

***In the Matter of the Application of the Borough of Sea Girt for a Judgment of Compliance,
County of Monmouth, Docket No.: MON-2312-20***

THIS SETTLEMENT AGREEMENT is made on this 26th day of April 2023, by and between the Borough of Sea Girt, with offices located at 321 Baltimore Boulevard, Sea Girt, New Jersey 08750 (“Sea Girt” or “Borough”) and Fair Share Housing Center, Inc., with offices located at 501 Park Boulevard, Cherry Hill, NJ 08002 (“FSHC”) (collectively hereinafter referred to herein as the “Parties”).

RECITALS

WHEREAS, pursuant to In Re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (“Mount Laurel IV”), on July 24, 2020, the Borough filed the above-captioned complaint for declaratory judgment, seeking a declaration of its compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act of 1986, N.J.S.A. 52:27D-301 et. seq. (the “FHA”); and

WHEREAS, the Borough having simultaneously sought and ultimately secured an Order from the trial court protecting Sea Girt from all exclusionary zoning lawsuit while it proposes approval of its Fair Share Plan; and

WHEREAS, In accordance with Mount Laurel IV, FSHC is a Supreme Court-designated interested party in this matter; and

WHEREAS, the trial court having also appointed Kendra Lelie, P.P., A.I.C.P. as the “Special Master” in this case as customary in Mount Laurel matters; and

WHEREAS, the Parties recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and have engaged in good faith negotiations with the assistance of the Special Master; and

WHEREAS, the Parties having reached an amicable agreement on the various substantive provisions, terms and conditions delineated herein now wish to present that settlement to the trial court for approval; and

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. At this particular time in the process resulting from the Supreme Court’s Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, the Parties recognize and agree that it is appropriate for the Borough and FSHC to enter into this Agreement settling the Borough’s Third Round Present and Prospective Need obligations instead of pursuing plenary adjudication of the Borough’s Mount Laurel obligation.

2. The Effective Date of this Agreement shall be the latest date on which all Parties have executed the Agreement.

3. FSHC and the Borough hereby agree that Sea Girt’s affordable housing obligations are as follow:

Rehabilitation/Present Need Obligation (pursuant to Kinsey Report ¹)	0
Prior Round Prospective Need Obligation (pursuant to N.J.A.C. 5:93)	115
Third Round (1999-2025) Prospective Need Obligation (pursuant to Kinsey Report, and as adjusted by and through this Agreement)	171

4. **Rehabilitation/Present Need Obligation.** The Borough does not have a Present Need Rehabilitation obligation.

5. **Gap Period Present Need Obligation.** For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which, as recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), is a measure of households formed between 1999 and 2015 that need affordable housing.

6. **Prior and Third Round Prospective Need Obligation.** Sea Girt has Prior Round Prospective Need obligation of 115 units and a Third Round Prospective Need obligation of 171, for a cumulative total fair share obligation of 286 affordable units.

7. **Vacant Land Adjustment.** Pursuant to N.J.A.C. 5:93-4.2, the Parties agree that Sea Girt is entitled to an adjustment of its Prior Round and Third Round Prospective Need obligation due to the lack of developable vacant land in Sea Girt available to meet its fair share obligation. For the purposes of settlement only, the Parties agree that Sea Girt’s vacant land adjustment, attached hereto as Exhibit A, results in the calculation of a Realistic Development Potential (hereinafter “RDP”) of 5 units. Accordingly, Sea Girt’s remaining Prior and Third Round unmet need is 281 affordable units.

8. Sea Girt shall address its 5-unit RDP through the following compliance mechanism:

- a. **Inclusionary Development-Sitar Site:** Pursuant to the Settlement Agreement between 501 Washington Blvd, LLC 503 Washington Blvd, LLC Sea Girt Fifth Avenue LLC and Sitco Sea Girt, LLC (“Developer”) and the Borough, settling the builder’s remedy action, 501 Washington Blvd, LLC 503 Washington Blvd, LLC Seat Girt Fifth Avenue LLC and Sitco Sea Girt, LLC v. Borough of Sea

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.

Girt, Borough Council of Sea Girt, and Sea Girt Planning Board, Docket No.: Mon-L-102-20, the Borough has rezoned Block 76, Lots 1 and 2 and Block 77, Lots 16 and 17 owned by Developer to create a realistic opportunity for the construction and development of nine (9) family rental units, including three (3) family non-age-restricted affordable rental units set aside for very-low, low and moderate-income households on a portion of the parcels designated at the North Property and ten (10) market rate multifamily dwellings on a portion of the parcels designated as the South property in a manner consistent with the Resolution of the Sea Girt Planning Board dated May 18, 2022 attached to Exhibit B. The three (3) affordable units shall consist of one (1) very low-income 2-bedroom unit (reserved for households earning 30% or less of median income), 1 low-income 2-bedroom unit (reserved for households earning 50% or less of median income); and 1 moderate-income 1-bedroom unit (reserved for households earning 80% or less of median income).

