FAIR SHARE
HOUSING CENTER

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

January 23, 2020

Edward J. Buzak, Esq.
Buzak Law Group
150 River Road, Suite N-4
Montville, New Jersey 07045

Robert T. Regan, Esq
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675

Re: In the Matter of the Borough of Upper Saddle River, County of Bergen, Docket No. BER-L-6121-15

Dear Messrs. Buzak and Regan:

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

Background

The Borough filed the above-captioned matter on July 10, 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 In re N.J.A.C. 5:96 and 5:97, supra.Through the declaratory judgment process, the Borough and FSHC have agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan")and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301,*et seq.*, for the Prior Round (1987-1999) and Third Round (1999-2025).

2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding

a municipality's Third Round Obligation instead of doing so through plenary adjudication of the Third Round Obligation.

3. FSHC and Upper Saddle River hereby agree that Upper Saddle River's affordable housing obligations are as follows:

Rehabilitation Share (per Structural Conditions Survey[1])	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	206
Third Round (1999-2025)Obligation (per Kinsey Report, as adjusted through this Agreement)[2]	529

FSHC and the Borough agree that Upper Saddle River does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, PP, FAICP. The parties agree to the terms in this agreement solely for the purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends that the 529-unit obligation should be the Borough's Third Round affordable housing obligation because it is based on the Prior Round methodology and reflects the application of the 20 percent cap to Dr. Kinsey's May 2016 calculation of the Borough's Third Round fair share obligation. The Borough contends that its Third Round obligation is less than 529 units. The parties' acceptance of the Third Round obligation of 529 units is solely for the purposes of achieving a settlement of the litigation and is without prejudice to the parties' ability to challenge that Third Round number during any proceedings involving subsequent rounds of affordable housing calculations after July 1, 2025.

4. For purposes of this Agreement, the Third Round Obligation shall be deemed to include the Gap Period present need which is a measure of households formed from 1999-2015, that need affordable housing that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), 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.

5. The Borough has no Rehabilitation Share and so no rehabilitation program is needed.

6. As noted above, the Borough has a Prior Round Obligation of 206 units, which has been met in part through the following compliance mechanisms:

Name of Site	# of Units	Comments
Jersey City RCA	17	Completed
Pinnacle (East & West)	18	Rental units; completed
Lancaster (Bendel-Skymark Ct.))	7	Completed; for-sale
Crescent Village	24	Completed; for-sale

[1]Pursuant to Structural Conditions Survey conducted December 2019 and attached to this agreement as Exhibit A.
[2]David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May, 2016.

Porcelanosa	52 of 69	34 senior units and 18 non-age-restricted supportive units for formerly homeless veterans
160-168 East Crescent Avenue	5 of 25	Family rental (5 units is portion of development that was included as unmet need mechanism in previously judicially approved Prior Round plan)
Rental Bonus credits	41	18 from Pinnacle; 5 from 160 East Crescent; 18 from Supportive Housing units at Site behind Porcelanosa
Total	164	

The Parties agree that the remaining 42-unit Prior Round obligation shall be addressed as unmet need which along with the Borough's Third Round unmet need shall be addressed through the mechanisms described in paragraph 8. Additionally, the Parties recognize that the Borough as part of Prior Round court proceedings adopted zoning for the following two sites which have not developed:

• Dynasty Building Corp. (Block 302 Lots 18 & 19, Block 307 Lots 4 & 5): the Borough adopted the AH-1 Zone at §150-1. The Borough will maintain this zoning through at least July 1, 2025 provided that given that Regional Contribution Agreements have been eliminated that option in the zone is acknowledged to be unavailable and the zoning will require 52 total units with a 10 unit on site affordable housing set-aside.

• Wojcik/Creative Gardens (Block 810, Lot 6): the Borough adopted Scarce Resource Zoning at §150-10.5 of Borough Code. The Borough will maintain this zoning through at least July 1, 2025.

