

## RESOLUTION 184-16

### **RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT TO SETTLE IN RE AFFIRMATION OF THE BOROUGH OF CLAYTON'S SUBSTANTIVE CERTIFICATION GRANTED ON OCTOBER 14, 2009, DOCKET NO.: L-936-15**

WHEREAS, a Housing Element and Fair Share Plan was prepared and adopted by the Planning Board in 2008 after notice pursuant to applicable law, which plan received substantive certification by the New Jersey Council on Affordable Housing ("COAH") on October 14, 2009 ("Substantive Certification"); and

WHEREAS, the New Jersey Supreme Court, In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("2015 Case"), declared that the Substantive Certification granted to the Borough of Clayton, and the substantive certifications granted to other municipalities, by COAH was no longer valid, and established a transitional process for municipalities, like the Borough of Clayton, that received substantive certification from COAH to file a declaratory judgment action with the trial courts seeking to reaffirm their substantive certification; and

WHEREAS, on July 8, 2015, the Borough filed a Declaratory Judgment action, captioned In Re Affirmation of the Borough of Clayton's Substantive Certification Granted on October 14, 2009, Docket No.: L-936-15, in accordance with 2015 Case, upon notice to all interested parties ("Litigation"); and

WHEREAS, an amended Housing Element and Fair Share Plan has been prepared in response to the 2015 Case, which was adopted by the Borough of Clayton Planning Board ("Planning Board") on December 21, 2015 after notice and hearing pursuant to applicable law and endorsed by the Council of the Borough of Clayton ("Council"); and

WHEREAS, on January 6, 2016, by way of a Motion for Substantive Certification, the Borough filed a revised HEFSP adopted by the Borough of Clayton's Planning Board on December 21, 2015 and endorsed by the Borough Council of the Borough of Clayton on December 30, 2015 ("2015 HEFSP"); and

WHEREAS, Fair Share Housing Center, as an interested party, has reviewed the Borough's 2015 HEFSP and has presented the Borough with objections thereto; and

WHEREAS, no other person or entity has appeared in the Litigation as an interested party and no other person or entity has presented any objections; and

WHEREAS, in order to amicably resolve the Litigation in a way that all parties to the Litigation agree complies with the Mount Laurel Doctrine, the Borough of Clayton and Fair Share Housing Center have negotiated a Settlement Agreement attached hereto as Exhibit A ("Settlement Agreement"); and

WHEREAS, the Council believes it is in the best interests of the citizens of the Borough of Clayton to enter into this Settlement Agreement in order to resolve the issues of the Borough's affordable housing obligations for the Third Round, to obtain absolute immunity from builder's remedy and/or constitutional compliance lawsuits against the Borough until July 8, 2025, and to end the expense of the Litigation.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Clayton, County of Gloucester, and State of New Jersey:

1. That the Borough Council does hereby approve the Settlement Agreement attached hereto as Exhibit A, and authorizes its attorneys, Maley & Associates, P.C., to execute the same on behalf of the Borough of Clayton.
2. The Borough Council further authorizes its attorneys, Maley & Associates, P.C., to take all actions necessary to obtain Court approval of the Settlement Agreement at a Fairness Hearing.
3. This Resolution shall take effect immediately.

**BOROUGH OF CLAYTON**

  
\_\_\_\_\_  
THOMAS BIANCO, Mayor

Attest:

  
\_\_\_\_\_  
CHRISTINE NEWCOMB, Borough Clerk

**M. James Maley, Jr.**  
**Attorney License No. 019561982**

**Law Offices**  
**MALEY & ASSOCIATES**  
**A Professional Corporation**  
**931 Haddon Avenue**  
**Collingswood, New Jersey 08108**  
**856-854-1515**  
**Attorneys for Plaintiff(s),**

IN RE AFFIRMATION OF THE  
BOROUGH OF CLAYTON'S  
SUBSTANTIVE CERTIFICATION  
GRANTED ON OCTOBER 14, 2009

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY  
DOCKET NO.: L-936-15

CIVIL ACTION  
(MOUNT LAUREL II)

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (the "Agreement"), dated as of \_\_\_\_\_, 2016 (the "Effective Date"), is entered into by and between the Petitioner **BOROUGH OF CLAYTON** (the "Borough"), a body corporate and politic of the State of New Jersey with offices at 25 N. Delsea Drive, Clayton, New Jersey 08312, and interested party, **FAIR SHARE HOUSING CENTER**, a non-profit organization, with an address of 510 Park Boulevard, Cherry Hill, New Jersey, 08002 ("FSHC") (singularly, a "Party," collectively referred to as "the Parties").

