

September 20, 2019

Eric M. Bernstein, Esq.  
Eric M. Bernstein and Associates, LLC  
34 Mountain Blvd., Building A  
Warren, NJ 07079

**Re: In the Matter of the Borough of Rutherford, County of Bergen,  
Docket No. BER-L-6367-15**

Dear Mr. Bernstein:

This letter memorializes the terms of an agreement reached between the Borough of Rutherford (the Borough or "Rutherford"), 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, a defendant in this proceeding.

### **Background**

Rutherford filed the above-captioned matter on July 8, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Borough 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**

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through 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. At this time and at this particular point 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, it is appropriate for the 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 Rutherford hereby agree that Rutherford's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	119
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	95
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Agreement)	477

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough's efforts to meet its present need include the following: The Borough may conduct a structural conditions survey in accordance with the applicable rules and processes of the Council on Affordable Housing. This survey shall be submitted for review to the Special Master and FSHC at least sixty (60) calendar days prior to the compliance hearing in this matter. In the event the survey demonstrates that there is not a Rehabilitation obligation, and if that conclusion is accepted by the Special Master and FSHC, the Borough shall have no obligation to administer a rehabilitation program. The Borough's rehabilitation share shall be the number of units so identified in the survey which are clearly in need of rehabilitation. In the event that there is a rehabilitation obligation demonstrated by the survey, the Borough will accept the survey's findings in an amount not to exceed one hundred nineteen (119) units. If the Borough chooses not to conduct a survey it shall accept the one hundred nineteen (119) unit obligation. The Borough plans to meet any rehabilitation obligation through participation in the Bergen County Housing Rehabilitation Program and through a supplemental municipally operated rehabilitation program that shall be available to rental units. Said municipal program shall meet the requirements in N.J.A.C. 5:93-5.2.
6. As noted above, the Borough has a Prior Round prospective need of 95 units, which is met through the following compliance mechanisms:

Name of Project	Description	# of Credits
South Bergen Mental Health Center	Special Needs – Prior Cycle, Block 60, Lot 20	8
Rutherford Senior Manor	Age-restricted, Block 75, Lot 2	24
	<b>Total</b>	<b>32</b>

7. The Borough's Prior Round plan previously included credit for affordable housing to be created at a property known as the Highland Cross site. The Borough previously proposed this site for one hundred one (101) affordable family rentals via a redevelopment of the Highlands Cross Redevelopment Area. Since that time the New Jersey Sports and Exposition Authority (formerly the Meadowlands Commission) has determined that the site is not suitable for residential use and thus no residential housing will be permitted on the

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<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, May 2016.

site. The parties agree that the remaining need from the Prior Round of sixty-three (63) units will become unmet need and will be added to the Borough's Third Round unmet need.

8. The Borough has implemented or will implement the following mechanisms to address its Third Round prospective need of four hundred seventy-seven (477) units:

The Borough has a realistic development potential (RDP) of fifty-two (52) units as shown in the following chart:

Description/ Owner	Location of Property	Size of Property	Density	RDP
Linque Properties	Block 224, Lot 3.04	.93	12 du/a	2
Agnew Place	Blocks 76 Lot 32;, Block 77 Lots 5,6 ,15, and 16; & all lots in Block 78	3.9 +/-	30 du/a	32
Park Avenue	Portion of Block 73	.70	50 du/a	10
Kip Avenue	Block 74, Lots 16-18	.20	50 du/a	2
Rutherford Gate/ Meadow Road Apartments LLC	Block 221, Lot 1.01	1.05	20 du/a	4
Native Developers, LLC	Block 73 Lots 12.02 and 17	.20	25 du/a	1
Varabee Realty, LLC	Block 7 Lots 20, 20.01, and 21	.40	16 du/a	1
			<b>Total</b>	<b>52</b>

\*Complete vacant land analysis and maps attached as Exhibit A.

9. The Borough will address its RDP by providing a realistic opportunity for the development of affordable housing through the following sites:

