

AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF RUMSON AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.

**In the Matter of the Borough of Rumson, County of Monmouth,
Docket No. MON-L-2483-15**

THIS SETTLEMENT AGREEMENT ("Agreement") made this 16th day of January 2020, by and between:

BOROUGH OF RUMSON, a municipal corporation of the State of New Jersey, County of Monmouth, having an address at 80 East River Road, Rumson, New Jersey 07760 (hereinafter the "Borough" or "Rumson");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Borough simultaneously sought and ultimately secured an Order protecting Rumson from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by the Borough remains in place as of the date of this Agreement; and

WHEREAS, the Trial Court appointed Francis J. Banisch, III, P.P., A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

WHEREAS, with Mr. Banisch's assistance, Rumson and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the Trial Court, 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 low and moderate income households; and

WHEREAS, at this time and at this particular point in the process resulting from the 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 present and prospective need, instead of doing so through plenary adjudication of the present and prospective need.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Borough and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Rumson's Rehabilitation Obligation is 29.
2. Rumson's Prior Round (1987-1999) Obligation is 268.
3. Rumson's Gap + Prospective Need or Round 3 (2015-2025) Obligation is 335.
4. FSHC and the Borough agree that Rumson does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the Court, that the 335-unit Round 3 obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a reduction of Dr. Kinsey's April 2017 calculation of the Borough's Gap (1999-2015) + Prospective Need (2015-2025) fair share obligations.
5. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master Banisch, Rumson has a combined Prior Round and Round 3 Realistic Development Potential (hereinafter "RDP") is 51. This leaves the Borough with a remaining combined Prior Round and Round 3 "unmet need" of 552. See the Borough's Vacant Land Analysis, which is attached hereto as Exhibit A. As indicated in the Vacant Land Analysis, 142 Bingham Avenue is excluded from the RDP as the parcel will be used for conservation purposes as permitted by N.J.A.C. 5:93-4.2(e)5(ii). Within one calendar year of the Court entering a final Judgment of Compliance and Repose, or at the latest within sixteen (16) months of the entry of an order approving the fairness of this Agreement, the Borough shall demonstrate that this site is owned, leased or licensed or in any other manner operated by a county, municipality or tax-exempt, nonprofit organization pursuant to N.J.A.C. 5:93-4.2(e)5(ii). If there is any dispute about the Borough's satisfaction of N.J.A.C. 5:93-4.2(e)5(ii), nothing herein shall preclude the Borough from asserting that the site should be excluded from the vacant land inventory on any other basis or FSHC from asserting it should be included in the vacant land inventory and generate realistic development potential.
6. **Satisfaction of Rehabilitation Obligation:** The Borough will address its Rehabilitation Obligation of twenty-nine (29) by participating in the Monmouth County Rehabilitation Program, or by hiring a separate entity to run a local rehabilitation program. The Borough may also complete a survey prior to a final Compliance Hearing to determine if the number of units in need of rehabilitation can be reduced from the twenty-nine (29) unit obligation.

7. **Satisfaction of the Borough's RDP:** The Borough has a combined Prior Round and Round 3 RDP of 51, which it will satisfy as follows:

Compliance Mechanisms 51 RDP Third Round Obligation (1999-2025)	VL Units Senior/SN	VL Units Family	Credits	Bonuses	Total
Market to Affordable					
Completed			2		2
Proposed			9		9
Inclusionary Development - Complete					
Washington Street (family rental)			1	1	2
Lafayette Mews (family rental)			2	2	4
100% Municipally Sponsored					
Carton Street: BCUW (4 SN beds + 10 family rentals)	2	3	14	10	24
North Street: BCUW (4 SN beds + 6 senior rentals)			10		10
Total Credits Provided	2	3	38	13	51
				Balance	0
Micro-requirements			Required		Provided
Min. Total Family- 50% of obligation-surplus-bonus			19		19
Min. Very Low Required - 13% of units developed after 7/17/2008			5		5
Min. Very Low Family Required- 50% of Total VL			3		3
Min. Total Rental - 25% of obligation			13		19
Min. Family Rental - 50% of total rental			7		13
Maximum Senior - 25% of obligation			12		6

□ **Two (2) Constructed And Occupied Market To Affordable Units:**

- i. One (1) moderate-income affordable family for-sale unit from an existing house located at 19 North Street (Block 46, Lot 15).
- ii. One (1) low-income for-sale affordable family unit from the constructed and occupied Habitat for Humanity house located at 68 Blackpoint Road (Block 54, Lot 5).