7. As noted above, the Borough has a Third Round obligation of 529 units (for the purposes of settlement only), which is met through the following compliance mechanisms:
    a. The Borough, as calculated in Exh. A, has aThird Round realistic development potential (RDP) of 78 units. That RDP will be satisfied as follows:

Name of Site	# of Units	Comments
Mack-Cali	22	Under construction, family for-sale
172-176 East Crescent Ave	3	Assisted Living (Alzheimer's Facility)
160-168 East Crescent Avenue	20 of 25	Additional units that the Borough proposes to construct to address Third Round RDP, family rental
Porcelanosa	17 of 69	Age-restricted rental units The project contains an aggregate of 70 units, but 1 of the 70 is for the Superintendent and that unit will not be subject to affordability controls or affirmative marketing requirements otherwise applicable.
Rental Bonus credits	20	From 20 family rental units at 160 East Crescent Avenue
Total	82	

8. The Compliance total of 82 above, subtracted from the Third Round Obligation of 529 units (for the purposes of settlement only), plus the remaining 42-unit unmet need from the Prior Round, results in an Unmet Need of 489 units, which shall be addressed through the following mechanisms:
    a. The Borough agrees to adopt overlay zoning on the following properties/areas

        i. Block 1301 Lot 13 – approximately 2.9 acres – office use built in 1986 with vacancy listed online. The Borough agrees to permit a gross density of 20 du/a (not to exceed 3 stories) and required a 20% on-site set-aside for affordable housing.
        ii. Marron and Company Site Block 1304 Lots 6, 9, and 10 – total of 4.9 acres. The Borough agrees to permit a gross density of 22 du/a (not to exceed 2 ½ stories, 35' height) and require a 20% on-site set-aside for affordable housing.
        iii. Block 1304 Lot 7.01 – about 2 acres– directly adjacent to the previous site, is vacant, and is currently for sale. The Borough agrees to permit a gross density of 15 du/a (not to exceed 2 ½ stories, 35' height) and require a 20% on-site set-aside for affordable housing.
        iv. Block 1301 Lots 1.04, 1.11, 1.15, 1.16, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, and 1.25. – approximately 19.2 acres. The Borough agrees to permit a gross density of 20 du/a and require a 20% on-site set-aside for affordable housing. For developments over 3 acres the Borough agrees to permit a gross density of 25 du/a and require a 20% on-site set-aside for affordable housing

    b. The Borough agrees to adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more that becomes permissible through either a use variance a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or new redevelopment plan. The set aside for all developments shall be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. The form of the Ordinance shall be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master, and representatives of the Borough. Neither this mandatory set-aside ordinance nor this Settlement Agreement gives any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough to grant such rezoning, variance or other relief.

9. The Borough will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:
    a. Mack-Cali –the Borough and Mack-Cali entered into a settlement agreement dated April 7, 2016 permitting the development of 208 total units on the Mack-Cali site at Block 601 Lot 1 of which 22 will be for sale family affordable housing units and an additional 25 family rental affordable housing units to be provided off-site.
    b. 172-176 East Crescent Avenue site – the Borough has been in negotiations with the developer of Block 1016 Lots 2 and 3 for the development of a Alzheimer's facility with approximately 16 bedrooms of housing dedicated to the care of individuals with Alzheimer's disease. While final development plans are not yet

complete the Borough represents that a prior consent order between the Borough of Ramsey and the Borough of Upper Saddle River conveying sewer service to this property requires that there must be an inclusionary affordable housing set-aside on any property developed utilizing the sewer service conveyance. Thus, the Borough anticipates that at least 3 of the units on this property will be set aside for lower income households. The Borough agrees that it will further explain in its Housing Element and Fair Share Plan, once additional details are available, how this development creates a realistic opportunity for affordable housing.

c. Overlay zoning to address unmet need referenced in paragraph 8.

10. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:
    a. Porcelanosa site – this development has received an allocation of Low-Income Housing Tax Credits and the Borough will demonstrate how it complies with the requirements of N.J.A.C. 5:93-5.5 in its Housing Element and Fair Share Plan.
    b. 160-68 East Crescent Ave site – this development will provide 25 affordable family rental units. The Borough will demonstrate how it complies with the requirements of N.J.A.C. 5:93-5.5 in its Housing Element and Fair Share Plan

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence of adequate and stable funding for any non-inclusionary affordable housing developments. The municipality shall request that the project sponsors provide a pro forma of both total development costs and anticipated sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending, and provide that pro forma as part of its Housing Element and Fair Share Plan. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough will describe how it meets this obligation for the above two projects in its Housing Element and Fair Share Plan.

