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October 4, 2020

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707 Union Avenue, Suite 301
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**Re: In the Matter of the Borough of Englewood Cliffs, County of Bergen,
Docket No. BER-L-6119-15**

Dear Messrs. Wunsch and Surenian:

This letter memorializes the terms of a settlement agreement ("Settlement Agreement" or "Agreement") reached between the Borough of Englewood Cliffs (the "Borough" or "Englewood Cliffs"), 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 defendant-intervenor in this matter pursuant to court order (collectively, "the parties"). It is expressly understood that the Planning Board of the Borough of Englewood Cliffs is neither a party to this Agreement, nor bound by the terms of this Agreement.

Background

Englewood Cliffs filed the above-captioned matter on July 1, 2015, seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., in accordance with Mount Laurel IV, 221 N.J. 1 (2015).

The matter was tried before the Hon. Christine A. Farrington, J.S.C. (ret'd, t/a), which resulted in a decision dated January 17, 2020 ("Trial Decision") and other orders and decisions before and after that date issued by Judge Farrington as well as by the Hon. Bonnie J. Mizdol, A.J.S.C.¹

After trial, the parties have agreed to settle the litigation and to present this Agreement to the trial court of the Superior Court of New Jersey with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and results more quickly in the construction of homes for lower-income households.

Settlement Agreement Terms

Englewood Cliffs and FSHC hereby agree to the following terms:

¹ These relevant orders and decisions include Judge Farrington's August 27, 2019, January 17, 2020; February 25, 2020, April 17, 2020, and June 8, 2020 Orders; as well as Judge Mizdol's April 17, 2020 Order, which are attached hereto as **Exhibit A**.

1. The parties recognize that this settlement occurs after the main trial in this matter but before the entry of final judgment by the trial court. The parties recognize that, at this juncture, certain issues remain pending before the trial court and also that the parties, absent entering into this Agreement, would have certain rights to appeal aspects of the trial court's adjudication. By entering into this Agreement and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose ("JOR") in accordance with the terms specified in this Agreement, the parties (a) agree to abide by the trial court's orders and decisions to this point, except as specifically modified herein; (b) agree to resolve the outstanding issues before the trial court in the manner specified herein; (c) agree to not appeal, and to relinquish and waive all rights to appeal, any and all aspect of the trial court's adjudication since the filing of the declaratory judgment action, and (d) agree to withdraw with prejudice any appeals or motions that may be pending as specified further herein. This Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board. Such action by the court and/or hearing officer shall not be a basis for the parties not abiding by the terms of this paragraph. It is expressly understood that the Planning Board of the Borough of Englewood Cliffs is not a party to this Agreement.
2. The parties agree to act in good faith, with candor, and with all continuity of purpose to ensure the full and swift implementation of the terms of this Agreement and the expeditious provision of the affordable housing agreed to herein. The parties shall work to avoid all delays and to promptly and amicably resolve any disagreements that may arise. Where the parties are unable to reach a prompt accord and/or where disputes arise, the parties agree and accept that the ultimate authority and power to resolve all issues and to take/order all required action and to enforce this Agreement rests with the Superior Court of New Jersey based upon input from the Special Master/Counsel and the Hearing Officer, which may be paid for with the administrative component of the Trust Fund beginning as of the date of execution of this Agreement by all parties. Such issues include, but are not limited to, adopting zoning ordinances, voiding zoning ordinances, issuing requests for proposals/qualifications, selecting developers, requiring municipal bonding if necessary after two housing cycles to obtain 9 percent tax credits as more fully detailed below, approving site plan applications, issuing permits, terminating immunity from exclusionary zoning suits in the event of a material violations of this Agreement, and/or issuing orders of contempt. The Parties agree that, where appropriate, the court may delegate appropriate tasks to the Special Master and/or Hearing Officer subject to the final decision of the court. As an essential term of this Agreement, the Parties accept and agree that where the court takes such actions as the court deems necessary hereunder to ensure the full and swift implementation of this Agreement, including resolving disagreements and/or disputes amongst the parties or ordering appropriate relief, that the parties shall abide by that decision and shall not thereafter challenge nor appeal such a decision.
3. The parties agree that Englewood Cliffs, through the adoption by the Superior Court of New Jersey of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter, "the Plan") and all required implementing ordinances, resolutions, and actions to implement that Plan, and through the full and swift implementation of the Plan and this Agreement and all required actions thereunder, will satisfy 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).