- **Nine (9) Proposed Market To Affordable Units:** The Borough will produce nine (9) market to affordable units for families on properties to be identified and purchased by the Borough at a later date. The Borough's already successful Market to Affordable Program allows the Borough to use development fee revenues to acquire identified properties, bring the properties up to code as needed, and deed restrict the units for affordable housing. The Borough agrees to provide five (5) units on or before July 1, 2022, and an additional four (4) units on or before July 1, 2024. In the event the Borough has not met the July 1, 2022 deadline for five (5) units, it agrees to identify in writing the alternative compliance mechanisms for the remainder of the nine (9) family units within three (3) months of the July 1, 2022 date. The compliance mechanism shall be one hundred percent (100%) affordable development if the market-to-affordable program does not provide the units by July 1, 2022. Construction of the replacement one hundred (100%) affordable units shall start within one year of

the July 1, 2022 date and be completed by July 1, 2024. The Borough agrees to take whatever steps are needed to ensure that all nine (9) units are completed and available for occupancy on or before July 1, 2024.

- **One (1) Affordable Family Rental Unit From The 16 Washington Street Project:** One (1) low-income affordable family rental unit from a constructed and occupied house located at 16 Washington Street (Block 8, Lot 5). The affordable unit was constructed as part of a three-unit project approved by the Zoning Board on the site, which also includes a constructed and occupied two-unit market rate duplex.
- **Two (2) Affordable Family Rental Units From The 7 Lafayette Street Inclusionary Project:** The constructed and occupied 7-unit Lafayette Mews inclusionary project, located at 7 Lafayette Street (Block 8, Lot 4), has delivered two (2) affordable family rental units.
- **Fourteen (14) Unit One Hundred Percent (100%) Affordable Carton Street Project:** This project, located on Carton Street (Block 59, Lot 10), will be constructed and run by a non-profit developer utilizing payment in lieu funds from developer Yellow Brook Property Co., LLC (hereinafter "Yellow Brook"), and additional monies from the Borough's Affordable Housing Trust Fund. The Borough will enter into a settlement agreement with Yellow Brook, which will allow for the construction of up to eighteen (18) total market rate units to be constructed on 132 Bingham Avenue (Block 94, Lot 5), and up to sixteen (16) total market rate units to be constructed on 91 Rumson Road (Block 124, Lot 31), in exchange for the aforementioned payment in lieu funds. Yellow Brook will convey the Carton Street site to the Borough as part of its settlement agreement with the Borough, and the Borough will turn the site over to a non-profit to facilitate this project. The parties agree as follows with regard to the timing of this development:
 - This development is a hybrid one hundred percent (100%) affordable development and inclusionary development. Five (5) of the units are not attributable to, and will not be funded by, Yellow Brook. Nine (9) of the units are off-site units that will be substantially, if not entirely, funded by the Yellow Brook inclusionary development. In view of the unique characteristic of this development, the parties in this Agreement agree to a modified approach for timing of the development.
 - With regard to the five (5) affordable units that are not going to be funded by Yellow Brook, Rumson agrees to ensure that construction starts on those five (5) units within two (2) years of the Court's issuance of an order approving this Agreement. Construction shall be completed within three (3) years of the Court's issuance of an order approving this Agreement. This deadline shall not be extended for any reason related to the Yellow Brook development. The Borough's obligation to provide a realistic

opportunity for these five (5) units exists independent of the Yellow Brook development.

