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September 7, 2016

Via Email

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

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

**Re: In the Matter of the Township of Byram Complaint for Declaratory
Judgment Demonstrating Municipal Compliance with Constitutional
Mount Laurel Obligation
Docket No. SSX-L-430-15
Our File No. 15883.015**

SETTLEMENT AGREEMENT

Dear Messrs. Walsh and Gordon:

This letter memorializes the terms of an agreement reached between the Township of Byram ("Byram"), the Planning Board of the Township of Byram, the declaratory judgment petitioners ("Byram" or "Petitioners"), and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

Byram filed the above-captioned matter on July 2, 2015, seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. On August 21, 2015, the Court entered a Consent Order granting a temporary period of immunity through January 7, 2016

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among other relief granted in the Order. On November 2, 2015, the Court extended immunity through April 6, 2016 and established a schedule by which Byram was required to submit a report to the Court regarding Byram's fair share obligation as well as submitting a Housing Element and Fair Share Plan to the Court on or before April 4, 2016. The Court further entered an Order on February 10, 2016 which stated in relevant part "Each municipality shall select the amount for its obligation based upon the expert it chooses." Thereafter, the Court issued a clarifying letter dated February 10, 2016 which similarly required Byram to pick the number it deems appropriate to submit its Housing Element and Fair Share Plan by April 4, 2016 as the Order of November 2, 2015 contemplated. The Court further held "Clearly, the number chosen by each municipality may not be the number to be fixed by the Court after an appropriate Trial." The Court further entered an Order on April 15, 2016 stating "The Court having determined preliminarily that there is sufficient merit to schedule a further proceeding upon notice, at which time the Court will consider any comments and determine if final judgment may be entered granting substantive certification and a period of immunity or repose from the builder's remedy litigation", the Court thereafter scheduled a hearing for June 23, 2016 in regard to this matter. The Court further extended the period of temporary immunity until further order of the Court. FSHC sought to engage Byram in settlement discussions which occurred on June 8, 2016. Notwithstanding, Byram and FSHC appeared before the Honorable Judge Hansbury on June 23, 2016 as Petitioner and Interested Party, respectively, to determine whether Byram's Housing Element and Fair Share Plan satisfied the Township's constitutional obligation to provide a realistic opportunity for its fair share of low and moderate income housing and should be granted substantive certification. Through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement Terms

Byram and FSHC hereby agree to the following terms:

1. FSHC agrees that Byram, through the adoption of the attached draft Housing Element and Fair Share Plan ("the Plan"), dated March 14, 2016, as amended and supplemented with the representations made on the Record by Paul Gleitz, P.P., of Latini Gleitz Planning, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. In Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986), Judge Skillman held that the most troublesome issue in Mount Laurel litigation is the determination of fair share. Furthermore, the Court expressed a desire to encourage voluntary compliance with the

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constitutional obligation by providing a realistic opportunity for housing and not litigation. 197 N.J. Super. at 366, 367. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding Byram's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. For settlement purposes only, Byram and FSHC hereby agree that Byram's affordable housing obligations are as follows:

Rehabilitation Share	13
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	33
Third Round Prospective Need (per Kinsey Report as revised July 2016 and as adjusted pursuant to this Settlement Agreement)	182
Total Need	228
Realistic Development Potential ("RDP")	1

4. Byram has and continues to act in good faith in order to comply with its constitutional obligation to provide a realistic opportunity for producing Byram's fair share of the regional present and prospective need for housing low and moderate income families. In the 1990's, the Township was awarded a Small Cities grant from the Department of Community Affairs and intends to use this funding to support a rehabilitation program. As of Monday, August 22, 2016, the affordable housing trust fund contained \$89,248.47. This is sufficient to satisfy Byram's present need/rehabilitation obligation of thirteen (13) units.
5. As noted above, Byram has a Prior Round obligation of 33 units, which is met through the following compliance mechanisms:

	Credit	Bonus
Village Center Inclusionary 2-Bed Age Restricted (FOR SALE)	6	0
Village Center Inclusionary 1-Bed (FAMILY RENTAL)	5	5
Village Center Inclusionary 2-Bed (FAMILY RENTAL)	9	4
Village Center Inclusionary 3-Bed (FAMILY RENTAL)	6	0
Rental Bonus Credits (capped at 25% or 9)	26	9
TOTAL	35 Units/Credits	

