

October 14, 2024

Michael Napuda, Esq.
Masten and Ray
254 S. Broadway
Pennsville, NJ 08070

**Re: In the Matter of the Application of the Township of Pennsville,
County of Salem, Docket No. SLM-L-119-15
AMENDMENT TO THE SETTLEMENT AGREEMENT**

Dear Mr. Napuda:

This letter memorializes the terms of an amendment (the "Amendment") to the Settlement Agreement ("Agreement") reached between the Township of Pennsville ("Township" or "Pennsville"), 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 and earlier settlement agreements, a defendant in this proceeding.

This Amended Settlement Agreement was necessitated by the addition of a new, revised Site #9 and a new Site #10 and an expansion of the Pennsville Towers site to the Township's affordable housing plan and other necessary changes as further described below.

The Township and FSHC have entered into this Amendment because the parties agree that it will result more quickly in additional affordable housing units being constructed in the Township of Pennsville.

The Township and FSHC hereby agree to the following Amendment terms:

1. The 2016 court-approved Settlement Agreement remains binding and valid except as modified by this Amendment. Where a conflict exists between the 2016 Settlement Agreement and the Amendment, the Amendment shall control. For ease of reference, the 2016 Settlement Agreement is attached hereto as Exhibit A. The Parties will seek Court approval of this Amendment in the manner described in Paragraph 16 of the 2016 Settlement Agreement. The Township will then amend its court-approved 2017 Housing Element and Fair Share Plan ("HEFSP") accordingly and seek approval of the amended HEFSP at a final compliance hearing.
2. FSHC and Pennsville hereby agree that Pennsville's affordable housing obligations shall remain as set forth in the 2017 Judgment of Compliance and Repose ("JOR") attached hereto as Exhibit B, which are as follows:
 - a. Rehabilitation Share: 38
 - b. Prior Round obligation (N.J.A.C. 5:93): 228
 - c. Round 3 Obligation: 374 Per Dr. Kinsey as modified to 234 (and reflected herein) per the 2017 JOR which stated, "which was further reduced to 234 by virtue of Court-approved durational adjustment pursuant to N.J.A.C. 5:93-4.3."

3. The Township's approach to addressing its combined Prior Round and Third Round obligation of 462 units as described in Paragraphs 4 through 7 of the 2016 Agreement is hereby amended in the following ways:

- a. **Site #3** (Block 4504 Lot 7) and **Site #4** (Block 4504 Lot 21) as identified and described in the 2016 Agreement and 2017 HEFSP are being rezoned to permit single family market-rate residential uses and shall no longer produce a total of 53 affordable units (22 and 31 affordable housing units, respectively). These sites will instead generate an affordable housing residential development fee under the Township's Affordable Housing Development Fee Ordinance adopted on May 7, 2009.
- b. **New Sites #9 & #10** (replace Sites #3 and #4, as well as the prior 2017 court-approved Site #9 ("former Site #9")) – The Township designated property previously known as Block 4201, Lot 17 as former Site #9 in its 2017 HEFSP. The Township reserved approximately 70% of the buildable acres on former Site #9 for commercial development. Former Site #9's Affordable Housing Yield was 24 Affordable Units. Thus, the total affordable housing yield to be replaced from former Sites # 3, #4 and #9 is 77 affordable units (53 from Sites #3 and #4 and 24 from former Site #9). Former Site #9 was recently subdivided by the owner into two relatively equal sized tracts, with the subdivision line running perpendicular to Rt. 49. The northern subdivided tract is now known as Block 4201, Lot 17 (new Site #9) and the southern subdivided tract is now known as Block 4201, Lot 17.01 (new Site #10). An experienced affordable housing developer, Rukenstein, is under contract to purchase new Site #10 (Block 4201, Lot 17.01).

