RESOLUTION R230-2021

WASHINGTON TOWNSHIP
GLOUCESTER COUNTY

RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WASHINGTON AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

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 Township of Washington (hereinafter "Washington Township" or the "Township") filed a Declaratory Judgment Complaint in the 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 Township simultaneously sought, and ultimately secured, a protective order providing Washington Township immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan, which is still in full force and effect; and

WHEREAS, with assistance from the Court Master, the Township and Fair Share Housing Center (hereinafter "FSHC") engaged in good faith negotiations, which resulted in the entering into of a Settlement Agreement between the Township and FSHC on June 26, 2019 (hereinafter "FSHC Settlement Agreement"); and

WHEREAS, a Fairness Hearing was held on October 10, 2019, during which the FSHC Settlement Agreement was approved, and said approval was memorialized by an Order entered by the Court on November 19, 2019; and

WHEREAS, FSHC and the Township's professionals have negotiated a First Amendment to the FSHC Settlement Agreement, which is attached hereto as Exhibit A, to implement certain changes that will also be made to the Township's Housing Element and Fair Share Plan; and

WHEREAS, in light of the above, the Township Council finds that it is in the best interest of Washington Township to execute the attached First Amendment to the FSHC Settlement Agreement, and to take various other actions delineated below, which will ultimately result in approval of the Township's Fair Share Plan which, in turn, will maintain the Township's immunity from all Mount Laurel lawsuits through July 2, 2025.

NOW, THEREFORE, BE IT RESOLVED on this 1st day of September, 2021, by the Council of the Township of Washington, County of Gloucester, State of New Jersey, as follows:

1. The Township Council hereby authorizes and directs the Mayor of Washington Township to execute the First Amendment to the FSHC Settlement Agreement in substantially the form attached hereto as Exhibit A.

2. The Township Council hereby directs its Affordable Housing Counsel to file the fully executed First Amendment to the FSHC Settlement Agreement with the Court, along with the original FSHC Settlement Agreement, for review and approval at a duly noticed combined Fairness and Compliance Hearing.

TOWNSHIP OF WASHINGTON

By: _____
Sean Longfellow, Council President

I, Christine Ciallella, do certify this to be a true copy of Resolution **R230-2021** adopted by the Township of Washington, Gloucester County, at the regular meeting held on September 1, 2021 and shall take effect immediately.

By: Christine Ciallella
Christine Ciallella, RMC, CMR
Township Clerk

Members	Motion	Second	Ayes	Nays	Abstain	Absent	Recuse
DellaPia		X	X				
Williams			X				
Bennett	X		X				
Dougherty			X				
Longfellow			X				

EXHIBIT A

In the Matter of the Township of Washington, County of Gloucester, Docket No. GLO-L-893-15

FIRST AMENDMENT TO THE JUNE 26, 2019 SETTLEMENT AGREEMENT BETWEEN THE TOWNSHIP OF WASHINGTON AND FAIR SHARE HOUSING CENTER.

This First Amendment to the June 26, 2019 Settlement Agreement between the Township of Washington and Fair Share Housing Center (hereinafter the "First Amendment") is entered into this _____ day of September, 2021, by and among the Township of Washington, Gloucester County, Declaratory Plaintiff in the above-captioned matter, which has an address of 523 Egg Harbor Road, Sewell, New Jersey 08080 (hereinafter the "Township" or "Washington"); and Fair Share Housing Center, a non-profit dedicated to protecting the housing rights of lower-income New Jerseyans under the Mount Laurel doctrine and a Defendant-Intervenor in this matter, which has an address of 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 Township filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") satisfies its "fair share" of the regional need for very-low, low- and moderate-income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Township simultaneously sought and ultimately secured an order protecting Washington from all Mount Laurel lawsuits, including builder's remedy lawsuits, while it pursues approval of its Fair Share Plan, which is still in full force and effect as of the date of this First Amendment; and

WHEREAS, the Township and FSHC entered into a Settlement Agreement dated June 26, 2019 (hereinafter the "June 26, 2019 Settlement Agreement" or "Settlement Agreement"), which is attached hereto as **Exhibit A**, and said Settlement Agreement was thereafter approved by a Court Order entered on November 12, 2019, after a properly noticed Fairness Hearing was held on October 10, 2019; and

WHEREAS, this First Amendment, when approved by the Court following a duly-noticed Fairness Hearing, shall supersede the June 26, 2019 Settlement Agreement, as to only those terms specifically amended by this First Amendment; and

WHEREAS, all terms of the June 26, 2019 Settlement Agreement not specifically amended by this First Amendment shall remain in full force and effect as previously approved by the Court;

NOW, THEREFORE, THE TOWNSHIP OF WASHINGTON AND FSHC AGREE AS FOLLOWS:

1. Paragraph 7(g) of the June 26, 2019 Settlement Agreement, which is attached hereto as **Exhibit A**, shall be replaced with the following:

   g) **Proposed 80-Unit Family Non-Age-Restricted Inclusionary Development**: The Township has rezoned Block 115, Lot 7 on Watson Drive to permit an inclusionary

development of four hundred (400) total units, which includes a twenty percent (20%) affordable set-aside of at least eighty (80) affordable family non-age-restricted rental units.

The income distribution of these eighty (80) affordable units shall consist of eleven (11) very-low-income units (restricted to households earning 30% or less of median income), thirty-five (35) low-income units, and thirty-four (34) moderate-income units.

