

FAIR SHARE HOUSING CENTER

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September 19, 2024

VIA E-COURTS

Honorable Michael V. Cresitello, Jr., P.J.Cv
Superior Court of New Jersey, Law Division
Middlesex County Courthouse
P.O. Box 964
New Brunswick, NJ 08903-0964

Re: **In the Matter of the Application of the Township of South Brunswick
Docket No. MID-L-4433-17**

Dear Judge Cresitello:

Please accept this letter enclosing the final executed settlement agreement between Fair Share Housing Center (“FSHC”) and the Township of South Brunswick’s (the “Township” or South Brunswick”).

Respectfully submitted,

FAIR SHARE HOUSING CENTER



Joshua D. Bauers, Esq.
*Attorney for Intervenor
Fair Share Housing Center*



South Brunswick Township
540 Ridge Road
Monmouth Junction, NJ 08852

RES-2024-302

Authorizing Settlement Agreement in the Matter of the Township of South Brunswick, County of Middlesex Under Docket No. MID-L-4433-17

WHEREAS, in accordance with Mount Laurel IV, on July 8, 2015, South Brunswick filed a complaint seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and

WHEREAS, the Trial Court rejected the relief sought by the Township in the 2015 Declaratory Judgment Action, revoked the Township's immunity and imposed a new construction fair share obligation for the Gap and Third Round periods, with additional phasing for the Fourth and Fifth Rounds, in excess of 2,251 affordable units on the Township, with at least 1,417 affordable units allocated for the Third Round, 417 affordable units for the Fourth Round, and 417 affordable units for the Fifth Round (the "Wolfson Decision"); and

WHEREAS, the Appellate Division, while affirming most of the trial court's decisions including the revocation of immunity and imposition of builder's remedies, reversed and remanded the Litigation to the Trial Court as to one issue, for the express purpose of requiring the Township to seek approval of a revised Third-Round Housing Element and Fair Share Plan (HEFSP) that is capped at one thousand (1,000) affordable housing units, in accordance with the Appellate Division Decision as to the application of the 1,000-Unit Cap Statute codified at N.J.S.A. 52:27D-307e (the "1,000-Unit Cap Statute" or the "1,000-Unit Cap"); and

WHEREAS, the Township and Fair Share Housing Center, Inc. ("FSHC" or "Fair Share Housing Center"), Township Planning Board (the "Board"), and various other intervening parties including developers that are parties to the Litigation, have filed Petitions and Cross-Petitions for Certification with the New Jersey Supreme Court (collectively the or those "Petitions" and "Cross-Petitions") to review various aspects of the Appellate Division Decision, including and not limited to the issue of whether the Appellate Division Decision as to the application of the 1,000-Unit Cap should be reversed. Those Petitions and Cross-Petitions remain pending for consideration before the New Jersey Supreme Court as of the date of execution of this Agreement; and

WHEREAS, while the matter was pending at the trial court and after case management conferences on March 13, 2024 and March 27, 2024 the trial court entered an Order For Further Proceedings dated April 9, 2024 wherein Hon. Michael V. Cresitello, J.S.C. retained the jurisdiction for the parties to negotiate a resolution and settlement to the Township's Third Round and Fourth Round fair share plans, including a determination of the Third Round and Fourth Round fair share obligations and the mechanisms that will be utilized to address those obligations. This order was followed by orders signed and entered by the Court on May 9, 2024, July 2, 2024, and the order efiled on July 30, 2024, which all specified an intention by the parties and the court to negotiate and resolve and globally settle the Township's Third Round and Fourth Round fair share obligations and all litigation and in the consolidated cases; and

WHEREAS, the Township, FSHC, and the various intervening parties agree to settle the litigation and to present this Agreement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and the expense of further litigation and results more quickly in the construction of homes for very-low-, low- and moderate-income households.

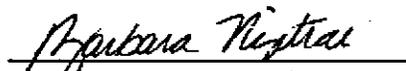
WHEREAS, the Agreement supersedes all prior writings between the parties and, once implemented, will create a realistic opportunity for the construction of a substantial number of new affordable homes for very-low-, low-, and moderate-income households;

NOW THEREFORE BE IT RESOLVED on this 4th day of September, 2024, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. The Mayor and Township Clerk shall be and are hereby authorized to execute the Settlement Agreement reached between declaratory judgment plaintiff the Township of South Brunswick and Fair Share Housing Center in the Matter of the Township of South Brunswick, County of Middlesex Under Docket No. MID-L-4433-17.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ken Bierman, Deputy Mayor
SECONDER:	Joseph Camarota, Councilman
AYES:	Bierman, Camarota, Grover, Hochman, Carley

This is to certify that the foregoing is a true copy of a resolution adopted at the South Brunswick Township Council meeting held on September 4, 2024.


 Barbara Nyitrai, Township Clerk



Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Ashley J. Lee, Esq.
Esmé Devenney, Esq.
Will Fairhurst, Esq.

September 12, 2024

Francis M. Womack, Esq.
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190

**Re: In the Matter of the Township of South Brunswick, County of Middlesex,
Docket No. MID-L-4433-17**

Dear Mr. Womack:

This letter agreement memorializes the terms of a Settlement Agreement ("Agreement") reached between declaratory judgment plaintiff the Township of South Brunswick (the "Township" or "South Brunswick") and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party and intervenor in the within declaratory judgment action filed by South Brunswick.

Background

In accordance with Mount Laurel IV, on July 8, 2015, South Brunswick filed a complaint seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq.,

The Trial Court rejected the relief sought by the Township in the 2015 DJ Action, revoked the Township's immunity and imposed a new construction fair share obligation for the Gap and Third Round periods, with additional phasing for the Fourth and Fifth Rounds, in excess of 2,251 affordable units on the Township, with at least 1,417 affordable units allocated for the Third Round, 417 affordable units for the Fourth Round, and 417 affordable units for the Fifth Round (the "Wolfson Decision").

The Appellate Division, while affirming most of the trial court's decisions including the revocation of immunity and imposition of builder's remedies, reversed and remanded the Litigation to the Trial Court as to one issue, for the express purpose of requiring the Township to seek approval of a revised Third-Round HEFSP that is capped at one thousand (1,000) affordable housing units, in accordance with the Appellate Division Decision as to the application of the 1,000-Unit Cap Statute codified at N.J.S.A. 52:27D-307e (the "1,000-Unit Cap Statute" or the "1,000-Unit Cap").

The Township and Fair Share Housing Center, Inc. ("FSHC" or "Fair Share Housing Center"), Township Planning Board (the "Board"), and various other intervening parties including developers that are parties to the Litigation, have filed Petitions and Cross-Petitions for Certification with the New Jersey Supreme Court (collectively the or those "Petitions" and "Cross-Petitions") to review various aspects of the Appellate Division Decision, including and not limited to the issue of whether the Appellate Division Decision as to the application of the 1,000-Unit Cap should be reversed. Those Petitions and Cross-Petitions remain pending for consideration before the New Jersey Supreme Court as of the date of execution of this Agreement.

