

Council Member	Intro	Second	Yes	No	Abstain	Absent	Recused
Von Rudenborg			X				
Deputy Mayor Canestrino	X		X				
Battaglia		X	X				
Carroll			X				
Mayor Labrosse			X				

CITY OF HACKENSACK

RESOLUTION NO. 452-21

RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE SEPTEMBER 10, 2020 SETTLEMENT AGREEMENT BETWEEN THE CITY OF HACKENSACK AND FAIR SHARE HOUSING CENTER

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), on June 12, 2015, the City of Hackensack (hereinafter “Hackensack” or the “City”) filed a Declaratory Judgment Complaint in the Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine;” and

WHEREAS, the City simultaneously sought, and ultimately secured, a protective order providing Hackensack immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan, which is still in full force and effect; and

WHEREAS, with assistance from the Court Master, the City and Fair Share Housing Center (hereinafter “FSHC”) engaged in good faith negotiations, which resulted in the entering into of a Settlement Agreement between the City and FSHC on September 10, 2020 (hereinafter “FSHC Settlement Agreement”); and

WHEREAS, a Fairness Hearing was held on October 22, 2020, during which the FSHC Settlement Agreement was approved, and said approval was memorialized by an Order entered by the Court on November 5, 2020; and

WHEREAS, FSHC and the City's professionals have negotiated a First Amendment to the September 10, 2020 Settlement Agreement between the City of Hackensack and Fair Share Housing Center ("First Amendment to the FSHC Settlement Agreement"), which is attached hereto as Exhibit A, to implement certain changes that will also be made to the City's Housing Element and Fair Share Plan; and

WHEREAS, in light of the above, the City Council finds that it is in the best interest of the City of Hackensack to execute the attached First Amendment to the FSHC Settlement Agreement, and to take various other actions delineated below, which will ultimately result in approval of the City's Fair Share Plan which, in turn, will maintain the City's immunity from all Mount Laurel lawsuits through July 2, 2025.

NOW, THEREFORE, BE IT RESOLVED on this 9th day of November, 2021, by the Council of the City of Hackensack, County of Bergen, State of New Jersey, as follows:

1. The City Council hereby authorizes and directs the Mayor of Hackensack City to execute the First Amendment to the FSHC Settlement Agreement in substantially the form attached hereto as Exhibit A.

2. The City Council hereby directs its Affordable Housing Counsel to file the fully executed First Amendment to the FSHC Settlement Agreement with the Court, along with the original FSHC Settlement Agreement, for review and approval at a duly noticed combined Fairness and Compliance Hearing.

**CERTIFIED TO BE A TRUE COPY OF THE RESOLUTION PASSED AT
THE CITY COUNCIL MEETING OF THE CITY OF HACKENSACK
HELD NOVEMBER 9, 2021**


DEBORAH KARLSSON, CITY CLERK

In the Matter of the City of Hackensack, County of Bergen, Docket No. BER-L-5731-15

FIRST AMENDMENT TO THE SEPTEMBER 10, 2020 SETTLEMENT AGREEMENT BETWEEN THE CITY OF HACKENSACK AND FAIR SHARE HOUSING CENTER.

This First Amendment to the September 10, 2020 Settlement Agreement between the City of Hackensack and Fair Share Housing Center (hereinafter the "First Amendment") is entered into this ____ day of _____, 2021, by and between the City of Hackensack, County of Bergen, Declaratory Plaintiff in the above-captioned matter, which has an address of 65 Central Avenue, Hackensack, New Jersey 07601 (hereinafter the "City" or "Hackensack"); and Fair Share Housing Center, which has an address of 510 Park Boulevard, Cherry Hill, New Jersey 08002 (hereinafter "FSHC").

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the City filed the above-captioned matter on June 15, 2015 seeking, among other things, a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the City simultaneously sought, and ultimately secured, an Order protecting Hackensack from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan, which Order is still in full force and effect today; and

WHEREAS, with the assistance of the Court-Appointed Master, Mary Beth Lonergan, PP, AICP (hereinafter "the Court Master"), the City and FSHC entered into a Settlement Agreement dated September 10, 2020 (hereinafter the "FSHC Settlement Agreement"), which is attached hereto as Exhibit A, and said FSHC Settlement Agreement was thereafter approved by a Court Order entered on November 5, 2020, after a properly noticed Fairness Hearing was held on October 22, 2020; and

WHEREAS, prior to the scheduled Compliance Hearing in this matter, which was to take place on March 3, 2021, the developer withdrew its project at the "Arena Diner" site, thereby necessitating an adjournment of the Compliance Hearing to September 14, 2021, which will be adjourned to a date in the future mutually agreed to by the parties and Court Master; and

