

B O R O U G H O F
NEW PROVIDENCE

SETTLED IN 1720

**Borough of New Providence
Affordable Housing Q & A**

Part 1

1. Briefly, what does the affordable housing settlement agreement provide?

The settlement provides for a rezoning of certain areas in New Providence to allow for higher density housing which will include an affordable housing component. The affordable housing component is 20% of the total rezoned development area. The remaining 80% would be market priced units. In return, New Providence would be protected from so called "Builder's Remedy" law suits whereby a developer could sue the Borough to allow high density housing with an affordable component nearly anywhere in town.

2. Where are these areas located?

The primary quadrant is located between Central Avenue/the RR Tracks/Chanlon Road and the properties of CR Bard (Becton-Dickenson) and Commerce Drive. This area consists of 10 individual parcels totaling approximately 89.6 acres. A second area is where the Linde Property located at 100 Mountain Avenue with an area of approximately 21.5 acres which will be rezoned for age restricted housing. Another parcel owned by Linde at 575 Mountain Avenue will also be rezoned to allow for a Continuing Care Retirement Community with no affordable component.

3. What does high density housing mean?

Density is defined by the number of units per acre that would be permitted. In the case of our settlement, the properties rezoned would have an average density of 10.9 units per acre. The density for the properties rezoned for affordable housing ranges from 9.5 to 17 units per acre, depending on the site. A developer could determine that a lower density would be more beneficial. Much of these considerations will be based on market research and demographic shifts as examined by developers.

4. How many units are being proposed?

In total, there is a *possibility* of development of 1209 units, which would include 244 affordable housing units. For the development of 1209 units to occur, all 12 property owners in the zones would have to redevelop their properties. Click the [settlement agreement](#) (page 7) which contains the specific number of potential units per parcel.

5. What could occur with regard to the redevelopment?

At this time, we are only aware of two locations that *appear* poised to redevelop their properties. The Linde office building property on Mountain Avenue has been vacant for some time so it would not be a surprise to see something happen on that site in the not too distant future. The CR Bard property, now Becton-Dickenson (BD) is being vacated. When CR Bard sold to BD, they decided to close the offices in New Providence with all employees off the site by May of 2019. Although this site will be vacant and appears poised for redevelopment, we have no direct information about any active discussions with developers at the BD site or the other sites contained in the agreement. Many of the other sites in the overlay zone have existing tenants. Those leases would need to come to an end and the site owners would need to decide that they can derive more economic benefit by selling the sites for residential units than renewing their leases or leasing to another commercial tenant before residential units would be built.

6. Why did New Providence agree to this settlement?

The courts have mandated that virtually every town in New Jersey provide for affordable housing. Various non-profit advocates have challenged the compliance plans presented by towns and have, for the most part, been successful in forcing the towns to adopt higher densities than they thought prudent. One of those non-profits entered into litigation with New Providence to force us to accept significantly higher densities than what we had proposed to the court. After seeing how other communities spent enormous sums litigating, only to lose their battle in the courts, the Borough Council had to decide whether it was prudent to settle or litigate the case. After seeing what has been happening around the state, with the advice of their professionals (planners and legal counsel) the council believed that the settlement eliminated the potential of a significantly higher number of units that could be ordered through litigation. By doing so, New Providence avoided the high costs of litigation associated with hiring of lawyers and planners to fight the battle and precluded the possibility of Builder's Remedy law suits while at the same time controlling where development would take place rather than having the non-profits, the developers, and the court dictate that for us.

7. What is affordable housing?

Affordable housing is divided into three (3) income classifications: moderate, low and very low, and is based upon income limits. The 2018 income limits for Region 2, the Essex, Morris, Union and Warren County area, range from \$53,404 for a single person, \$76,921 for a family of four, up to \$100,705 for a family of eight people as a moderate income household; \$33,377 for a single person, \$47,682 for a family of four, and up to \$62,940 for eight people as a low income household; and \$20,026 for a single person, \$28,609 for a family of four, and up to \$37,764 for eight people as a very low income household.

8. Why didn't New Providence pay another municipality under a "Regional Contribution Agreement" to shift our affordable housing obligation?

In the earlier rounds of affordable housing compliance, municipalities had the option to pay another municipality to take their obligation. However, legislation signed by Governor Corzine in July of 2008 eliminated Regional Contribution Agreements. Prior to that time, New Providence was in full-compliance with our affordable housing obligation and there was no need to export our share to another community.

9. There is a [Fairness Hearing](#) scheduled for April 5th where Judge Cassidy of the Union County Superior Court will review the settlement to determine whether it conforms to the law concerning affordable housing. What happens after that hearing?

If Judge Cassidy finds the settlement in compliance, New Providence is expected to have 120 days to enact the changes to the zoning ordinances to satisfy the provisions of the settlement agreements. After the 120 period, the Borough will appear again before Judge Cassidy at a compliance hearing to assure that the steps required to be in compliance with the settlement has been achieved.

10. When could redevelopment begin?

The compliance hearing is expected to occur around August-September of 2019. At that time, the zoning will have been changed to permit the redevelopment. If a developer has property and plans, they could make application to the planning board. Review of plans of this magnitude would take some time – likely at least 9-12 months. Thereafter, permits could be issued and construction could begin.

11. Where can I find additional information about the settlement?

New Providence has posted the settlement agreements on the Borough's web-site (www.newprov.org). Click on Affordable Housing Program (left column). Additionally, the Borough Council will host a special meeting on March 18th at 7 PM in the council chambers to answer any questions from the public.

B O R O U G H O F
NEW PROVIDENCE

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**Borough of New Providence
Affordable Housing Q & A**

Part 2

- 1. Can the Borough buy land and build the affordable housing required on its own, thereby avoiding the need to construct four regular units for every affordable unit?**

Constructing our own affordable housing would be cost prohibitive given the number of units required. Building out the required 249 units could cost as much as fifty to seventy-five million dollars.

- 2. Is our obligation larger than other towns bigger than New Providence in land area and population?**

The affordable unit obligation is not based upon a percentage of population nor on the geographic size of a town. It is based upon the projected need for affordable housing in the region of the state where the town is located, which for New Providence includes Union, Essex, Morris, and Warren Counties. Need is determined by a complex calculation which involves projected population growth, projected jobs within the region, income, and the land area available for development. All settlements have been within the same range based upon these factors. We were able to rezone some land and place a zoning overlay on currently occupied commercial property to satisfy our obligation. Other towns have come up with similar plans as that developed by New Providence.

- 3. Why don't we already have a plan for infrastructure and community services necessary to support the added development expected to satisfy the Borough's affordable housing obligation since we have known this was coming for the last couple of years?**

It would be incorrect to assume that there is no plan. The police department knows theoretically how many officers it needs based upon certain population. This is also the same for Emergency personnel such as fire and rescue. We have engineering studies related to roads and traffic. Waste water conveyance and treatment capacity is being studied by our engineering department. It would be premature to hire staff or finalize plans for new infrastructure until we know what will be built and when the construction will occur. While we know the total number of residential units that could be built as a result of the settlement agreement, we do not know how quickly this is going to ramp up and we will not know until buildings, most of which are currently occupied with multi-year leases, are actually sold and turned over to developers.

4. Will this cause our taxes to go up?

The Borough is actively analyzing the impact of the development that could potentially be built as a result of the settlement agreement. Our tax assessor is currently evaluating the tax assessed value of the current uses of the buildings versus the tax assessed value of residential developments. Our engineering department is looking at our waste water used and possible future needs. Our CFO is engaged and analyzing the impact on our tax rates. In general, more services require more taxes. We need to analyze the offset by any incoming revenue from the added development before making a determination that the new development will increase the tax burden on individual property owners.

5. Why are we allowing our schools to be destroyed by affordable housing?

We completely agree that rezoning resulting from court imposed settlement agreements is not a sensible way to plan for the growth of New Providence or any of the other communities being forced to go through this process. All we can do is to make the best of the mess that the courts and the legislature have left us with. If residents feel strongly that such a haphazard method of imposing zoning on communities is counterproductive, we recommend that you write to the leaders of the legislature and the Governor in Trenton and let them know your thoughts on this.

However, please keep in mind that the quality of our schools is driven by our students and their supportive/involved parents. This culture will remain regardless of increases in population.

6. What is the timing on development?

There are several steps that need to be completed before development can begin. In addition to the actual land sales/turnover, there are several other steps that need to happen. The compliance hearing in court to approve the settlement agreement is expected to occur on April 5, 2019. We expect to be given 120 days to pass amendments to our zoning ordinance to effectuate the new zoning in accordance with the terms of the settlement agreement. That should be completed in August 2019. At that time, the zoning will have been changed to permit the redevelopment. If a developer has the property and plans, they would need to make an application to the planning board. Review of the plans of this magnitude would take some time. Thereafter, permits would be issued and construction can begin. There are two areas that look closer to development than others: 100 Mountain Avenue and the Becton Dickinson Company property off of Central Avenue. Construction may take more than a year once development plans are completed, site plans are approved and construction permits are obtained. We won't know anything concrete about the time frames until properties actually turn over.

7. Why is all of the rezoning for affordable housing on the AWR side of town and not spread out around other parts of the community?

We had to decide where to put the zoning or overlay zoning, considering that there is limited vacant and available land in the Borough. We could have put an overlay across the whole town, but that would create a risk that builders decide where the housing would go with unpredictable impacts to nearby residential neighborhoods. Available land on the Salt Brook side of town was not suitable for large scale development. The location chosen on the west side of town was favorable from a land use planning perspective because it is close to transit and provides walkability to the schools, nearby shopping and downtown. If there is development, the BOE can decide if the lines separating Salt Brook School from AWR sending districts need to be changed.

- 8. The 100 Mountain Avenue property is slated for a 55 and over age restricted community. If it does not sell as such, can the developer demand that they be allowed to take families without age restrictions to sell?**

No one can say for certain what a future court or the legislature might say if the planned 55 and over community is a bust from a marketing point of view. However, as far as we know at this time, we are under no obligation to remove the 55 plus age restriction and there appears to be a strong demand for this type of community that offers activities and a social environment for seniors in a town like New Providence.

