

**SECOND AMENDMENT TO AFFORDABLE HOUSING SETTLEMENT AGREEMENT
AMONG THE BOROUGH OF SADDLE RIVER, FAIR SHARE HOUSING CENTER, ZHANNA
TORRES AND THE BOROUGH OF WOODCLIFF LAKE**

**In the Matter of the Borough of Saddle River, County of Bergen,
Docket No. BER-L-6120-15**

Background

The Borough of Saddle River (the "Borough") filed the above-captioned matter on July 8, 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 Mount Laurel IV, 221 N.J. 1 (2015). On February 10, 2020, the Borough and Intervenors Fair Share Housing Center (FSHC) and Saddle River Investors, LLC ("SRI") entered into an agreement to settle the matter ("Original Settlement Agreement"). Prior to the scheduled fairness hearing in this matter on June 2, 2020, Zhanna Torres ("Torres") and the Borough of Woodcliff Lake ("Woodcliff Lake") filed objections with regards to the 78 Woodcliff Lake Road site contained in the Original Settlement Agreement. The 78 Woodcliff Lake Road site (the "78 site") does not involve SRI. After mediation conducted by Special Master Francis Banisch, the Borough, FSHC, Torres and Woodcliff Lake attempted to agree on an amendment of the Original Settlement Agreement to resolve the objections and present such amendment to the trial court reviewing the Original Settlement Agreement. These four parties were unable to agree on an such amendment but the Borough and FSHC agreed upon an amendment to the Original Settlement Agreement (the "First Amendment to the Agreement") and submitted the First Amendment to the Agreement to the trial court for review as part of its review of the Original Settlement Agreement. Subsequently, the Borough, FSHC, Torres and Woodcliff Lake were able to agree on a further amendment to the Original Settlement Agreement (the "Second Amendment to the Agreement"), which would supersede and replace the First Amendment to the Agreement, and intend to submit the Second Amendment to the Agreement to the trial court for review as part of its review of the Original Settlement Agreement.

Settlement Terms

1. The Original Settlement Agreement is hereby modified as follows. All other provisions not specifically modified herein remain in full force and effect:
 - a. The chart in Paragraph 7 is replaced with the following chart:

Plan Component	Number of Affordable Units	Bonus Credits	Total Credits
SRI E. Allendale Road site. 60 total units (B 1402, L 23, 24 & 25)	8	N/A	8
SRI 14 Algonquin Trail site. 60 total units (B 1603, Lots 1 & 2 and B 1602, Lot 1)	12	N/A	12
Choctaw Trail and 25 E. Allendale Borough 100% affordable rentals. 111 total units. 79 allocated to 3rd Round; 32 to Unmet Need (B 1601 L 10, 10.01, 11 and 12)	79 (of 111)	32	111
TOTAL	99	32	131

- b. Paragraph 8(a) is replaced with "32 surplus units generated from satisfying RDP as reflected in the above chart (111– 79 = 32)."
- c. Paragraph 8(b) is replaced with "100% affordable special needs site (20 E. Allendale Road - Block 1605 Lot 1) – 16 special needs rental bedrooms. This site is described further in paragraph 10 below."
- d. Paragraph 10(a) is replaced with the following:
 - a. **Choctaw Trail.** A 111-unit 100% affordable family rental development, as well as one unrestricted superintendent's unit on Block 1601, Lots 10, 10.01, 11 and 12 and the land area of the municipal street known as Choctaw Trail that shall be vacated (the "Choctaw Trail" site). The affordable units will be 14 very low, 42 low, 55 moderate and will meet UHAC bedroom distribution (max 20% 1 BR, i.e. maximum 22 units, minimum 30% 2 bedroom, i.e. minimum 34 units, and minimum 20% 3 bedroom, i.e. minimum 23 units) proportionally distributed across each income category.
 - i. The Borough agrees that the four (4) lots comprising the Choctaw Trail site, plus the vacation of Choctaw Trail, are sufficient to accommodate 111 affordable family rental units, as well as an unrestricted superintendent's unit. The Borough agrees to acquire these lots either through voluntary purchase or by eminent domain within three (3) months of the execution of the within Second Amendment to the Settlement Agreement. (Three of the lots have already been acquired.)
 - ii. The Borough shall rezone these lots to allow for this proposed development within three (3) months of the execution of the within Second Amendment to the Settlement Agreement
 - iii. The Borough shall work with the developer designated by the Borough for the site, The Michaels Organization, to provide a revised timetable within three (3) months of the execution of the within Second Amendment to the Settlement Agreement showing how each step in the development process will lead to construction to commence no later than September 30, 2023.