While the matter was pending at the trial court and after case management conferences on March 13, 2024 and March 27, 2024 the trial court entered an Order For Further Proceedings dated April 9, 2024 wherein Hon. Michael V. Cresitello, J.S.C. retained the jurisdiction for the parties to negotiate a resolution and settlement to the Township's Third Round and Fourth Round fair share plans, including a determination of the Third Round and Fourth Round fair share obligations and the mechanisms that will be utilized to address those obligations. This order was followed by orders signed and entered by the Court on May 9, 2024, July 2, 2024, and the order efiled on July 30, 2024, which all specified an intention by the parties and the court to negotiate and resolve and globally settle the Township's Third Round and Fourth Round fair share obligations and all litigation and in the consolidated cases.

The Township, FSHC, and the various intervening parties agree to settle the litigation and to present this Agreement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and the expense of further litigation and results more quickly in the construction of homes for very-low-, low- and moderate-income households.

This Agreement supersedes all prior writings between the parties and, once implemented, will create a realistic opportunity for the construction of a substantial number of new affordable homes for very-low-, low-, and moderate-income households.

Agreement Terms

The Township and FSHC hereby agree to the following terms:

1. The parties recognize that this Settlement Agreement occurs after the main trial in this matter, after the Appellate Division has issued a decision, and while the issues contained in that appeal are pending for potential certification before the New Jersey Supreme Court. The parties recognize that, at this juncture, certain issues remain pending before the trial court and the Supreme Court, and also that the parties, absent entering into this Agreement, may assert certain rights to appeal aspects of the trial court's adjudication and/or pursue a Petition for Certification before the Supreme Court. By entering into this Agreement and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose ("JOR") in accordance with the terms specified in this Agreement, the parties (a) agree to abide by the trial court's orders and decisions to this point, including prior determinations by the trial court appointed Special Hearing Officer(s) ("SHO") except as specifically modified herein; (b) agree to resolve the outstanding issues before the trial court, including but not limited to the matters remanded by the Appellate Division decision, in the manner specified herein, and agree that the unpublished Appellate Division decision's interpretation of the 1,000 unit cap shall not bind any party given that the issue was the subject of pending petitions before the Supreme Court at the time of this settlement and that the parties have agreed to settle this issue in a manner that differs from both the trial court's original decision and the Appellate Division decision based upon mutual agreement of the parties; (c) agree to not appeal, and to relinquish and waive all rights to appeal, any and all aspect of the trial court's adjudication since the filing of the declaratory judgment action, and (d) agree to withdraw with prejudice any appeals, petitions for certification, or motions that may be pending as specified further herein. This Agreement contemplates that the SHO may (and in some cases shall) be required to continue to act in lieu of the Planning Board for current parties to the litigation. Such action by the SHO shall not be a basis for the parties not abiding by the terms of this

paragraph. Non-parties to the litigation shall make application to and appear before the Planning Board.

2. The parties agree to act in good faith, with candor, and with all continuity of purpose to ensure the full and swift implementation of the terms of this Agreement and the expeditious provision of the affordable housing agreed to herein, including but not limited to cooperating with efforts of any builders remedy plaintiff or settling developer to construct affordable housing as further provided for in this Agreement. The parties shall work to avoid all delays and to promptly and amicably resolve any disagreements that may arise. Where the parties are unable to reach a prompt accord and/or where disputes arise, the parties agree and accept that the ultimate authority and power to resolve all issues and to take/order all required action and to enforce this Agreement rests with the Superior Court of New Jersey based upon input from the Special Adjudicator and the SHO. Such issues include, but are not limited to, requiring the adoption of or amendment to zoning ordinances, approving site plan applications, requiring the issuance of permits, terminating immunity from exclusionary zoning suits in the event of a material violation of this Agreement, and/or issuing orders of contempt. The Parties agree that, where appropriate, the court may delegate appropriate tasks to the Special Adjudicator and/or SHO subject to the final decision of the court. As an essential term of this Agreement, the Parties accept and agree that where the court takes such actions as the court deems necessary hereunder to ensure the full and swift implementation of this Agreement, including resolving disagreements and/or disputes amongst the parties or ordering appropriate relief, that the parties shall abide by that decision and shall not thereafter challenge nor appeal such a decision. As discussed above, non-parties to the litigation shall make application to and appear before the Planning Board.
3. FSHC agrees that the Township, through adoption of a Housing Element and Fair Share Plan ("HEFSP") consistent with the terms of this Agreement and through the implementation of the HEFSP 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), Third Round (1999-2025), and Fourth Round (2025-2035).
4. FSHC and South Brunswick hereby agree for purposes of settlement that South Brunswick's affordable housing obligations are as follows:

Third Round Present Need (per 2016 Kinsey Report); Fourth Round Present Need to be determined pursuant to paragraph 6	109
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	841
Third Round (1999-2025) New Construction Obligation	1,450
Fourth Round (2025-2035) New Construction Obligation	1,070 including 70-unit non-profit development program (see para 13(l))

5. For purposes of this Agreement, the unadjusted Third Round Obligation of 1,450 shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015 and June 30, 2025. The parties recognize that the prior trial court decision in this matter identified a Third Round Prospective Need of more than 2,251 including an allocation from the "Gap Period (1999-2015)," and that the trial court previously allocated some elements of this obligation

to the Fourth Round (2025-2035) and Fifth Round (2035-2045). The parties also recognize that this configuration was rejected by the Appellate Division in an unpublished opinion which found that the Township's obligation for the Third Round should be capped at 1,000 units, inclusive of the Gap Period obligation. FSHC and other parties have petitioned for certification of this decision to the New Jersey Supreme Court which petition is currently pending, but undecided. The parties agree to seek approval from the trial court as set forth herein of this final resolution of disputed issues from both the pending petitions for certification and disputed interpretations between the parties of the Appellate Division decision through the Township's acceptance of a Third Round New Construction obligation of 1,450 units and a Fourth Round New Construction obligation of 1,070 units including a 70-unit non-profit development program (see para 13(l)), which obligations shall cumulatively satisfy all new construction need for the 1999-2015 Gap Period and the 2015-2025 and 2025-2035 prospective need periods, with the mechanisms for satisfying these obligations as set forth in this Agreement. The parties agree to a total 1,070 obligation for the Fourth Round, which the parties anticipate will include a total of 802 units and 268 bonuses as specified further in paragraphs 11 and 12, provided that the Township can demonstrate they are eligible for 268 bonuses pursuant to the new bonus standards set forth by P.L. 2024, c. 2. The parties agree that included in those 802 units will be a 70-unit non-profit program, further described in paragraph 13(l) below, which at the time of the Fourth Round approval is not anticipated to provide a realistic opportunity but will provide a realistic opportunity throughout the Fourth Round as set forth therein. The parties agree that allowing the timing established by paragraph 13(l) is a fair and reasonable resolution of pending issues regarding the 1000-unit cap that, as of the date of this settlement, remained pending in petitions for certification before the Supreme Court. The parties agree that no further obligation from the so-called "Gap Period" shall be met in excess of this and that no additional obligation deriving from the "Gap Period" beyond those obligations set forth in this Agreement shall be required in the Third, Fourth, or Fifth Rounds.