These income distributions shall be proportionally distributed within each bedroom distribution. Phrased differently, approximately 57% of the affordable units within each bedroom distribution shall be low-income (inclusive of very-low-income units) and the remainder may be moderate income.

The bedroom distribution of these eighty (80) affordable units shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., which shall, among other things, mean that it will consist of no more than sixteen (16) efficiency/one-bedroom units, and there shall be at least sixteen (16) three-bedroom units.

Among these eighty (80) affordable units, there shall be no more than two (2) very-low-income efficiency/one-bedroom units, and there shall be at least three (3) very-low-income three-bedroom units. The remaining six (6) very-low-income units may be either two- or three-bedroom units.

Prior to a final judgment of compliance, the Township shall provide a development agreement for Block 115, Lot 7, which shall reflect the above provisions.

2. Paragraph 7(h) of the June 26, 2019 Settlement Agreement shall be replaced with the following:

h) **Proposed One Hundred Percent (100%) Affordable 64-Unit Age-Restricted Development**: The Township shall support and facilitate the development of a one hundred percent (100%) affordable, municipally sponsored age-restricted project to be constructed by Ingerman Development Company, LLC ("Ingerman") that will consist of at least sixty-four (64) affordable units at Block 113, Lots 23, 24, & 25. The Township has already zoned the site for the proposed project.

The Township has agreed to fully support Ingerman's application for 9% Low Income Housing Tax Credits for the project, and the Township shall expeditiously take all actions necessary to ensure that Ingerman will submit a competitive application in the New Jersey Housing Mortgage Finance Agency's 2021 application cycle, which deadline is August 31, 2021. This shall include a payment in lieu of taxes (PILOT) agreement, resolution of need, and all other steps necessary for Ingerman to maximize points under the then-applicable Qualified Allocation Plan for tax credits.

The Township has committed to provide $300,000.00 to Ingerman from the Township's affordable housing trust fund to help render the project economically feasible and to support the very-low-income units within the municipally sponsored, one hundred percent (100%) affordable housing development.

The income distribution of these sixty-four (64) affordable units shall consist of nine (9) very-low-income units (restricted to households earning 30% or less of median income), twenty-three (23) low-income units (restricted to households earning 50% or less of

median income), and thirty-two (32) moderate-income units (restricted to households earning 80% or less of median income).

The affordable units shall be subject to a thirty (30) year affordability period tax credit deed restriction with a fifteen (15) year extended control period from the date of initial occupancy, for a total control period of at least forty-five (45) years. The deed restriction shall state the bedroom size and income level of each affordable unit.

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that, prior to a final judgment of compliance, it must provide evidence that the municipality has adequate and stable funding for the one hundred percent (100%) affordable development. The municipality is also required to provide a pro-forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source in the event that the funding request is not approved.

The Township shall meet this obligation as follows: Ingerman intends to fund the project with nine percent (9%) Low Income Housing Tax Credits. The Township will adopt a resolution of intent to fund, including bonding, for any shortfall associated with the project. In the event that the project is unable to secure nine percent (9%) tax credits in the 2021 application cycle, Ingerman will be allowed to apply for nine percent (9%) tax credits in the 2022 application cycle.

If Ingerman does not secure nine percent (9%) tax credit funding in either the 2021 or 2022 cycles, the Township must either utilize other available funds, including four percent (4%) tax credits and bonding for any shortfall in the project that has not secured funding, or may seek alternative realistic compliance techniques for the production of at least sixty-four (64) affordable housing units, subject to the approval of FSHC and the Court.

If Ingerman does not secure 9% tax credit funding in in either the 2021 or 2022 cycles, the Township must contact FSHC and the Court in writing within sixty (60) days of notification of the 2022 results from the New Jersey Housing Mortgage Finance Agency to inform FSHC and the Court as to how the Township will finance and/or ensure the realistic opportunity for the sixty-four (64) age-restricted affordable units or to propose alternative realistic alternative compliance techniques to produce the sixty-four (64) affordable units.

If the Township chooses to help finance the project or FSHC, in its sole discretion, does not agree to the alternative realistic compliance mechanisms proposed, then the Township shall take the necessary steps to fund any shortfall in the 64-unit project so that construction shall commence by no later than June 1, 2023.

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that, prior to a final judgment of compliance, it must provide a construction or implementation schedule, or timetable, for each step in the development process, including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, and construction.

Prior to a final judgment of compliance, the Township shall provide an executed MOU with Ingerman that (i) confirms the total number of affordable units in the project as sixty-four (64), (ii) confirms the income distribution levels, (iii) commits to apply for 9% tax credits in

the 2021 and 2022 HMFA application cycles; (iv) demonstrates that the Township has rezoned the site for the one hundred percent (100%) affordable project; and (vi) provides evidence that Ingerman has site control.

3. Paragraph 7(i) of the June 26, 2019 Settlement Agreement shall be replaced with the following:

   i) **355 Affordable Units from Two Redevelopment Areas**: The Township acknowledges and agrees that in the Delsea Drive and Washington Square Redevelopment Areas, additional family and senior rental and for-sale projects can and must be constructed on vacant, developable land, which shall provide affordable housing.