In addition, a construction or implementation schedule, or timetable, shall be submitted for each step in thedevelopment process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractorand construction. The schedule shall provide for construction to begin within two years of court approval of the Borough's Housing Element and Fair Share Plan. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall developmentactivity. The Borough will provide this information with respect to the two above-referenced projects as part of its Housing Element and Fair Share Plan. For the Porcelanosa site, which has already received an allocation of Low-Income Housing Tax Credits, and for the 160-168 East Crescent Avenue site, which was the subject of a prior fairness hearing in 2017 as part of approval of the Borough's settlement with Mack-Cali, the schedule shall provide for construction to begin within two years of court approval of the settlement. In the event that because of circumstances unforeseen at the time of this Agreement the Low-Income Housing Tax Credits allocated to the site are recaptured by the New Jersey Housing and Mortgage Finance Agency, the Borough shall within six (6) months of such recapture provide a realistic opportunity for an either (i) amend its Plan, subject to the review and comment of FSHC and review

and approval of the Court, to include valid compliance mechanisms that do not rely upon securing outside funding that will provide a realistic opportunity for 69 affordable housing units beyond other units contemplated in this Agreement, unless the Borough has created a realistic opportunity for additional affordable housing units not referenced in this Agreement ("Unanticipated Units") in which case the 69 affordable housing units shall be reduced by said Unanticipated Units; or (ii) bond to provide funding for the proposed project. If the Borough replaces some or all of the 69 units, all units that replace the 69 affordable housing units will be in compliance with all terms of this Agreement.

11. The Borough agrees to require 13% of all units constructed after July 1, 2008, with the exception of units constructed after July 1, 2008 that had been granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those provisions by requiring that 13% of all units generated as a result of inclusionary and overlay zoning set forth above, any units generated as a result of the mandatory set-aside ordinance be reserved for very-low income households. The municipality shall further demonstrate how it meets these requirements in its Housing Element and Fair Share Plan.

12. The Borough shall meet its Third Round RDP and unmet need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:

    a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).

    b. At least 50 percent of the units addressing the Third Round RDP and unmet need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

    c. At least twenty-five percent of the Third Round RDP and unmet need shall be met through rental units, including at least half in rental units available to families.

    d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

    e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

13. 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, 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. 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.

14. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, *et seq.*, or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in rental projects shall be affordable to households earning 30% or less of the regional median income. The Borough, as part of its HEFSP, shall adopt and/or update appropriate implementing ordinances in conformance with all applicable laws to ensure that this provision is satisfied. Income 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 Regionin 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 80 percent 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 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent 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 B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2019, 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 to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement, the

terms of which shall also be reflected in the Borough's Affordable Housing Ordinance.

15. 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.

16. As an essential term of this Agreement, within one hundred twenty (120) days of the Court's approval of this Agreement and the entry of an order approving this agreement following a fairness hearing, the Borough shall introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement. The parties agree that this 120-day time period may be extended by the parties with the approval of the court, provided that the Borough has diligently pursued efforts to comply with this section.

17. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round Obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment (or the time to appeal has expired), the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including maintaining all site specific zoning; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms set forth herein to address unmet need; and otherwise fully implementing the mechanisms to address the fair share obligations that are established in this Agreement. The reduction of the Borough's Third Round Obligation as established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Third Round Obligation, the Borough may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.

