

MAYOR AND COUNCIL
BOROUGH OF CLOSTER

SPECIAL MEETING MINUTES - THURSDAY, JUNE 21, 2018 - 7:30 P.M.

The Mayor and Council of the Borough of Closter held a Special Meeting on Thursday, June 21, 2018. Council President Latner called the meeting to order at 7:30 p.m.

1. PLEDGE OF ALLEGIANCE

Council President Latner invited all to join in the Pledge of Allegiance.

2. OPEN PUBLIC MEETINGS ACT STATEMENT

48 Hour Notice of this Special Meeting was sent to The Record and Star Ledger on June 15, 2018 for publication as soon as possible, was posted on their respective Community Notices boards upon receipt; will be published in the Bergen Record on June 19, 2018 and in the Star Ledger on June 19, 2018, is posted on the Municipal Clerk's bulletin board and on the Borough Web Site and will remain posted as the required notices under the Statute. In addition, a copy of the notice is and has been available to the public and is on file in the office of the Municipal Clerk.

3. ROLL CALL

The following persons were present:

Council President Alissa J. Latner.
Councilpersons Dolores A. Witko, Joseph Yammarino and Jannie Chung
Borough Administrator, Arthur Braun Dolson
Borough Attorney, Edward T. Rogan
Borough Clerk, Loretta Castano
Borough Engineer, Nick DeNicola

The following persons were absent:

Mayor John C. Glidden, Jr.
Councilpersons: Scott Devlin, Victoria Amitai

Council President Latner asked the Borough Attorney to explain the reason for calling this Special Meeting for the following matter:

4. REVIEW AND TAKE ACTION ON A SETTLEMENT AGREEMENT REGARDING THE DECLARATORY JUDGMENT ACTION, CAPTIONED AS IN THE MATTER OF THE BOROUGH OF CLOSTER, COUNTY OF BERGEN DOCKET NUMBER BER-L-6372-15 AND TO AUTHORIZE THE MAYOR AND /OR COUNCIL PRESIDENT TO SIGN SUCH AGREEMENT

Mr. Rogan distributed copies of the 10-Page Settlement Agreement containing 51 pages of Exhibits, explained in detail during a 1 1/2 hour period of time the majority of the 37 settlement terms as follows and answered questions posed by the Council members and Borough Engineer:

He said that essentially we are at the very end of the negotiation period that we had to try to resolve the COAH litigation. The Judge scheduled this hearing for 7/24/18 and we are required under the law to publish 30 days in advance of that hearing, whether or not it is going to be an actual hearing that is contested or whether there is a settlement, which means we have to publish no later than Saturday. That was the reason why there had to be a special meeting called which could not wait until next Wednesday.

Over the past couple of weeks there has been a frenzy of activity going back and forth between two attorneys from Fair Housing, the attorney for the only Intervenor for the Corner Farm and himself trying to get together some type of agreement that all three could sign off on. As I have indicated at prior meetings, Fair Housing had basically agreed to the essential term a couple of weeks back. However, the Corner Farm had not. To add to the complication of all of this, the attorney for Fair Housing this past week, the attorney for Fair Housing who he had been working with for almost three years, went on vacation; so he was not around over this past week. So, another attorney got involved, had some other changes, and had questions about the Agreement that had been discussed up until then. The main focus over the past couple of weeks has been with regard to the Corner Farm. Just to recap, the Corner Farm did file early on as an Intervenor being an objector and had been involved in the process from day one. Over the course of that time they were very slow in coming up with any type of alternative proposal. An Intervenor basically has a right to show up at a fairness hearing and object to our report, object to the analysis as to how we calculated what our fair share number would be, object to our ordinances, which we are proposing, object to any portion of the plan that they see fit. They are allowed to do that through architects, through planners, through other experts; and they have them on board to go.

As you may recall over the past several months, they had given certain proposals or had some discussions with the Borough which was reviewed in detail by the COAH Committee. It started out as a 40-unit apartment building which was basically one big box of approximately four to five stories high. The

Borough rejected that pretty much out of hand. A couple of months later it dropped down to 30 units - again just a big box.

We have had numerous conferences with the Judge, mediations with the Special Master, and they switched an attorney, they switched planners; and more recently, there had been discussion between the Borough and the Corner Farm about basically a fourplex concept. We envisioned it to be three large structures which would look basically like a McMansion. And that had been discussed at the COAH Committee. One of the COAH Committee members, Joe Bianco, who is the head of the Zoning Board, of Adjustment, had actually prepared some concept plans and had provided us with some things which I will pass around. This is my personal favorite of what it might look like. We cannot control the design of the buildings.

The Council and the public need to understand that all we are doing now is approving a plan that will basically set forth an ordinance to be prepared. It is called an overlay ordinance or zoning change. Normally a zoning change for one piece of property would be considered spot zoning because you are not allowed to pick out one property and give it any benefit or take away any rights it might have. There is an exception to that under this type of litigation for an Intervenor. So, if this plan is approved by the Judge, this type of overlay zone would be permitted. We do have certain overlay zones throughout the town for affordable housing. This would be an affordable housing overlay zone which means it would be given certain development rights over and above other properties in Residential A. Even though it is on Piermont Road, that particular property, despite the fact that it is catty corner to the Closter Commons, to the two garages and across the street from an office building, that property is zoned Residential A. But this proposal would allow the Borough to adopt an overlay ordinance for that property which would permit multi-family homes. The idea would be three large buildings and inside these buildings would be four units.

In response to Council President Latner's question, Mr. Rogan explained that they got their idea from Alpine which has one much bigger with approximately 18 units; and it does not stand out. He informed the Borough Engineer it is on 9W; and Borough Administrator said south of Hillside (Avenue) before Rio Vista.

He continued that was the concept and the whole idea and the whole theme of the Borough's negotiation from the very beginning has been, if we have to do this, we want it to be as close to keeping it in character to the neighborhood as possible. The Borough Council and I think the Committee was unanimous that we did not want a big box apartment building that was offensive to the character and the nature of that particular neighborhood. So, finally they bought into the idea. Then we have been fighting for months about the size of it. Of course, they wanted bigger; we wanted it smaller. They wanted more flexibility, they wanted five or six of these units. We wanted three. So we have been going back and forth. When we finally got them to the point, we said it is either three or we will take our chances in Court. Then we started fighting about the size and the footprint of it. We had originally said 1200 square feet for each unit; and inside of each, they could decide what they wanted to do. The plan was that out of the 12 units, two (2) of them would have to be affordable in some way because that is the formula Fair Housing required. That is the only way this type of thing could be done. If it did satisfy some type of criteria of the Housing regulations, there would be two affordable units in there. The concept on what we are being told is that some of them will be rentals; and as you will see, in the proposed agreement we finally came to an understanding.

Mr. Rogan referred to the following section of the proposed agreement:

Paragraph 10B (on Page 3 of the Proposed Settlement Agreement) is what we have been spending on the last three days all day. This is what we have been focused on; and heated discussions have taken place. This is what he would recommend the Council to consider this evening.

“10. To address its unmet need, the Borough will adopt overlay zoning on the following sites:

- A. See Description of overlay zoning as outlined in the attached March 22, 2018 Memorandum to Special Master Michael Bolan, P.P., AICT attached and made a part hereto. (See attached “Exhibit A”)
- B. The Corner Farm is a site located at 515 Piermont Road, Closter, New Jersey, more specifically identified on the Closter Tax Map as Block 1605, Lot 17 in District No. 1 in the Residential A Zone and contains approximately 3.2 acres. The site will be rezoned to permit an overlay zone with 17 percent of the total development set aside for affordable housing. The overlay density of 3.75 units (per acre) will permit three (3) stand alone, detached quadruplex structures (4 units per structure), or a total of twelve (12) two (2) and three (3) bedroom units ranging in size from 900 sq. ft. up to 1,500 sq. ft., including two (2) affordable units (one low income two bedroom and one moderate income three bedroom), to be constructed on the site. The building coverage of each building may not exceed 2,600 square feet. The overlay ordinance would include specific standards, including, but not limited to, (i) providing buffers for adjoining residential uses, (ii) maintaining a residential architectural scale, design, and treatment similar to the residential uses located to the east and north of the site, (iii) prohibiting parking in front of any building located along Piermont Road, and (iv)

establishing the maximum front yard setback along Piermont Road at 40 feet or less with appropriate landscape buffering.”

Borough Attorney read the following: “The Corner Farm is a site located at 515 Piermont Road, Closter, New Jersey, more specifically identified on the Closter Tax Map as Block 1605, Lot 17 in District No. 1 in the Residential A Zone and contains approximately 3.2 acres. The site will be rezoned to permit an overlay zone with 17 percent of the total development set aside for affordable housing. The overlay density of 3.75 units (per acre) will permit three (3) stand alone, detached quadruplex structures (4 units per structure), or a total of twelve (12) two (2) and three (3) bedroom units ranging in size from 900 sq. ft. up to 1,500 sq. ft. ...” He informed they wanted up to 2,500 square feet; and again that was a concern for the Borough because of the number of bedrooms, the number of children that could be in the school, the number of parking spaces that could be put on site. So this is 900; we envision being probably the two (2) affordables and then they can do whatever they want up to 1,500 square feet for the others. And again we indicate “including two (2) affordable units (one low income two bedroom and one moderate income three bedroom)”... that was also significant to us because Fair Housing is critical of Closter because the affordable housing that we do have up until this date between the special needs are all one (1) bedrooms and Village School is yet unknown what the one (1), two (2) and three (3) bedroom scenario would be; so they were skeptical that we weren’t providing any multi-bedroom affordable; so this way we take care of two issues on that by having them do this.

Mr. Rogan continued reading “The building coverage of each building may not exceed 2,600 square feet.” He said that was the last thing we had been fighting about most of today up until late this afternoon. They wanted that much bigger; we started off at 2,400 square feet thinking 12, 12, 12, 12. As of 9:00 a.m. they still wanted 3,500 square feet; again they were looking for the units to be bigger for the market value that they could make more money; and again we were concerned both about parking and how it would look from the street; so finally they went down significantly to the 2,600 and we felt that was a minimal change over what we have been talking about the last couple of months. It was a 200 square foot increase, but when you put in some common area, a stairway or something that is going to connect these, it probably isn’t that bad if you figure we were going to give them 1,200 for living space for each unit, another 200 square feet for the hallways and the steps, it probably kind of makes sense.

He continued reading “The overlay ordinance would include” he said this is something we fought to put in here. Understand this still is up in the air. The whole system here – we’re entering into this Settlement Agreement; and they’re entering into this Settlement Agreement before either side has actually seen these ordinances. This ordinance, we haven’t even started working on, and this is the one that affects them the most. The other ones – the accessory apartment one we talked about where you could have up to ten (10) extra – everybody kind of has an idea what it is. Having units over the downtown stores – everybody can kind of conceptually understand. This ordinance is very tricky, so we wanted to make sure there was no misunderstanding as to certain things that were extremely important to our needs. So we say “the overlay ordinance would include specific standards, including, but not limited to...” because this entire ordinance has to be over the 120 days following the July 24th Hearing, between the Planning Board and the Council, we have to come up and adopt these ordinances; and this is going to be, in my opinion, the most important one. So we’re saying right up front; it will include but not be limited to “(i) providing buffers for adjoining residential uses”. Mr. Rogan said again the big concern here was to make sure that the people on Trautwein Crescent and the people north of this site are heavily buffered from it because these are not typical houses.

Council President Latner asked what heavily buffered meant; and Mr. Rogan explained that we are going to decide that. The Borough Engineer is going to come up with some wonderful buffer ideas. In answer to Mrs. Latner, Mr. DeNicola said staggered plantings; and the Borough Attorney said a heavily visual buffer. He reminded that we did a conditional use a couple of years ago for houses of worship when the Temple was originally going to go on the top (of the hill). We were very concerned that that was going to be very offensive to the neighborhood but we couldn’t stop it because houses of worship are allowed anywhere; so we came up with a conditional use ordinance which basically heavily buffered it to ensure there was either berms with trees on top/something year round that would buffer the view between the standard residential homes and the more intense use. So that is the first thing “(i) providing buffers for adjoining residential uses, (ii) maintaining a residential” and this was important too so we can justify some of the things we may want to do or the Planning Board may want to do in this ordinance; and he read “(ii) maintaining a residential architectural scale”, meaning we don’t want this thing more than two (2) stories – we don’t want it so fat looking that it looks out of place; “design” – we want it to look like the rest of the neighborhood, “and treatment similar to the residential uses located to the east and north of the site” and again, that’s to make sure that it’s consistent with the neighborhood. East being Trautwein Crescent; north being the house directly next door going up towards Norwood. Additionally, we were concerned about what this would look like if we had this big house looking thing that could pass for a McMansion, but then we had twelve (12) parking spaces in front of it, so it would look like some sort of a strip mall; so we say “(iii) prohibiting parking in front of any building located along Piermont Road” so it would either be to the side or behind; “and (iv) establishing the maximum front yard setback

along Piermont Road at 40 feet or less with appropriate landscape buffering.”. Mr. Rogan noted they put in the “or less” and he will fight when they talk about this to keep it at 40. When you have a bigger structure, the closer you have it to the road, the bigger it looks. People always say like over by High Street there is that side street, there’s the new house on the corner of Storig and everybody says “how did they get away with this”. The setbacks aren’t any different, it’s just that the house is bigger, so it looks like it’s too close to the road; so that’s why we wanted to make sure that is in there to keep it kind of neighborhood friendly, if you will. So that 10B was the big fight and he wanted that that is the one that addresses specifically the Intervenor.

Mr. Rogan referred to Page 1 of the Agreement:

“Settlement terms

The Borough, FSHC and The Corner Farm hereby agree to the following terms:

1. FSHC agrees, and The Corner Farm will not object, that the Borough, through the adoption of a Housing Element and Fair Share Plan that complies with this agreement, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.”