   The redevelopment plans for these two areas have been amended and are in the process of being adopted by the Township to (a) increase the allowed residential densities in both areas to at least ten (10) units per acre, (b) require a twenty percent (20%) affordable housing set-aside for all residential (both rental and for-sale) projects, including the residential portion of any mixed-used developments, constructed in both redevelopment areas, and (c) require all other affordable housing requirements, such as phasing, affirmative marketing, and bedroom mixes in accordance with Paragraph 4 of this First Amendment.

   For all residential (both rental and for-sale) projects constructed in the redevelopment zones, the two redevelopment plans shall require that thirteen percent (13%) of the affordable units are very-low-income (30% or less of median income), forty percent (40%) of the affordable units are low-income, and forty-seven percent (47%) of the affordable units are moderate-income. Each of these income distributions shall be distributed within each bedroom distribution.

   There is a total of 164.77 developable, vacant acres in the Delsea Drive Redevelopment Area and 214.43 developable, vacant areas in the Washington Square Redevelopment Area, as shown in **Exhibit B** to the First Amendment, which includes a list of the blocks and lots, owner, total acres, and vacant developable acres.

   Within sixty (60) days of the entry of a conditional Judgment of Compliance and Repose Order after a duly noticed combined Amended Fairness and Compliance Hearing is held to approve this First Amendment and the Township's Housing Element and Fair Share Plan, and before a second order is entered by the Court finalizing the Judgment of Compliance and Repose, the Township shall amend the Washington Square and Delsea Drive Redevelopment Plans, with an opportunity for comment and review by FSHC and the Special Master prior to introduction, so that both redevelopment plans require the following:

   - Designate a minimum of thirty-seven percent (37%) of the developable, vacant land area of each project in the Delsea Drive Redevelopment Area, and fifty-five percent (55%) of the developable, vacant land area of each project in the Washington Square Redevelopment Area, for inclusionary residential use in conformance with the terms stated above. This means that at least 178 acres of the developable, vacant land across the two redevelopment areas must be zoned and used solely for residential inclusionary development – at least 61 acres in the Delsea Drive Redevelopment Area and at least 117 acres in the Washington Square Redevelopment Area.

- Designate and require that at least 132.5 of the developable, vacant acres between the two redevelopment areas be zoned and used for non-age-restricted family residential uses.[1] A maximum of 46.5 developable, vacant acres between the two Redevelopment Areas may be zoned and used for age-restricted residential uses, including assisted living.

The above shall provide a realistic opportunity for the following number of affordable units:

- Total Inclusionary Affordable Units: A minimum of 355 affordable units across both redevelopment areas.
    - Inclusionary Family Non-Age-Restricted Affordable Units: A minimum of 262 affordable family rental or for-sale units across both redevelopment areas.
    - Inclusionary Age-Restricted Affordable Units: A maximum of 93 affordable age-restricted rental or for-sale units across both redevelopment areas.

Once the Township has granted final site plan approval for a total of at least three-hundred-and-fifty-five (355) affordable units as required above, the Township may amend the two redevelopment plans to remove the required percentages of residential development.

If the Township chooses to do so, it shall inform FSHC and the Court in writing at least sixty (60) days before adopting any amended redevelopment plan for either redevelopment Area. The provisions of this paragraph shall be executed as permitted by the Local Housing and Redevelopment Law (LRHL) and the Municipal Land Use Law (MLUL).

The parties also acknowledge that the proposed inclusionary development on Watson Drive (Block 115, Lot 7), a total of 400 units with a 20% affordable housing set-aside inclusive of 80 affordable units, as detailed in Paragraph 1 of the First Amendment, is within the boundaries of the Washington Square Redevelopment Plan. However, this land may not be used or counted as part of meeting the fifty-five percent (55%) requirement for the Washington Square Redevelopment Plan because that land is already accounted for separately.

The Township redevelopment goals are to propose a mix of residential and commercial development in the two redevelopment areas overall. Nevertheless, the minimum acreage designated above shall be zoned and permitted to develop for inclusionary residential uses only, provided that portions of the same site may be designated for non-residential uses with other portions designated for residential uses so long as there will not be a requirement that any inclusionary residential development can only be built after some or all non-residential development is built.

In addition, the redevelopment plans shall provide that inclusionary mixed-use building types are an option for development, so long as (i) entirely residential buildings that create

[1] Assisted living, special needs, among other alternative living arrangements, is understood to not be family housing.

a realistic opportunity for the above-referenced number of affordable units are allowed and not prohibited in any way, and (ii) the mixed-use option, if exercised on one or more sites, shall still allow for the above-referenced total number of affordable units, which includes residential development at ten (10) units an acre.

4. Unless specified differently in this First Amendment or the June 26, 2019 Settlement Agreement, Washington agrees to ensure that the following terms are complied with in all residential development that produces affordable housing:

    a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low-income households earning thirty percent (30%) or less of the median income.

    b. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the Township, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. The deed restriction shall state the bedroom size and income level of each affordable unit. If the Township acts to release the unit from such controls, the affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the occupant household.

    c. In inclusionary developments, the affordable units shall be fully integrated with the market-rate units to the greatest extent feasible, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.

    d. Construction of the affordable units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).

    e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified in the June 26, 2019 Settlement Agreement, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

5. Washington acknowledges and agrees that the affordable housing sites identified herein are available, suitable, developable, and approvable for the construction of affordable housing, including the number of units contemplated, in accordance with N.J.A.C. 5:93-5.3(b), including that adequate sewer and water infrastructure and capacity is available.

