

September 27, 2017

John R. Pidgeon  
Pidgeon & Pidgeon, P.C.  
600 Alexander Road  
Princeton, New Jersey 08540

**Re: In the Matter of the Long Hill Township, County of Morris,  
Docket No. MRS-1660-15**

Dear Mr. Pidgeon:

This letter memorializes the terms of an agreement reached between the Township of Long Hill ("Long Hill" or "Township"), 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**

Long Hill 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. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Township appeared before the Honorable Stephan Hansbury on case management conferences August 11, 2015, October 13, 2015, and June 9, 2016, and attended an out-of-court settlement conference in Morristown on June 8, 2016. The parties also engaged in several settlement conferences through February 2017. Through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

### **Settlement terms**

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a new Housing Element and Fair Share Plan ("the Plan") consistent with this Agreement, to be adopted within 120 days of the approval of this Agreement at a Fairness Hearing, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding 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 Long Hill hereby agree that Long Hill's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	6
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	62
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	220

4. The Township's efforts to meet its present need include the following: a rehabilitation program which has rehabilitated five (5) units, one (1) additional unit is proposed to be rehabilitated. This is sufficient to satisfy the Township's present need obligation of 6 units.
5. As noted above, the Township has a Prior Round prospective need of 62 units, which is met through the following compliance mechanisms:

**Prior Round Completed Units, Long Hill Township**

Mechanism	Units/Credits	Bonus Credits	Total Credits	Carryover Credits
Accessory Apartments	13	1	14	0
Lounsberry Meadow Senior (51 age-restricted units)	15*	5	20	36
RCA (Newark) Prior Round (42 units)	28**	0	28	14
<b>Sub-Totals</b>	56	6**	62	50
<b>Total Prior Round</b>			<b>62 units</b>	
<b>Total Carryover Credits for Third Round</b>				<b>50 units</b>

\*15 units apply due to a 25% cap on age-restricted units in the Prior Round.  
 \*\*Bonuses are capped at 16 credits (25%) of the obligation.  
 \*\*\*RCAs are capped at 50% of the obligation; 28 are applied and 14 are carried over.

6. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 220 units:

Long Hill has been the subject of a voluntary sewer ban since 2000 due to exceeding sewer capacity. As a result the Township is seeking an adjustment of its Third Round

<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.

obligation until such time as the Township's sewer capacity issues are resolved and the sewer ban is lifted. The Township currently has sufficient credits to meet 57 units of its Third Round obligation.

**Third Round Mechanisms, Long Hill Township**

Mechanism	Units/Credits	Bonus Credits	Total Credits	Carryover Credits
Lounsberry Meadow Senior (36 age-restricted units carried over)	14	1	15*	22
RCA (Newark) Prior Round	14	0	14	0
Stirling Manor	8	8	16	0
Chestnut Run	6	6	12	0
<b>Sub-Totals</b>	<b>42</b>	<b>15</b>	<b>57</b>	<b>22</b>
<b>Total Credits</b>			<b>57 credits</b>	

\*14 units apply due to a 25% cap on age-restricted units in the Third Round.

The Township has completed 57 of its 220 unit Third Round Obligation. This results in a remaining need to be durationally adjusted of 163 units, which shall be partly addressed through the following mechanisms, which have already been completed:

**Remaining Need Based on 163 Units**

Mechanism	Units/Credits	Bonus Credits	Total Credits	Carryover Credits
Lounsberry Meadow (22 age-restricted units carried over)	22	0	22	0
Extension of Expiring Controls on Lounsberry Meadow (51 units)	19*	0	19	32
<b>Sub-Totals</b>	<b>41</b>	<b>0</b>	<b>41*</b>	<b>32</b>
<b>Total Credits against Durationally Adjusted Need</b>			<b>41 credits</b>	
<b>Total Carryover for 4<sup>th</sup> Round</b>				<b>32 credits</b>

