

**ORDINANCE 2020-15**

**AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE ACQUISITION BY PURCHASE OR CONDEMNATION OF REAL PROPERTY SHOWN AS BLOCK 128, LOT 2 ON THE TOWNSHIP TAX MAP AND COMMONLY KNOWN AS 522 SOUTHERN BOULEVARD, NOW OWNED BY KRONOS HOLDING, LLC**

**WHEREAS**, the New Jersey Supreme Court, through its rulings in In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Hous., 221 N.J. 1 (2015) (“Mount Laurel IV”); Hills Dev. Co. v. Twp. of Bernards, 103 N.J. 1 (1986) (“Mount Laurel III”); S. Burlington Cty. NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”); Burlington Cty. NAACP v. Twp. of Mount Laurel, 67 N.J. 151, 174 (1975) (“Mount Laurel I”) (“Mount Laurel Decisions”), determined that municipalities in New Jersey have a constitutional obligation to provide a realistic opportunity for a fair share of its region’s present and prospective needs for housing for low and moderate income families; and

**WHEREAS**, the New Jersey State Legislature, in response to the Mount Laurel Decisions, adopted the Fair Housing Act, N.J.S.A. 53:27D-301 et seq. to codify the obligation of municipalities to provide a realistic opportunity for housing for low and moderate income families; and

**WHEREAS**, the Township of Chatham recognizes its obligation under the State Constitution, as further set forth in the Mount Laurel Decisions and the Fair Housing Act, to provide a realistic opportunity for housing for low and moderate income individuals and families; and

**WHEREAS**, on July 6, 2015, the Township filed a declaratory judgment action, in accordance with Mount Laurel IV, seeking a declaration of its compliance with the Mount Laurel Decisions and the Fair Housing Act (“Action”); and

**WHEREAS**, the Fair Share Housing Center (“FSHC”) intervened in the Action and, with the assistance of a Court Appointed Special Master, reached a settlement with the Township which sets forth the manner in which the Township will ensure the opportunity for housing for low and moderate income families; and

**WHEREAS**, on December 13, 2018, the Township and FSHC entered into the December 13, 2018 Settlement Agreement which fixed the Township’s Third Round (1999 – 2025) Prospective Need, as adjusted through the December 13, 2018 Settlement Agreement, at 387 affordable housing units; and

**WHEREAS**, through a Vacant Land Analysis a municipality attempts to demonstrate that it does not have the land capacity to meet its affordable housing obligation and is used to calculate a municipality’s realistic development potential (“RDP”); and

**WHEREAS**, the December 13, 2018 Settlement Agreement fixed the Township’s RDP at 200 affordable units as calculated in the Vacant Land Analysis attached as Exhibit B to that Agreement; and

**WHEREAS**, the Township’s RDP was to be satisfied as follows:

<u>Compliance Mechanism</u>	<u>Units</u>	<u>Bonuses</u>
Regional Contribution Agreement (“RCA”) with the City of Newark	8	
Extension of expiring controls on affordable family, for-sale units at Vernon Grove Condominium	72	
Family rental units created through inclusionary zoning with off-site family rental affordable units at the Skate Park	24	24
Affordable family rental units through the development of a 100% municipally sponsored development at a site or sites to be determined	74	26
Totals	<u>178</u>	<u>50</u>
	228	

;and

**WHEREAS**, the December 13, 2018 Settlement Agreement was amended on January 10, 2019 to correct a block and lot designation; and

**WHEREAS**, on February 22, 2019, there was a Fairness and Preliminary Compliance Hearing during which the December 13, 2018 Settlement Agreement, as amended on January 10, 2019, was approved by the Superior Court of New Jersey; and

**WHEREAS**, under the December 13, 2018 Settlement Agreement, the Township had until July 22, 2019 to identify a site or sites for the 100% municipally sponsored development for 74 affordable family rental units (“Development”); and

**WHEREAS**, the Township obtained extensions of the July 22, 2019 deadline to designate a site or sites for the 100% municipally sponsored development for 74 affordable family rental units during which the Township sought to identify municipally owned properties

for this development, including converting the Township owned Municipal Building at 58 Meyersville Road; and

**WHEREAS**, on January 10, 2020, the Township filed a Notice of Motion for Approval of Development Fee Ordinance and Related Spending Plan, Extension of Time for Compliance and Temporary Immunity, and Adjustment of Construction Start Date, including to extend the deadline to identify municipally owned property for the 100% municipally sponsored development for 74 affordable housing family rental units; and

**WHEREAS**, on January 24, 2020, the FSHC filed opposition to the Township’s Motion and a Cross-Motion seeking to terminate the Township of Chatham’s Immunity from Builder’s Remedy Suits and to Enforce Litigant’s Rights; and