**RECITALS**

**WHEREAS**, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("Mount Laurel IV"), citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel, 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808 (1975) ("Mount Laurel I"), and that this constitutional obligation requires that towns must provide "a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing," Ibid., citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel, 92 N.J. 158, 205 (1983) ("Mount Laurel II") (Mount Laurel I and Mount Laurel II are collectively referred to herein as the "Mount Laurel Doctrine"); and

**WHEREAS**, in 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act N.J.S.A. 52:2D-301 et seq. ("FHA") which transformed the Mount Laurel doctrine into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it; and

**WHEREAS**, COAH proceeded to adopt regulations for first round obligations applicable from 1987 to 1993 ("First Round Obligations"), second round obligations that created a cumulative obligation from 1987 to 1999 ("Second Round Obligations"), and third round obligations that created a cumulative obligation from 1999 to 2018 ("Third Round Obligations"); and

**WHEREAS**, although the Borough of Clayton did not receive substantive certification for its First Round Obligations, the Borough thereafter engaged in the administrative process before COAH under the FHA to obtain approval of its HEFSP as in compliance with its Second Round Obligations under the Mount Laurel Doctrine, and which substantive certification for the Borough's Second Round obligations was granted by COAH on July 1, 2001 ("2001 COAH Certification"); and

**WHEREAS**, on December 31, 2008, the Borough petitioned COAH for substantive certification for its HEFSP for the Borough's Third Round Obligations to address the Borough's Mount Laurel Obligations for 1987 through 2018; and

**WHEREAS**, on October 14, 2009, COAH adopted the Resolution Granting Third Round Substantive Certification #39-09 granting the Borough substantive certification for its Third Round Obligations ("2009 COAH Certification"); and

**WHEREAS**, as a result of the 2009 COAH Certification, the Borough was a municipality that qualified as a certified municipality pursuant to the decision in Mount Laurel IV; and

**WHEREAS**, the New Jersey Supreme Court, in Mount Laurel IV determined that "the administrative forum [before COAH] is not capable of functioning as intended by the [Fair Housing Act] due to the lack of lawful Third Round Rules assigning constitutional obligations to municipalities," and, consequently "the Courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations;" and

**WHEREAS**, Mount Laurel IV accordingly provided for a judicial mechanism for municipalities to seek a Declaratory Judgment that they have complied with the Mount Laurel Doctrine and are entitled to immunity from exclusionary zoning lawsuits; and

**WHEREAS**, on July 8, 2015, the Borough filed the above captioned Declaratory Judgment action in accordance with Mount Laurel IV, upon notice to all interested parties set forth in the service list attached hereto as Exhibit A; and

**WHEREAS**, on January 6, 2016, by way of a Motion for Substantive Certification, the Borough filed a revised HEFSP adopted by the Borough of Clayton's Planning Board on December 21, 2015 and endorsed by the Borough Council of the Borough of Clayton on December 30, 2015 ("2015 HEFSP"); and

**WHEREAS**, FSHC, as an interested party, has reviewed the Borough's 2015 HEFSP and has presented the Borough with objections thereto; and

**WHEREAS**, no other person or entity has appeared as an interested party and no other person or entity has presented any objections;

**WHEREAS**, 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 low and moderate-income households; and

**WHEREAS**, the Borough and FSHC have agreed to settle this litigation by entering into this Agreement and requesting that the Court find that this Agreement, and the Borough's 2015 HEFSP, as modified by this Agreement, are fair to the interests of low and moderate-income persons and entitle the Borough to absolute protection from Mount Laurel litigation for a period of ten years under an Order entered by the Court approving this Agreement; and

**WHEREAS**, all Parties acknowledge that this Agreement must be reviewed and formally approved by the Borough Council before it can be binding upon the Borough; and

**WHEREAS** all Parties acknowledge that this Agreement must be reviewed by the Court in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div.1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), and that, in order to approve the settlement, the Court must find that it adequately protects the interests of low and moderate-income persons in obtaining affordable housing; and

**WHEREAS**, the Borough has prepared a fair share plan to address its Present, Prior Round and Third Round obligations that provide a realistic opportunity for the creation of housing affordable to low and moderate-income households, including families, people with special needs, very-low-income households including very-low-income families, and seniors; and