6. Washington commits to support the inclusionary and non-inclusionary developments referenced herein, and commits to work cooperatively and expeditiously with the developers to ensure all necessary land use approvals and to issue all construction and building permits.

7. An essential term of this First Amendment is that the Township shall introduce and adopt all ordinances and resolutions to implement the terms of this First Amendment and the June 26, 2019 Settlement Agreement and the zoning contemplated and adopt an amended Housing Element and Fair Share Plan and Spending Plan in conformance by no later than the date of the Amended Fairness and Final Compliance Hearing in this matter scheduled for November 3, 2021, unless an extension of said deadline is agreed upon by the Township, FSHC, the Court Master and the Court.

   To the degree that any other items besides those specifically enumerated herein required by the terms of the June 26, 2019 Settlement Agreement have not yet been completed by the Township, those items shall likewise be completed by no later than the date of the Amended Fairness and Final Compliance Hearing in this matter scheduled for November 3, 2021, unless an extension of said deadline is agreed upon by the Township, FSHC, the Court Master and the Court.

   To the extent feasible, the Township shall submit proposed documentation to FSHC and the Master for comments prior to their adoption/formal action by the Township. FSHC agrees to expeditiously review said documents so that the Township can maintain its schedule for actions that need to be taken prior to the Compliance Hearing.

   The Township shall provide the compliance documentation evidencing satisfaction of the above to FSHC and the Special Master at least thirty (30) days before the date of the Amended Fairness and Final Compliance Hearing scheduled for November 3, 2021, unless an extension of said deadline is agreed upon by the Township, FSHC and the Court Master.

8. In view of the additional time and resources required to be expended by FSHC to ensure the fulfillment of the June 26, 2019 Settlement Agreement's terms and to negotiate and defend this First Amendment, the Township agrees to pay FSHC's additional attorney's fees and costs in the amount of $30,000 within fifteen (15) days of the Court's approval of this First Amendment following a duly-noticed Amended Fairness and Final Compliance Hearing.

9. Paragraphs 18 and 19 of the June 26, 2019 Settlement Agreement require the Township to provide an annual report on all affordable housing activity and trust fund activity.

   The new date by which this annual report must be posted on the Township's website, with a copy mailed and emailed to Fair Share Housing Center, shall be January 1, beginning January 1, 2022.

   The annual affordable housing activity report shall state the location and the number of affordable units approved, under construction, and built, and it shall provide information on the type, bedroom, and income distribution of the affordable units and whether a deed restriction has been imposed on them.

The Township shall also provide FSHC annually starting on January 1, 2022, and every anniversary thereafter, an updated acreage monitoring form that details any development proposed and pursued on the vacant, developable land in the Washington Square and Delsea Drive Redevelopment Areas, as listed in **Exhibit B**, the number of acres, including percentage, used for inclusionary residential development or for other purposes, the number of acres used for non-age-restricted family residential development, the number of acres used for age-restricted residential development, and any other information needed to ensure full compliance.

10. This First Amendment must be approved by the Court following an Amended 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), and East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996). The Township shall present its planner as a witness at the hearing. FSHC agrees to support this First Amendment at the Amended Fairness Hearing. The hearing will be a combined Amended Fairness and Final Compliance Hearing.

11. If an appeal is filed of the Court's approval or rejection of this First Amendment, the parties agree to defend the First Amendment and the June 26, 2019 Settlement 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 this First Amendment if it is approved before the Law Division, unless and until an appeal of the Law Division's approval is successful, at which point the parties reserve their right to rescind any action taken in anticipation of the Law Division's approval. All parties shall have an obligation to fulfill the intent and purpose of this First Amendment.

12. Unless otherwise specified, it is intended that the provisions of this First Amendment are to be severable. The validity of any article, section, clause or provision of this First Amendment shall not affect the validity of the remaining articles, sections, clauses or provisions hereof or the June 26, 2019 Settlement Agreement.

13. This First Amendment may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Gloucester County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees and costs, should a court agree that the payment of such fees is warranted.

14. The Township and FSHC acknowledge that each has entered into this First Amendment on its own volition without coercion or duress after consulting with its counsel, that each person to sign this First Amendment is the proper person and possesses the authority to sign the First Amendment, that this First Amendment and the June 26, 2019 FSHC Settlement Agreement contains the entire understanding of the Township and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth in writing therein.

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

16. This First Amendment 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 First Amendment.

17. All other terms and conditions of the June 26, 2019 Settlement Agreement not specifically amended by this First Amendment shall remain in full force and effect and shall be incorporated as if fully set forth at length herein.

18. The First Amendment and the June 26, 2019 Settlement Agreement constitute the entire agreement between the Township and FSHC hereto and supersedes all prior oral and written agreements between the Township and FSHC with respect to the subject matter hereof except as otherwise provided herein.

19. The effective date of this First Amendment shall be the date upon which Fair Share Housing Center and Washington have executed and delivered this First Amendment.