Within five (5) months of the date of this agreement, the Township agrees to amend its 2017 HEFSP and adopt an affordable housing zoning ordinance that would create new Site #10 on Block 4201, Lot 17.01 and new Site #9 on Block 4201, Lot 17 (from some or all of the buildable area that had been reserved for commercial development of the former Site #9) that would allow for the following: either 1) the development of a 100% Affordable project of 60 units on new Site #10 and the inclusionary development on new Site #9 of a maximum of 150 units with 30 affordable units (resulting in a total of 90 affordable units on new Site #10 and new Site #9 exceeding the previously required 77 total affordable housing yield from former Sites #3, #4 and #9); or, 2) if the contract-purchaser of Block 4201 Lot 17.01 is unsuccessful in securing funding for a 100% Affordable project within the next two subsequent 9% tax credit cycles or through a 4% tax credit application on new Site #10, then new site #10 shall be zoned for the development of an inclusionary project that includes a maximum of 275 units with at least 55 affordable units (rounded up). New Site #9 shall be zoned for the development of an inclusionary project that includes a maximum of 110 units with at least 22 affordable units. Under this alternative, there will be a total of 77 affordable units zoned on both new Site #9 and new Site #10, matching the previously required 77 total affordable housing yield from former Sites # 3, #4 and #9).

The Town shall not be obligated to fund the 100% Affordable project proposed on new Site #10 if the contract purchaser is unsuccessful in securing full outside funding per paragraphs _i_ and ii_ below regarding 100% Affordable

projects . If there is remaining acreage on both new Site #9 and new Site #10 in either scenario, it may be reserved for commercial development consistent with what has been previously contemplated in the 2017 HEFSP.

- i. The Township and FSHC acknowledge the requirements of N.J.A.C. 5:93-5.5, regarding adequate and stable funding for any non-inclusionary affordable housing developments. However, in light of the Township's present inability to satisfy such funding shortfall requirements, the Township shall rely on the realistic opportunity presented by the enhanced inclusionary zoning to be enacted as an alternative per the above. The municipality is required to provide the 100% affordable housing developer's pro forma of both total development costs and sources of funds and documentation of the funding available to the project sponsor, and any applications still pending as part of the future compliance plan.
 - ii. 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 municipal approvals, application for State and Federal permits, selection of a contractor and construction. Rukenstein shall provide a proposed Construction Schedule and Pro Forma for the proposed project as part of the future compliance plan.
- c. Directly adjacent to the existing **Pennsville Towers** site (40 Eaton Road – Block 3101, Lot4) a stabilized 99-unit, 100% affordable senior rental development in the Township, it is anticipated that a new all affordable senior rental building at the of 60 units will be developed as a distinct, stand-alone community ("Pennsville Towers Phase II"). The existing affordable senior rental complex was built in 1984 through HUD 202 funding and the owner noted that there is a significant waiting list of seniors The owner may apply for HUD funding or LIHTC ('tax credit') funding from HMFA for the development the Phase II community. Although the Township currently has maximized the number of eligible senior affordable credits for the Third Round, the Township would be eligible for a new round of senior affordable credits in the Fourth Round (about one year away) and the production of 60 additional senior affordable units at Pennsville Towers Phase II may also help to free up some portion of any one-bedroom affordable units that will be open to all ages (including seniors) at the new Sites 9 and 10 affordable housing project.

The Township has very little water capacity remaining for future development. Pennsville's water capacity is limited by a Water Allocation Permit issued by DEP, which permit is not expected to be expanded under any circumstances. As such, the Township was granted a Durational Adjustment of its Third Round affordable obligation under the 2016 Agreement and subsequent Court Orders. Also, per the 2016 Agreement, the Township reserved water and sewer capacity for 55 affordable units to address its affordable obligation balance of the Prior Round (time period 1986-1999). The total water usage reserved for the aforementioned 55 affordable units (20% of a total of 275 housing units) is 82,500 gpd based on $275 \times 300 \text{ gpd} = 82,500 \text{ gpd}$. It is anticipated, at this time, that the 55 affordable unit reservation (or a total of 275 total housing units) will be partially utilized on proposed new Site #10. See chart below:

Prior Round Required Water Reservation = 55 affordable units	Total Housing Units	Water Usage per Unit	Total Water By Day
55 affordable units at 20%	275	300 gpd	82,500 gpd

The Township, in consideration of the approaching water capacity limit, has recently taken steps to ensure its compliance with the DEP Water Allocation Permit and to ensure a fair and organized process by which the remaining water capacity is allocated. With regard to the “fair and organized” process, Pennsville enacted a policy whereby potential developers must submit an application and pay a fee for water to be reserved for their project. Even then, the reservation of capacity is only valid for six (6) months. Without an approved application, potential developers are not guaranteed water for their project. The Township enacted this policy because it did not want developers to expend significant resources on exploring projects in Pennsville only to eventually find that there was no water, whereas when exploring development in other towns, developers might just assume that water will be available.

Additionally, Pennsville recalculated its excess water capacity by averaging its peak demand months for 2020 (June), 2021 (August), 2022 (August), and 2023 (June), subtracting that from its current monthly allocation, and subtracting from that difference the anticipated demands for unfinished projects for which water allocation has been approved. The analysis starts in “gallons per month” and ends in “gallons per day” for two reasons: 1) monthly usage is what is monitored and regulated by the DEP, and; 2) daily usage is what is customarily used by the Township when discussing water capacity on a day-to-day basis with developers and among professionals outside of the DEP compliance realm. See chart below:

AVG PEAK DEMAND 2020-2023	Current Monthly Allocation	Excess Monthly Allocation	Monthly Demand for Approved Projects	Excess Capacity Gallons per Day (gpd)
47,295,000 gallons per month (gpm)	54,250,000 gpm	6,955,000 gpm	6,020,000 gpm	30,161 gpd

The Township must be aware, however, that the 30,161 gpd figure is the theoretical absolute maximum remaining capacity. The Township is left to govern itself as to how much of the remaining capacity is in fact allocated and it is not able to allocate all of it. A higher-than-average month would result in DEP fines and penalties if the Township does not maintain an allocation buffer. Therefore, the Township is committed to maintaining an allocation buffer of at least 15,080 gpd.

The aforementioned “anticipated demands” consist primarily of the following significant projects:

Anticipated Water Demands of Significant Projects	Total Housing Units	Water usage per unit	Total water by day
Warehouse	n/a	n/a	50,000 gpd
Pennsville Towers Phase II	100 senior 1-BR	200 gpd	20,000 gpd
Sites #3/#4	125 market	300 gpd	37,500 gpd

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Sites #3/#4	125 market	300 gpd	37,500 gpd

			107,500 gpd
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No portion of the Township's 55 affordable unit reservation of water and sewer capacity is specifically assigned to the new Site #10 by this agreement. The Township's 55 affordable unit reservation of water and sewer capacity shall be allocated on a first come-first served basis to affordable housing development at any of the Township's affordable housing sites. This agreement, however, evidences the Township's current expectation that the new Site #10 will be the next affordable project to actually be developed.

If new Site #10 is developed as a 60 unit 100% Affordable project as anticipated by this agreement, those 60 units will fall within the 275 total unit water/sewer capacity reservation. The Township will have met its obligation of providing water and sewer to its prior round obligation of 55 affordable units without utilizing the entire 275 total unit water/sewer reservation, thus leaving 215 units of excess water/sewer capacity. The Township agrees to re-allocate 150 total units, of which 30 will be affordable, of water/sewer capacity back to a COAH reservation, with the rest of the 65 unit excess to be utilized by the Township in any manner it sees fit. If new Site #10 is developed instead as an inclusionary project, the Township's current water/sewer reservation of 275 total/55 affordable units will remain in place and available to the first inclusionary developer that utilizes some or all of it, which given the current development interests in Pennsville, would be on new Site # 10. Pennsville Towers Phase II, as stated previously herein, is anticipated to be a 60 unit project and the developer of same is pursuing funding therefore. The developer, earlier in its investigation of the site and through the proper municipal channels, reserved water capacity for 100 units. The anticipated 60 unit project would fall within the previously reserved 100 units of water capacity.