**WHEREAS**, on February 7, 2020 the Township filed opposition to the FSHC Cross-Motion; and

**WHEREAS**, the Township and the FSHC participated in mediation with the Court Appointed Special Master to resolve the pending motions; and

**WHEREAS**, as a result of that mediation, the Township and the FSHC entered into the March 12, 2020 Amended Settlement Agreement; and

**WHEREAS**, the March 12, 2020 Amended Settlement Agreement reallocated the 74 units in the Development as follows:

<u>Compliance Mechanism</u>	<u>Units</u>	<u>Bonuses</u>
No fewer than 59 affordable two- and three-bedroom family rental units on River Road (Block 62, Lot 71) and, potentially, Block 62, Lot 74	59	26
Up to 15 group home bedrooms on a site or sites to be identified	15	
Totals	<u>74</u>	; and

**WHEREAS**, after proceedings before the Township Planning Board, the Township concluded that the River Road property was not appropriate for the Development and sought to amend the March 12, 2020 Amended Settlement Agreement; and

**WHEREAS**, after further review by the Township, FSHC and the Court Appointed Special Master, the Township concluded that because of the lack of sufficient unencumbered

vacant land owned by the Township, that the property shown as Block 128, Lot 2 on the Township Tax Map and commonly known as 522 Southern Boulevard, now owned by Kronos Holding, LLC (“Property”) was an appropriate site for the Development; and

**WHEREAS**, the acquisition of the Property will increase the number of affordable family rental units in the Township by at least 59 units because, without the Property, the Township would be unable to meet its RDP; and

**WHEREAS**, on July 20, 2020, the Township Planning Board adopted the 2020 Housing Element and Fair Share Plan which designated the Property for the Development; and

**WHEREAS**, on July 23, 2020, the Township endorsed the 2020 Housing Element and Fair Share Plan which designated the Property for the Development; and

**WHEREAS**, on July 23, 2020, the Township and FSHC entered into the July 23, 2020 Amended Settlement Agreement designating the Property for the Development; and

**WHEREAS**, the Township Committee finds that the Property is necessary or useful for the construction of low and moderate income housing because the Property is: (a) of a sufficient size to accommodate at least 59 affordable family-rental two and three bedroom housing units, (b) is located in the “downtown” area of the Township close to shopping, local services, parks and public transportation; (c) offers a convenient location to the affordable unit residents; (d) is serviced by sewer and water; (e) is compatible to adjacent land uses; (f) offers a more suitable location for affordable housing than the Municipal Building or the River Road property all as detailed in the “Site Suitability Analysis for Construction of Affordable Housing, 522 Southern Boulevard, Chatham Township, N.J., July, 2020” prepared by Francis J. Banisch III, P.P., A.I.C.P. attached as Exhibit A to the July 23, 2020 Amended Settlement Agreement; and

**WHEREAS**, based upon the above factors, the Township hereby determines that the Property is necessary or useful for the construction of low and moderate income housing and that will result in an increase in affordable housing units in the Township; and

**WHEREAS**, in accordance with N.J.S.A. 40A:12-5(a)(1) “any municipality, by ordinance, may provide for the acquisition of any real property, capital improvement, or personal property: (1) by purchase, gift, devise, lease, exchange, or condemnation . . .”; and

**WHEREAS**, in accordance with N.J.S.A. 52:27D-325 “a municipality may purchase, lease or acquire by gift or through purchase, lease or acquired by gift or through the exercise of eminent domain, real property and any estate or interest therein, which the municipal governing

body determines necessary or useful for the construction or rehabilitation of low and moderate income housing or conversion to low and moderate income housing”; and

**WHEREAS**, an appraiser retained by the Township, Appraisal Consultants Corp., determined the value of the Property to be \$3,685,000 as set forth in that “Appraisal for 522 Southern Boulevard, Chatham Township, NJ”, dated August 11, 2020; and

**WHEREAS**, the Township Committee wishes to authorize the Mayor and/or designee to negotiate for the acquisition of the Property in an amount not to exceed the appraised value for the Property, and if a negotiated purchase cannot be agreed upon, to initiate an eminent domain action to acquire title to the Property for the Development under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq. so long as all legal prerequisites for eminent domain are satisfied and to thereafter prosecute such eminent domain action to completion and to arrange for the Township to satisfy any judgment entered in such eminent domain proceedings.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, as follows:

**Section 1.** The appraisal of the Property prepared by Appraisal Consultants Corp. on behalf of the Township is hereby accepted and approved in its entirety, including but not limited to the appraised value of \$3,685,000.00.