He said he wants to go through it again and he knows they’ve talked about it in the past; but what this Agreement does, starting on Page 1, it essentially says to the Court, Fair Housing has agreed with Closter’s numbers; Fair Housing has agreed with its plan; and it also now says that the only Intervenor, the Corner Farm, will not object to anything. Rather than having a two (2) or three (3) day trial where they can come in with their Planner and say that Caroline Reiter, our expert Planner did it wrong; rather than saying well the number we came up with still ended up 347 units that we were supposed to provide for. They could very well have challenged this and potentially won. What we’re saying here is our ordinances that we’re adopting potentially allows for that; and what they’re saying is they can live with this. The big influence of all this was the Village School because we are actually going to be developing or at least starting development over the next two (2) years of units that will definitely be built. A lot of these plans that have been approved or submitted to courts don’t include any guarantee that the units are going to be built. There are a lot of zone changes and suggestions but there’s no guarantee that the units will be built. This is guaranteeing that there will be units built; and as an update on that, the Village School structural inspection was done on Monday; and it is scheduled to close on the property in mid-July. That should get at least thirty-five (35) units built in there. The County will be taking title to that and then the County will be paying for the reconstruction, the addition that will be put on and everything else; and they will oversee it; and we will get the credit for the housing.

Councilwoman Chung asked how long they had before they had to start; and Mr. Rogan informed they have two (2) years. They have two years to start construction; and in answer to Council President Latner, he said it could be a long time until it’s settled. He said the problem which is not ours solely, the funding for that type of project may not be available every single year; and there are rumors that it won’t be available for 2019; so it may skip a year. The County will not be able to get the money to start the project. Now, what starting the project means is not defined, so between Bergen County Housing and us, I’m sure we can figure out a way to start the project by 2020. It is two (2) years from the date of the Fairness Hearing that it has to be started.

Mr. Rogan said not to read paragraph by paragraph, but offered to stop at any point to go over it. He explained the Settlement Terms start on Page 1, and again, basically that first page just says that there is a Settlement Agreement and they are not going to object to it. You will see at the top of Page 2 in the box, the prospective need per Fair Housing’s Report, with a 30% discount was still 347 units:

3. FSHC and the Borough hereby agree, and The Corner Farm does not object, that Closter’s affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	110
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	347

*See Paragraph 5 below.”

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.

Borough Attorney said that is the number if we were to have a trial – that is the number that Fair Housing would say we were supposed to be providing for; it doesn't mean that we have to build it. Our plan has to demonstrate that over the next years we could possibly build it or someone could come in and ask for approval to build that many. The rest of, again, he referred to Paragraph 7 and said this kind of outlines how we have satisfied prior requirements:

- “7. As noted above, the Borough has a Prior Round prospective need of 110. This number is reduced by the adjustment previously approved by the Council on Affordable Housing (COAH) based upon the lack of available vacant and developable land within the Borough as established in the Borough's Prior Round Vacant Land Inventory and Analysis (“VLA”). The Prior Round RDP of 62 units is met through the following compliance mechanisms:

Spectrum for Living	16
Vantage	3
AH/Z	1
Bonus Credits	16
RCA Credits	26
Total	62 units

”

Mr. Rogan said we had satisfied that by coming up with 62 units. The RCA is Regional Contribution Agreement. He explained that back years ago we were allowed to actually pay other towns; we would pay for the units and they would build them; and they allowed towns to get credit for that; then they decided that wasn't really what they wanted. So, we actually did build twenty-six (26) units in Fairview a while back; but we still got credit for in the prior round. In answer to Councilwoman Witko, he affirmed that the three (3) units from Vantage are on Harrington Avenue.

On the next Page 3, Mr. Rogan informed he fought to put in Paragraph 8 because he believes the Borough was just totally ripped off when Spectrum 1 was built. He's not sure how this happened as he wasn't involved in it at the time. But for some reason, and this was a Court decision, the Court decided that Spectrum should not qualify Closter for any credits for affordable housing. They likened it to a hospital, which it is not; and he believes if that was tried today, the result would be different; and we would get a full credit of fifty-two (52) units. The Supreme Court case from three (3) years ago, however, said specifically this is not an opportunity for towns to re-litigate cases, so we cannot go back and try to argue it; but nevertheless, he wanted it in here, up front, because he wanted them, if they were on the fence, to understand that we have the right to claim that we had been providing for affordable housing before the other towns had even thought about it. Spectrum was not built in response to an affordable housing lawsuit. It was built because Closter was okay with providing for special needs. All of those residents are eligible as very low income residents. In answer to Mrs. Latner, he said there was COAH back then, but we didn't get the credit for it. The Court misinterpreted what Spectrum does.

- “8. The Borough since 1983 is home of the original Spectrum for Living. This facility consists of 52 living units for very low income residents. In a previous round, it was erroneously identified as a hospital, however, is clearly not a facility where one resides temporarily, but rather is a permanent home for 52 of Closter's residents. If applied under current regulations, it would eliminate all of Closter's unmet need. The Borough does not at this time seek any credit or offset for its historical efforts, but wishes to memorialize the Borough's long-standing policy of providing for very low income residents.”

Mr. Rogan referred to Paragraph 9:

- “9. The Borough and FSHC agree and The Corner Farm does not object that based upon the Borough's Third Round VLA, the Borough has a Third Round RDP of 45 units. That RDP will be satisfied as follows:

Vantage (Supportive Housing)	16
Village School (Family Rental)	35
Accessory Apartments (Family Rentals)	10
Bonus Credits	12
Total	73

The RDP of 45, subtracted from the Third Round obligation of 347 units, results in an unmet need of 302 units for the Third Round. The unmet need from the Prior Round of 48 units plus the unmet need from the Third Round of 302 equals a combined unmet need of 347 units. This shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:

RDP Surplus-to be used for unmet need	28 units
Zone #4	Potential for 43 units
Zone #5	Potential for 67 units
Business Zone District	Potential for 27-36 units

”

He explained Paragraph 9 talks about the Third Round and how we satisfied that; and this goes to the newer Vantage and that is sixteen (16) units, so we got credit for that. The Village School projected units will be thirty-five (35). The Borough Administrator had told him there was a possibility for more units once the County gets in there; but for purposes of the Agreement, I think we have to stick with the thirty-five (35). We know from the prior application of the Applicant that even with the old part of the building – the walls that were in the way, and other restrictions in construction, that they could get between 33-35; so we should be able to get at least 35. If we get more in the next go round of this in 10 years, we can claim the additional credit. In reference to Accessory Apartments, that is one of the ordinances we had talked about. This is an idea whereby existing homeowners could possibly have an accessory apartment on their property and rent it out to either low or moderate or very low income; and it caps out at ten (10). That is one of the ordinances we will be looking at within the 120 days. So, for instance, some of the homes over in the historic district of town, some of them have big garages or apartments or apartment-like structures over their garage or maybe an old coach house or something behind their home that could arguably be converted into an apartment. This would allow them to do that without a use variance; and it maxes out at ten (10); so there can't be more than that or we won't get credit for more than that. Whether or not anybody opts to do that, it is up to them; but for purposes of our plan, we are proposing that we'll adopt an ordinance that will allow that to happen; and that's what we're required to do is to show everybody, including the Court that we are allowing this.

Council President Latner asked if somebody opted to do that, who would their tenant be and would the homeowner be able to choose them. Mr. Rogan explained that it would not be the homeowner's choice; and affirmed they would be opening their house up to somebody on the State list. He said everybody is going to be asked this a hundred times once this gets going, but this is not administered through the town. We do not have the right to come up with our own list; all we can do after this is implemented is to provide a prospective resident with a name and phone number of the State and they could call there and get put on the State list. In answer to Mrs. Latner, he informed he does not have a name at the State for same at this time, but he's sure there is one. Councilwoman Witko voiced her understanding that a lottery is held every couple of years. Mr. Rogan said we should probably get that on file because once this gets going, there's going to be a lot of questions and that's going to be one of them. Unlike thirty (30) years ago, affordable housing is not as feared as it once was because a lot of older people are eligible for it; and they are saying they can't live here anymore but want to stay here; and income-wise may qualify. He voiced his opinion that he thinks there are a lot of people who are going to want to get on this list to possibly get an apartment in town and be able to stay here in a more affordable setting. Councilwoman Chung questioned how homeowners are compensated for accessory apartments; and Mr. Rogan said the rent would be sent by the State. There is a provision whereby the Borough, out of its Affordable Housing Trust Fund, would have to set aside a certain amount of money to supplement in certain cases. So that money could be used also to encourage this. In answer to Mrs. Latner, he said the incentive is that they get some income as opposed to none, like if it was an older couple with a garage in the back with a huge apartment over it – now they'll be able to rent it and not have to go to the Zoning Board for a Use Variance. That's a lot of money between an architect and possibly an engineer and attorney and possibly getting denied – so that's a big issue. Also, it's some income and potentially, it hasn't been worked out the details, but like Councilwoman Chung brought up, there's a potential that the Borough would supplement something over and above the rent. We are required by the law to spend the COAH monies we collect within four (4) years after its being collected. That was the lawsuit – we got sued about a year and a half ago for not doing that and we won the case at trial in Bergen County. They appealed that, but they actually withdrew the appeal and it never actually got decided by the Appellate Division. Our position was COAH was not providing any direction, so if they're not providing any direction, how can we spend the money; and, basically, the Trial Judge, the same one who will be hearing this case, agreed with that and ruled in our favor. The Department of Community Affairs didn't like that and appealed it, but during the course of this, and probably because of Village School, they just decided to withdraw, so we kept the money. Part of our argument at the time was that we had also committed \$1 Million of our money – we didn't spend it but we had a contract to spend \$1 Million so the argument was we did comply with the law and did commit the fund to buy the original (seven) 7 units that we were going to buy in Village School and then we converted it over towards the purchase price. So that's what Box #9 is. He explained the wording underneath explains the development potential; this is a whole complicated formula that he still doesn't understand after three (3) years; and said the numbers are so far apart between all the experts, it's ridiculous; but we were able to get Fair Housing to agree that our realistic development potential is forty-five (45); we showed how we actually exceeded it. We actually did seventy-

three (73) as you can see above. So we were actually able to get that 347 down to 302 and then we talked about how we were going to basically satisfy that number; and we talked about the surplus of twenty-eight (28) units; we talked about a potential zoning change in District 4, which the Committee has looked at before, and the Planning Board was presented with these ordinances over the past several months; so they have some sense as to what it is and a sub-committee of the Planning Board looked at it and seemed to be okay with it; the full Board seemed to be okay with it. So the zoning change that's recommended in District 4 would provide forty-three (43) potential units; in District 5 sixty-seven (67) potential units; the Business Zone twenty-seven (27) to thirty-six (36) potential units and again that's the concept of having a mixed-use with retail on the first floor and residential rental on the second floor.

Borough Attorney noted they already went over Paragraph 10 relating to the Corner farm. He explained it then gets into very specific details about what the ordinances are going to say. Basically, these ordinances are going to require a 20% set aside; so, if somebody comes in and gets an application for ten (10) units down the line, two (2) of them have to be affordable. And that would be before any Board, even things we haven't thought about, if somebody comes before the Planning Board or Zoning Board of Adjustment and gets that type of approval, 20% of whatever residential approval they get have to be affordable; so that will continue to add to our list as we go forward.

Mr. Rogan referred to Paragraph 12 and said it gets into the specifics of Village School:

- "12. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Village School – the Borough is in the process of purchasing the Village School property and anticipates a closing date of on or about July 15, 2018, in order to turn it over to an affordable housing developer to develop a 100% affordable re-use project. In order to receive credit for this project and comply with the terms of this Agreement, the Borough must have the property under contract and have an affordable housing developer in place before the final compliance hearing. (See attached "Exhibit B", Contract of Sale and Bergen County Housing Development Corporation Resolutions 2017-07 and 2017-11).

The Borough has to date obtained an Order dated October 31, 2017 permitting the Borough of Closter to utilize up to \$900,000.00 of its Affordable Housing Trust Fund monies toward the purchase of the property located at 511 Durie Avenue, Closter, New Jersey. See attached "Exhibit C". The Borough has further pursuant to the terms and conditions of the Contract to Purchase the property deposited \$800,000.00 into the Trust Account of David M. Watkins, Esq. and has secured that amount by virtue of a first Mortgage and Note filed on the property. (See attached "Exhibit D"). The Borough has adopted the statutory required Ordinance permitting the purchase of real property at its meeting of November 8, 2017. (See attached "Exhibit E"). The Borough has also adopted a Bond Ordinance in the amount of \$2,800,000.00 at its meeting of November 20, 2017. (See attached "Exhibit F"), in order to satisfy a balance that would be due at time of closing.

A Contractor was retained by the Seller of the property and permits obtained, all asbestos removed and partial demolition has been completed.

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality and/or its developer, Bergen County Housing Development Corporation will provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or developer 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, such as municipal bonding, in the event that the funding request is not approved within a reasonable time. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing.

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 schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing."

He explained this section outlines what exactly has happened timetable wise leading up to now; and there are different Exhibits attached, which he sent everybody today via e-mail, but are not attached here. We basically show the progress of that; and he reiterated the closing is scheduled for the middle of July.

Moving on to Paragraph 13:

“13. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

- a. Vantage. All 16 of the Vantage units are very low income.
- b. 13% of units at Village School
- c. 13% of units developed as a result of the overlay zones and set-aside ordinance as required by Ordinance.”

Mr. Rogan explained we were required to show where our very low income units were, and we were also required to show that of any future potential development, 13% of them would be very low; so Vantage, all sixteen (16) units, qualify for very low; 13% of what’s built at Village School will have to be very low and that’s going to be the County’s problem, not ours. There are different income levels and that means when the County takes over and starts accepting applicants, they make all of those determinations. This requires them to say that of the 35 (thirty-five) or 40 (forty) units built there, 13% of them have to be very low. Councilwoman Chung questioned where 13% came from; and the Borough Attorney said they just made it up; all of this is made up. He said he gets the concept but the rules and regulations are just a lot of arguing back and forth over the years; and it’s almost like a settlement or what they settled on at some point.