- iv. The project shall include adequate age-appropriate active and passive outdoor recreation facilities and spaces which shall be the subject of an agreement with the developer during the compliance phase of this matter. The agreement shall include at a minimum the following:
1. Add a minimum 10' x 15' patio space near the tot lot with appropriate development and facilities to provide a play and activity space for older children/teenagers
 2. If it can be done in a safe manner vis-a-vis traffic circulation, add a basketball hoop at the cul de sac.
 3. Add walking trails connecting the sidewalks from (a) the end of the cul-de-sac generally southwest, and (b) from the northwest end of the parking spaces perpendicular to Choctaw Trail north then east and southeast towards Allendale Road, with several benches on all trails.
 4. Add two grassy picnic areas with movable picnic tables south of Building C and east of Building F.
 5. Add a schedule of bedroom types by building and overall to the plan, consistent with that reflected in the within Second Amendment to the Settlement Agreement.
 6. To the extent feasible after NJDEP issues the LOI for the site, add green planting islands with shrubs in the parking lot between Buildings C and D.

The Choctaw Trail site has received an allocation of NJ HMFA tax credits based on a pro forma of both total development costs and sources of funds marked into evidence during the combined fairness and compliance hearing as Exhibit P-23. This pro forma and allocation of tax credits satisfies the requirement to provide such information pursuant to N.J.A.C. 5:93-5.5, provided that the Borough still retains the requirement to bond in the event of any shortfall that may arise prior to construction and occupancy of the project.

- e. Paragraph 10(b) is replaced with the following: b. **Allendale Road.** A 100% affordable special needs site shall be constructed on the Allendale Road site (20 E. Allendale Road - Block 1605 Lot 1) consisting of 16 special needs rental bedrooms in accordance with N.J.A.C. 5:97-6.10.
- i. The Borough shall rezone this lot to allow for this proposed development within 90 days of the execution of the within Second Amendment to the Settlement Agreement by all Parties.
 - ii. The Borough shall work with the developer designated by the Borough for the site, The Michaels Organization, to provide a timetable within three (3) months of the execution of the within Second Amendment to the Settlement Agreement showing how each step in the development process will lead to construction to commence no later than September 30, 2023.
 - iii. Within 90 days of the execution of the within Second Amendment to the Settlement Agreement by all Parties, the municipality shall 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. No later than September 1, 2022, the municipality shall bond for the full development cost of this

development as shown in the pro forma, and construction shall commence on the development no later than September 30, 2023.

