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June 13, 2017

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18 Railroad Avenue, Suite 104
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**Re: In the Matter of the Borough of Dumont, County of Bergen, Docket
No. BER-L-6065-15**

Dear Counsel:

This letter memorializes the terms of an agreement reached between the Borough of Dumont (the Borough or "Dumont"), 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

Dumont filed the above-captioned matter on June 30, 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. The Borough and FSHC have 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 Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of the Housing Element and Fair Share Plan ("the Plan"), to be supplied, 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) consistent with the provisions hereof.
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 Dumont hereby agree that Dumont's affordable housing obligations are as follows:

Rehabilitation Share or Present Need (per Kinsey Report ¹)	41
Prior Round Obligation (pursuant to N.J.A.C. 5:93 ²)	34
Third Round Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	295

4. For purposes of this agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. FSHC and the Borough agree that Dumont 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 295-unit Third Round obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30% reduction of Dr. Kinsey's May 2016 calculation of the Borough's Third Round prospective need.
6. The Borough's efforts to meet its present need include the following:
 - a. 8 units completed by the Bergen County Home Improvement Program;
 - b. 21 (new construction) units completed at Saint Mary's;
 - c. Moving forward, the Borough will work with the Bergen County Home Improvement Program to advertise the program to Dumont residents. This is sufficient to satisfy the Borough's present need obligation of 41 units.
7. As noted above, the Borough has a Prior Round need of 34 units, which is met through the following compliance mechanisms:

PRIOR ROUND CREDITS							
Project	Status	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
David F. Roche	Completed	Prior Cycle	Rental	N/A	34	-	34
Total					34		34

8. Pursuant to the framework set forth in N.J.A.C. 5:93-4.2 and as agreed upon by FSHC, the Borough and Special Master Banisch, Dumont's current Realistic Development Potential (hereinafter "RDP") is 81. The RDP has been calculated using a Vacant Land Analysis and the addition of affordable units, which were created between 1999 and 2015. The RDP consists of the following:
 - a. 3-unit RDP from the Vacant Land Analysis

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, May 2016.

² As determined by COAH.

- b. 49 units created at Saint Mary's
- c. 3 units created at Advance Housing
- d. 4 credits created at Bethesda Lutheran
- e. 22 credits to be created by Landmark

9. The municipality, as calculated herein and as will be set forth in the HEFSP to be supplied, has a Realistic Development Potential of 81 units. That RDP will be satisfied as follows:

THIRD ROUND RDP CREDITS							
Project	Status	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
David F. Roche	Completed	Prior Cycle	Rental	N/A	18	-	18
94 W. & 95 E. Schraalenburg	Completed	100% Affordable	Rental	Yes	20	-	20
Landmark Dumont, LLC	Proposed	Inclusionary	Rental	No	22	21	43
Total					60	21	81

The RDP of 81, subtracted from the Third Round obligation of 295 units, results in an unmet need of 214 units, which shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:

THIRD ROUND UNMET NEED CREDITS							
Project	Status	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
David F. Roche	Completed	Prior Cycle	Rental	N/A	47		47
94 W. & 95 E. Schraalenburg	Completed	100% Affordable	Rental	Yes	20		20
Bethesda Lutheran	Completed	Alt. Living	Rental	No	4		4
Community Options	Completed	Alt. Living	Rental	No	3		3
ARC of Bergen & Passaic	Completed	Alt. Living	Rental	No	5		5
Advance Housing	Completed	Alt. Living	Rental	No	3		3
Saint Mary's Senior Residence	Completed	100% Affordable	Rental	Yes	28	-	28
Downtown B2 Zone - Rezone or Overlay Zone	Proposed	Inclusionary	Rental & For-Sale	No	TBD		TBD
Borough-wide Set-aside Ordinance	Proposed	Inclusionary	Rental & For-Sale	No	TBD		TBD
Total					110	0	110

10. The Borough will to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites as reflected in the RDP credit table under Paragraph 9, above:

- a. Landmark – Block 212, Lot 20 and Block 215, Lot 1

11. The Borough 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:

- a. A Borough-wide Ordinance, adopted pursuant to the Municipal Land Use Law, that requires the establishment of a mandatory set-aside requirement of 20% if the affordable units will be for sale and 15% of the affordable units will be for rent, for any multi-family development created through any Planning board action on subdivision or site plan applications, rezoning, use variance, redevelopment plan, or rehabilitation plan that provide for densities at or above six (6) units per acre. This does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Dumont to grant such rezoning, variance or other relief.
 - b. Downtown B2 Zone as illustrated in Exhibit A, map from the Borough's Planner to the Special Master dated July 6, 2016, as revised effective on or about June 8, 2017. One specific revision that must be noted in the settlement agreement is the removal from the Downtown B2 Zone overlay of any parcels which currently have a single-family residential use. This amounts to approximately 5 acres out of the total 57 acre zone. The Borough is prepared to allow for buildings of up to 4 stories and approximately 48 feet in a limited portion of the district, potentially along West Shore Avenue parallel to the railroad tracks and at the intersection of Washington and Madison Avenues that do not abut single family detached residences. These will be the subject of future zoning ordinance enactments that will be considered as part of the Borough's compliance plan, but must be definitively decided prior to the Borough's final compliance hearing. In the areas where 4 stories and 48 feet will be permitted, the residential density shall be increased from 20 units per acre to 24 units per acre.
12. The Borough agrees to require 13% of all the affordable 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 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:
- a. The three-bedroom Community Options facility provides very low income housing.
 - b. The four-bedroom Bethesda Lutheran Services facility provides very low income housing.
 - c. Two of the rental units at Landmark.
 - d. Four units created through the Downtown B2 Zone rezoning/overlay zone.
13. The Borough 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 9 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 shall be available to families.
 - e. The Borough 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.

14. The Borough 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 Bergen County Chapter 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 Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
15. 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 Borough 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.
16. 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.
17. As an essential term of this settlement, within one hundred and twenty (120) days of Court's approval of this Settlement Agreement, if necessary and required, the Borough shall introduce an ordinance providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.
18. The parties agree that if a decision of a court of competent jurisdiction in Bergen 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 Borough 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 Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough 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; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough'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 Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
19. Within one hundred and twenty (120) days of the Court's approval of this Settlement Agreement, the Borough shall prepare a spending plan subject to the review and approval

of FSHC and the Special Master. The parties to this agreement agree that this spending plan, if prepared in accordance with accepted standards may be approved by the Court, and that the expenditures of funds contemplated under the agreement constitute "commitment" for the 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 agreement 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 Borough 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 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. Said forms shall be provided to the Borough. 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.

20. On the first anniversary of the execution of this agreement, 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 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.
21. The Fair Housing Act includes two provisions regarding action 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 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township/Borough 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/Borough 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.

22. 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 as an intervenor, but the absence of such an order shall not impact FSHC's rights.
23. Prior to becoming effective, this settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. The court-appointed Special Master shall also appear as a witness at this hearing. FSHC agrees not to challenge the attached Map (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" or "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," which shall be determined by the trial judge. The "accompanying protection" shall remain in effect through July 1, 2025, during which time Dumont's immunity from all Mount Laurel lawsuits shall be maintained. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
24. 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.
25. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen 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.
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. 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.
33. 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.
34. 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.
35. 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.
36. 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:

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Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
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E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

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18 Railroad Avenue-Suite 104
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**WITH A COPY TO THE
MUNICIPAL CLERK:**

Susan Connelly, RMC
Borough of Dumont
80 West Madison Avenue
Dumont, NJ 07628

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 Borough of Dumont, with the authorization
of the governing body:

Dated: _____

