

# Housing Element and Fair Share Plan

City of Summit  
Union County, New Jersey

PREPARED FOR:

City of Summit Planning Board

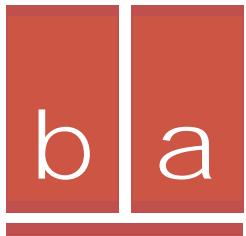
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COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

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City of Summit  
Union County, New Jersey

Prepared for City of Summit Planning Board  
BA #3052.06

The original document was appropriately signed and sealed on February 8, 2018 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners

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# Executive Summary

## Introduction

The 2018 Housing Element and Fair Share Plan (HE&FSP) Element of the Master Plan sets forth the manner in which the City of Summit addresses its constitutional obligation to provide for affordable housing. While the state of the State's determination of prospective (future) housing need continues to be fluid, given the fact that neither the Courts, COAH, nor the legislature have yet to develop a definitive set of housing-need numbers which are universally accepted, two sets of numbers have been promulgated. One is on behalf of a consortium of municipalities known as the Municipal Joint Defense Group, of which Summit is a part, and the other is on behalf of the Fair Share Housing Center (FSHC). Their statewide numbers vary dramatically, with the consultant for the municipal consortium (Econsult Solutions) estimating the City prospective affordable housing obligation is 183 units, while FSHC indicates the need is for 1,446 units.

Irrespective of those projected housing-need numbers, a Settlement Agreement reached between the City and FSHC has established that the City has a thirty-six unit realistic development potential (RDP), and an unaddressed Unmet Need.

The following Plan details the manner in which the City intends to address its affordable housing obligation. Specific details on how this obligation was calculated, the extent to which the City can meet this obligation, background data on the community's socio-economic and demographic characteristics, and information on the affordable housing process and the manner in which this Plan is to be implemented, are contained in the body of this report.

## Overview

The following section provides a brief introduction to the 2016 Housing Element and Fair Share Plan for the City of Summit, and includes an overview of the affordable housing issue, the State's Council on Affordable Housing (COAH), and the City's historic response to its affordable housing obligations.

### Historic Background

In 1975 the New Jersey Supreme Court determined, in So. Burlington Cty. NAACP v. Borough of Mount Laurel (Mount Laurel I) that every developing municipality in New Jersey had an affirmative obligation to provide for its fair share of affordable housing. In a subsequent decision in 1983 (Mount Laurel II), the Court acknowledged that the vast majority of municipalities had ignored this constitutional obligation. The Court in that decision refined this obligation to focus primarily on those municipalities that had portions of their boundaries within the growth area as delineated in a document that was the precursor to the State Development and Redevelopment Plan. The Court also called for the state legislature to enact legislation that would save municipalities from the burden of having the courts determine their affordable housing needs. The result of this decision was the adoption of the Fair Housing Act in 1985 as well as the creation of the New Jersey Council on Affordable Housing (COAH), which became the state agency responsible for overseeing the manner in which New Jersey's municipalities address their low and moderate income housing needs.

COAH proceeded to adopt regulations for the First Round obligation, which covered the years 1987 to 1993. It also established Second Round housing-need numbers that cumulatively covered the years 1987 through 1999. Under both the First and Second Rounds, COAH utilized what is commonly referred to as the "fair share" methodology.

COAH utilized a different methodology, known as "growth share," beginning with its efforts to prepare Third Round housing-need numbers. The Third Round substantive and procedural rules were first adopted in 2004. These regulations were challenged and in January 2007, the Appellate Division invalidated various aspects of them and remanded considerable portions of the rules to COAH with the directive to adopt revised rules.

In May 2008, COAH adopted revised Third Round regulations which were published and became effective on June 2, 2008. Coincident to this adoption, COAH proposed amendments to the rules they had just adopted, which subsequently went into effect in October 2008.

The rules and regulations adopted in 2008 were subsequently challenged, and in an October 2010 decision the Appellate Division invalidated the Growth Share methodology, and also indicated that COAH should adopt regulations pursuant to the Fair Share methodology utilized in Rounds One and Two. The Supreme Court affirmed this decision in September 2013, invalidating the third iteration of the Third Round regulations and sustaining the invalidation of growth share, and directing COAH to adopt new regulations pursuant to the methodology utilized in Rounds One and Two.

In October 2014 COAH failed to adopt their newly revised Third Round regulations, deadlocking with a 3-3 vote. The Fair Share Housing Center, who was a party in both the 2010 and 2013 cases, responded by filing a motion in aid of litigants' rights with the New Jersey Supreme Court. The Court heard the motion in January 2015. On March 20, 2015, the Court ruled that COAH was effectively dysfunctional, and consequently returned jurisdiction of affordable housing issues back to the trial courts where it had originally been prior to the creation of COAH in 1986.

