



**BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
RESOLUTION NO. 217-2017**

A Resolution Approving the Settlement Agreement with Fair Share Housing Center to Resolve the Borough's Affordable Housing Declaratory Judgment Action

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), on July 2, 2015, the Borough of Montvale (hereinafter "Montvale" or the "Borough") filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

WHEREAS, the Borough simultaneously sought, and ultimately secured, a protective order providing Montvale with immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the trial judge appointed Frank Banisch, P.P., A.I.C.P. as the Special Court Master (hereinafter the "Court Master"), as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, with assistance from the Court Master, Montvale and Fair Share Housing Center (hereinafter "FSHC") engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto as Exhibit A; and

WHEREAS, the Borough was represented in these negotiations by Special Counsel Jeffrey R. Surenian, Esq., as well as the Borough Attorney and the Borough Planner, with additional consultation and input received from the Planning Board Attorney and the Borough Engineer; and

WHEREAS, through this process, the Borough and FSHC agreed upon the Borough's affordable housing obligations and the compliance techniques necessary for Montvale Borough to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the Borough and FSHC also agreed to present the Settlement Agreement to the Trial Judge for approval at a duly-noticed Mount Laurel Fairness Hearing; and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1) it avoids the expenditure of finite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, the Borough Council finds that it is in the best interest of the Borough of Montvale to execute the attached Settlement Agreement with FSHC and to take various other actions delineated below, which will ultimately result in approval of the Borough's Fair Share Plan which, in turn, will maintain the Borough's immunity from all Mount Laurel lawsuits for the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

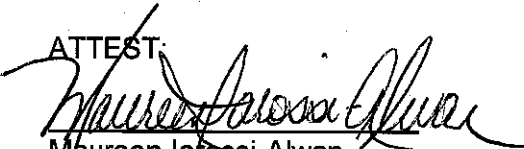
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Montvale, County of Bergen, State of New Jersey, as follows:

1. The Borough Council hereby authorizes and directs the Mayor and Borough Clerk to execute the Settlement Agreement attached hereto as Exhibit A.
2. The Borough hereby directs its Special Affordable Housing Counsel to (a) file the fully-executed Settlement Agreement with the Court for review and approval at a duly-noticed Fairness Hearing, (b) take all actions reasonable and necessary to secure an Order approving the Settlement Agreement, and (c) work towards ultimately securing judicial approval of the Borough's Fair Share Plan, after it is drafted, adopted by the Borough's Planning Board and endorsed by the Borough Council.
3. All other appropriate Borough officials are authorized and empowered to execute all documents and take all steps necessary and appropriate to effectuate the terms and purposes of this resolution and the Settlement Agreement.

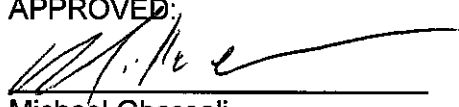
Councilmember	Motion	Second	Yes	No	Absent	Abstain
Arendacs			✓	✓		
Curry			✓			
Gloeggler			✓			
Koelling		✓	✓			
Lane	✓		✓			
Weaver				✓		

Adopted: November 14, 2017

ATTEST:


Maureen Larossi-Alwan
Municipal Clerk

APPROVED:


Michael Ghassali
Mayor

AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF MONTVALE AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.

In the Matter of the Borough of Montvale, County of Bergen, Docket No. BER-L- 6141-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 14th day of November, 2017, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at 12 Mercedes Drive, Montvale, NJ 07645 (hereinafter the "Borough" or "Montvale");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough filed the above-captioned matter on July 6, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Borough simultaneously sought and ultimately secured an Order protecting Montvale from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by Montvale remains in place as of the date of this Agreement; and

WHEREAS, the trial court appointed a "Special Master", as is customary in a Mount Laurel case, to assist the Court; and

WHEREAS, more specifically, the Court appointed Frank Banisch, P.P., A.I.C.P. to serve as the Special Master;

WHEREAS, with Mr. Banisch's assistance, Montvale and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court, 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; and~~