- f. Paragraph 10(c) is replaced with the following: **c. Woodcliff Lake Road.** The "Woodcliff Lake Road" site (78 Woodcliff Lake Road, Block 1703, Lot 15) shall be eliminated from the Borough's compliance plan. Within 45 days of the execution of the within Second Amendment to the Settlement Agreement by all Parties, the Borough of Saddle River shall introduce an ordinance which shall revoke the multi-family residential zoning of the Woodcliff Lake Road site and which shall re-zone the Woodcliff Lake Road site to its prior R-1 zoning ("Revoking and Rezoning Ordinance"). The Borough of Saddle River shall adopt the Revoking and Rezoning Ordinance upon second reading after a public hearing within 45 days thereafter. Thus, the Revoking and Rezoning Ordinance shall be adopted within 90 days of the execution of the within Second Amendment to the Settlement Agreement by all Parties. After adoption of the ordinance, the Borough of Saddle River shall record a restrictive covenant that prohibits construction of any building and/or structures on the Woodcliff Lake Road site other than a single family detached residential dwelling and permitted accessory structures ("Restrictive Covenant"). The Restrictive Covenant shall be recorded before the public sale described below. However, the Restrictive Covenant shall not take effect until the day the deed from the Borough to the Buyer is recorded. The Borough of Saddle River shall put out for public bid the sale of the Woodcliff Lake Road site with a minimum bid of \$1,160,000 and shall deliver to the highest bidder a deed to the site to be held in escrow pending receipt by the highest bidder of the purchase price. In the event that the highest bidder is not Torres, and that highest bidder fails to close, the Borough of Saddle River shall reject any remaining bids and shall bid the sale of the Woodcliff Lake Road site anew. This process shall continue until the property is successfully conveyed to a third party or conveyed to Torres for the minimum bid of \$1,160,000. Torres shall submit a fully conforming bid to purchase the Woodcliff Road site for a minimum unconditional purchase price of \$1,160,000. In the event that Torres is the highest bidder, Torres shall acquire the site for the purpose of: (1) construction of a, or reconstructing the existing, single family detached dwelling in accordance with the Restrictive Covenant that the Borough will record on the site, or (2) demolishing the existing single-family dwelling and accessory structures on the site and maintaining the site as an undeveloped vacant parcel. It shall be the sole and exclusive determination of Torres on which of the (1) or (2) of these options to elect. In the event that Torres is the highest bidder and Torres elects to construct a new single family detached dwelling or reconstruct the existing single family detached dwelling, the dwelling shall be designed to be consistent with the surrounding dwellings (e.g. Hampton Style Home with no more than five (5) bedrooms, five (5) full bathrooms and one (1) half bathroom) ("Single Family Structure"). Additionally, in the event that Torres is the highest bidder and Torres elects to construct a new single family detached dwelling or reconstruct the existing single family detached dwelling, the dwelling may be oriented to have access to Apple Ridge Road, and the Borough of Woodcliff Lake consents to such access as a material term in the execution of this Agreement, so long as Torres shall maintain the berm along Apple Ridge Road and provide a landscape buffer which shall be subject to approval by the Borough of Woodcliff Lake. Additionally, the driveway entrance on Apple Ridge Road shall be no more than 12 feet in width. The Borough of Saddle River agrees that in the event the regularly scheduled meetings are canceled for any reason, it will schedule special

meetings for the purposes of having the Revoking and Rezoning Ordinance adopted within 90 days of the execution of the within Second Amendment to the Settlement Agreement by all Parties.

- g. In paragraph 25, "\$95,000" is replaced with "\$105,000." Additionally, the following shall be added to paragraph 25: "Torres agrees to pay FSHC the sum of \$20,000 to cover additional costs incurred by FSHC within 30 days of the Court's approval of the within Second Amendment to the Settlement Agreement
- h. The Original Settlement Agreement as anticipated to be amended by the Second Amendment to the 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). Torres, by participation of her current counsel, shall continue to participate in the fairness/compliance hearing but for the purposes of supporting the Borough's request to have the court approve the Original Settlement Agreement and the Second Amendment to the Settlement Agreement through and up to the conclusion of the hearing, and counsel shall advise the Court that Torres does not object to the terms of the Original Settlement Agreement and supports the Second Amendment to the Settlement. Moreover, on the next business day following the introduction on first reading of the Revoking and Rezoning Ordinance, Torres shall request that any and all expert reports and testimony proffered by experts retained by Torres shall be stricken from the record. Torres agrees that any expert retained by Torres shall continue to be retained by Torres through the fairness hearing and any appeal and shall not testify on behalf of any other party. If this Second Amendment to the Settlement Agreement is rejected by the Court at a fairness hearing, or approved at a fairness hearing but that approval is reversed on appeal, this agreement shall be null and void. If an appeal is filed of the Court's approval or rejection of this Agreement, Saddle River and FSHC 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 this 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 if specifically directed by the court to do so. Woodcliff Lake and Torres agree to not take any action to oppose the trial court's approval of this Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and may either defend the agreement or submit a letter of non-participation in any appeal. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. Unless the trial court rejects the Agreement or an appellate court specifically directs the Borough to rescind any action taken to implement this Agreement, all of the terms of this Second Amendment to the Agreement relating to the Woodcliff Lake Road site including the adopted Revoking and Rezoning Ordinance and recorded Restrictive Covenant shall remain in full force and effect and the Borough of Saddle River and FSHC shall undertake no action to alter or modify any ordinance or the Restrictive Covenant as it relates to this Woodcliff Lake Road Site at any proceeding in the future, including complying with Saddle River's ongoing affordable housing obligations in future "rounds." In addition, the

Borough of Saddle River shall not interfere with Torres' rights to file the necessary site plan applications for the construction or reconstruction of the Single Family Structure nor delay the issuance of building permits for the construction or reconstruction of such Single Family Structure.

