

**Settlement Agreement**  
**In the Matter of the Borough of Chatham Affordable Housing Compliance**  
**County of Morris, Docket No. MRS-L-1906-15**

This **AGREEMENT** made and entered into this 7<sup>th</sup> day of November, 2016, by and between the Borough of Chatham (the "Borough"), the declaratory judgment plaintiff, and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, an interested party in this proceeding (collectively, the "Parties"):

**WHEREAS**, the Borough filed the above-captioned matter on July 6, 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.;

**WHEREAS**, the Borough filed its Draft 2015 Housing Element and Fair Share Plan (the "Plan") with the Court on December 4, 2015;

**WHEREAS**, in accordance with the report of Special Master Michael P. Bolan, AICPP, PP, dated February 29, 2016 and negotiations between FSHC and the Borough, the Borough has made revisions to its Plan;

**WHEREAS**, the Borough and FSHC agree 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;

**NOW THEREFORE**, the Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of the attached Plan, Exh. A, and the implementation of that Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. for the Prior Round (1987-1999) and Third Round (1999-2025), thus entitling the municipality to protection from builder's remedy litigation through July 1, 2025.
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and the Borough hereby agree that the Borough's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	0 units
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> )	77 units, adjusted to a 23-unit RDP with an unmet need of 53 units

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, April 16, 2015, revised July 2015.

Third Round Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)

337, adjusted to a 36-unit RDP with an unmet need of 301 units

4. As indicated in the Kinsey report, the Borough has a present need of 0 units. As a result, the Borough's Plan does not include mechanisms to address rehabilitation of substandard units occupied by low-and-moderate income households. This is sufficient to satisfy the Borough's rehabilitation obligation of 0 units.
5. As noted above, the Borough has a prior round prospective need of 77 units, adjusted to a 23-unit RDP which is met through the following compliance mechanisms:

DEVELOPMENT	BLOCK/LOT	EXPIRATION <sup>2</sup>	UNIT TYPE	RENTAL/SALE
<b>CHATHAM @ WILLOWS:</b>				
34 SCHINDLER CT Unit ML-1	106/1.34	7/21/2019	3 BR Moderate	For Sale
36 SCHINDLER CT Unit ML-2	106/1.36	2/16/2019	3 BR Low	For Sale
38 SCHINDLER CT Unit ML-3	106/1.38	10/19/2018	2 BR Low	For Sale
40 SCHINDLER CT Unit ML-4	106/1.40	12/14/2018	2 BR Moderate	For Sale
42 SCHINDLER CT Unit ML-5	106/1.42	10/26/2018	2 BR Low	For Sale
44 SCHINDLER CT Unit ML-6	106/1.44	3/10/2019	2 BR Moderate	For Sale
46 SCHINDLER CT Unit ML-7	106/1.46	12/2/2018	2 BR Moderate	For Sale
48 SCHINDLER CT Unit ML-8	106/1.48	11/24/2018	2 BR Low	For Sale
<i>Credits</i>				<i>8 Units</i>
<b>WILLOWS CT./Zuckerman (Averett/Nilson):</b>				
1 LACKAWANNA CT. UNIT #1	99/20.01	3/2/2031	2 BR Moderate	Rental
1 LACKAWANNA CT. UNIT #2	99/20.01	3/2/2031	2 BR Low	Rental
<i>Credits</i>				<i>2 Rental Units plus 2 bonus credits = 4 credits</i>
<b>RIVER COMMONS/Gunn:</b>				
117 SUMMIT AVE (GUNN)	129/46.07	1/31/2032	3 BR Moderate	Rental
121 SUMMIT AVE (GUNN)	129/46.08	1/31/2032	2 BR Low	Rental
<i>Credits</i>				<i>2 Rental Units plus 2 bonus credits = 4 credits</i>
<b>CHESTNUT RIDGE (Rau/Chatham Land Inc.)/31 Maple Street: Credits</b>				
	103/7.05	1/1/2006	4 age-restricted rentals (all 2-bedroom Low)	<i>4 Rental Units</i>
<b>HOWARDSON PROPERTY</b>				
	118/48		2 unit RCA	<i>2 Unit RCA to Linden</i>