\*Age-restricted units capped at 25 percent of the remaining need. (163/4)

- The Township will also address its durationally adjusted need through the adoption of inclusionary zoning on the following sites:

- a. Redevelopment Area along Valley Road. The Township has declared an area in need of redevelopment along Valley Road. The area consists of Block 10401, Lots 1-4 and Block 11514, Lots 6, 31-32. The area consists of a total of 4.4 acres. The Report Concerning the Determination of the Proposed Valley Road Study Area dated May 24, 2016 is attached to this agreement as Exhibit A. For the purposes of this agreement, the parties assume that this site will produce 10 affordable units in a rental project and 13 affordable units in a for-sale project, based on a total of 66 units on the site with a 15% rental/20% for-sale set-aside. The Township has not yet completed the Redevelopment Plan, but will complete said plan within 18 months of this agreement allowing for such a yield of total and affordable units. In the event that a plan is not completed within 18 months or the redevelopment plan, the Township will adopt overlay zoning on the parcels in the area declared in need of redevelopment allowing for the development of the same or greater yield of total and affordable units.
- b. Overlay Zoning – The Township will also address the durationally adjusted need by placing overlay zoning on the following sites:

Site #	Block/Lot	Area(ac)	Total Units	Set-aside Rental (15%)	Set-aside For-sale (20%)
1. Tifa Site	12301/1	11.5	138	21	28
2. Gillette Office	10801/3	5.15	62	9	12
3. Warren Ave	11501/1 & 4 11502/1,2,14	7.87	94	14	19
4. Valley Road Redevelop Area	10401/1-4 11514/6,31-32	4.4	66	10	13
<b>Sub-Totals</b>			360	54	72
<b>Total Credits towards Durationally Adjusted Need</b>				54	72

- c. The Township and FSHC agree that Long Hill may claim 22 units of credit at the Lounsberry Meadow project and 19 units of credit for the extension of the controls at Lounsberry Meadow for a total of 41 credits toward its 163 units of durationally adjusted need. This is the maximum number of age-restricted units permitted under the COAH regulations and this Agreement. Any further development in the municipality that seeks credit for affordable housing toward the Third Round obligation including the Redevelopment Area and Overlay Zoning sites must be constructed as non-age-restricted. The Township shall be eligible to carry the 31 additional units of credit from the extension of controls on the Lounsberry Meadow project as surplus toward the Fourth Round which shall be credited in accordance with the applicable law at the time.
- d. The parties agree that the Township will be eligible to claim an additional 40 rental bonus credits up to the 25% cap on bonus credits if non age-restricted rental units are constructed. These bonus credits will be realized as the additional units are completed.

8. The Township will seek court approval for, and FSHC will support, a durational adjustment of the remaining 118 units and address the requirements of N.J.A.C. 5:93-4.3 through the following:
  - i. In accordance with N.J.A.C. 5:93-4.3(c), the requirement to address Third Round prospective need obligation of 118 units shall be deferred until adequate sewer is made available. The Township shall reserve and set aside new sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide additional sewer capacity.
  - ii. The Township has designated and rezoned the sites in the chart in Paragraph 7(b). As an essential term of this settlement, the Township represents that it is diligently attempting to remedy the sewer capacity issue that has led to the Township to be constricted by a voluntary sewer service moratorium since 2000. The Township intends to either sell the utility to a private entity or to bond for the necessary further upgrades needed to the utility. Within 30 days of the 1st anniversary of the execution of this agreement and every anniversary after that until the 5th year, the Township will present to the Court and FSHC a report on its sewer capacity. In the event that the sewage treatment capacity has not been remedied by the 5 year anniversary, the Township will demonstrate how its plan presents a realistic opportunity for the creation of affordable housing. The Township must demonstrate that the sewage capacity is adequate to provide sewage treatment service to the above-mentioned overlay zoning mechanisms and redevelopment area. FSHC shall have the right to review the Township's plan at both the mid-point review on July 1, 2020 and again at the 5 year anniversary and may move to remove the Township's repose in the event that the necessary sewer upgrades have not been substantially resolved by that date.
9. The Township agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements by requiring that 13% of all units created as a result of the redevelopment and overlay zoning referenced in Paragraphs 7(a) and 7(b) will be available to very low-income households.
10. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:
  - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