- 9. What are the environmental impacts on the demolition of commercial structures in the rezoned areas given their relative proximity to residential neighborhoods and schools?**

A permit is required before any building of this type can be demolished. There is a study to determine if asbestos is present. If the study discloses the presence of asbestos, a remediation plan designed by a licensed asbestos remediation professional is put in place if needed. If other environmental issues are revealed, there are strict regulations which must be followed for site remediation. Our inspectors and licensed professionals hired by the site owner or developer monitor the demolition activity to maximize safety to the surrounding areas.

- 10. What are PILOTS and will they be used here?**

PILOTS are Payments in Lieu of Taxes which means the developer pays an agreed upon amount to the town instead of an annual tax bill. A small portion of that payment goes to the County (smaller than their usual share). This allows a town to maintain payments nearly commensurate with the municipal taxes it otherwise would have received while relieving some of the tax burden that would otherwise be paid by the developer. These agreements usually occur with blighted properties that are shown to be unusable in their current form. The term blighted does not only mean a run-down area but also includes old and dilapidated buildings. We have been approached by one property owner to consider a PILOT. In their case, the owner claims that the building is outdated and not usable in its current state. We have an obligation to evaluate the proposal to see if such an arrangement is in the best interests of our taxpayers while complying with applicable law regarding conditions that must be satisfied prior to entering into an agreement for a PILOT. However, no decision has been made at this time.

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2019-068

Council Meeting Date: 02-25-2019

Date Adopted: 02-25-2019

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE
AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT IN THE
AFFORDABLE HOUSING DECLARATORY JUDGMENT ACTION

Councilperson Cumiskey submitted the following resolution, which was duly seconded by Councilperson Muñoz.

BE IT RESOLVED, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey, as follows:

WHEREAS, the Borough of New Providence (hereinafter "Borough") filed a Complaint on or about July 7, 2015 seeking a declaration of its compliance with the Mount Laurel Doctrine and Fair Housing Act of 1987, N.J.S.A. 53:27D-301, et seq., in accordance with In re: N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015); and

WHEREAS, after extended negotiations with Fair Share Housing Corporation ("FSHC"), with the participation of a Court-appointed special master, the Borough and FSHC had agreed to settle litigation in 2016, as set forth in Resolution 2016-349, which was approved by the Court by an Order entered January 30, 2017, subject to a final compliance hearing, and;

WHEREAS, prior to the final compliance hearing, various parties objected to the settlement and intervened in the proceedings, including Linde North American, Inc. ("Linde"), and C.R. Bard, Inc., now known as Becton Dickinson and Company ("BD"); and

WHEREAS, with the participation of the Court-appointed Special Masters, the Borough, FSHC, Linde, and BD have agreed to settle the litigation and present the settlement for review and approval by the Superior Court having jurisdiction over this matter;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Borough Council of the Borough of New Providence that the Mayor and Borough Clerk are hereby authorized to execute the written Settlement Agreement with FSHC, Linde, and BD ("Primary Agreement), and the agreement with Linde ("Linde Agreement"), which is to be included as Ex B to the Primary Settlement Agreement, that are substantially in the form attached hereto as Exhibit A, subject any non-substantive revisions and corrections as may be necessary.

This Resolution shall take effect immediately.

APPROVED, this 25th day of February, 2019.

RECORD OF VOTE

| | AYE | NAY | ABSENT | NOT VOTING |
|----------|-----|-----|---------------------------|------------|
| CUMISKEY | X | | | |
| DESARNO | X | | | |
| GENNARO | X | | | |
| GEOFFROY | X | | | |
| MUÑOZ | X | | | |
| ROBINSON | X | | | |
| MORGAN | | | TO BREAK COUNCIL TIE VOTE | |

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 25th day of February, 2019.

Wendi B. Barry, Borough Clerk

AFFORDABLE HOUSING SETTLEMENT AGREEMENT
In the Matter of the Borough of New Providence, County of Union

Docket No. UNN-L-2442-15

This Agreement (“Agreement”) sets forth the terms of the settlement of the matter entitled **In the Matter of the Borough of New Providence, County of Union**, in the Superior Court of New Jersey, Union County, Docket No. UNN-L-2442-15 reached between the Borough of New Providence (“Borough” or “New Providence”), declaratory judgment plaintiff, 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, objectors Linde North America, Inc, (“Linde”), and Becton Dickinson and Company (f/k/a C.R. Bard, Inc.) (“BD”), (“Objectors”) through this settlement.

Background

New Providence filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with Mount Laurel IV.

On December 13, 2016, the Borough and FSHC entered into a Settlement Agreement (“2016 Agreement”) which was approved by the Court at a Fairness Hearing held on January 13, 2017, and memorialized in an Order entered January 30, 2017, annexed as Exhibit A (“2016 Order”). Prior to the Compliance Hearing, objections were raised by Objectors. After mediation with assistance of the Court appointed Special Masters, the Borough revised its approach to settlement as set forth herein.

Through that process, the Borough, FSHC, and the Objectors have agreed to settle the litigation and to present that settlement for review and approval to the trial court with jurisdiction over this matter, 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.

This agreement replaces and supersedes the 2016 Agreement.

Settlement terms

The Borough, FSHC, and Objectors hereby agree to the following terms:

1. FSHC and the Objectors agree that the Borough, through the adoption of a Housing Element and Fair Share Plan that implements the terms and provisions of this Agreement, will have satisfied its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301, et. seq., for the Prior Round (1987-1999) and Third Round (1999-2025). The Third Round Obligation includes both the gap period “present need” (1999-2015) and the prospective need (2015-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when 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 present and prospective need.
3. FSHC and New Providence hereby agree that New Providence’s affordable housing obligations are as follows:

| 2019 Summary of Obligation | | | |
|-----------------------------------|------------|-------------------|--------------|
| | <i>RDP</i> | <i>Unmet Need</i> | <i>Total</i> |
| <i>Prior Round:</i> | - | - | 135 |
| <i>Third Round:</i> | 52 | 264 | 316 |

4. The Borough's efforts to meet its Rehabilitation Share include the following:

New Providence intends to address its Rehabilitation Share through continued participation in Union County rehabilitation programs, operated by the County’s Bureau of Community Development and Bureau of Housing (Bureau). This Bureau oversees the federally funded Community Development Block Grant (CDBG) program and the HOME Investment Partnership Program (HOME). The Borough will also use monies from the affordable housing trust fund to supplement the County rehabilitation programs and shall either create its own Rental Rehabilitation Program or join with another municipality in a shared services agreement in order to address rehabilitation for very

low-, low-, and moderate-income rental units within the Borough. This is sufficient to satisfy the Borough's Rehabilitation Share.

5. The Borough will meet its Prior Round Obligation (1987-1999) in the following manner:

| SUMMARY OF NEW PROVIDENCE'S PRIOR ROUND OF <u>135</u> | |
|--|------------|
| Prior Round Credits: | |
| <i>Our House (very low, rental)</i> | 4 |
| Existing Inclusionary Development: | |
| <i>The Villages at New Providence (rental)</i> | 10 |
| <i>Patriot Village (rental)</i> | 4 |
| <i>Spring Gardens (rental)</i> | 6 |
| <i>Stonefields at New Providence</i> | 2 |
| <i>Southgate at Murray Hill</i> | 2 |
| <i>Riverbend</i> | 4 |
| <i>Murray Hill Farms</i> | 13 |
| Existing 100% Affordable Age-Restricted | |
| <i>Elizabeth Barabash (rental)</i> | 22 |
| Existing Alternative Living Arrangements (very- low rental): | |
| <i>Community Action Independent Living</i> | 4 |
| <i>Union County Arc I</i> | 4 |
| <i>Union County Arc II</i> | 3 |
| <i>Community Access I</i> | 6 |
| <i>Community Access II</i> | 6 |
| <i>Arc of Union County</i> | 3 |
| Existing Inclusionary Zoning | |
| <i>Blocks 310 and 311</i> | 9 |
| Total Units | 102 |
| Rental Bonus Credits | |
| <i>The Villages at New Providence</i> | 10 |
| <i>Patriot Village</i> | 4 |
| <i>Spring Gardens</i> | 6 |
| <i>Community Action Independent Living</i> | 3 |
| <i>Union County Arc I</i> | 4 |
| <i>Community Access I</i> | 6 |
| Total Rental Bonus Credits | 33 |
| TOTAL PRIOR ROUND | 135 |

6. The Borough continues to have a Third Round Obligation of 316 units as set forth in the 2016 Agreement. Based upon the revisions to the Borough's approach to compliance, the Borough now has a realistic development potential (RDP) of 52 units for the Third Round. The RDP of 52 units, subtracted from the Third Round Obligation of 316 units, results in an unmet need of 264 units.
7. The Borough will address its Third Round Obligation of 316, which includes the RDP of 52 and an unmet need of 264, through the compliance mechanisms provided below:

| SUMMARY OF NEW PROVIDENCE'S THIRD ROUND OF 316 | |
|---|---|
| Summary of New Providence's Third Round RDP of 52 | |
| Existing Non Age-Restricted Inclusionary Zoning: <i>Blocks 310 and 311</i> | 1 |
| Proposed Non Age-Restricted Inclusionary Zoning: <i>Bard Site (rental)</i> | 38 |
| Total Units | 39 |
| Rental Bonus Credits <i>Bard Site</i> | 13 |
| Total Bonus Credits | 13 |
| THIRD ROUND RDP COMPLIANCE TOTAL | 52 |
| Summary of New Providence's Third Round Unmet Need of 264 | |
| Proposed Age-Restricted Overlay Zoning: <i>630 Central Ave. (Block 221 Lot 5)</i> <i>Linde (100 Mountain Ave.)</i> | 20 59 |
| Proposed Non-Age-Restricted Overlay Zoning: <i>41 Spring Street (Block 210 Lot 21)</i> <i>165 Spring Street (Block 210 Lot 23)</i> <i>48 Commerce Drive (Block 210 Lot 33)</i> <i>98 Floral Ave. (Block 340 Lot 4)</i> <i>150 Floral Ave. (Block 340 Lot 6)</i> <i>140 Spring Street (Block 340 Lot 8)</i> <i>700 Central Ave. (Block 221 Lot 2.01)</i> <i>121 Chanlon Rd (Block 221 Lot 6)</i> | 29 5 8 7 17 10 30 21 |
| Total Units | 206* |

*Pursuant to this settlement agreement, the Borough will claim bonus credits for units in the Unmet Need as the units are constructed.

a. As part of the Agreement, New Providence will be able to increase its Third Round RDP and, hence, its eligibility for rental bonuses, as units are developed in overlay districts at the following rates and subject to the following terms:

1) Rates

i. For each 3 new family for sale units, one age-restricted unit can be added for a total of 4 credits toward the Unmet Need;

OR

ii. For each 2 family rental units, one age-restricted unit can be added and one rental bonus can be added for a total of 4 credits toward the Unmet Need.