**Section 2.** After the effective date of this Ordinance, the Township shall reserve the sum of \$3,685,000.00 from Bond Ordinance 2020-14 titled “BOND ORDINANCE TO AUTHORIZE THE ACQUISITION OF REAL PROPERTY (BY PURCHASE OR EMINENT DOMAIN) FOR AFFORDABLE HOUSING PURPOSES IN, BY AND FOR THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, TO APPROPRIATE THE SUM OF \$4,000,000 TO PAY THE COST THEREOF, TO MAKE A DOWN PAYMENT, TO AUTHORIZE THE ISSUANCE OF BONDS TO FINANCE SUCH APPROPRIATION AND TO PROVIDE FOR THE ISSUANCE OF BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE OF SUCH BONDS” and the Chief Financial Officer has certified the availability of funds for the purposes set forth herein.

**Section 3.** The Mayor and/or designee are hereby authorized to negotiate for the acquisition by voluntary purchase and, if voluntary purchase cannot be effectuated, to carry out the condemnation of the Property in the amount not to exceed the appraised value of the Property for the purpose of providing for housing for low and moderate income individuals and families.

**Section 4.** The Mayor and/or designee are hereby authorized to execute any and all agreements and other legal documents necessary to accomplish the acquisition of the Property, including but not limited to a written offer for the purchase of the Property, land sale contract and deed for the conveyance of the Property and Verified Complaint, Declaration of Taking, and any other necessary documents for eminent domain proceedings for the Property in accordance with the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

**Section 5.** In conjunction with said acquisition, the Township hereby reserves and shall reserve any and all rights it had or may have to recover in any subsequent or pending action or by any administrative means, all costs of remediation and/or clean-up of contamination that have been incurred or may be incurred in the future by reason of conditions which were in existence as of or prior to the date of vesting of title and possession of the Property in the name of the Township.

**Section 6.** In conjunction with said acquisition, the Township hereby reserves and shall reserve the right to seek in its sole discretion, any and all available legal, administrative and equitable remedies to compel the record owners and/or responsible parties to remediate and/or clean up the Property in accordance with applicable state and federal statutory and regulatory provisions. The Township is not and shall not be liable for the clean-up and removal costs of any discharge which occurred or began prior to the Township's ownership.

**Section 7.** The Mayor and Township Committee and such other officials, consultants, agents, employees and professionals of the Township as may be necessary and appropriate are hereby authorized and directed to take any and all actions necessary to effectuate the purposes of this Ordinance.

**Section 8.** The Township Committee takes notice of the following documents referenced in this Ordinance, which documents are incorporated herein by reference:

- a. December 13, 2018 Settlement Agreement between the Township of Chatham and the Fair Share Housing Center, Inc., with attached Exhibits;
- b. January 10, 2019 Amended Settlement Agreement;
- c. February 22, 2019 Order on Fairness and Preliminary Compliance Hearing, with attached Exhibits;
- d. January 10, 2020 Township of Chatham Notice of Motion and supporting documents;
- e. January 24, 2020 Fair Share Housing Center, Inc. Opposition to Motion and Cross-Motion and supporting documents;
- f. February 7, 2020 Township Reply to Cross-Motion and supporting documents;
- g. March 12, 2020 Amended Settlement Agreement, with attached Exhibits;
- h. July 23, 2020 Amended Settlement Agreement, with attached Exhibits;
- i. 2020 Housing Element and Fair Share Plan ("HE&FSP") and supporting documents;
- j. July 20, 2020 Planning Board Resolution adopting the 2020 HE&FSP and supporting documents;
- k. July 23, 2020 Township Committee Resolution endorsing HE&FSP, and supporting documents;
- l. July 23, 2020 Township Committee Resolution authorizing July 23, 2020 Amended Settlement Agreement;
- m. July 23, 2020 Amended Settlement Agreement, with attached Exhibits, and
- n. August 11, 2020 Appraisal Consultants Corp. Appraisal Report, with attached Exhibits.

**Section 9.** All of the **WHEREAS** clauses are incorporated into this **NOW, THEREFORE**.

**Section 10.** A copy of the Ordinance and any agreements authorized herein shall be placed on file with the Township Clerk's Office.

**Section 11.** If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

**Section 12.** This Ordinance shall take effect in accordance with the laws of the State of New Jersey after final passage and publication.

Introduced: August 13, 2020

TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY

Adopted: September 10, 2020

Attest:

BY: \_\_\_\_\_  
Michael J. Kelly, Mayor

\_\_\_\_\_  
Gregory J. LaConte, Clerk

I, Gregory J. LaConte, Township Clerk of the Township of Chatham in the County of Morris, New Jersey, hereby certify the foregoing to be a true complete copy of an ordinance adopted by the Township Committee of the Township of Chatham at a regular meeting held on September 10, 2020.

Date Issued: \_\_\_\_\_

\_\_\_\_\_  
Township Clerk