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.

September 27, 2017

Mark Madaio, Esq.
Law Offices of Mark D. Madaio
29 Legion Drive
Bergenfield, New Jersey 07621

Re: In the Matter of the Borough of Hillsdale, County of Bergen,
Docket No. BER-L-005680-15

Dear Counsel:

This letter memorializes the terms of an agreement reached between the Borough of Hillsdale ("the Borough" or "Hillsdale"), 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
Hillsdale filed the above-captioned matter on June 16, 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. The Borough and FSHC have agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review.

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 ("the Plan"), 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 Hillsdale hereby agree that Hillsdale's affordable housing obligations are as follows:

Rehabilitation Share or Present Need (per Kinsey Report[1])	26
Prior Round Obligation (pursuant to N.J.A.C. 5:93[2])	111
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	234

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 its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

5. FSHC and the Borough agree that Hillsdale does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends and is free to take the position before the Court that the 234 Third Round obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a reduction from Dr. Kinsey's May 2016 calculation of the Borough's Third Round prospective need.

6. The Borough's efforts to meet its present need include the following:
   a. After the Settlement Agreement is approved, the Borough will reserve a maximum of $80,000 of its affordable housing trust fund account to complete up to eight rehabilitations through a Borough-sponsored rehabilitation program.
   b. Moving forward, to address the remainder of its rehabilitation obligation, the Borough will work with the Bergen County Home Improvement Program to advertise the program to Hillsdale residents. This is sufficient to satisfy the Borough's present need obligation of 26 units.

7. As noted above, the Borough has a Prior Round obligation of 111 units, which is met through the following existing compliance mechanism:

PRIOR ROUND MECHANISMS & CREDITS						
Mechanism	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
Hillsdale House	100% Affordable	Rental	Yes	86	27	113
			Total	86	27	113

8. Pursuant to the framework set forth in N.J.A.C. 5:93-4.2 and as agreed upon by FSHC, the Borough and Special Master Banisch, Hillsdale's current Realistic Development Potential (hereinafter "RDP") is 35. The RDP has been calculated using a Vacant Land Adjustment and the addition of affordable units, which were created between 1999 and 2025. The RDP consists of the following:

[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.
[2] As determined by COAH.

- 17 units RDP from the Vacant Land Analysis
- 4 units created at V & R
- 2 units to be created at Paterno
- 6 units to be created at Walsky
- 6 units to be created at 175 Broadway (Verizon)

9. The municipality has a Realistic Development Potential (RDP) of 35 units. That RDP will be satisfied as follows:

THIRD ROUND RDP MECHANISMS & CREDITS						
Mechanism	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
Carryover Credits: Hillsdale Hou	100% Affodrable	Rental	Yes	2	-	2
New Concepts for Living	Prior-Cycle	Rental	-	4	-	4
V&R	Inclusionary	Rental	-	4	4	8
273 Broadway (Paterno)	Inclusionary	Rental	-	2	2	4
305 Patterson Street (Walsky)	Inclusionary	Rental	-	6	3	9
Alliance Against Homelessness	Alternative Living Arrangement	Rental	-	4	-	4
Bank of America (Block 1102)	Inclusionary	TBD	-	4		4
			Total	26	9	35

The RDP of 35, subtracted from the Third Round obligation of 234 units, results in an unmet need of 199 units, which shall be addressed through the following mechanisms:

THIRD ROUND UNMET NEED MECHANISMS & CREDITS						
Mechanism	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
175 Broadway (Verizon)	Inclusionary	TBD	-	6		6
Spectrum for Living	Alternative Living Arrangement	Rental	-	6		6
Care Plus New Jersey - Patterson St	Alternative Living Arrangement	Rental	-	5		5
Care Plus New Jersey - Park Ave	Alternative Living Arrangement	Rental	-	4		4
Industrial Zone Redevelopment Area	Inclusionary	TBD	-	24		24
Habitat for Humanity, TBD	100% Affordable	Sale	-	1		1
Borough-Wide Set-aside Ordinance	Inclusionary	TBD	-	TBD		TBD
			Total	45	0	45