- With regard to the nine (9) units that are going to be funded by the Yellow Brook inclusionary developments, the parties agree that the timing of these developments is linked to the inclusionary units as follows:
 - Yellow Brook has agreed to provide payments in lieu of affordable housing in the amount of \$350,000 for each of nine (9) units of affordable housing. The Borough agrees to require the timing of the payments in lieu to be in accordance with N.J.A.C. 5:93-5.6(d), and represents that Yellow Brook has agreed to that requirement. The development is anticipated to provide a total of \$3.15 million in payments in lieu, with \$1.7 million being credited for the donation by Yellow Brook of a parcel on Carton Street that will be used for the development of affordable housing. The Borough shall require payments by Yellow Brook to be made on a per unit basis at the time when an affordable unit would have been required to be completed under COAH's phasing schedule in N.J.A.C. 5:93-5.6(d) ("Phasing Schedule"). Developer's credit for the Carton Property in the amount of \$1.7 million represents payment towards 4.85 affordable units. Therefore, Yellow Brook will not have to make any additional payments until it reaches the seventy-five percent (75%) completion threshold in the Phasing Schedule of the combined projects. Notwithstanding the Phasing Schedule, the Borough's obligation to develop the nine (9) units of affordable housing shall be as follows: Upon the issuance of the building permit for fifty percent (50%) of the market-rate units to be developed by Yellow Brook, the Borough agrees to assume all of the responsibility to complete the nine (9) units of affordable housing without regard to the receipt of further funds from Yellow Brook, provided that the municipality may be reimbursed for any funds advanced for the development from additional payment in lieu funds paid by Yellow Brook. It is anticipated that the funds received from Yellow Brook will be sufficient to support the development of the nine (9) units attributable to the Yellow Brook developments, but the obligation to fund and complete the Yellow Brook development is irrevocable following the issuance of building permits for half of the market rate units to be developed by Yellow Brook, and the Borough agrees to ensure that the nine (9) units of affordable housing are completed at that point. Construction of the nine (9) units of affordable housing shall start within four (4) months of the issuance of the building permit for fifty percent (50%) of the market-rate units to be developed by Yellow Brook and be completed within twelve (12) months

thereafter. In the event the construction or other costs for the nine (9) Yellow Brook units exceed the funds received or to be received, the Borough shall provide any necessary additional funding.

- **Ten (10) unit 100 percent Affordable North Street Project:** This project, located on North Street (Block 45, Lot 4), will be constructed and run by an experienced non-profit developer. The Borough is currently in negotiations with the owner of the property owner to purchase the parcel. The Borough agrees to produce the 10 units by July 31, 2022.
- **13 rental bonus credits.**

8. **Non-inclusionary developments:** In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough will meet these obligations during the compliance phase of this matter. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. With the exception of compliance mechanisms that are recognized to have different timing requirements in this Agreement, the schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough will meet these obligations during the compliance phase of this matter. The parties agree that the requirements to provide a stable alternative source of funding, such as municipality bonding, as required by this paragraph, do not apply to the nine (9) units attributable to the Yellow Brook development. The funding requirements for those units are addressed in Paragraph 7 of this Agreement.

9. **Satisfaction of “unmet need”:** The Borough agrees to address its combined Prior Round and Round 3 RDP of 552 “unmet need” through the following mechanisms:

- **Faith Institution Overlay Zone:** The Borough will establish an affordable housing overlay zone that will require a twenty percent (20%) affordable housing set-aside over the following religious institutions:
 - **Holy Cross Church:** This is a 7.6-acre site (Block 104, Lot 1.01), which is located in Borough’s R-2 district. The overlay will allow for a project to be developed at a density of 6 du/acre, and will require a twenty percent (20%) affordable housing set-aside.

- First Presbyterian Church: This is a 2-acre site (Block 10, Lot 6), which is located in Borough's R-4 district. The overlay will allow for a project to be developed at a density of 8 du/acre, and will require a twenty percent (20%) affordable housing set-aside.
 - Congregation B'Nai Israel: This is a 5.5-acre site (Block 81, Lot 6), which is located in Borough's R-1 district. The overlay will allow for a project to be developed at a density of 6 du/acre, and will require a twenty percent (20%) affordable housing set-aside.
- **Downtown GB/NB/POB Overlay Zone**: The Borough will establish an affordable housing overlay over the GB, NB and POB Zones in the Borough, as depicted in the map attached hereto as Exhibit B, as follows:
 - Enhanced Mixed-Use: The Borough has an existing overlay zone in the GB, NB and POB zone districts that permits the development of residential dwellings on the second floor where the underlying zoning does not permit mixed-use of commercial and residential. The current overlay zone ordinance, which was adopted on June 12, 2018, requires a twenty percent (20%) affordable housing set-aside. The Borough will amend the ordinance to permit a third story for residential dwellings, provided certain architectural design standards require a setback of the third story from the right-of-way.
 - Expanded Zone Area: The northern GB district will be expanded to include Block 4, Lots 1, 2, 3, 4.01 and 6, 7, 8.01 and 9.01 and Block 3, Lots 1.01, 3, 4, 5, 6 and 7.
 - Multi-Family Option: The Borough will create a new option in this overlay zone that permits multi-family residential dwellings as a permitted principal use, which is currently not permitted in the underlying zone and the existing overlay zone. The maximum density for the multi-family option will be set at 12 du/acre.
- **R-2 Overlay Zone**: The Borough will adopt an overlay zone on certain parcels in the R-2 district, as depicted on the map attached hereto as Exhibit B, to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 3 du/acre on a minimum lot size of 3 acres, but with an affordable housing set-aside equal to what would be required at a density of 6 du/acre. The Borough will subsidize the affordable housing units associated with a density that exceeds the 3 du/acre. The Borough will provide language in the ordinance that indicates that the maximum density will be 6 units per acre if funding for the affordable housing units is not made available. The overlay zone will require a twenty percent (20%) affordable housing set-aside.