6. The Township's actions to meet its Third Round Present Need consist of continued participation in the Middlesex County Home Improvement Program as well as the municipally sponsored South Brunswick Home Improvement Program, which is consistent with the provisions of N.J.A.C. 5:93-5.2. These actions are sufficient to satisfy the Township's Third Round Present Need obligation of 109 units. The parties also recognize that the Township's Fourth Round Rehabilitation Share has not yet been definitively determined. The parties recognize that recent legislation has now codified a methodology for calculating Present Need and both parties agree that South Brunswick's Present Need for the Fourth Round shall be calculated in accordance with the standards set forth in N.J.S.A. 52:27D-304.2 and -304.3. The parties also agree that South Brunswick shall present a plan to address its Fourth Round Present Need when it presents its Fourth Round plan to court in accordance with the terms outlined below. Given the unique circumstances of this case involving disputed issues resulting from a case still pending as of the date of execution of this settlement of the trial court Third Round determinations that included obligations assigned to the Fourth and Fifth Rounds, the parties agree that it is appropriate for the Township's Fourth Round present need and new construction obligation to be determined through the trial court's review of this settlement and that the Township shall not be required to submit an adopted resolution by Jan 31, 2025 to the Affordable Housing Dispute Resolution Program regarding Fourth Round obligation determinations.
7. As stated above, the Township has a Prior Round (new construction) Obligation of 841 units. The Township's Prior Round obligations were previously deemed satisfied by the trial court in an August 8, 2016 order of the trial court finding that South Brunswick had fully-satisfied

September 12, 2024

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its Prior Round obligation. The parties have agreed for the purposes of settlement and subject to approval by the court that South Brunswick's Prior Round obligations shall be calculated to be 841 units and satisfied via the mechanisms approved by Judge Wolfson as modified by this Agreement and listed in the chart below.

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comment/ Notes
Deans Apartments/Woodhaven Terr.	Family Rentals	40		Prior Cycle
Charleston Place I	Senior Rentals	54		Prior Cycle
Regal Point	Family Sales	5		Inclusionary
Monmouth Walk	Family Sales	43		Inclusionary
Nassau Square	Family Sales	49		Inclusionary
Summerfield	Family Sales	69		Inclusionary
Deans Pond Crossing	Family Sales	20		Inclusionary
Southridge/Southridge Woods	Family Rentals	124	124	Inclusionary
Woodhaven	Family Rentals	80	80	100%
Charleston Place II	Senior Rentals	30		100%
Oak Woods	Senior Rentals	73		100%
Wheeler Rd - Bedrooms	Special Needs	3	3	Group Home
Major Road - Bedrooms	Special Needs	3	3	Group Home
CIL Woods	Special Needs	16	1, cap	
CIL Wynwood	Special Needs	7		
Dungarvin, 30 Cranston – Bedrooms	Special Needs	4		Group Home
Dungarvin - Bedrooms	Special Needs	8		Group Homes
Triple C - 1 of 6 Bedrooms	Special Needs	2		Group Home
		630	211	841

8. As noted above, it is agreed for purposes of this Settlement Agreement, that the Township has a Third Round (new construction) Obligation of 1,450 units, which will be satisfied as follows:

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comments/ Status
Princeton Orchards	Family Rentals	46	46	Inclusionary
PPF/Matrix – 83 Rentals, 15 Sales	Family	98	83	Inclusionary
SBC – 336 Family, 24 Seniors	Rentals	360	234, cap	Inclusionary
KHov – 30 Fam. Sales, 4 Sp.Nd	Sales/Sp Need	34		Inclus., Gr. Home
American Properties	Family Sales	72		Inclusionary
Pulte/Avalon - 27 Fam.Sale, 5 Sp.Nd	Sales/Sp Need	32		Inclus., Gr. Home
Windsor	Family Rentals	13		Inclusionary
Jaynar/Wilson Farm – 151 of 210	Senior Rentals	151		Inclusionary
Buckingham Pl. Assist. Living	Senior Rentals	23		Inclusionary
Deans Apts/Woodhaven Terr	Family Rentals	40		Ext. of Controls
Charleston Place I and II	Senior Rentals	84		Ext. of Controls
Regal Pt/Monm. Walk/Nassau Sq. 97 (91 Third Rd; 6 Fourth Rd.)	Family Sales	91		Ext. of Controls
Gr. Homes (Wheeler/Major/Dungar.)	Special Needs	10		Ext. of Controls
Triple C - 4 Bal. Bedrooms	Special Needs	4		Group Homes
Comm Opt – BR 13 comp/ 1 fund	Special Needs	14		Group Homes
ARC of Middlesex - Bedrooms	Special Needs	15		Group Homes

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comments/ Status
RDG/MMHP/TG Acq.	Family Rentals	32		Inclusionary
		1,119*	+ 363	= 1,482*

*The Parties recognize and agree that the chart above provides for the Township to address its Third Round obligation of 1,450 units with a 32-unit family rental surplus which shall be applied to the Fourth Round obligation.

9. While the Township's declaratory judgment action proceeded through the trial court a number of parties were awarded builder's remedies and proceeded through a SHO process established by the court and/or were included in the Township's fair share plan that was previously approved by the trial court. Those parties are in various stages of SHO/Court approval /and resolution compliance, but all will have their affordable housing units counted toward the Township's Third Round obligations. They are as follows:

- a. Pulte Homes/AvalonBay Communities (hereinafter "Pulte/AVB") site located at Block 86, Lots 63, 65, and 67 through 71. Pulte/AVB was granted a builder's remedy and its builder's remedy site plan was recommended for approval by the SHO on November 20, 2020, as modified on January 19, 2021. That approval recommendation was reviewed and approved by the court in an order dated February 16, 2021. Pulte/AVB has secured all necessary outside agency approvals to begin construction, with the exception of approval for public water service, which approval remains the subject of the Township's resolution compliance process. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans of the Pulte/AVB site that were previously approved by the SHO and trial court. The Township further agrees to expedite all outstanding items of resolution compliance for the Pulte/AVB project.
- b. Princeton Orchards (hereinafter "PO") site located at Block 31, Lots 30.012 and 35.09. PO was granted a builder's remedy and PO ultimately entered into a settlement agreement with South Brunswick on March 19, 2018, which was approved by the Court after a Fairness Hearing in an order dated May 22, 2018 and its settlement site plan was approved by the Board on February 5, 2020. PO has secured all necessary approvals to begin construction.
- c. PPF/Matrix (hereinafter "PPF") site located at Block 6, Lots 15.021 and 15.022 and Block 11, Lots 13.02 and 15.03. PPF was granted a builder's remedy and PPF ultimately entered into a settlement agreement with South Brunswick on October 8, 2020, which was approved by the Court after a Fairness Hearing in an order dated January 28, 2021 and its settlement site plan was approved by the Board. PPF has secured many, but not all necessary approvals to begin construction.
- d. South Brunswick Center (hereinafter "SBC") site located at intersection of Route 1 and Northumberland Way, Block 86, Lots 22.041, 89.13 and 89.023. SBC was granted a builder's remedy and its builder's remedy site plan was recommended for approval by the SHO on February 13, 2020. That approval recommendation was reviewed and approved by the court in an order dated September 8, 2020. SBC has begun construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans, and building permits applied for, or issued, for the SBC site.
- e. K. Hovnanian/ Bellemead (hereinafter "KHov") site located at Block 80, Lot 3.024. KHov was granted a builder's remedy and its builder's remedy site plan was

recommended for approval by the SHO on July 23, 2020. That approval recommendation was reviewed and approved by the court in an order dated December 9, 2020. KHov has secured all necessary approvals to begin construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans of the KHov site.