<b>UNITS &amp; BONUS CREDITS</b>				<b>22 Credits</b>
<b>INCLUSIONARY SITE</b> <b>- Averett</b>	98/2		Zoned AFD-2	<b>2 Units</b>
<b>PRIOR ROUND TOTALS</b>				<b>24 CREDITS</b>

6. The Borough has implemented or will implement the following mechanisms to address its Third Round prospective need of 337 units, adjusted to a 36-unit RDP:

<b>Inclusionary Site</b>	<b>Location</b>	<b>Zoning</b>	<b>Affordable Units/Credits</b>
1	17-37 Bowers Lane	AFD-4	5 to 7
2	16 River Road	M-3/Gateway	4 to 5
3	12 River Road	M-3/Gateway	8 to 10
4	4 Watchung Avenue	M-3/Gateway	6 to 8
		<b>Total</b>	<b>23 to 30 Units</b>
Extension of Controls	Schindler Court		8 Credits
Rental Bonuses	Sites 2, 3 & 4	M-3/Gateway	9 Credits
		<b>TOTAL</b>	<b>40 to 47 Units/Credits</b>

7. The Borough agrees to address its Prior Round and Third Round Unmet Need through potential future redevelopment or revitalization of existing developed sites, as described more fully in the attached Plan, Exh. A. The Borough also agrees to provide overlay zoning in the B-2 and B-4 business districts to address Unmet Need, as described more fully in the attached Plan, Exh. A.
8. The Borough agrees to require 13% of all affordable units referenced in this plan, with the exception of units that were approved and vested or constructed on or before July 1, 2008, to be very low income units, affordable to households earning 30% or less of the regional median income, with half of these very low income units being available to families.
9. The municipality will also comply with all of the following requirements:
- Minimum 50% family housing = 18 units
  - Minimum 50% low-income housing (per NJAC 5:93) = 18 units
  - Minimum 13% very low income housing (per FHA) = 5 units
  - Minimum 50% of very low income housing to be family housing = 3 units
  - Minimum rental requirement = 25% of RDP = 9 units
  - Minimum family rental requirement = 50% of rental requirement = 5 units
  - Maximum age-restricted = 25% of RDP = 9 units
  - Maximum age-restricted units qualifying for rental bonus = 50% of rental obligation = 4 units
  - Maximum rental bonus = 25% of RDP = 9 units (cap on rental bonuses with rental bonuses applying up to the rental obligation per NJAC 5:93)
9. At least 50 percent of the units in each of the Third Round Prospective Need sites shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

10. 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, Newark NAACP, Morris Co. NAACP, East Orange NAACP, Latino Action Network, Housing Partnership for Morris County, Community Access Unlimited, Inc., and Northwest New Jersey Community Action Program, Inc., and shall as part of its regional affirmative marketing strategies during its implementation of this plan shall provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
11. The Borough further agrees to comply with the requirements of N.J.A.C. 5:80-26, including but not limited to, the marketing, bedroom distribution and affordability standards for the affordable housing units referenced herein.
12. The parties agree that if there is legislative action, a final judgment from a court of competent jurisdiction, or administrative order from an administrative agency responsible for implementing the Fair Housing Act (a "Change in Law") which reduces the Borough's total prospective Third Round need obligation established in this Agreement by more than fifteen (15%) that the Borough may seek to amend the judgment in this matter without objection by FSHC. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including leaving in place any site specific zone changes made or continued in connection with the plan approved pursuant to this settlement agreement and any mechanism to meet unmet need; and otherwise fulfilling fully the fair share obligations established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carryover any resulting extra credits to future rounds. FSHC hereby expressly waives any right to seek an increase in any aspect of the Borough's affordable housing obligation which may result from a Change in Law and that the Court's entry of a Final Judgment of Repose in this matter may not be reopened.
13. The Borough has prepared a spending plan that is attached hereto in the appendix to Exh. A. 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, the Borough agrees to provide annual monitoring of trust fund activity to the NJ Department of Community Affairs, Local Government Services, with a copy to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing. The monitoring shall include an accounting of any housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
14. 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 monitoring of affordable housing activity by means of a posting of a report of such activity on the Borough website, with a copy to Fair Share Housing Center, and by posting of updated information on COAH's CTM system, using forms previously developed for this purpose by the Council on Affordable Housing (or any other forms endorsed by the Special Master and FSHC).
15. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review as of July 1, 2020 as required pursuant to N.J.S.A. 52:27D-313, the Borough will provide to the Court, with