- **R-4 Overlay Zone:** The Borough will adopt an overlay zone on certain parcels in the R-4 district, as depicted on the map attached hereto as Exhibit B, to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 8 du/acre on a minimum lot size of 1 acre. The overlay zone will require a twenty percent (20%) affordable housing set-aside.
- **R-5 Overlay Zone:** The Borough will adopt an overlay zone on certain parcels in the R-5 district, as depicted on the map attached hereto as Exhibit B, to permit multi-family housing (townhouse, duplex, triplex, quads) at a density of 12 du/acre on a minimum lot size of 1 acre. The overlay zone will require a twenty percent (20%) affordable housing set-aside.
- **10 Accessory Apartment Units:** The Borough's adopted an Accessory Apartment Ordinance on June 12, 2018. Any units created under this program up to 10 will be applied to the Borough's "unmet need." During the compliance phase of the litigation, the Borough will demonstrate that this program has been established and is ready to be implemented in accordance with N.J.A.C. 5:93-5.9, including through the adoption of a manual. The units must be affirmatively marketed. During the compliance phase of this litigation, the Borough will prepare all necessary manuals and forms for review by FSHC, the Special Master, and the Court prior to and at the Compliance Hearing.
- **Mandatory Set-Aside Ordinance ("MSO"):** The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance ("MSO"). The MSO will require a twenty percent (20%) affordable housing set-aside for residential developments comprised of five (5) or more dwelling units. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of Rumson or its Planning Board to grant such rezoning, variance, redevelopment designation or other relief. The MSO will not apply to any of the affordable housing overlay zones described in this Agreement.
- **Development Fee Ordinance:** The Borough has a COAH approved Development Fee Ordinance ("DFO") in place, which will be amended to reflect current DFO language.

10. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.

11. The Borough agrees to require thirteen percent (13%) of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very-low-income units (defined as units affordable to households earning thirty percent (30%) or less of the regional median income by household size), with half of the very-low income units being available to families.

12. Rumson will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

13. At least fifty percent (50%) of the units addressing the Borough's RDP and at least fifty percent (50%) of the units addressing unmet need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households. The municipality shall demonstrate satisfaction of these requirements during the compliance phase of this matter.

14. At least twenty-five percent (25%) of the Borough's RDP shall be met through rental units, including at least half in rental units available to families.

15. At least half of the units addressing the Borough's RDP in total must be available to families.

16. The Borough agrees to comply with COAH's Round 2 age-restricted cap of twenty-five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its Prior Round obligation and twenty-five percent (25%) of all units developed or planned to meet its Round 3 obligation.

17. The Borough and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002); the New Jersey State Conference of the NAACP; the Latino Action Network (P.O. Box 943, Freehold, NJ 07728); STEPS, OCEAN, Inc.; the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton branches of the NAACP; the Supportive Housing Association; and any interested party in this matter. As part of its regional affirmative marketing strategies during implementation of its Fair Share Plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

18. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be affordable to households earning at or below thirty-five percent (35%) of the regional median household income by household size, thirteen percent (13%) of affordable units in such projects shall be required to be affordable to households earning at or below thirty percent (30%) of the regional median household income by household size subject to Paragraph 11 herein, and all other applicable law. 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. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