He referred to Paragraph 14 and explained that we do get bonuses for rentals which will include a big bonus for rentals for Village School, because those are all rentals, and will now include the Corner Farm because those will all be rentals:

“14. The Borough shall meet its Third Round RDP and Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least 50 percent of the units addressing the Third Round RDP and Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent of the Third Round RDP and Prospective Need shall be met through rental units, including at least half in rental units available to families.
- d. At least half of the units addressing the Third Round RDP and Prospective Need in total must be available to families.
- e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation as set forth in Paragraph 7 above”

Borough Attorney explained Paragraph 15 is a standard paragraph that deals with who gets notified and does the marketing; and we have no say in it to be honest because that’s the State law and the organizations that are involved in the marketing plan for these units:

“15. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.”

Mr. Rogan referred to Paragraph 18 and said that one of the essential parts of the Agreement is that we are agreeing that within one hundred twenty (120) days of the Court’s approval of the Settlement Agreement, we will be introducing and adopting ordinances as we’ve talked about. Those overlay and accessory use ordinances we are agreeing that will happen; the Planning Board more than the Mayor and Council having special meetings. He explained for zoning ordinances it’s not like we can just introduce it Wednesday and adopt it a month from Wednesday. It has to go back and forth between the Planning Board and the Mayor and Council. He noted Planning Board Chair Mark Maddaloni is on the Committee; Councilwoman Amitai is on the Planning Board and the Committee; and the Mayor is on the Committee; so there are already three (3) Members of the Planning Board who have lived with these proposed ordinances for almost two (2) years. He noted that Ms. Reiter and he also went to the Planning Board about two (2) months ago and explained exactly

what would be needed; so he thinks they are aware of what needs to be done; and they are willing to schedule whatever Special Meetings may have to be scheduled. Ultimately the Mayor and Council does have to adopt these ordinances.

- “18. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.”

Mr. Rogan referred to Paragraph 19 and explained this paragraph says what happens if, in the future, a court makes a different determination; obviously we are subject to the law and whatever changes may be made.

- “19. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.”

At this point, we are assuming that the Council moves forward with this Agreement. He already received written confirmation today that Fair Housing and the Corner Farm are in agreement with this Agreement. Assuming the Court approves it, we will be protected for ten (10) years against any potential Builder's Remedy suit and that's the thing everybody is looking to get out of. In answer to Council President Latner, he said a number of other towns have already gotten it; but there are some who are still lagging way behind. Our immunity from those suits expires at the end of July 2018; so if the Judge approves this on the 24th, we're good; and the Judge retires he believes on the 25th.

Mr. Rogan referred to Paragraph 21 and explained that this will need to be discussed because it is important to keep a diary somewhere in Borough Hall as follows:

- “21. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.”

He noted we have never had this reporting requirement before; so that is something that future Administrators and Councils cannot forget to do. He voiced his understanding that from the reading of this paragraph we need to start tracking it from day one so that on July 24, 2019 we will already have it in there; and it will say exactly how many units are occupied, how many aren't, whether there's been any proposals. We basically have to give them an update.

Mr. Rogan said Paragraph 22 talks about that 10-year period of protection:

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

- a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet

unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.”

He referred to Paragraph 23 and said this is the one they need to have a little discussion on because this is the only one that is somewhat different than what the Council has been talking about up until now:

“23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC’s rights.

The Borough agrees to pay \$5,000.00 to FSHC, payable within ten (10) days of judicial approval of this Agreement pursuant to a duly-noticed Fairness Hearing.”

Fair Share Housing has requested in all of their settlements that they be paid something for their legal fees. Most towns have paid it; some have paid up to \$18,000; and the Borough of Closter has been adamantly saying “No”. The last go around they were at \$7,500; and, basically, they have said they want \$5,000 to sign off on this Agreement. He does not know yet whether this \$5,000 can come out of the Affordable Housing Trust Fund, though it seems to him like it should; if it can, it’s not tax dollars; but if it can’t, he still recommends that we do it at this point because if we had another six (6) months to talk about it maybe; but for \$5,000, after three years (3) of litigation and the potential of having Builder’s Remedy suits as of July 25th, it’s too big of a risk. He said he will try to find out over the next week or so; and this would be payable within ten (10) days of the Settlement or the first week of August; but he would like to find out if it is Affordable Housing Trust Fund money that can be used. Councilwoman Chung questioned if these fees would have had to have been asked for since the beginning, and Mr. Rogan affirmed same, saying some towns have fought it; and if there was a Fairness Hearing, some towns have not had to pay; but that’s after the full hearing. We can’t ask the Judge to give us an advisory opinion ahead of time before the trial if he would make them pay. It’s either a full trial; and at the end, the Judge says they’re entitled to it or not; or they can just agree to pay it. In answer to Mrs. Latner, he affirmed \$18,000 was the most he had heard; and the least amount paid was zero. Some of the towns early on did not pay, but some of the towns had zero numbers and didn’t have anything to worry about because they had affordable housing. He noted he did not know what the lowest fee paid is statewide. He reiterated Fair Housing initially wanted \$10,000, then went down to \$7,500 several months ago, and we just kept saying zero. He said he took that paragraph out of the last two (2) drafts; they came back the end of last week and said no it’s got to be in there. He said how about \$2,500, Fair Housing said no, they want \$7,500; and then they came back with \$5,000 the other day and said this is as good as we’re going to do. Mr. Rogan reiterated this is the only thing in the Agreement that is significantly different than everything else they had previously talked about.

Everything else, the 100 square feet, one way or the other, is a change but it is not a major change. Basically the rest of the Agreement is “legalease” and there’s nothing of great substance in it. It is covered by the Laws of New Jersey, cannot be modified unless it is in writing; everybody has entered into it freely and willingly; there’s no side agreements. This Agreement nobody can claim that there were any side deal or verbal agreements to anything like that. So this is the proposed Agreement.

At this time, Borough Engineer referred back to the Corner Farm property and asked what if the DEP (Department of Environmental Protection) does not allow it to build what they think they can get – they don’t get to modify this agreement do they? Borough Attorney informed they could not modify the Agreement. What they could do would be to go in in for a use variance of some sort; and when this overlay zone is changed, it is going to set up a criteria as best we can. We cannot make specifics about things such as design elements but we could, for example, say we want a 10-foot buffer, or 40 feet back from the road, or “x” number of feet high. We can do those things, but we cannot design the building itself. Let’s say for some reason they deviate from that, and certainly if it’s a State agency like the DEP, they have to move it over; and somehow by restructuring their plan, they violate this criteria set forth in our overlay zone, they would need a use variance from the Zoning Board of Adjustment for that. If they comply with everything, it’s a Planning Board application because it’s a permitted use to build multi-family homes. In answer to Mr. DeNicola, he informed he fought to have the words “conditional use” included in the Agreement; and they would not allow that because they don’t like the fact that if we call it “conditional”, any type of bulk change could trigger a use variance; and they are not agreeing to that. Affordable Housing is overseen by overlay zones, not by conditional use ordinances. Mr. DeNicola said if they have a minor deviation from what we’re saying, wouldn’t it trigger a use variance anyway like the buffer requirement. Mr. Rogan said no they would not be allowed under the ordinance. He

explained in that case, if something specifically was outlined in there, they could go for a use variance. Although he would prefer a conditional use ordinance, because that's what he's used to, the overlay zone is what oversees affordable housing; and Fair Housing, the Special Master and the Corner Farm took that out on Friday. Up to that point, Mr. Rogan's draft included "conditional use/overlay zone" and they said no it couldn't be conditional use. Councilwoman Chung questioned if this was spot zoning; and Borough Attorney affirmed same but noted COAH is an exception to that. In his opinion, it's spot zoning because it's one (1) property that we're giving benefits to. The difference is that you're allowed to do it in the name of affordable housing. He said he doesn't know if he philosophically agrees with that. All of our other overlay zones, up until now, have been one geographic area, not one specific spot or property; and that was a major concern he had on a long talk with the Special Master; and he explained that under this type of Settlement that is court approved and State mandated, you're allowed to do it. Potentially does it open us up to somebody south of this property saying why not me, then the answer is they were not an Intervenor and not part of the Agreement. Ten (10) years from now you can jump in if you want, but not now. Councilwoman Chung questioned what would happen if the Corner Farm was to sell the property down the road and the new owners wanted to expand against the ordinance, would they be able to go in for a use variance under the ordinance. Mr. Rogan explained nothing prohibits them from going for a use variance at any time even before 10 years has passed; and they could try to deviate from this no different than any other person in town trying to for any other ordinance. Mrs. Chung noted that in 10 years' time it could be entirely different Boards and administration that sees things differently and doesn't have the history that what we are living through right now.

Mr. Rogan reiterated that the (10) years just protects us that nobody can sue the Borough seeking a Builder's Remedy lawsuit and that's what is so critical. In order to get the thirty-five (35) units at Village School, that would have been hundreds of units developed by a private developer, because for every one hundred (100) units, we would only get credit for 20; we would have had one hundred fifty (150) units to get thirty-five (35). We are getting thirty-five (35) credits in one spot; and yes we are paying for it, which is a consideration, but you're going to pay for it one way or the other because for every unit built in town, if you build one hundred fifty (150) units in Closter even if seventy-five (75) of those people have one child, we're paying approximately \$18,000 per child and they're paying minimal taxes because it's a 1,000 -1,200 square foot unit; so everybody in town is going to make up the difference. Yes, Village School was a big expenditure; but those thirty-five (35) units saved us from the potential of one hundred fifty (150) or more being built. That was the value and that's going to be an issue for the public. People are going to say we spent \$2 Million to buy Village School, but the point is that \$2 Million, when you calculate out the school cost over 8 or 12 years of seventy-five (75) children, that \$2 Million is a drop in the bucket. Not to mention the additional pressure of an additional seventy-five (75) children and one hundred fifty (150) units would put on our Fire Department, Ambulance Corps, Police Department. He referred to the Sunrise building in Cresskill and noted it's a nice building that's a mixture of affordable housing, market value and assisted living. There are hundreds of units, and Mr. Rogan happens to know because a family member is living there, the ambulance is there 3-4 times a week that he has seen. It is a huge burden on the resources; and Closter has volunteer ambulance and fire departments; and all of those calls first go to the police. You're talking about adding 150-200 units in town just to get 35 credits. The Village School is a bargain; and it's a unique piece of property. He affirmed that \$1 Million of that money was not tax dollars but Affordable Housing Trust Fund monies previously raised by affordable housing fees.

Councilwoman Chung questioned if this Agreement signed by the Corner Farm bars them from challenging the Fairness Hearing or can they still come. Mr. Rogan informed once this is signed, they're done. They could not challenge it. They can come and sit at the table and not say anything. In fact, his hope is that they sign it and not even come to the Hearing because this Agreement says they will not object; so at best, they can stand up and say they do not object. Frankly, their attorney is in Princeton and he doesn't even think he'll come at this point assuming that the Council agrees to this. In answer to Mrs. Chung, Mr. Rogan affirmed the Fairness Hearing is open to the public.

Mr. Rogan explained the Judge is anticipating this being a Settlement, so he has three to four scheduled for that day. If it was a contested case, it would go on for at least a couple of days. He reiterated he has e-mail confirmations from both Fair Housing and the Corner Farm today saying the way this Agreement is written right now, they are good with this; so it is up to the Council to approve or deny it.

Therefore, Council President Latner asked for a motion to approve the following Settlement Agreement.

“SETTLEMENT AGREEMENT REGARDING THE DECLARATORY JUDGMENT ACTION, CAPTIONED AS IN THE MATTER OF THE BOROUGH OF CLOSTER, COUNTY OF BERGEN DOCKET NUMBER BER-L-6372-15 AND TO AUTHORIZE THE MAYOR AND /OR COUNCIL PRESIDENT TO SIGN SUCH AGREEMENT”

Motion of approval was made by Councilwoman Chung, seconded by Councilwoman Witko and declared unanimously carried by Council President Latner upon the affirmative vote of Councilpersons Witko, Yammarino, Chung and Council President Latner.

CLOSTER MAYOR AND COUNCIL
SPECIAL MEETING MINUTES – THURSDAY, JUNE 21, 2018

5. OPEN MEETING TO PUBLIC FOR ANY MATTER, PER N.J.S.A. 10:4-12 (a)
(Subject to 5-minute limit per By-Laws General Rule No.11)

Council President Latner asked if anyone wished to speak. No one wishing to do so, Council President Latner continued with the Agenda.

6. ANY OTHER MATTER WHICH MAY COME BEFORE THE GOVERNING BODY

Council President Latner asked if there was any other matter to come before the governing body. No one wishing to address any other matter, Council President Latner continued with the Agenda.

7. ADJOURNMENT

Motion to adjourn the Regular Meeting at 9:25 p.m. was made by Councilwoman Chung, seconded by Councilman Yammarino and declared unanimously carried by Council President Latner.

Provided to the Mayor and Council on
June 28, 2018 for approval at the
Regular Meeting to be held
July 11, 2018

Loretta Castano, RMC
Borough Clerk

Prepared by Borough Clerk and
Arlene Marie Gray, RMC utilizing the
recording and Borough Clerk's notes

Approved at the Regular Meeting held July 11, 2018
Consent Agenda Item No. 17a



Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.

June 22, 2018

Edward T. Rogan, Esq.
One University Plaza – Suite 607
Hackensack, NJ 07601

**Re: In the Matter of the Borough of Closter, County of Bergen, Docket
No. BER-L-6372-15**

Dear Mr. Rogan:

This letter memorializes the terms of an agreement reached between the Borough of Closter (the "Borough"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

Closter filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, *supra*. FSHC and the Borough have engaged in a mediation process under the supervision of the court-appointed Special Master. Through that process, the Borough, FSHC and the Borough's sole intervenor, The Corner Farm agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Borough, FSHC and The Corner Farm hereby agree to the following terms:

1. FSHC agrees, and The Corner Farm will not object, that the Borough, through the adoption of a Housing Element and Fair Share Plan that complies with this agreement, and the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and the Borough hereby agree, and The Corner Farm does not object, that Closter's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	110
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	347

*See Paragraph 5 below.