4. The parties agree that this Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board. Such a circumstance when envisioned by and consistent with this Agreement shall not be considered a violation of this Agreement. Except as otherwise noted in this Agreement, if the court resolves a dispute between and/or among the parties, that also shall not be considered a violation of this Agreement. Notwithstanding anything to the contrary, in the event the Borough engages in a bad faith pattern of repeatedly disputing or delaying the court's implementation of this Agreement, nothing shall prevent FSHC from applying to the court for a revocation of immunity and counsel fees.
5. The parties recognize that aside from the above-captioned litigation there is a separate action entitled Fair Share Housing Center v. Borough of Englewood Cliffs, Docket No. BER-L-2457-20 (the "Civil Rights Action"), wherein FSHC alleges that the Borough has violated New Jersey's Civil Rights Act. FSHC agrees that, upon execution of this Agreement, the parties shall jointly request the court to stay that litigation. If the Agreement is approved by a court order following a duly noticed fairness hearing and if Englewood Cliffs abides by the Agreement, the court subsequently enters a final judgment of compliance repose, and the Borough pays in full the attorneys fees referenced in paragraph 29, FSHC (i) shall dismiss the Civil Rights Action with prejudice; and agrees on behalf of itself, and its past, present and future parent companies, subsidiaries, affiliated and related entities, divisions, representatives, agents, directors, officers, employees, advisors, licensees, successors and assigns, as well as the persons and entities whom it represents in this action, to irrevocably and forever, fully and finally, remise, release, acquit and discharge the Borough, along with the Borough's, subsidiaries, agencies, divisions, representatives, agents, elected officials, appointed officials, directors, officers, employees, advisors, attorneys, licensees, successors and assigns, of and from any and all claims asserted in the Civil Rights Action, or which could have been asserted in the Civil Rights Action, or which existed from the beginning of time through the execution of this Agreement, including but not limited to both known claims and unknown claims that have been or could have been asserted directly, indirectly, individually, representatively, derivatively or in any other capacity, in the Civil Rights Action. Notwithstanding the foregoing, it is mutually agreed that the foregoing releases do not relate to any breach of this Agreement or to any claims which arise after the date of execution of this Agreement.
6. The parties recognize that at the time of this Agreement, Englewood Cliffs does not have immunity from builder's remedy litigation. Englewood Cliffs and FSHC consent to the entry of an order in the form appended to this Agreement as **Exhibit B** which, among other matters, grants the Borough temporary immunity commencing September 29, 2020 pending a fairness and compliance hearing on this Agreement and the entry of a final JOR, which order shall be revoked if the Borough does not comply with any of the provisions set forth in this Agreement, provided that this Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board and that the court and/or hearing officer acting in lieu of the municipality and/or Planning Board as permitted by this Agreement shall not be considered a basis for revocation of immunity.
7. In addition to the terms described above, **Exhibit B** provides that upon the Borough's timely fulfillment of the terms of this Agreement and the entry of a final JOR, the Borough shall be immune from exclusionary zoning suits through July 1, 2025, other than litigation to enforce the terms of this Agreement and the court's applicable orders. The order also

provides that the provisions of Judge Farrington’s April 17, 2020 Order concerning the invalidation of the Borough’s ordinances, the appointment of a special hearing officer and the imposition of scarce resource restraints, shall remain in place until the entry of final JOR. Upon the entry of such a JOR, the Borough’s ordinances shall become effective once again with the modifications that are set forth in this Agreement, the scarce resource restraint shall expire, and the role of the special hearing officer shall continue to function as set forth herein. Notwithstanding the foregoing, prior to the fairness and compliance hearing, the Borough shall provide proof(s) to the court, Special Master, and FSHC of the adequacy of sewer and water capacity for the sites that address the RDP as well as for the 800 Sylvan and Cioffi sites. In the event the Borough cannot provide sufficient proof(s), the restraint on sewer and or water capacity, as the case may be, shall continue until such time as adequate proof(s) have been presented.

8. Englewood Cliffs and FSHC hereby agree that Englewood Cliffs’ combined affordable housing obligations is 584, as previously determined by the trial court, and as shown below:

Present Need (per Farrington Order)	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	219
Third Round (1999-2025) Obligation (per Farrington Order)	365

9. For purposes of this Agreement, the Third Round Obligation shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of very low, low, and moderate income households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015, and June 30, 2025.
10. The parties agree that the Borough’s Present Need (aka Rehabilitation Share) is 0 and therefore no compliance mechanisms are needed.
11. As noted above, the Borough has a Prior Round (new construction) Obligation of 219 units and a Third Round (new construction) obligation of 365 units, for a combined new construction obligation of 584 units. The parties agree that the Borough is eligible for a vacant land adjustment pursuant to N.J.A.C. 5:93-4.2.
12. The parties agree for the purposes of settlement that Englewood Cliffs has a combined realistic development potential (RDP) of 97 units. That RDP is calculated as follows:

Name of site, Block and Lot, Address	Acreage (Net)	Density (du/a)	20% Set-aside (RDP #)
Prentice Hall / New LG, Block 207, Lot 6 (111 Sylvan Ave.)	27.03	12	65
Site #17-20 – Block 303, Lots 35, 36, 37, and 44 (146, 150 & 154 Wood Rd. & 312 Boltz St.	0.91	10	2
Site #21-23 – Block 303, Lots 40.05, 40.07, and 40.08 (Sara Hill Lane)	0.67	10	1

Site #35 and 36 – Block 601, Lots 14 and 15 (2 Kim Hunter Rd.)	2.73	6	3
Site #41 – Block 603, Lot 20 (552 Summit St.)	1.04	10	2
Site #55-56 – Block 802, Lots 7.01 and 7.02 (575-577 Floyd St.)	1.43	10	3
Site #64-65 – Block 1009, Lots 15-16 (41-45 Laurie Drive)	0.69	10	1
Site #67 – Block 1101, Lot 6 (98 Roberts Rd.)	0.73	10	1
Site #29-31 – Block 513, Lots 5 & 7, Block 514, Lots 4 & 5, and approximately 0.25-acre portion of Clendinen Place to-be-vacated (“Municipal Site” on Hudson Terrace)	N/A	N/A Minimum 60 Total Units	12
Site #72 – Block 1202, Lot 2 (980 Sylvan Avenue)	3.00	12	7
Total			97

The combined RDP shall be satisfied as follows:

Name of development	# of AH units	# of bonus credits	Total AH credits
Municipally-sponsored 100% AH site (family rental units)	60	25	85
New LG / North Woods – Block 207, Lot 6 (3.5-acre portion (family units)	12		12
Total	72	25	97