19. Upon full execution of this Agreement, Rumson shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Rumson will place this

Agreement on file in the Borough's municipal building and file a copy with the Court 30 days prior to the Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in 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. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Within 120 days of the approval of this Agreement by the Court after a Fairness Hearing, Rumson will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and will adopt all ordinances required to be adopted as part of this Agreement, and will submit same to the Court, the Court Master, and FSHC for review. The Borough, FSHC, the Court Master and the Court may agree to extend this period of time for good cause shown. The Borough will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Rumson's adopted Housing Element and Fair Share Plan and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, Rumson shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Borough's Fair Share Plan so long as adopted in conformance with this Agreement. If the Fairness and Compliance Hearings result in approval of this Agreement and the Borough's Fair Share Plan, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain Rumson's immunity from all Mount Laurel lawsuits through July 2, 2025.

20. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Rumson's Gap (1999-2015) + Prospective Need (2015-2025) obligation is decreased to 268 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Gap (1999-2015) + Prospective Need (2015-2025) obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the Borough's "unmet need", and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Gap + Prospective Need for Round 3, the Borough may carry over any resulting surplus credits to Round 4.

21. The Borough shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and FSHC agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to

N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of In re Tp. Of Monroe, 442 N.J.Super. 565 (Law Div. 2015) (aff'd 442 N.J.Super. 563). Upon approval of its Spending Plan, the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

22. On the first anniversary of the approval of this Agreement after a final Judgement of Compliance and Repose Order is entered by the Court, 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 FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

23. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$31,000 within forty-five (45) days of the Court's approval of this Agreement following the entry of a an order approving this Agreement after a Fairness Hearing. The Borough may delegate this obligation to one or more third parties, but if payment is not received by FSHC within forty-five (45) days after the approval of this agreement by the Court following a Fairness Hearing the Borough shall make the payment to FSHC within 10 days of FSHC's written request.

24. The Fair Housing Act includes two provisions regarding actions 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 FSHC, 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 FSHC, 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. To be clear, the midpoint review is less than a year away and the expectation should be no more than the Borough will comply with this Agreement.
- 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 the approval of the Borough's Housing Element and Fair Share Plan via the entry of a Judgment of Compliance and Repose Order, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, 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 FSHC on the issue of whether the municipality has complied with its very-low-income housing obligation under the terms of this settlement.

- c. In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

25. This Agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Monmouth County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

26. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the Trial Court unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the Parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

27. 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.

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

29. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Borough and FSHC.

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

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

32. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the

Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent 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 persons executing it.

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

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

35. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

36. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC 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 to all interested parties and 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
Telecopier: (856) 663-8182
Email: kevinwalsh@fairsharehousing.org

TO THE BOROUGH: Erik C. Nolan, Esq.
Surenian, Edwards & Nolan, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

Martin M. Barger, Esq.
The Reussille Law Firm
149 Avenue at the Commons, Suite 1
Shrewsbury, NJ 07702
Phone: (732) 741-1800
Telecopier: (732) 758-9724
Email: Bargerlaw@aol.com

**WITH A COPY TO THE
BOROUGH ADMINISTRATOR:**

Thomas S. Rogers, Administrator
Borough of Rumson
80 East River Road
Rumson, NJ 07760
Phone: (732) 842-3300
Telecopier: (732) 219-0714
Email: trogers@rumsonnj.gov

**WITH A COPY TO THE
SPECIAL MASTER:**

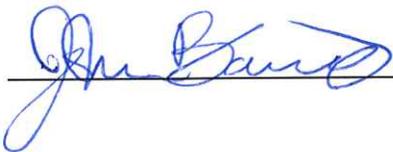
Francis J. Banisch, III, PP/AICP
Banisch Associates
111 Main Street
Flemington, NJ 08822
Phone: (908) 782-0835
Telecopier: (908) 782-7636
Email: frankbanisch@banisch.com

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.

IN WITNESS WHEREOF, the Parties hereto 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.