Name of Project	Description	Credits
West Erie, Union Avenue, Agnew Place, and Chestnut Street Redevelopment Areas.	The Borough has adopted two Redevelopment Areas (Area A and Area B) for portions of Blocks 76, 77, and 78 which encompass approximately one point seventy (1.7 +/-) acres. Area A is comprised of Block 78 Lots 1, 1.02, 2, 5, 7, 14, 16, 18, and Block 77 Lots 5, 6, 15, and 16. and permits up to 140 total units of multi-family apartments and require a 15% set-aside of 21 affordable housing units. Area B is comprised of Block 76 Lot 32. Area B will permit 21 total dwelling units and a 15% set-aside of 3 affordable housing units. The Borough agrees that any Redevelopment Agreement for these Redevelopment Areas will require the referenced number of affordable	24

	units and shall otherwise be in conformance with the terms of this Agreement.	
Park Avenue Redevelopment Area (formerly "The Maples")	The Borough has adopted a Redevelopment plan for portions of Block 73 which encompasses point seventy (.70) acres. The Redevelopment Agreement requires a payment in lieu contribution in lieu of providing 6 on-site units. No later than 10 days before the Fairness Hearing in this matter, the Borough shall provide to the FSHC and the Special Master a plan for how it will use that payment in lieu to create a realistic opportunity for 6 affordable housing units and/or special needs bedrooms.	6
Rutherford Gate/ Meadow Road Apartments LLC	Block 221, Lot 1.01 – the Borough approved multi-family development here for 20 total units with a 20% set-aside. The apartments are completed and fully occupied.	4
Native Developers, LLC	Block 73 Lots 12.02 and 17 – Planning Board adopted a Resolution granting approval to Native Developers on December 20, 2018 for development at 19 Franklin Place for mixed-use development including 5 studio apartments with 1 affordable housing unit set-aside.	1
Varabee Realty, LLC	Block 7 Lots 20, 20.01, and 21. – Planning Board adopted a resolution of approval to Varabee Realty, LLC on December 20, 2018 for a mixed-use development including 6 apartments and 1 affordable housing unit.	1
Kip Avenue	Block 74 Lots 16-18 – The Zoning Board of Adjustment reached a settlement on October 9, 2007 providing that 10 total units will be constructed including 1 affordable housing unit and a payment in lieu for a portion of another unit.	1
Vantage Health	Block 201 Lot 1 (DACKKs Group for Supportive Housing)	1
K of C Property	April 17, 2018 Zoning Board of Adjustment approval with 4 total units including 1 affordable housing unit.	1
	Sub-total	39
	Rental Bonus Credits	13
	<b>Total</b>	<b>52</b>

10. The RDP of fifty-two (52), subtracted from the Third Round obligation of four hundred seventy-seven (477) units, results in a Third Round unmet need of four hundred twenty-five (425) units, the parties agree that this will be combined with the remaining Prior Round need of sixty-three (63) units for a total unmet need of four hundred eighty-eight (488), which shall be addressed through the following mechanisms:

- a. Rutherford Senior Manor –Prior Round age-restricted project – HUD subsidized Section 202 project completed under the auspices of the Episcopal Diocese of Newark. This site contains fifty-five (55) age-restricted units. Twenty-four (24) will

be allocated to meet the Prior Round and thirty-one (31) to go toward the Borough's unmet need.

- b. Therefore, as of the date of this Agreement, based on the provisions of Paragraph 10a above, the Borough's total unmet need is four hundred fifty-seven (457), which is subject to further reduction during the period of this Agreement and beyond pursuant to paragraph 17 of this Agreement or through the documentation of additional credit worthy affordable housing produced to address unmet need subject to the review of the Special Master and FSHC and approval of crediting by the court.
- c. Meadow Road – the Borough previously designated Block 169 Lots 2, 3, and 27 through 41; Block 155 Lot 15.05, and Block 221 Lot 3 as an Area in Need of Redevelopment. The Borough agrees to adopt a Redevelopment Plan for this area which totals approximately four (4) acres to permit residential development up to thirty (30) du/a and to require a twenty (20) % affordable housing set-aside.
- d. In addition, the Borough has adopted at Section 51-59 of the Borough Code that "All residential development proposing the creation of three or more new residential units in any zoning district shall be required to provide affordable housing at the ratio of at least one affordable unit for every five proposed new market-rate units. If the application of this ratio results in less than a whole number, then the developer shall be required to contribute the fractional amount as a development fee, consistent with the Borough of Rutherford ordinance or as an additional affordable housing unit. For the purposes of this article, "residential development" shall include newly constructed market-rate residential units as well as new market-rate residential units created from the conversion of a nonresidential building to residential unit(s) requiring the issuance of a certificate of occupancy."

The Borough has adopted an amended ordinance to provide that the affordable housing set-aside shall be fifteen (15%) percent in the case of rental housing and twenty (20%) percent in the case of for-sale housing.