- b. As the Settlement Agreement between Developer and the Borough requires the Developer to provide three (3) affordable family rental housing units as part of the Sitar Site Inclusionary Development, this is the needed ‘firm commitment’ to generate the maximum two (2) upfront rental bonuses (maximum rental bonuses calculated based on 0.25 of 5-unit RDP = 1.25, rounded up to two (2) minimum rental units or two (2) maximum rental bonuses). Thus, the total of three (3) affordable credits and rental bonuses (3 affordable rental units plus 2 rental bonuses = 5 total credits/bonuses) from the Sitar Site Inclusionary Development will fully address the Borough’s 5-unit RDP.

9. **Unmet Need Obligation.** Sea Girt’s 5-unit RDP subtracted from its cumulative prospective need obligation of 286 units results in a remaining unmet need obligation of 281 affordable units, which shall be addressed through the Borough’s implementation of the following compliance mechanisms:

- a. 2 East/West Convenience Commercial Overlay Inclusionary Zoning: Sea Girt shall adopt overlay inclusionary zoning on select parcels in the 2 East Convenience Commercial and 2 West Convenience Commercial zones to permit multi-family inclusionary 2story residential development over ground floor commercial The affordable housing set-aside shall be twenty percent (20%) for both rental and for-sale affordable units. The form of ordinance shall be finalized through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Brough in accordance with paragraph 18(a) below.

1 West Overlay: Sea Girt shall adopt overlay inclusionary zoning on select parcels in the 1 West Single Family zone to permit multi-family inclusionary 2-story residential development over ground floor commercial with a twenty percent (20%) set-aside for both rental and for-sale affordable units. The form of ordinance shall be finalized through collaboration between FSHC, the

Special Master and representatives of the Borough and adopted by the Brough in accordance with paragraph 18(a) below.

- c. Mandatory Borough-Wide Affordable Housing Set-Aside Ordinance: Sea Girt shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential development of five (5) units or more. The set aside for both rental and for-sale developments shall be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more. See Mandatory Set-Aside Ordinance attached hereto as Exhibit C.
- d. Development Fee Ordinance: Sea Girt shall implement an approved Development Fee Ordinance for all new non-residential development and new non-inclusionary housing units. The Ordinance shall provide for the Borough's collection of residential fees for all residential expansions that increase said residential square footage by the creation of a new bedroom. The form of Ordinance shall be finalized through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with paragraph 18(a) below.

10. Sea Girt shall require thirteen percent (13%) of all units referenced in this Agreement, with the exception of those units constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families.

11. **Recreation and Open Space Inventory**. The Borough shall execute and record Deeds of Open Space Easements at the time the Court approves this Settlement Agreement restricting the properties identified below for the exclusive purposes of public park, recreation and open space uses: Block 84, Lot 20, Block 78, Lot 1, Block 91, Lot 1 and Block 84, Lot 1. See Deeds of Open Space Easements attached hereto as Exhibit D.

12. Sea Girt shall meet its Prior Round and Third Round Prospective Need obligation of 281 units in accordance with the following Mount Laurel standards:

- a. Rental bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least fifty percent (50%) of the units addressing Sea Girt's Prior Round and 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 (25%) of Sea Girt's Prior Round and Third Round Prospective Need shall be met through rental units, including at least half of the rental units being made available to families.

- d. At least fifty percent (50%) of the units addressing Sea Girt's Prior Round and Third Round Prospective Need shall be non-age-restricted units available to families.
- e. Sea Girt agrees to comply with the Council of Affordable Housing ("COAH")'s Prior Round age-restricted cap of twenty-five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its cumulative Prior Round and Third Round fair share obligation.

13. **Affirmative Marketing Plan.** As part of its Housing Element and Fair Share Plan ("HEFSP"), Sea Girt must prepare an Administrative Marketing Plan and shall include the following entities 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): FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, Trenton Branches of the NAACP, and the Supportive Housing Association. As part of its regional affirmative marketing strategies during implementation of the affirmative marketing plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations. The affirmative marketing plan shall include posting of all affordable units on the New Jersey Housing Resource Center ("HRC") website in accordance with applicable law. 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.