13. The Borough shall provide a realistic opportunity for satisfaction of its combined realistic development potential in the following manner:

- a. Municipally-sponsored 100% affordable housing development located at (i), Borough-owned Block 513, Lot 7, Block 514, Lots 4 & 5 (approximately 1.4-acres owned by the Borough), and an approximately 0.24-acre, 190 feet long portion of Clendinen Place to-be-vacated, with street addresses of 474 & 482 Hudson Terrace and 4 Clendinen Place (hereinafter “Municipal Site A”) and (ii) Block 513, Lot 5 at 488 Hudson Terrace which is currently partially developed with the Borough’s community center and emergency squad facility (hereinafter “Municipal Site B” or “community center site”). In the event that there are any title issues that impair the construction of the municipally sponsored project on the community center site, the Borough will take appropriate steps to resolve them.
- b. Englewood Cliffs shall provide a realistic opportunity for a 100% affordable development of at least sixty (60) affordable non-age-restricted rental units at Municipal Sites A and B. The parties agree that Municipal Sites A and B shall be

developed in accordance with the standards attached hereto as **Exhibit C**, which require that any building on Municipal Site A shall not exceed 4 stories and any building on Municipal Site B shall not exceed 3 stories. The parties agree to the following process to ensure the timely construction of at least sixty (60), but not more than sixty-five (65), affordable housing units on the Municipal Sites A and B in accordance with **Exhibit C**:

- i. The parties agree that within one (1) week of the execution of this Agreement that the Borough shall furnish to the Special Master and FSHC any and all documents, materials, mapping, and information necessary to issue the Request for Proposals/Request for Qualifications (“RFP/RFQ”).
- ii. The parties agree that within two (2) weeks of the execution of this Agreement that the Special Master will issue a RFP/RFQ for the production of affordable housing on the Municipal Sites A and B. The RFP/RFQ shall require a minimum of sixty (60) and a maximum of sixty-five (65) affordable non-age-restricted rental units, all of which shall be family rental units except for up to five (5) special need units, which are credited by the bedroom. The RFP/RFQ shall require that the income and bedroom distribution of the affordable units shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be very low income units for households earning thirty percent (30%) or less of median income.
- iii. The RFP/RFQ to be issued by the Special Master shall provide anticipated municipal funding. In this regard, the Borough shall commit all present and future Affordable Housing Trust Fund monies received up to July 1, 2025, to this project to increase the likelihood of a successful nine percent (9%) tax credit application except for those reserved for administrative expenses in accordance with the twenty percent (20%) cap established by the New Jersey Fair Housing Act, understanding that the commitment of monies anticipated to be received in the future may require the municipality to bond or otherwise advance the funds to be repaid by the Affordable Housing Trust Fund. FSHC agrees with the Borough’s right to obtain a refund from the trust fund should it bond for monies not yet received in this time frame.
- iv. To the degree that the Borough chooses to require a portion of the project to include the rebuilding of the existing community center, which is not a requirement of the affordable housing settlement, any additional funding necessary for such rebuilding shall be provided by Borough funds outside of the Affordable Housing Trust Fund, and any such specifications or requirement shall be set forth in the RFP/RFQ. Demolition of the existing community center, if required, may be funded by Affordable Housing Trust Fund dollars. The RFP/RFQ shall also provide the Borough’s specifications, the existing conditions of the sites(s), any lands within Sites A and B to be donated by the Borough and the anticipated condition of the lands to be conveyed (i.e., whether the existing buildings will be demolished and all site improvements removed), and any other municipal actions. The parties agree that the RFP/RFQ shall include a required response within six (6) weeks of being issued.

- v. The RFP/RFQ shall require each applicant to provide the following information: (1) a proposal to develop the site with at least sixty (60), but not more than sixty-five (65) affordable housing units; (2) a concept plan of the site layout, a typical floor plan, and a typical building elevation illustrating what the developer proposes; (3) a detailed development program; (4) a pro forma with estimate of total development costs and sources of funds; (5) a construction schedule providing for construction to begin within two years of court approval of this Agreement after a fairness and compliance hearing; (6) a draft scorecard (HMFA Form 10) on how the applicant believes it would score for an application for 9 percent tax credits based upon HMFA criteria; (7) a list of comparable tax credit (LIHTC) projects that have been completed by the developer; and (8) resumes of key personnel of the developer and the developer's design team. The RFP/RFQ shall also require each applicant to copy the Borough and FSHC on its application. The RFP/RFQ shall require the selected developer to be prepared to apply for Low-Income Housing Tax Credits in the next available cycle after this Agreement is executed. Notwithstanding anything to the contrary, the Parties consent to any adjustment of the construction schedule based upon the award of 9 percent tax credits in 2021 or 2022.
- vi. Within two (2) weeks of receipt of the responses to the RFPs/RFQs, counsel and planner for the Borough and counsel and planner for FSHC shall meet with the Special Master in person or virtually to review and discuss the responses and provide any comments to the Special Master.
- vii. The Borough shall make the final determination to whom to award the approval, subject to review and decision by the court if requested by FSHC or Special Master on the basis that the awardee is not able to viably develop the site in accordance with this Agreement.
- viii. If the Borough does not select a developer by December 24, 2020, or if there is a request by FSHC or the Special Master for the court to review the Borough's award, the parties agree that the Superior Court of New Jersey shall have the sole power to select a proposal among the responses received and that decision shall be binding on all parties. The parties agree that the court may solicit recommendations from the Special Master and the parties on which proposal to select.
- ix. If no viable response to the RFP/RFQ is received, the parties agree that, the Superior Court shall have the power to modify the RFP/RFQ, including altering the maximum number of units and the design constraints in this paragraph, so long as at least sixty (60) , but no more than seventy (70) affordable non-age restricted rental all of which shall be family rental units except for up to five (5) supportive need units compliant with the terms of this Agreement shall be developed. All parties shall have the ability to provide comments to the Superior Court on any necessary revisions, but the Superior Court shall have the ultimate power to issue a revised RFP/RFQ and the Borough shall have the power to select a proposal. The revised RFP/RFQ shall be subject to the zoning limitations in **Exhibit C** unless the Court makes a determination after reviewing the advice of the

