

**NOTICE OF FAIRNESS AND PRELIMINARY COMPLIANCE HEARING FOR THE
BOROUGH OF SPRING LAKE HEIGHTS, COUNTY OF MONMOUTH, FOR THE
BOROUGH OF SPRING LAKE HEIGHTS'S HOUSING ELEMENT AND FAIR SHARE
COMPLIANCE PLAN FOR THE AFFORDABLE HOUSING PERIOD 1987-2025
DOCKET NO. MON-L-1916-21**

PLEASE TAKE NOTICE that on April 19, 2024 at 9:00 a.m. there will be a Fairness and Preliminary Compliance Hearing (the "Hearing") held before the Honorable Linda Grasso Jones, J.S.C., at the Monmouth County Courthouse, 71 Monument Park, Freehold, NJ 07728-1266 in the above-referenced affordable housing litigation. The purpose of the Hearing is two-fold. First, the Court will determine whether the terms of a Settlement Agreement (the "Settlement Agreement") between the Borough of Spring Lake Heights (the "Borough") and Intervenor the Fair Share Housing Center (the "FSHC") is fair and reasonable to low and moderate-income households. A related consideration for the Hearing is for the Court to consider whether the Borough's affordable housing strategy as set forth in the Settlement Agreement satisfies the Borough's obligation to provide a realistic opportunity to satisfy its Prior Round Prospective Need Obligation and Third Round Prospective Need Obligation of the regional need for housing affordable to low and moderate income households pursuant to the Mount Laurel decisions and their progeny, the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.) and the applicable procedural and substantive regulations of COAH and the Supreme Court's March 10, 2015 decision in the matter of In re N.J.A.C. 5:96 & N.J.A.C.5:97, 221 N.J. 1 (2015), and other applicable laws.

The affordable housing strategy set forth in the Settlement Agreement fully addresses the existing components of the Borough's affordable housing obligation for the period 1987-2025. These include a Prior Round (1987-1999) obligation of 76 units, and a Third Round Prospective Need obligation, including gap present need (1999-2025) obligation of 145 units for a cumulative new construction fair share obligation of 221 units. The Settlement Agreement further provides that the Borough is entitled to a Vacant Land Adjustment pursuant to N.J.A.C. 5:93-4.2 thereby leaving a Realistic Development Potential of 17 units resulting in a Prior Round and Third Round unmet need of 204 units. The Settlement Agreement provides a detailed list of the Borough's total affordable housing obligations; the compliance mechanisms to meet its affordable housing obligation and demonstrates the Borough's compliance with those affordable housing obligations. The full text of the Settlement Agreement is available for public inspection and/or photocopying (at requestor's expense) during normal business hours at the Borough of Spring Lake Heights's Clerk's Office located at 555 Brighton Avenue, Spring Lake Heights, NJ, 07762 and is also available on the Borough's website..

On the date of the Hearing, the Court will conduct a joint Fairness and Preliminary Compliance Hearing to determine whether the Settlement Agreement and the affordable housing strategy set forth therein is fair to low and moderate-income households and create a realistic opportunity for satisfaction of the Borough's affordable housing obligations. This Notice is intended to inform all interested parties of the existence of the proposed Settlement Agreement and the possible consequences of the Court approving the Settlement Agreement which may include the Borough ultimately obtaining a Judgment of Compliance and Repose or the judicial equivalent of a grant of Substantive Certification pursuant to the New Jersey Fair Housing Act,

N.J.S.A. 52:2D-301, et. seq., said Judgment of Compliance will entitle the Borough to protection for any Mount Laurel builder's remedy lawsuits for a period to be determined by the Court.

