FAIR SHARE
HOUSING CENTER

Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

January 22, 2019

Jonathan E. Drill, Esq.
Stickel, Koenig, Sullivan, & Drill, LLC
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Re: In the Matter of the Application of the Township of Greenwich, County of Warren, Docket No. WRN-L-228-16
Third Amendment (corrected) to Settlement Agreement dated September 18, 2017

Dear Mr. Drill:

This letter constitutes the corrected third amendment to the Settlement Agreement dated September 18, 2017 (the "corrected **Third Amended Settlement Agreement**") between the Township of Greenwich (the "**Township**" or "**Greenwich**"), 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 the Settlement Agreement, a defendant in this proceeding.

Background

The initial Settlement Agreement was signed by FSHC on September 18, 2017 and by the Township on September 27, 2017 (the "**initial Settlement Agreement**").

Paragraph 7 of the initial Settlement Agreement provides that the Township will satisfy and implement its Third Round affordable housing obligation through the following affordable housing developments in the following manner:

Development	**Units**
Greenwich Chase (existing development with 29 credits)	29
Block 26, Lot 2 – 100% Affordable Family Rental development	Up to 144
ARC Warren County Group Home	3
Rental Bonuses (100% Affordable, ARC)	51
Total	**Up to 227**
Surplus	**Up to 23**

Paragraph 21 of the initial Settlement Agreement provides that it 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).

Paragraph 15 of the initial Settlement Agreement requires that, within one hundred and twenty (120) days of Court's approval of the initial Settlement Agreement, the Township shall introduce and adopt ordinance(s) amending the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of the initial Settlement Agreement, and shall adopt a Housing

Element and Fair Share Plan, including a Spending Plan, in conformance with the terms of the initial Settlement Agreement.

On December 7, 2017, a Fairness Hearing was held on the initial Settlement Agreement by the Honorable Thomas Miller, J.S.C. On December 22, 2017, an order approving the initial Settlement Agreement was entered by Judge Miller.

On April 11, 2018, the Township Land Use Board adopted a 2018 Housing Element and Fair Share Plan in accordance with the initial Settlement Agreement.

The Township introduced for first reading the two required implementing ordinances on April 19, 2018 and May 17, 2018 (the Affordable Housing Ordinance #3-2018 and the MF-1 Zone District Ordinance #4-2018) and public hearings on both ordinances were duly noticed and opened on June 21, 2018. As those ordinances were pending, the Township became aware of other potential sites for providing part or all of its affordable housing obligation that the Township believed could be preferable as additional and/or replacement site to that provided in the initial Settlement Agreement.

An Amended Settlement Agreement dated and signed by FSHC on July 17, 2018 and signed by the Township on July 20, 2018 (the "**First Amended Settlement Agreement**") was entered into allowing an extension of the time set forth in paragraph 15 of the initial Settlement Agreement within which the Township had to adopt implementing ordinances from April 22, 2018 to November 15, 2018 in order to give the Township time to attempt to negotiate or otherwise revise its affordable housing compliance plan set forth in paragraph 7 of the Settlement Agreement to move all or a portion of its Third Round affordable housing obligation to another site including possibly changing the form of affordable housing development from entirely rental for the Third Round to a mix that may include some for-sale units and at least 25% rental units across the Township's cumulative obligation.

A second Amended Settlement Agreement dated and signed by FSHC on October 9, 2018 and signed by the Township on October 18, 2018 (the "**Second Amended Settlement Agreement**") was then entered into, allowing a further extension of the time set forth in paragraph 15 of the Initial Settlement Agreement within which the Township had to adopt implementing ordinances from November 15, 2018 to February 22, 2019 in order to give the Township additional time to attempt to negotiate or otherwise revise its affordable housing compliance plan set forth in paragraph 7 of the Initial Settlement Agreement to move a portion of its Third Round affordable housing obligation to another site, while also providing for requirements for the Township to move forward during that time period on the first phase of 100% affordable rental housing which will take place on the Dumont Road site.