Special Master and comment by the parties that any such limitation is a reason why no viable response to the RFP/RFQ, in which case the Court shall have the binding power to revise Exhibit C accordingly provided that under no circumstance can the structures on Site A be more than four (4) stories and the structures on Site B be more than three (3) stories. If no viable response to the RFP/RFQ is received and the court revises the zoning standards, the Superior Court shall have the power to reissue the RFP/RFQ with responses required within six (6) weeks. Responses to the reissued RFP/RFQ shall be provided to the Borough, Special Master, and FSHC, and the parties and the Special Master shall meet, either virtually or in person, to discuss the responses. The Borough shall, within three (3) weeks of the receipt of responses, make the final determination to whom to award the approval, subject to review and a decision by the court if requested by FSHC or Special Master on the basis that the awardee is not able to viably develop the site in accordance with this Agreement. If the Borough does not select a developer within three (3) weeks, or if there is a request by FSHC or the Special Master for the court to review the Borough's award and the Court agrees upon considering a response from the Borough that the awardee is not viable, the parties agree that the Superior Court of New Jersey shall have the sole power to select a proposal among the responses received and that decision shall be binding on all parties.

- x. The parties agree that once a developer is selected that the Borough, FSHC, and the Special Master shall work with the developer to jointly prepare modifications to the Borough's zoning ordinance to permit the development selected subject to the limitations in **Exhibit C**, unless the court has determined that any such limitations make the project unviable pursuant to the above process, provided that under no circumstance can the structures be more than four (4) stories on Site A and no more than three (3) stories on Site B.
- xi. The parties agree that the court shall be empowered in place of the Borough to adopt the appropriate zoning ordinance and that any disputes between the parties as to the form of ordinance shall be resolved finally by the court, which ordinance shall be initially adopted by the court as part of the joint fairness and compliance hearing. The Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance amendment to the court by November 10, 2020 though the failure of the parties to agree on part or all of the ordinance shall not invalidate this agreement. If the parties do not agree on any aspect of the form of any such ordinance, counsel for both parties and the Special Master shall provide their positions to the court no later than November 10, 2020. There may need to be revisions to the ordinance which shall remain otherwise consistent with all terms of this Agreement including the height limitations herein once a site is fully engineered by the developer selected through the RFP/RFQ; the parties agree that any such revisions may be accomplished as a post-judgment condition of or post-judgment modification to a final judgment of compliance and repose. The parties consent to the applicant selected by the Borough or by the court to request that the Special Hearing Officer may process a development application for site plan approval for its

project with a targeted date of approval by June 30, 2021, which may be extended on consent of the parties and the developer so long as such extension does not make it infeasible for the developer to apply for nine percent (9%) Low Income Housing Tax Credits in the 2021 application cycles. Notwithstanding anything to the contrary, the court shall have the power to craft an ordinance after a developer has been selected and after that developer has engineered the site plan for the project.

- xii. The parties agree that the Borough shall expeditiously take appropriate additional steps in order to enable a developer to apply competitively for Low Income Housing Tax Credits including, but not limited to, adopting a resolution of intent to bond no later than November 1, 2020, and adopting a resolution of need, entering into a PILOT agreement at a rate that enables the applicant to maximize point(s) for Low Income Housing Tax Credit projects, and entering into a developer's agreement no later than December 31, 2020. The parties agree that the Superior Court shall have the power to enter into any or all of these agreements on behalf of the Borough or take any such action needed for a competitive Low Income Housing Tax Credit application if not concluded by the Borough by the dates specified herein, which the parties agree may be accomplished as a post-judgment condition of or post-judgment modification to a final judgment of compliance and repose.
- xiii. The parties agree that the developer shall apply for Low Income Housing Tax Credits in the next available tax credit cycle, which is expected to be sometime in the Summer or Fall of 2021. In the event that the development is not approved for funding via nine percent (9%) Low Income Housing Tax Credits in the 2021 application cycle, the Parties agree that the developer selected to apply in 2021 shall be able to apply again in the 2022 cycle. In the event the developer does not secure nine (9%) tax credits in 2022, the Borough shall be responsible for covering the funding gap through municipal bonding, the use of the trust fund, and/or through any legal means no later than December 31, 2022, deducting only firmly committed funding from outside sources at that time from the total development cost necessary to complete the project. If the Borough does not voluntarily cover such a funding gap, the court shall be empowered to compel the Borough to bond to cover the funding gap.
- xiv. The parties agree that the Borough will receive, under this Agreement, rental bonus credits in addressing its RDP for the Municipal Site only because the Borough has agreed to move forward expeditiously to construct family rental affordable housing units on this site with funding being secured no later than December 31, 2022, either via Low Income Housing Tax Credits or municipal bonding or some other legal means including the use of Trust Fund monies if necessary, and construction shall begin on or before June 30, 2023. The parties agree that in the event that the Borough breaches this Agreement or attempts to prevent the development of affordable housing on the Municipal Site including, for example, refusing to pass a bond ordinance if Low Income Housing Tax Credits are not secured or hindering the applicant to miss the deadline for the start of construction, the Borough shall lose access to those rental

bonus credits and shall be required to make up the twenty-five (25) credit shortfall through additional compliance sites and mechanisms as shall be directed by the court through a process established by the court.