The Court decision has now effectively created a process for municipalities like Summit, that had participated in the process but due to the inertia of COAH never obtained Third Round substantive certification of their HE&FSP. This process allows municipalities to file a declaratory judgment seeking to declare their HE&FSP constitutionally compliant or receive temporary immunity from affordable housing builders remedy lawsuits while they prepare a new or revised HE&FSP to ensure their plan continues to affirmatively address their local housing need, as may be adjusted by new housing-need numbers promulgated by the Court. The City filed a declaratory judgment and a brief in support of a motion for temporary immunity with the Court, and subsequently supported a Settlement Agreement with FSHC with respect to its affordable housing obligation and manner in which this obligation may be addressed. This settlement is detailed in the body of this report.

### City's Historic Responses to its Affordable Housing Obligation

The City of Summit has prepared a number of Housing Elements and Fair Share Plans over the years to address its affordable housing obligations. As noted above, COAH had originally adopted a 'fair share' methodology to determine housing-need numbers for all municipalities throughout the state in 1987 and again in 1994. The adopted, combined first and second round housing need numbers for Summit covering the years 1987-1999 indicated that the City had a 171 unit obligation.

The City's adopted Plans include a Plan adopted and also approved by the Court in 1991, followed by Plans adopted in 2000, 2005, 2007 and again in 2008, all in response to the ever-changing COAH determinations of housing need.

#### Prospective Need Affordable Housing Obligation and City's Response

The state of the State's determination of prospective need continues to be fluid, given the fact that neither the Courts, COAH, nor the legislature have yet to develop a definitive set of housing-need numbers which are universally accepted. Two sets of numbers have been promulgated. These include numbers prepared by Econult Solutions on behalf of a consortium of municipalities known as the Municipal Joint Defense Group, of which Summit is a part, and numbers prepared by Dr. David Kinsey on behalf of the Fair Share Housing Center. Their statewide affordable housing-need numbers vary dramatically. Econult estimated a statewide affordable housing need of approximately 54,000 units while FSHC estimated the need to be 201,000 units. For the City of Summit, their estimates are as follows:

<u>Indice</u>	<u>Econsult</u>	<u>FSHC</u>
Rehabilitation	149	131
Prior Need Obligation	171	171
Prospective Need Obligation	183	1,446

Ultimately, a Settlement Agreement which was executed by the City of Summit and FSHC sets forth the extent of Summit's prior need and prospective need obligations. The parties have agreed upon the following obligations for the City for the period from 1987 through July 1, 2025: a rehabilitation obligation of 131 units, a Prior Round obligation of 171 units, and a Prospective Need obligation of 567 units.

The Settlement Agreement also affirms, irrespective of the above, that the City's realistic development potential (RDP) is thirty-six units, which was based upon a vacant land adjustment (VLA) analysis as well as analyses of pending and existing affordable housing developments approved since 1999. In addition, the Settlement Agreement notes the manner in which the City is to address its affordable housing obligation (summarized below), and identifies its Unmet Need.

The manner in which the City has agreed to address its need is through the identification of a variety of existing affordable housing units and pending development applications, overlay zones and the use of existing multi-family zones in the City. To address RDP and unmet need the Plan seeks twenty credits for existing group homes, nineteen credits for other existing affordable housing units, and the use of ten credits from pending development applications. In addition, the Plan identifies a number of overlay zones wherein attached residential development with affordable housing set-asides may be developed, and the manner in which the City will attempt to 'facilitate' the development of up to fifty new affordable housing units on scattered sites as its effort to address unmet need. Furthermore, the Plan identifies the extensive areas in the City already zoned for multi-family housing. These are all detailed in the body of this report.

The following HE&FSP is divided into three sections. Section 1: Housing Element contains background data on the City's population and housing characteristics. Section 2: Fair Share Obligation describes the City's affordable housing obligation. Section 3: Fair Share Plan contains the City's Plan for meeting its affordable housing obligation.

## Section I: Housing Element

## A. COMMUNITY OVERVIEW

The City of Summit is located in the northwestern portion of Union County. It is bounded by seven municipalities, including the Borough of Chatham and the Township of Millburn to the north, the Township of Springfield to the east, the Borough of Mountainside and Township of Berkeley Heights to the south, and the Borough of New Providence and the Township of Chatham to the west.