The Township has now requested, and FSHC has agreed, to enter into this corrected Third Amended Settlement Agreement, which makes certain minor corrections to the Third Amended Settlement Agreement executed on January 17, 2019, on the following terms and conditions:

Third Amended Settlement terms

1. Paragraph 7 of the Initial Settlement Agreement is amended by providing that the Township will satisfy and implement its Third Round affordable housing obligation through the following affordable housing developments in the following manner (with the change being that two (2) 100% affordable housing developments are now proposed,

one (1) on the Dumont Road site with 66-units instead of up to 144-units, and one (1) on the Furhman site with 64-units where no development at all was previously proposed):

Development	**Units**
Greenwich Chase (existing development with 29 credits)	29
Dumont Road Site, Block 26, Lot 2 – 100% Affordable Family Rental development	66
Furhman site (Block ~~50~~ 40, Lot ~~9.01~~ 1.01) – 100% Affordable Rental Development	64
ARC Warren County Group Home	3
Rental Bonuses (100% Affordable, ARC)	51
Total	**213**
Surplus	**9**

2. Paragraph 15 of the Initial Settlement Agreement is amended to provide additional time for the Land Use Board to adopt an amended HE&FSP (the "**2019 HE&FSP**") and for the Township to introduce and adopt ordinance(s): amending the MF-1 zone to decrease the number of units to be allowed on the Dumont Road site from 71 to 66 which amendment shall be done in accordance with the further provisions regarding the Dumont Road site provided in this Third Amended Settlement Agreement; and to create the MF-2 zone to allow 64 units of affordable rental housing on the Furhman site, both of which ordinances would be needed to implement the terms of the Third Amended Settlement Agreement and the 2019 HE&FSP. Specifically, the Land Use Board shall have 60 days from the days from the date this Third Amended Settlement Agreement is last signed to adopt, and the Township shall have 75 days from the date it is last signed to endorse, such a 2019 HE&FSP.

3. Paragraph 15 of the Initial Settlement Agreement is also amended to provide that the Township shall have 90 days from the date this Third Amended Settlement Agreement is last signed to adopt any and all ordinances necessary to implement the 2019 HE&FSP and the within Third Amended Settlement Agreement.

4. The parties agree that Paragraphs 2 and 3 of the Second Amended Settlement Agreement have been fulfilled by the Township by (a) the Township having adopted the Affordable Housing Ordinance #3-2018 on October 29, 2018; (b) the Township having adopted the second version of the MF-1 Zone District Ordinance #5-2018 governing the municipally sponsored Dumont Road 100% affordable housing development on October 29, 2018; (c) the Township having issued a RFP for the municipally sponsored Dumont Road 100% affordable housing development on October 23, 2018; (d) the Township having selected Ingerman as developer of the Dumont Road site from the responses to the RFP on December 20, 2018. The parties agree that it is acceptable for the Dumont Road site to provide 66 affordable units instead of the 71 originally anticipated as long as the terms of this Third Amended Settlement Agreement are otherwise met. The 66 affordable units on the Dumont Road site shall include at least 9 very low-income units, at least 24 low income units, and no more than 33 moderate income units, and no more than 13 one-bedrooms and a minimum of 14 three-bedroom units, proportionally distributed across the income categories. The 64 affordable units on the Fuhrman site shall include at least 9 very low-income units, at least 23 low income units, and no more than 32 moderate income units,

and no more than 12 one-bedrooms and a minimum of 13 three-bedroom units, proportionally distributed across the income categories.