- c. New LG/North Woods site (Block 207 Lot 6 portion) – the parties agree to jointly request the court to rezone the +/- 3.5-acre portion on the northern end of the New LG site to permit development of up to sixty (60) total units and require a twenty percent (20%) affordable housing set-aside of twelve (12) affordable non-age-restricted housing units, which zoning shall provide a realistic opportunity for such development to occur on the site while allowing all of the approved buildings and uses on the remainder of the New LG site to continue as conforming uses and allow for the preservation of the two isolated forested freshwater wetlands areas that will act as a buffer between the residential development on the Northern most portion of the site and the new LG office complex.
 - i. Counsel for the Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance to the court by November 10, 2020, though the failure of the parties to agree on part or all of the ordinance shall not invalidate this Agreement. If the parties do not agree on aspects of the ordinance, all parties and the Special Master shall provide their positions to the court no later than November 10, 2020. The Superior Court shall have the ultimate power to adopt a zoning ordinance consistent with the process set forth in prior orders entered by the court. Notwithstanding the foregoing, no zoning ordinance shall be required that authorizes building heights on the North Woods site higher than the existing New LG buildings or that would adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings and be visible above the tree canopy from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan, so other bulk, set back, etc. standards shall be adjusted to provide a realistic opportunity for sixty (60) units with a twenty percent (20%) affordable housing set-aside and comply with these height limits.
- d. The Borough and FSHC will support a provision in the final judgment of compliance and repose that provides that the Borough shall be entitled to apply to the court to adjust its RDP to increase the RDP after approval of the 800 Sylvan Avenue project, as described in paragraph 13.a, the approval of the CFI site, as described below in paragraph 13.b., and/or any other subsequent approval of an inclusionary or 100% affordable housing project, provided any such approval is final and not subject to further appeal. The RDP adjustment shall provide that 20% of the total number of units approved shall be added to the RDP and the sites shall be removed from unmet need, and its rental bonus cap shall be adjusted so that twenty-five percent (25%) of the increased RDP shall be eligible for rental bonus credits and the site(s) shall be removed from unmet need. However, pursuant to N.J.A.C. 5:93-5.15(d) there are circumstances wherein a municipality may lose granted rental bonuses if approvals lapse or a project is abandoned. Under no circumstances shall the Borough be relieved of any of its responsibilities and obligations under this Agreement as a result of any adjustment of the RDP or any claim for additional rental bonus credits.

14. Subject to an adjustment to the RDP based upon the redevelopment for inclusionary purposes of sites slated to address the RDP as described in paragraph 13(d), the RDP is 97, which if subtracted from the combined Prior Round and Third Round Obligation of 584 units, results in a combined Unmet Need of 487 units. The combined 487-unit unmet need shall be addressed through the following mechanisms:
- a. 800 Sylvan Avenue site (Block 910, Lot 1) – The parties acknowledge that the Borough has entered into a separate agreement with 800 Sylvan that permits up to 450 units with a required twenty percent (20%) affordable housing set-aside.
 - b. CFI (Cioffi) site (Block 201, Lots 10-14; Block 205, Lots 1 and 4) - The parties agree to jointly request the court to establish a process whereby the CFI site may be reviewed and approved by the Special Hearing Officer consistent with the Special Hearing Officer process previously established by the Court in its April 17, 2020 Order.
 - c. The Borough agrees to implement inclusionary overlay zoning that allows for family development, at 19 units/acre with twenty percent (20%) affordable housing set-aside if strictly residential and 24 units/acre with a twenty percent (20%) affordable housing set-aside if mixed-use, unless specified otherwise, with accommodating and flexible bulk standards within a three (3) story building height. These standards shall apply to Hudson Terrace Overlay, East Palisades Overlay & the B-3 Zone District Overlay as depicted on the attached **Exhibit D** which is the same Exhibit that is contained in the Borough's HE&FSP approved by the Planning Board and endorsed by the Borough Council and which the Borough used as an exhibit at trial.
 - d. Northern Sylvan Avenue Corridor Mixed Use Overlay (A), inclusionary overlay zoning that allows for family development, at 23 units/acre with twenty percent (20%) affordable housing set-aside with accommodating and flexible bulk standards, provided that the building height does not exceed four (4) stories for the area north of Hollywood Avenue, west of Sylvan Avenue to Sage Road, and east of Johnson Avenue and Floyd Street, excluding the 800 Sylvan Avenue site with the exception of the area described under section d.i. below, and including the following properties (about 48 acres):
 - i. Remainder of 800 Sylvan Avenue site, remaining portion of Block 910, Lot 1, about 8.0 +/- acres, with an existing research and development facility, at same density as the bulk of the 28.78-acre property
 - ii. 910 Sylvan Avenue, Block 1201, Lot 8, 22.3 acres
 - iii. 910-920 Sylvan Avenue, Block 1201, Lot 9.03, 9.295 acres
 - iv. 930-940 Sylvan Avenue, Block 1201, Lot 9.04, 10.457 acres
 - e. Northern Sylvan Avenue Corridor Mixed Use Overlay (B), inclusionary overlay zoning on the Old LG site (1000 Sylvan Avenue) and 980 Sylvan Avenue as follows:
 - i. 980 Sylvan Avenue, Block 1201, Lot 2 (Lighthouse), 6.009 acres, a gross density of 7.5 units per gross acre in a family inclusionary project with a 20% set aside.
1000 Sylvan Avenue, Block 1201, Lot 2.01 (Old LG headquarters), 5.46 acres, a gross density of 13.5 units per acre for an age-restricted

