

**MEMORANDUM OF UNDERSTANDING BETWEEN AND AMONG THE BOROUGH  
OF ENGLEWOOD CLIFFS, 800 SYLVAN AVENUE LLC, AND THE FAIR SHARE  
HOUSING CENTER**

**Final April 23, 2019 (w/FSHC comment of April 25, 2019)**

1. The Parties to this matter, 800 Sylvan Avenue LLC ("800 Sylvan"), the Borough of Englewood Cliffs ("Borough") and the Fair Share Housing Center ("FSHC") have all expressed their desire to settle the case entitled In the Matter of the Application of the Borough of Englewood Cliffs, Docket No. BER-L-6119-15.
2. To advance this goal, the Borough has created a Mount Laurel subcommittee to work on an agreement to be presented to the Mayor and Council for a vote after a duly noticed hearing at which time the Borough can consider the statements of the public before voting on whether to authorize the execution of a Settlement Agreement.
3. To further advance the process of developing a form of Settlement Agreement for consideration at a duly noticed hearing, the Mount Laurel subcommittee, 800 Sylvan and FSHC have negotiated the essential terms of a non-binding Memorandum of Understanding ("MOU") and wish to turn their resources to formulating a Settlement Agreement with these essential terms. The Settlement Agreement between FSHC and the Borough will follow the standard form agreed to between FSHC and the Surenian law firm in other matters involving vacant land adjustments.
4. The goal of the Parties is to have a form of Settlement Agreement by May 3, 2019 to present to the Governing Body of the Borough of Englewood Cliffs for a vote after a duly noticed public hearing on or before May 17, 2019.
5. The essential terms to which the Mount Laurel subcommittee, FSHC and 800 Sylvan have agreed to include within a non-binding Memorandum of Understanding are set forth below:
  - A. As to the 800 Sylvan site, it is agreed that said site will be developed with 400 units, with 94 units being townhouses to be offered for sale and 306 being apartments. 80 of the apartments shall be affordable, deed-restricted units as further described below. Sylvan shall be permitted to maintain a 20 percent set aside of what is approved and not 80 units in the event that Sylvan cannot secure approval of an application pursuant to an ordinance to be negotiated among the parties, attached to the Settlement Agreement, and thereafter adopted by the Governing Body.
  - B. Notwithstanding the foregoing, 800 Sylvan shall be entitled, at its exclusive option, to provide two additional townhouses to bring the maximum number of townhouse units from 94 to 96 provided that (1) each townhouse is a group home of 3 or 4 bedroom units, (2) the group homes are deed restricted for a minimum period of 30 years and until released by the municipality to ensure the creditworthiness of each bedroom and (3) if Sylvan elects to construct both group homes resulting in a total of 8 creditworthy bedrooms,, the total number of affordable

apartments shall be reduced from 80 to 72 and the total number of apartments shall be reduced from 306 to 301. Under this scenario the total number of residential units would be 397.

C. Market rate apartments will consist of at least 40% of the market apartments being studio units and/or one bedroom units ("One Bedroom Units"). The selection of studios vs One Bedroom Units shall be at 800 Sylvan's sole discretion with respect to this 40% limit. No more than 60 percent of the market apartments shall be two bedroom units (with or without den) and there shall be no market apartments with 3 or more bedrooms.

D. As to the 80 affordable units (inclusive of the affordable, deed restricted group home bedrooms), the UHAC standards will dictate bedroom distribution and income distribution, except that 13% or 11 affordable units will be very-low income units at 30% of the regional median income per the FHA with 9 of the 11 being family units if 800 Sylvan selects the 8 unit group home option. Otherwise, the 11 VLI units will all be family units. The supportive housing and family affordable units will be treated separately for purposes of UHAC, including for bedroom distribution purposes.

E. None of the 94 market rate townhouses will contain more than 3 bedrooms and the two possible additional townhouses to be used for creditworthy group homes may be up to four bedrooms each.

F. Englewood Cliffs will fully cooperate with and support 800 Sylvan's request for and applications seeking all required approvals to permit a left turn in and/or out of their property to/from Sylvan Avenue/Route 9W.