4. For purposes of this agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. FSHC and the Borough agree, and The Corner Farm does not object to the fact that Closter does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends and is free to take the position before the Court that the 347-unit Third Round obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects the 30% reduction of Dr. Kinsey's calculation of Closter's Third Round Fair Share obligation.
6. The Borough's efforts to meet its present need include the following: The Borough's Present Need/Rehabilitation Share is 0 units and so no mechanisms are needed.
7. As noted above, the Borough has a Prior Round prospective need of 110. This number is reduced by the adjustment previously approved by the Council on Affordable Housing (COAH) based upon the lack of available vacant and developable land within the Borough as established in the Borough's Prior Round Vacant Land Inventory and Analysis ("VLA"). The Prior Round RDP of 62 units is met through the following compliance mechanisms:

Spectrum for Living	16
Vantage	3
AH/Z	1
Bonus Credits	16
RCA Credits	26
Total	62 units

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.

The Borough's Prior Round Prospective Need of 110 units minus its RDP of 62 units leaves an unmet need of 48 units.

8. The Borough since 1983 is home of the original Spectrum for Living. This facility consists of 52 living units for very low income residents. In a previous round, it was erroneously identified as a hospital, however, is clearly not a facility where one resides temporarily, but rather is a permanent home for 52 of Closter's residents. If applied under current regulations, it would eliminate all of Closter's unmet need. The Borough does not at this time seek any credit or offset for its historical efforts, but wishes to memorialize the Borough's long-standing policy of providing for very low income residents.

9. The Borough and FSHC agree and The Corner Farm does not object that based upon the Borough's Third Round VLA, the Borough has a Third Round RDP of 45 units. That RDP will be satisfied as follows:

Vantage (Supportive Housing)	16
Village School (Family Rental)	35
Accessory Apartments (Family Rentals)	10
Bonus Credits	12
Total	73

The RDP of 45, subtracted from the Third Round obligation of 347 units, results in an unmet need of 302 units for the Third Round. The unmet need from the Prior Round of 48 units plus the unmet need from the Third Round of 302 equals a combined unmet need of 350 units. This shall be addressed through the following mechanisms, as more fully described in the attached fair share plan:

AP
350

RDP Surplus-to be used for unmet need	28 units
Zone #4	Potential for 43 units
Zone #5	Potential for 67 units
Business Zone District	Potential for 27-36 units

10. To address its unmet need, the Borough will adopt overlay zoning on the following sites:

- A. See Description of overlay zoning as outlined in the attached March 22, 2018 Memorandum to Special Master Michael Bolan, P.P., AICT attached and made a part hereto. (See attached "Exhibit A")
- B. The Corner Farm is a site located at 515 Piernont Road, Closter, New Jersey, more specifically identified on the Closter Tax Map as Block 1605, Lot 17 in District No. 1 in the Residential A Zone and contains approximately 3.2 acres. The site will be rezoned to permit an overlay zone with 17 percent of the total development set aside for affordable housing. The overlay density of 3.75 units

(per acre) will permit three (3) stand alone, detached quadruplex structures (4 units per structure), or a total of twelve (12) two (2) and three (3) bedroom units ranging in size from 900 sq. ft. up to 1,500 sq. ft., including two (2) affordable units (one low income two bedroom and one moderate income three bedroom), to be constructed on the site. The building coverage of each building may not exceed 2,600 square feet. The overlay ordinance would include specific standards, including, but not limited to, (i) providing buffers for adjoining residential uses, (ii) maintaining a residential architectural scale, design, and treatment similar to the residential uses located to the east and north of the site, (iii) prohibiting parking in front of any building located along Piermont Road, and (iv) establishing the maximum front yard setback along Piermont Road at 40 feet or less with appropriate landscape buffering.

11. As an additional mechanism to address unmet need, the Borough will provide realistic opportunity for the development of additional affordable housing by adoption of a Mandatory Set-Aside Ordinance.

a. Mandatory Set-Aside Ordinance – The establishment of a requirement that 20% if the affordable units are for sale and 20% if the units are for rent, for all new multi-family residential development of five (5) or more units that become permissible through either a use variance, density variance increasing the permissible density on a site, a rezoning permitting multi-family residential housing where not previously permitted or new or amended redevelopment plan. This does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Closter to grant such rezoning, variance, or other relief.

12. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Village School – the Borough is in the process of purchasing the Village School property and anticipates a closing date of on or about July 15, 2018, in order to turn it over to an affordable housing developer to develop a 100% affordable re-use project. In order to receive credit for this project and comply with the terms of this Agreement, the Borough must have the property under contract and have an affordable housing developer in place before the final compliance hearing. (See attached “Exhibit B”, Contract of Sale and Bergen County Housing Development Corporation Resolutions 2017-07 and 2017-11).

The Borough has to date obtained an Order dated October 31, 2017 permitting the Borough of Closter to utilize up to \$900,000.00 of its Affordable Housing Trust Fund monies toward the purchase of the property located at 511 Durie Avenue, Closter, New Jersey. See attached “Exhibit C”. The Borough has further pursuant to the terms and conditions of the Contract to Purchase the property deposited \$800,000.00 into the Trust Account of David M. Watkins, Esq. and has secured that amount by virtue of a first Mortgage and Note filed on the property. (See attached “Exhibit D”). The Borough has adopted the statutory required Ordinance permitting the purchase of real property at its meeting of November 8, 2017. (See attached “Exhibit E”). The Borough has also adopted a Bond Ordinance in the amount of \$2,800,000.00 at its meeting of November 20, 2017. (See attached “Exhibit F”), in order to satisfy a balance that would be due at time of closing.

A Contractor was retained by the Seller of the property and permits obtained, all asbestos removed and partial demolition has been completed. In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality and/or its developer, Bergen County Housing Development Corporation will provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or developer 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, such as municipal bonding, in the event that the funding request is not approved within a reasonable time. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing.

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 schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough shall demonstrate how it meets this obligation as part of the Housing Element and Fair Share Plan to be submitted pursuant to this Agreement prior to the Compliance Hearing.

13. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

- a. Vantage. All 16 of the Vantage units are very low income.
- b. 13% of units at Village School
- c. 13% of units developed as a result of the overlay zones and set-aside ordinance as required by Ordinance.

14. The Borough shall meet its Third Round RDP and Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least 50 percent of the units addressing the Third Round RDP and Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent of the Third Round RDP and Prospective Need shall be met through rental units, including at least half in rental units available to families.

- d. At least half of the units addressing the Third Round RDP and Prospective Need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation as set forth in Paragraph 7 above
15. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
 16. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.
 17. 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.
 18. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
 19. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the fair share plan attached hereto, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the

development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

20. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from 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, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. 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.

21. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

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

- a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unmet sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
- The Borough agrees to pay \$5,000.00 to FSHC, payable within ten (10) days of judicial approval of this Agreement pursuant to a duly-noticed Fairness Hearing.
24. This settlement agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the attached Plan (Exh. A) at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.
25. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
26. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
27. 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.

28. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
29. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
36. 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.
37. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Edward T. Rogan, Esq.
One University Plaza, Suite 607
Hackensack, NJ 07601
Phone: (201)342-6404
Telecopier: (201)342-6658
Email: office@rogan-lawfirm.com

TO THE CORNER FARM:

Frank Petrino, Esq.
2000 Lenox Drive, Suite 203
Lawrenceville, NJ 08648
Phone: (609)989-5029
Telecopier: (609)392-7956
Email: fpetrino@eckertseamans.com

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

Loretta Castano, Borough Clerk
295 Closter Dock Road
Closter, NJ 07624
Phone: (201)784-0600
Email: lcastano@clostermi.us

Please sign below if these terms are acceptable.

Sincerely, 
Kevin B. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of Closter, with the authorization
of the governing body:

Borough of Closter

John C. Glidden, Jr., Mayor

Dated: _____

On behalf of The Corner Farm:

Dated: _____

Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE BOROUGH:

Edward T. Rogan, Esq.
One University Plaza, Suite 607
Hackensack, NJ 07601
Phone: (201)342-6404
Telecopier: (201)342-6658
Email: office@rogan-lawfirm.com

TO THE CORNER FARM:

Frank Petrino, Esq.
2000 Lenox Drive, Suite 203
Lawrenceville, NJ 08648
Phone: (609)989-5029
Telecopier: (609)392-7956
Email: fpetrino@eckertseamans.com

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

Loretta Castano, Borough Clerk
295 Closter Dock Road
Closter, NJ 07624
Phone: (201)784-0600
Email: lcastano@closternj.us

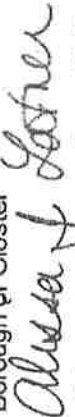
Please sign below if these terms are acceptable.

Sincerely,

Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of Closter, with the authorization
of the governing body:

Borough of Closter



Alissa J. Latner, Council President

John G. Glidden, Jr., Mayor

Dated: June 21, 2018

On behalf of The Corner Farm:


Dated: 7/2/2018

EXHIBIT A

CHRISTOPHER P. STATILE, P.A.

PROFESSIONAL ENGINEERS AND PLANNERS
DESIGN CONSULTANTS

CPSTATILE@AOL.COM

3 FIR COURT
OAKLAND, NJ 07436
TELEPHONE (201) 337-7470
FAX (201) 337-7599

NEW YORK

ATTORNEY-CLIENT PRIVILEGED MATERIALS

Memorandum

To: Michael Bolan, P.P., AICP
Affordable Housing Special Master

From: Caroline Reiter, P.P., AICP
Borough of Closter Affordable Housing Planner

Date: March 22, 2018

Regarding: Borough of Closter, Bergen County

The Borough has analyzed the existing Affordable Housing Overlay requirements in Zone #4 (Commercial Area) and Zone #5 (Industrial Area). The existing Affordable Housing Overlay was created as a mechanism to meet unmet need under the Borough's Prior Round Substantive Certification.

Presently, the Affordable Housing Overlay permits townhouses at eight units/acre with a 20% affordable set-aside, and apartments at 10 units/acre with a 20% affordable housing set-aside. The minimum lot size is one acre for townhouses and five acres for apartments.

The Borough believes that Zone Districts #4 and #5 contain additional opportunities to meet Round 3 unmet need. Specifically, revisions can be made to the overlay zones to capture additional affordable housing opportunities. The existing overlay zones are shown on the map entitled, Closter Overlay Zones, dated January 3, 2018. Industrial Zones #5 are shown in yellow and Commercial Zones #4 are shown in dark gray.

Zone District #4: Commercial Area

All properties in the three Zone Districts #4 total approximately 18 acres. Under the present overlay zoning, the total gross acreage could yield approximately 29 affordable units if townhouses were constructed, and 36 affordable units if apartments were constructed, as follows:

- Townhouses: 18 x 8 units/acre = 144 total units, of which 29 would be affordable.
- Apartments: 18 x 10 units/acre = 180 total units, of which 36 would be affordable.

The proposals include revising the permitted overlay density so that apartment density is increased to 12 units/acre. The proposed increased density could result in 43 affordable apartment units, based on the gross acreage, as follows:

- Apartments: 18 x 12 units/acre = 216 total, of which 43 would be affordable.

Within the Zone District #4, Commercial Zones, the proposed density revisions could result in increases of seven affordable units if apartments are built; all credits are considered for unmet need. All calculations assume consolidation of smaller properties as well as the potential for new construction.

Zone District #5: Industrial Area

The Closter Affordable Housing Committee determined that, upon review of the existing Industrial Zones, the overlay requirements for the Reuten Drive Industrial Area Zone should not be revised. The Reuten Drive Industrial Zone is identified on the Overlay Zone Map; no revisions are proposed due to the existing development of Reuten Drive.

All of the properties in the remaining Industrial Zones (Reuten Drive Industrial Zone was not considered) approximate 28 acres. Under the current overlay zoning, and based on existing gross acreages, these properties could produce approximately 45 affordable units if townhouses were constructed, and 56 affordable units if apartments were constructed, as follows:

- Townhouses: 28 x 8 units/acre = 224 total, of which 45 would be affordable.
- Apartments: 28 x 10 units/acre = 280 total, of which 56 would be affordable.

The proposals include revising the permitted overlay density so that the apartment density is increased to 12 units/acre. The proposed increased density could produce approximately 67 affordable apartment units, as follows:

- Apartments: 28 x 12 unit/acre= 336 total, of which 67 are affordable.

Within the Industrial Zones, the proposed density revisions could result in increases of 11 affordable units if apartments are built; all credits are considered for unmet need. All calculations assume consolidation of smaller properties as well as the potential for new construction.

We believe the proposed density modifications could result in new opportunities to capture affordable housing. All inclusionary zoning in Districts #4 and #5 would be conditional uses, and would be used to meet the Borough's unmet need.

Business District – Updated Acreage and Existing Dwelling Units

The Business Zone #3 contains an affordable accessory apartment overlay zone. The accessory apartment zoning was adopted in 2003 as a condition of COAH Prior Round unmet need. The Business District #3 is shown in orange on the Closter Overlay Zone map.

The Borough has analyzed the business area and believes that it could provide additional opportunities for the provision of affordable housing, as well as promote current planning practices. Successful planning practices favor a mixed-use environment in the downtown district to provide a residential component of the commercial area. The addition of a multi-family residential use in the downtown could assist local businesses by providing additional customers to the area. Mixed use neighborhoods also provide employees the opportunity to live near to their places of employment.

Closter has a quaint downtown area that is walkable and lends itself to the mixed-use environment. The commercial area contains sidewalks and benches for pedestrians, as well as bicycle racks for alternate transportation options. The area is also within walking distance to bus service.