TO FSHC:

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

TO THE TOWNSHIP:

Erik C. Nolan, Esq.
Surenian, Edwards & Nolan, LLC
311 Broadway, Suite A
Point Pleasant Beach, New Jersey 08742
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

Stuart A. Platt, Esq.
Platt & Riso P.C.
40 Berlin Ave
Stratford, NJ 08084
Phone: (856) 784-8500
Telecopier: (856) 784-8050
Email: platt@prlawoffice.com

WITH A COPY TO THE TOWNSHIP ADMINISTRATOR:

Jason Gonter, Township Administrator
Township of Washington
523 Egg Harbor Road
Sewell, NJ 08080
Phone: (856) 589-0520 x239
Telecopier: (856) 589-4122
Email: jgonter@twp.washington.nj.us

WITH A COPY TO THE

COURT MASTER:

Mary Beth Lonergan, PP/AICP
Clarke, Caton, Hintz
100 Barrack Street
Trenton, NJ 08608-2008
Phone: (609) 477-7302
Telecopier: (609) 883-4044
Email: mblonergan@cchnj.com

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

Witness/Attest:

FAIR SHARE HOUSING CENTER:

_____ By: _____
Adam M. Gordon, Esq.
On Behalf of Fair Share Housing Center

Dated: _____, 2021

Witness/Attest:

TOWNSHIP OF WASHINGTON:

_____ By: _____
Joann Gattinelli, Mayor
On Behalf of the Township of Washington

Dated: _____, 2021

Exhibit A:
June 26, 2019 Settlement Agreement Between
Fair Share Housing Center and Washington Township

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

In the Matter of the Township of Washington, County of Gloucester, Docket No. GLO-L-893-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 26 day of June 2019, by and between:

TOWNSHIP OF WASHINGTON, a municipal corporation of the State of New Jersey, County of Gloucester, having an address at 523 Egg Harbor Road, Sewell, New Jersey 08080 (hereinafter the "Township" or "Washington Township");

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 Township filed the above-captioned matter on July 2, 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 Township simultaneously sought and ultimately secured an Order protecting the Township from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

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

WHEREAS, FSHC was granted intervention in this matter by Court Order dated August 7, 2015; and

WHEREAS, the Trial Court appointed Philp B. Caton, P.P., F.A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

WHEREAS, with Mr. Caton's assistance, Washington Township 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 Township 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, at this time and at this particular point in the process resulting from the 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 Rehabilitation obligation, and Gap + Prospective Need (1999-2025) affordable housing obligation (hereinafter "Round 3" obligation), instead of doing so through plenary adjudication of the Rehabilitation obligation and Round 3 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 Township and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Washington Township's "Rehabilitation" obligation is 127.

2. Washington Township's "Prior Round" obligation is 507.

3. Washington Township's Round 3 obligation is 925.

4. FSHC and the Township agree that Washington Township 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 Township 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 925-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a reduction of Dr. Kinsey's July 2016 and April 2017 calculation of the Township's Gap + Round 3 (1999-2025) fair share obligation.

5. **Satisfaction of Rehabilitation Obligation**: The Township has a 127-unit Rehabilitation obligation, and has/shall satisfy that obligation as follows:

a) The Township retained Triad Associates in 2014 to serve as the Township's Administrative Agent and to run a rehabilitation program utilizing funds from the Township's Affordable Housing Trust Fund, which were allowed to be expended under a COAH approved Spending Plan.

b) Since that time Triad has rehabilitated thirteen (13) units. All are creditworthy as they were all completed after April of 2010.

c) In addition, Gloucester County has rehabilitated twenty five (25) additional units in the Township since April of 2010.

d) The Township will continue to implement its successful local rehabilitation program, including ensuring during the compliance phase of this litigation that the Triad Associates program is available to rehabilitate both renter- and owner-

occupied properties, and work with the Gloucester County program to address its remaining rehabilitation obligation of 89.

6. **Satisfaction of Prior Round Obligation**: Washington Township has a 507-unit Prior Round obligation, and has fully satisfied that obligation as follows:

a) **Camden City RCA (152 units)**: 152 credits from an RCA agreement between Washington Township and the City of Camden.

b) **Gloucester City RCA (37 units)**: 37 credits from an RCA agreement between Washington Township and Gloucester City.

c) **County House Village (56 family rental units)**: 56 affordable family rental units from the 96-unit constructed and occupied County House Village one hundred percent (100%) affordable family rental development, located at 1901 Aron's Circle (Block 16, Lots 8.05 and 8.06).

d) **Mill Stream Apartments (95 family rental units)**: 95 affordable family rental units from the constructed and occupied Mill Stream Apartments inclusionary project, located at 241 Blackwood-Barnsboro Road (Block 2.13 Lot 3.01).

e) **The Gardens at Cross Keys Assisted Living Facility (7 total affordable beds)**: Seven (7) affordable housing credits from seven (7) of the 79 total beds (10% Medicaid bed set-aside) located in the Gardens at Cross Keys constructed and occupied Assisted Living Facility, which has an address of 3152 Glassboro Cross Keys Road (Block 84.16, Lot 3).

f) **Terraces at Park Place Assisted Living Facility (15 total affordable beds)**: 15 affordable housing credits from of the 76 total beds (20% Medicaid bed set-aside) located in the Terraces at Park Place constructed and occupied Assisted Living Facility, which has an address of 661 Delsea Drive (Block 51.09, Lot 1.01).

g) **Kaplan Development Group Assisted Living Project (11 affordable beds)**: This project, on a site identified on the Township's tax map as Block 54.10, Lot

7.02, will consist of a 112-bed Assisted Living Facility. The developer has received a use variance and has agreed to provide a ten percent (10%) Medicaid bed set-aside, or 11 affordable beds. This project is constructed and occupied.

h) **Proposed Presbyterian Homes Project (7 age restricted affordable units)**: Seven (7) affordable housing credits from seven (7) of the 41 proposed affordable housing units at the Presbyterian Homes Project, on a site identified on the Township's tax map as Block 118, Lot 1, which will consist of 204 total units, broken down as follows (1) an assisted living facility with 61 units and 78 beds; (2) a memory care facility with 48 units and (3) 95 independent living units. The developer proposes a 20 percent (20%) affordable housing set-aside across all of the units, which will deliver 41 total affordable age restricted units.

i) **127 rental bonus credits**.