18. The Borough will prepare a Spending Plan as part of its HEFSP. The parties to this Agreement agree that the Spending Plan will be provided to FSHC for review and will be prepared in accordance with accepted standards to be approved by the Court and that the Borough may request the Court to find that the expenditures of funds contemplated under the Spending Plan approved by the Court 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 beginning to run with the entry of a final judgment in this matterthat 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). The Spending Plan shall include a provision that the $325,000, and any interest received, that was designated for a proposed RCA with Fairview for which funds were never transferred or approved by COAH shall be used as a partial source of the municipal contribution for the 160-168 East Crescent Avenue site. 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 provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

19. The parties agree that the proposed RCA discussed in Paragraph 18 is unenforceable by the Borough of Fairview because it was never approved by COAH, the statute of limitations on the enforcement of the contract has expired, and because there has been a significant change in law prohibiting regional contribution agreements. The New Jersey Fair Housing Act clearly prohibits RCAs not approved by COAH prior to 2008 (No consideration shall be given to any regional contribution agreement for which the council did not complete its review and grant approval prior to the effective date of P.L.2008,c.46 (C.52:27D-329.1 et al.. On or after the effective date of P.L.2008, c.46 (C.52:27D-329.1 etal.), no regional contribution agreement shall be entered into by a municipality, or approved by the council or the court L.1985, c.222, s.12; amended 1995, c.83, s.2; 2001, c.435, s.4; 2008, c.46, s.16.) N.J.S.A. 52:27D-312(g). Notwithstanding the foregoing the parties agree that if the Borough of Fairview is successful in enforcing the aforementioned RCA, the Borough of Upper Saddle River shall not be required to transfer $325,000 to the 160-168 East Crescent Avenue site, provided that the lack of requirement to transfer said funds shall not otherwise impact the Borough's obligations to ensure said site is developed pursuant to this Agreement.

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

21. 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. For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and if there are changed circumstances, 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. Any interested party may by motion request a hearing before the court regarding these issues. The parties recognize that the compliance process for this Agreement will still be ongoing as of the point of the statutory midpoint review.

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

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

23. 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. In the event the Court approves this proposed settlement, the parties agree that the municipality will be entitled to either a "Judgment of Compliance and Repose" or "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," (collective "Final Judgment") 221 NJ at 6, which shall be determined by the trial Judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court with each party agreeing to accept either form of relief and to not appeal an Order granting either repose or substantive certification and accompanying protections. The "accompanying protection" or repose 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.

24. Within 45 days of the entry of an Order approving this Settlement Agreement at a duly noticed Fairness Hearing, the Borough shall pay $20,000.00 in attorneys' fees to FSHC.

25. If an appeal is filed of the Court's approval or rejection of this Agreement and/or Final Judgment, the Parties agree to defend the Agreement and/or Final Judgment on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to 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, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

26. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.

27. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable, except the entry of a Final Judgment. 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, unless the Final Judgment is rescinded

or vacated. 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, unless the Final Judgment is rescinded or vacated.

28. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

29. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

30. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

31. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

32. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

33. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

34. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

35. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

36. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

37. All Notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight 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:

Theodore F. Preusch,
Borough Administrator
Borough of Upper Saddle River
Municipal Building
376 West Saddle River Road
Upper Saddle River, New Jersey 07458-1621
Phone: (201) 327-2196

WITH A COPY TO:

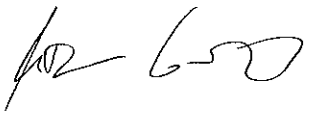
Robert T. Regan, Esq.,
Sturbridge Commons
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675
Phone: (201) 664-3344

AND:

Edward J. Buzak, Esq.
The Buzak Law Group, LLC
150 River Road, Suite N-4
Montville, New Jersey 07045
Phone: (973) 335-0600

Please sign below if these terms are acceptable.

Sincerely,



Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of Upper Saddle River, with the authorization of the governing body:

_____
Joanne L Minichetti, Mayor
Dated:_____

EXHIBIT A: VACANT LAND ADJUSTMENT

BURGIS
ASSOCIATES, INC.