- f. American Properties (hereinafter "American Prop") site located at Block 79, Lots 1.06, 11 and 12. American Prop was granted a builder's remedy and its builder's remedy site plan was recommended for approval by the SHO on March 7, 2022. That approval recommendation was reviewed and approved by the court in an order dated July 21, 2022. American Prop has secured all necessary approvals to begin construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans of the American Prop site.
- g. Windsor Associates (hereinafter "Windsor") site located at Block 85, Lot 17.014. Windsor was granted a builder's remedy and its builder's remedy plan is under review by the SHO. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, and, at such time the SHO recommends approval of and the trial court approves the development plans of the Windsor site, the Township agrees to withdraw all objections to the development plans.
- h. RDG/MMHP/TG Acq. (hereinafter "TG Acq.") site located at Block 95, Lots 48.011, 49, 50.02, 50.03, 50.04, 50.06, and 50.07. TG Acq. was granted a builder's remedy and its builder's remedy plan is under review by the SHO. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, and at such time the SHO recommends approval of and the trial court approves the development plans of the TG Acq. site, the Township agrees to withdraw all objections to the development plans..
- i. Jaynar/Wilson Farm (hereinafter "Jaynar") is a site located at Block 96.24, Lot 24.002. On June 26, 2019 the Township entered into a redeveloper's agreement with Jaynar for the construction of 210 age-restricted affordable units. In 2019, the redeveloper received preliminary site plan approval and in 2024, it is anticipated the redeveloper will receive final site plan approval.
- j. Ridge Road Properties, LLC ("Ridge Road") is the owner of real property located at Block 79, Lots 4.02, 4.031, 4.032, 4.04, 6.01 and 6.03 ("Ridge Road Site"). Ridge Road was granted a builder's remedy to construct an inclusionary development consisting of 264 affordable units. After Ridge Road was granted its builder's remedy, it entered into a settlement agreement dated April 26, 2022, with the Township and Township Planning Board that allows for the construction of a warehouse/light industrial development on the Ridge Road Site ("Ridge Road Settlement"). The Township and Township Planning Board each reaffirm and agree to be bound by their respective obligations required by the Ridge Road Settlement including but not limited to the requirement of Ridge Road to pay \$8,065,000 towards the production of affordable housing in the Township or the 2.5 percent non-residential development fee, whichever is greater, which shall be used towards the mechanisms in the Township's Fourth Round Housing Element and Fair Share Plan with the process for determining the use of those funds and specific mechanisms as set forth in this settlement and which shall not be used for administrative costs. The parties acknowledge that the Ridge Road Settlement requires by its own terms review at a fairness hearing which has not occurred and will need to be scheduled by the trial court in order for the agreement to take effect.

The parties acknowledge that FSHC is not a party to the Ridge Road Settlement and is not bound by it or under any obligation to defend it, and FSHC reserves all rights to ensure an adequate plan is in place to ensure appropriate buffering and circulation between the proposed warehousing uses on the Ridge Road site and any neighboring proposed inclusionary affordable housing developments, which may include an objection to the settlement agreement between Ridge Road Partners and the Township and Planning Board at the fairness hearing to be scheduled on that settlement in accordance with that agreement. In the event that any legal challenge invalidates the Ridge Road Settlement, Ridge Road shall construct the inclusionary development it was granted as a builder's remedy which the Township may count towards its Fourth Round Obligation or any future obligation. In the event Ridge Road proceeds with its inclusionary residential development, the development application shall proceed before and be reviewed by a Special Hearing Officer appointed by the court.

10. The process for approval of the settlement agreement is as follows:
 - a. Upon execution of the settlement agreement the parties agree to jointly request a joint fairness/compliance hearing from the court which the parties expect to take place in October/November 2024.
 - b. By October 1, 2024 the Township shall provide a draft/proposed Third Round HEFSP consistent with the terms of this Agreement to FSHC and the Special Adjudicator. FSHC and the Special Adjudicator shall provide any comments to the Draft/Proposed Third Round HEFSP by October 4, 2024. The Township shall adopt and endorse a final Third Round HEFSP and all Third Round implementing ordinances consistent with the terms of this Agreement before the compliance hearing.
 - c. Through the hearing to take place in November 2024 the parties anticipate requesting approval of the settlement agreement including the obligations set forth in paragraph 4 as to Third Round Present Need and Third and Fourth Round New Construction Obligation, which obligations represent a comprehensive and final settlement of the disputed issues around the trial court and Appellate Division's decisions on fair share obligations for the Gap Period (1999-2015), Third Round (2015-2025), and Fourth Round (2025-2035).
 - d. Through the same November hearing, the parties anticipate requesting a finding of compliance with the settlement agreement and the Mount Laurel doctrine as to the Township's Third Round affordable housing obligations such that the Township shall be eligible for a Third Round judgment of repose. The parties agree to jointly request that the court enter an amended final judgment as to the Township's Third Round fair share obligations subsequent to the hearing to take place in November. The final judgment will replace, in full, the final judgment of repose entered by the trial court on June 6, 2021. The final Third Round judgment shall be appealable as of the date of that judgment by parties other than the parties to this agreement, who waive their right of appeal pursuant to paragraph 1., except with respect to the builders remedies awarded to the parties hereto in the June 6, 2021 Judgment and Orders of Site Plan approval issued on recommendations of the SHOs affirmed by the Appellate Division in its July 2023 decision, which builders remedy awards and site plan approval orders shall remain final and non-appealable in all respects as to all parties, interested persons, and objectors.
 - e. The parties also agree to request that the court continue to retain jurisdiction as to the Township's Fourth Round fair share plan as contemplated in the April 9, 2024 order and to approve a Fourth Round fair share obligation of 1,070 units including a 70-unit non-profit program as described above. The parties agree to jointly

request the court provide a schedule for the finalization of the Township's Fourth Round fair share plan to create a realistic opportunity to address the 1,070-unit, including 70-unit non-profit program, Fourth Round fair share obligations by March 31, 2025. All parties agree to request a Fourth Round fairness and compliance hearing, requesting entry of a final judgment of compliance and repose for the Fourth Round to take place on or before May 31, 2025. The present need obligation and compliance for the Fourth Round will also be determined as part of this hearing, consistent with the present need standards set forth in N.J.S.A. 52:27D-304.2 and -304.3. Given the unique circumstances of this case involving disputed issues resulting from a case still pending as of the date of execution of this settlement of the trial court Third Round determinations that included obligations assigned to the Fourth and Fifth Rounds, the parties agree that it is appropriate for the Township's Fourth Round present need and new construction obligation to be determined through the trial court's review of this settlement and that the Township shall not be required to submit an adopted resolution by Jan 31, 2025 to the Affordable Housing Dispute Resolution Program regarding Fourth Round obligation determinations.