2) Terms

i. As the Third Round RDP is increased and the Unmet Need is reduced, all of the parameters of the Settlement Agreement must continue to be met.

ii. FSHC shall be notified of all increases to New Providence's Third Round RDP, with the basis for the calculation of the new RDP and additional credits claimed as well as supporting documentation as may be requested by FSHC.

b. Any excess credits that are generated through development can be carried to future obligations in accordance with applicable law at that time.

8. Proposed Rezoning:

To create future opportunities for affordable housing, the Borough will enact an amendment to the zoning codes as follows. The Borough shall also rezone the Objectors' properties in the following manner:

Linde

As set forth in more detail in a separate agreement between Linde and the Borough, annexed hereto as Exhibit B, and made a part hereof:

- Block 370, Lot 1 (100 Mountain Ave.) will be included in the proposed AH-AR Affordable Housing Age-Restricted Zone as an overlay to the existing zoning. The rezoning will enable the production of 59 affordable, age-restricted units on the site. All 59 units will be applied to the Third Round Unmet Need. The Borough will also rezone Block 320, Lot 18.01, (575 Mountain Avenue) for Continuing Care Retirement Community (“CCRC”) development (as set forth in Exhibit B).

Becton Dickinson (“BD”)

- The Property, located at Block 210, Lot 32 in the Borough of New Providence, shall be included in the A-H Affordable Housing Zone, which will permit construction of 192 units. BD shall donate to the Borough a portion of the site containing an existing field currently used by the Borough for recreation (soccer field), along with a portion of the adjacent driveway, totaling approximately 2.2 - 2.5 acres. The field will be renamed “Becton Dickinson Field.” Regardless of the amount of eventual acreage left at the Company site (total lot acreage minus the soccer field lot acreage), the total number of dwelling units permitted is 192. BD shall be provided an easement for a right-of-way for access to Central Avenue across the Property being donated to the Borough as set forth in Exhibit C. The design of the easement/right-of-way will be subject to minor subdivision approval. The development will provide for a 20% set aside for family rental affordable units, which will result in 38 affordable units. The affordable units shall comply with the requirements of the UHAC regulations and as also required by the terms of this Agreement.
- The zoning shall permit the following:
 - The permitted maximum height of the structures will be 38 feet and 3 stories. If the residential structure contains a ground level enclosed parking area, then the calculation of the height and number of stories shall exclude the ground level parking area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area;

level parking area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area;

- o Such other bulk requirements as shall be set forth in the applicable ordinances to be adopted.

Murray Hill

The Borough will amend the zoning for the area located northwest of the Murray Hill train station, providing for overlay zoning with a required 20% affordable set-aside (see proposed zoning map in Exhibit D).

The following chart details the proposed rezoning of the BD site as well as the overlay zoning of Linde and the Murray Hill area.

| AH-AR Affordable Housing Age-Restricted Overlay District | | | | | | | | |
|--|-----|---------------|---------------------|-----------------------|----------|----------------------|---------------|----------------------------|
| Block | Lot | Total Acreage | Constrained Acreage | Unconstrained Acreage | Density | Total Dwelling Units | 20% Set Aside | Property Location |
| 370 | 1 | 21.5 | 0 | 21.5 | 13.8 | 297 | 59 | 100 MOUNTAIN AVE ("LINDE") |
| 221 | 5 | 7 | 0 | 7 | 14 | 98 | 20 | 630 CENTRAL AVE |
| Total | | 28.5 | 0 | 28.5 | - | 395 | 79 | - |
| AH Affordable Housing Zone | | | | | | | | |
| Block | Lot | Total Acreage | Constrained Acreage | Unconstrained Acreage | Density | Total Dwelling Units | 20% Set Aside | Property Location |
| 210 | 32 | 31.0 | 8.8 | 20.0 | 9.6 | 192 | 38 | 111 SPRING ST ("BD") |
| Total | | 31.0 | 8.8 | 20.0 | - | 192 | 38 | - |
| AH Affordable Housing Overlay District | | | | | | | | |
| Block | Lot | Total Acreage | Constrained Acreage | Unconstrained Acreage | Density | Total Dwelling Units | 20% Set Aside | Property Location |
| 210 | 21 | 15 | 0 | 15 | 9.5 | 143 | 29 | 41 SPRING STREET |
| 210 | 23 | 2.3 | 0 | 2.3 | 9.5 | 22 | 5 | 165 SPRING ST |
| 210 | 33 | 5 | 1 | 4 | 9.5 | 38 | 8 | 48 |

| | | | | | | | | |
|--------------|------|--------------|-------------|-------------|----------|-------------|-------------|-----------------------|
| | | | | | | | | COMMERCE DR |
| 340 | 4 | 2 | 0 | 2 | 16.0 | 32 | 7 | 98 FLORAL AVE |
| 340 | 6 | 5.7 | 0.7 | 5 | 17.0 | 85 | 17 | 150 FLORAL AVE |
| 340 | 8 | 5.1 | 0.1 | 5 | 9.5 | 48 | 10 | 140 SPRING ST |
| 221 | 2.01 | 10 | 0 | 10 | 15.0 | 150 | 30 | 700 CENTRAL AVE |
| 221 | 6 | 6.5 | 0 | 6.5 | 16.0 | 104 | 21 | 121 CHANLON RD |
| Total | | 52 | 2 | 50 | - | 622 | 127 | - |
| TOTAL | | 111.1 | 10.6 | 98.3 | - | 1209 | 244* | - |

* This number does not include rental bonus credits which may become available through development.

9. By the implementation of the Plan Summary, and as set forth above, the Borough will have taken all steps necessary to satisfy the legal requirements for addressing its entire Third Round RDP and Unmet Need.
10. The Borough shall meet its Third Round Obligation in accordance with the following standards:
 - 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 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 of the Third Round Obligation shall be met through rental units; at least half of all rental units meeting the rental obligation shall be available to families.
 - d. At least half of the units addressing the Third Round Obligation 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 Third Round fair share obligation, inclusive of both mechanisms to address the RDP and the unmet need. The parties agree that the age-restricted units may be satisfied fully through unmet need.
 - f. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units constructed, as of July 1, 2008 or subject to preliminary or final site plan approval, to be very low-income units, with half of the very low income units being available to families.
11. 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), FSHC (510 Park Blvd, Cherry Hill, NJ); the Latino Action Network (PO Box 943, Freehold, NJ 07728); East Orange NAACP (PO Box 1127, East Orange, NJ 07019); Newark NAACP (PO Box 1262, Newark, NJ 07101); Morris Co. NAACP (PO Box 2256, Morristown, NJ 07962); Elizabeth NAACP (PO Box 6732, Elizabeth, NJ 07206), and the New Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units along with links to application forms, copies of which shall be mailed on request. 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.
12. All units shall include the required bedroom distribution, shall be governed by controls on affordability, and shall be 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 such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its Plan shall adopt and/or update appropriate implementing

ordinances in conformance with standard ordinances and guidelines developed by COAH and modified to reflect the terms of this settlement agreement to ensure that the provisions of this paragraph are satisfied.

a. 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:

i. Regional income limits shall be established for the region in which the Borough is located (i.e. Region 2) 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 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 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.

- ii. The 2018 income limits attached hereto as Exhibit E are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2018 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.
- iii. 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 (i) 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.

13. 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.
14. As an essential term of this settlement, within one hundred twenty (120) days of Court's approval of this Settlement Agreement, the Borough shall adopt an amended Housing Element/Fair Share Plan and shall introduce such ordinance or ordinances providing for amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the Plan.
15. The parties agree that if a decision of a court of competent jurisdiction in Union County, a final decision of a New Jersey Appellate Court which creates binding precedent, 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) a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent of the total prospective Third Round Obligation established in this agreement (i.e. determined to be 253 or less), and if the calculation or determination is memorialized in an unappealable final judgment or action by the legislature or administrative agency, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, New Providence shall be obligated to implement the fair share plan attached hereto, including

by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all compliance mechanisms referenced herein; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that 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 prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

16. The Borough shall prepare and submit a spending plan to the Special Master and the court for approval, with FSHC being provided an opportunity to comment on or object to the spending plan. The parties hereto agree that the spending plan, once approved, shall be valid. 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 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, 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; however, the Borough may redact or remove any personally identifying information on individual assistance raising privacy concerns from the website.

17. 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.

18. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year 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 its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the 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 the 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 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.

19. FSHC, Linde, and BD are hereby deemed to have party status in this matter and to have intervened in this matter as defendants without the need to file a motion to intervene or an answer or other pleading.

20. This settlement 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 make its planner available as a witness at this hearing.
21. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County.
22. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. 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.
23. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
24. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
25. 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.
26. 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.
27. 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; and, (iii) has provided documentation authorizing the signing of the agreement on behalf of the party.