The City is approximately six square miles in area, making it the seventh largest municipality in Union County. It is a fully developed community with very little vacant land remaining for development. The center of the City features an active central retail business district that contains 221 parcels and occupies an area of eighty acres, excluding rights-of-ways. The City is also home to the Overlook Medical Center which is located near the downtown, as well as several corporate campuses. In addition, the City has a variety of housing types, ranging from single-family dwellings on varied lot sizes to a variety of multi-family developments.

Regional access to Summit is provided by a number of county and state roadways, and also has public transit options. Routes 78 and 24 are located along the City's southerly and northeasterly property lines, and provide access to the region. In addition, NJ Transit's Morristown Line and Gladstone Branch merge at the Summit train station, which is located in the downtown area. The Summit Train station provides access to Secaucus Junction, Hoboken Terminal, and New York Penn Station.

## B. INVENTORY OF MUNICIPAL HOUSING STOCK

The following section of the Housing Element provides an inventory of the City's housing stock, as required by the Municipal Land Use Law (MLUL). This inventory details such housing characteristics as age, condition, purchase/rental value, and occupancy. It also details the number of affordable housing units available to low-and-moderate income households, as well as the number of substandard housing units capable of being rehabilitated.

1. Number of Dwelling Units. As shown on the accompanying table, the City's housing stock has experienced modest growth since 1990. In 2010, the City contained an estimated 8,190 dwelling units, which represents a 0.5% increase from 2000 and a 2.3% increase since 1990. The number of dwelling units is estimated to have increased slightly in 2014.

Table 1: Dwelling Units (1990-2014)  
City of Summit, New Jersey

Year	Total Dwelling Units	Numerical Change	Percentage Change
1990	8,003	-	-
2000	8,146	143	1.8%
2010	8,190	44	0.5%
2014	8,267	77	0.9%

*Source: U.S. Census 1990, 2000, 2010; 2014 American Community Survey 5-Year Estimate*

The following table provides additional insights regarding the tenure and occupancy of the City's housing stock. Overall, owner-occupied units increased approximately 6.6% since 1990, while renter-occupied units decreased

approximately 9.5%. The percentage of owner-occupied units has increased slightly since 1990 from 65.2% to an estimated 67.3% in 2014. Meanwhile, the percentage of renter-occupied units has decreased from 31.0% in 1990 to an estimated 27.1% in 2014. Vacancy rates have fluctuated from a high of 5.9% in 2010 to a low of 3.9% in 1990.

Table 2: Housing Units by Tenure and Occupancy Status (1990-2014)  
City of Summit, New Jersey

Category	1990 Units	Percent	2000 Units	Percent	2010 Units	Percent	2014 Units	Percent
Owner-Occupied Units	5,214	65.2%	5,378	66.0%	5,253	64.1%	5,560	67.3%
Renter-Occupied Units	2,480	31.0%	2,519	30.9%	2,455	30.0%	2,244	27.1%
Vacant Units	309	3.9%	249	3.1%	482	5.9%	463	5.6%
<b>Total Units</b>	<b>8,003</b>	<b>100.0%</b>	<b>8,146</b>	<b>100.0%</b>	<b>8,190</b>	<b>0.0%</b>	<b>8,267</b>	<b>100.0%</b>

Source: U.S. Census 1990, 2000, 2010; 2014 American Community Survey 5-Year Estimate

2. Housing Characteristics. The following table provides additional information regarding City's housing stock, including data on the number of units in structures and the number of bedrooms in units. As shown below, the City's housing stock is predominantly characterized by single-family detached units, which account for two-thirds of all units in 2014.

Table 3: Units in Structures (1990-2014)  
City of Summit, New Jersey

Units in Structure	1990 Number	Percent	2000 Number	Percent	Number	*2010 Percent	2014 Number	Percent
1-unit, detached	5,069	63.3%	5,118	62.8%	5,178	64.2%	5,518	66.7%
1-unit, attached	323	4.0%	292	3.6%	252	3.1%	358	4.3%
2 units	606	7.6%	708	8.7%	626	7.8%	580	7.0%
3 or 4 units	468	5.8%	601	7.4%	336	4.2%	520	6.3%
5 to 9 units	381	4.8%	322	4.0%	442	5.5%	395	4.8%
10 to 19 units	331	4.1%	297	3.6%	174	2.2%	302	3.7%
20 or more units	711	8.9%	799	9.8%	1041	12.9%	594	7.2%
Mobile home	1	0.0%	9	0.1%	19	0.2%	0	0.0%
Boat, RV, van, etc.	113	1.4%	0	0.0%	0	0.0%	0	0.0%
<b>Total</b>	<b>8,003</b>	<b>100.0%</b>	<b>8,146</b>	<b>100.0%</b>	<b>8,068</b>	<b>100.0%</b>	<b>8,267</b>	<b>100.0%</b>