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

PRINCIPALS:
Joseph H. Burgis PP, AICP
Edward Snieckus, Jr. PP, LLA, ASLA
David Novak PP, AICP

Borough of Upper Saddle River
Housing Element and Fair Share Plan
Exhibit "A"

Block	Lot	Property Address	Owner	Comments	Area (ac)	Developable Area (ac)	RDP (du/ac)	RDP (units)
203	1	29 HILLSIDE AVE	WOHRLE (TRSTE), ROGER J	Three lots with common owner combined. Some steep slopes on Lot 2. Infill site in single-family detached housing neighborhood on the New York State border.	1.64	0.60	6.0	1
203	2	31 HILLSIDE AVE						
203	3	39 HILLSIDE AVE						
503	6	39 PARKER PL	GUEMBEL, HEIDI & LONGO, JAMES	Qualifies for RDP Analysis. Infill site in single-family detached housing neighborhood.	1.74	1.70	6.0	2
601	1.01	1-15 LAKE ST	TOLL BROS	Former Mack-Call site under development by Toll Bros., with 5.3 acres of constrained land (wetlands and stream). Site Is sufficiently large to establish its own land use character. Adjacent to Orchard Hill townhouses across Lake Street to the south developed at about 6 units/acre in early 2000's and inclusionary Pinnacle Properties East and West developed at 7.8 units/acre. Office and residential uses to the northwest fronting on E. Crescent Avenue. Skymark Court inclusionary townhouse development to the north developed at 9.4 units/acre in mid-2000's. Single-family detached houses to the north and east buffered by woods and wetlands.	38.65	31.35	8.0	50
805	1.02	430 WEST SADDLE RIVER RD	MAC DONALD, RAYMOND & HELEN	Qualifies for RDP Analysis. (Borough analysis found 0.91 acre of developable area, illogically larger than the lot area; developed area adjusted to match lot area) Surrounded by single-family detached residential land uses.	0.86	0.86	6.0	1
810	8.08	443 EAST SADDLE RIVER RD	ROSENTHAL, KAREN	Qualifies for RDP Analysis. Surrounded by single-family detached residential land uses.	0.88	0.85	6.0	1
901	3	382 EAST SADDLE RIVER RD	JMN INVESTMENTS LLC	Qualifies for RDP Analysis. Environmental Constraints: Steep Slopes. Approximately 458 square feet are constrained. Surrounded by single-family detached residential land uses.	0.86	0.86	6.01	1
906	8	25 PEACH TREE PL	VOSKIAN, MICHAEL J	Qualifies for RDP Analysis. Surrounded by single-family detached residential land uses.	1.04	0.93	6.0	1
919	1.02	ASH RD	WASKO, JOSEPH P & PAULINE E	Qualifies for RDP Analysis. Surrounded by single-family detached residential land uses.	0.93	1.03	6.0	1
1211	10.03	3 STEVENSON CT	THIE, CHARLES H.	Qualifies for RDP Analysis. Environmental Constraints: Steep Slopes. Approximately 1,170 square feet are constrained. Surrounded by single-family detached residential land uses.	0.88	0.84	6.0	1
1301	1.11	PARK WAY	TRIANGLE LAND DEVELOPMENT	Qualifies for RDP analysis. Commercial uses to the west, north and east. Developable vacant wooded lot to the south.	1.91	1.91	16.0	6
1301	1.15	23 PARK WAY	FOCKE & CO, INC.	Qualifies for RDP analysis. Commercial uses to the west and east. Developable vacant wooded lot to the north. Small-lot single-family detached residential uses to the south in Ramsey Borough.	1.86	1.86	16.0	6

Block	Lot	Property Address	Owner	Comments	Area (ac)	Developable Area (ac)	RDP (du/ac)	RDP (units)
1304	7.01	100 ROUTE 17	ATRIMEC REALTY CORP	Qualifies for RDP Analysis. (Developed area adjusted to 2.0 acres as Borough did not Identify any environmental constraints and none are shown by the Remaining Lands app). Fronts on northbound Route 17. Commercial uses to the north and west. Hotel to the south. Single- family detach house to the east, buffered by woods.	2.00	1.73	16.0	6
1306	1.03	20 PLEASANT AVE	GANZHORN, ARTHUR S & ELIZABETH M	Qualifies. Constrained by floodplain and slopes. 41,271 s.f. remain unconstrained. Surrounded by single-family detached residential land uses.	1.73	0.95	6.0	1
				TOTAL	54.98	45.47	110.01	78