28. **Successors Bound:** The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors, affiliates and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates and assigns.
29. 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.
30. 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.
31. 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.
32. 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 or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected 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:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Phone: (856) 665-5444
E-mail: kevinwalsh@fairsharehousing.org

TO LINDE:

Linde North America, Inc.
Greg Schuetz, Esq., Head of Legal - Americas
200 Somerset Corporate Blvd.
Suite 7000
Bridgewater, NJ 08807
Phone: 908-771-1012
E-mail: greg.schuetz@linde.com

With a copy to:

Craig M. Gianetti, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07054
Phone: (973) 966 8053
E-mail: cgianetti@daypitney.com

TO BECTON DICKINSON:

James G. Webber, Esq.
Dempsey, Dempsey & Sheehan
387 Springfield Avenue
Summit, NJ 07901
Phone: 908-277-0388
E-mail: jwebber@ddsnjlaw.com

Becton, Dickinson and Company
1 Becton Drive, MC 112
Franklin Lakes, NJ 07417
Attention: Real Estate Americas
Phone: _____
E-mail: _____

With a Copy to:

Becton, Dickinson and Company
1 Becton Drive, MC 089
Franklin Lakes, NJ 07417
Attention: Legal Department
Phone: _____
E-mail: _____

TO THE BOROUGH: Paul R. Rizzo, Esq
DiFrancesco, Bateman, et. al.
15 Mountain Blvd.
Warren, NJ 07059
Phone (908) 757-7800
Email: prizzo@newjerseylaw.net

With a Copy to: Douglas R. Marvin, Administrator
Borough of New Providence
360 Elkwood Ave.
New Providence, NJ 07974
Phone: (908) 665-1400
E-mail: dmarvin@newprov.org

Agreed on behalf of the Borough of New Providence, with the authorization of the Governing Body:

Dated: _____

Agreed on behalf of Fair Share Housing Center with the authorization of the Board of Trustees.

Dated: _____

Agreed on behalf of Linde North America, Inc.

Dated: _____

Agreed on behalf of Becton Dickinson and Company

Dated: _____

Exhibit A

Order on Fairness Hearing

January 30, 2017

Steven A. Kunzman, Esq. (Arty I.D. # 012731981)
Our File No.: C22117

**DIFRANCESCO, BATEMAN, KUNZMAN,
DAVIS, LEHRER & FLAUM, P.C.**

15 Mountain Boulevard
Warren, New Jersey 07059
Tele: 908-757-7800
Attorneys for Borough of New Providence

FILED

JAN 30 2017

**KAREN M. CASSIDY
A.J.S.C.**

IN THE MATTER OF THE ADOPTION OF
THE BOROUGH OF NEW PROVIDENCE
FOR A JUDGMENT OF COMPLIANCE OF
ITS THIRD ROUND HOUSING ELEMENT
AND FAIR SHARE PLAN.

SUPERIOR COURT OF NEW JERSEY
CIVIL DIVISION: UNION COUNTY
DOCKET NO: UNN-L-2442-15

Civil Action

**ORDER ON FAIRNESS AND
PRELIMINARY COMPLIANCE HEARING**

THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Borough of New Providence (hereinafter referred to as “Borough” or “New Providence”), Steven A. Kunzman, Esq., appearing, in the presence of Joshua Bauers, Esq., attorney for Interested Party, Fair Share Housing Center, Inc. (hereinafter “FSCH”), by way of Fairness and Preliminary Compliance Hearing held pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) and Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984); and the Court having considered the report dated January 8, 2017 and the testimony of the Court-appointed Special Master, Elizabeth McKenzie, P.P., P.A., and the Court having considered the Settlement Agreement entered into between

New Providence and FSHC dated December 13, 2016, including the Borough's draft summary Housing Element and Fair Share Plan annexed to the Settlement Agreement; and the Court having considered the testimony and presentations of the Borough, the Special Master, FSHC at the time of the hearing; and good cause having been shown;

IT IS on this 30th day of January 2017, **ORDERED** that:

1. The Court finds that the Settlement Agreement between New Providence and FSHC is fair and adequately protects the interests of low and moderate income persons within New Providence's housing region based upon the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel litigation; and

2. The Court preliminarily finds that the Borough's proposed draft summary Housing Element and Fair Share Plan is facially constitutionally compliant and provides a fair and reasonable opportunity for New Providence to meet its obligation under Mount Laurel IV, subject to New Providence's satisfaction of the list of conditions set forth in the Court's Special Master's report of January 8, 2017, and subject to the Court's approval by way of a Final Compliance Hearing to be held as hereinafter set forth; and

3. A Final Compliance Hearing is hereby scheduled for May 17, 2017 at 10:00 a.m., by which time New Providence shall have complied with the above-referenced conditions, shall have submitted to the Special Master for review and comment New Providence's Housing Element and Fair Share Plan and all Resolutions and Ordinances required to implement the Housing Element and Fair Share Plan, and shall have provided for the Planning Board of the Borough to finalize and adopt the Housing Element and Fair Share Plan and the New Providence

Borough Council to endorse same and to adopt all necessary effectuating Resolutions and Ordinances; and

4. The temporary immunity previously granted to New Providence herein is hereby extended until and through the day following the completion of the Final Compliance Hearing herein scheduled and the entry of an Order granting a Final Judgement in this matter; and

5. A copy of this Order shall be served upon all parties on the service list in this matter with 7 days of New Providence's receipt thereof.



HONORABLE KAREN CASSIDY, A.J.S.C.

Exhibit B

Borough – Linde Agreement

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (“*Agreement*”) is made this _____ day of _____, 2019, by and between:

BOROUGH OF NEW PROVIDENCE, a municipal corporation of the State of New Jersey, County of Union, having an address at 360 Elkwood Avenue, New Providence, New Jersey 07974 (“*Borough*”);

and

LINDE NORTH AMERICA INC., a Delaware corporation with a business address of 200 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807 (“*Linde*” or “*Developer*”).

Collectively, the Borough and Linde shall be referred to as the “Parties.” All references to Linde or Developer shall include its successors, affiliates and assigns.

WHEREAS, in compliance with the New Jersey Supreme Court’s decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 7, 2015, the Borough filed a Declaratory Judgment Action with the Superior Court of New Jersey (“*Court*”), entitled In the Matter of the Application of the Borough of New Providence, County of Union, Docket No. UNN-L-2442-15, seeking a Judgment of Compliance and Repose approving its Compliance Plan (as defined herein), in addition to related relief (“*Compliance Action*”); and

WHEREAS, in connection with the Compliance Action, the Borough submitted an affordable housing compliance plan / fair share plan (“*Compliance Plan*”) pursuant to a settlement agreement with Fair Share Housing Center (“*FSHC*”) dated December 31, 2016 (“*FSHC Settlement*”) and approved by the Court by Order dated January 30, 2017; and

WHEREAS, Linde objected to the Fair Share Settlement prior to the Compliance Hearing on the FSHC Settlement via correspondence to the Honorable Karen Cassidy, A.J.S.C., dated August 23, 2017 (the “*Objection*”); and

WHEREAS, Linde, through affiliated entities, is the current owner of two properties within the Borough, located at (1) 100 Mountain Avenue and identified as Block 370, Lot 1 on the Borough tax map (“*100 Mountain Property*”); and (2) 575 Mountain Avenue and identified as Block 320, Lot 18.01 (“*575 Mountain Property*”) (together referred to as “*Linde Properties*”); and

WHEREAS, Linde desires to develop the 100 Mountain Property with an age-restricted inclusionary development consisting of 297 multifamily units (townhouses and apartments) of which at least fifty-nine (59) units will be restricted for affordable housing (“*Inclusionary Development*”) as generally shown in the concept plan attached as **Exhibit A** (“*Inclusionary Concept Plan*”) and the draft ordinance, attached as **Exhibit B** (“*Inclusionary Ordinance*”); and

WHEREAS, Linde desires to develop the 575 Mountain Property with a continuing care retirement community (the “*CCRC Development*”) consisting of independent senior apartments and healthcare units as shown on the concept plan attached as **Exhibit C** (“*CCRC Concept Plan*”); and

WHEREAS, as a result of several negotiations, the parties have come to a resolution of the Objection by including the proposed Inclusionary Development in the Borough’s Compliance Plan and by zoning for the CCRC Development on the 575 Mountain Property; and

WHEREAS, as part of the resolution, the Borough desires to effectuate a rezoning of the 100 Mountain Property and the 575 Mountain Property to permit the Inclusionary Development and the CCRC Development, respectively; and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Borough’s Round 3 affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the Prior Round regulations (N.J.A.C. 5:92-1, et seq. and N.J.A.C. 5:93-1 et seq.) of the New Jersey Council on Affordable Housing (“*COAH*”), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“*UHAC*”), and all other applicable law; and

WHEREAS, the Borough is also entering into an agreement with Fair Share Housing Center (“*FSHC*”), and Becton Dickinson Company, Inc., and Linde for settlement of the Compliance Action, (“*FSHC Agreement*”); and

WHEREAS, the Parties wish to enter into this Agreement (“*Linde Agreement*”) which shall be included and made part of the *FSHC Agreement*, setting forth the terms, conditions, responsibilities and obligations of the Parties; and

NOW, THEREFORE, in consideration of the promises and the mutual obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto, each binding itself, its successors, affiliates and assigns, agree as follows:

ARTICLE I – PURPOSE

1.1 The purpose of this Agreement is to create a realistic opportunity for the construction of the Inclusionary Development on the 100 Mountain Property and the CCRC Development on the 575 Mountain Property, and to generate affordable housing credits for the Borough to apply to any Prior Round and Round 3 obligation assigned to it.

1.2 The Parties agree that the Properties are available, approvable, developable and suitable for the proposed Inclusionary Development and CCRC Development as those terms are used in this Agreement. No representations are made as to sewer capacity associated with the development of this site except that the Borough is not aware of any sewer capacity issues for these Properties.