Witness/Attest:

FAIR SHARE HOUSING CENTER:



By: 
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

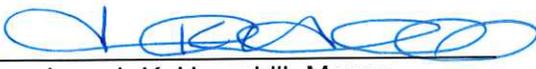
Dated: 1/8, 2020

Witness/Attest:

BOROUGH OF RUMSON:



Thomas S. Rodgers
Borough Clerk and Administrator

By: 
Joseph K. Hemphill, Mayor
On Behalf of the Borough of Rumson

Dated: January 16th, 2020

EXHIBIT A
VACANT LAND ANALYSIS

Borough of Rumson
Vacant Land Analysis (VLA) and Realistic Development Potential (RDP)

July 2018

Updated November 2019

Prepared by:

Kendra Lelie, PP, AICP, LLA

Kyle + McManus Associates

Introduction

The Borough examined all (1) vacant sites, (2) underutilized sites and (3) sites that are likely to redevelop from a relatively low density and/or intensity use to one that would create an opportunity for affordable housing if inclusionary development were in place within the remaining third round timeframe (1999-2025).

Identification of Vacant Land

This inventory reviewed July 2018 MOD IV Tax Data records for Vacant (Property Class: 1), Public (Property Class 15C), Farmland (Property Classes 3A and 3B) lands in the Borough. These sites were joined to available parcel data in a Geographic Information System (GIS) in order to review development capability and potential. The Borough then examined each parcel to evaluate its suitability as an affordable housing site.

Permitted Exclusions

COAH regulations (N.J.A.C. 5:93-4.2(c)) establish the criteria by which sites or portions of sites in a municipal vacant land inventory may be excluded from the calculation of the municipality's Realistic Development Potential (RDP). Environmentally sensitive areas may be excluded from consideration, including flood hazard areas, wetlands, and areas characterized by steep slopes (defined in COAH's regulations as slopes with a grade of greater than fifteen percent) that render a site or a portion of a site unsuitable for low and moderate income housing. In addition, small isolated lots having an insufficient acreage to generate an affordable housing set-aside as part of an inclusionary development may be excluded. Landlocked parcels or sites with limited or no access may also be excluded from the calculation of the RDP. Agricultural land may be excluded when the development rights to the land has been restricted by covenant. Historic and architecturally important sites may also be excluded if sites are listed on the State Register of Historic Places. Furthermore, properties identified on the Recreation and Open Space Inventory (ROSI) as part of the NJDEP Green Acres Program are also excluded.

RDP Calculation and Conclusion

Additionally, our office made every attempt to consolidate acreage of parcels that were contiguous and/or under similar ownership. Ultimately, densities were assigned to be cognizant of the Borough's obligation, as well as keeping the context/character of their surroundings and sound planning principles in mind. This analysis of vacant sites identified one (1) vacant parcel contributing to the RDP. The analysis of "underdeveloped" sites identified four (4) farm assessed lots. The analysis of sites likely to redevelop if zoned for inclusionary development identified three (3) parcels and two (2) additional parcels that were presented by a developer for

inclusionary housing.

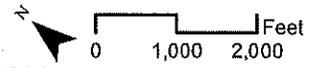
The following chart identifies each parcel by block and lot number, location, total parcel size, developable acreage, RDP density, total units and RDP units. In addition, a separate table is provided indicating those parcels that are vacant but fully constrained, Borough owned and farm assessed. The reason for exclusion is presented in the table.

Table 1: Sites Generating RDP						
Sites	Block / Lot	Address	Acres	Density (du/acre)	Total units	RDP
Vacant Land Suitable For Inclusionary Development						
1	103/1	50 Rumson Road	2.37 gross 2.37 net	6	14	3
Underdeveloped Sites Suitable For Inclusionary Development						
2	1/10	88 W. River Road	6.7 gross 6.52 net	6	39	8
3	1/16	72 W. River Road	8.5 gross 8.01 net	6	48	10
4	84/13	170 Rumson Road	6.23 gross 6.23 net	6	37	7
5	123/3.01	99 Rumson Road	6.44 gross 6.44 net	6	37	7
Sites Likely to Redevelop						
A	54/7	E. River Road	0.3 gross 0.3 net	12	4	0.75
B	54/8	E. River Road	0.16	12	2	0.4
C	59/10	Carton Street	0.52	20	10	2
D	94/5	Bingham Avenue	5.07 gross	6	30	6
E	124/31	91 Rumson Road	5.79 gross	6	34	6
					Total	51