7. **Satisfaction of the Township's Round 3 Obligation**: Washington Township has a Round 3 obligation of 925, and will satisfy said obligation as follows:

a) **County House Village (40 family rental units)**: 40 affordable family rental units from the 96-unit constructed and occupied County House Village one hundred percent (100%) affordable family rental development, located at 1901 Aron's Circle (Block 16, Lots 8.05 and 8.06).

b) **Group Homes (19 bedrooms)**: Nineteen (19) bedroom credits from the following occupied and constructed group homes in the Township:

Personalized Independent Living	145 Hurffville Road	Block 195.13, Lot 9.03	3 Bedrooms
Arc of Gloucester County	275 Greentree Road	Block 194.12, Lot 7.03	3 Bedrooms
Elwyn New Jersey	5 Concord Court	Block 196.02, Lot 39	5 Bedrooms
Elwyn New Jersey	838 Richmond Drive	Block 110.05, Lot 34	4 Bedrooms
Elwyn New Jersey	308 Hilbert Drive	Block 182, Lot 3	4 Bedrooms

c) **Gloucester County Housing Authority Units (5 rental units)**: Five (5) rental units from the following constructed and occupied Gloucester County Housing Authority rental units:

180 Altair Drive	Block 82.26, Lot 2
2 Auriga Lane	Block 82.22, Lot 1
15 Fomal Court	Block 82.01, Lot 37
403 Tuckahoe Road	Block 96, Lot 2.01
1 Walnut Avenue	Block 55, Lot 11

d) **Washington Square Mixed-Use Project (70 Family Rental Units)**: 70 affordable family rental units from the approved 430-unit mixed use Washington Square Urban Renewal, LLC redevelopment project, which is located at 255-269 Hurffville-Cross Keys Road (Block 115, Lots 3 and 3.01). This project was approved by the Court at a Fairness Hearing, and is currently under construction.

e) **Proposed Blackwood Inclusionary Project (27 family rental units)**: This inclusionary project will consist of 180 total family rental units, with a fifteen percent (15%) affordable housing set-aside of 27 family rental units. A final form of Settlement Agreement was executed by the developer and was entered into by the Township on May 10, 2017. The implementing zoning ordinance was adopted by the Township on July 12, 2017.

f) **Proposed Presbyterian Homes Project (34 age restricted affordable units)**: Thirty-four (34) affordable housing credits from thirty-four (34) of the 41 proposed affordable housing units at the proposed Presbyterian Homes Project, on a site identified on the Township's tax map as Block 118, Lot 1, which will consist of 204 total units, broken down as follows (1) an assisted living facility with 61 units and 78 beds; (2) a memory care facility with 48 units and (3) 95 independent living units. The developer proposes a 20 percent (20%) affordable housing set-aside across all of the units, which will deliver 41 total affordable age restricted units.

g) **Proposed One Hundred Percent (100%) Affordable 80-unit Family Rental Project**: The Township will work with a developer to construct a 80-unit one hundred percent affordable family rental project located on Watson Drive (Block 115, Lot 7). Of these 80 units, 11 will be very low income, 35 will be low income, and 34 will be moderate income.

h) **Proposed One Hundred Percent (100%) Affordable 80-unit Senior Rental Project**: The Township will work with a developer to construct a 80-unit one hundred percent affordable senior rental project located on Black Horse Pike

(Block 113, Lot 15.01). Of these 80 units, 11 will be very low income, 35 will be low income, and 34 will be moderate income.

i) **339 Affordable Units From Two Redevelopment Zones:** In the Township's Delsea Drive and Washington Square Redevelopment Zones, additional family and senior for-sale and rental projects can be constructed, which will provide affordable housing. The Township will amend the existing Delsea Drive and Washington Square Redevelopment Plans to (A) increase the allowed densities in the zones to ten (10) units per acre, (B) require a twenty percent (20%) affordable housing set-aside for all rental or for-sale projects constructed in the zones and (C) require all other affordable housing requirements such as phasing, affirmative marketing, bedroom mixes and 13 percent very low, 40 percent low and 47 percent moderate income units in each development.

There are a total of 176.46 developable, vacant acres in the Delsea Drive Redevelopment Area and 246.87 developable, vacant acres in the Washington Square Redevelopment Area as shown in Exhibit A. Prior to the final Compliance Hearing in this matter, the Township will amend the Redevelopment Plans for these two zones to designate a minimum of thirty percent (30%) of the developable vacant land area of each project in the Delsea Drive Redevelopment Area, and forty-seven percent (47%) of the developable vacant land area of each project in the Washington Square Redevelopment Area for residential use in conformance with the above paragraph, of which a maximum of 38.5 developable, vacant acres between the two Redevelopment Areas may be zoned for age-restricted residential use. This will provide a realistic opportunity for the following number of affordable units:

- Inclusionary Family Units: 262 affordable family for-sale or rental units.