**WHEREAS**, because at the time of this Agreement no definitive methodology has been established under the standards set forth by the Supreme Court in Mount Laurel IV to determine municipal affordable housing obligations, it is appropriate within the context of this litigation for the Parties to arrive at a settlement of those obligations using a mutually agreed upon process for determining the Borough's affordable housing obligations rather than resorting to litigation to resolve those obligations; and

**WHEREAS**, pursuant to the Supreme Court's directive in Mount Laurel IV, this Court is obligated to determine this Declaratory Judgment action based upon the merits of the record developed in this individual action before the Court, Mount Laurel IV, 221 N.J. at 29, and the methodology agreed to by the Parties in determining the Borough's affordable housing obligations in this matter is applicable solely to this case based upon the record developed herein; and

**WHEREAS**, in order to amicably resolve this matter in a way that all Parties agree complies with the Mount Laurel Doctrine, the Parties have agreed to the terms set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and for the benefit of the Parties hereto and general public, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein and made a part hereof.
2. **Purpose of Agreement.** The purpose and intent of this Agreement is to settle the above captioned Declaratory Judgment action on terms that are fair to low and moderate-income households in accordance with the requirements of Mount Laurel IV and the Mount Laurel Doctrine through the provision of a realistic opportunity for the creation of affordable housing on the terms set forth herein. It shall govern the Borough's Third Round Obligations and its compliance therewith.
3. **Establishment of Fair Share Obligation.** The Parties agree that the Borough's affordable housing obligation is comprised of: (a) a Present Need Obligation; (b) a Prior Round Obligation (for the period 1987-1999); and (3) a Prospective Need Obligation (for the period 1999-2025, which includes any "Gap Period" obligation for the period 1999-2015). In accordance with Morris County Fair Housing Council, supra, 197 N.J. Super. at 364, the Parties agree upon the following as to the Borough's affordable housing obligation:
  - a. The Borough's Present Need Obligation, as agreed upon by the Parties based upon implementing the directives of Mount Laurel IV using 2010 Census data, is 44 housing units; and
  - b. The Borough's Prior Round Obligation, as originally determined by COAH in 1994 for the period 1987-1999 is 94 housing units; and
  - c. The Borough's Prospective Need Obligation is the subject of dispute between the Parties in the above captioned Declaratory Judgment Action where, based upon expert opinion, the Borough contends the obligation is 101 housing units and FSHC contends the obligation is 249 units. Because the Parties acknowledge there is no mathematical certainty in the methodology for the calculation of affordable housing obligations, and since the Borough had previously received substantive

certification from COAH, the Parties agree to each compromise their position, to obtain a resolution of the Declaratory Judgment Action in accordance with the directives of Mount Laurel IV, and agree that the Borough's Prospective Need Obligation is 162 housing units.

**4. Change in Law.**

- a. The parties agree that: (1) if a court of competent jurisdiction in Gloucester County; (2) the Superior Court Appellate Division; or (3) the New Jersey Supreme Court; or (4) an administrative agency responsible for implementing the Fair Housing Act, calculates an obligation for the Borough for the period 1999-2025 that lower by more than twenty (20%) percent of the Borough's Third Round prospective need obligation of 162, as established in this Agreement, and if that calculation is memorialized in an unappealable final judgment or a rule or regulation adopted in accordance with the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1, et seq. the Borough may seek to amend the judgment in this matter to reflect the new Third Round prospective need obligation.
  - b. In the event that there is not an adjudication of municipal fair share obligations by (1) a court of competent jurisdiction in Gloucester County; (2) the Superior Court Appellate Division; or (3) the New Jersey Supreme Court; or (4) an administrative agency responsible for implementing the Fair Housing Act prior to the midpoint realistic opportunity review on July 1, 2020 pursuant to N.J.S.A. 52:27D-313, the Borough may apply to the court to amend the judgment in this matter establish a new Third Round prospective need obligation. In any resulting proceeding, any party shall have the right to take whatever position it wishes with respect to the manner in which the Third Round prospective need obligation should be calculated for the Borough in accordance with then-applicable law. Paragraphs 4(a) and 4(b) are the sole basis on which the municipality may seek to amend this judgment in accordance with 4:50-
  - d. Notwithstanding any reduction which may be obtained pursuant to the foregoing subparagraphs, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zone changes made or continued in connection with the plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of 100% affordable developments referenced herein; maintaining any mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations established herein. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.
- 5. Fair Share Compliance.** The Borough's 2015 HEFSP which addresses the Borough's affordable housing obligations is attached hereto as Exhibit B. The parties have agreed that the 2015 HEFSP will need to be revised as follows (the "Revised HEFSP"):