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6. The following shall support a vacant land adjustment authorized pursuant to N.J.A.C. 5:93-4.2: Appendix A (pages 81-98, maps 3 & 4) of attached draft Housing Element and Fair Share Plan ("the Plan"), dated March 14, 2016, as amended and supplemented with the representations made on the Record by Paul Gleitz, P.P., of Latini Gleitz Planning.
7. Byram has or will implement the following mechanisms to address its Third Round prospective need ("the Mechanisms"):

	Credit	Bonus
Surplus Credits From Prior Round	2	
8 Francis Road: Rental/Alternative Living	4	4
23 Waterloo Road: Rental/Alternative Living	4	4
52 Lee Hill Road: Rental/Alternative Living	4	4
63 Lee Hill Road : Rental/Alternative Living	4	4
Venture Two, LLC: Rental	1	1
Village School Apartments: Rental	3	3
<i>New Construction Credits</i>	22	
Rental Bonus Credits (capped at 25%)		20
Total Credits	42	
Prospective Need Remaining before Vacant Land Adjustment	140	
Vacant Land Adjustment	139	
Realistic Development Potential (RDP) Met by the Plan	1	

The Mechanisms reflected in the above chart include: (a) Credits and Adjustments (see 2016 Housing Element and Fair Share Plan, pp 56-57; (b) Four (4) Group Homes (see 2016 Housing Element and Fair Share Plan, page 58; and (c) Inclusionary Development in the Village Business ("VB") Zone and Multi-Family ("MF") Zone (see 2016 Housing Element and Fair Share Plan, pp 58-59). In addition, in an effort to satisfy its unmet need, Byram will alter the current zoning in the VB Zone to permit second and third floor apartments above commercial uses (in accordance with 2016 Housing Element and Fair Share Plan, pp 73-75), continue to promote the above-referenced affordable housing developments and will update and continue to implement its incentive zoning, density and intensity bonuses and mandatory set aside ordinances.

8. Byram, as calculated in the Plan, has a realistic development potential ("RDP") in the Highlands Council Planning Area ("the Planning Area") of 1 affordable housing unit. As set forth in the Plan, 14,300 acres of Byram (or approximately 98% of the entire municipality) are located in the Highlands Council Preservation Area ("the Preservation Area") where land use development is severely restricted, and a realistic opportunity for

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the development of affordable housing does not exist. The remaining 236 acres in Byram (approximately 2% of the entire municipality) are located in the Planning Area, wherein the Village Center ("VC") Inclusionary Zone is located and is zoned for an inclusionary development addressing Prior Round need of 26 affordable units, with eligibility for 9 additional bonus credits. Outside of the VC Zone in the Planning Area in Byram, a total of three (3) parcels exist that are available for development. This produces a maximum of six (6) housing units per Highlands Development standards for these 3 parcels.¹ At twenty (20%) percent set aside, a maximum of 1 affordable housing unit is produced. See 2016 Housing Element and Fair Share Plan, page 82 and Appendix A.

9. In accordance with the Fair Housing Act pursuant to N.J.S.A. 52:27D-329.1, Byram agrees to require 13% of all units referenced in this plan, and units subject to preliminary or final site plan approval, to be very low income units, with at least half of the very low income units being available to families. FSHC and Byram agree that Byram has the legal authority to require that 13% of all units be affordable to very low income persons pursuant to N.J.S.A. 52:270-329.1.
10. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93 (i.e. one bonus credit per family rental unit up to the 25 percent maximum). As reflected in the table in paragraph 7, at least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families, and at least half of the units addressing the Third Round Prospective Need in total shall be available to families.
11. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
12. Byram agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may Byram claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
13. Byram 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), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, and the Warren/Sussex County Branch of the NAACP, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. Byram also agrees to require any other entities,

¹ Byram has opted into the Highlands Planning Area, and is subject to Highlands development standards.