- f. The parties agree that if the Township is not able to adopt/endorse a final fair share plan and adopt implementing ordinances and resolutions that create a realistic opportunity to address the 1,070-unit obligation, including 70-unit non-profit program as provided for in paragraph 13(l) by March 31, 2025, the Township will submit its Fourth Round Housing Element and Fair Share Plan to the Affordable Housing Dispute Resolution Program as set forth in paragraph 12 below.
- g. Upon the entry of an Order by the Trial Court that confirms that this agreement is fair and reasonable, the Township and FSHC shall withdraw their petition and cross-petition for Certification within 7 days.

11. As noted above, it is agreed for purposes of this Settlement Agreement, that the Township has a Fourth Round (new construction) Obligation of 1,070 units, which the Township proposes will be satisfied as follows, including a 70-unit obligation for non-profit development referenced in paragraph 13(l):

Name of Development	Type of AH Unit	# of AH Units	Bonus	Comments/Status
Third Rd Surplus - TG/RDG	Family Rentals	32		Inclusionary
Menowitz/KHov Cam Cross	Family Sales	8		Inclusionary
East Meadow	Family Sales	6		Inclusionary Off-Site
Sassman	Family Sale	1		Inclusionary
Harbor Assisted Living	Senior Rentals	15	12*	Inclusionary
Jaynar/Wilson Farm – bal.	Senior Rentals	59		Inclusionary
RPM Mixed Use – Ph I	Family Rentals	63	63**	Tax Credit Mixed Income
RPM Family/Supp – Ph II	44FRent, 26SN	70	70**	100%
Days Inn Redevelopment	Family Rentals	30	15***	Inclus./Reconstruction
4126 Route 1 Redev	Family	24		Inclusionary
New Windsor	Family Rentals	3		Inclusionary
Sonesta Redevelopment	Family Rentals	40	20***	Inclus./Reconstruction
Site(s) TBD	Senior Rentals	50		Inclusionary
Site(s) TBD	Family Rentals	19		Inclusionary
REACH New	Family	34	34****	Market-to-Affordable
REACH Comp 29 Fam, 1Sen	Sales	30	30****	Market-to-Affordable
Summerfield (69), Deans Pond Crossing (20) Mon Walk (6)	Family Sales	95		Ext. of Controls
New Senior Site (2 phases)	Senior Rentals	115		100%
New Road, 5 or 24	Family Rental	5		
Dungarvin - agreement	Special Needs	3	3*****	Group Home
New Group Homes	Special Needs	30	21*****	Group Homes
Non-profit program	Family	70		See paragraph 13(l)
		802	268	1,070

* N.J.S.A. 52:27D-311(k)(4) - Max Senior Bonus = 240 x 10% = 24 x 0.5 bonus = 12.

** N.J.S.A. 52:27D-311(k)(8)(b) – 100% Bonus on RPM site (63 + 70) x 1.0 bonus = 63 + 70

*** N.J.S.A. 52:27D-311(k)(6) – Bonus on prior commercial space (30 + 40) x 0.5 bonus = 15 + 20

**** N.J.S.A. 52:27D-311(k) (10) – Bonus on REACH (30 + 34) x 1.0 bonus = 30 + 34. In order to receive this bonus, the Township will have to demonstrate as part of the review of its Housing Element and Fair Share Plan compliance with the statutory requirement that "A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property." If such requirements cannot be demonstrated, the municipality shall demonstrate compliance with alternative bonuses or units as part of its Housing Element and Fair Share Plan.

***** N.J.S.A. 52:27D-311(k) (1) – Bonus on Special Needs units (3 + 30) x 1.0 bonus = 33, capped at 24

12. The parties recognize that some portions of South Brunswick's Fourth Round Fair Share Plan are not definitively determined, including on sites that have been identified and sites listed as TBD, and require additional preparation on behalf of South Brunswick, as more specifically described in paragraph 13 below. The Township agrees that it shall provide updates to FSHC at least once per month until these items are resolved. The parties agree and recognize that these elements of the HEFSP necessarily cannot be approved by the court at a hearing until sites are specifically identified.

The Township agrees that it shall identify all necessary information to demonstrate a realistic opportunity for the remainder of its Fourth Round fair share obligations by March 31, 2025. The parties shall jointly request a fairness and compliance hearing as to the remaining elements of the Fourth Round fair share plan to take place by May 31, 2025. If all elements of the Fourth Round plan are approved by the court at the fairness and compliance hearing, the Township agrees to prepare and present a submission of the final judgment of compliance and repose to the Affordable Housing Dispute Resolution Program (the "Program") by June 30, 2025 which the parties agree will be a submission for informational purposes.

The parties agree that any element of the Township's fair share plan that is not sufficiently documented through adopted ordinances and resolutions to demonstrate a realistic opportunity or crediting documentation for constructed units by March 31, 2025 and/or are rejected at the fairness and compliance hearing to take place by May 31, 2025 shall be presented to the Program pursuant to P.L. 2024, c. 2 in accordance with the timeframes set forth therein, and that in that instance the Township shall submit the orders entered by the court approving mechanisms within the Fourth Round plan with any remaining elements not approved by the court as part of an updated HEFSP to the Program by June 30, 2025. The parties recognize and agree that amendments to this agreement may be necessary to ensure and demonstrate a realistic opportunity on the remaining sites necessary to address the Township's Fourth Round obligation. The parties agree to work in good faith to reach these as potential amended agreements, as necessary, before March 31, 2025.

13. The Township's plan for each individual site utilized to address the Fourth Round, other than the TBD sites, that is not yet built or described above is further described below:
 - a. 4112-4126 Route 1 Redevelopment – Block 84/Lot 4.05, Route 1. A Redevelopment Plan was approved by the Township for the redevelopment of Block 84/Lot 4.05 for a total of 118 multi-family housing units with 20% or 24 affordable family rental units to be provided on-site. The Township shall provide a redeveloper's agreement for this site demonstrating the owner's agreement to the rezoning within sixty (60) days of the court's approval at the fairness hearing.
 - b. Sonesta Hotel/ Avia NJ Deerpark Redevelopment – Block 97/Lot 13.012. There is a fully executed Redeveloper's Agreement, dated April 22, 2024, between the Township and Avia NJ Deerpark for the redevelopment and reconstruction of the former Sonesta hotel into a total of 200 housing units including a 20% set-aside or 40 affordable family rental units.
 - c. Days Inn Redevelopment – The Township proposes to prepare an Area In Need or Redevelopment Study for the possible redevelopment and reconstruction of the former

Days Inn hotel into a total of 150+/- housing units including a 20% set-aside or 30 affordable family rental units. If the site is found to be an Area In Need of Redevelopment, the Township shall provide a draft redevelopment plan and a letter from the owner supporting redevelopment of the site as part of its HEFSP adopted by March 31, 2025. If the site is not found to be an Area in Need of Redevelopment the Township shall otherwise demonstrate how this site creates a realistic opportunity for the construction of 30 affordable housing units by March 31, 2025.