- a. The compliance chart found on page 20-21 of the 2015 HEFSP will be replaced with the chart attached hereto as Exhibit C; and
- b. The last paragraph of Section 2.0 of the Fair Share Plan portion of the HESFP will be deleted in its entirety and replaced with the following:

During judicial review of this Plan for Constitutional compliance, the Borough's adjusted calculation was challenged by FSHC. Because at this time no definitive methodology has been established by COAH, nor under the standards set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) to determine the Borough of Clayton's municipal affordable housing obligations, in order to promote voluntary compliance and to achieve an prompt resolution of this issue, it is appropriate to revise the Borough's affordable housing obligation calculation to a calculation that the all parties have agreed is appropriate and the Court has approved pursuant to a Fairness Hearing, upon notice to interested parties. As a result, the Borough's Third Round affordable housing obligations shall be:

<b>Present Need</b>	<b>Prior Round Obligation</b>	<b>Prospective Need</b>
44	94	162

- c. All references to "unmet prior round need" and "prior round unmet need" will be deleted and replaced with "prior round need" and references to "unmet prior round obligation" will be deleted and replaced with "prior round obligation"; and
- d. Sections 4.0 to 5.2 of the Fair Share Plan portion of the HEFSP shall be revised to be consistent with the chart attached hereto as Exhibit C.
- e. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units that have been constructed and/or deed restricted as of 2008 to be very low income units, with half of the very low income units being available to families. The parties specifically acknowledge that the 13% requirement set forth in this subparagraph does not apply to the units provided as part of the ARC of Gloucester County (Post-1986 credits) project, the Emerson Green project, the Delsea View project or the Clayton Mews Project.
- f. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93 and the chart set forth in Exhibit C.
- g. At least 50 percent of the units in each of the Third Round Prospective Need sites, with the exception of units that have been constructed as of the date of this agreement, shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.



- h. The Borough agrees that for determination of compliance with its Third Round obligations only, it shall comply with an age-restricted cap of 25% and not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim a credit toward its total Third Round fair share obligations for age-restricted units in excess of 25% of its total Third Round fair share obligation.
- i. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan pursuant to N.J.A.C. 5:80-26.15(f)(5) Fair Share Housing Center, Gloucester County NAACP, Latino Action Network, and New Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to amend its affordable housing ordinances to require developers and/or persons or companies retained to do affirmative marketing, to comply with the Borough's affirmative marketing plan.
- j. All units be governed by controls on affordability, bedroom distribution, and affirmatively marketing requirements contained in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, and all other applicable law. Within forty-five (45) days from the entry of the Judgment of Compliance and Repose discussed in Section 6.e below, the Borough shall adopt appropriate implementing ordinances to ensure conformance with this subsection.
- k. The Borough has prepared a spending plan that is attached hereto as Exhibit E ("Spending Plan"). The parties to this agreement agree that this Spending Plan is valid and should be approved by the Court. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, which shall include an accounting of all housing trust fund activity, indicating the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- l. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such posting provided to Fair Share Housing Center.
- m. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

- (i) For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
- (ii) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, which is \_\_\_\_\_, 2019, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

6. **Process for Agreement to Become Final; Municipal Approval, Notice and Fairness Hearing.** All Parties agree that the validity of this Settlement Agreement is contingent upon the occurrence of all of the following:

- a. **Borough Council Approval.** Either prior to or following execution of this Agreement by the attorneys for the Parties, the Settlement Agreement will be presented to the Borough Council of the Borough of Clayton for its review and approval at the next scheduled Council meeting. The validity of this Settlement Agreement is specifically conditioned upon its approval by the Borough Council. If the Borough Council does not approve the Agreement, this Agreement is null and void and all Parties shall continue with the litigation and shall not be prejudiced in any way by the terms of this Agreement.
- b. **FSHC Intervention.** A condition of this agreement is that FSHC shall be granted as part of any final judgment party status in this matter and shall be deemed to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading.
- c. **Fairness Hearing.** Following Borough Council approval, the Borough shall request that the Court conduct a "Fairness and Compliance Hearing" (the "Fairness Hearing") to be scheduled on Friday, December 1, 2016 or as soon thereafter as the Court deems appropriate, to determine whether the terms of the

within Agreement are fair and reasonable to low income and moderate income persons and whether the Revised HEFSP satisfies the Borough's obligation to provide a realistic opportunity for the creation of affordable housing pursuant to its constitutional responsibilities under the Mount Laurel Doctrine.