Source: U.S. Census 1990, 2000, American Community Survey 2010, 2014, 5-Year Estimates

\* Based upon 2010 ACS, and as such will not match with Tables 1 and 2

Table 4: Number of Bedrooms in Housing Units (1990-2014)  
City of Summit, New Jersey

<b>Bedrooms</b>	<b>1990 Number</b>	<b>Percent</b>	<b>2000 Number</b>	<b>Percent</b>	<b>*2010 Number</b>	<b>Percent</b>	<b>2014 Number</b>	<b>Percent</b>
Zero	38	0.5%	78	1.0%	47	0.6%	195	2.4%
One	881	11.0%	869	10.7%	906	11.2%	698	8.4%
Two	1,727	21.6%	1,720	21.1%	1564	19.4%	1,616	19.5%
Three	2,453	30.7%	2,510	30.8%	2,264	28.1%	2,150	26.0%
Four	1,821	22.8%	1,770	21.7%	2,050	25.4%	2,271	27.5%
Five or More	1,083	13.5%	1,199	14.7%	1,237	15.3%	1,337	16.2%
<b>Total</b>	<b>8,003</b>	<b>100.0%</b>	<b>8,146</b>	<b>100.0%</b>	<b>8,068</b>	<b>100.0%</b>	<b>8,267</b>	<b>100.0%</b>

Source: U.S. Census 1990, 2000, American Community Survey 5-Year Estimates

\*Based upon 2010 ACS, and as such will not match with Tables 1 and 2

3. Housing Age. The following table details the age of the City's housing stock. As shown, only 3.6% of the City's housing stock has been built since 2000. Nearly three-quarters of the City's housing stock was constructed before 1970, while approximately 39% was constructed prior to 1940.

Table 5: Year Structure Built  
City of Summit, New Jersey

<b>Year Built</b>	<b>Units</b>	<b>Percent</b>
2010 or later	47	0.6%
2000 to 2009	247	3.0%
1990 to 1999	129	1.6%
1980 to 1989	522	6.3%
1970 to 1979	572	6.9%
1960 to 1969	738	8.9%
1950 to 1959	1,876	22.7%
1940 to 1949	943	11.4%
1939 or earlier	3,193	38.6%
<b>Total</b>	<b>8,267</b>	<b>100.0%</b>

Source: 2014 American Community Survey 5-Year Estimate

4. Housing Conditions. An inventory of the City's housing conditions is presented in Tables 6 and 7. Table 6 identifies the extent of overcrowding in the City, which is defined as housing units with more than one occupant per room. As shown, the number of housing units considered to be overcrowded has historically been negligible.

Table 6: Occupants Per Room (1990-2014)  
City of Summit, New Jersey

<b>Occupants Per Room</b>	<b>1990</b>		<b>2000</b>		<b>2010</b>		<b>2014</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
1.00 or less	7,606	98.9%	7,668	97.1%	7,388	98.6%	7,777	99.7%
1.01 to 1.50	59	0.8%	127	1.6%	107	1.4%	18	0.2%
1.51 or more	29	0.4%	102	1.3%	0	0.0%	9	0.1%
<b>Total</b>	<b>7,694</b>	<b>100.0%</b>	<b>7,897</b>	<b>100.0%</b>	<b>7,495</b>	<b>100.0%</b>	<b>7,804</b>	<b>100.0%</b>

Source: U.S. Census 1990, 2000; 2010, 2014 American Community Survey 5-Year Estimate

The following table presents additional details regarding housing conditions, including the presence of complete plumbing and kitchen facilities as well as the type of heating equipment used. The data indicates the fact that few units in Summit are characterized as deficient with respect to these critical indices.

Table 7: Equipment and Plumbing Facilities (1990-2014)  
City of Summit, New Jersey

<b>Facilities</b>	<b>1990</b>		<b>2000</b>		<b>2014</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Kitchen:</b>						
With Complete Facilities	7,987	99.8%	8,134	99.9%	8,267	98.4%
Lacking Complete Facilities	16	0.2%	12	0.1%	137	1.6%
<b>Plumbing:</b>						
With Complete Facilities	7,975	99.7%	8,146	100.0%	8,173	98.9%
Lacking Complete Facilities	28	0.3%	0	0.0%	94	1.1%
<b>Heating Equipment:</b>						
Standard Heating Facilities	7,650	99.4%	7,880	99.8%	7,734	99.1%
Other Means, No Fuel Used	44	0.6%	24	0.3%	70	0.9%

Source: U.S. Census 1990, 2000; 2014 American Community Survey 5-Year Estimate (Note: 1990 data based upon occupied housing units)

5. Purchase and Rental Values. As shown in Tables 8 and 9, the City has historically experienced gross rents that are higher than the County median. In 2014, the median gross rent in the City was estimated to be \$1,530, whereas the County's median rental value was estimated at \$1,181. Nearly two-thirds of the City's rental values exceeded the County's median in 2014.