- i. In the event any party is in default of its obligations pursuant to this Agreement, the party may seek to enforce this Agreement by a motion in aid of litigant's rights or a separate action in Superior Court, Law Division, Bergen County.
2. Within 10 days of the submission of a fully executed copy of the within Second Amendment to the Settlement Agreement to the Court by the Borough of Saddle River, Torres and Woodcliff Lake shall submit to the court written withdrawals of each of their objections to the Court's approval of the settlement and to the grant to the Borough of a final judgment of compliance and repose in the pending combined fairness and compliance hearing, and Torres and Woodcliff Lake shall not object during any further hearing in the Borough's declaratory judgment action; it being understood that the failure to withdraw said objections or the provision of further objections will result in the Borough and/or FSHC, at their sole discretion, having the ability to terminate this Agreement and return to the status quo ante (i.e. the First Amendment to the Agreement). The withdrawals of objections shall be without prejudice and solely conditioned upon the Borough complying with its obligations under the within Second Amendment to the Settlement Agreement. Upon the Borough adopting the Revoking and Rezoning Ordinance and the expiration of all appeal periods, and the recordation of the Restrictive Covenant, Torres and Woodcliff Lake shall dismiss with prejudice all of their claims against the Borough and objections to the Court's approval of the settlement and to the grant to the Borough of a final judgment of compliance and repose in the pending combined fairness and compliance hearing, including but not limited to the following pending litigation:
 - a. Torres v. Saddle River, Docket No. BER-L- 5113-20 (OPMA challenge)
 - b. Torres v. Saddle River, Docket No. BER-L- 5209-20 (OPRA challenge)
 - c. Torres v. Saddle River, Docket No. BER-L-1327-21 (Ordinance challenge)
 - d. Woodcliff Lake v. Saddle River, Docket No. BER-L-1355-21 (Ordinance challenge)
3. 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.
4. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
5. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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.
11. No member, official or employee of the Borough of Saddle River or the Borough of Woodcliff Lake shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
12. 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.
13. In the event of a dispute concerning the obligations under this Agreement, the Court shall retain jurisdiction to resolve the dispute.
14. 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:

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 BOROUGH OF SADDLE RIVER:

Jonathan Drill, Esq.
Stickel, Koenig & Sullivan

571 Pompton Avenue
Cedar Grove, New Jersey 07009
Phone: 973-239-8800
Telecopier: (973) 239-0369
Email: jdrill@sksdlaw.com

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

Vanessa Nienhouse, RMC
Saddle River Municipal Building
100 E. Allendale Road
Saddle River, New Jersey 07458
Phone: 201-327-2609
Telecopier: 201-327-0168
Email: vnienhouse@saddleriver.org

TO THE BOROUGH OF WOODCLIFF LAKE:

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On behalf of Fair Share Housing Center:



Adam M. Gordon, Esq., Executive Director

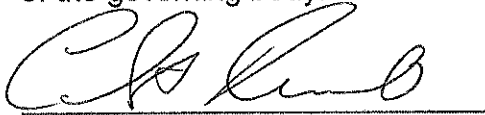
Dated: _____ November xx, 2021 _____

On behalf of the Borough of Saddle River, with the authorization of the governing body:



Mayor Dr. Albert Kurpis
Dated: 8th November ~~xx~~, 2021 _____

On behalf of the Borough of Woodcliff Lake, with the authorization of the governing body:



Dated: 8th November ~~xx~~, 2021 _____

On behalf of Zhanna Torres:

Zhanna Torres

Dated: 8 November xx, 2021 _____