WHEREAS, since the adjournment of the March 2021 Compliance Hearing, the City adopted a Redevelopment Plan for Lot T (Block 305, Lot 2), which includes a set-aside of affordable housing units that will contribute to satisfying the City's Prior Round obligation; and

WHEREAS, the City's Affordable Housing Plan will be amended to satisfy these changes, as well as several other changes to existing affordable housing projects included in the City's Fair Share Plan; and

WHEREAS, the City and FSHC have agreed that the proposed changes to the City's Affordable Housing Plan are fair and reasonable to very-low-, low-, and moderate-income households; and

WHEREAS, in order to implement the proposed changes, in addition to amending the City's Affordable Housing Plan, it is also necessary to amend the FSHC Settlement Agreement accordingly, and this First Amendment to the FSHC Settlement Agreement serves that purpose.

NOW, THEREFORE, THE CITY OF HACKENSACK AND FSHC AGREE AS FOLLOWS:

1. Paragraph 4.a), on page 2 of the 2020 FSHC Settlement Agreement, which is attached hereto as Exhibit A, is hereby replaced with the following:

a) The Hackensack Housing Authority has rehabilitated units in the following developments, and the Bergen County Home Improvement Program has rehabilitated the following individual units:

Project	Total Units	COAH Eligible Units*	Major Systems Upgraded	Total Expended Since 2010	Average Cost Per Unit
Barsalona Court (HHA)	50	48	Sewer line replacement HVAC – in-unit heating	\$386,738.62	\$8,407.36
Harry Berkie Gardens (HHA)	100	98	Generator Elevators Kitchen Cabinets	\$1,258,960.83	\$12,589.61
Oratam Court (HHA)	144	133	Roof Common area HVAC Sidewalk handrails Pedestrian concrete/ driveways/parking Building envelop, caulking sealant	\$6,668,767.37	\$46,310.88
Ostrowski Court (HHA)	50	46	Roof	\$1,275,457.53	\$25,509.15
Widnall Towers (HHA)	100	100	Site work, carpet, elevators, energy update Kitchen cabinets	\$706,805.71	\$7,068.06
70 Cedar Ave (County)	2	2	To be provided		
83 Linden Street (County)	1	1	To be provided		
135 Ricardo Pl (County)	1	1	To be provided		
73 Vanderbeek (County)	1	1	To be provided		
Total Units Rehabilitated Since 2010	449	430			
Balance of Rehabilitation Obligation		152			

*Due to HUD income standards v. Region 1 income standards

2. Paragraph 5, on pages 3 and 4 of the 2020 FSHC Settlement Agreement is hereby replaced as follows:

Satisfaction of Prior Round Obligation: Hackensack has a 201-unit Prior Round obligation, and will satisfy that obligation as follows:

Housing Type	Project/Address	Year Built	Units	Rental Bonus	Total Credits
Family For-Sale	Clinton Terrace Condos	1994	22	0	22
Family For-Sale	Pulaski Place Condos	1982	4	0	4
Family For-Sale	Franklin Garden Condos	1984	2	0	2
Senior Rental	Patrick DiZenzo Court	1982	50*	0	50
Supportive/Special Needs	AAH Bergen County 266 Spring Valley Avenue (Group Home)	1995	3		3
Supportive/Special Needs	Advance Housing 279 Clark Street (Group Home)	1999	2		2
Supportive/Special Needs	Advance Housing 10 Orchid Street (Group Home)	1999	2		2
Supportive/Special Needs	Advance Housing 451 Heath Place (Group Home)	1999	2		2
Supportive/Special Needs	Bergen & Passaic ARC (Group Home)	1980	4	0	4
Supportive/Special Needs	Comprehensive Behavioral Healthcare 298 Jackson Street	1988	7		7
Supportive/Special Needs	Community Action for Independent Living 155 Poor Street (Group Home)	1996	5		5
Supportive/Special Needs	NJ ARC Bergen-Passaic Unit 279 Lookout Avenue	1980	6	0	6
Inclusionary Family Rental (Proposed)	Lot T Redevelopment Plan (Block 305, Lot 2)	Proposed	60	51**	111
TOTAL			169	51**	220

* Maximum 25% cap on age-restricted units

** 25% Rental bonus cap

In order to receive credit for 50 of the 59 units from the Patrick DiZenzo Court project toward its Prior Round obligation (the 9 excess credits being above the 25% senior cap), , on August 17, 2021 the City entered into an agreement with the Hackensack Housing Authority (HHA) to remove the "residency preference" from its affirmative marketing and deed restriction, if applicable, and the HHA will commence with affirmatively marketing the units to very-low, low- and moderate-income households within the region with the first vacancy to occur after October 22, 2022.