EXHIBIT B: 2019 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - May 2019

2019 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**	Max Increase Sales***	Regional Asset Limit****
Region 1	Median	$66,607	$71,365	$76,122	$85,637	$95,153	$98,959	$102,765	$110,377	$117,989	$125,602	2.6%	4.73%	$183,994
Bergen, Hudson, Passaic and Sussex	Moderate	$53,286	$57,092	$60,898	$68,510	$76,122	$79,167	$82,212	$88,302	$94,391	$100,481			
	Low	$33,303	$35,682	$38,061	$42,819	$47,576	$49,479	$51,382	$55,189	$58,995	$62,801			
	Very Low	$19,982	$21,409	$22,837	$25,691	$28,546	$29,688	$30,829	$33,113	$35,397	$37,680			
Region 2	Median	$70,537	$75,576	$80,614	$90,691	$100,767	$104,798	$108,829	$116,890	$124,952	$133,013	2.6%	5.67%	$193,321
Essex, Morris, Union and Warren	Moderate	$56,430	$60,460	$64,491	$72,553	$80,614	$83,838	$87,063	$93,512	$99,961	$106,410			
	Low	$35,269	$37,788	$40,307	$45,345	$50,384	$52,399	$54,414	$58,445	$62,476	$66,506			
	Very Low	$21,161	$22,673	$24,184	$27,207	$30,230	$31,439	$32,649	$35,067	$37,485	$39,904			
Region 3	Median	$82,810	$88,725	$94,640	$106,470	$118,300	$123,032	$127,764	$137,228	$146,692	$156,156	2.6%	9.64%	$225,261
Hunterdon, Middlesex and Somerset	Moderate	$66,248	$70,980	$75,712	$85,176	$94,640	$98,426	$102,211	$109,782	$117,354	$124,925			
	Low	$41,405	$44,363	$47,320	$53,235	$59,150	$61,516	$63,882	$68,614	$73,346	$78,078			
	Very Low	$24,843	$26,618	$28,392	$31,941	$35,490	$36,910	$38,329	$41,168	$44,008	$46,847			
Region 4	Median	$72,165	$77,319	$82,474	$92,783	$103,092	$107,216	$111,340	$119,587	$127,834	$136,082	2.6%	3.91%	$193,919
Mercer, Monmouth and Ocean	Moderate	$57,732	$61,855	$65,979	$74,226	$82,474	$85,773	$89,072	$95,670	$102,268	$108,865			
	Low	$36,082	$38,660	$41,237	$46,392	$51,546	$53,608	$55,670	$59,794	$63,917	$68,041			
	Very Low	$21,649	$23,196	$24,742	$27,835	$30,928	$32,165	$33,402	$35,876	$38,350	$40,825			
Region 5	Median	$63,070	$67,575	$72,080	$81,090	$90,100	$93,704	$97,308	$104,516	$111,724	$118,932	2.6%	3.09%	$166,981
Burlington, Camden and Gloucester	Moderate	$50,456	$54,060	$57,664	$64,872	$72,080	$74,963	$77,846	$83,613	$89,379	$95,146			
	Low	$31,535	$33,788	$36,040	$40,545	$45,050	$46,852	$48,654	$52,258	$55,862	$59,466			
	Very Low	$18,921	$20,273	$21,624	$24,327	$27,030	$28,111	$29,192	$31,355	$33,517	$35,680			
Region 6	Median	$53,714	$57,550	$61,387	$69,061	$76,734	$79,803	$82,873	$89,011	$95,150	$101,289	2.6%	5.15%	$143,713
Atlantic, Cape May, Cumberland, and Salem	Moderate	$42,971	$46,040	$49,110	$55,248	$61,387	$63,843	$66,298	$71,209	$76,120	$81,031			
	Low	$26,857	$28,775	$30,694	$34,530	$38,367	$39,902	$41,436	$44,506	$47,575	$50,644			
	Very Low	$16,114	$17,265	$18,416	$20,718	$23,020	$23,941	$24,862	$26,703	$28,545	$30,387			

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). The increase for 2015 was 2.3%, the increase for 2016 was 1.1%, the increase for 2017 was 1.7%, and the increase for 2018 was 2.2%. The increase for 2019 is 2.6% (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, or 2018 may increase rent by up to the applicable combined percentage including 2019 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.