G. 800 Sylvan will agree to pay directly to FSHC the amount of \$105,000.00 for FSHC fees and costs the Borough has been requested to pay to FSHC in connection with this matter. 800 Sylvan's payment shall be paid to the FSHC within sixty (60) days of the entry of an order approving a settlement following a fairness hearing.

H. 800 Sylvan after consultation and discussion with Englewood Cliffs' representatives have agreed to reduce the effective height of the proposed multifamily buildings as depicted on a concept plan and perspective attached as Exhibits "A" and "B" and include the architectural features referred to in Exhibit "C" and attached to the settlement agreement ultimately presented to the Borough for a vote after a duly noticed hearing (hereinafter "Settlement Agreement").

I. Englewood Cliffs will fully cooperate with 800 Sylvan in securing all necessary approvals, variances and/or court orders necessary to permit the release of the prior restriction on parking in the front yard as generally depicted on the attached plan. Surface parking will be allowed in front of the R&D facility as generally illustrated on the attached plan. The restriction prohibiting parking on the remaining 20 +/- acres (the residential portion of the property) shall remain in place with the exception of a modification of the restriction to allow the construction of a portion of the apartment building within the restricted area, which contains parking on the lower level of the building, as depicted on the Concept Plan.

J. No vehicular access to/from the property will be permitted on Floyd Street, but pedestrian access and bicycle access shall be allowed and shall be provided.

K. Complete municipal cooperation to allow 800 Sylvan to secure final unappealable land use approval/permits for the development of 800 Sylvan Avenue and the adjacent Unilever property as shown on plans that will be appended to the Settlement Agreement. Nothing contained herein or the Settlement Agreement shall preclude 800 Sylvan from making application to the court for the appointment of a special hearing officer to review 800 Sylvan's land use applications and/or oversee the implementation of and compliance with the Settlement Agreement.

L. Perimeter landscaping including supplementation of the perimeter buffer areas will be addressed in the ordinance to be attached to the settlement agreement.

6. The development is to be consistent with the concept plan and perspective to be attached to the Settlement Agreement and will have affordability controls for a minimum period of 30 years and until released by the municipality. A draft zoning ordinance permitting the proposed 800 Sylvan development will be attached to a full settlement agreement, with the finalized concept plan to be attached to the rezoning ordinance, governing the land use controls to be applicable to the property, including but not limited to the general location of apartment and townhouse elements, the apartment building will include an interior Kid Center and Fitness Center available to residents of the apartments, , access points and circulation, setbacks, parking, the existing forested buffers to remain to the extent practical as depicted on the concept plan, , modifications to the Unilever portion of the site as will be shown on a concept plan, and the like. The draft zoning ordinance will permit front yard parking and structured parking consistent with the development plan. The draft zoning ordinance will provide an overall multifamily parking ratio of 1.7 parking spaces per apartment unit and the townhouse community shall meet the RSIS parking standards. 800 Sylvan shall also be entitled to subdivide the property in accordance with the concept plan to be attached to the Settlement Agreement.
7. The Borough shall prepare a Housing Plan Element and a Fair Share Plan to implement the Borough's plan to implement its constitutional responsibilities and shall prepare and adopt and endorse all standard ordinances and manuals.
8. An identification and explanation of all of the means by which the Borough will satisfy its RDP and unmet need is set forth herein.
9. No later than May 3, 2019, the Parties shall complete negotiations over the form of Settlement Agreement inclusive of the exhibits. No later than May 17, 2019, the Settlement Agreement shall be scheduled for a vote before the Mayor and Council following a duly noticed hearing. In the event that the May 3, 2019 benchmark or the May 17, 2019 benchmark is not achieved, any party may request a trial date no sooner than 30 days from request provided that the parties shall cooperate to arrange depositions within this 30-day window and the parties shall be free to assert any claims and defenses available to them prior to entering this MOU.