WHEREAS, it is particularly appropriate where, as here, the Court has yet to make a determination of the Borough's fair share, to arrive at a settlement regarding a municipality's

fair share obligation, instead of doing so through plenary adjudication of that obligation.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Borough and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Montvale's "Rehabilitation" obligation is 5.
2. Montvale's "Prior Round" obligation is 255.
3. Montvale's allocation of the Round 3 regional need is 542.
4. FSHC and the Borough agree that Montvale does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 542-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May, 2016, calculation of the Borough's Gap (1999-2015) and Third Round (2015-2025) fair share obligations.
5. For the purposes of this Agreement, the "Round 3 regional need" (also referenced as the "Third Round Prospective Need") shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999 to 2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions filed by Various Municipalities, 227 N.J. 508 (2017).
6. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master Banisch, Montvale's current Round 3 Realistic Development Potential (hereinafter "RDP") is 181 units.
7. **Satisfaction of the Rehabilitation Obligation:** The Borough has a 5-unit rehabilitation obligation, and will work with Bergen County or hire a separate entity to implement an indigenous need rehabilitation program to address this component of its fair share.
8. **Satisfaction of the Prior Round Obligation:** The Borough has a 255-unit Prior Round obligation, which was subject to a Vacant Land Adjustment yielding a Prior Round RDP of 188 units. By way of this Settlement Agreement, the Borough proposes to address its entire 255-unit Prior Round obligation with a 24-unit surplus to be applied towards Round 3 as follows:

Development	Type	Tenure	Status	Units	Bonus	Credits
Janovic	RCA	-	Complete (2004)	15	-	15
Janovic II	RCA	-	Complete (2004)	2	-	2
Chamberlain	RCA	-	Complete (2004)	10	-	10
K. Hov/Dill (Four Seasons)	RCA	-	Complete (2004)	32	-	32
Greenway at Montvale	Inclusionary	Rental	Complete (2000/2001)	2	2	4
Greenway at Montvale	Inclusionary	4-sale	Complete (2000/2001)	10		10
Bear Brook	Inclusionary	Rental	Complete (1998)	5	5	10
Baldanza	Inclusionary	Rental	Complete (2007)	3	3	6
Nottingham	Inclusionary	Rental	Complete (2007)	8	8	16
NIFPw/D	Group Home	Rental	Complete (post- 2001)	5	5	10
Axxin (Valley View)	Inclusionary	4-sale	Complete (2007- 2009)	26	-	26
Montvale Senior (not senior)	100% Affordable	Rental	Completed (2013)	18	18	36
Montvale Senior (not senior)	100% Supportive	Rental	Completed (2013)	10	10	20
Del Ben	Inclusionary	Sale	Completed (2017)	6	-	6
DePiero	Group Home	Rental	Proposed	32		32
Bonnabel / Trailing Ridge	Inclusionary	Rental	Approved, Construction has started	18	13	31
127 Summit	Inclusionary	Rental	Zoned	13		13
Total				215	64	279

*24 Surplus Credits after meeting 255 Prior Round Obligation

The plan components shown in the above table fully satisfy the minimums and maximums for the Prior Round, RCA cap (50% of Prior Round obligation), maximum age-restricted unit requirement (25% of Prior Round obligation less RCAs), minimum required rental units (at least 25% of Prior Round obligation), and maximum rental bonus credits (equal to rental obligation).

9. **Satisfaction of the Round 3 RDP:** The Borough has a 181-unit Round 3 RDP, and has satisfied that obligation as follows:

Development	Type	Tenure	Status	Units	Bonus	Credits
24 Surplus Credits from Prior Round				24		24
School 2 (Age Restricted and Special Needs)	100% Affordable	Rental	Under Construction	14		14
Children's Aid	Group Home	Rental	Approved and Operating	5		5
99 Spring Valley	Inclusionary	Sale	Approved	2		2
7 Franklin Ave	Inclusionary	TBD	Application Pending	3		3
110 Summit Ave	Inclusionary (Senior)	Rental	Zoned	25		25
A&P – 2 Paragon	Inclusionary	Sale	Settlement Concept	16		16
MB	Inclusionary	Rental	Proposed	53	46	99
Hornrock	Inclusionary	Rental	Proposed	37		37
Total				179	46	225
*44 surplus credits over Round 3 RDP						

The plan components shown in the above table fully satisfy the minimums and maximums for the Third Round RDP, inclusive of maximum age-restricted units (25% of RDP less RCAs), minimum rental units (25% including at least half available to families), and maximum rental bonus credits (equal to rental obligation), including maximum rental bonus credits for age-restricted units (50% of rental obligation).