- d. **Notice.** The Borough shall provide notice of the Fairness Hearing in the form attached hereto as Exhibit D, in accordance with the procedures recognized by the Appellate Division in Morris County Fair Housing Council, supra, 197 N.J. Super. at 364, at least thirty days prior to the Fairness Hearing. Specifically, the Borough shall be required to:
    - (i) Publish the notice in the Gloucester County Times, also known as the South Jersey Times, and the Courier-Post, both of which are daily newspapers circulated in Gloucester County and neighboring counties, at least thirty (30) days prior to the date of the Fairness Hearing; and
    - (ii) Publish the notice in the Sentinel of Gloucester County, which is a weekly newspaper circulated in Gloucester County, at least thirty (30) days prior to the date of the Fairness Hearing; and
    - (iii) Provide written notice to all of the interested parties on the service list attached hereto as Exhibit A.
  - e. **Approval of the Settlement Agreement.** At the Fairness Hearing, the Court shall consider the Revised HEFSP and the within Agreement. If the Court, upon review of the Revised HEFSP and the within Agreement, finds that it is fair and adequately protects the interests of low and moderate-income persons in obtaining affordable housing, the Parties agree that the Borough may request that the Court enter a Judgment of Compliance and a Judgment of Repose in accordance with Mount Laurel II and Mount Laurel IV, granting, among other things, to the Borough absolute immunity from builder's remedy and/or constitutional compliance lawsuits until July 8, 2025, subject to the Borough Planning Board's adoption of the Revised HEFSP.
  - f. **Planning Board Adoption of the Revised HEFSP.** Following entry of the Judgment of Compliance and Judgment of Repose, the Planning Board shall have forty-five (45) days to adopt the Revised HEFSP. This shall be an essential term of this Settlement Agreement.
7. **Temporary Immunity Extended.** Pursuant to the Order dated March 30, 2016, the Borough currently has temporary immunity from builder's remedy and constitutional compliance lawsuits until May 31, 2016. The Parties agree that in order to allow sufficient time to review and approve this Agreement, that the Borough shall request, and FSHC shall not oppose an extension of the temporary immunity until December 31, 2016 to allow sufficient time to approve this Agreement and adopt the Revised HEFSP.

8. **Effective Date of Agreement and Duty to Defend.** The terms set forth in this Agreement shall become effective upon the Court's entry of the Judgment of Compliance and Judgment of Repose. If an appeal is filed of the Court's approval of this Agreement, the Parties agree to defend this 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 Agreement unless and until an appeal of the Trial Court's approval is reverse, at which point the Parties reserve their right to rescind any action taken to implement this Agreement. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
9. **Successors Bound.** The provisions of this Agreement and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.
10. **Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.
11. **Enforcement.** This Agreement 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.
12. **Severability.** 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.
13. **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
14. **Counterparts.** 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.
15. **Voluntary Agreement.** 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 possesses 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.

16. **Preparation.** 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 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.
17. **Exhibits.** Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement.
18. **Entire Agreement.** 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.
19. **Conflict of Interest.** No member, official or employee of the Borough shall 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.
20. **Release of Claims.** Except as set forth in this Agreement, the Parties hereby mutually waive, discharge, forgive, and release each other and their representative employees, agents, officers, directors, attorneys, subsidiaries, affiliates, insurers and underwriters, and successors in interest, their past, present and future assigns, from any and all past, present or future claims, charges, penalties, obligations, rights, actions, causes of action, suits, debts, payments, expenses, compensation, covenants, contracts, controversies, agreements, promises, damages, costs, attorneys' fees, interest, warranties, representations and demands or other relief which were or could have been the subject of this litigation, whatsoever, whether known or unknown, suspected or unsuspected, at law or in equity, the Parties ever or now have against each other or which may hereafter accrue or otherwise be acquired regarding the Borough's Mount Laurel Obligations up and through July 8, 2025, including, but not limited to any state or federal civil rights actions. FSHC agrees, on behalf of itself and its successors, assigns and affiliated entities, agrees not to file, intervene in, or otherwise participate in any builder's remedy and/or constitutional compliance lawsuits, or any other Mount Laurel litigation brought against the Borough on or before July 8, 2025, except to defend and/or enforce this Agreement in accordance with Paragraph 8 above.
21. **Disputes.** The Parties agree that should disputes arise in the implementation of this Agreement, each will use their best efforts to resolve the dispute amicably without resort to the Courts. In the event that a dispute cannot be resolved amicably, any Party may apply to the Superior Court, Gloucester County, New Jersey, for interpretative, declaratory and/or other relief.