- d. Windsor Site expansion - Family Inclusionary Zoning - Block 85, Lot 17.014; Northumberland Way. Proposed Inclusionary Zoning site for a total of 15 additional multi-family housing units with 20% or 3 affordable family rental units to be provided on-site. The Township shall provide the adopted zoning ordinance within sixty (60) days of the court's approval at the fairness hearing.
- e. New Road – Block 95, Lot 46.051 – the Township proposes to rezone the site for either a small, DCA-funded 100% development of up to 24 total affordable family rental units (the Township shall address the funding and development timetable requirements in N.J.A.C. 5:93-5.5) or for an inclusionary development of 24 total housing units with a 20% set-aside to produce five (5) affordable family rental units.
- f. Extension of Expiring Controls – Summerfield (70 existing affordable family sale units) and Deans Pond Crossing (20 existing affordable family sale units) have controls that are scheduled to expire in the Fourth Round time period (July 1, 2025 to June 30, 2035). The Township will extend these controls in accordance with COAH's extensions of control regulations at N.J.A.C. 5:97-6.14 which are incorporated by reference pursuant to N.J.S.A. 52:27D-311(m).
- g. Future Senior Affordable Housing Site – As part of its Fourth Round plan the Township agrees to create a realistic opportunity by March 31, 2025 for the construction of a 108-unit, up to two-phased 100% Affordable Housing development.
 - i. The parties agree that this development may be, but is not required to be, age-restricted. The development may also include supportive and/or special needs housing units as may be required to receive the maximum score under the Qualified Allocation Plan by the New Jersey Housing and Mortgage Financing Agency.
 - ii. By March 31, 2025, the Township and FSHC shall agree upon an "available," "approvable," "developable," and "suitable" location, as those terms are defined in N.J.A.C. 5:93-1.3, whereon a 100% senior affordable development may be constructed.
 - iii. The parties agree to work in good faith between now and March 31, 2025 to identify an agreeable location and shall amend this agreement, as needed, to include the identified location for the 108-unit, 100 percent affordable housing development. In the event the parties cannot agree upon an "available," "approvable," "developable," and "suitable" site the Township shall present this site to the "Program" as described above pursuant to N.J.S.A. 52:27D-304.1.
 - iv. 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 development. The Township is required to provide a pro forma of both total construction 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 outside application is still pending the municipality shall provide a stable alternative source, such as municipal bonding, in the event the funding request is not approved. As a condition of any judgment in this matter the Township agrees to meet these obligations by adopting a resolution of intent to bond for any shortfalls.
- v. 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 schedule shall provide for construction to begin within no more than two (2) years of the approval of the Township's Fourth Round HEFSP. Once a site is selected the Township shall work with the developer to produce the construction schedule which shall be submitted to FSHC and the court prior to final judgment.
- h. REACH program – The Township will continue the implementation of its successful REACH Program (a market-to-affordable program) for a total of 34 affordable family sale units at a rate of 4 per year over the Fourth Round until the program is completed. The Township will address COAH's market-to-affordable program regulations at N.J.A.C. 5:97-6.9 as incorporated by reference pursuant to N.J.S.A. 52:27D-311(m).
- i. Supportive Housing/Group Home program – During the period between now and July 1, 2030 the Township shall facilitate the construction of 30 more additional supportive housing and/or group home units/bedrooms.
- i. On or before March 31, 2025 the Township shall provide a detailed and specific plan to create a realistic opportunity to construct and/or convert dwellings into at least 30 additional supportive housing units. The plan document shall include an outline of which providers and locations the Township is targeting to construct these units.
 - ii. The Township shall provide annual reports outlining its progress in meeting the goals specified in the plan.
 - iii. The Township shall be required to bond and/or utilize the affordable housing trust fund as needed in order to facilitate the construction of the 30 group home bedrooms.
 - iv. The parties agree that this program will need to be reviewed and approved by the court at a fairness hearing in the Spring of 2025 as described above.
- j. Non-profit Affordable Housing Development Program - During the period between now and July 1, 2035, South Brunswick shall facilitate the construction of 70 new rental/ownership affordable units for families within the Township in 100% scattered site affordable housing developments, subject to the following parameters.
- i. The 70 units shall be constructed via agreements between the Township and non-profit affordable housing developers which may include a variety of roles for the Township in supporting the development.
 - ii. South Brunswick shall not be required to facilitate construction of a single, 70-unit all-affordable development.
 - iii. The parties agree that these seventy family affordable units shall be pro-rated to ten units per year in the first seven years of the

- Fourth Round. The Township agrees that it will annually provide a report to FSHC and the Special Adjudicator that demonstrates how it has created a realistic opportunity for the construction of the previous year's ten units and how it plans to create a realistic opportunity for the construction of the following year's ten units, in accordance with the standards for 100% affordable developments set forth in N.J.A.C. 5:93-5.5. The first report shall be due on July 1, 2026 with the Township providing a report annually on July 1st thereafter through July 1, 2033.
- iv. In furtherance of engaging the non-profit development community, the Township agrees that it shall conduct an annual meeting noticed to non-profit developers of its Mount Laurel subcommittee. The notice for this meeting shall solicit proposals from non-profit developers for how they can contribute to the Township's non-profit affordable housing program.
 - v. The parties agree that it is appropriate to allow the construction of the units at a 10-unit per year pace during the first seven years of the Fourth Round due to the unique circumstances and history of this matter and aspects that have been disputed by the parties throughout of the original trial court ruling about deferring certain obligations over time.
14. The Township agrees to adopt an ordinance requiring a mandatory affordable housing set aside for all new multi-family residential developments of five (5) units or more at a density of at least six (6) units per acre that becomes permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or new redevelopment plan. The set aside of affordable units for all developments will be 20%. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. The form of the Ordinance shall be finalized and the ordinance adopted prior to the Third Round final judgment being issued in this matter through collaboration between FSHC, the Special Adjudicator, and representatives of the Township. Neither this mandatory set-aside ordinance nor this Settlement Agreement gives any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Township to grant such rezoning, variance or other relief.
15. The Township will address its Third Round Obligations in accordance with the following standards as agreed to by the Parties and reflected in the HEFSP:
- a. Third Round bonuses will be applied consistent with former N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round Obligation will be affordable to very-low-income and low-income households with the remainder being affordable to moderate-income households.
 - c. At least 25 percent of the Third Round Obligation will 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 Obligation in total must be available to families.