ARTICLE II – BASIC TERMS AND CONDITIONS

2.1 In the event of any legal challenges to the Approvals (as defined below), including a challenge by any third party, the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or of the Inclusionary Development or CCRC Development, the Parties must negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement; however, the affordable units shall not be less than 59 for the Inclusionary Development, and the CCRC Development shall be permitted in accordance with the CCRC Concept Plan (**Exhibit C**).

2.2 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. Those issues are addressed in the FSHC Agreement, which shall include this Linde Agreement; however, the rezoning contemplated herein shall be completed prior to a Judgment of Compliance.

ARTICLE III – REZONING

3.1 100 Mountain Property: The 100 Mountain Property will be rezoned to permit inclusionary age-restricted housing as an overlay zone, which will be in addition to the current zoning of the 100 Mountain Property, substantially in accordance with the Inclusionary Concept Plan (**Exhibit A**) and Inclusionary Ordinance (**Exhibit B**). The Inclusionary Development shall be further subject to the following requirements:

3.1.1 Proposed Development. The age-restricted inclusionary residential development of the 100 Mountain Property shall be developed with a density allowing up to 297 residential units, 59 of which shall be deed restricted for affordable housing.

3.1.2 Amenities. The residential development of the 100 Mountain Property shall be designed to have the amenities typical for age restricted inclusionary developments.

3.1.3 Parking. Parking for the Inclusionary Development shall comply with the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1, et seq. (“RSIS”).

3.2 575 Mountain Property: The 575 Mountain Property will be rezoned to permit, as a principal permitted use, the CCRC Development which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330, et seq. and N.J.A.C. 5:19-1.1 et. seq, as an overlay zone, which will be in addition to the current zoning of the 575 Mountain Property, substantially in accordance with CCRC Concept Plan (**Exhibit C**) and shall be subject to the following requirements:

3.2.1. Definitions.

a. Continuing Care Retirement Community “CCRC”:

i) a development of residential living units for residents who are sixty-two (62) years of age or older, or for couples, one of whom is at least sixty-two (62) years of age, that provides “continuing care” as defined in N.J.S.A. 52:27D-332.c.

b. Health Care Unit (“HCU”) shall consist of either:

i) An assisted living unit or memory care unit, each of which is an apartment configured for those needing assisted living or memory care, and (i) designed to house 1 or 2 related or unrelated individuals, and (ii) having an entrance door opening onto an interior corridor which is a common area; or

ii). A skilled nursing room substantially similar to a room in a nursing home, where the CCRC provides health care under medical supervision and continuous nursing care for residents who do not require the degree of care and treatment which a hospital provides, and (a) designed to house 1 or 2 related or unrelated individuals requiring nursing or rehabilitation care, and (b) having an entrance door opening onto an interior corridor which is a common area.

c. Independent Living Unit (“ILU”):

An Independent Living Unit (“ILU”) is a self-contained apartment with full kitchen facilities and private bath comprising an independent self-contained dwelling unit (i) designed to house individuals not needing assisted living services, memory care, rehabilitation care, or nursing care, and (ii) having an entrance door opening onto an interior corridor.

3.2.2 Density. The permitted density shall be 17 units per acre, subject to the provisions set forth in Section 3.2.3, below, and with the number of units being calculated in the following manner:

- a. Each ILU shall be considered to be one unit.
- b. Each HCU shall be considered to be one-third (1/3) of a unit.

3.2.3 Increased Density: The Developer may elect to develop up to, but not greater than, 24 units per acre, in accordance with the method of calculation set forth above in Section 3.2.2.a and b; however, in addition to the Non-Residential Development Fee, as set forth in N.J.S.A. 40:55D-8.3, et. seq., the Developer agrees to pay an additional Three Thousand Dollars (\$3,000.00) for each ILU over 17 units per acre and an Additional Development Fee of One Thousand Dollars (\$1,000.00) for each HCU over 17 units per acre, as set forth more particularly below in this Section

3.2.3 (collectively, the "Additional Fee") into the Borough's Affordable Housing Trust Fund. One half of the payment of the Additional Fee shall be due at the time of the application for the building permit, and the balance shall be due prior to the issuance of the certificate of occupancy. The computation of density over which the Additional Fee becomes payable, and payment of the Additional Fee, shall be in accordance with the following provisions:

- A. Threshold Density. First, one shall compute the number of units over which the Additional Payment becomes due (the "Threshold Density"). Assuming that total area of the 575 Mountain Property is 24.6 acres, the Threshold Density shall be 418 units (= 17 units/acre x 24.6 acres).
- B. Counting of Units. Second, the number of units is then computed as the CCRC Development Proceeds, with each ILU counting as one unit and each HCU counting as 1/3 of a unit.
- C. Payments of Additional Fee. After the Threshold Density is reached then:
 - (i) For each ILU thereafter constructed, an Additional Fee of Three Thousand Dollars (\$3,000) shall be paid (i.e., \$1,500 prior to building permit and \$1,500 prior to certificate of occupancy) since, as set forth above, each ILU is the equivalent of one unit for which the Additional Fee is payable.
 - (ii) For each HCU thereafter constructed, an Additional Fee of One Thousand Dollars (\$1,000) per HCU shall be paid (i.e., \$500 for each HCU prior to building permit and \$500 for each HCU prior to certificate of occupancy) since, as set forth above, each HCU is the equivalent of one-third (1/3) of a unit for which the Additional Fee is payable.
- D. Examples: The following examples assume total acreage of 24.6 acres and build-out of 540 ILU's and 108 HCU's.
 - (i) Example 1 – Calculation of Permitted Density. The 540 ILU's and 108 HCU's constitute, in accordance with Section 3.2.2, a total of 576 units for purposes of calculating permitted density (576 units = 540 ILU's + (108 HCU's/3)). At a maximum density of 24 units/acre, the total number of permitted units, based on assumed acreage of 24.6 acres, is 590 (=24 units/acre x 24.6 acres). Therefore, the 540 ILU's and 108 HCU's are permitted, as

they represent 576 units, i.e., less than the 590.

- (ii) Example 2 – Calculation of Additional Fee. If 108 HCU's are first built, then since they each count as 1/3 of a unit, they will be treated as 36 units (=108/3). Therefore, the Threshold Density of 418 units will be reached upon construction of 382 ILU's (= 418 – 36). Thereafter, when an additional 158 ILU's are constructed, for the above total of 540 (= 382 + 158), the Additional Fee of \$3,000/ILU shall be paid for each of said 158 ILU's in excess of the Threshold Density, for a total Additional Fee of \$474,000 (= 158 ILU's x \$3,000/ILU), all payable at one-half prior to building permit and one-half prior to certificate of occupancy.
- (iii) Example 3 – Calculation of Additional Fee. If 418 ILU's are initially constructed then the Threshold Density of 418 units will have been reached. If thereafter, 108 HCU's are built, an Additional Fee of \$1,000/HCU shall be paid for each of said 108 HCU's, i.e., an Additional Fee of \$108,000. And if thereafter, 122 ILU's are constructed, bringing the total to 540 ILU's (= 418 + 122), then an Additional Fee of \$3,000/ILU shall be paid for each of said 122 ILU's, i.e., an Additional Fee of \$366,000 (= 122 ILU's x \$3,000/ILU), for a total Additional Fee of \$474,000 (= \$108,000 + \$366,000), all payable at one-half prior to building permit and one-half prior to certificate of occupancy.
- (iv) Example 4 – Maximum Additional Fee. If 540 ILU's and 108 HCU's are constructed on 24.6 acres, then the maximum, total Additional Fee shall be Four Hundred Seventy-Four Thousand Dollars (\$474,000) computed as follows:

$$\begin{aligned} (540 \text{ ILU's} + (108 \text{ HCU's}/3) - 418) \times \$3,000 &= \\ (540 + 36 - 418) \times \$3,000 &= \\ 158 \times \$3,000 &= \$474,000 \end{aligned}$$

3.2.4 Parking: Parking for the ILU's within the CCRC Development shall comply with Table 4.4 in the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1, et seq. (“RSIS”), at 1.3 parking spaces per ILU where the number of bedrooms per unit is not shown on the plan, N.J.A.C. 5:21-4.14; and parking for all HCU's shall be governed by the Nursing Home requirement in New Providence Ordinance 2013-11 (1 parking space for each 2 beds), all subject to such relief as may be granted under RSIS,

including de minimis relief under N.J.A.C. 5:21-3.1.

3.3 No Density Variances: The density permitted for the Properties as set forth in this Article III is the maximum density permitted on the Properties. The Developer understands and agrees that it will not request an increase or variance from the permitted density.

ARTICLE IV - DEVELOPER OBLIGATIONS

4.1 Obligation To File Development Applications In Accordance With Ordinance, Concept Plan And The Elevations: It is the intention of the Parties to have the Developer file development applications, which will be consistent with the Inclusionary Concept Plan, attached as **Exhibit A**, the Inclusionary Ordinance, attached as **Exhibit B**, and the CCRC Concept Plan attached as **Exhibit C**. Except as provided in Section 3.3, nothing herein shall preclude the Developer from seeking reasonable variances, waivers or *de minimis* exceptions as part of the development applications.

4.2 Obligation To Maintain Affordable Housing Set-Aside And To Comply With All Affordable Housing Laws. Developer shall have an obligation to deed-restrict at least 59 of the residential units in the Inclusionary Development as very low, low or moderate income affordable units ("*Affordable Units*"). The 59 Affordable Unit obligation is based upon a 20% set-aside of the 297 total residential units in the Inclusionary Development; however, the Developer shall provide 59 Affordable Units even if the Developer elects to develop less than 297 units on the 100 Mountain Property. The Borough expects and supports the development of 297 age restricted units on the 100 Mountain Property.