development with a 20% set aside shall only be allowed for a period of three years from the entry of the JOR and if no application is approved for an age-restricted development by that time the zoning shall also allow as an alternative a non-age-restricted development with family affordable affordable units to be constructed on the property at a gross acreage of 8.5 units per acre with a 20% set aside.

- f. Sisters of St. Joseph of Peace – The Parties agree that the Court is empowered to adopt an inclusionary overlay zoning ordinance on the property located at Block 1302, Lot 5 (12.7 +/- acres) to permit age-restricted residential development at a gross density of six (6) units/acre with a 20% set-aside. A second and separate development will allow for a bonus density of additional age-restricted units provided those units are limited to the conversion of the main “historic buildings” on the property, whether or not these building are on or eligible to be on any State or National Registers of Historic Places list. The conversion of these “historic buildings” for any bonus density shall be limited to one bedroom age-restricted units with a 20% set aside. Any development on the property shall maintain, or if not inconsistent with the historical preservation requirements herein, reduce any current visual intrusions to the scenic integrity of the Palisades viewshed from the vantage point of Manhattan and the George Washington Bridge.
- g. The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. Any zoning regulations for the sites in subparagraphs (c) through (e) of this paragraph shall require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan. The proposed zoning regulations for the site in subparagraph (f) of this paragraph specify additional requirements for preservation of the viewshed for zoning regulations for that site.
- h. The parties agree that the court is empowered to amend Ordinance No. 18-14, dated October 20, 2018, requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more to provide a set-aside of twenty percent (20%) regardless of whether the affordable units are for-sale or for-rent.
- i. For the ordinances in paragraphs (c) through (g), the Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance amendment to the court by November 10, 2020 though the failure of the parties to agree on part or all of the ordinance shall not invalidate this agreement. If the parties do not agree on any aspect of the form of any such ordinance, counsel for both parties and the Special Master shall provide their positions to the court no later than November 10, 2020. The Superior Court shall have the ultimate power to adopt a zoning ordinance consistent with the process set forth in prior orders entered by the court.

The parties agree to request an order of the court requiring that any party submitting an application to develop property consistent with the above-mentioned overlay zoning shall have the option of filing its application with the Planning Board or requesting a process before the Special Hearing Officer.

15. The Borough agrees to require at least 13% of all affordable housing units within each bedroom distribution referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units (“VLI,” reserved for households earning less than 30% of area median income), with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Municipal site	At least 8 including at least 7 or 13% of family rental units, whichever is greater
New LG/ North Woods (family)	2
800 Sylvan Avenue (family rental)	12
Total VLI	22
Total Family VLI	21

- a. In addition, the Borough agrees that at least 13% of all affordable housing units constructed as a result of any development approved pursuant to the overlay zoning or Borough- wide set-aside mentioned in Paragraph 14 shall be available to very low income households earning 30% or less of regional median income.
16. The Borough shall meet its combined Prior Round and Third Round Obligation in accordance with the following standards as agreed to by the Parties:
- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least fifty percent (50%) of the units addressing the Third Round Obligation shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent (25%) of the Third Round Obligation 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 Prospective Need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of twenty-five percent (25%) and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
17. 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, Passaic County NAACP, Bergen County Urban League, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units, along with copies of application forms. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Borough and/or its Administrative Agent shall also provide notice of all available affordable housing units to the above-referenced organizations and ensure posting of all units on the New Jersey Housing Resource Center, <https://www.nj.gov/njhrc> consistent with applicable law including the new HRC law effective November 1, 2020. 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.

18. All units shall include the required bedroom distribution, be governed by controls on affordability² 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 ten percent (10%) of affordable units in rental projects being required to be at thirty-five percent (35%) of median income, thirteen percent (13%) of affordable units within each bedroom distribution in rental projects shall be required to be reserved for very low income households earning less than thirty percent (30%) of area median income, and in conformance with 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. Limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the Housing Region in which the Borough is located (in this case, Housing Region 1) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be fifty percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit

² This shall require all affordable units (non-LIHTC units) to be subject to affordability controls of at least 30 years and affordable deed restrictions as provided for by UHAC, and the affordability controls shall remain until the Borough, in its sole discretion, takes action to release the unit from such requirements pursuant to the requirements of N.J.A.C. 5:80-26.1. Restricted rental units created as part of developments receiving Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.

for a very low income unit for a household of four shall be thirty percent (30%) of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits attached hereto as Exhibit C are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2020, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
 - d. The parties agree that the Court shall have the power to adopt an ordinance implementing this paragraph of this Agreement.
19. 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.
20. The parties agree that the Court shall adopt all necessary ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and the Court shall adopt a Housing Element and Fair Share Plan and Spending Plan and accompanying resolutions and ordinances (e.g. appointing municipal housing liaison and administrative agent, etc.) in conformance with the terms of this Agreement. All parties shall have the ability to provide comments to the Superior Court on the form of the ordinances and plans, which ordinances and plans shall be prepared by the Special Master with assistance by the Borough and FSHC, provided that the Superior Court shall have the ultimate power to adopt the ordinances and plans consistent with the process set forth in prior orders entered by the court and the terms of this Agreement.
21. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.
22. The Parties hereto agree support as a provision of the final judgment of compliance and repose in this matter that the expenditures of funds contemplated under the Spending Plan constitute a "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 and that the four year period commences with the entry of a final judgment in this matter that includes approval of the Spending Plan 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).