notice to Fair Share Housing Center and other interested parties identified in this agreement, a status report as to its implementation of its Fair Share Plan and any comments as to whether any unbuilt sites continue to present a realistic opportunity and whether mechanisms to meet unmet need should be revised, with the opportunity for any interested party to submit comments and request a hearing before the court as to whether any sites no longer present a realistic opportunity and should be replaced.

- 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, the Borough will provide to the Court, with notice to Fair Share Housing Center and other interested parties identified in this agreement, a status report as to its satisfaction of its very low income requirements, including family low income requirements referenced herein, with the opportunity for any interested party to submit comments and request a hearing before the court as to whether the municipality has complied and whether any corrective actions should be taken.
16. This settlement agreement must be approved by a court prior to going into effect through a fairness hearing process, as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees to not challenge the attached fair share plan in court during any fairness hearing in which it is reviewed. The parties agree to submit the issue of whether the court should issue an order providing substantive certification or an order providing repose to the court for a conclusive determination.
17. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris County. FSHC shall be deemed to be an intervenor in this proceeding for purposes of enforcing this agreement.
18. 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.
19. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
20. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. 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.
27. 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

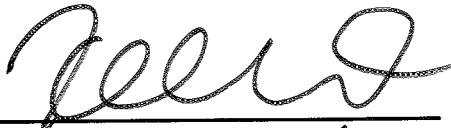
**TO THE BOROUGH:** Borough of Chatham  
54 Fairmont Avenue  
Chatham, New Jersey 07928  
Attn: Steve Williams  
Affordable Housing Liaison  
Phone: (973) 635-0674  
Telecopier: (973) 635-2417  
E-mail: swilliams@chathamborough.org

**WITH A COPY TO THE  
MUNICIPAL CLERK:** Borough of Chatham  
54 Fairmont Avenue  
Chatham, New Jersey 07928  
Attn: Robin Kline  
Phone: (973) 635-0674  
Telecopier: (973) 635-2417  
E-mail: rkline@chathamborough.org

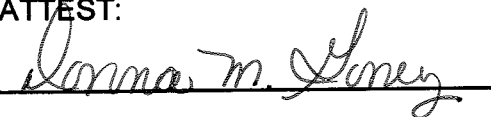
**WITH A COPY TO:** James L. Lott, Jr.  
Riker Danzig Scherer Hyland & Perretti, LLP  
One Speedwell Avenue  
Morristown, New Jersey 07962  
Phone: (973) 538-0800  
Telecopier: (973) 451-8684  
E-mail: jlott@RIKER.com

IN WITNESS WHEREOF, each party has caused its authorized officials to sign and seal this Agreement on its behalf this 7<sup>th</sup> day of November, 2016.

FAIR SHARE HOUSING CENTER

BY:   
10/27/2016


ATTEST:



BOROUGH OF CHATHAM

BY:   
Bruce A. Harris, Mayor

ATTEST:

  
Robin Kline, MAS, RMC, CMR  
Borough Clerk