

**RESOLUTION NO. 2017-49
TOWNSHIP OF ABERDEEN
COUNTY OF MONMOUTH, NEW JERSEY**

**A RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BY AND AMONG
THE TOWNSHIP OF ABERDEEN AND FAIR SHARE HOUSING CENTER TO
RESOLVE THE AFFORDABLE HOUSING ISSUES RAISED IN THE TOWNSHIP'S
DECLARATORY JUDGMENT ACTION**

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality “must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income,” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) (*Mount Laurel IV*), citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (*Mount Laurel I*), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S.Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing,” Ibid, citing S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (*Mount Laurel II*), 92 N.J. 158, 205 (1983), (together with *Mount Laurel I*, the *Mount Laurel Doctrine*).

WHEREAS, the Township of Aberdeen (“Township of Aberdeen”) has long engaged in the judicial process and the administrative process before the Council on Affordable Housing (COAH) established under the Fair Housing Act, N.J.S.A. 52:27D-1 et seq., to obtain approval of its affordable housing plan in compliance with its obligations under the *Mount Laurel Doctrine*; and

WHEREAS, the New Jersey Supreme Court, in *Mount Laurel IV* determined that “the

administrative forum (“COAH”) is not capable of functioning as intended by the Fair Housing Act due to the lack of lawful Third Round Rules assigning constitutional obligations to municipalities,” and, consequently “the Courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations;” and

WHEREAS, *Mount Laurel IV* accordingly provided for a judicial mechanism for municipalities to seek a declaratory judgment that they have complied with the *Mount Laurel Doctrine* and are entitled to immunity from exclusionary zoning lawsuits; and

WHEREAS, on July 6, 2015, the Township filed a declaratory judgment action under the procedures established by the Supreme Court in *Mount Laurel IV* encaptioned In the Matter of the Application of the Township of Aberdeen, Monmouth County, New Jersey for a Declaratory Judgment, Docket No. MON-L-2362-15 (“the Declaratory Judgment Action”) to address its *Mount Laurel Obligation*; and

WHEREAS, FAIR SHARE HOUSING CENTER (“FSHC”) is an intervenor in the Declaratory Judgment action and is a party to the settlement agreement and will be able to enforce the settlement agreement; and

WHEREAS, 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 low and moderate-income households; and

WHEREAS, the ABERDEEN Township Planning Board (“the Planning Board”) will adopt a Housing Element and Fair Share Plan (HE/FSP) to provide for the Township’s compliance with its *Mount Laurel Obligation* which will be provided to the Governing Body for review; and

WHEREAS, Ordinances will be presented to the Governing Body for introduction and adoption to implement the HE/FSP and provide mechanisms for the provision of affordable

housing; and

WHEREAS, presented to the Governing Body for review and approval is a proposed Settlement Agreement with FSHC to resolve all disputes arising under the Township's Declaratory Judgment Action.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of ABERDEEN that:

1. The Township Council will review Housing Element and Fair Share Plan and all of its constituent components to address and provide for the Township's *Mount Laurel Obligation*, subject to the Court's review and determination.
2. The Township Council will review the Ordinances to implement the Housing Element and Fair Share Plan which will be considered for adoption subject to the Court's review and determination.
3. The Township Council hereby approves and endorses the proposed Settlement Agreement with FSHC to resolve all disputes arising under the Township's Declaratory Judgment Action, subject to the Court's review and determination. The Mayor is hereby authorized to execute the Settlement Agreement on behalf of the Township substantially in the form as presented to the Township Council and upon the advice of counsel.