14. **Affordability Controls.** In all development that produces affordable housing, the Parties agree that the following terms shall apply:

- a. All affordable housing units shall be governed by and fully comply with affordability controls and affirmative marketing requirements of the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq. ("UHAC"), or any successor regulation, including without limitation, the required bedroom and income distribution, with the sole exception that, in lieu of the ten percent (10%) of the affordable units in rental projects being required to be at thirty-five percent (35%) of the median income, thirteen percent (13%) of the affordable units in such projects shall be required to be at thirty percent (30%) or less of the median income pursuant to the FHA and all other applicable law.
- b. All of the affordable units shall be subject to affordability controls of at least thirty (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 thirty percent (30%) of median income pursuant to the FHA, and the affordability controls shall remain unless and until the Borough, in its sole discretion, takes action to extend or release the unit

from such controls after at least thirty (30) years. If the Borough 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, 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.
- f. The Borough, as part of its HEFSP, shall adopt appropriate and comprehensive implementing fair share ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. This paragraph does not create any additional obligations beyond those specifically identified in this Agreement.

15. **Income Limits.** Income limits for all units that are part of the Borough's HEFSP 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 Sea Girt annually within thirty (30) days of the publication of determinations of median income by the U.S. Department of Housing and Urban Development ("HUD") as follows:

- a. Regional income limits shall be established for the region that Sea Girt is located within (i.e. Region 4) 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 Borough'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 (80%) 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 (50%) 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 (30%) 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, attached hereto as Exhibit E, are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2022, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- 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 Sea Girt 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.
- d. The Parties agree to request the court enter an order implementing this paragraph prior to or at the Fairness Hearing in this matter.

16. **New Construction.** 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.

17. **Spending Plan.** Sea Girt shall prepare a Spending Plan, which shall be approved by the Borough prior to a duly noticed compliance hearing. FSHC reserves the right to provide any comments or objections on the Spending Plan to the court upon review. The Borough reserves the right to seek a finding by the court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, in which case the four-year time period for expenditures shall begin to run with the entry of a final judgment approving this Agreement 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).

18. Sea Girt agrees to take the following steps within the timeframes specified below:
- a. Within 120 days of the court entering an order approving this Agreement following a duly noticed Fairness Hearing:
 - i. Introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning

Ordinances referenced herein to implement the terms of this Agreement and the zoning contemplated herein;

- ii. Amend the Housing Element and Fair Share Plan to comply with the terms of this Agreement;
 - iii. Adopt a Spending Plan in conformance with the terms of this Agreement, and submit the Spending Plan to the court, Special Master and FSHC for review; and
 - iv. Development Fee Ordinance in accordance with the terms of this Agreement, and submit the ordinance to the court, Special Master and FSHC.
- b. Within 150 days of the Effective Date, Sea Girt shall provide notice to the court, Special Master and FSHC that it has complied with the terms of Paragraph 18(a) of this Agreement.

19. **Changed Circumstances.** The Parties agree that Sea Girt's RDP shall not be revisited by FSHC or any interested party absent a substantial changed circumstance that impacts the Borough's development potential for affordable housing. In the event such a changed circumstance occurs either with Sea Girt's RDP or the remaining portion of Sea Girt's Third Round unmet need obligation, Sea Girt shall have the right to first address the changed circumstance with notice to the court, Special Master and FSHC, without any negative impact on its immunity. FSHC reserves the right to provide any comments or objections to the court upon review of any mechanisms proposed by the Borough to address changed circumstances.

20. **Determination of Reduced Obligation.** Subsequent to the Court entering an order approving this Agreement following a duly noticed Fairness Hearing, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the FHA, determines that Sea Girt's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third Round Need obligation established in this Agreement, with any relevant appeal period having passed, the Borough may, with notice to FSHC, seek to amend the judgment solely to reduce its fair share obligation accordingly. Notwithstanding any such reduction, Sea Girt shall be obligated to implement the HEFSP prepared, adopted and endorsed as a result of this Agreement, including adopting and/or leaving in place any site-specific zoning adopted or relied upon in connection with the HEFSP approved pursuant to this Agreement; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of Sea Girt's obligation below that established in this Agreement does not provide a basis for seeking leave to amend any provision of this Agreement or to amend an order or judgment pursuant to R. 4:50-1 with respect to any term other than the Borough's calculated Third Round Prospective Need obligation pursuant to the process set forth in this Paragraph. Should a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the FHA, determines that Sea Girt's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third

Round Need obligation established in this Agreement, the Borough will be permitted to carry over any resulting extra credits to the Fourth Round in conformance with the then-applicable law.

21. **Reporting of Trust Fund Activity.** On December 31, 2023, and on every anniversary of that date thereafter through 2025, Sea Girt shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, COAH, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by COAH, the New Jersey Department of Community Affairs or FSHC. 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. **Reporting on Affordable Housing.** On June 30, 2023, and on every anniversary of that date thereafter through 2025, Sea Girt shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

23. **The Midpoint Review.** The Parties agree that, given the commencement of the Fourth Round on July 2, 2025, and the opportunity for public comment and objections at the fairness hearing and compliance hearing, Sea Girt will not be required to submit a midpoint review report pursuant to N.J.S.A. 52:27D-313, and the compliance hearing shall suffice as the midpoint review.