The opportunity to add a multi-family use to the downtown Business area also is an opportunity for affordable housing. The Borough has studied the Business Zone #3 and recommends, from the western edge of the zone district to Perry Street (the area shown in darker orange on the Overlay Zone Map):

- Establishment of a separate Business Zone District.
- Removal of the existing affordable housing accessory apartment overlay.
- Permitting, as an overlay, mixed use in this area. Potential recommendations include permitting a commercial or business use on the first level, with apartments above it.
- Potential zone regulations could include permitting a residential density of 10 units/acre with a 20% affordable set-aside for “sale” units, and a 15% affordable set-aside for rental units.

Potential revisions to this section of the Business Zone District would be used to meet the unmet need. The following analysis is offered on potential zone changes to a section of the Business Zone District.

The subject area of the Business Zone District approximates 22 acres. There are existing dwelling units in this area. Based on Closter Building Department records, it appears that

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approximately 38 dwelling units (apartments) are in the subject area, none of which are known affordable units.

Assuming an approximate area of 22 acres, 38 existing dwelling units, and a density of 10 units/acre, there is the potential for 36 affordable “for sale” units (assuming 20% set-aside), or 27 affordable rental units (assuming a 15% affordable set-aside) as follows:

- 22 acres x 10 units/acre = 220 units total
- 220 – 38 existing dwelling units = 182 potential new residential units
- 20% of 182 = 36 affordable units.
- 15% of 182 = 27 affordable units

Revisions to Business Zone #3 could be used to meet Round 3 unmet need.

We look forward to discussing this memo with you as Closter continues to provide a realistic opportunity for the provision of affordable housing.

CR/mr
5599

EXHIBIT B

CONTRACT FOR SALE OF REAL ESTATE

THIS CONTRACT is made the 13th day of September, 2017, between KITTY FAN KOO IRREVOCABLE INTER-VIVOS TRUST UNDER A TRUST AGREEMENT DATED DECEMBER 20, 1989, LEI CHEN FAN, LEO FAN and LEI MIN FAN, TRUSTEES, having an address at 555 10th Street, Palisades Park, New Jersey 07650 ("Seller") and THE BOROUGH OF CLOSTER, located at 295 Closter Dock Road, Closter, New Jersey 07624 ("Purchaser").

Seller and Purchaser hereby covenant and agree as follows:

1. AGREEMENT TO PURCHASE; DESCRIPTION OF PROPERTY.

Seller agrees to sell to Purchaser and Purchaser agrees to purchase at the price and upon the terms and conditions set forth in this Agreement the parcel of land and building, as remediated and partially demolished pursuant to Paragraph 22, located on the real property commonly known as 511 Durie Avenue, Borough of Closter, County of Bergen described as Lot 9 in Block 1316 on the Tax Map of the Borough of Closter. This property is more fully described in the attached Exhibit A.

Title to the Premises shall be conveyed to Purchaser and shall be good and marketable fee simple title to the Premises being insurable at regular rates by any reputable title insurance company licensed to write title insurance in the State of New Jersey ("Title Company"), free and clear of all liens, encumbrances and restrictions except for such matters as the Purchaser's Title Company shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises.

2. PURCHASE PRICE AND METHOD OF PAYMENT.

The Purchase Price ("Purchase Price") for the contemplated transaction is Three Million Five Hundred Fifty Thousand Dollars (\$3,550,000). This price is based in part upon a \$800,000.00 estimate for demolition and asbestos removal. The price to be adjusted for any cost overruns on

asbestos removal. Buyer shall pay the first \$80,000 of any cost overruns. Seller to pay an amount not to exceed \$40,430 thereafter for the cost of any cost overruns. The Purchaser to pay any difference in overruns. The Purchaser shall indemnify Seller for any cost overruns in excess of Seller's contribution of \$40,430.00. The Purchase Price shall be payable as follows:

A. Upon execution of this Agreement, and receipt of a Note and recordable Mortgage from Seller for the same amount, by Purchasers, by wire or check payable to the Escrowee (as hereinafter defined), the receipt of which is hereby acknowledged, to be held in escrow pursuant to Paragraph 5 hereof (the initial down payment);

Initial Deposit \$800,000.00

B. Balance by banker's check, attorney trust account check and/or wire. \$2,750,000.00

TOTAL: \$3,550,000.00

The Purchaser and Seller certify that this Contract accurately reflects the Purchase Price as indicated above, and understand and agree that this information shall be disclosed to the Internal Revenue Service as required by law.

The Purchaser's participation in this Contract is contingent upon receiving approval from the Court overseeing a certain declaratory action captioned In the Matter of the Application of the Borough of Closter, a Municipal Corporation of the State of New Jersey, bearing Docket No. BER-L-6372-15 to utilize funds from its Affordable Housing Trust Fund. If such Court approval is not forthcoming within 30 days of all parties signing this Contract, this Contract shall become null and void and all deposits shall be returned in full. Any extensions of such time period shall be within Seller's exclusive discretion. If such Court approval is limited in any way below the

projections illustrated above, Purchaser shall supplement such trust funds with monies obtained through Municipal Bonding.

Failure to pay when due or non-payment of any checks issued by Purchaser shall be deemed a default hereunder and shall, among other remedies, give Seller the option of cancelling the Agreement.

Purchaser shall not assume responsibilities for any liabilities of any nature or type related to, or due by Seller. The Seller shall deliver the subject property free and clear of any and all liens.

The closing shall occur within 30 days of completion of demolition and proof of compliance of any and all mandatory State requirements for removal of asbestos.

3. DEPOSIT.

The initial down payment of \$800,000.00, paid at the time of the making of this Contract, is refundable pursuant to ¶10 of this Contract, and will be held in Seller's Attorney Trust account, and shall be secured by a first Mortgage and Note signed by Seller on the property for the full amount of the deposit. All deposit monies will be credited at the time of Closing against the Purchase Price. Utilization of deposit monies shall be governed by Paragraph 5 herein.

4. CONTINGENCIES. BONDING CONTINGENCY.

This Contract is contingent upon the completion of the Municipal Bonding process in accordance with N.J.S.A. 40A:2-1 et seq. and the adoption of a statutorily required Ordinance pursuant to N.J.S.A. 40A:12-5(a).

DUE DILIGENCE PERIOD.

The Purchaser, absent proof from Seller of an oil tank sweep by a certified oil tank removal company that no such tanks are located on the premises, shall have thirty (30) days from the date of full execution of this Contract in which to undertake a due diligence investigation in order to investigate environmental factors as to the existence of an underground oil/storage tank. Seller shall also provide documentation evidencing satisfactory air quality testings under the laws of the State of New Jersey following asbestos removal. If oil tank removal/soil testing documentation and/or air quality testing following asbestos removal is not in compliance with State regulations and laws, Purchaser shall have the right to cancel this Contract upon notice to Seller. Upon receipt of such notice, this Contract shall be deemed null and void of no further force and effect and the deposit hereunder shall be returned to Purchaser. Thereupon, neither party shall have any further rights, duties or obligations to the other. If Purchaser has not waived the contingency during the due diligence period or any extension thereof, Seller may void this Agreement, at its option, upon five (5) days notice to the Purchaser.

This Agreement is not contingent upon the obtaining of any required zoning permit or other approval as may be required by the Municipality, County or State.

This Agreement and Purchaser's obligation to purchase the premises shall be contingent upon the satisfactory compliance with New Jersey State Regulations and Laws regarding the removal of asbestos.

5. DOWN PAYMENT.

The Purchaser acknowledges that it will pay by check drawn to the order and delivered to Seller's Attorney ("Escrowee") subject to Court approval as referenced above as a good faith deposit to be used primarily toward asbestos removal and demolition for the entire initial down

payment of \$800,000.00. The Escrowee is holding the proceeds thereof in escrow in a non-interest bearing trust account until required by payment in phases, under a certain Contract for asbestos removal, gutting and partial demolition of the structure, including air quality testing is due and payable or the date of closing, whichever occurs first.

The parties acknowledge that Escrowee, David M. Watkins, Esq. is acting solely as the stakeholder at the request and for their convenience. Escrowee shall not be deemed to be the agent of either of the parties and that the Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this Agreement or involving negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorney's fees incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this Agreement or involving negligence on the part of Escrowee.

Escrowee acknowledges its agreement to these provisions by signing in the place indicated on the signature page of this Agreement.

6. TITLE.

The Seller agrees to deliver a Bargain and Sale Deed with Covenant against Grantors Acts and Affidavit of Title at Closing, free and clear of any and all liens, other than Purchaser's First Mortgage as referenced in Paragraph 2 above. Title shall be good and marketable such as will be insured at regular rates by a reputable title company licensed to do business in the State of New Jersey selected by Seller's Attorney, subject to easements and restrictions of record, such facts as an accurate survey might disclose, and zoning ordinances and other applicable laws, regulations and ordinances. However, the Purchaser shall not be obligated to proceed with the

closing if the easements and restrictions of record: (1) are presently violated and not curable by Seller; or (2) provide that the property would be forfeited if they were violated. Purchaser is responsible for costs of recording the Deed, Mortgage, Surveys, Title Search, and owner's and mortgagee's title policies, and all other costs of Closing and transferring Title including, without limitation, costs associated with Purchaser's mortgage. The Purchaser covenants and agrees that the acceptance of the Deed shall constitute a full acceptance of the property and structure as remediated and partially demolished, and a waiver of any and all claims whatsoever against the Seller for any cause relating to title. None of the terms of this Contract, except as expressly provided in this Contract, shall survive the delivery of the Deed and acceptance of it by the Purchaser.

7. RISK OF LOSS.

- A. The risk of loss or damage to the property by fire or otherwise is on Seller until time of closing.
- B. Purchaser assumes the risk for any personal injury or property damage sustained by Purchaser or members of their family or guests while on the Property and before Closing, unless said visit is scheduled by Seller and Purchaser is escorted by Seller's representative.
- C. Seller assumes the risk and responsibility for environmental permitting, cleanup, and partial demolition of structure as required.

8. TAX AND OTHER ADJUSTMENTS.

Collection of Real estate taxes will be frozen from the date the fully executed Contract is received by the Borough of Closter up and until the day of closing. In the event closing does not occur due to no fault of Buyer, taxes will be collected as of the date of cancellation of Contract.

9. POSSESSION.

At Closing, Purchaser will be given possession of the Properties. Prior to that, Purchaser has no right to enter upon the Properties unless agreed to by Seller. Purchaser shall, upon notice as to specific individuals and/or fields of expertise to Seller, be given periodic access during construction for any necessary inspections.

10. DEFAULT OF SELLER.

In the event that Seller's title proves unmarketable or if Seller for any reason cannot or does not complete the remediation, cleanup, air testing and partial demolition of the premises or convey title within six months , as provided for above, the Purchaser's sole remedy shall be a return of the Deposit , without interest, and there shall be no further liability of any kind on the part of the Seller to the Purchaser and this Contract shall become null and void.

11. NO CLOUD ON TITLE.

This Contract shall not be recorded or lodged for recording or filed in any court or public office and nothing in this Contract shall bind or cloud the title to the Property in case Purchaser or Seller fail to fulfill the terms of this Contract. If this Contract is canceled for any reason, Purchaser agrees to immediately return all copies to Seller. Any attempt to record this Contract shall be deemed a default on the part of the Purchaser. In the event the Property is affected by any lien other than Purchaser's First Mortgage, at the time of Closing, such lien shall be paid from the proceeds of sale.

12. REPRESENTATIONS AND WARRANTIES.

Purchaser represents and warrants to Seller that as of the Effective Date, it holds approximately \$1 million in Affordable Housing monies in a specifically designated trust account for construction of Affordable Housing.

(i) Purchaser has all necessary and requisite authority to enter into this Agreement subject to the Court approval as outlined in Paragraph 2 above.

Purchaser shall proceed in a good faith expedited manner to obtain the requisite Court approval and adopt necessary bond ordinance to fund the purchase, within sixty (60) days of the completion of this Contract;

(ii) Seller is vested in title to the Premises.

(iii) Seller is the sole owner of the fee simple interest in the Premises, and no person, firm or corporation or other entity (other than Purchaser) has any right or option to acquire the Premises.

(iv) The execution of this Agreement by Seller does not, and the performance by Seller of the transaction contemplated by this Agreement will not, violate or constitute a breach of any Agreement, permit, license, order or decree to which Seller is a party or by which Seller or its assets are bound.

(v) Seller is neither a "foreign person" nor a "foreign corporation" as those terms are defined in Section 7701 of the Internal Revenue Code of 1986, as amended. (e) Seller is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 & 7701 (i.e.), seller is not a Non-Resident Alien, Foreign Corporation, Foreign Partnership, Foreign Trust or foreign Estate, as those terms are defined in said Code and regulations prorogated thereunder.

(vi) Seller further represents and warrants as follows: i) The Property is connected to municipal water; and ii) the property is connected to municipal sewer.

(vii) Seller has not received notice, either written or oral, from any insurance carrier of the existence of defects or inadequacies in the Premises which if not corrected would result in termination of insurance coverage or increase its cost.

(viii) Seller has not generated, stored or disposed of any hazardous waste, hazardous substance and/or hazardous material (collectively "Hazardous Waste") on or from the Premises and Seller has no knowledge of any previous or present generation, storage, disposal or existence of any Hazardous Waste on or from the Premises. Seller has not received any notice from any governmental department, agency or authority concerning, nor does Seller have any knowledge of, the existence of any petroleum product or other Hazardous Waste discharge or seepage. There are no on-site facilities at the Premises for the disposal of solid waste. As used herein "Hazardous Waste" shall have the meaning set forth in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Liability and Compensation Act, the Hazardous Materials Transportation Act and corresponding state and local statutes, ordinances and regulations, or as defined in any federal, state or local regulation adopted pursuant to the aforesaid Acts. Seller shall deliver the Premises free of any environmental hazard, contamination or condition.

(ix) To the best of Seller's knowledge, there is no underground oil tank or storage facilities located at the Premises. Purchaser reserves the right during the Due Diligence period set forth hereinabove to test the existing underground tank and surrounding soil to determine that the tank is free from leaks and the surrounding ground is free from contamination. If leaks or contamination are located within the tank or surrounding ground, Purchaser may request that (a) the tank be removed; (b) the Seller offer a credit in an amount sufficient to

remediate the tank leak; and/or (c) in either party's discretion, either party may terminate this contract and Purchaser's deposit shall be returned.