22. **Attorneys' Fees.** Each Party agrees that it shall bear its own attorneys' fees and costs and shall not seek to recover such attorneys' fees or costs from the other Party.

23. **Notices.** All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by 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 THE BOROUGH:

Sue Miller  
Borough Administrator  
125 N. Delsea Drive  
Clayton, New Jersey 08312  
[smiller@claytonnj.com](mailto:smiller@claytonnj.com)

WITH A COPY TO:

M. James Maley, Jr.  
MALEY & ASSOCIATES, P.C.  
931 Haddon Avenue  
Collingswood, New Jersey 08108  
[jmaley@maleyassociates.com](mailto:jmaley@maleyassociates.com)

TO FSHC:

Adam Gordon, Esquire  
510 Park Blvd.  
Cherry Hill, NJ 08002  
[adamgordon@fairsharehousing.org](mailto:adamgordon@fairsharehousing.org)

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 the successor.

**IN WITNESS WHEREOF**, the Petitioner and Intervenor hereto have caused this Agreement to be properly executed and attested to this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

MALEY & ASSOCIATES, P.C.

INTERESTED PARTY

On behalf of Petitioner,

The Borough of Clayton

Fair Share Housing Center

By: \_\_\_\_\_  
Erin E. Simone

By: \_\_\_\_\_  
Kevin D. Walsh, Esq. Executive Director

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

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

**EXHIBIT A**

**CLAYTON DECLARATORY JUDGMENT**  
**SERVICE LIST**

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

Council on Affordable Housing  
101 South Broad Street  
Trenton, NJ 08608

Box 813  
Trenton, NJ 08625  
**lpsmail@dca.state.nj.us**

New Jersey Builders Association  
200 American Metro Boulevard  
Suite 123  
Hamilton, NJ 08619

New Jersey State League of Municipalities  
222 West State Street  
Trenton, New Jersey 08608

Jeffrey R. Surenian, Esq.  
Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian & Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
**irs@surenian.com**  
Represents Borough of Atlantic Highlands

**SERVE ATTORNEY PER 6-17-15**  
**EMAIL**

Jonathan E. Drill, Esq.  
Stickel, Koenig, Sullivan & Drill, LLC  
571 Pompton Avenue  
Cedar Grove, NJ 07009  
**jdill@sksdllaw.com**  
Represents Bernards Township, Clinton  
Township, Union Township & Greenwich  
Township

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Law Office of Abe Rappaport  
195 Route 46 West  
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Totowa, NJ 07512  
**jkantowitz@rappaport-law.com**  
Represents Kenneth Martin, Alice Martin  
and MTAE, Inc.

**SERVE ATTORNEY PER 6-17-15**  
**EMAIL**

Berk's Walk  
c/o Berk Cohen Associates  
2657 East 14<sup>th</sup> Street  
Brooklyn, New York 11235

Delsea View Apartments,  
c/o Clayton Apartments LTC Partnership  
191 White Horse Pike,  
Berlin, New Jersey 08009

ARC of Gloucester County  
1555 Gateway Boulevard  
Woodbury, New Jersey 08096



Conifer Realty, LLC  
20000 Horizon Way  
Suite 180  
Mt. Laurel, NJ 08054

Jacqui Adam  
53 Newton Avenue  
P.O. Box 570  
Woodbury, New Jersey 08096-7570

Emerson Green Townhomes  
105 Still Run  
Clayton, NJ 08312

Timothy D. Scaffidi, Esq.  
Law Offices of Timothy D. Scaffidi  
28 Cooper Street  
Woodbury, New Jersey 08096

Gloucester County Owner Occupied  
Rehabilitation Program  
C/O Gloucester County Dept. of Economic  
Development  
115 Budd Boulevard,  
West Deptford, NJ 08096

Samuel V. Hudman  
Executive Director  
Gloucester County Housing Authority  
100 Pop Moylan Boulevard  
Deptford, New Jersey 08096-1907

Karl Hartkopf  
Office of Smart Growth  
Dept. of Community Affairs  
101 S. Broad St.  
P.O. Box 204  
Trenton, New Jersey 08625

Mary Taylor  
641 Clayton-Williamstown Road  
Franklinville, New Jersey 08322

John Alice, Esq.  
28 Cooper Street  
Woodbury, New Jersey 08096

Emerson Green Homeowners Assoc., Inc.  
107 Floral Vale Blvd  
Yardley, Pennsylvania 19067