24. **Fairness Hearing Determination.** This Agreement must be approved by the court following a duly noticed 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). Upon full execution of this Agreement, the Fairness Hearing shall be scheduled by the court. Sea Girt shall make its consulting planner and any other relevant witnesses available for testimony at the fairness hearing. FSHC agrees to support this Agreement at the fairness hearing.

25. **Compliance Hearing and Judgment of Repose.** In the event the court approves this Agreement and the Borough's HEFSP at the Compliance Hearing, the Parties agree that Sea Girt will receive the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as set forth in the New Jersey Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2915). The accompanying protection shall remain in effect through July 1, 2025. If this Agreement is rejected by the court at the fairness hearing, it shall be null and void.

26. **Attorney's Fees.** The Borough agrees to pay FSHC's attorney's fees and costs in the amount of \$23,750.00 within thirty (30) days of the court's approval of this Agreement following the entry of an order approving this Settlement Agreement after a duly noticed fairness hearing.

27. **FSHC Party Status.** FSHC is hereby deemed to have party status in this matter and to have intervened as a Defendant without the need to file a motion to intervene or an answer

or other pleading. The Parties agree to request the entry of an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.

28. **Obligation to Defend.** Sea Girt and FSHC shall each fulfill the intent and purpose of this Agreement. If an appeal is filed challenging the court's approval or rejection of this Agreement, Sea Girt 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 time the Parties each reserve their right to return to the *status quo ante*.

29. **Enforcement.** This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Monmouth County.

30. This Agreement shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against either Party because such Party drafted or requested such provision, or this Agreement as a whole.

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

32. **Severability.** Unless otherwise specified, the various provisions of this Agreement are independent and severable and if any item, condition or provisions of this Agreement is declared or found to be illegal, void or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, and if the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law. The invalidity of any one provision that is not material to this Agreement shall have no bearing on the continuing full force and effect of the remaining valid provisions hereunder.

33. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

34. **Entire Agreement.** Each Party acknowledges that this Agreement, and all Exhibits and Schedules annexed hereto, constitutes the complete, exclusive, entire statement between the Parties of the terms and conditions with respect to the subject matter of this Agreement, and supersedes and merges all previous communications, representations, understandings, agreements, communications, and negotiations, written or oral, between the Parties relating to this Agreement.

35. **Amendment or Modification.** This Agreement may not be modified or amended except by written instrument that specifically states that it is a supplement, modification, or amendment to this Agreement and is signed by an authorized representative for each Party.

36. **Waiver.** No waiver, forbearance or failure by any Party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of such Party's right to enforce any other provision of this Agreement or such Party's right to enforce such provision in the future.

37. **Headings.** The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. In the case of a conflict between the headings and the content of the section or subsection, the content shall control.

38. **Legal Capacity.** Each Party who signs this Agreement in a representative capacity warrants that the Party's execution of this Agreement is duly authorized, execute and delivered by and for the entity for which that Party signs. Each Party warrants that the Party has carefully read and understands the scope and effect of each and every provision of this Agreement, that the Party has consulted with chosen legal counsel who has explained the terms of the provisions of this Agreement, and all attachments hereto, and has executed this Agreement voluntarily, without duress, coercion, or undue influence with the express intent to be bound thereby.

39. **Notices.** Any notice, demand, request or other communication required or permitted under this Agreement shall be valid and effective only if given by written instrument which is personally delivered or sent by facsimile, prepaid overnight or second-day air courier, or registered or certified air, postage prepaid, addressed as follows:

If to Sea Girt to:

James Grant, Borough Administrator
Borough of Sea Girt
321 Baltimore Blvd.
Sea Girt, NJ 09750
P: 732-449-9433
F: 732-974-8296
Email: jgrant@seagirtboro.com

With a copy to:

Andrew Bayer, Esq.
Pashman Stein Walder Hayden, PC
Bell Works
101 Crawford Corner Road, Suite 4202
Holmdel, NJ 07733
P. 732-405-3686
F. 732-852-2482
Email: abayer@pashmanstein.com

If to FSHC to:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

P: (856) 665-5444
F: (856) 663-8182
Email: adamgordon@fairsharehousing.org

Any notice, demand, request or other communication given as provided in this Paragraph, if given personally, shall be effective upon delivery; if given by facsimile shall be effective upon transmission; if given by mail, shall be effective ten (10) business days after deposit in the mail; and, if given by prepaid courier service, shall be effective on the date established by such courier as the date delivered. Any party may change the address at which it is to be given notice by giving written notice to the other party as provided in this Paragraph.

41. **Counterparts.** This Agreement may be executed in counterparts all of which when taken together shall constitute one original executed Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their duly authorized officers and/or representatives.

The Borough of Sea Girt
By: _____
Name: _____
Title: _____
Date: _____

Fair Share Housing Center, Inc.
By: _____
Name: _____
Title: _____
Date: _____