23. The Borough agrees to prevent the expenditure of any municipal funds, revenue, or other municipal resources by the Borough of Englewood Cliffs Planning Board for any purpose related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. Upon the entry of the Consent Order attached as Exhibit B, the Borough shall notify the Borough of Englewood Cliffs Planning Board that the Borough will not provide any funds to pay any bills, invoices or other costs incurred by the Planning Board for any purpose related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. This provision does not impact the Borough's obligation to appropriate funds for the normal expenses of the Borough of Englewood Cliffs Planning Board, and the Borough is not obligated to discontinue funding for such normal expenses associated with customary operations of the Borough of Englewood Cliffs Planning Board for matters including, but not limited to, employing a secretary and professionals to attend meetings and consider applications for development other than those related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. This obligation to prevent the expenditure of municipal funds, revenue or resources is specifically applicable to: (1) any of the terms of this Agreement; (2) any of the terms of any JOR entered in favor of the Borough; (3) any zoning ordinances or amendments implemented in connection with this Agreement; or (4) any land use approvals or permits sought or obtained to develop any of the sites in this Agreement before the court and/or special hearing officer, or any judicial proceeding arising therefrom. Notwithstanding the provisions in this section, the Borough may provide the Borough of Englewood Cliffs Planning Board with reasonable funds for the purposes of commenting on any of the plans (including future site plan applications for the potential creation of affordable housing pursuant to the terms of the Agreement), ordinances or resolutions referenced in this Agreement (other than the 800 Sylvan site which shall be governed by the separate agreement between the Borough and 800 Sylvan), and/or any process before the Special Hearing Officer provided that such funds shall not extend to any appeal or other judicial challenge to any decision of the trial court or Special Hearing Officer, and FSHC shall have the right to apply to the court for a limitation on these funds or the use thereof and appropriate counsel fees in the event the Planning Board engages in a bad faith pattern of repeatedly disputing or delaying the court's implementation of this Agreement.
24. In mutual consideration for the execution of this Agreement, and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose in accordance with the terms specified in this Agreement, the Parties agree to waive any and all appellate rights that they may have as well as any rights they may have to bring claims related to or arising out of the DJ Action in any court of competent jurisdiction. Specifically, the Parties voluntarily agree to waive and surrender any and all claims arising out of any order, decision, opinion or ruling, or any failure to make any enter any order, or make any decision, opinion or ruling in the DJ Action and agree not to seek any relief, of any kind, regarding any order, decision, opinion or ruling in the DJ Action in the Superior Court of New Jersey, Appellate Division, the Supreme Court of New Jersey, or any court established pursuant to Article III of the

United States Constitution. In waiving their appellate rights, the Parties acknowledge that a change in political control of the Borough Council may occur, but such a change would not constitute a change in circumstances that would warrant a retraction of waiver of the right to appeal. In the event that either Party files an appeal or seeks any relief related to the DJ Action in any court of the State of New Jersey or in any court established pursuant to Article III of the United States Constitution, the non-breaching Party may move to enforce this provision of the Agreement and the breaching Party shall be liable for all legal fees incurred. Additionally, the breaching Party shall be liable to the other party for all costs incurred in connection with the negotiation of this Agreement and any related costs, including but not limited to fees paid any consultant, attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement.

25. On the first anniversary of the Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Borough agrees to work with the Special Master so that the Special Master may provide annual reporting of trust fund activity to Fair Share Housing Center and for posting by the Borough on the municipal website, using monitoring forms provided by FSHC. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
26. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to work with the Special Master so that the Special Master may 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 monitoring forms provided by FSHC.
27. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the period of protection provided in this Agreement. The Borough agrees to comply with those provisions as follows:
 - a. The midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, has passed without the Borough preparing a report. The Borough agrees to work with the Special Master so that the Special Master may prepare the midpoint report as part of the second annual reporting required in paragraph 23. The Borough shall post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the 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 shall work with the Special Master so that the Special Master may provide to the Borough to 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.

28. This 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 to support this Agreement at the fairness hearing. The Parties further agree to request that the Court to conduct a compliance hearing contemporaneously with the fairness hearing and to enter a JOR approving the Borough's affordable housing plan and implementing ordinances as adopted by the Court, with any conditions the Court deems appropriate prior to December 31, 2020. In the event the Court approves this proposed settlement and the affordable housing plan resulting therefrom, 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 this Agreement is rejected by the Court at a fairness hearing it shall be null and void and all parties shall return to *status quo ante* with all of the rights they had prior to the execution of this Agreement.
29. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$335,000.00 within ten (10) days of the court's approval of this Agreement pursuant to a duly-noticed fairness and compliance hearing. If such approval is not provided by the Court as of December 21, 2020, the Borough shall place \$335,000.00 in escrow with FSHC's attorney escrow account on that date; counsel for the Borough and FSHC shall negotiate an escrow agreement in good faith that shall disburse the funds to FSHC upon court approval of the judgment.
30. If an appeal is filed of the Court's approval or rejection of this 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 Englewood Cliffs commits to continue to fully and swiftly implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
31. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court of New Jersey, Bergen County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees and costs.
32. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable except for the height limitations. 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.

33. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
34. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.
40. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
41. 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.
42. 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 carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC: Adam M. Gordon, Esquire
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE BOROUGH: Attention: Lisette Duffy
Borough of Englewood Cliffs
482 Hudson Terrace
Englewood Cliffs, NJ 07632
Fax: (201) 569-4356

WITH COPIES TO: **Surenian Edwards & Nolan, LLC**
Attention: Jeffrey R. Surenian, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
Fax: (732) 612-3101

AND TO: **Albert H. Wunsch, III, Esq.**
400 Sylvan Ave., #2
Englewood Cliffs, NJ 07632
Fax: (201) 541-0606

Chiesa Shahinian & Giantomasi, P.C.
Thomas J. Trautner, Jr. Esq.
1 Boland Drive
West Orange, NJ 07052
Fax: (973) 530-2279

Joseph R. Mariniello, Jr.
Mariniello & Mariniello PC
265 Columbia Ave.
Fort Lee, NJ 07024
Fax: (201) 947-6605

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

Please sign below if these terms are acceptable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, this Agreement to be effective as of the Effective Date.

ON BEHALF OF FAIR SHARE HOUSING CENTER:

Witness/Attest:

By: _____

Dated: _____, 2020

**ON BEHALF OF THE BOROUGH OF ENGLEWOOD CLIFFS, WITH THE AUTHORIZATION
OF THE GOVERNING BODY:**

Witness/Attest: By: _____

Dated: _____, 2020

Exhibit E – 2020 Income Limits

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - April 24, 2020

2020 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents** Sales***	Regional Asset Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$67,166	\$71,964	\$76,761	\$86,357	\$95,952	\$99,790	\$103,628	\$111,304	\$118,980	\$126,656		
	Moderate	\$53,733	\$57,571	\$61,409	\$69,085	\$76,761	\$79,832	\$82,902	\$89,043	\$95,184	\$101,325	1.9%	0.84%
	Low	\$33,583	\$35,982	\$38,381	\$43,178	\$47,976	\$49,895	\$51,814	\$55,652	\$59,490	\$63,328		\$185,539
Region 2 Essex, Morris, Union and Warren	Median	\$73,857	\$79,132	\$84,408	\$94,959	\$105,510	\$109,730	\$113,951	\$122,391	\$130,832	\$139,273		
	Moderate	\$59,085	\$63,306	\$67,526	\$75,967	\$84,408	\$87,784	\$91,160	\$97,913	\$104,666	\$111,418	1.9%	4.71%
	Low	\$36,928	\$39,566	\$42,204	\$47,479	\$52,755	\$54,865	\$56,975	\$61,196	\$65,416	\$69,636		\$202,419
Region 3 Hunterdon, Middlesex and Somerset	Median	\$83,650	\$89,625	\$95,600	\$107,550	\$119,500	\$124,280	\$129,060	\$138,620	\$148,180	\$157,740		
	Moderate	\$66,920	\$71,700	\$76,480	\$86,040	\$95,600	\$99,424	\$103,248	\$110,896	\$118,544	\$126,192	1.9%	1.01%
	Low	\$41,825	\$44,813	\$47,800	\$53,775	\$59,750	\$62,140	\$64,530	\$69,310	\$74,090	\$78,870		\$227,546
Region 4 Mercer, Monmouth and Ocean	Median	\$76,469	\$81,931	\$87,393	\$98,317	\$109,242	\$113,611	\$117,981	\$126,720	\$135,460	\$144,199		
	Moderate	\$61,175	\$65,545	\$69,915	\$78,654	\$87,393	\$90,889	\$94,385	\$101,376	\$108,368	\$115,359	1.9%	5.96%
	Low	\$38,235	\$40,966	\$43,697	\$49,159	\$54,621	\$56,806	\$58,990	\$63,360	\$67,730	\$72,099		\$205,486
Region 5 Burlington, Camden and Gloucester	Median	\$67,620	\$72,450	\$77,280	\$86,940	\$96,600	\$100,464	\$104,328	\$112,056	\$119,784	\$127,512		
	Moderate	\$54,096	\$57,960	\$61,824	\$69,552	\$77,280	\$80,371	\$83,462	\$89,645	\$95,827	\$102,010	1.9%	7.21%
	Low	\$33,810	\$36,225	\$38,640	\$43,470	\$48,300	\$50,232	\$52,164	\$56,028	\$59,892	\$63,756		\$179,028
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$57,458	\$61,562	\$65,666	\$73,874	\$82,083	\$85,366	\$88,649	\$95,216	\$101,782	\$108,349		
	Moderate	\$45,966	\$49,250	\$52,533	\$59,100	\$65,666	\$68,293	\$70,919	\$76,173	\$81,426	\$86,679	1.9%	6.97%
	Low	\$28,729	\$30,781	\$32,833	\$36,937	\$41,041	\$42,683	\$44,325	\$47,608	\$50,891	\$54,175		\$153,730
	Very Low	\$17,237	\$18,469	\$19,700	\$22,162	\$24,625	\$25,610	\$26,595	\$28,565	\$30,535	\$32,505		

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015, 2016, 2017, 2018 or 2019 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2020 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.