Table 2: Sites Not Generating RDP					
Sites	Block / Lot	Address	Acres	Zoning	Comments
Municipal					
a	115/23.01	BUENA VISTA AVE.	0.89 net	POS	Bird Sanctuary Constrained Undersized On ROSI
Farm-Assessed					
b	94/9.01	142 Bingham Ave	29.47 gross 28.42 net	R-1	Municipal Conservation Purposes: within 3% total land area limit
Other Lots Considered					
c	45/4	89 E. River Road	0.34 gross	GB	Environmental Contamination
d	52/12	118 E. River Road	0.19 gross	GB	Lot is too small
Vacant Constrained Parcels					
j	76/6	6 N Ward Avenue	1.79 gross	R-2	Fully Constrained Flood Hazard Wetlands
k	108/12	2 Waterway	0.95 gross	R-2	Fully Constrained Flood Hazard
l	119/2	25 Heathcliff Road	1.33 gross	R-1	Fully Constrained Flood Hazard Wetlands
m	121/1.02	Broadmoor Drive	3.71 gross	R-1	Fully Constrained Flood Hazard Wetlands
n	121/1.03	Broadmoor Drive	2.74 gross	R-1	Fully Constrained Flood Hazard Wetlands
o	122/2	115 Rumson Road	1.49 gross	R-1	Constrained / House Flood Hazard Wetlands
p	128/5	9 Ave of Two Rivers	2.41 gross	R-1	Fully Constrained Flood Hazard
q	128/6.01	15 Ave of Two Rivers	2.27 gross	R-1	Fully Constrained Flood Hazard
r	128/10.1	Oyster Bay Drive	0.14 gross	R-1	Fully Constrained Flood Hazard
s	144/13	71 1/2 Waterman Ave	0.29 gross	R-5	Fully Constrained Flood Hazard
t	163/1	Island	3.84 gross	POS	Fully Constrained Flood Hazard Wetlands
u	164/1	Island	11.38 gross	POS	Fully Constrained Flood Hazard Wetlands
v	164/2	Island	5.24 gross	POS	Fully Constrained Flood Hazard Wetlands
w	168/1	Island	0.77 gross	POS	Fully Constrained Flood Hazard Wetlands

Golf Course					
x	112/1	163 RUMSON ROAD	125.5 gross 81.7 net	R-1	Private – Member owned

Highlands
Borough



Data Sources:
NJGIN Tax Parcels and MODIV information, Rumson Borough
Housing Element and Fair Share Plan, NJ Office of Information
Technology, Office of Geographic Information Systems

RDP Generating Sites (Vacant)

- 1 - 50 RUMSON ROAD
- 2 - 88 W RIVER ROAD
- 3 - 72 W RIVER ROAD
- 4 - 170 RUMSON ROAD
- 5 - 99 RUMSON ROAD
- A - 130 E. RIVER ROAD
- B - 128 E. RIVER ROAD
- D - 132 BINGHAM AVENUE
- E - 91 RUMSON ROAD

RDP Non-Contributing Sites

- (a) - BUENA VISTA AVENUE
- (b) - 142 BINGHAM AVENUE
- (c) - 80 RIVER ROAD
- (d) - 118 E. RIVER ROAD
- (x) - 163 RUMSON ROAD

Middletown Township

Sea Bright Borough

Monmouth Beach Borough

Oceanport Borough

Little Silver Borough

Fair Haven Borough

Vacant Constrained Land

- (j) - 6 N. WARD AVENUE
- (k) - 2 WATERWAY
- (l) - 25 HEATHCLIFF ROAD
- (m) - END OF BROADMOOR DRIVE
- (n) - END OF BROADMOOR DRIVE
- (o) - 115 RUMSON ROAD
- (p) - 9 AVE. OF TWO RIVERS SO.
- (q) - 15 AVE. OF TWO RIVERS SO.
- (r) - OYSTER BAY DRIVE
- (s) - 71 1/2 WATERMAN AVENUE
- (t) - ISLAND W. OF B.P.
- (u) - ISLANDS W. OF B.P.
- (v) - ISLAND
- (w) - ISLAND



Map Prepared by:
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Hopewell, NJ 08525
609-451-0013
lelie@kylemcmamus.com

Vacant Land Analysis

HOUSING ELEMENT AND FAIR SHARE PLAN

Borough of Rumson, Monmouth County, NJ

EXHIBIT B
OVERLAY ZONE MAP