4.3 Obligation To Comply With All Affordable Housing Laws And Maintain Creditworthiness of Units.

4.3.1 Developer and the Borough's affordable housing administrative agent ("*Administrative Agent*") shall work to ensure that the Affordable Units are constructed, marketed, and administered in accordance with applicable laws related to affordable housing in New Jersey, including the UHAC regulations and COAH's Prior Round regulations (collectively "*Affordable Housing Laws*"). All necessary steps shall be taken to ensure the continuing creditworthiness of all affordable units provided for under this Agreement. Such steps shall include but not be limited to (i) complying with the bedroom distribution of the affordable units; (ii) the split of very-low income units, low-income units, and moderate-income units; (iii) the phasing of the market units with the affordable units in accordance with all applicable regulations; (iv) appropriately marketing the affordable units; (v) screening potential applicants for the units to ensure that they qualify as very-low, low-, or moderate-income households; (vi) pricing the units at affordable rates; (vii) ensuring that the affordable units are properly deed restricted; (viii) enforcing any and all other UHAC requirements and the requirements of the Court, COAH, or a successor agency as to the affordability of the units; (ix) addressing any reasonable monitoring requirements as may be imposed on the Borough

with respect to the affordable units. For the purposes of this subparagraph, Parties assume current UHAC regulations and COAH Round 2 regulations (N.J.A.C. 5:93-1, et seq.) shall control.

- 4.3.2 Each Affordable Unit shall remain subject to the requirements of the 30 year control period until the municipality in which the unit is located elects to release the unit from such requirements, the release of which shall not be unreasonably withheld or delayed by the municipality upon request for release from the Developer. Prior to such a municipal election to release a restricted unit must remain subject to the requirements for a period of at least 30 years. The Borough may seek to extend said restrictions, if permitted by applicable law, for such a period as may be permitted therein, subject to the consent of and upon terms acceptable to the Developer or any successor or assign.
- 4.3.3 The Parties agree that the Affordable Units are to be included in the Compliance Plan to be approved and credited by the Court in the Compliance Action and treated as age restricted affordable rental units, and that the credits will be applied as the Borough deems fit.
- 4.3.4 Developer will cooperate with and support the Borough's subsequent request for entry of a judgment of compliance provided that the Borough's Compliance Plan includes the Property consistent with this Agreement and will support the settled upon fair share, including any vacant land analysis and/or realistic development potential analysis.
- 4.3.5 Developer shall comply with the following distribution of very-low, low-, and moderate-income units in the Inclusionary Development: very-low (at least 13%) / low (up to 37%) / moderate (no more than 50%). The breakdowns shall therefore be as follows: at least 8 will be very-low, up to 22 will be low, and up to 29 will be moderate.

4.4 Obligation to Cooperate: Developer shall have the obligation to cooperate with Borough to advance the intent and purposes of this Agreement.

ARTICLE V - OBLIGATIONS OF THE BOROUGH

5.1 The Rezoning Ordinance: Upon the Court's approval of any settlement with Fair Share Housing Center to resolve the Compliance Action, the Borough shall, as set forth below, introduce and adopt the Ordinances that will permit the development of the Properties reasonably consistent with the (i) the Inclusionary Concept Plan, for development on the 100 Mountain Property, and (ii) the CCRC Concept Plan, for the development on the 575 Mountain Property within the time required by the Court. It is agreed that with respect to the Inclusionary Development, the Borough will be introducing the draft Inclusionary Ordinance attached as **Exhibit B** for adoption unless otherwise agreed to between the Parties.

Upon introduction of such Ordinances (the "Rezoning Ordinances"), the Borough shall

refer the Rezoning Ordinances to the Planning Board for review and recommendation in accordance with the provisions and requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et. seq (“*MLUL*”) or otherwise in accordance with the time frames that may be set by the Court at the Fairness Hearing. The Rezoning Ordinance for the 100 Mountain Avenue Property shall be adopted by the Borough prior to the Borough seeking and the court granting a Judgement of Compliance and Repose.

5.2 Obligation To Include Project Into Borough’s Affordable Housing Plan. The Borough shall incorporate the Inclusionary Development and, as appropriate, the CCRC Development, into the Compliance Plan for which it seeks the Court’s approval.

5.3 Obligation To Cooperate: The Borough acknowledges that in order for Developer to construct the Inclusionary Development on the 100 Mountain Property, and the CCRC Development on the 575 Mountain Property, the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which have jurisdiction over the Parties to this Agreement and the development contemplated hereby, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Planning Board, the County of Union, the Union County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, “*Required Approvals*”). The Borough agrees to use all reasonable efforts to assist the Developer in its undertakings to obtain the Required Approvals.

5.4 Obligation to Maintain Proposed Re-Zoning of Property: The Borough agrees that if a decision of a court of competent jurisdiction in Union 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 affordable housing obligation for the Borough for the period 1987-2025 that would lower the Borough’s affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Borough shall nonetheless implement the Rezoning Ordinances contemplated by this Agreement and take all steps necessary to support the development of the Inclusionary Development and CCRC Development contemplated by this Agreement.

5.5 Obligation to Refrain From Imposing Cost-Generative Requirements. The Borough recognizes that any development approvals for the 100 Mountain Property under this Agreement contemplate the development of an “inclusionary development” within the meaning of the Mount Laurel doctrine and as set forth in N.J.A.C. 5:93-10.1 and 5:93-10.2.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Obligation To Comply with State Regulations: The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development, the CCRC Development, or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

6.2 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the introduction and adoption of the Rezoning Ordinances, the Required Approvals, the development of the Linde Properties consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.3 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (“*Notice[s]*”) shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by facsimile or electronic mail. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. 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 LINDE: Linde North America, Inc.
Greg Schuetz, Esq., Head of Legal - Americas
200 Somerset Corporate Blvd.
Suite 7000
Bridgewater, NJ 08807
Phone: 908-771-1012
E-mail: greg.schuetz@linde.com

With a copy to: Craig M. Gianetti, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07054
Phone: (973) 966 8053
E-mail: cgianetti@daypitney.com

TO THE BOROUGH: Paul R. Rizzo, Esq
DiFrancesco, Bateman, et. al.
15 Mountain Blvd.
Warren, NJ 07059
Phone (908) 757-7800
Email: prizzo@newjerseylaw.net

With a Copy to: Douglas R. Marvin, Administrator
Borough of New Providence
360 Elkwood Ave.
New Providence, NJ 07974
Phone: (908) 665-1400
E-mail: dmarvin@newprov.org

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.

ARTICLE VII - MISCELLANEOUS

7.1 Necessity of Required Approvals: The Parties recognize that the site plans required to implement the Inclusionary Development and CCRC Development provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough Council, as appropriate, and in accordance with their duties and the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, it being understood that any such action shall be in accordance with procedures established by law.

7.2 Default. In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived in writing by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available.

7.3 Severability: Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions 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.

7.4 Successors Bound: The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors, affiliates and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates and assigns. The following partial assignments of the rights hereunder are permitted:

- a. The rights and obligations under this Agreement pertaining to the Inclusionary Development may be assigned to and assumed by an assignee who is a prospective developer of the Inclusionary Development on the 100 Mountain Property.

b. The rights and obligations under this Agreement pertaining to the CCRC Development may be assigned to and assumed by an assignee who is a prospective developer of the CCRC Development on the 575 Mountain Property.

In the event of any such partial assignment, the assignee shall have only the rights and obligations pertaining to the development which was the subject of such assignment, and any default by Linde or another assignee with respect to the other development shall not affect, or in any way impair, the rights or obligations of the non-defaulting assignee with respect to its development. For example, default by an assignee of rights pertaining to the Inclusionary Development shall not affect the rights or obligations of an assignee of rights pertaining to the CCRC Development; and each such assignee shall have the cure rights set forth under Section 7.2 with respect to its development.

7.5 Governing Law: This Agreement shall be governed by and construed by the laws of the State of New Jersey.

7.6 No Modification: This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties or, in the event of a partial assignment reference above in Section 7.4, signed by the assignee whose rights and obligations are affected by such modification, amendment, or alteration.

7.7 Effect of Counterparts: This Agreement may be executed simultaneously in one (1) or more facsimile or PDF counterparts, each of which shall be deemed an original. Any facsimile or PDF counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth in this Agreement.

7.8 Voluntary Agreement: 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 possesses 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 in this Agreement.

7.9 Interpretation: 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: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

7.10 Schedules: 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.

7.11 Entire Agreement: 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, except for those terms and conditions set forth in the Agreement entered into between the Borough, Fair Share Housing Center, and Becton Dickinson, and Linde, in settlement of the Borough's Compliance Action, to which this Agreement is appended and included [**Erickson needs to review that other agreement**].

7.12 Intentionally Left Blank

7.13 Effective Date: The effective date ("*Effective Date*") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

7.14 Waiver. The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

7.15 Captions. The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

7.16 Construction, Resolution of Disputes. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Union County. Service of any complaint may be effected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

7.17 Conflicts. The Parties acknowledge that this Agreement cannot be affected by the Compliance Action or any amendments to the Borough's Compliance Plan or Zoning Ordinances, and this Agreement shall control with respect to those matters as applied to the Property. As to any inconsistencies between the Required Approvals and this Agreement, the Required Approvals shall control.

7.18 Recitals. The recitals of this Agreement are incorporated by reference.

[*Signature Page to Follow.*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:

LINDE NORTH AMERICA, INC.