4. Pursuant to Paragraph 8.f. of the 2016 Agreement, the 2017 HEFSP shall be amended to require 13% very low-income units or at least 7 of the 55-unit balance of the Prior Round affordable housing obligation anticipated to be developed as very low income family affordable rentals. In addition, all future family or senior affordable rental 100% developments (including any expansion of the Pennsville Senior Towers Phase II) or inclusionary rental developments shall provide 13% as very low-income rental units.
5. 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 ("UHAC"), 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 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. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from UHAC pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:
 - a. Regional income limits shall be established for the region that the Township is located within (Region 6) based on the median income by household size, which

shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits prepared by the Affordable Housing Professionals of New Jersey ("AHPNJ") attached hereto as Exhibit C are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for fiscal year 2024, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year. The Township may continue to use the updated AHPNJ income limits each year, if available.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year. The Township may continue to use the updated AHPNJ income limits including the Regional Asset Limit each year, if available.
 - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Amendment.
6. In all developments that produce affordable housing, the Township agrees that the following terms shall apply:
- a. All of the affordable units shall fully comply with UHAC, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low-income households earning thirty percent (30%) or less of median income pursuant to the Fair Housing Act.
 - b. All of the affordable units shall be subject to affordability controls of at least thirty (30) years for sale units and at least 40 years for rental units 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 thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the Township, in its sole discretion, takes action to extend or release the for-sale unit from such controls after at least thirty (30) years and the rental unit from such controls after at least forty (40) years. If the Township acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b).

- c. In inclusionary developments with similar market-rate and affordable unit type and tenure, the affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
 - d. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
 - e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified herein: Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network, Gloucester County and Salem County Branches of the NAACP, Senior Citizens United Community Services (S.C.U.C.S.), and the Supportive Housing Association; and it shall also include posting of all affordable units on the New Jersey Housing Resource Center ("HRC") website in accordance with applicable law.
- 7. Pennsville shall notify the Court so that a Fairness Hearing can be scheduled as soon as possible to approve the Amended Agreement. At a later date, the Township shall notify the Court so that a Compliance Hearing can be scheduled to review and approve the Township's amended Housing Element and Fair Share plan and necessary supplemental documentation.
 - 8. Within 45 days of the entry of an Order approving this Amended Settlement Agreement at a duly noticed Fairness Hearing, the Township shall pay to FSHC as a donation for the advancement of affordable housing in the amount of \$7,500 in addition to any sums previously provided.
 - 9. Pursuant to the terms of the Amendment Agreement, the Township shall amend its Housing Element and Fair Share Plan, zoning ordinance, Spending Plan (if necessary), and provide all of the information required for new Site #9 and #10 to be consistent with the terms of this Agreement Amendment.
 - 10. All other terms of the 2016 settlement agreement between FSHC and the Township of Pennsville that was approved by the court on January 27, 2017 shall remain in full force and effect. Notices shall be provided as follows:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Michael Napuda, Esq.
Masten and Ray
254 S. Broadway
Pennsville, NJ 08070

**WITH A COPY TO THE
MUNICIPAL CLERK:**

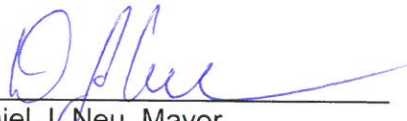
Angela Foote, Clerk
Town Hall
90 North Broadway
Pennsville, NJ 08070

Please sign below if these terms are acceptable.

Sincerely,

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

On behalf of the Township of Pennsville, with the authorization
of the governing body:



Daniel J. Neu, Mayor
Township of Pennsville

Dated: 10-15-2024