The vast majority of the City's Prior Round affordable housing credits are completed, existing affordable housing units. The proposed Lot T Redevelopment Plan is discussed in detail in new Paragraph 6A added below. In addition, the City may consider other affordable housing production efforts as discussed in new Paragraph 6B below.

3. Paragraph 6, on page 4 of the 2020 FSHC Settlement Agreement is hereby replaced with the following:

6A. INCLUSIONARY REDEVELOPMENT

Lot T (Block 305, Lot 2) Redevelopment Plan: The City has adopted a Redevelopment Plan for the parcel(s) known as "Lot T" which will include a minimum of 60 affordable family rental units or 20% of the total number of residential units, whichever is greater.

- a) Prior to the Compliance Hearing, the City shall revise the Redevelopment Plan for Lot T and enter into a Redevelopment Agreement with a Redeveloper for this project, which will include all income and bedroom distribution requirements pursuant to the Fair Housing Act, COAH Regulations, and UHAC requirements, including that thirteen percent (13%) of the total number of affordable units shall be affordable to very-low-income households, earning no more than 30% of median income for the housing region. Accordingly, 50% of the total number of affordable units in the project shall be affordable to moderate-income households, 37% shall be affordable to low-income households, and 13% shall be affordable to very-low-income households. Bedroom distributions shall be representative throughout the income levels. Should the Redevelopment Agreement not be executed prior to the Compliance Hearing in this matter, the City shall have submitted the proposed language set forth above to FSHC and the Court Master for approval prior to the 45-day notice period commencing for the Compliance Hearing.
- b) Hackensack shall ensure and require that all affordable units are subject to affordability controls of at least 30 years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low income shall be defined as at or below 30 percent of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the City, in its sole discretion, takes action to extend or release the unit from such controls.
- c) Hackensack shall ensure and require that all affordable units are affirmatively marketed pursuant to paragraph 13 of the FSHC Settlement Agreement and applicable law, including posting of all affordable units on the online New Jersey Housing Resource Center website.

6B. MUNICIPALLY SPONSORED PROJECTS

- a) The City of Hackensack is considering, but is not required to implement, the following 100% affordable, family rental projects to satisfy its Prior Round obligation. Any units in excess of the number of units needed to satisfy its 201-unit Prior Round obligation will be considered surplus that can be applied against a future housing cycle. The proposed projects are in varying stages of completeness, due to the impact of the SARS-COV2 pandemic and resulting State of Emergency. The City, in its discretion, will partner with a developer on any, all, or none of the proposed projects listed below, or has the option to exercise its powers related to its inclusionary overlay zones in Paragraph 7 of the 2020 Settlement Agreement.
- i. **251 West Railroad Avenue, Block 356, Lot 1:** This project is proposed to be a maximum of 25 affordable family rental units on this City-owned parcel. Should the City choose to develop this project, it will amend its MOU with Greater Bergen Community Action and support any application for funding, beginning in 2022. If the project does not receive funding by 2024, the City will remove its support from the project.
 - ii. **Hackensack Housing Authority (HHA):** the City and the HHA have entered into an agreement where the City will assist the HHA in determining if any City-owned land can be developed into a 100% affordable housing project of up to 60 units. This agreement also removes the "residency preference" on the DiZenno Court units beginning with the first vacancy after October 22, 2022. The City will explore opportunities with the HHA for the development on City-owned land of a municipally-sponsored project of up to 60 units that is creditworthy in accordance with COAH and UHAC regulations and income guidelines. Should the City and the HHA agree upon a proposed project, the City will enter into a Memorandum of Understanding (MOU) with the HHA in support of the project. Once an MOU is signed, the City will support the project's application for 9% Low Income Housing Tax Credits (LIHTC).
 - iii. **Housing Authority of Bergen County (HABC):** HABC is proposing a mixed-use, 100% affordable project along Hudson Street, the purchase of the land for which, as of the date of this Amendment, continues to be in its due diligence period. Due to significant delays from the pandemic, this project is not ready for a tax credit application at this time. Should the City choose to support this project, it will enter into a Memorandum of Understanding with HABC and support the project's application for 9% LIHTC tax credits for at least two funding cycles.
 - iv. **"Arena Diner" Project by Hampshire Properties:** [removed in its entirety].
- b) In accordance with N.J.A.C. 5:93-5.5, the City recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor,

and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source in the event that the funding request is not approved. The City meets this obligation as follows: the City intends to fund a project with nine percent (9%) tax credits, if such funding is applicable to the particular project, and will adopt a resolution of intent to fund for any shortfall associated with the project. In the event that none of the projects specified above are able to secure nine percent (9%) tax credits within the parameters set forth above, the City may utilize other available funds, including four percent (4%) tax credits, alternative funding sources, and bonding for the project(s) that have not secured funding, or secure redevelopment agreements in accordance with the terms of paragraph 7 of the 2020 Settlement Agreement.