10. FSHC and the Borough agree that the Borough shall have the right to apply the 44-unit surplus generated in excess of the Borough's Round 3 obligation to any future changed circumstances, which would result in an increase in the Borough's RDP. See Fair Share Housing Center v. Cherry Hill, 173 N.J. 393 (2002) ("Cherry Hill"). Should a suitable, available, approvable and developable site become vacant that had not been vacant, available, suitable or developable at the time of the VLA, and did not contribute to the Borough's current 181-unit RDP ("additional site"), the Borough would be entitled to apply any or all of the 44-unit surplus, as may be necessary, towards addressing the increase in RDP, provided that the Borough shall be required to identify in a filing with the Court the additional site or additional sites, and the RDP generated by those sites consistent with N.J.A.C. 5:93-4.2, that it is applying all or part of the 44-unit surplus of the RDP, within forty-five (45) days after the Borough becomes aware of the changed circumstance, on notice and opportunity to be heard to FSHC, the owner of the ~~additional site or sites, and any other interested parties. To the extent a change in~~ circumstances results in an increase in RDP that is larger than the Borough's 44-unit surplus, the Borough shall still have an obligation to address the portion of the RDP in excess of 44 unit-surplus ("Residual RDP"), provided, however, that the Borough shall maintain the right to satisfy

any Residual RDP in a manner and location it deems appropriate pursuant to N.J.A.C. 5:93-4.2 and otherwise consistent with the requirements of this Agreement and shall not be required to utilize the site generating the increase in RDP in order to satisfy the increase in RDP. The Borough agrees that this provision specifically, and the interpretation of application of surplus units generally as it relates to other matters, has no bearing on any other settlement agreement entered into between FSHC and any other municipality. This provision is of no precedential value and cannot be used by either party or their respective attorneys as a mechanism of interpreting any other settlements in other declaratory judgment actions.

11. **Addressing the Remaining "Unmet Need"**: For the purposes of settlement, the Borough agrees to address the 361-unit remaining portion of its allocation of the Round 3 regional need or "unmet need" through the following mechanisms:

- a) The Township will adopt overlay ordinances in the areas described herein and as depicted on the accompanying map ("Exhibit A"):
 - i. "Annie Sez";
 - ii. Southeast B1 District (east of the train tracks);
 - iii. Southeast B1 District (west of the train tracks);
- b) The site identified in paragraph 11(a)(i) above will be overlaid with zoning for mixed use with a residential density of twelve(12) units per acre. The sites identified in 11(a)(ii) above will be overlaid with zoning for mixed use with a residential density of fifteen (15) units per acre. The sites identified in 11(a)(iii) above overlaid with zoning for mixed use with a residential density of twelve (12) units per acre. The overlay zones identified in 11(a) above shall permit a maximum building height of three stories for mixed-use, with setback, floor area, and other requirements making the construction of such buildings realistically possible given the character of the lots in the B-1 zone and at the Annie Sez site. For inclusionary projects resulting from paragraph 11(a) above, in which the low and moderate units are to be offered for sale, the affordable set-aside percentage shall be 20 percent; for projects in which the low and moderate income units are to be offered for rent, the affordable set-aside percentage shall be 15 percent.
- c) Subject to all relevant notice and public hearing provisions pursuant to the New Jersey Municipal Land Use Law, within 120 days of the approval of this Agreement at a Fairness Hearing, the Borough 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 shall be fifteen percent (15%) and the set aside for for-sale developments shall 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 five or more, or to specific parcels or zones identified in other paragraphs of this agreement which shall be subject to the requirements specified therein. ~~The form of the Ordinance shall be finalized prior to the Compliance Hearing through collaboration between FSHC, Special Master Banisch, and representatives of the Borough. FSHC and the Borough, in~~

collaboration with the Special Master will agree upon the density upon which the ordinance shall be triggered in prior to the Compliance Hearing.

12. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025. In addition, said substantial change in circumstances shall be governed by paragraph 10 above.

13. The Borough agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

14. Montvale will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

15. At least 50 percent of the units addressing the Borough's Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

16. At least twenty-five percent of the Borough's Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

17. At least half of the units addressing the Borough's Third Round Prospective Need in total must be available to families.

18. The Borough agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

19. The Borough and/or its Administrative Agent shall add the following entities 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 (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), the Bergen County NAACP, Bergen Urban League, and Bergen County Housing Coalition. As part of its regional affirmative marketing strategies during implementation of its Housing Element and Fair Share Plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

20. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), 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 affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or

below 30 percent of the regional median household income by household size subject to Paragraph 13 herein, and all other applicable law. 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. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, 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.

21. Upon full execution of this Agreement, Montvale shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Montvale will place this Agreement on file in the Borough's municipal building and file a copy with the Court 45 days prior to the Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in 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. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Within 120 days of the approval of this Agreement by the Court after a Fairness Hearing, Montvale will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all ordinances required to be adopted as part of this Agreement. The Borough will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Montvale's adopted Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan") and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, Montvale shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. As long as the Affordable Housing Plan complies with the terms set forth herein, FSHC shall support the Borough's application for approval of its Affordable Housing Plan at the Compliance Hearing. If the Court approves this Agreement after a Fairness Hearing, the parties hereto agree not to appeal the Court's approval. If the Court approves the Affordable Housing Plan following a Compliance Hearing, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. The parties further agree that the JOR shall insulate the Borough and its Planning Board from, among other things, exclusionary zoning litigation through July 6, 2025.

22. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Montvale's Round 3 obligation is decreased to 434 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Housing Element and Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the remaining portion of the Borough's allocation of the Round 3 regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to

amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for Round 3, the Borough may carry over any resulting surplus credits to Round 4.

23. The Borough shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and FSHC agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of applicable law. Upon approval of its Spending Plan, the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, 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.

24. On the first anniversary of the Judgment of Compliance and Repose, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

25. The Fair Housing Act includes two provisions regarding actions to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

- a) For the midpoint realistic opportunity review due on July 6, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to 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 the municipality, 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 the Judgment of Compliance and Repose, and every third year thereafter, the Borough 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 interested party to submit comments to the municipality and FSHC on the issue of whether

the municipality has complied with its very low income housing obligation under the terms of this settlement.

- c) In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

26. This Agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

27. The Borough will ensure that the sum of \$25,000.00 in payment of fees and costs is conveyed to Fair Share Housing Center within 10 days of the approval of this Agreement by court order following a Fairness Hearing. By separate agreements between the Township and Hekemian and the Township and Hornrock, one-half of the fee is to be paid those two intervenors (\$12,500.00 each). The Borough agrees to enter into agreements with the intervenors that requires the payment of the funds to their counsel to be held in escrow within 10 days of the execution of the agreements between the Borough and intervenors and before the fairness hearing in this matter.

28. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, 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 by 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 return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

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

30. 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.

31. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Borough and FSHC.

32. 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.

33. The Borough and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person

to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Borough and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

34. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

35. 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 the Borough and FSHC.

36. This Agreement constitutes the entire Agreement between the Borough and FSHC hereto and supersedes all prior oral and written agreements between the Borough and FSHC with respect to the subject matter hereof except as otherwise provided herein.

37. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

38. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC 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:

Adam M. Gordon, Esq.
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 BOROUGH:

Michael J. Edwards, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100

Telecopier: (732) 612-3101
Email: MJE@Surenian.com

Joseph Voytus, Esq.
Boggia & Boggia, LLC
71 Mt Vernon St.
Ridgefield Park, NJ 07660

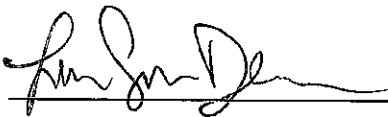
**WITH A COPY TO THE
BOROUGH ADMINISTRATOR:**

Maureen Iarossi-Alwan, Administrator
Borough of Montvale
12 Mercedes Drive
Montvale, NJ 07645

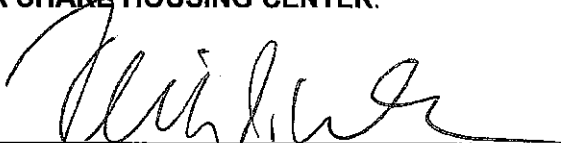
In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

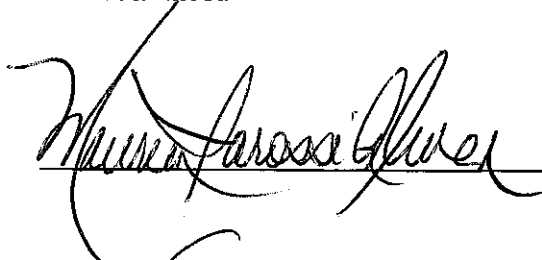


FAIR SHARE HOUSING CENTER:

By: 
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

Dated: 11/10, 2017

Witness/Attest:




BOROUGH OF MONTVALE:

By: 
Michael Ghassali, Mayor
On Behalf of the Borough of Montvale

Dated: November 14th, 2017

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

A Limited Liability Company
Counselors at Law

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Michael A. Jedziniak, Esq. - Counsel
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Fax: (732) 612-3101

Erik C. Nolan, Esq. - Associate
Email - EN@Surenian.com

Michael J. Edwards, Esq. - Associate
Email - MJE@Surenian.com

November 27, 2017

VIA EMAIL

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

Re: First Amendment to Montvale/FSHC Settlement, dated November 14, 2017

Dear Mr. Walsh:

Through this letter, the parties to the Montvale/FSHC Settlement dated November 14, 2017 agree to make two changes.

First, this letter will confirm that the settlement agreement with S. Hekemian Group, LLC ("Hekemian") approved by the Borough on November 14, 2017 empowers Hekemian to make the 9 affordable family units on the Glenview site for sale or for rent in addition to making all 44 affordable units on the Mercedes sites family rental units. However, the settlement agreement with FSHC envisions that the 9 affordable units on the Glenview site would be rental units. In addition, the FSHC Agreement contemplates 46 rental bonuses collectively, for the two sites. At this juncture, we cannot know if the developer of Glenview site will ultimately develop the units as for sale or rental units, and thus, whether there will even be an issue. However, even if the 9 units are for-sale units, we fortuitously have an overabundance of affordable family rental units in our plan.

In view of the foregoing, we would like to formally acknowledge that the Parties agree that the Borough's Settlement Agreement with FSHC will be modified to reflect a total of 53 affordable units resulting from the Mercedes Site and the Glenview Site. Of those 53 units, those located on the Mercedes Site (44 units) will be rental. The remaining 9 affordable units to be constructed at Glenview can be either for sale or rental. As a natural corollary, the Borough will claim 44 rental bonus credits for the Mercedes Site and not 46 as contemplated in the FSHC Settlement Agreement. The Borough will instead claim 2 rental bonus credits on Hornrock, instead of the 0 currently contemplated in the FSHC Agreement to take the place of those lost at Mercedes.

Second, the parties through this letter agree to amend the settlement agreement to address an inconsistency involving the payment of attorney fees to FSHC. The Montvale/FSHC agreement includes the following at paragraph 27:

The Borough will ensure that the sum of \$25,000.00 in payment of fees and costs is conveyed to Fair Share Housing Center within 10 days of the approval of this Agreement by court order following a Fairness Hearing. By separate agreements between the [Borough] and Hekemian and the [Borough] and Hornrock, one-half of the fee is to be paid those two intervenors (\$12,500.00 each). The Borough agrees to enter into agreements with the intervenors that requires the payment of the funds to their counsel to be held in escrow within 10 days of the execution of the agreements between the Borough and intervenors and before the fairness hearing in this matter.