The following chart summarizes the residential use provision in the Borough Code:

Zoning District	Residential Use Permitted	Description
R-1, R-1A, R-1B	Yes	Varying minimum lot sizes but none greater than six (6) units per acre (7,500 s.f.)
R-2, R-3, R-4	Yes	Two family through multi-family having up to thirty-five (35) units per acre
B-1, B-2, B-3	Yes	Above ground floor
HC	Yes	Same as B-1
PCD	Yes	Same as B-1
Neighborhood Commercial	Yes	Same as B-1

Office – Research	No	
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11. The Borough agrees to require thirteen (13%) percent of all affordable units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with one half (1/2) of the very low income units being available to families. The municipality will comply with those requirements as follows:
  - a. Vantage Health – this development includes one (1) very low-income unit.
  - b. Agnew Place Redevelopment Area – the Borough agrees to require that at least four (4) of the affordable housing units provided shall be very low income.
  - c. Rutherford Gate – this development includes one (1) very low income family unit.
  - d. Meadow Road Redevelopment – the Borough agrees to require that at least thirteen (13%) percent of affordable housing units developed pursuant to this Redevelopment Plan shall be very low income.
  - e. Mandatory Set-Aside Ordinance – the Borough agrees to require that at least thirteen (13%) percent of affordable housing units developed pursuant the affordable housing ordinance identified in Paragraph 10(d) shall be very low income units.
  
12. The Borough shall meet its Third Round Prospective Need of four hundred seventy-seven (477) units in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 8 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least fifty (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.
  - c. At least twenty-five (25%) percent of the Third Round Prospective Need shall be met through rental units, including at least fifty (50) % in rental units available to families.
  - d. At least fifty (50%) percent of the units addressing the Third Round Prospective Need in total must be available to families.
  - e. The Borough agrees to comply with an age-restricted cap of twenty-five (25%) percent and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed twenty-five (25%) percent of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
  
13. 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, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League, and Bergen County Housing Coalition, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, 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.

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, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of ten (10%) percent of affordable units in rental projects being required to be at thirty-five (35%) percent of median income, thirteen (13%) percent of affordable units in such projects shall be required to be at thirty (30%) percent of median income, and all other applicable law. The Borough 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. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within thirty (30) days of the publication of determinations of median income by HUD as follows:
  - a. Regional income limits shall be established for the region that the Borough is located within (i.e. Region 1) 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 (4). The income limit for a moderate-income unit for a household of four shall be eighty (80%) percent 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 fifty (50%) percent 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 thirty (30%) percent 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 (a) above to HUD's determination of median income for FY 2019, 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 the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (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 prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.
15. 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. As an essential term of this Agreement, within one hundred twenty (120) days of the Court's approval of this Agreement, the Borough shall introduce 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.
  17. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, Hudson County, Passaic County, and Sussex County 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 the Borough 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, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any one hundred (100%) percent 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 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 carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
  18. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from 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, 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, which shall be established by the date on which it is executed by a representative of the Borough, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the 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, 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.

19. On the first (1<sup>st</sup>) 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 Borough through posting on the Borough website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing (COAH) or any other forms endorsed by the Special Master and FSHC.
20. The Fair Housing Act includes two (2) provisions regarding action to be taken by the Borough during the ten (10) 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 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 the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any 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 any 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 thirty (30) days of the third anniversary of this Agreement, and every third year thereafter, 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.
21. 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.
22. This 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). The Borough shall present its

planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event that the Court approves this proposed settlement, the parties contemplate the municipality will receive "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 through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing, it shall be null and void.

23. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of Ten Thousand (\$10,000.00) Dollars within ten (10) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing.
24. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, 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 point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
25. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Law Division, Bergen County.
26. Paragraphs 3, 5, 6, 7, and 8 are essential elements of this Agreement. Therefore, the Borough and/or FSHC may rescind this Agreement if any of those paragraphs are rejected or modified by the trial court or an appellate court in any substantial way and the parties then would return to status quo ante. 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.
27. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
28. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
29. 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.
30. 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.
31. 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.

32. 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.
33. 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.
34. 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.
35. 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.
36. 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:** Adam M. Gordon, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
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Telecopier: (856) 663-8182  
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**TO THE BOROUGH:** Eric M. Bernstein, Esq.  
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Warren, New Jersey 07059-4922  
Phone: (732) 805-3360  
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Email: embernstein@embalaw.com

**WITH A COPY TO THE  
MUNICIPAL CLERK:** Margaret Scanlon, PMC  
Borough Clerk  
Borough of Rutherford  
176 Park Avenue

Rutherford, New Jersey 07070

Please sign below if these terms are acceptable.

Sincerely,



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

On behalf of the Borough of Rutherford, with the authorization  
of the governing body:



Dated: 10/9/19