10. Upon execution of the Settlement Agreement, the parties will jointly request that the Court conduct a fairness hearing to determine whether the settlement is fair and reasonable to low and moderate income households. The parties will request that the Court conduct the fairness hearing no sooner than 30 days from the signing of the agreement(s) and the publication of notice of the fairness hearing all of which shall be expedited after any public vote authorizing the execution of a Settlement Agreement.
11. Ordinances implementing the Settlement Agreement shall be introduced no later than 15 days after the execution of the Settlement Agreement.
12. The Borough will conduct a public hearing to consider and vote upon the adoption of the ordinances within 20 days of the entry of an Order confirming that the Settlement Agreement is fair and reasonable to low and moderate income households following a duly noticed fairness hearing.
13. A full housing element and fair share plan ("HEFSP") may be adopted following the fairness hearing, although the settlement shall not be affected if the Planning Board declines to adopt an HEFSP. In such a case, a fair share plan adopted by the Borough alone shall suffice. A summary of the proposed fair share plan shall be made an exhibit to the settlement agreement. The Mayor and Council shall proceed to adopt and implement any ordinance, plan or document in furtherance of this agreement should the Planning Board fail to act or fail to approve, recommend, find consistent, adopt and/or take any other action designed to implement this agreement.
14. On the property owned by the Borough, the Borough's plan shall be to cause the construction of 15 affordable units (including 10 family units and up to 5 special needs units). If increasing the density of the project would facilitate developer's ability to address the Borough's primary objective of providing the affordable housing on this site at no cost to the town, the developer would be entitled to increase the density of the project to 20 affordable units (including 15 family units and up to 5 special needs units).
15. The Borough will create an overlay on the New LG Headquarters site - Multifamily zoning with a 20 percent set aside for families on 1.8 developable acres. In lieu of controlling the development of this site through a density limitation, Michael Mistretta will prepare a concept plan for this site and then fashion bulk standards to limit the development of the site consistent with the concept plan. This component of the agreement is subject to agreement on the concept plan and implementing ordinance.
16. The Borough will create an overlay on the Old LG Headquarters site - Multifamily zoning for age restricted housing with a 20% set-aside for seniors on the developable portion of that site (approximately 2.75 acres). Michael Mistretta will prepare a concept plan for this site and then fashion an ordinance to limit the development of the site consistent with the concept plan. This component of the agreement is subject to agreement on the concept plan and implementing ordinance.

17. The Borough will create an overlay on the Sisters of Peace Property - 30 affordable age-restricted units plus 10 age-restricted market units to generate the profits to use for the affordable units. The Borough would have no responsibility to cover any gap in funding and no responsibility if individuals or organizations challenge applications to develop the site in accordance with the overlay zoning the Borough adopts. If the Sisters of Peace wish to increase the number of affordable age-restricted units to 40 units, the zoning of the site will permit that.
  
18. As to the three areas designated for an overlay zone in the Borough's current HE & FSP adopted by the Planning Board in January, 2019, the Borough shall adopt overlay ordinances on the Hudson Terrace (purple area) and the B-3 area (green area) and shall impose a flat 20 percent set-aside in both areas. The Borough shall not adopt overlay zoning on the Palisades Avenue site (in blue). The densities in the Hudson Terrace overlay and the B-3 Overlay area, as specified, in the Borough's aforementioned HE & FSP.
  
19. This proposal is subject to being memorialized in a Settlement Agreement to be presented for a vote by the Governing Body at a duly noticed public meeting.
  
20. No party shall use this MOU against each other in any future proceeding if, for any reason, a Settlement Agreement is not consummated. Nor shall any party be entitled to use any statements against each other that are made in conjunction with the process of presenting a Settlement Agreement for a vote after a duly noticed hearing.
  
21. The Parties further acknowledge that it is not in their interest to continue to expend their time and money to advance their interests in the litigation process and thus shall fully cooperate in seeking an adjournment of the trial date and the date established by the Appellate Division for the Borough to file its Respondent's brief.


NOW, THEREFORE, the parties hereto enter into this Agreement:

THE MOUNT LAUREL SUBCOMMITTEE OF THE BOROUGH OF ENGLEWOOD CLIFFS

By: 

Dated: 4/25/19

Albert H. Wunsch, III, Esq. , On Behalf Of the Mount Laurel Subcommittee of the Borough of the Borough of Englewood Cliffs  
 800 SYLVAN AVENUE, LLC

By:   
 GIORGIOS L. VLAMIS  
 AUTHORIZED SIGNATORY

Dated: 4/25/19

FAIR SHARE HOUSING CENTER

By: 

Dated: 4-25-19