The Montvale/Hekemian agreement includes the following at paragraph 3gii:

The DEVELOPER will pay FSHC, on behalf of the BOROUGH, \$12,500.00. The \$12,500.00 represents a portion of the costs incurred by FSHC in this matter. The payment to FSHC will be made by the DEVELOPER within ten (10) days after the adoption of the ORDINANCE required by this AGREEMENT and the expiration of the appeal period, without an appeal being filed. If an appeal is filed, BOROUGH shall pay FSHC \$12,500.00 within ten (10) days of the filing of any appeal. Within ten (10) days after the appeal being successfully denied, or determined in favor of DEVELOPER and BOROUGH, and the validity of this

AGREEMENT and all ORDINANCES upheld, DEVELOPER shall reimburse the BOROUGH \$12,500.00.

The parties recognize that the provision in the Montvale/Hekemian does not implement fully the requirements regarding the payment of fees and costs addressed in the Montvale/FSHC agreement.

In view of the foregoing, the parties through this letter formally acknowledge that the Parties agree that the Borough's Settlement Agreement with FSHC will be modified to reflect that paragraph 27 of the Montvale/FSHC agreement is replaced with the following paragraph:

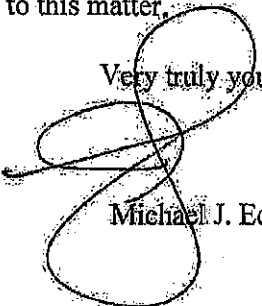
27. The Borough will ensure that the sum of \$25,000.00 in payment of fees and costs is conveyed to Fair Share Housing Center following a Fairness Hearing, at the latest, as follows:
 - a. By separate agreement between the Borough and Hornrock, one-half of the fees and costs (\$12,500.00) is to be paid by Hornrock. The Montvale/Hornrock agreement requires the payment of the funds to Richard Hoff, Esq. to be held in escrow by his firm within 10 days of the execution of the agreements between the Borough and intervenors and before the fairness hearing in this matter. Mr. Hoff is required under the agreement to transmit the payment to FSHC. This satisfies the Borough's obligation as to half of the funds owed to FSHC.
 - b. By separate agreement between the Borough and Hekemian, one-half of the fees and costs (\$12,500.00) may be paid by Hekemian. The Montvale/Hekemian agreement provides that the payment of \$12,500.00 will be paid by Hekemian to FSHC within ten days after the adoption of the ordinance required by that agreement and the expiration of the appeal period, without an appeal being filed. The agreement further provides that if an appeal is filed, the Borough shall pay FSHC \$12,500.00 within ten days of the filing of any appeal. In view of these provisions, Montvale and FSHC agree that if the obligation to pay the funds has not been satisfied by the Borough or Hekemian prior to the expiration of a period of 10 days after the approval of the Montvale/FSHC agreement following a fairness hearing, the Borough agrees to pay that amount to FSHC within 15 days after the approval of the Montvale/FSHC agreement following a fairness hearing. The parties recognize that Montvale may be reimbursed under the terms of the Montvale/Hekemian agreement for its payment of FSHC's fees

and costs, but the Borough agrees to pay the funds to FSHC without regard to whether and when it will be reimbursed by Hekemian. The requirements of this subparagraph may be enforced through a motion to enforce litigant's rights.

By countersigning this letter, the Borough of Montvale and FSHC authorize these modifications.

Thank you for your attention to this matter.

Very truly yours,


Michael J. Edwards,

Witness/Attest:



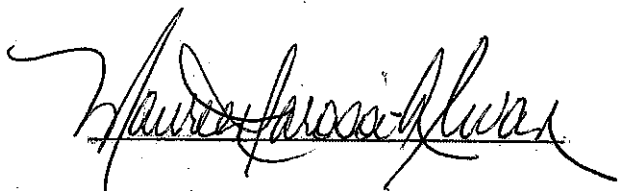
FAIR SHARE HOUSING CENTER:

By: 
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

Dated: November 28, 2017

Witness/Attest:

BOROUGH OF MONTVALE:



By: 
Michael Ghassali, Mayor
On Behalf of the Borough of Montvale

Dated: 11/28, 2017