(x) The Premises is not located in a Flood Zone.

(xi) Seller shall promptly advise Purchaser of any change in circumstances which may affect the aforesaid warranties and representations up until closing.

13. **SELLER'S CLOSING OBLIGATIONS.**

At the Closing, Seller shall execute and/or deliver to Purchaser the following:

- A. A Bargain and Sale Deed with covenants against Grantor's Acts, executed by Seller in form for recording so as to convey to Purchaser the title required by this Agreement.
- B. Possession of the Premises.
- C. A certification of non-foreign status, in form required by the Internal Revenue Code §1445, as amended and the regulations promulgated thereunder.
- D. An affidavit of title in form reasonably required by Purchaser's Title Company.
- E. Any other documents required by this Agreement to be delivered by Seller and/or reasonably required by counsel to Purchaser.

14. **PURCHASER'S CLOSING OBLIGATIONS.**

At the Closing, Purchaser shall execute and/or deliver to Seller:

Bank Checks or wire transfer in payment of the portion of the Purchase Price payable at the Closing in compliance with Paragraph 2 hereof.

Any other documents required by this Agreement or by the title insurance company insuring the Purchaser to be executed and delivered by Purchaser.

15. TITLE REPORT. OBJECTIONS TO TITLE

15.01. Promptly following the execution of this Agreement by the parties hereto, Seller shall forward all available surveys and back title to Purchaser's attorney. Upon receipt Purchaser shall order an examination of title in respect of the Premises from a title company selected by Seller's Attorney licensed or authorized to issue title insurance by the New Jersey State Insurance Department or any agent for such title company and shall cause a copy of the title report to be forwarded to Seller's attorneys upon receipt.

15.02. If at the Closing Date Seller is unable to cause title to the Premises to be conveyed to Purchaser in accordance with this Agreement, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise, herein collectively called "Defects", other than those subject to which Purchaser is obligated to accept title hereunder, and if Purchaser shall be unwilling to waive the same and to close title without abatement of the Purchase Price, then Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this Agreement; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon notice to Purchaser, to adjourn the date for Closing for a period or periods not exceeding sixty (60) days in the aggregate. If, for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment, and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the Purchase Price, then either party may cancel

this Agreement by notice to the other given within ten days after such adjourned date. Notwithstanding the foregoing, however, Seller shall cure and/or discharge any liens or encumbrances which may affect the Premises at the Closing Date, if either (a) created by Seller after the date of this Agreement, or (b) susceptible to being reduced to a liquidated sum or sums, whether or not created by Seller, and which can be discharged or otherwise cured by the payment of a sum or sums. For purposes of this Agreement, Permitted Exceptions shall not be deemed Defects.

15.03. If this Agreement is canceled pursuant to this Article, other than as a result of Purchaser's default, this Agreement shall terminate and come to an end and the sole liability of Seller shall be to cause the Down payment to be refunded to Purchaser and to reimburse Purchaser for the cost of title examination, and Purchaser's actual expenses not to exceed a total of \$2,500.00. Upon such refund and reimbursement being made, this Agreement shall be null and void and the parties hereto shall be relieved of all further obligations and liability. Seller shall not be required to bring any action or proceeding or, except as otherwise expressly set forth in this Agreement, to incur any expense to cure any title defect or to enable Seller otherwise to comply with the provisions of this Agreement.

15.04. Any liens or encumbrances which Seller is obligated to pay and discharge, together with the costs of recording or filing any instruments necessary to discharge such liens or encumbrances of record, may be paid out of the proceeds of the monies payable by Purchaser at the closing. Seller shall deliver to Purchaser on the Closing Date instruments in recordable form sufficient to discharge any such liens and encumbrances of record. ???Upon request made a reasonable time before the

Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2 hereof. If Purchaser's title insurance company is willing to insure Purchaser that such charges, liens or encumbrances will not be collected out of or enforced against the Premises, or interfere with Purchaser's use thereof, then Seller shall have the right, in lieu of payment and discharge, to deposit with the title insurance company such funds or grant such assurances or pay such special or additional premiums as the title insurance company may require in order to so insure.

In such case the charges, liens or encumbrances with respect to which the title insurance company has agreed so to insure Purchaser shall not be considered objections to title.

15.05 In Purchaser's sole discretion, Purchaser may at any time accept such title as Seller can convey, and may negotiate a reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller, and if the same cannot be agreed upon, either party may cancel this agreement at its option.

16. **Casualty.** The risk of loss for the Premises shall be with Seller until Closing.

17. **ASSIGNMENT; BINDING EFFECT.**

A. Purchaser shall not assign, sell or in any manner transfer this Contract or any right, title or interest without first obtaining the written consent of Seller, which consent may be unreasonably withheld.

B. This Contract shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties to this Contract.

18. USE OF PRONOUNS.

It is understood that pronouns, singular or plural, as used throughout this Contract, shall include the appropriate parties, whether singular, plural, masculine, or feminine, and whether individuals, partnerships, associations, corporations or L.L.C.'s.

19. ENTIRE AGREEMENT.

This is the entire agreement between Seller and Purchaser and supersedes all prior agreements between the parties hereto. There are no other agreements, understandings, or representations other than those contained in this Contract or any other written instrument, which is made a part of this Contract and is signed by Purchaser and Seller.

20. LIQUIDATED DAMAGES.

Default by Purchaser. There shall be no liquidated damages. If Purchaser fails to perform in accordance with this Agreement, Seller may rescind this Agreement by delivering written notice thereof to Purchaser and shall be entitled to any actual damages or such other relief as may be available at law or in equity.

Default by Seller. There shall be no liquidated damages. If the Seller fails to perform in accordance with this Contract, or if any representation or warranty of Seller in this Agreement is untrue in any material respect, Purchaser may (i) rescind this Agreement, or (ii) seek such other relief as may be available at law or in equity including specific performance hereunder. In the event Purchaser shall rescind this Agreement pursuant to sub-paragraph (I) above, the Escrow Agent shall, upon written

demand by Purchaser and without further authorization from Seller, immediately refund the deposit to Purchaser.

21. REMEDIATION/DEMOLITION.

This Contract is contingent upon the successful completion of certain remediation and partial demolition of the structure in accordance with a certain Contract entered into between Seller and Lombardo Excavating, Inc. attached hereto as "Exhibit A"

22. OTHER CONTRACTORS.

No Purchaser or independent contractor or tradesman hired by the Purchaser shall be permitted to enter upon the Property prior to Closing without the written consent of the Seller, which consent may not be unreasonably withheld.

23. NOTICES.

Any and all notices made by and between the parties hereto may be effectuated by and through their respective attorneys by way of regular mail, Certified Mail, Return Receipt Requested, overnight delivery and/or by facsimile transmission. If a notice is sent to the party it must be sent to the address contained at the top of this Contract or such other address that a party designates by like notice. Any notice sent to a party must be sent Certified Mail, Return Receipt Requested.

24. WALK THROUGH.

Seller will schedule a walk through with Purchaser immediately prior to the Closing. Purchaser shall confirm that the Premises being delivered consists of the demolition of the entire addition to the original building, including foundation and footings and

original building's interior has been demolished down to the shell of the existing original school. The Site will be left broom swept and ready for new construction.

25. REQUIREMENT FOR APPROVALS AND PERMITS.

It is expressly understood and agreed by and between the parties to this Contract that this Contract is made subject to the Seller and/or Seller's Contractor(s) obtaining all necessary permits required by any and all federal, state and local governmental authorities, bodies, agencies, and officials having jurisdiction for the proposed remediation of asbestos, gutting and partial demolition of the structure.

26. CLOSING OF TITLE (SETTLEMENT).

The consummation of the transaction contemplated by this Contract (the "Closing") shall take place at the office of David Watkins, Esq., 285 Closter Dock Road, Closter, New Jersey, at the time and date specified by Seller by notice to Purchaser, or at such other place as may be chosen by Seller. A tentative Closing date cannot be established at this time. However, it will be agreed to between the parties upon completion of work required and referenced in Paragraph 22 above. The Closing date may be scheduled upon completion of this work within ten (10) days of written notice by one party to the other.. Completion shall be evidenced by a Certificate of Occupancy issued by an appropriate official of the Borough of Closter and/or State of New Jersey.

27. The Contract is subject to the laws and regulations of the State of New Jersey.

28. BROKER.

The parties represent to each other that no Broker was utilized in this transaction.

29.

PARAGRAPH HEADINGS.

The paragraph headings are intended only for convenience in finding the subject matter and do not constitute part of the text of this Contract and shall not be considered in the interpretation of this Contract.

WITNESS:

Tiffany S. Lim
Tiffany S. Lim

PURCHASER

WITNESS:

SELLER

Kitty Fan Koo Irrevocable Inter-Vivos Trust, Under a Trust Agreement Dated December 20, 1989, Lei Chen Fan, Leo Fan and Lei Min Fan, Trustees

BY: *[Signature]*
DOUG WATKINS POE
SELLER

Borough of Closter

BY:

John Glidden

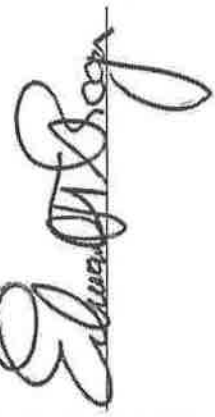
Mayor

WITNESS:

SELLER
Kitty Fan Koo Irrevocable Inter-Vivos Trust, Under a
Trust Agreement Dated December 20, 1989, Lei Chen
Fan, Leo Fan and Lei Min Fan, Trustees

BY: _____

WITNESS:



PURCHASER
Borough of Closter

BY:  _____
John Glidden Mayor

EXHIBIT B(2)

HOUSING DEVELOPMENT CORPORATION OF BERGEN COUNTY
ONE BERGEN COUNTY PLAZA, FL 2
HACKENSACK, NEW JERSEY

RESOLUTION 2017-07

RESOLUTION BY THE TRUSTEES OF THE HOUSING DEVELOPMENT CORPORATION OF BERGEN COUNTY AUTHORIZING AND APPROVING THE NEGOTIATION AND EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH THE BOROUGH OF CLOSTER.

WHEREAS, the Borough of Closter has certain obligations to provide affordable housing under the laws of the State of New Jersey; and

WHEREAS, the Mayor and Council of the Borough of Closter desire to effectively address its affordable housing needs; and

WHEREAS, the Mayor and Council of the Borough of Closter has authorized the negotiation and execution of a memorandum of understanding with the Housing Development Corporation of Bergen County on November 9, 2016 for the purpose of providing and constructing housing for low and moderate income persons and families; and

WHEREAS, the Borough has deemed it to be in the Borough's best interest to identify possible redevelopment options available through the Housing Development Corporation of Bergen County; and

WHEREAS, in order to effectuate the purpose of providing low and moderate income housing and identify and apply for financing for such development, a Memorandum of Understanding and eventual Developers Agreement must be entered into.

NOW THEREFORE BE IT RESOLVED by the Board of Trustees of the Housing Development Corporation of Bergen County approves the negotiation and eventual execution of a Memorandum of Understanding with the Borough of Closter, subject to attorney review, and entering into an eventual contractual relationship by way of a Developers Agreement, subject to attorney review, and

BE IT FURTHER RESOLVED the Corporation hereby approves and authorizes the execution and delivery of such Agreement by the Executive Director/Secretary of the Corporation, along with any other designated and authorized officer(s) of the Corporation (collectively the "Authorized Officers"). Said Authorized Officers are hereby directed to execute any documents, make any agreements, approve any changes, and undertake and perform any and all other actions that are necessary to effectuate the negotiation and execution of a Memorandum of Understanding and eventual Developers Agreement.

Resolution adopted as read on motion by Trustee Apicella seconded by Trustee DiPisa.

Upon roll call the Ayes and Nays were as follows:

Trustees	Ayes	Nays	Abstain	Absent
Michael Apicella	✓			
Mark DiPisa	✓			
Joanne English Rollieson	✓			
Steven E. Kopf	✓			
Al Restaino	✓			
Joseph Rutch				
Diane Scriveri				✓

March 23, 2017
DATE


ALFRED RESTAINO, JR., PRESIDENT


LYNN BARTLETT, EXECUTIVE DIRECTOR/SECRETARY

HOUSING DEVELOPMENT CORPORATION OF BERGEN COUNTY
ONE BERGEN COUNTY PLAZA, FL 2
HACKENSACK, NEW JERSEY

RESOLUTION 2017-11

RESOLUTION BY THE TRUSTEES OF THE HOUSING DEVELOPMENT CORPORATION OF BERGEN COUNTY AUTHORIZING THAT CERTAIN ACTION BE TAKEN AND THAT CERTAIN EXPENDITURES BE MADE WITH RESPECT TO THE DEVELOPMENT OF AFFORDABLE HOUSING AT 500 DURIE AVENUE, CLOSTER, NEW JERSEY.

WHEREAS, the Housing Development Corporation of Bergen County (the HDC) will execute a Memorandum of Understanding with the Borough of Closter to develop approximately 35 units of affordable housing at 500 Durie Avenue in the Borough of Closter, New Jersey; and

WHEREAS, it is anticipated that the project would be partially financed with Borough contribution, tax credit financing and other affordable resources;

WHEREAS, it is necessary to incur certain professional service costs in an estimated amount of \$150,000.00 which would cover fees for pre-development services, including but not limited to financial consultant services, tax credit consultant services, legal services, an environmental consultant and an appraiser; and

WHEREAS, the professional service costs would be reimbursable from the project financing if the tax credit application is successful.

NOW THEREFORE BE IT RESOLVED that the Trustees of the Housing Development Corporation of Bergen County do hereby authorize and approve the expenditure of up to \$150,000.00 for pre-development costs for professional and consulting to prepare for funding applications; and

BE IT FURTHER RESOLVED that the Executive Director of the Housing Development Corporation of Bergen County be and hereby are authorized to execute any and all documents including agreements, contracts and applications necessary to accomplish the foregoing.