- c) In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process, including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The City will chose a project and developer of that project, and will provide a proposed Construction Schedule and Pro Forma for the proposed project.

4. On November 5, 2020, following a duly-noticed Fairness Hearing, the Honorable Gregg A. Padovano, J.S.C. issued an Order Approving Settlement between the City and FSHC. In light of this First Amendment, Hackensack and FSHC agree to request that the Court conduct review and approval of this First Amendment and the new compliance mechanisms identified herein at either a joint Fairness Hearing and Compliance Hearing, or at a separate Fairness Hearing, to be followed by a Compliance Hearing at a Court-ordered date in the future following the Fairness Hearing. The City shall present its planner as a witness at the hearing.

5. All other terms and provisions set forth in the FSHC Settlement Agreement and not expressly amended herein shall remain unchanged and are in full force and effect as previously approved by the Court.

6. The City and FSHC agree to defend this First Amendment and the FSHC Settlement Agreement, and all action taken in compliance thereunder, on appeal including in proceedings before the Superior Court, Appellate Division, and the New Jersey Supreme Court. The City agrees to continue to implement the terms unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the City and FSHC acknowledge that the Parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

7. This First Amendment and the FSHC Settlement Agreement may be enforced by the City or FSHC through a motion to enforce litigant's rights or a separate action filed in the Superior Court, Bergen County. If FSHC determines that such action is necessary, the City consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

8. Unless otherwise specified, it is intended that the provisions of this First Amendment are to be severable. The validity of any article, section, clause, or provision of this

First Amendment shall not affect the validity of the remaining articles, sections, clauses, or provisions hereof or the FSHC Settlement Agreement.

9. This First Amendment shall be governed and construed by the laws of the State of New Jersey.

10. This First Amendment may not be modified, amended, or altered in any way except by a writing signed by both the City and FSHC.

11. This First Amendment 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.

12. The City and FSHC acknowledge that each has entered into this First Amendment on its own volition without coercion or duress after consulting with its counsel, that each person to sign this First Amendment is the proper person and possesses the authority to sign the First Amendment, that this First Amendment and the 2020 FSHC Settlement Agreement contain the entire understanding of the City and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth in writing therein.

13. The City and FSHC acknowledge that this First Amendment was not drafted by the City or FSHC, but was drafted, negotiated, and reviewed by representatives of the City and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The City and FSHC each represent that: (a) it has been represented by counsel in connection with negotiating the terms of this First Amendment; and (b) it has conferred due authority for execution of this First Amendment upon the persons executing it.

14. The First Amendment and the 2020 FSHC Settlement Agreement constitute the entire agreement between the City and FSHC and supersede all prior oral and written agreements between the City and FSHC with respect to the subject matter hereof except as otherwise provided herein.

15. Anything herein contained to the contrary notwithstanding, the effective date of this First Amendment shall be the date upon which representatives of the City and FSHC have executed and delivered this First Amendment.

16. All notices required under this First Amendment ("Notice[s]") shall be written and shall be served upon the City and FSHC by certified mail, return receipt requested, or by a recognized overnight delivery service or by a personal courier. In addition, where feasible (for example, transmittals of less than 50 pages), Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon date of delivery. Delivery shall be effected to all interested parties and 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 Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
E-mail: adamgordon@fairsharehousing.org

TO THE CITY: Nancy L. Holm, Esq.
Surenian, Edwards & Nolan, LLC
311 Broadway, Unit A
Point Pleasant Beach, NJ 08742
Email: nlh@surenian.com

**WITH A COPY TO THE
CITY CLERK:** Deborah Karlsson, City Clerk
City of Hackensack
65 Central Avenue
Hackensack, NJ 07601
Email: dkarlsson@hackensack.org

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be properly executed, their corporate seals affixed and attested and this First Amendment to be effective as of the Effective Date.

Witness/Attest:



Dated: 11/8/21, 2021

FAIR SHARE HOUSING CENTER:


By: 
_____ Adam Gordon, Esq.
On Behalf of Fair Share Housing Center

Witness/Attest:



Dated: 11/10, 2021

CITY OF HACKENSACK:

By: 
_____ John P. Labrosse, Mayor
On Behalf of the City of Hackensack