Keiluhm Venture  
P.O. Box 117  
Clayton, New Jersey 08412

Sickel & Associates  
Borough Engineer  
833 Kings Highway  
Woodbury, New Jersey 08096

Jeffrey B. Lehrer, Esq.  
DiFrancesco, Bateman, Coley, et. Al.  
15 Mountain Blvd.  
Warren, New Jersey 07059

Dale T. Taylor, Esq.  
53 Newton Avenue  
P.O. Box 570  
Woodbury, New Jersey 08096-7570

The Honorable Anne McDonnell, P.J.F.D.  
Gloucester County Courthouse  
1 North Broad Street  
Woodbury, New Jersey 08096

Charles E. Romick, AICP, PP  
Planning Director  
Gloucester County Planning Board  
1200 N. Delsea Drive  
Clayton, New Jersey 08071

Gloucester County Planning Board  
1200 N. Delsea Drive  
Clayton, New Jersey 08312

Harvey Berk  
President, CEO  
Manhattan Management Company  
2657 East 14<sup>th</sup> Street  
Brooklyn, New York 11235

Sidney Lipkin  
Manhattan Management Company  
2657 East 14<sup>th</sup> Street  
Brooklyn, New York 11235

Stephen W. Price  
International Senior Development  
755 Business Center Drive  
Suite 200  
Horsham, Pennsylvania 19044

Stephen E. Samnick, Esq.  
1129 Bloomfield Avenue  
West Caldwell, New Jersey 07006

Louis Vega  
CPM, Special Projects Manager  
Manhattan Management Company  
3001 U.S. Route 130  
Delran, New Jersey 08075

Clayton Apartments Limited Partnership  
191 West White Horse Pike  
Berlin, New Jersey 08009  
Larry S. Waetzman, PP. AICP  
The Waetzman Planning Group  
1230 County Line Road  
Bryn Mawr, Pennsylvania 19010-1594

Gloucester County Habitat for Humanity  
425 S. Broadway  
Pitman NJ 08071

Triad Associates, Inc.  
1301 West Forest Grove Road Vineland,  
New Jersey 08360

**EXHIBIT B**

BOROUGH OF CLAYTON'S HOUSING ELEMENT AND FAIR SHARE PLAN  
ADOPTED DECEMBER 21, 2015  
AND ENDORCED DECEMBER 30, 2015

**EXHIBIT C**

**COMPLIANCE PLAN CHART**

<u>Source</u>	<u>Need Being Met</u>	<u>Rental?</u>	<u>Counted Towards Rental Obligation</u>	<u>Age Restricted?</u>	<u># of Units</u>	<u>Bonus Credits</u>	<u>Total # of Units</u>
Gloucester County Rehab	No		N/A		22	0	22
Rehabilitation credits	Yes		N/A		22	0	22

**Subtotal 44**

<u>Source</u>	<u>Need Being Met</u>	<u>Rental?</u>	<u>Counted Towards Rental Obligation</u>	<u>Age Restricted?</u>	<u># of Units</u>	<u>Bonus Credits</u>	<u>Total # of Units</u>
ARC of Gloucester County (Post-1986 credits)	Prior Round	Yes	No	No	4	1	5
Emerson Green	Prior Round	No	No	No	8	0	8
Delsea View Apartments	Prior Round	Yes	Yes	Yes	12	0	12
Delsea View Apartments	Prior Round	Yes	No	Yes	12	0	12
Berk's Walk (with Rental Bonus)	Prior Round	Yes	Yes	No	24	24	48
Berk's Walk	Prior Round	Yes	No	No	9	0	9

**Subtotal 94**

Berk's Walk	Prospective Need	Yes	No	No	13	0	13
Delsea View	Prospective Need	Yes	No	Yes	6	0	6
Clayton Mews	Prospective Need	Yes	Yes	Yes	21	0	21
Clayton Mews	Prospective Need	Yes	No	Yes	14	0	14
Conifer (with Rental Bonus)	Prospective Need	Yes	No	No	51	41	92
Conifer	Prospective Need	Yes	Yes	No	23	0	23

**Subtotal 169**

**TOTAL: 307**

## **EXHIBIT D**

### **PUBLIC NOTICE**

#### **NOTICE OF PROPOSED SETTLEMENT**

In Re Affirmation of the Borough of Clayton's Substantive Certification  
Granted on October 14, 2009, Docket No.: L-936-15

TO: All Interested Persons:

A hearing will be held on \_\_\_\_\_ before the Honorable Anne McDonnell, P. J. Ch. in the Law Division of Superior Court of New Jersey, at \_\_\_\_\_ at the Gloucester County Court House located at 1 N. Broad Street, Woodbury, New Jersey 08096, to consider entry of a final judgment of compliance and a judgment of repose in favor of the Borough of Clayton, based upon a proposed settlement agreement which has been submitted to the Court.