Any interested third party that seeks to appear and be heard at the Hearing on the Settlement Agreement shall have the opportunity to present any position on the Settlement Agreement and the Borough's affordable housing strategy. Written objections or comments by any interested person should include (1) a clear and complete statement as to each aspect of the Settlement Agreement contested by the interested party; (2) an explanation of the basis for each objection; (3) copies of any and all expert reports, studies or other data relied upon by the interest party; (4) proposed modifications, changes, or other measures which the interested party contends would resolve the dispute with the Borough; and (5) an explanation of how the interested party's objections are consistent with applicable law including the Fair Housing Act. Written objections must be filed with the Court at the above address on or before March 29, 2024 with duplicate copies being forwarded to the Hon. Linda Grasso Jones, J.S.C. at the same address and with additional copies by mail and e-mail to the attention of the following:

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This Notice is provided pursuant to directive of the Court and is intended to inform interested parties of the Settlement Agreement and to inform such parties that they may comment on said Settlement Agreement before the Court reviews and evaluates whether to approve the Settlement Agreement. This Notice does not indicate any view by the Court as to the fairness of the Settlement Agreement or the adequacy of the Borough's affordable housing strategy.

Pashman Stein Walder Hayden, PC
Attorneys for the Borough of Spring Lake Heights, Monmouth County, NJ

THIS SETTLEMENT AGREEMENT (“Agreement”) is made on this 4th day of March 2024, by and between the Borough of Spring Lake Heights, with its principal offices located at 555 Brighton Avenue, Spring Lake Heights, New Jersey 07762 (“Spring Lake Heights” or “Borough”) and Fair Share Housing Center, Inc., with offices located at 510 Park Boulevard, Cherry Hill, NJ 08002 (“FSHC”) (collectively hereinafter referred to herein as the “Parties”).

RECITALS

WHEREAS, Helen Motzenbecker, the owner of a property located at Block 59, Lot 39 in the Borough of Spring Lake Heights, County of Monmouth, State of New Jersey (“Motzenbecker”) filed a Mount Laurel Builder’s Remedy action with the Superior Court of New Jersey (“**Court**”), entitled, Helen Motzenbecker v. Borough of Spring Lake Heights, Borough Council of the Borough of Spring Lake Heights, and the Borough of Spring Lake Heights, Docket No.: MON-L-0030-21, against the Borough of Spring Lake Heights on January 5, 2021 seeking to compel the Borough to provide a realistic opportunity for the construction of affordable housing for very-low, low and moderate income households and to meet the Borough’s fair share of the housing region’s need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 (“FHA” or “Fair Housing Act”) and Mount Laurel jurisprudence (hereinafter “**Builder's Remedy Action**”); and

WHEREAS, in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (“Mount Laurel IV”), FSHC is a Supreme Court designated interested party in this matter; and

WHEREAS, the Borough of Spring Lake Heights filed a Mount Laurel declaratory judgment action with the Superior Court of New Jersey (“**Court**”), entitled, In the Matter of the Application of the Borough of Spring Lake Heights, Docket No.: MON-L-1916-21, on June 2, 2021, seeking a judgment that the Borough is in compliance with its constitutional obligations under the New Jersey Fair Housing Act and Mount Laurel jurisprudence and seeking approval of its local development fee ordinance and associated spending plan; and

WHEREAS, the Court having also appointed Kendra Lelie, P.P., A.I.C.P. as the “Special Master” in this consolidated case as customary in Mount Laurel matters; and

WHEREAS, the Court issued an order consolidating the above matters on February 16, 2022; and

WHEREAS, as a result of settlement negotiations and mediation between the Borough and Motzenbecker, those two parties agreed to the Affordable Housing Settlement Agreement (“Affordable Housing Agreement”), attached hereto as **Exhibit A**, whereby Developer proposes, and the Borough Defendants agree to permit the development of Block 59, Lot 39, 2014 Highway 71.; and

WHEREAS, the Affordable Housing Agreement does not address and resolve the Borough's entire affordable housing obligation which shall be addressed in the Borough's Housing Element and Fair Share Plan ("HEFSP") as discussed in more detail below after application of a permissible Vacant Land Adjustment, pursuant to N.J.A.C. 5:93-4; and

WHEREAS, the Borough and FSHC 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, have engaged in good faith negotiations with the assistance of the Special Master; and

WHEREAS, the Parties having reached an amicable agreement on the various substantive provisions, terms and conditions delineated herein now wish to present that settlement to the trial court for approval;

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. At this particular time in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, the Parties recognize and agree that it is appropriate for the Borough and FSHC to enter into this Agreement settling the Borough's Third Round Present and Prospective Need obligations instead of pursuing plenary adjudication of the Borough's Mount Laurel obligation.