Resolution adopted as read on motion by Trustee Scriven
seconded by Trustee Apicella.

Upon roll call the Ayes and Nays were as follows:

Trustees	Ayes	Nays	Abstain	Absent
Michael Apicella	✓			
Joanne English Rollieson	✓			
Steven E. Kopf				✓
Al Restaino	✓			
Joseph Rutch	✓			
Diane Scrivner	✓			

April 27, 2017
DATE


ALFRED RESTAINO, PRESIDENT


LYNN BARTLETT, EXECUTIVE DIRECTOR/SECRETARY

EXHIBIT C

FILED

OCT 31 2017

**MENELAOS W. TOSKOS
J.S.C.**

**EDWARD T. ROGAN, ESQ.
EDWARD ROGAN & ASSOCIATES, LLC
Attorney No.: 065721985
One University Plaza - Suite 607
Hackensack, NJ 07601
201-342-6484**

Attorney for Plaintiff/Petitioner, Borough of Closter

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

DOCKET NO. BER-L-6372-15

**CIVIL ACTION
(Mount Laurel)**

CONSENT ORDER

**IN THE MATTER OF THE
APPLICATION OF THE
BOROUGH OF CLOSTER, a municipal
Corporation of the State of New Jersey,**

Plaintiff/Petitioner,

**This matter having been opened to the Court by Edward T. Rogan, attorney for the
Plaintiff, Borough of Closter, and the Court having considered the consent of all parties affixed
below, and for good cause shown,**

IT IS on this 31 day of October, 2017,

**ORDERED that the Borough of Closter be permitted to utilize \$900,000 of its affordable
housing trust fund monies toward the purchase of property located at 511 Durie Avenue, Closter,
New Jersey pursuant to the terms and conditions of the Agreement of Purchase entered into
between the Borough of Closter and Kitty Fan Koo Irrevocable Inter-Vivos Trust Under a Trust
Agreement Dated December 20, 1989, Lei Chen Fan, Leo Fan and Lei Min Fan, Trustees to be
utilized toward the construction of 100% affordable housing units.**

**IT IS FURTHER ORDERED that a copy of this Order be served upon all parties to this
action within 10 days of the date hereof.**



HON. MENELAOS W. TOSKOS

I hereby consent to the form and entry
of the within Order


Ashina Banera
Chair Housing

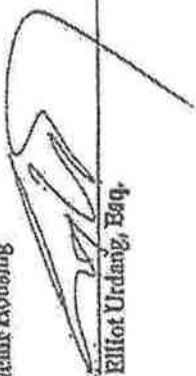

Elliot Urdang, Esq.

EXHIBIT D

Bergen County Recording Data Page
Honorable John S. Hogan
Bergen County Clerk



Official Use Only - Barcode



18-001626 Mortgage
V Bk: 02829 Pg: 1611-1617 Rec. Fee \$93.00
John S. Hogan, Bergen County Clerk
Recorded 01/08/2018 02:14:46 PM

Official Use Only - Realty Transfer Fee

Date of Document: 12/20/2017	Type of Document: Mortgage
First Party Name: Kitty Fan Koo Irrevocable Inter-Vivos Trust Under a Trust Agreement dated 12/20/89, Lei Chen Fan, Leo Fan and Lei Min Fan, Trustees	Second Party Name: Borough of Closter
Additional Parties:	

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY	
Block:	Lot:
Municipality:	
Consideration:	
Mailing Address of Grantee:	

THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING & PAGE INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES & OTHER ORIGINAL MORTGAGE AGREEMENTS ONLY	
Original Book:	Original Page:

BERGEN COUNTY RECORDING DATA PAGE
Please do not detach this page from the original document as it
contains important recording information and is part of the permanent record.

MORTGAGE

This Mortgage is made on December 20, 2017

BETWEEN the Borrower(s)

KITTY FAN KOO IRREVOCABLE INTER-VIVOS TRUST
UNDER A TRUST AGREEMENT DATED DECEMBER 20, 1989,
LEI CHEN FAN, LEO FAN, AND LEI MIN FAN, TRUSTEES

having an address at 555 10th Street, Palisades Park, New Jersey 07650 and 285 Closter Dock Road,
Closter, New Jersey 07624

referred to as ALe,

AND the Lender

BOROUGH OF CLOSTER

whose address is 295 Closter Dock Road, Closter, NJ 07624

referred to as ALender,

If more than one Borrower signs this Mortgage, the word ALe shall mean each Borrower named above. The word ALender means the original Lender and anyone else who takes this Mortgage by transfer.

1. **Mortgage Note.** In return for a loan that I received, I promise to pay \$800,000.00 (called APrincipal). All terms of the Note are made part of this Mortgage. This is a pre-closing loan for purposes of asbestos clean up and partial demolition of structure and is to be credited to Lender at the time of the closing of title or upon Borrowers breach of the Contract of Sale, whichever occurs first.
2. **Property Mortgaged.** The property mortgaged (called the AProperty) to the Lender is located in the Borough of Closter, County of Bergen and State of New Jersey commonly known as 511 Durie Avenue, Closter, New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; as per Contract of Sale between the parties; (c) all condemnation awards and insurance proceeds relating to the land and building(s); and (d) all other rights that I have or will have as owner of the Property. The legal description is:
G See attached Legal Description annexed hereto and made a part hereof.
3. **Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I satisfy all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.
4. **Promises.** I make the following promises to the Lender:
 - a. **Note and Mortgage.** I will comply with all of the terms of the Note and this

Mortgage.

- b. **Payments.** I will pay or provide a credit all payments required by the Note and this Mortgage on the day of closing of title, or upon any breach of contract by me.
 - c. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property subject to the conditions and exceptions set forth in the title report #SL-4788 of Safe Land Title Agency and will defend my ownership against all claims adverse to such title;
 - d. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the Principal and Interest payable under this Note and this Mortgage for any taxes paid on the Property;
 - e. **Insurance.** I must maintain extended coverage for fire, property, personal injury insurance on the Property. I must provide at the time of the making of this Mortgage, a copy of the general liability policy in place on the property. The insurance companies, policies, amounts, and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of any substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a Astandard mortgage clause@ in the insurance policy. The Lender may use any proceeds to repair and restore the Property or reduce the amount due under the Note and this Mortgage. This will not delay the due date for any amount under the Note and this Mortgage;
 - f. **Repairs/Remediation.** I will, pursuant to Contract of Sale between the parties, promptly undertake the clean up of asbestos and partial demolition of the structure. I will allow the Lender to inspect the property upon reasonable notice to me;
 - g. **Statement of Amount Due.** Upon request of the Lender, I will certify to the Lender in writing: (a) the amount due on the Note and this Mortgage; and (b) whether or not I have any defense to my obligations under the Note and this mortgage;
 - h. **Rent-Leases.** No Leases shall be entered into for this property
 - i. **Lawful Remediation and Demolition** I will ensure any asbestos removal or demolition of the structure will be done in compliance with all laws, ordinances and other requirements of any governmental authority and that appropriate certificates of insurance will be obtained by Borrowers from any of its contractors or sub-contractors utilized in the asbestos removal and part and partial demolition.
5. **Eminent Domain.** All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation, up to the full amount of the Loan, be given to the Lender. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.
6. **Taxes.** I will make regular quarterly payments toward real estate taxes and assessments on the property.
7. **Payments Made for Borrower(s).** If I do not make all the remediation repairs and perform the

required demolition as agreed in the Contract of Sale, the Lender may do so for me. The cost of these repairs and payments will be added to the Principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.

8. **Default.** The Lender may declare that I am in default on the Note and this Mortgage if:
- a. I fail to make any payment or provide the credit required by the Contract of Sale, the Note and Mortgage on the day of closing or within 30 days after its due date, whichever occurs first;
 - b. I fail to keep any other promise I make in this Mortgage;
 - c. The ownership of the Property is changed for any reason;
 - d. The holder of any lien on the Property starts foreclosure proceedings; or
 - e. Bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.
 - f. I breach the terms and conditions of the Contract of Sale between the parties.

All of the above subject to the grace and cure periods provided in the Note which this Mortgage secures.

9. **Payments Due Upon Default.** If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid Principal, Interest and other amounts due on the Note and this Mortgage and the Lender=s cost of collection and reasonable attorneys fees.

10. **Lenders Rights Upon Default.** If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:

- a. Take possession of and manage the Property, including the collection of rents and profits;
- b. Start a Court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and
- c. Sue me for any money that I owe the Lender;

11. **Notices.** All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the address given in this Mortgage. Address changes may be made upon notice to the other party.

12. **No Waiver by Lender.** Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.

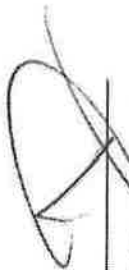
13. **Each Person Liable.** This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may endorse any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

14. **No Oral Changes.** This Mortgage can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

15. **Signatures.** I agree to the terms of this Mortgage and have set my hand and seal hereunto. If the Borrower is a corporation, its proper corporate officers sign and seal this Mortgage.

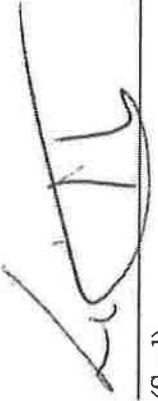
Witnessed or Attested by:

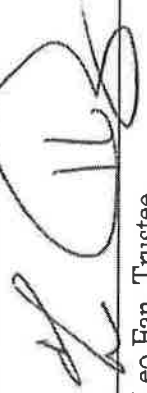
KITTY FAN KOO IRREVOCABLE INTER-VIVOS TRUST
UNDER A TRUST AGREEMENT DATED DECEMBER 20,
1989, LEI CHEN FAN, LEO FAN, AND LEI MIN FAN,
TRUSTEES

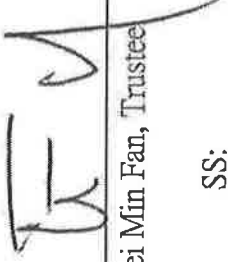

DAVID M. WATKINS
Attorney at Law
State of New Jersey

DAVID M. WATKINS
Attorney at Law
State of New Jersey

DAVID M. WATKINS
Attorney at Law
State of New Jersey


(Seal)
Lei Chen Fan, Trustee


Leo Fan, Trustee


Lei Min Fan, Trustee

STATE OF NEW JERSEY, COUNTY OF BERGEN

SS:

I CERTIFY that on Lei Chen Fan, Leo Fan and Lei Min Fan on Dec. 19, 2017
personally came before me and stated to my satisfaction that this person (or if more than one, each
person)

- (a) was the maker of the attached instrument; and
- (b) executed this instrument as his or her act.



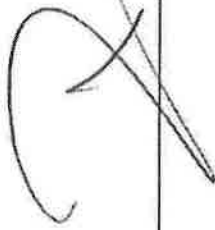
STATE OF NEW JERSEY, COUNTY OF BERGEN

SS:

DAVID M. WATKINS
Attorney at Law
State of New Jersey

I CERTIFY that on _____, 2017 _____
personally came before me and stated to my satisfaction that this person (or if more than one, each
person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as _____
of _____, the entity named in this
instrument; and
- (c) executed this instrument as the act of the entity named in this instrument.



DAVID M. WATKINS
Attorney at Law
State of New Jersey

RECORD AND RETURN TO:
Edward Rogan & Associates, LLC
One University Plaza

5 VITE 607

Hackensack, N.J. 07601 4

Suite 607
Hackensack, NJ 07601

To the County Recording Officer of Bergen County:

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated: _____

MORTGAGE NOTE

Dated: December 11, 2017

Amount: \$800,000.00

FOR VALUE RECEIVED, the undersigned, **KITTY FAN KOO IRREVOCABLE INTER-VIVOS TRUST UNDER A TRUST AGREEMENT DATED DECEMBER 20, 1989, LEI CHEN FAN, LEO FAN, AND LEI MIN FAN, TRUSTEES**, having an address of 555 10th Street, Palisades Park, New Jersey 07650 and 285 Closter Dock Road, Closter, New Jersey 07624 (the "Borrowers") promises to pay to **BOROUGH OF CLOSTER**, a New Jersey Municipality, (the "Lender"), at its office located at 295 Closter Dock Road, Closter, New Jersey 07624, or at such other place as the Lender may direct, **EIGHT HUNDRED THOUSAND AND 00/100 (\$800,000.00 DOLLARS)**, together with interest, as follows:

1. **LOAN.** This Note evidences a loan in the amount of Eight Hundred Thousand Dollars (\$800,000.00) (the "Loan"), the proceeds of which shall be funded and allocated in accordance with the terms of a loan agreement dated the date hereof by and between the Borrowers and the Lender (the "Loan Agreement").
2. **INTEREST RATE.** Interest will be charged on unpaid principal commencing upon any breach of the Contract of Sale, until the full amount of principal has been paid or received as a credit. The Undersigned will pay interest at a yearly rate for the term of this Loan of Prime plus 5% , but no less than 7 ½ %.
3. **TERM.** The Loan shall mature on the date of the closing of title between the parties which shall be no later than March 1, 2018 (subject to weather conditions for demolition and asbestos removal) in this matter or upon Borrowers breach of the Contract of Sale, whichever shall occur first (the "Maturity Date")
4. **PAYMENTS.** Payment of principle and interest in full shall be made to the Holder upon the maturity date or the expiration of the cure period for any default hereunder, whichever is sooner.

Should any balance remain unpaid after the Maturity Date or after any acceleration of the amounts due hereunder pursuant to the terms of this Note, the mortgage on the premises known as 511 Durie Avenue, Closter New Jersey 07624 (the "Mortgage"), or under the terms of the Contract of Sale dated September 13, 2017 together (the Note, Mortgage, Real Estate Contract of Sale, and any other document executed in connection with the Loan will collectively be referred to as the "Loan Documents") or in such other circumstances as provided for herein, then the interest rate on this Note shall be increased to a rate equal to zero percentage (0%) points over and above the interest rate set forth above (which increased rate of interest shall hereinafter be referred to as the "Default Interest Rate"). In no event, however, shall the interest charged on the Loan exceed that permitted by

law.