Entry of a final judgment of compliance would the Borough of Clayton in compliance with its obligations to provide realistic opportunities for housing affordable to low and moderate income households under Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, also known as the "Mount Laurel Doctrine." Entry of a judgment of compliance and a judgment of repose may bar for ten (10) years any claim by any person or entity, including persons or entities not formally parties to the lawsuit, that the Borough of Clayton is failing to provide sufficient realistic housing opportunities for low and moderate income households. This includes protection for a period of ten years from any builder's remedy lawsuits brought pursuant to the *Mount Laurel Doctrine*.

A lawsuit has been filed by the Borough of Clayton, in accordance with In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), wherein the Borough has sought a Declaratory Judgment that the Borough of Clayton's Housing Element and Fair Share Plan, along with its existing zoning and land use planning practices provide adequate realistic opportunities for the construction of housing affordable to low and moderate income households to meet the needs of persons residing in the Borough of Clayton and to meet the Borough of Clayton's fair share of the present and prospective regional housing need.

Fair Share Housing Center, a non-profit organization who is devoted to enforcement of the Mount Laurel Doctrine and ensuring the maximum number of affordable housing units are made available to New Jersey's poor, has participated in this litigation as an interested party and has reviewed the Borough of Clayton's Housing Element and Fair Share Plan. The parties have agreed to settle the case upon the following terms:

1. The Borough of Clayton has an obligation between 1978 and 2025 to create realistic opportunities for safe, decent housing affordable to low and moderate income households as follows:

<b>Present Need</b>	<b>Prior Round Obligation</b>	<b>Prospective Need</b>
44	94	162

2. The Borough of Clayton will satisfy its Present Need obligation through the Gloucester County Rehabilitation Program. The Borough of Clayton will satisfy its Prior Round Obligation and its Prospective Need obligation through the following projects: (a) the ARC of Gloucester County; (b) Emerson Green; (c) the Delsea View Apartments; (d) Berk's Walk; (e) Clayton Mews; and (f) the Conifer Realty project.

Of the sources identified above, the ARC of Gloucester County, Emerson Green, Delsea View Apartments and Clayton Mews projects have all been fully constructed. A redevelopment agreement has been executed with the owner of the Conifer project for the construction of that project and the Berk's Walk project has received General Development Plan approval as well as Preliminary Site Plan approval.

The full text of the proposed agreement including a map of the designated sites may be examined and copied during regular business hours at the Borough of Clayton's clerk's office, or by appointment at the offices of any of the following attorneys.

**MALEY & ASSOCIATES, P.C.**

Erin E. Simone, Esquire  
931 Haddon Avenue  
Collingswood, New Jersey 08077  
856-854-1515

**FAIR SHARE HOUSING CENTER**

Adam Gordon, Esquire  
510 Park Blvd.  
Cherry Hill, NJ 08002  
856-665-5444

Any interested party, including any low or moderate income person residing in northern New Jersey, any organization representing the interests of low or moderate income persons, any owner of property in the Borough of Clayton, or any organization representing the interests of owners of property in the Borough of Clayton, may file objections to the proposed agreement and may present evidence in support of such objections. Objections must be filed in writing together with copies of any supporting affidavits or documents with the Honorable Anne McDonnell, P. J. Ch. at the Gloucester County Court House located at 1 N. Broad Street, Woodbury, New Jersey 08096, on or before \_\_\_\_\_. Copies must also be filed with the Gloucester County Clerk, at the Gloucester County Court House located at 1 N. Broad Street, Woodbury, New Jersey 08096, and with each of the lawyers listed above. Any person or entity who has filed comments or objects with the Court and has served the same on the attorneys listed above may also appear and be heard at the hearing on Friday, \_\_\_\_\_.

This notice is intended to inform all interested parties of the existence of a proposed settlement and the possible consequences of court approval of this settlement and to inform such persons that they may comment upon the Settlement Agreement and the Housing Element and Fair Share Plan before the Court evaluates whether to approve the same. It does not indicate any view by the Court as to the fairness, reasonableness or adequacy of the proposed settlement or the

Borough of Clayton's Housing Element or Fair Share Plan, or whether the Court will approve the settlement or enter a judgment of compliance and a judgment of repose.



**EXHIBIT E**  
**SPENDING PLAN**