2. The Effective Date of this Agreement shall be the earliest date on which all Parties have executed the Agreement.

3. FSHC and the Borough hereby agree that the Borough's affordable housing obligations are as follow:

Rehabilitation/Present Need Obligation (pursuant to Kinsey Report ¹)	21
Prior Round Prospective Need Obligation (per to N.J.A.C. 5:93)	76
Third Round (1999-2025) Prospective Need Obligation (pursuant to Kinsey Report, and as adjusted by and through this Agreement)	145

4. **Rehabilitation/Present Need Obligation**. The Borough's efforts to meet its 21 unit Present Need obligation include the following: The Borough will participate in the Monmouth County Housing Improvement Program (MCHIP) administered by the Monmouth County

¹ 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, May 2016.

Development Block Grant (CDBG) program in accordance with applicable law. The Borough will fund the program until such time as the funds become available in the Affordable Housing Trust Fund.

5. **Gap Period Present Need Obligation.** For purposes of this Agreement, the Borough's Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which, as recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), is a measure of households formed between 1999 and 2015 that need affordable housing.

6. **Prior Round and Third Round Prospective Need Obligation.** Spring Lake Heights has Prior Round Prospective Need obligation of 76 units and a Third Round Prospective Need obligation of 145 units, for a cumulative fair share obligation of 221 affordable units.

7. **Realistic Development Potential.** Pursuant to N.J.A.C. 5:93-4.2, the Parties agree that the Borough is entitled to an adjustment of its Prior and Third Round Prospective Need obligation due to the lack of developable vacant land in Spring Lake Heights available to meet its cumulative fair share obligation. Spring Lake Height's vacant land adjustment, attached hereto as **Exhibit B**, reveals a Realistic Development Potential ("RDP") of 17 units. Notwithstanding the Parties' agreement that the RDP is 17 units, the Parties further agree that in a changed circumstance such as a property owner/developer submitting a complete application for a residential development approval from the Borough's Land Use Board for a site that could support the density that would require an affordable housing set-aside pursuant to the procedures defined in N.J.A.C. 5:93-4.2 and N.J.A.C. 5:97-5.2, thereby increasing the Borough's RDP calculation, the Borough is obligated to address the increased RDP through mechanisms agreed upon by both Parties. Otherwise, the RDP shall remain 17 units. This forgoing provision shall not apply if a proposed residential development is already subject to an affordable housing set-aside requirement pursuant to the Borough's adopted zoning.

8. Spring Lake Heights shall address its 17 (or greater RDP if there is a changed circumstance as set forth in Paragraph 7) unit RDP through the following compliance mechanisms:

- a. **Motzenbecker Site:** Pursuant to the Settlement Agreement between Motzenbecker and the Borough, settling the Builder's Remedy Action, the Borough has rezoned Block 59, Lot 39 owned by Motzenbecker and bearing the address of 2014 State Highway 71 in the Borough, to create a realistic opportunity for the construction and development of a mixed use inclusionary development consisting of five (5) multi-family residential units, including one (1) family non-age-restricted two-bedroom affordable unit and one (1) commercial unit. The affordable two-bedroom unit shall be affordable to a very-low-income household earning 30% or less of the median income.
- b. **Lombardi Site:** Pursuant to a Settlement Agreement between Lombardi and the Borough, the Borough rezoned Block 46.01, Lots 5 & 7, 2019 and 2023

Highway 71 to create a realistic opportunity for the construction of an mixed-use development containing sixteen (16) residential units of which three (3) units will be family rental affordable units in a mixed-use building. Spring Lake Heights will also seek three (3) rental bonus credits for this site.