10. The Borough will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

a. 175 Broadway (Verizon) – Permit mixed-use development with commercial uses on the first floor and residential units on the second and third floor. A maximum density of 20 units to the acre would be permitted. However, all parking would be required to be provided on-site.
b. Bank of America (Block 1102) – Permit mixed-use development with commercial uses on the first floor and residential units on the second and third floor. A maximum density of 20 units to the acre would be permitted. However, all parking would be required to be provided on-site.

11. The following sites are in the Borough's affordable housing plan:
    a. V & R – In 2008, V&R Developers applied to the Zoning Board for a use variance to permit multi-family residences. On December 16, 2008, the Board approved the application for 16 rental units at 55-59 Patterson Street. The Building, located on Block 1101, Lots 6 and 7, received Certificates of Occupancy in March of 2012. Four of the units, specifically, #206, #207, #306 and #307 are affordable family rental units deed-restricted for 30 years.
    b. Paterno – In 2016, John C. Paterno applied to the Zoning Board for a use variance to permit multi-family residences. On May 11, 2017, the Board approved the application for 15 rental units at 273 Broadway. The site is known as Block 1205, Lot 8. The resolution of approval requires 2 of the units to be affordable units with a 30-year deed restriction.
    c. Walsky – 305 Patterson Street, LLC applied to the Zoning Board for a use variance to permit multi-family residences. On April 25, 2017, the Board approved the application for 40 units at 305 Patterson Street. The site is known as Block 1212, Lots 15 and 16. The resolution of approval requires 6 of the units to be affordable units with a 30-year deed restriction.

12. The Borough will provide additional affordable housing mechanisms that will be developed or created through means other than inclusionary zoning in the following ways:

    a. A redevelopment designation of a portion of the Industrial Zone located off of Patterson Street. There is approximately 5.8 buildable acres within the study area. After the area is designated, the Borough shall adopt a Redevelopment Plan that will permit a variety of uses, including inclusionary housing at a maximum density of 28 units to the acre within 3 years of the court's approval of this Agreement. The residential density shall be calculated using the final developable acreage in the Redevelopment Plan.

    b. The Borough will donate a property to Habitat to Humanity for the construction of one affordable home. Habitat for Humanity will be responsible for the construction of the new home. The Borough shall identify the property to be donated and initiate the donation prior to the final compliance hearing.

    c. A Borough-wide Set-aside Ordinance. The Borough will adopt a Borough-wide Set-aside Ordinance that requires a 20% set-aside if the affordable units will be for-sale and a 15% set-aside if the affordable units will be for rent, for all new multi-family residential development of five (5) or more units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or a new redevelopment plan. This does not give any

developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Hillsdale to grant such rezoning, variance or other relief.

13. The Borough agrees to require 13% of all the 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. Based upon the agreed Third Round RDP of 35, there is a requirement for five (5) units to be reserved for very low income households. The municipality will comply with those requirements as follows:

    a. The four (4) beds at New Concepts for Living provide very low income housing.

    b. The six (6) beds at Spectrum for Living provide very low income housing.

    c. A 13% very low income set-aside would be imposed on development within the Industrial Zone Redevelopment Area, 175 Broadway (Verizon) and Bank of America (Block 1102) and as part of the Borough-wide Set-aside Ordinance for rental units constructed under that Ordinance.