5. As to funding for the two (2) 100% affordable housing developments, the following shall apply. Both Ingerman, the proposed developer of the 100% Affordable Family Rental development slated for the Dumont Road Site, Block 26, Lot 2, and Petrucci, the proposed developer of the 100% Affordable Family Rental development slated for the Furhman site, Block 50, Lot 9.01, shall make applications for 9% tax credit financing for their respective developments by the next deadline for 9% tax credit financing applications announced by NJ HMFA after the execution of this Third Amended Settlement Agreement (currently expected for July, 2019). In the event that Petrucci obtains feedback during the pre-application process that it is not likely that its 9% tax credit financing application will be granted or, if it does not obtain such negative feedback but does not obtain 9% tax credit financing by December 31, 2019, it will immediately cease seeking 9% tax credits and will immediately submit an application for 4% tax credit financing. In the event that Petrucci neither obtains 9% tax credit financing by December 31, 2019 nor obtains the USDA loan that it requires to make the 4% tax credit financing deal work for the project and a commitment for 4% tax credit financing by July 31, 2020, the Township shall have the following two options: A. First, the Township shall have the option of bonding to bridge the gap in financing. B. Second, the Township shall have the option of re-zoning a site for an inclusionary development that will provide at least 55 low and moderate income units based on presumptive densities and set-asides in accordance with N.J.A.C. 5:93 or other agreement on densities and set-asides acceptable to the property owner, all of which the Township can show, with court approval, is available, approvable, developable, and suitable and presents a realistic opportunity. In the event that Ingerman's application for 9% tax credits is not approved at the upcoming (expected for July, 2019) round, Ingerman may apply again for 9% tax credit financing during the next round. If tax credits are not awarded after two rounds, the Township will be required to provide other available funds, including 4% Tax Credits and/or bonding for the Dumont Road development. For both the Dumont Road site and the Furhman site, the Township shall submit the information required by N.J.A.C. 5:93-5.5 as part of its Housing Element and Fair Share Plan.

6. The Township agrees to convey the Dumont Road property for $1.00 to the developer of the 100% affordable housing development on the Dumont Road site. The Township agrees to convey for $1.00 to each of the developers of the 100% affordable housing developments (the Dumont Road site development and the Furhman site development) sufficient sewer capacity to serve the 100% affordable housing projects on those sites and warrants that it has sufficient sewer allocations at the time of signing of this Agreement to do so and will take all necessary steps to reserve said allocations for these two sites. While the Dumont Road site has a sewer line in the road, the parties recognize that the Furhman site does not have a sewer line in the road but that a sewer line does exist diagonally across the road under the Dowel property. As the sewer line under the Dowel property belongs to and is the private property of Dowel, the parties recognize that the developer of the Furhman site will have to seek permission from Dowel to hook up into the line. The Township agrees that if the developer of the Furhman site is not able to obtain the voluntary agreement of Dowel to hook up into its sewer line, the Township will institute litigation to obtain the legal right for the developer of the Fuhrman site to hook up into the sewer line.

7. This agreement, the ultimate ordinances that are adopted, as well as the 2019 HE&FSP shall be subject to approval by the Court following a combined amended fairness and

compliance hearing in accordance with 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), which combined hearing shall be scheduled with the Superior Court of New Jersey (Vicinage 13 Mount Laurel Judge), with the parties agreeing that they shall seek to have that hearing scheduled 120 days from the date this corrected Third Amended Settlement Agreement is last signed.

8. Paragraph 22 of the Initial Settlement Agreement is amended to increase the donation from $5,000 to $12,500. The Township will transmit the $5,000 donation to FSHC within one week of execution of this corrected Third Amended Settlement Agreement. The additional $7,500 donation shall be transmitted to FSHC within 20 days of the Court's approval of the corrected Third Amended Settlement Agreement after the combined fairness and compliance hearing is conducted.

   This corrected Third Amended Settlement Agreement supersedes both the First Amended and Second Amended Settlement Agreement and the prior uncorrected Third Amended Settlement Agreement. Other than the amendments to the initial Settlement Agreement as set forth above in this corrected Third Amended Settlement Agreement, all terms and conditions of the Initial Settlement Agreement shall remain in full force and effect.

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 Township of Greenwich, with the authorization of the governing body:

Robert A Barry

Dated: 01/25/19