- c. Highwood Development Holdings Site: Pursuant to a Settlement Agreement between Highwood Development and the Borough to be memorialized, the Borough has agreed to rezone Block 46.01 Lots 2, 3 and 4 to create a realistic opportunity for the construction of a mixed use development with inclusionary multi-family non-age restricted rental units comprised of forty seven (7) very-low, low- and moderate income housing units and forty (40) market rate units for a total of forty-seven (47) residential units as well as 600 square feet of non-residential space on the ground floor.
- d. Block 59, Lots 21.03 and 21.04: Pursuant to a Settlement Agreement with the property owner and the Borough to be memorialized, the Borough has agreed to rezone the above referenced Block and Lots to create a realistic opportunity for the construction of an inclusionary multi-family townhouse project with four (4) very-low, low- and moderate income family rental units and nine (9) market rate townhouse units for a total of thirteen (13) townhouse units. Spring Lake Heights will also seek one (1) rental bonus credit for this site.

9. **Unmet Need Obligation.** Spring Lake Heights's 17-unit RDP, subtracted from its cumulative prospective need obligation of 221 units, results in an unmet need obligation of 204 units, which the Parties agree shall be addressed through the Borough's implementation of the following compliance mechanisms:

- a. **Surplus Credits:** The Borough will have a two (2) unit surplus after meeting with above referenced RDP which will go towards meeting the 204 unit unmet need.
- b. **MU-1 and M-2 Inclusionary Overlay:** Spring Lake Heights shall adopt inclusionary zoning over those properties fronting on State Highway Route 71. The form of Ordinance and Overlay Zone Map shall be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.
- c. **Mandatory Borough-Wide Ordinance:** Spring Lake Heights shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential development of five (5) units or more. The set aside for affordable housing shall be twenty percent (20%). The provisions of the ordinance shall not apply to residenti expansions, additions, renovations,

replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more. The form of Ordinance shall be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.

- d. Development Fee Ordinance: Spring Lake Heights shall implement an approved Development Fee Ordinance for all new non-residential development and new non-inclusionary residential development. The Ordinance shall provide for the Borough's collection of residential fees for all new residential development, residential expansions that increase said residential square footage by the creation of a new bedroom. The form of ordinance shall be finalized through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.

10. Spring Lake Heights shall require thirteen percent (13%) of all units referenced in this Agreement, with the exception of those units constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low-income units, with half of the very low income units being available to families.

11. Spring Lake Heights shall meet its Prior Round and Third Round Prospective Need obligation of 221 units in accordance with the following Mount Laurel standards:

- a. Rental bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least fifty percent (50%) of the units addressing Spring Lake Heights's Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent (25%) of Spring Lake Height's Third Round Prospective Need shall be met through rental units, including at least half of the rental units being made available to families.
- d. At least half of the units addressing Spring Lake Heights's Third Round Prospective Need shall be non-age-restricted units available to families.
- e. Spring Lake Heights agrees to comply with COAH Second Round age-restricted cap of twenty-five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its cumulative prior round and Third Round fair share obligation.

- f. Thirteen percent (13%) of all affordable units referenced in this Agreement, with the exception of those units constructed or granted preliminary or final site plan approval prior to July 1, 2008, shall be very low-income units for households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, with half of the very low income units being available to families.

12. **Affirmative Marketing Plan.** As part of its Housing Element and fair Share Plan (“HEFSP”), Spring Lake Heights and/or its administrative agent shall prepare an Affirmative Marketing Plan and shall include the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5):

- a. FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, Trenton Branches of the NAACP, and the Supportive Housing Association.
- b. As part of its regional affirmative marketing strategies during implementation of the affirmative marketing plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.
- c. The Affirmative Marketing Plan shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. 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.

13. **Affordability Controls.** In all development that produces affordable housing, the Parties agree that the following terms shall apply:

- a. All affordable housing units shall be governed by and fully comply with affordability controls and affirmative marketing requirements of the Uniform Housing Affordability Controls N.J.A.C. 5:80-26.1 et. seq. (“UHAC”), or any successor regulation, including without limitation, the required bedroom and income distribution, with the sole exception that, in lieu of the ten percent (10%) of the affordable units in rental projects being required to be at thirty-five percent (35%) of the median income, thirteen percent (13%) of the affordable units in such projects shall be required to be for very low income households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act and all other applicable law.
- b. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low

income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the Borough, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. If the Borough acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b).