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including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

14. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, and all other applicable law, including N.J.S.A. 52:27D-329.1, with the exception to UHAC that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in all such projects shall be required to be at 30 percent of median income. Byram, as part of its HEFSP, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. FSHC and the Township agree that such an ordinance requirement is lawful and not arbitrary capricious or unreasonable.
15. As an essential term of this settlement, within one hundred twenty (120) days of a Court Order Granting Substantive Certification and a Judgment of Repose or at such other additional time as approved by the Court, Byram shall introduce an ordinance providing for the amendment of Byram's Housing Element and Fair Share Plan and Land Use Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.²
16. The parties agree that if a decision of a court of competent jurisdiction in the Morris/Sussex County vicinage, at the appellate level or the Supreme Court, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for Byram for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement (i.e.: determined to be 146 units or less), and if that calculation is memorialized in an unappealable final judgment, Byram may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, Byram shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of Byram's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If Byram prevails in reducing its prospective need for the Third Round, Byram

² The Byram Planning Board and the Mayor and Township Council have adopted Resolutions confirming that the Housing Element and Fair Share Plan and implementing Ordinances will be adopted if approved by the Court.

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may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.

17. Byram has an approved spending plan which expires on or about January 8, 2024 ("the 2014 Spending Plan") a copy of which is attached hereto as Exhibit A. Byram shall file with the Court and FSHC an updated 2016 Spending Plan valid through 2026, which shall supersede the 2014 Spending Plan and which shall incorporate all of the requirements of this Agreement ("the 2016 Spending Plan"). The 2016 Spending Plan shall be substantially in a form approved by FSHC, and shall be subject to the review and approval of the Court and FSHC. The 2016 Spending Plan shall be filed with the Court and FSHC on or before Monday, September 12, 2016. Upon approval of the 2016 Spending Plan, the parties agree that the expenditures of funds contemplated under the agreement constitute "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 a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, Byram 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 FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
18. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, Byram agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms as approved by the Court.
19. The Fair Housing Act includes two provisions regarding action to be taken by Byram during the ten-year period of protection provided in this agreement. Byram agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, Byram will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to

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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 Byram, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, Byram will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to Byram and FSHC on the issue of whether Byram has complied with its very low income housing obligation under the terms of this settlement.
20. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
 21. Prior to becoming effective, this settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Byram presented its planner as a witness at the June 16, 2016 Fairness/Compliance hearing. FSHC did not challenge the attached Plan (Exhibit A) at the fairness hearing. The fairness hearing was carried by the Court with no additional notices required to September 19, 2016. The parties agree that if the Court approves this proposed settlement, and Byram will grant "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect for ten (10) years from the date of the Court Order. If an appeal is filed of the Court's approval of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial

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court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

22. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris/Sussex vicinage.
23. 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.
24. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
25. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
26. 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.
27. 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.
28. 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.
29. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
30. 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.

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31. 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.
32. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days-notice as provided herein:

TO FSHC: Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO BYRAM: Joseph Sabatini, Manager
Township of Byram
Municipal Building
10 Mansfield Drive
Stanhope NJ 07874
Phone: (973) 347-2500
Fax: (973) 347-0502

Please sign below if these terms are acceptable.

Very truly yours,

VOGEL, CHAIT, COLLINS & SCHNEIDER
Attorney for the Township of Byram

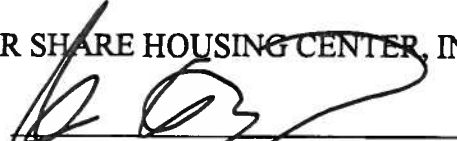
By: _____
Thomas F. Collins, Jr.
VOGEL, CHAIT, COLLINS AND
SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, NJ 07960
Attorneys for Petitioner, Township of Byram

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FAIR SHARE HOUSING CENTER, INC.



Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center
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Cherry Hill, NJ 08002

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Morristown, NJ 07960
Attorneys for Petitioner, Township of Byram

FAIR SHARE HOUSING CENTER, INC.

Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

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On behalf of the Township of Byram, with the Authorization of the Mayor and Township
Council and Planning Board.

ATTEST:

Doris Flynn
Doris Flynn, Clerk

TOWNSHIP OF BYRAM
James Oscovitch
James Oscovitch, Mayor

Date: 9/16/10

Date: 9/16/10

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ATTEST:

PLANNINGBOARD OF THE
TOWNSHIP OF BYRAM

Cheryl White

George Shivas
George Shivas, Chairman

Date: Sept. 15, 2016

Date: 9/15/2016