- e. The HEFSP will be consistent with the current Third Round age-restricted cap of 25% and will not include a claimed credit toward the Township's current fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet the cumulative Prior Round and Third Round fair share obligation. Any such "excess" age-restricted affordable housing units may be credited against any future obligation.
 - f. Thirteen percent (13%) of all affordable units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, shall be very-low-income units for households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"), with half of the very low income units being available to families.
 - g. 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.
16. The Township will address its Fourth Round Obligation in accordance with the standards set forth in P.L. 2024, c. 2, including but not limited to with respect to:
- a. Fourth Round Bonuses shall be consistent with P.L. 2024, c. 2 such that rental bonuses are no longer permitted and only those bonuses listed in N.J.S.A. 52:27D-311(k)(1) through (10) may be applied toward a Fourth Round obligation. The bonus cap remains at 25 percent of the Fourth Round obligation.
 - b. The Township agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units which is applied to the Fourth Round obligation exclusive of bonuses or to the total of Fourth Round affordable housing units, i.e. a maximum of 240 units.
 - c. Family units – pursuant to N.J.S.A. 52:27D-311(l), the municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, i.e. a minimum of 401 units, created to address its Fourth Round affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).
 - d. Rental and family rental units - pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the affordable housing units, exclusive of any bonus credits, i.e. a minimum of 201 units, shall be addressed through rental housing, including at least half as available to families with children.
 - e. Very Low-Income Units – pursuant to N.J.S.A. 52:27D-329.1, thirteen percent (13%) of all affordable units referenced in this Agreement shall be very-low-income units for households earning thirty percent (30%) or less of the median income, with half of the very low income units being available to families.
 - f. 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. In all developments that produce affordable housing, the Township agrees that unless varied by a prior court order of the trial court or the SHO, the below terms shall apply. In the event that any of the following terms are inconsistent with a prior order of the trial court or SHO for an approved development, the terms of that prior order of the trial court or SHO shall control:
- 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 median income pursuant to the Fair Housing Act, and controls on affordability. Affordability controls shall remain on affordable units unless and until the Township, in its sole discretion, takes action to extend or release the unit from such controls after the applicable deed restriction time period. If the Township acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b). All of the affordable units approved prior to the passage of P.L. 2024, c. 2 shall be subject to the requirements of UHAC as modified by this paragraph it was written at the time of the approval. All affordable units approved after the passage of P.L. 2024, c. 2 and not part of a site previously approved as part of the Township's Judgment of Compliance and Repose of July 6, 2021, and that are subject to the revisions to UHAC required pursuant to N.J.S.A. 52:27D-313.3(b) shall be subject to affordability controls of at least forty (40) years for rental units and at least thirty (30) years for for-sale units from the date of initial occupancy and affordable deed restrictions and otherwise governed by the revised form of UHAC.
 - b. The parties recognize that the Housing and Mortgage Financing Agency ("HMFA") is required to adopt updated UHAC regulations before the end of the year. The Township agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC per the timing required per N.J.S.A. 52:27D-313.3(b) and revise those ordinances accordingly as part of its Fourth Round Housing Element and Fair Share Plan and implementing ordinances.
 - c. In inclusionary developments, to the extent practical and cognizant of differing unit type and tenure, the affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, 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 in inclusionary developments 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 this agreement, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

18. 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):
 - a. Fair Share Housing Center, Inc. (510 Park Boulevard, Cherry Hill, New Jersey 08002); the New Jersey State Conference of the NAACP, the Latino Action Network, the New Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP, the Central Jersey Housing Resource Center, and Supportive Housing Association and other appropriate non-profits and Civil Rights organizations that request to be notified of available units, and shall, as part of its regional affirmative marketing strategies during its implementation of any affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units, along with copies of application forms. The Township also agrees to require any other entities, including developers, persons or companies retained to do affirmative marketing, to comply with these notice requirements.
 - b. 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 and shall ensure all affordable units are posted on the New Jersey Housing Resource Center website in accordance with applicable law.
19. Income limits for all units that are part of the HEFSP and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 will be consistent with the table of 2024 Affordable Housing Regional Income Limits by Household Size prepared by the Affordable Housing Professionals of New Jersey, dated April 12, 2024, a copy of which is attached hereto as **Exhibit I**, as may be updated or superseded by similar calculations consistent with former COAH regulations and UHAC.
20. The previously approved Township Third Round Spending Plan which was adopted in accordance with the prior rulings of the trial court in this matter is deemed to be appropriate, and FSHC agrees to cooperate with and support South Brunswick's request for approval of any needed Spending Plan amendment by the Court consistent with those prior rulings, including an express judicial determination that expenditures of funds contemplated under the Spending Plan constitute a "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and 329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of an amended final judgment in this matter that includes approval of an Amended Third Round Spending Plan 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. Any future trust fund reporting shall address P.L. 2024, c. 2. The Department of Community Affairs is now required to review and update the regulations regarding affordable housing trust funds and spending plans. Those updated regulations are required to be adopted by December 2024. The Township agrees that it shall prepare a Fourth Round Spending Plan in accordance with those regulations and present that Fourth Round Spending Plan along with its Fourth Round HEFSP on March 31, 2025 pursuant to the process set forth in paragraph 12.
21. On February 15, 2025, and every anniversary thereafter, the Township shall address the unit monitoring and trust fund reporting requirements of N.J.S.A. 52:27D-329.2(a)(3), N.J.S.A. 52:27D-329.4(b)(2), and N.J.S.A. 40:55D-8.4(c)(4).

22. For the midpoint realistic opportunity review, the Township shall address the requirements of N.J.S.A. 52:27D-313.
23. The parties agree that due to the unique circumstances of this case and litigation over obligations across multiple affordable housing rounds, upon the trial court entering an order approving this Agreement following a duly noticed Fairness Hearing, any binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch that, if applied, would result in a lower or higher affordable housing obligation for the Township for the Third or Fourth Round shall be inapplicable and the Township shall neither have a reduced or increased affordable housing obligation for the Third and Fourth Rounds. Rather the terms of this Agreement shall continue to control and no subsequently enacted, binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch shall provide a basis for seeking leave to amend any provision of this Agreement or to amend an order or judgment pursuant to R. 4:50-1. Regardless of any such legal determination, South Brunswick shall be obligated to implement the Third and Fourth Round HEFSPs prepared, adopted and endorsed as a result of this Agreement, including adopting and/or leaving in place any site-specific zoning adopted or relied upon in connection with the HEFSP approved pursuant to this Agreement; and otherwise fulfilling fully the fair share obligations as established herein.
24. This Agreement must be approved by the Court following fairness hearings for the Third Round and Fourth Round as described above and as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township will present its planner as a witness at these hearings. FSHC agrees to support this Agreement at the fairness hearings. If the Third Round plan and/or the fair share numbers set forth in this Agreement is rejected by the Court at the initial fairness hearing the agreement shall be null and void; if any portion of the Fourth Round Housing Element and Fair Share Plan is rejected by the Court at a fairness hearing, the procedures set forth in paragraph 12 shall apply. In the event the Court approves this Agreement, subject to the provision of Paragraph 10(d) regarding continued finality and non-appealability of the builders remedy awards and site plan approval orders affirmed by the Appellate Division, the parties contemplate the municipality will receive a comprehensive adjudication of the Township's fair share obligations as set forth above and a final judgment of compliance and repose as to its Third Round Housing Element and Fair Share Plan that will supersede the prior Third Round judgment of compliance and repose entered by the trial court on July 6, 2021, as well as a Fourth Round final judgment of compliance and repose pursuant to the process specified in paragraph 12 of this Agreement.
25. As part of the earlier Third Round judgment of repose, the Township of South Brunswick was required to pay attorney's fees and costs of FSHC in the amount of \$602,259, which already has been fully paid. FSHC asserts the Township already waived any right to further contest, and the Township agrees as part of this agreement to waive any claim it may have to further contest. In light of the additional time and resources expended since then by FSHC, including to review compliance documents, negotiate and enter into this agreement, and to conduct a fairness and an additional compliance hearing, the Township agrees to pay FSHC's additional attorney's fees and costs of an additional \$75,000 to be used at the discretion of FSHC for the provision of affordable housing opportunities/assistance within sixty (60) days after entry by the Court of an Order approving this Agreement pursuant to a duly-noticed fairness hearing and such Order becoming final and unappealable as part of

the entry of a Third Round final judgment. The Parties agree that neither shall request or otherwise make a claim against the other for payment or reimbursement of any further legal fees and/or costs incurred in connection with the within Declaratory Judgment Action and/or any related actions or proceedings, other than a motion to enforce litigant's rights or separate action pursuant to paragraph 27 of this Agreement.

26. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, provided, however, that each Party shall be responsible for its own legal fees for any such proceedings and shall have the sole discretion as to litigation strategy and the extent of resources devoted thereto. The Parties agree to continue to implement the terms of this Agreement if the Agreement is approved before the trial court, unless and until an appeal of the trial court's approval is successful, the Parties each reserve their right to return to the *status quo ante*.
27. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Middlesex County.
28. 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.
29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
31. 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.
32. 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.
33. 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.
34. 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.

35. No member, official or employee of the Township has or will have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
36. 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.
37. 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 carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) day notice as provided herein:

TO FSHC: Adam M. Gordon, Esquire
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: Barbara Nyitrai, Township Clerk
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190
Phone: (732) 329-4000 x 7352
Telecopier: (732) 329-9026
Email: bnyitrai@sbtnj.net

WITH A COPY TO THE TOWNSHIP ATTORNEY: Francis M. Womack, Esq.
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190
Phone: (732) 329-4000 x 7311
Telecopier: (732) 329-9026
Email: mwomack@sbtnj.net

September 12, 2024

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

Sincerely,

Adam M. Gordon, Esq.
Executive Director of Fair Share Housing Center

Witness: _____

Dated: _____

On behalf of the Township of South Brunswick, with the authorization of the governing body:

Witness/ Attest:

TOWNSHIP OF SOUTH BRUNSWICK

Norma Carlin

Charles Carley
Charles Carley, Mayor

Dated: 9/18/2024

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

Sincerely,



Adam M. Gordon, Esq.
Executive Director of Fair Share Housing Center

Witness:  _____

Dated: 9/12/24 _____

On behalf of the Township of South Brunswick, with the authorization of the governing body:

Witness/ Attest:

TOWNSHIP OF SOUTH BRUNSWICK

Dated: _____

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - April 12, 2024
2024 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		Max Increase										Regional Asset Limit****	
		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person		Rents**
Region 1	Median	\$84,288	\$90,309	\$96,329	\$108,371	\$120,412	\$125,228	\$130,045	\$139,678	\$149,311	\$158,944		
	Moderate	\$67,431	\$72,247	\$77,064	\$86,697	\$96,329	\$100,183	\$104,036	\$111,742	\$119,449	\$127,155	5.2%	0.00%
	Low	\$42,144	\$45,154	\$48,165	\$54,185	\$60,206	\$62,614	\$65,022	\$69,839	\$74,655	\$79,472		
	Very Low	\$25,286	\$27,093	\$28,899	\$32,511	\$36,124	\$37,568	\$39,013	\$41,903	\$44,793	\$47,683		
Region 2	Median	\$90,591	\$97,062	\$103,533	\$116,475	\$129,416	\$134,593	\$139,769	\$150,123	\$160,476	\$170,829		
	Moderate	\$72,473	\$77,650	\$82,826	\$93,180	\$103,533	\$107,674	\$111,816	\$120,098	\$128,381	\$136,663	5.2%	4.51%
	Low	\$45,296	\$48,531	\$51,766	\$58,237	\$64,708	\$67,296	\$69,885	\$75,061	\$80,238	\$85,415		
	Very Low	\$27,177	\$29,119	\$31,060	\$34,942	\$38,825	\$40,378	\$41,931	\$45,037	\$48,143	\$51,249		
Region 3	Median	\$102,340	\$109,650	\$116,960	\$131,580	\$146,200	\$152,048	\$157,896	\$169,592	\$181,288	\$192,984		
	Moderate	\$81,872	\$87,720	\$93,568	\$105,264	\$116,960	\$121,638	\$126,317	\$135,674	\$145,030	\$154,387	5.2%	2.31%
	Low	\$51,170	\$54,825	\$58,480	\$65,790	\$73,100	\$76,024	\$78,948	\$84,796	\$90,644	\$96,492		
	Very Low	\$30,702	\$32,895	\$35,088	\$39,474	\$43,860	\$45,614	\$47,369	\$50,878	\$54,386	\$57,895		
Region 4	Median	\$91,038	\$97,540	\$104,043	\$117,048	\$130,054	\$135,256	\$140,458	\$150,862	\$161,267	\$171,671		
	Moderate	\$72,830	\$78,032	\$83,234	\$93,639	\$104,043	\$108,205	\$112,367	\$120,690	\$129,013	\$137,337	5.2%	0.00%
	Low	\$45,519	\$48,770	\$52,022	\$58,524	\$65,027	\$67,628	\$70,229	\$75,431	\$80,633	\$85,836		
	Very Low	\$27,311	\$29,262	\$31,213	\$35,115	\$39,016	\$40,577	\$42,137	\$45,259	\$48,380	\$51,501		
Region 5	Median	\$80,290	\$86,025	\$91,760	\$103,230	\$114,700	\$119,288	\$123,876	\$133,052	\$142,228	\$151,404		
	Moderate	\$64,232	\$68,820	\$73,408	\$82,584	\$91,760	\$95,430	\$99,101	\$106,442	\$113,782	\$121,123	5.2%	0.26%
	Low	\$40,145	\$43,013	\$45,880	\$51,615	\$57,350	\$59,644	\$61,938	\$66,526	\$71,114	\$75,702		
	Very Low	\$24,087	\$25,808	\$27,528	\$30,969	\$34,410	\$35,786	\$37,163	\$39,916	\$42,668	\$45,421		
Region 6	Median	\$68,852	\$73,770	\$78,688	\$88,524	\$98,360	\$102,294	\$106,228	\$114,097	\$121,966	\$129,835		
	Moderate	\$55,081	\$59,016	\$62,950	\$70,819	\$78,688	\$81,835	\$84,983	\$91,278	\$97,573	\$103,868	5.2%	2.61%
	Low	\$34,426	\$36,885	\$39,344	\$44,262	\$49,180	\$51,147	\$53,114	\$57,049	\$60,983	\$64,917		
	Very Low	\$20,655	\$22,131	\$23,606	\$26,557	\$29,508	\$30,688	\$31,868	\$34,229	\$36,590	\$38,950		

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents between 2015 through 2023 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2024 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.