- Inclusionary Age Restricted Units: 77 affordable age restricted for-sale or rental units.

Once the Township has granted final approval for the total number of affordable family and age restricted units above, the Township can amend the Redevelopment Plans to remove the required percentages of residential development. In addition, the Township is free to apply to Court, subject to review by the Court Master and FSHC, for an amendment to the Final Judgment in this matter that would allow the Township to reduce the above required affordable housing numbers in the redevelopment zones by amending the Redevelopment Plans if additional credit worthy affordable housing projects not otherwise referenced in this Agreement are constructed and occupied in areas of

the Township that are not in either redevelopment zone. The provisions of this paragraph shall be executed as permitted by the Local Housing And Redevelopment Law (LRHL) and the Municipal Land Use Law (MLUL).

The parties also acknowledge that the one hundred percent (100%) family affordable site referenced within subparagraph 7(g) above is within the boundaries of the Washington Square Redevelopment Plan and the land required for development of the 100% family affordable site, while included in the total calculation of developable, vacant acres, may not be used as part of meeting the forty-seven percent (47%) requirement in this subparagraph since that land is already accounted for in subparagraph 7(g) above.

The Township redevelopment goals are to propose a mix of commercial and residential development in these redevelopment zones overall. The minimum acreage designated above shall be permitted to develop for inclusionary residential uses only, provided that portions of the same site may be designated for non-residential uses with other portions designated for residential uses so long as there will not be a requirement that any inclusionary residential development can only be built after some or all non-residential development is built. In addition, the Redevelopment Plan may provide inclusionary mixed-use building types as an option for development, as long as (i) entirely residential buildings that create a realistic opportunity for the above-referenced number of affordable units are also allowed and (ii) the mixed use option, if exercised on one or more sites, would still allow for the development of the above-referenced number of affordable units. The exact form of these requirement will be developed by the Township in collaboration with the Court Master and FSHC as part of adopting revised Redevelopment Plans for the two areas in accordance with the timeframes provided in Paragraph 16 of this Agreement.

- As to the two 80-unit one hundred percent (100%) affordable housing projects, in accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source in the event that the funding request is not approved. The Township meets this obligation as follows: The Township intends to fund the project with nine percent (9%) tax credits and will adopt a resolution of intent to fund for any shortfall associated with the project. In the event that either or both projects is unable to secure nine percent (9%) tax credits within the next two funding cycles for which applications are due after January 1, 2020, the Township may utilize other available funds, including four percent (4%) tax Credits and bonding for the project(s) that have not secured funding, or may seek alternative compliance techniques for the production of eighty (80) family rental affordable housing units and/or for eighty (80) age restricted rental affordable housing units, subject to the approval of FSHC and the Court.

- In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process, including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. Prior to the final judgment in this matter, as part of the timeframe described in Paragraph 16, the Township will provide a proposed Construction Schedule and Pro Forma for the proposed project, after a developer is selected and such documents can be drafted and provided.

j) **231 Rental Bonus Credits**

8. The Township agrees to require thirteen percent (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 (defined as units affordable to households earning thirty percent (30%) or less of the regional median income by household size), with half of the very low income units being available to families.

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

10. At least fifty percent (50%) of the units addressing the Township's Round 3 obligation 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, provided that income mix requirements for specific developments in paragraph 7 shall apply.

11. A minimum of twenty-five percent (25%) of the Township's Round 3 obligation shall be met through rental units, including at least half in rental units available to families.

12. At least half of the units addressing the Township's Round 3 obligation must be available to families.

13. The Township agrees to comply with COAH's Round 2 age-restricted cap of twenty five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Township claim credit toward its fair share obligation for age-restricted units that exceed twenty five percent (25%) of all units developed or planned to meet its Prior Round and Round 3 obligations.

14. The Township 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, Gloucester County and Salem County Branches of the NAACP, Senior Citizens United Community Services (S.C.U.C.S.), and the Supportive Housing Association. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or its Administrative Agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

15. 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 8 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 Township, 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.

16. Upon full execution of this Agreement, Washington shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Washington will place this Agreement on file in the Township's municipal building and file a copy with the Court 30 days prior to the Fairness Hearing, at which the Township 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, Washington will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all resolutions and ordinances required to be adopted as part of this Agreement, and will submit same to the Court, the Court Master, and FSHC for review. The Township will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Washington's adopted Housing Element and Fair Share 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, Washington shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Township's Fair Share Plan. If the Fairness and Compliance Hearings result in approval of this Agreement and the Township's Fair Share Plan, the parties agree that the Township 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. Among other things, the entry of such an Order shall maintain Washington's immunity from all Mount Laurel lawsuits through July 2, 2025.

17. 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 Washington Township's Round 3 (1999-2025) obligation is decreased to 740 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 (1999-2025) obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the 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 Agreement, maintaining all mechanisms to continue to address the remaining portion of the Township's allocation of the Round 3 (1999-2025) regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township'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 Township prevails in reducing its Round 3 (1999-2025) obligation, the Township may carry over any resulting surplus credits to Round 4.