- c. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
- d. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law.
- e. Spring Lake Heights, 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.

14. **Income Limits.** Income limits for all units that are part of Spring Lake Heights' Housing Element and Fair Share Plan required by this Agreement and for which income limits are not already established through a federal program exempted from UHAC, pursuant to N.J.A.C. 5:80-26.1, shall be updated by Spring Lake Heights annually within thirty (30) days of the publication of determinations of median income by the U.S. Department of Housing and Urban Development ("HUD") as follows:

- a. Regional income limits shall be established for the region that Spring Lake Heights is located within (i.e. Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent (80%) of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent (30%) of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits, attached hereto as **Exhibit C** are the result of applying the percentages set forth in Paragraph 15(a) above to HUD's determination of median income for FY 2022, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by Spring Lake Heights annually by taking the percentage increase of the income limits calculated pursuant to Paragraph 15(a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- d. The Parties agree to request the court enter an order implementing Paragraph 15 of this Agreement prior to or at the Fairness Hearing in this matter.

15. **New Construction.** All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

16. **Spending Plan.** Spring Lake Heights shall prepare a Spending Plan, which shall be approved by the Borough during, or prior to, a duly noticed compliance hearing. FSHC reserves the right to provide any comments or objections on the Spending Plan to the court upon review. The Borough reserves the right to seek a finding by the court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, in which case the four-year time period for expenditures shall begin to run with the entry of a final judgment approving this Agreement 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).

17. Spring Lake Heights agrees to take the following steps within the timeframes specified below:

- a. Within 90 days of the date the Court approves the Settlement Agreement after conducting a Fairness Hearing:
 - i. Introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement; and
 - ii. Adopt a Development Fee Ordinance in accordance with the terms of this Agreement, and submit the ordinance to the court, Special Master and FSHC.

- b. Within 120 days after the Order the Court approves the Settlement Agreement after conducting a Fairness Hearing, Spring Lake Heights shall provide notice to the court, Special Master and FSHC that it has complied with the terms of Paragraph 16(a) above.

18. **Determination of Reduced Obligation.** Subsequent to the Effective Date, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the Fair Housing Act, determines that Spring Lake Heights's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third Round Need obligation established in this Agreement, with any relevant appeal period having passed, the Borough may, with notice to FSHC, seek to amend the judgment solely to reduce its fair share obligation accordingly. Notwithstanding any such reduction, Spring Lake Heights shall be obligated to implement the Housing Element and Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including adopting and/or leaving in place any site-specific zoning adopted or relied upon in connection with the Housing Element and Fair Share Plan approved pursuant to this Agreement; taking all steps necessary to support the development of all municipally-sponsored non-inclusionary developments referenced herein or deemed suitable for affordable housing development by a court; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of Spring Lake Heights's obligation below that established in this Agreement does not provide a basis for seeking leave to amend any provision of this Agreement or to amend an order or judgment pursuant to R. 4:50-1 with respect to any term other than the Borough's calculated Third Round Prospective Need obligation pursuant to the process set forth in this Paragraph. Should a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the Fair Housing Act, determines that Spring Lake Heights's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third Round Need obligation established in this Agreement, the Borough will be permitted to carry over any resulting extra credits to the Fourth Round in conformance with the then-applicable law.

19. **Reporting of Trust Fund Activity.** On December 31, 2024, and on every anniversary of that date thereafter through 2025, Spring Lake Heights shall 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.

20. **Reporting on Affordable Housing.** On December 31, 2024, and on every anniversary of that date thereafter through 2025, Spring Lake Heights shall 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by

the Special Master and FSHC. By December 31, 2024, Spring Lake Heights shall post on its municipal website, with a copy provided to FSHC, a status as to its satisfaction of its very-low-income requirements, including requirements contained herein.

21. **The Midpoint Review.** The Parties agree that, given the commencement of the Fourth Round on July 2, 2025, and the opportunity for public comment and objections at the fairness hearing and compliance hearing, Spring Lake Heights will not be required to submit a midpoint review report pursuant to N.J.S.A. 52:27D-313, and the compliance hearing shall suffice as the midpoint review. In accordance with the provisions of the Fair Housing Act regarding actions to be taken by the Borough during the ten-year period of protection provided in this Agreement, Spring Lake Heights agrees to comply with those provisions as follows:

- a. 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, Spring Lake Heights shall post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very-low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this Agreement.