Name:

By: _____
Name:
Title:

Date: _____, 2019

Attest:

BOROUGH OF NEW PROVIDENCE,
A Municipal Corporation of the
State of New Jersey

Name:

By: _____
Name:
Title:

Date: _____, 2019

EXHIBIT A

CONCEPT SITE PLAN FOR INCLUSIONARY DEVELOPMENT



DEVELOPMENT PROGRAM

TOTAL ACRES: 21.5 ACRES
 TOTAL DU per AC: 13.8 DU/AC
 TOTAL NO. DU: 297 DU
 TOWNHOMES:
 • TYPICAL UNIT

APARTMENTS:
 • BUILDING TYPE "A"
 • BUILDING TYPE "B"
 • BUILDING TYPE "C"
 • BUILDING TYPE "D"
 • TYPICAL UNIT

BUILDING HEIGHT
 • TOWNHOMES
 • BUILDING TYPE "A, B"
 • BUILDING TYPE "C, D"

PARKING:
 • TOWNHOMES (2.4 SP/DU)
 • APARTMENTS (1.8 SP/DU)
 • GARAGE SURFACE
 • CLUBHOUSE

28'x55' (INTERIOR)
 32'x55' (END)

247 DU
 112 DU
 59 DU
 32 DU
 44 DU
 1,050 SF

2 1/2 STORIES
 4 STORIES RESIDENTIAL
 OVER 1 LEVEL PARKING
 3 STORIES RESIDENTIAL
 OVER 1 LEVEL PARKING

502 SP
 123 SP
 451 SP
 10 SP



AGE-RESTRICTED COMMUNITY
 DATE: 08/13/2018

100 MOUNTAIN AVE
 NEW PROVIDENCE, NEW JERSEY
 XXXXXX
 COPYRIGHT © MINNO & WASKO ARCHITECTS AND PLANNERS



MINNO WASKO
 ARCHITECTS AND PLANNERS
 100 MOUNTAIN AVE
 NEW PROVIDENCE, NJ 07954
 TEL: 908.461.1234
 WWW.MWARCHITECTS.COM

EXHIBIT B

DRAFT REZONING ORDINANCE

Planned Adult Community (PAC)

- A. The purpose of the Planned Adult Community (PAC) District, which applies to Block 370 Lot 1, is to provide areas within the Borough designated for age-restricted, multi-family housing, including age-restricted affordable housing opportunities. The intent of this zone is to be developed as a single entity. Any development of this site shall respect the character of the existing single-family residential neighborhood that surrounds the site to the north and west. Additionally, buffers and screening along the perimeter of the site shall be provided pursuant to the standards herein. The Township's steep slope ordinance shall not apply to the PAC District. Should any other section of the Borough's Land Use Development Ordinance (Chapter 310 of the Borough's Revised General Code) contradict with the standards herein, this ordinance section shall take precedence.

The development of the PAC shall be substantially consistent with the attached concept plan, dated August 13, 2018.

B. Definitions:

AGE-RESTRICTED UNIT: A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of household is a minimum of 62 years, or 55 and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

C. Principal permitted uses:

- a. Age-restricted multi-family dwellings
- b. Age-restricted townhouses

D. Permitted accessory uses:

- a. Private parks and playgrounds
- b. Private recreation buildings and facilities
- c. Garages and off-street parking facilities
- d. Structured parking beneath the multi-family housing.
- e. Uses customary and incidental to the principal use

E. The following bulk standards shall apply:

- a. Minimum Lot Area: 21 Acres
- b. Minimum Building Setbacks:
 - i. From Mountain Avenue: 100 feet for 3 residential stories with and without underground parking; 150 for 4 residential stories with and without underground parking.
 - ii. From Southgate Road: 40 feet
 - iii. From Ryder Way: 80 feet

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- iv. From internal streets: 12 feet
 - c. Minimum Distance Between Buildings: No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.
 - d. Minimum Parking Setback for Multi-Family Residential Buildings: Surface parking areas shall be set back a minimum of 12 feet from the principal building.
 - e. Townhouse Driveways: Driveways shall be a minimum of 18 feet between the sidewalk and garage.
 - f. Maximum Building Height, measured in accordance with §310-6 of the Borough's Zoning and Land Use Ordinance:
 - i. Townhouses: 2.5 stories / 35 feet
 - ii. Multi-Family buildings: 3 stories / 40 feet; 4 stories / 50 feet. The height may increase another story and 15 feet for multi-family buildings with structured parking.
 - iii. Clubhouse: 25 feet
 - iv. All other accessory structures: 15 feet
 - g. Maximum Building Coverage: 25%
 - h. Maximum Impervious Coverage: 50%
- F. Minimum Off-Street Parking: same as RSIS
- G. Maximum Density: 297 dwelling units.
- H. Affordable Housing
- a. 59 rental units shall be set-aside for very-low, low- and moderate-income households.
 - b. The affordable units shall be located throughout the multi-family units and not clustered in a concentrated location.
 - c. The development of all affordable units shall comply with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et. seq. or any successor legislation.
 - d. A minimum of 50% of all affordable units shall be affordable to very-low and low-income households. All other affordable units shall be affordable to moderate-income households.
 - e. A minimum of 13% of all affordable units will be affordable to very-low income households.
 - f. All aspects of the affordable housing component of the tract, including but not limited to monitoring, advertisement, eligibility, controls, and restrictions, shall be in conformance with the UHAC regulations and the court approved affordable housing ordinance.

I. Buffers

- a. There shall be a buffer area that surrounds the entire perimeter of the site. The buffer area shall be 100 feet off Mountain Avenue, 40 feet off Southgate Road, and 80 feet off Ryder Way.
- b. Buffering shall be located to minimize headlights of vehicles, noise, light from structures, the movement of people and vehicles and to shield activities from adjacent properties when necessary. Buffering may include but not be limited to fencing, walls, evergreens, shrubs, landscaping, berms, rocks, boulders, open space, ponds, steep slopes, deciduous trees or combinations thereof to achieve the stated objectives.
- c. Extensive buffering shall be required where intensive land uses abut less intensive uses (i.e. single-family to townhouses/multifamily). Existing natural vegetation, if appropriate for the above stated purposes, shall be retained.
- d. No buildings, signs, structures (including stormwater facilities), storage of materials, roadways or parking shall be permitted within the buffer areas, with the exception of access roads into the development and freestanding signs, in accordance this section.

J. Signage

- a. The provisions of §310-33, entitled "Signs" and amended by Ordinance 2011-20, shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-33 and this ordinance, this ordinance shall take precedence.
- b. One freestanding sign is permitted at each main entrance to the development. Each sign shall not exceed 50 square feet per side. The sign may or may not be illuminated.
- c. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
- d. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.
- e. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract's other signage.
- f. Numbers indicating the addresses of the multi-family residential buildings are permitted to be hung on the exterior walls, not to exceed 8 square feet and not to protrude more than 6 inches from the building's surface.

K. Additional Standards

- a. Two or more principal uses are permitted on a single tract.
- b. The multi-family units shall include a recreational amenity, such as a clubhouse or senior center.
- c. To the extent feasible, the existing forested areas of the tract shall be maintained.

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- d. Access roads to the tract shall be permitted from Southgate Road and/or Ryder Way. No access road shall be permitted to extend from Mountain Avenue.
- e. Surface parking lots shall include landscaped medians and/or islands.
- f. For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
- g. Multi-family buildings shall not contain more than 135 units.
- h. No building shall be in excess of 400 feet in length. However, any building in excess of 200 feet shall have significant articulation and offsets so as to not create a monolithic and overbearing aesthetic.
- i. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure may have a basement/cellar that contains a family room or recreation room.
- j. Generator power is required for the multi-family clubhouse and elevators

L. Design Standards

Any deviation from the following standards shall trigger waiver relief.

- a. Landscaping.
 - i. Any landscaping which, within 2 years of planting dies for any reason, shall be replaced by the developer(s) at their expense by way of written agreement.
 - ii. A minimum 3-foot wide landscape strip (e.g. grass and street trees) shall be provided between the curb and the sidewalk (where required by RSIS) along all internal streets.
 - iii. Street trees shall be planted 40 feet apart within the landscape strip along all internal streets.
 - iv. Street trees shall be at least 2.5 inch caliper at planting. Evergreen trees shall be at least 6 feet tall at planting. All trees shall adhere to the American Standards for Nursery Stock.
 - v. All areas not occupied by buildings, roadways, parking areas, patios, walkways, and/or any other impervious surface shall be adequately landscaped.
 - vi. No landscaping at any location shall interfere with site triangles.
- b. Exterior Lighting.
 - i. Exterior lighting fixtures shall not create excessive glare or light levels or direct light onto neighboring buildings or properties.
 - ii. All building entrances to multi-family structures shall be illuminated by exterior lighting.
 - iii. For parking lots, light poles shall not exceed 18 feet in height.

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- iv. Street lights shall be provided along all internal streets at a height not to exceed 18 feet.

c. Circulation.

- i. The development of the tract shall take into consideration both the vehicular and pedestrian movement of the site.
- ii. Sidewalks shall be provided throughout the entire tract (where required by RSIS), providing access to all structures and parking areas.
- iii. Sidewalks shall have a minimum clearance of 4 feet in width. Sidewalk clearance must not be less than the minimum levels set by the Americans with Disabilities Act.
- iv. All intersections shall contain handicapped accessible ramps.
- v. All intersections shall contain crosswalks.
- vi. All crosswalks shall be a minimum of 5 feet in width.

d. Utilities.

- i. Utilities shall be as visually unobtrusive as possible.
- ii. Meters and access panels shall be integrated with street and building design.
- iii. Transformers and primary and back-up generators shall be located interior to the building or vaulted underground within the pavement area of an internal street.
- iv. The existing substation shall be appropriately screened by landscaping.

e. Refuse and Recycling.

- i. For multi-family construction:
 - 1. No refuse and recycling storage and collection areas shall be permitted between the front of a building and the street.
 - 2. All outside refuse and recycling storage areas shall conform to the perimeter setbacks as established herein.
 - 3. Outdoor refuse and recycling containers shall be screened with a durable enclosure, so as to not be visible by interior roads or adjacent properties. Landscaping and/or fencing may be used as additional screening measures.
 - 4. Refuse and recycling areas shall be designed to appropriately contain all refuse generated on site.
 - 5. There shall be clear and unobstructed access to all refuse and recycling areas for collection vehicles.

f. Sustainable Building Design

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1. Development shall comply with Energy Star Guidelines.