- c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
  - d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
  - e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
11. The Township 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, and the Morris County Chapter of the NAACP, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
  12. 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 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law.
  13. The Township shall adopt an updated Housing Element and Fair Share Plan consistent with this Agreement which will be submitted to the Court for review and approval, and shall propose and adopt any new or modified ordinances required to implement this Agreement, within 120 days of the entry of an order by the Court approving this Agreement pursuant to paragraph 22, unless a longer time period is otherwise specifically referenced in another provision of this Agreement.
  14. The Township 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.
  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. The parties agree that if a decision of a court of competent jurisdiction in Morris 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 Township 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 Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to implement the fair share plan attached hereto, including by leaving

in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township'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 Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

17. Long Hill has an approved Spending Plan, a copy of which is attached hereto as Exhibit B. Long Hill shall file with the Court and FSHC an updated Spending Plan (valid through 2025), which shall supersede the previously approved Spending Plan and which shall incorporate all of the requirements of the within Agreement ("the 2017 Spending Plan"). The 2017 Spending Plan shall be substantially in a form approved by FSHC, and shall be subject to the review and approval of the Court and FSHC, and shall be attached to this agreement as Exhibit C upon its availability. The 2017 Spending Plan shall be filed with the Court and FSHC within 120 days of the entry of an order by the Court approving this Agreement. Upon approval of the 2017 Spending Plan, the parties agree that the expenditures of funds contemplated under the 2017 Spending Plan shall constitute a "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). In the time period prior to the entry of the final judgment approving this settlement and the 2016 Spending Plan, the 2009? Spending Plan shall remain in full force and effect, and the expenditures of funds contemplated under the 2009? Spending Plan shall constitute a "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Township 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.
18. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

19. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this agreement. The Township 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 Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its 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 30 days of the third anniversary of this agreement, and every third year thereafter, the Township 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.
20. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
21. The Township agrees to pay FSHC \$5,000 in attorneys fees and costs within 30 days of judicial approval of this settlement agreement pursuant to a duly-noticed fairness hearing.
22. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event 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 the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
23. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to

implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

24. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
25. 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.
26. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
27. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.

33. No member, official or employee of the Township shall have any direct or indirect interest in this Settlement 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. 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.
35. 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 TOWNSHIP:** Nancy Malool, Township Administrator  
Township of Long Hill  
915 Valley Road  
Gillette, NJ 07933  
Telecopier: (908) 647-4150  
Email: Administrator@longhillnj.gov

**WITH A COPIES TO THE  
MUNICIPAL CLERK and the TOWNSHIP ATTORNEY:**

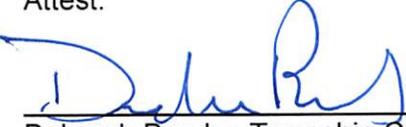
John R. Pidgeon  
Pidgeon & Pidgeon, P.C.  
600 Alexander Road  
Princeton, NJ 08540  
Telecopier: (609) 520-1001  
Email: jpidgeon @pidgeonlaw.com

Please sign below if these terms are acceptable.

Sincerely,  
  
Kevin D. Walsh, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Township of Long Hill, with the authorization  
of the governing body:

Attest:

  
\_\_\_\_\_  
Deborah Brooks, Township Clerk

TOWNSHIP OF LONG HILL

By:   
\_\_\_\_\_  
Cornel Schuler, Mayor

DATED:

AS AUTHORIZED BY RESOLUTION NO. 17-255, ADOPTED BY THE LONG HILL TOWNSHIP  
COMMITTEE ON SEPTEMBER 13, 2017.