22. **Fairness Hearing Determination.** This Agreement must be approved by the court following a duly noticed 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. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Upon full execution of this Agreement, The Fairness and Compliance Hearings may be held concurrently or sequentially, which shall be decided by the court with consultation by the Special Master, FSHC, and the Borough. Spring Lake Heights shall make its consulting planner and any other relevant witnesses available for testimony at the hearing(s). FSHC agrees to support this Agreement at the fairness hearing. If this Agreement is rejected by the court at the fairness hearing, it shall be null and void.

23. **Compliance Hearing and Judgment of Compliance and** Repose. In the event the court approves this Agreement and the Borough's HEFSP at a compliance hearing, the Parties agree that Spring Lake Heights will receive the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as set forth in the New Jersey Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2915). The accompanying protection shall remain in effect through July 1, 2025.

24. **Attorney's Fees.** The Borough agrees to pay FSHC's attorney's fees and costs in the amount of \$33,300.00 within thirty (30) days of the court's approval of this Agreement following the entry of an order approving this Settlement Agreement after a duly noticed fairness hearing.

25. **FSHC Party Status.** FSHC is hereby deemed to have party status in this matter and to have intervened as a Defendant without the need to file a motion to intervene or an answer or other pleading.

26. **Obligation to Defend.** Spring Lake Heights and FSHC shall each fulfill the intent and purpose of this Agreement. If an appeal is filed challenging the court's approval or rejection of this Agreement, Spring Lake Heights and FSHC 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 this 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 time the Parties each reserve their right to return to the *status quo ante*.

26. This Agreement shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against either Party because such Party drafted or requested such provision, or this Agreement as a whole.

27. **Severability.** Unless otherwise specified, the various provisions of this Agreement are independent and severable and if any item, condition or provisions of this Agreement is declared or found to be illegal, void or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, and if the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

28. **Entire Agreement.** Each Party acknowledges that this Agreement, and all Exhibits and Schedules annexed hereto, constitutes the complete, exclusive, entire statement between the Parties of the terms and conditions with respect to the subject matter of this Agreement, and supersedes and merges all previous communications, representations, understandings, agreements, communications, and negotiations, written or oral, between the Parties relating to this Agreement.

29. 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.

30. **Amendment or Modification.** This Agreement may not be modified or amended except by written instrument that specifically states that it is a supplement, modification, or amendment to this Agreement and is signed by an authorized representative for each Party.

31. **Waiver.** No waiver, forbearance or failure by any Party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of such Party's right to enforce any other provision of this Agreement or such Party's right to enforce such provision in the future.

32. **Headings.** The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the

terms hereof. In the case of a conflict between the headings and the content of the section or subsection, the content shall control.

33. **Legal Capacity.** Each Party who signs this Agreement in a representative capacity warrants that the Party's execution of this Agreement is duly authorized, execute and delivered by and for the entity for which that Party signs. Each Party warrants that the Party has carefully read and understands the scope and effect of each and every provision of this Agreement, that the Party has consulted with chosen legal counsel who has explained the terms of the provisions of this Agreement, and all attachments hereto, and has executed this Agreement voluntarily, without duress, coercion, or undue influence with the express intent to be bound thereby. 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.

34. **Enforcement.** This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Monmouth County.

35. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey

36. **Notices.** Any notice, demand, request or other communication required or permitted under this Agreement shall be valid and effective only if given by written instrument which is personally delivered or sent by facsimile, prepaid overnight or second-day air courier, or registered or certified air, postage prepaid, addressed as follows:

If to Spring Lake Heights to:

Name Janine Gillis, Borough Clerk
Entity Borough of Spring Lake Heights
Address 555 Brighton Avenue
City/State Spring Lake Heights, NJ 07762
P: (732) 449-3500
F: (732) 449-3535
Email: jgillis@springlakehts.com

With copy to:

Andrew Bayer, Esq.
Pashman Stein Walder Hayden, PC
Bell Works
101 Crawford Corner Road, Suite 4202
Holmdel, NJ 07733
P. 732-405-3686
F. 732-852-2482
Email: abayer@pashmanstein.com

If to FSHC to:


Adam M. Gordon, Esq.
Fair Share Housing Center, Inc.
510 Park Boulevard
Cherry Hill, NJ 08002
P: (856) 665-5444
F: (856) 663-8182
Email: adamgordon@fairsharehousing.org

Any notice, demand, request or other communication given as provided in this Paragraph, if given personally, shall be effective upon delivery; if given by facsimile shall be effective upon transmission; if given by mail, shall be effective ten (10) business days after deposit in the mail; and, if given by prepaid courier service, shall be effective on the date established by such courier as the date delivered. Any party may change the address at which it is to be given notice by giving written notice to the other party as provided in this Paragraph.

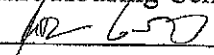
37. **Counterparts.** This Agreement may be executed in counterparts all of which when taken together shall constitute one original executed Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement in duplicate by their duly authorized officers and/or representative as of the earliest date of the signature below.

The Borough of Spring Lake Heights

By: 
Name: Christopher M. Campion, Jr.
Title: Mayor-Spring Lake Heights
Date: April , 2024

Fair Share Housing Center, Inc.

By: 
Name: Adam Gordon
Title: Executive Director
Date: March 22, 2024

BOROUGH OF SPRING LAKE HEIGHTS

RESOLUTION AUTHORIZING THE BOROUGH TO ENTER INTO A SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

Resolution No. R2024-63

WHEREAS, the Borough of Spring Lake Heights has a constitutional obligation to provide for its fair share of affordable housing pursuant to the *Mt. Laurel* doctrine established by the New Jersey Supreme Court; and

WHEREAS, a property owner commenced *Mt. Laurel* builder's remedy litigation against the Borough docketed at MON-L-0031-21, which was subsequently consolidated with a declaratory judgment action commenced by the Borough captioned In the Matter of the Application of the Borough of Spring Lake Heights, Docket No. MON-L-1916-21, in an effort to establish the Borough's Prior Round and Third Round affordable housing obligation and the mechanisms by which the Borough may meet its constitutional obligation (the "Declaratory Judgment Action"); and

WHEREAS, the Fair Share Housing Center ("FSHC") has been recognized by the Supreme Court in *Mt. Laurel IV* as an interested party that may participate as a matter of right in all cases filed by municipalities seeking a declaration as to their affordable housing obligation, including the Borough of Spring Lake Heights; and

WHEREAS, to avoid the large expense and risk of trial as to fair share methodology and the proposed compliance mechanisms required to meet the Borough's fair share obligation, the Borough and FSHC has reached a settlement to resolve the Declaratory Judgment Action Litigation and they wish to memorialize the terms in the form of a Settlement Agreement; and


WHEREAS the Borough Council believes it is in the best interest of the Borough to resolve the *Mt. Laurel* Litigation with Fair Share Housing Center to satisfy its constitutional obligation to provide for its fair share of affordable housing from 1987-2025 and to obtain immunity from builder's remedy litigation through July 1, 2025.

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the Borough Council of the Borough of Spring Lake Heights, County of Monmouth and State of New Jersey, that it hereby approves the Settlement Agreement with Fair Share Housing Center in the Declaratory Judgment Action, and it hereby authorizes the Mayor to execute the Settlement Agreement in a form acceptable to the Borough Attorney and the Borough's Special Affordable Housing Counsel.

BE IT FURTHER RESOLVED that a certified copy of this Resolution shall be provided to each of the following:

- a. Andrew Bayer, Esq. Special Counsel
- b. Mark Kitrick, Esq.

Adopted: March 4, 2024


Janine Gillis, Borough Clerk

ATTEST:

I hereby certify that the foregoing Resolution was adopted by the governing body of the Borough of Spring Lake Heights on March 4, 2024


Janine Gillis, RMC, CMR, Borough Clerk