18. The Township shall prepare a Spending Plan for approval by the Court during the duly-noticed Compliance Hearing. As part of that Spending Plan the Township shall develop affordability assistance program(s) to assist low- and very-low-income households in accessing affordable rental homes in the Township. 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 Township and FSHC agree that the expenditures of funds contemplated in the Township'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 In re Tp. Of Monroe, 442 N.J.Super. 565 (Law Div. 2015) (aff'd 442 N.J.Super. 563). Upon approval of its Spending Plan, the Township 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.

19. On the first anniversary of the approval of the Township's Housing Element and Fair Share Plan after a Compliance Hearing, and every anniversary thereafter through July 2, 2025, 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 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 Township 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.

20. The Fair Housing Act includes two provisions regarding actions 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 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. 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. 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 approval of the

Township's Housing Element and Fair Share Plan after a Compliance Hearing, and every third year thereafter, the Township 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 Township may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

21. This Agreement may be enforced by the Township or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Gloucester County.

22. 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 Township 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*.

23. The Township agrees to pay $10,000 to FSHC, payable within 10 days of judicial approval of this Agreement pursuant to a duly-noticed Fairness Hearing.

24. 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.

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

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

27. 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.

28. The Township 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 Township and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

29. The Township and FSHC acknowledge that this Agreement was not drafted by the Township and FSHC, but was drafted, negotiated and reviewed by representatives of the Township and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Township 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.

30. 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 Township and FSHC.

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

32. 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.

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

34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Township 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 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 TOWNSHIP:

Erik C. Nolan, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

Stuart A. Platt, Esq.

Platt & Riso P.C.
40 Berlin Ave
Stratford, NJ 08084
Phone: (856) 784-8500
Telecopier: (856) 784-8050
Email: platt@prlawoffice.com

WITH A COPY TO THE TOWNSHIP ADMINISTRATOR:

Jason Goner, Township Administrator
Township of Washington
523 Egg Harbor Road
Sewell, NJ 08080
Phone: (856) 589-0520 x239
Telecopier: (856) 589-4122
Email: jgonter@twp.washington.nj.us

WITH A COPY TO THE COURT MASTER:

Philip B. Caton, PP/FAICP
Clarke, Caton, Hintz
100 Barrack Street
Trenton, NJ 08608-2008
Phone: (609) 477-7302
Telecopier: (609) 883-4044
Email: pcaton@cchnj.com

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: _____
Adam M. Gordon, Esq.
On Behalf of Fair Share Housing Center

Dated: June 20, 2019

Witness/Attest:

TOWNSHIP OF WASHINGTON:

By: _____
Joann Gattinelli, Mayor
On Behalf of the Township of Washington

Dated: June 26, 2019

Exhibit A

	Redevelopment Areas - Adjustments for Recent Developments and Potential Redevelopment		
	Delsea Square	Washington Square	Combined
Numer of Parcels	353	163	516
Redevelopment Area	782.60 acres	450.63 acres	1,233.23 acres
Number of Vacant Parcels	31	5	36.00
Vacant Land - Acres	237.28	256.68	493.96
Developable Vacant Land - Acres	176.46	246.87	423.33
Number of Units 10 units/acre	1,764.60	2,468.70	4,233.30
Inclusionary Units (20%)- 10 units/acre	352.92	493.74	846.66

GLO-L-000893-15 07/10/2019 4:01:25 PM Pg 18 of 18 Trans ID: LCV20191197164

Exhibit B:
List of Developable, Vacant Blocks and Lots in
Delsea Drive and Washington Square Redevelopment Areas

Washington Sqaure

BLOCK	LOT	OWNER	VACANT AND DEVELOPABLE ACRES
115.02	18.01	WEGMANS FOOD MARKETS INC	30.59
115	24	ACP SOFINT ASSOC @ AMER CONT PROP	137.91
115	6	FRIES MILL ASSOC PRTNRS%C&D BREWING	26.10
115.02	9.01	OHANA AKAHI LLC	9.80
115.03	24	ACP SOFINT ASSOC @ AMER CONT PROP	10.02
			214.43

Delsea Drive

BLOCK	LOT	OWNER	VACANT AND DEVELOPABLE ACRES
16	4.17	MBS PROPERTIES LLC	1.12
16	7.03	265 DELSEA DRIVE LLC	2.72
16	4	PLATT, GERALDINE	1.39
15	12.05	ANYZEK, BARBARA DORIS	0.63
16	7.01	265 DELSEA DRIVE LLC	1.92
16	1	KEYSTONE COUNTY HOUSE ROAD LLC	18.86
16	1.03	KEYSTONE COUNTY HOUSE ROAD LLC	10.43
15	15	ANYZEK, BARBARA DORIS	2.15
16	2	KEYSTONE COUNTY HOUSE ROAD LLC	0.55
16	6	PLATT, GERALDINE	16.39
15	12.09	DENJEN LLC	5.41
16	4.18	KEYSTONE COUNTY HOUSE ROAD LLC	16.69
16	8	GUY, BYRON JACK ESTATE%GLORIA FAUST	36.31
16	4.08	OAK VIEW NURSERY	11.59
16	7	PLATT, GERALDINE	18.38
16	1.01	OAK VIEW NURSERY	15.84
15	12	OAK VIEW NURSERY	4.37
			164.77