hackettstown through the WCHRP.

Hackettstown intends to continue to encourage residents to utilize the existing Warren County Housing Program to rehabilitate homes. Hackettstown transferred \$210,000 from its affordable housing trust fund to WCHRP in 2012 to be designated for rehabilitation of homes in Hackettstown. At an average cost of \$10,000 per home, this is assumed to be sufficient funds for 21 homes to be rehabilitated. It is assumed that additional funds will be available from the Warren County Housing Program to rehabilitate an additional 23 units in Hackettstown, for a total of 39 anticipated units.

Pursuant to N.J.A.C. 5:97-6.2(b)(7), units that are eligible to receive new construction credit may be used to address a municipal rehabilitation share. Accordingly, Hackettstown plans to utilize excess 15 new construction credits from Van Paftinos II to be applied to the rehabilitation obligation. These 15 credits are rental units, which will fulfill the requirement to include renter-occupied units in the rehabilitation program, pursuant to NJAC 5:93-5.2(f).

In the case of a shortfall, Hackettstown will apply for a Small Cities/CBDG grant available through the Department of Community Affairs. The grant's purpose is to rehabilitate homes and encourage the construction of affordable housing. Other eligible

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<sup>1</sup> 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 2016.

costs include activities that support an affordable housing development, such as site assemblage, engineering, infrastructure improvements, and utilities hook ups. The Town will earmark funds from its total development fees projected to be collected over the next ten years for rehabilitation to supplement the existing rehabilitation mechanisms in the case of a shortfall of rehabilitation credits.

<b>Mechanism</b>	<b>Existing Credits</b>	<b>Proposed Credits</b>	<b>Total Credits</b>
WCHRP Rehabilitation Credits	1	23	24
Funds Reserved through WCHRP		21	21
Van Paftinos II (Age-Restricted Rental)	15		15
<b>Total</b>	<b>16</b>	<b>44</b>	<b>60</b>

5. As noted above, the Town has a Prior Round prospective need of 62 units, which is met through the following compliance mechanisms:

<b>Mechanism</b>	<b>Existing Credits</b>	<b>Proposed Credits</b>	<b>Bonus Credits</b>	<b>Total Credits</b>
Heritage House (Age-Restricted)	15			20
B & W and Gordon MAB (Family Rental)	6		6	12
Van Paftinos III (Bilby Road) (Family Rental)		15	10	20
Arc of Warren County Group Home (109 Carter Terrace)	4			4
Arc of Warren County Group Home (431 Hurley Drive)	4			4
Center for Humanistic Change	2			2
<b>Total</b>	<b>31</b>	<b>15</b>	<b>16</b>	<b>62</b>

6. The Town has implemented or will implement the following mechanisms to address its Third Round prospective need of 163 units.

<b>Mechanism</b>	<b>Existing Credits</b>	<b>Proposed Credits</b>	<b>Bonus Credits</b>	<b>Total Credits</b>
Heritage House (Age-Restricted Rental)	40			53
Van Paftinos III (Bilby Road) (Family Rental)		58	41	83
Center for Humanistic Change	3			3
Brook Hollow Estates	21			21
<b>Total</b>	<b>64</b>	<b>58</b>	<b>41</b>	<b>163</b>

The Town intends to reserve the following existing or proposed credits to be applied towards either the rehabilitation obligation or for future affordable housing obligations beyond 2025 in conformance with then-applicable law:

<b>Mechanism</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>
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	Credits	Credits	Credits
Heritage House (Age-Restricted Rental)	26		26
Van Paftinos I (Age-Restricted Rental)	14		14
Van Paftinos II (Age-Restricted Rental)	6		6
Jane Paftinos, LLC (Age-Restricted Rental)	21		21
Bergen Tool Redevelopment		11	11
Van Paftinos III (Bilby Road) (Family Rental)		7	7
Lion Gate at Musconetcong, LLC (Family Rental)		31	31
<b>Total</b>	<b>67</b>	<b>49</b>	<b>116</b>

7. Nothing in this Agreement shall prejudice or limit Hackettstown's right to seek credit in the future for units/credits not specifically addressed or identified herein or to utilize additional non-age-restricted new construction credits not already allocated to the Prior Round or Third Round towards the rehabilitation obligation, so long as said credits meet all applicable legal standards and are approved by the court or an administrative agency responsible for implementing the Fair Housing Act with the requisite authority, with FSHC reserving its right to take any position it wishes as to the validity of said credits.
  
8. The Town 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. Of the Prior Round and Third Round mechanisms, all but Van Paftinos III were built before July 1, 2008, so the very low income obligation for the Prior Round and Third Round mechanisms is 13% of this development's affordable units, or  $13\% * 73 = 10$ . The Town will comply with these requirements through 10 very-low-income family rental units in Van Paftinos III. In addition, the Town will continue to comply with the 13% very low income requirement, including half of those units available to families, in other affordable housing developed in the Town after July 1, 2008.
  
9. The Town 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 Town 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.

10. The Town 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, and the Warren/Sussex County Branch Unit of the NAACP, 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 Town also agrees 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, 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 Town 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. 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.
13. As an essential term of this settlement, within one hundred-twenty (120) days of Court's approval of this Settlement Agreement, the Town shall, if necessary, introduce and adopt an ordinance providing for the amendment of the Town's Affordable Housing Ordinance to implement the terms of this settlement agreement and adopt a final Housing Element and Fair Share Plan consistent with the terms of this Agreement.
14. The parties agree that if a decision of a court of competent jurisdiction in Warren 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 Town 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 Town may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Town shall be obligated to implement the fair share plan being adopted to implement the terms of this settlement agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Town's obligation less than 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 Town prevails in reducing its prospective need for the Third Round, the Town may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
15. Prior to the final compliance hearing, the Township shall prepare a spending plan that shall incorporate all of the requirements of the within agreement (the "2016 Spending Plan"). FSHC may comment on or object to the approved Spending Plan. The Spending Plan shall be subject to the review and approval of the Court at the final compliance

hearing. Upon approval of the 2016 Spending Plan, the parties agree 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 Town 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.

16. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Town 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.
17. Pursuant to N.J.S.A. 52:27D-313, the Fair Housing Act requires that procedures be established for a realistic opportunity review at the midpoint of the certification period and for notice to the public. The Town agrees to comply with the following provisions:
  - a. For the midpoint realistic opportunity review due on July 1, 2020, the Town 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. 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. 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 Town 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.
18. 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.

19. 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 Town shall present its planner as a witness at this hearing. FSHC agrees to support the settlement agreement 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.
20. 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.
21. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Warren County.
22. 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.
23. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
24. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
25. 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.
26. 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.
27. 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.

28. 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.
29. 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.
30. No member, official or employee of the Town 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.
31. 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.
32. 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  
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Telecopier: (856) 663-8182  
E-mail: [kevinwalsh@fairsharehousing.org](mailto:kevinwalsh@fairsharehousing.org)

**TO THE TOWN:** Mark R. Peck, Esq.  
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Paul M. Sterbenz, P.E., P.P.,  
Hackettstown Town Engineer  
Perryville III Corporate Park  
53 Frontage Road, Suite 110



Hampton, NJ 08827

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

William W. Kuster, Jr.  
215 Stiger Street  
Hackettstown, New Jersey 07840  
Phone: (908) 852-3130

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 Town of Hackettstown, with the authorization  
of the governing body:



Maria DiGiovanni, Mayor

Dated: \_\_\_\_\_

1/12/17