14. The Borough 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 9 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 Borough 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. For the purposes of settlement, the parties agree that the age-restricted cap shall be applied by combining the Prior Round obligation (111) and the Third Round obligation (234) for a total of 345. Therefore, the Borough's total age-restricted cap is 86 units (345 * .25). Hillsdale has claimed 84 age-restricted units toward the Prior Round and 2 age-restricted units toward the Third Round. FSHC agrees that this is acceptable because it does not exceed the combined age-restricted cap for the Prior Round and Third Round. FSHC and Hillsdale agree that the Borough shall not be entitled to any further credit for age-restricted housing as applied to the Third Round. The parties also agree that Hillsdale is eligible for 27 bonuses in the Prior Round pursuant to N.J.A.C. 5:93-5.15(d) through Hillsdale House and/or because credits could be rearranged between rounds for Hillsdale to take the same number of

bonuses from family and special needs units that currently are not receiving bonuses but are eligible for bonuses.

15. FSHC and Hillsdale agree that Hillsdale shall be entitled to carry 13 units of credit from the Hillsdale House as surplus to be used toward any affordable housing obligations that are calculated after 2025 and shall be credited in accordance with the applicable law at that time.

16. 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, and the Bergen County Chapter of the NAACP, and Bergen Urban League, 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 Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

17. 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. 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.

18. 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.

19. As an essential term of this settlement, within one hundred twenty (120) days of the Court's approval of this Settlement Agreement, the Borough shall adopt a final Housing Element and Fair Share Plan incorporating the terms of this Settlement Agreement and introduce an ordinance providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein. The Redevelopment Plan discussed in Paragraph 12(a) will not be subject to the one hundred twenty (120) day timeframe.

20. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or if no court in Bergen County issues a decision on fair share obligations then a court within COAH's Region 1 (Bergen, Hudson, Sussex, Passaic), 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 (which in the case of Hillsdale would be an obligation of 187 or lower) need obligation established in this agreement, 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 implement the mechanics within the Housing Element and Fair Share Plan, 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 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.

21. The Borough shall prepare and adopt a spending plan within one hundred twenty (120) days of the Court's approval of this Settlement Agreement, which shall be reviewed by FSHC and the Special Master. The Borough reserves the right to request the Court's approval that the expenditures of funds under the revised 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), and FSHC reserves the right to respond to such request and comment on the revised spending plan. On the first anniversary of the court's approval of this agreement, and every anniversary thereafter through July 1, 2025, 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. Such forms will be provided to the Borough prior to the fairness hearing. 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.

22. On the first anniversary of the court's approval of this Agreement, and every anniversary thereafter through July 1, 2025, the Borough 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 provide 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. Such forms will be provided to the Borough prior to the fairness hearing.

23. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

    a. For the midpoint realistic opportunity review 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 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 the court's approval 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.

24. The Borough agrees to pay Fair Share Housing Center $4,500 to cover their ongoing legal expenses. The Borough shall pay said amount within 30 days of the Court's approval of this Settlement Agreement.

25. 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.

26. Prior to becoming effective, 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 Borough shall present its planner as a witness at this hearing. The court-appointed Special Master shall also appear as a witness at this hearing. FSHC agrees not to challenge the Housing Element and Fair Share Plan at the fairness hearing. In the event the Court approves this proposed settlement, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" or "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), which shall be determined by the trial judge and both parties agree not to appeal the decision of the trial judge as to whether Hillsdale receives a judgment of compliance and repose or the judicial equivalent of substantive certification. 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.

27. 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.

28. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.

29. 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.

30. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

31. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. No member, official or employee of the Borough 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.

38. 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.

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change

as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Mark Madaio, Esq.
Law Offices of Mark D. Madaio
29 Legion Drive
Bergenfield, New Jersey 07621
Phone: 201-385-3788
Telecopier: 201-385-3191
Email: mark.madaio@madaiolaw.com

WITH A COPY TO THE BOROUGH:

Denise Kohan, Borough Clerk
380 Hillsdale Avenue
Hillsdale, New Jersey 07642
Phone: 201-666-4800
Telecopier: 201-358-5002
Email: dkohan@hillsdalenj.org

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 Borough of Hillsdale, with the authorization of the governing body:

Mayor

Dated: 10/10/17