EXHIBIT C
CONCEPT SITE PLAN FOR CCRC DEVELOPMENT



| Legend | |
|--------------------|------------------------|
| [Yellow Box] | Residential Buildings |
| [Orange Box] | Community Space |
| [Light Orange Box] | Assisted Living |
| [Dashed Line] | Exposed Parking Garage |

MASTER PLAN
 1"=180'-0" @ 11 X 17
 2018-05-08

LANTERN HILL
 ERICKSON SENIOR LIVING
 LANTZ-BOGGIO ARCHITECTS



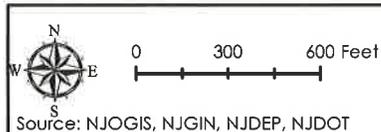
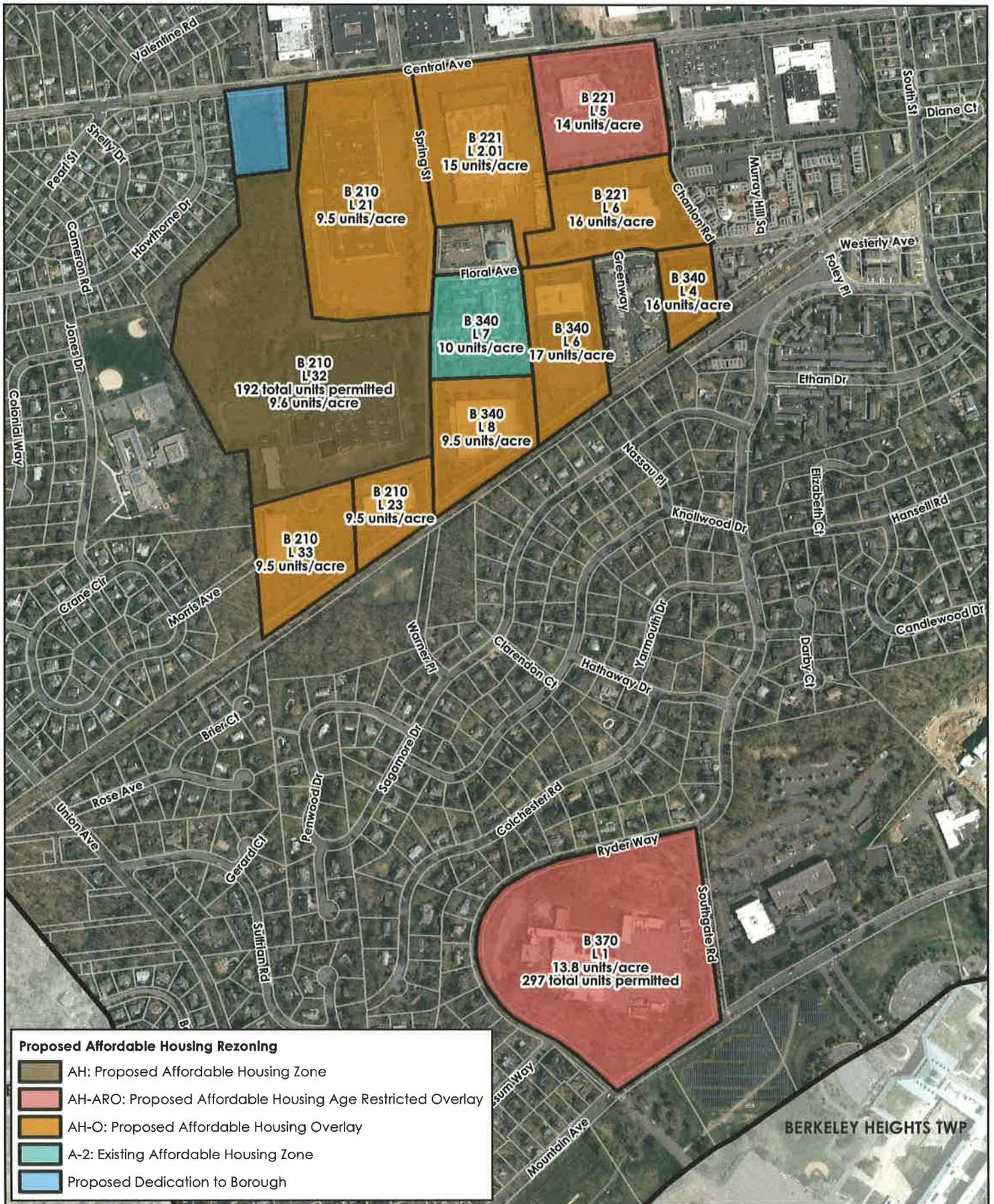
Exhibit C

**Site Plan of Becton Dedication to
Borough for Soccer Field**

Exhibit D

Map of Affordable Housing

Rezoning



Proposed Rezoning
New Providence, NJ

BERKELEY HEIGHTS TWP

Exhibit E

REGIONAL INCOME LIMITS

Prepared by *Affordable Housing Professionals of New Jersey (AHPNJ) - April 2018*

2018 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

| | | 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 | Median | \$63,597 | \$68,140 | \$72,682 | \$81,767 | \$90,853 | \$94,487 | \$98,121 | \$105,389 | \$112,657 | \$119,926 | | |
| | Moderate | \$50,878 | \$54,512 | \$58,146 | \$65,414 | \$72,682 | \$75,589 | \$78,497 | \$84,311 | \$90,126 | \$95,940 | 2.2% | \$175,679 |
| | Low | \$31,798 | \$34,070 | \$36,341 | \$40,884 | \$45,426 | \$47,243 | \$49,060 | \$52,695 | \$56,329 | \$59,963 | 5.52% | |
| | Very Low | \$19,079 | \$20,442 | \$21,805 | \$24,530 | \$27,256 | \$28,346 | \$29,436 | \$31,617 | \$33,797 | \$35,978 | | |
| Region 2 | Median | \$66,755 | \$71,523 | \$76,291 | \$85,828 | \$95,364 | \$99,179 | \$102,993 | \$110,622 | \$118,252 | \$125,881 | | |
| | Moderate | \$53,404 | \$57,218 | \$61,033 | \$68,662 | \$76,291 | \$79,343 | \$82,395 | \$88,498 | \$94,601 | \$100,705 | 2.2% | \$182,955 |
| | Low | \$33,377 | \$35,762 | \$38,146 | \$42,914 | \$47,682 | \$49,589 | \$51,497 | \$55,311 | \$59,126 | \$62,940 | 1.22% | |
| | Very Low | \$20,026 | \$21,457 | \$22,887 | \$25,748 | \$28,609 | \$29,754 | \$30,898 | \$33,187 | \$35,475 | \$37,764 | | |
| Region 3 | Median | \$75,530 | \$80,925 | \$86,320 | \$97,110 | \$107,900 | \$112,216 | \$116,532 | \$125,164 | \$133,796 | \$142,428 | | |
| | Moderate | \$60,424 | \$64,740 | \$69,056 | \$77,688 | \$86,320 | \$89,773 | \$93,226 | \$100,131 | \$107,037 | \$113,942 | 2.2% | \$205,458 |
| | Low | \$37,765 | \$40,463 | \$43,160 | \$48,555 | \$53,950 | \$56,108 | \$58,266 | \$62,582 | \$66,898 | \$71,214 | 2.37% | |
| | Very Low | \$22,659 | \$24,278 | \$25,896 | \$29,133 | \$32,370 | \$33,665 | \$34,960 | \$37,549 | \$40,139 | \$42,728 | | |
| Region 4 | Median | \$69,447 | \$74,407 | \$79,368 | \$89,289 | \$99,209 | \$103,178 | \$107,146 | \$115,083 | \$123,020 | \$130,956 | | |
| | Moderate | \$55,557 | \$59,526 | \$63,494 | \$71,431 | \$79,368 | \$82,542 | \$85,717 | \$92,066 | \$98,416 | \$104,765 | 2.2% | \$186,616 |
| | Low | \$34,723 | \$37,204 | \$39,684 | \$44,644 | \$49,605 | \$51,589 | \$53,573 | \$57,541 | \$61,510 | \$65,478 | 5.19% | |
| | Very Low | \$20,834 | \$22,322 | \$23,810 | \$26,787 | \$29,763 | \$30,953 | \$32,144 | \$34,525 | \$36,906 | \$39,287 | | |
| Region 5 | Median | \$61,180 | \$65,550 | \$69,920 | \$78,660 | \$87,400 | \$90,896 | \$94,392 | \$101,384 | \$108,376 | \$115,368 | | |
| | Moderate | \$48,944 | \$52,440 | \$55,936 | \$62,928 | \$69,920 | \$72,717 | \$75,514 | \$81,107 | \$86,701 | \$92,294 | 2.2% | \$161,977 |
| | Low | \$30,590 | \$32,775 | \$34,960 | \$39,330 | \$43,700 | \$45,448 | \$47,196 | \$50,692 | \$54,188 | \$57,684 | 5.05% | |
| | Very Low | \$18,354 | \$19,665 | \$20,976 | \$23,598 | \$26,220 | \$27,269 | \$28,318 | \$30,415 | \$32,513 | \$34,610 | | |
| Region 6 | Median | \$51,085 | \$54,734 | \$58,383 | \$65,681 | \$72,979 | \$75,898 | \$78,817 | \$84,655 | \$90,494 | \$96,332 | | |
| | Moderate | \$40,868 | \$43,787 | \$46,706 | \$52,545 | \$58,383 | \$60,718 | \$63,054 | \$67,724 | \$72,395 | \$77,066 | 2.2% | \$136,680 |
| | Low | \$25,543 | \$27,367 | \$29,192 | \$32,840 | \$36,489 | \$37,949 | \$39,409 | \$42,328 | \$45,247 | \$48,166 | 0.00% | |
| | Very Low | \$15,326 | \$16,420 | \$17,515 | \$19,704 | \$21,894 | \$22,769 | \$23,645 | \$25,397 | \$27,148 | \$28,900 | | |

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 is 2.2% (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, or 2017 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. 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).

Note: Since the Regional Income Limits for Region 6 in 2017 were higher than the 2018 calculations, the 2017 income limits will remain in force for 2018 (as previously required by N.J.A.C. 5:97-9.2(c)).