5. INTEREST RESERVE. INTENTIONALLY OMITTED

6. PREPAYMENTS. Prepayment will be permitted in whole or in part at any time upon ten (10) prior days written notice without fee or penalty. In addition to any prepaid amount, the Borrower shall also pay to the Lender any accrued and unpaid interest and all other sums due under the terms of this Note at the time of such prepayment.

7. LATE FEE. If the Lender does not receive the entire amount of any payment required under this Note, there will be no late fee. However, interest will be charged in accordance with Paragraph 2 above.

8. COLLATERAL AND GUARANTEES. Repayment of this Note is secured by a mortgage (the "Mortgage") on real estate located at **511 DURIE AVENUE, (Block 1316, Lot 9) CLOSTER, NEW JERSEY** (the "Property"), Contract of Sale of the property between the Mortgagor and Mortgagee dated September 27, 2017 (the "Contract of Sale").

9. DEFAULT. The Borrower shall be in default under this Note upon the occurrence of any of the following events:

- (a) Failure to make any payment required under this Note on the Maturity Date or on the due date of any other payment;
- (b) Any non-monetary default shall occur under the terms and provisions of the Contract of Sale, the Mortgage, (collectively, the "Loan Documents") or an Event of Default as defined in any of the Loan Documents shall occur provided, however, that the Borrower shall have the opportunity to cure said non-monetary defaults for a period of ten (10) days upon receipt of notice from the Lender, and additional reasonable time if Borrower is diligently pursuing to cure said non-monetary default but same cannot be cured in said 10 day period; or

The Lender does not give up its rights upon a default as a result of any delay in declaring or failure to declare a default.

10. Remedies. Upon the occurrence of an event of default hereunder, at the option of the Holder, the whole principal sum with accrued interest shall become immediately due and payable without further notice, demand or presentment for payment. Thereafter, interest on the principal sum shall be computed at the Default Interest Rate. In addition, upon the occurrence of an event of default hereunder, the Holder shall be entitled to recover all costs and expenses incurred by the Holder, including a reasonable allowance for attorneys' fees, to obtain or enforce payment of any sums owing hereunder or to enforce other obligations of the Undersigned to the Holder. In addition, upon the occurrence of an event of default hereunder, the Holder shall be entitled to take all actions set

forth in the Loan Documents, including all rights to proceed against the Undersigned, either before, after or simultaneously with any action against any and all collateral. It is specifically agreed that the Holder shall in addition to the remedies provided for herein, generally have all of the remedies of a secured party provided for under the New Jersey Uniform Commercial Code.

11. Notices. All notices provided for herein shall be in writing. Notice shall be given by certified or registered mail and shall be deemed to have been given and received three business days after a certified or registered letter containing such notice, return receipt requested, properly addressed with proper postage prepaid, is deposited in the United States mail. Notice to Borrowers will be to the addresses set forth above.

Notice to the Holder shall be given at the address set forth above leaving notice with the Borough Administrator at the Municipal Building located at 295 Closter Dock Road, Closter, New Jersey 07624, with a copy mailed to Edward T. Rogan, Esq., attorneys for Borrower, One University Plaza, Suite 607, Hackensack, New Jersey 07601 by certified mail, return receipt requested.

Any party hereto may, by giving five (5) days' written notice to the other, designate an additional and/or other party or address as a substitution of the foregoing party or address to which such notice shall be given.

12. SET-OFF. If any amount owing under this Note is not paid when it becomes due, the Lender may set off all property held by it, and funds from any account maintained with it, belonging to any Borrower or any other maker, endorser or Guarantor.

13. WAIVERS. The Lender is not required to do any of the following before enforcing its rights under this Note:

- (a) Demand payment of amount due;
- (b) Give notice that amounts due have not been paid; or
- (c) Obtain an official certificate of non-payment.

14. CHANGES. This Note can only be changed by an agreement in writing signed by the Borrower and the Lender.

15. NOTE BINDING ON EACH BORROWER AND SUCCESSORS.
All obligations under this Note are the joint and several unconditional obligations of each Borrower and all who succeed to their rights and interests. Release of any Borrower, the Property, Collateral or Guarantor shall not release any other Borrower, Property, Collateral or Guarantor.

16. GOVERNING LAW. This Note shall be construed according to the laws of the State of New Jersey and the Borrower consents to the jurisdiction of the courts of the State of New Jersey to determine any questions of fact or law

arising under this Note.

17. ACTIONS INVOLVING THIS NOTE. In any action involving the enforcement of this Note and the loan documents, the prevailing party agrees to pay all costs of collection, including court costs and reasonable attorney's fees. The Borrower hereby irrevocably waives its right to a trial by jury in any action arising out of the Loan evidenced by this Note and the transactions contemplated hereunder and under the Loan Agreement.

18. NO USURY. The Lender and Borrower intend to comply at all times with applicable usury laws. If at any time such laws would ever render usurious any amounts called for under this Note or the Loan Documents, then it is Borrower's and the Lender's express intention that such excess amount shall be immediately credited on the principal balance of this Note (or, if this Note has been fully paid, refunded by the Lender to Borrower), and the provisions hereof shall be immediately reformed and the amounts thereafter collectible under this Note reduced, without the necessity of the execution of any further documents, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note. Any such crediting or refund shall not cure or waive any Event of Default by Borrower under this Note or the other Loan Documents. If at any time following any reduction in the interest rate payable by Borrower, there remains unpaid any principal amount under this Note and the maximum interest rate not prohibited by applicable law is increased or eliminated, then the interest rate payable under this Note shall be readjusted, to the extent not prohibited by law, so that the dollar amount of interest payable hereunder shall be equal to the dollar amount of interest which would have been paid by Borrower without giving effect to the reduction in interest resulting from compliance with applicable usury laws. Borrower agrees that in determining whether or not any interest payable under this Note or the Loan Documents exceeds the highest rate not prohibited by law, any non-principal payment (except payments specifically stated in this Note or in the Loan Documents to be "interest"), including, without limitation, prepayment fees and late charges, shall, to the maximum extent not prohibited by law, be an expense, fee, premium or penalty rather than interest.

19. RIGHTS CUMULATIVE. The rights and remedies of the Lender under this Note and the Loan Documents shall be cumulative and concurrent and at the sole discretion of the Lender may be pursued singly, successively, or together and exercised as often as the Lender shall desire. Time if of the essence under this Note.

The failure of the Lender to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Nothing herein contained shall be construed as limiting the Bank to the remedies mentioned above.

20. Successors and Assigns. This Note shall be binding upon the Undersigned and the Undersigned's heirs, personal representatives, successors and assigns, and shall be for the benefit of the Holder hereof and the Holder's heirs, personal representatives, successors and assigns.

21. Obligations of Persons Under this Note. If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

22. Waiver of Jury Trial. Any and all rights to trial by jury in any action or proceeding based hereon are specifically waived by the Undersigned. The Undersigned acknowledges that he was represented by counsel and that this waiver was specifically negotiated by the parties hereto.

IN WITNESS WHEREOF, the Borrower has executed this Mortgage Note as of the day and year first set forth above.

Witnessed or Attested by:

KITTY FAN KOO IRREVOCABLE INTER-VIVOS TRUST UNDER A TRUST AGREEMENT DATED DECEMBER 20, 1989, LEI CHEN FAN, LEO FAN, AND LEI MIN FAN, TRUSTEES

Three lines for signatures with corresponding names: Lei Chen Fan, Trustee (Seal), Leo Fan, Trustee, and Lei Min Fan, Trustee.

STATE OF NEW JERSEY, COUNTY OF BERGEN SS:

I CERTIFY that on Dec 11th, 20 17, personally came before me and stated to my satisfaction that this person (or if more than one, each person)

- (a) was the maker of the attached instrument; and
(b) executed this instrument as his or her act.

STATE OF NEW JERSEY, COUNTY OF BERGEN SS:

I CERTIFY that on Dec. 14th, 2017 David M. Watkins P.O. A. personally came before me and stated to my satisfaction that this person (or if more than one, each person):
(a) was the maker of the attached instrument;
(b) was authorized to and did execute this instrument as Power of Attorney of Lei Chen Fan, Leo Fan and Lei Min Fan, the entity named in this instrument; and
(c) executed this instrument as the act of the entity named in this instrument.

Handwritten signature of David M. Watkins

TIFFANY SONGHEE LIM
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/8/2018

EXHIBIT E

**BOROUGH OF CLOSTER
ORDINANCE NO. 2017:1230
AN ORDINANCE AUTHORIZING THE ACQUISITION OF REAL PROPERTY
COMMONLY KNOWN AS "511 DURIE AVENUE" IN THE BOROUGH OF CLOSTER**

WHEREAS, the Borough of Closter has a constitutional obligation to provide for affordable Housing; and

WHEREAS, the Governing Body may, pursuant to N.J.S.A. 40:12-4, acquire real property for a public purpose; and

WHEREAS, the Borough of Closter desires to acquire certain property for its Affordable Housing needs and for a public use and said property is commonly known as "Village School" located at 511 Durie Avenue in the Borough of Closter; and

WHEREAS, said property is also known as Block 1316, Lot 9 on the Tax Map of the Borough of Closter; and

WHEREAS, the Governing Body has determined that this acquisition at a purchase price in the amount of \$3,550,000 is in the best interest of the Borough; and

WHEREAS, a portion of said purchase price will be paid with funds provided by the Affordable Housing Trust monies in the amount of \$900,000; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Closter, County of Bergen and State of New Jersey as follows that the property known as 511 Durie Avenue "Village School" in the Borough of Closter be acquired for public use by the Borough for the purchase price in the amount of \$3,550,000.00; the Borough Attorney is hereby authorized to prepare all necessary documentation for the purchase, make application to the Affordable Housing Judge assigned to the matter captioned "In the Matter of the Application of the Borough of Closter" Docket No. BER-L-6372-15 for release of \$900,000 of the Closter Affordable Housing Trust monies. The Mayor and Clerk are hereby authorized to execute the contracts and other documents necessary pursuant to the purchase.

This Ordinance shall take effect immediately upon final passage and publication as required by law.

Councilperson	Motion	Second	Aye	Nay	Absent
Councilman Barad	X		X		
Councilwoman Latner		X	X		
Councilman Di Dio			X		
Councilman Yammarino			X		
Councilwoman Chung			X		
Councilwoman Amitai			X		

Introduced: October 11, 2017
 Adopted: November 8, 2017

ATTEST:


 Loretta Castano, RMC, Borough Clerk


 John C. Glidden, Jr., Mayor

Certified to be a true copy of an Ordinance adopted by the Mayor and Council of the Borough of Closter at the Regular Meeting held November 8, 2017.



 Loretta Castano, Borough Clerk

EXHIBIT F

**BOROUGH OF CLOSTER
BOND ORDINANCE NO. 2017:1233**

AN ORDINANCE OF THE BOROUGH OF CLOSTER, IN THE COUNTY OF BERGEN, NEW JERSEY, PROVIDING FOR THE ACQUISITION OF 511 DURIE AVENUE IN THE BOROUGH OF CLOSTER AND APPROPRIATING \$3,700,000 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$2,800,000 IN BONDS OR NOTES OF THE BOROUGH OF CLOSTER TO FINANCE THE SAME

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF CLOSTER, IN THE COUNTY OF BERGEN, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), AS FOLLOWS:

Section 1. The improvement or purpose described in Section 3 of this bond ordinance is hereby authorized to be undertaken by the Borough of Closter, in the County of Bergen, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3 hereof, there is hereby appropriated the sum of \$3,700,000, including the sum of \$900,000 from the Borough's Affordable Housing Trust Fund as the down payment for the improvement or purpose pursuant to the Local Bond Law. The \$900,000 hereby appropriated from the Borough's Affordable Housing Trust Fund is currently held by the Borough and has previously been contributed for the improvement or purpose described in Section 3 hereof other than by the Borough.

Section 2. In order to finance the cost of the improvement or purpose not covered by application of the down payment or otherwise provided for hereunder, negotiable bonds or notes are hereby authorized to be issued in the principal amount of \$2,800,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds or notes, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement hereby authorized and the purpose for which the bonds or notes are to be issued is for the acquisition of the real property located at 511 Durie Avenue in the Borough of Closter (Lot 1316, Lot 9, on the tax maps of the Borough), including all work and materials necessary therefor and incidental thereto. The Borough intends to acquire the property in connection with the satisfaction of the Borough's affordable housing requirement.

(b) The estimated maximum amount of bonds or notes to be issued for the improvement or purpose is as stated in Section 2 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no note shall mature later than one year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law. The chief financial officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

Section 5. The capital budget or temporary capital budget (as applicable) of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. In the event of any such inconsistency and amendment, the resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget or amended temporary capital budget (as applicable) and capital program as approved by the Director of the Division of Local Government Services is on file with the Clerk and is available there for public inspection.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

- (a) The improvement or purpose described in Section 3 of this bond ordinance is not a current expense. No part of the costs thereof has been or shall be specially assessed on property specially benefited thereby.
- (b) The period of usefulness of the improvement or purpose, within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 40 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$2,800,000, and the obligations authorized herein will be within all debt limitations prescribed by that Law.

(d) An amount not exceeding \$150,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the improvement or purpose.

Section 7. Any grant moneys received for the purposes described in Section 3 hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance.

Section 8. The full faith and credit of the Borough is hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy ad valorem taxes upon all the taxable real property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. To the extent that any previous ordinance or resolution is inconsistent herewith or contradictory hereto, said ordinance or resolution is hereby repealed or amended to the extent necessary to make it consistent herewith.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

The foregoing bond ordinance is hereby approved.

Date: November 20, 2017



JOHN C. GLIDDEN, JR., Mayor

Certified to be a true copy of Bond Ordinance No. 2017:1233 which was adopted by the Mayor and Council of the Borough of Closter at the Regular Meeting held November 20, 2017.

Loretta Castano, Borough Clerk