Table 8: Gross Rent of Specified Renter-Occupied Housing Units (1990-2014)  
City of Summit, New Jersey

Rent	1990		2000		2014	
	Number	Percent	Number	Percent	Number	Percent
Less than \$200	75	6.2%	43	1.7%	0	0.0%
\$200 to \$299	58	4.8%	82	3.2%	0	0.0%
\$300 to \$499	72	6.0%	131	5.2%	72	3.2%
\$500 to \$749	707	58.5%	241	9.5%	76	3.4%
\$750 to \$999	904	74.8%	507	20.1%	137	6.1%
\$1,000 to \$1,499	613	50.7%	996	39.4%	762	34.0%
\$1,500 or More	N/A	N/A	417	16.5%	1126	50.2%
No Cash Rent	41	3.4%	109	4.3%	71	3.2%
Total	1,208	100.0%	2,526	100.0%	0	0.0%
Median Gross Rent	\$834		\$1,078		\$1,530	
Union County Median Gross Rent	\$596		\$752		\$1,181	

Source: U.S. Census 1990, 2000; 2014 American Community Survey Five Year Estimate

Similarly, the values of owner-occupied units have remained consistently greater than the County median. Since 1990, the estimated median value of owner-occupied units in the City has risen by 141%, while the County's estimated median value has increased by approximately 95%. In 2014, the estimated median value of owner-occupied units is over two times as high as the County's median.

Table 9: Value of Specified Owner-Occupied Housing Units (2000-2013)  
City of Summit, New Jersey

Value Range	2000		2008		2014	
	Number	Percent	Number	Percent	Number	Percent
Less than \$50,000	7	0.2%	21	0.4%	22	0.4%
\$50,000 to \$99,999	64	1.4%	19	0.4%	8	0.1%
\$100,000 to \$149,999	172	3.8%	37	0.8%	76	1.4%
\$150,000 to \$199,999	549	12.2%	276	5.8%	31	0.6%
\$200,000 to \$299,999	1,291	28.7%	898	18.7%	146	2.6%
\$300,000 to \$499,999	1,341	29.9%	1,368	28.5%	1,137	20.4%
\$500,000 to \$999,999	1,067	23.8%	1,651	34.4%	2,214	39.8%
\$1,000,000 or More	N/A	N/A	529	11.0%	1,926	34.6%
Total	4,491	100.0%	4,799	100.0%	5,560	100.0%
Median Value	\$321,400		\$469,200		\$774,800	
Morris County Median Value	\$180,500		\$188,800		\$353,300	

Source: U.S. Census 2000; 2008 American Community Survey Three-Year Estimate; 2014 American Community Survey Five Year Estimate

6. Number of Units Affordable to Low- and Moderate-Income Households. The City of Summit is placed in COAH Region 2, which is comprised of Essex, Morris, Union, and Union County. Based on the most current COAH regional income limits from 2014, the median household income for a three-person household is

\$81,553. A three-person moderate-income household, which is defined as a household earning no more than eighty (80%) percent of the median income of the region, would have an income not exceeding \$65,242.

An affordable sales price for a three-person moderate-income household earning eight (80%) percent of the median income is estimated at approximately \$150,000. This estimate is based upon the UHAC affordability controls outlined in N.J.A.C. 5:80-26.3. In 2014, the percentage of housing units in the City valued at less than \$150,000 was estimated to be approximately 2.0%

For renter-occupied housing, an affordable monthly rent for a three-person household is estimated at approximately \$1,340. According to the most recent US Census data, approximately 40.8% of the City's rental units had a gross rent less than \$1,500.

7. Substandard Housing Capable of Being Rehabilitated. The number of units in a community that are in need of rehabilitation and are not likely to experience "spontaneous rehabilitation" has been provided, as detailed in other sections of this report. This item is further explained in the Fair Share Plan section of this document.

## C. POPULATION ANALYSIS

The MLUL requires that a Housing Element provide data on the municipality's population, including population size, age and income characteristics.

1. Population Size. As seen on the following table, the City's population has fluctuated over the years, before leveling off and experiencing only modest increases recently. According to the 2014 American Community Survey, the City had a population of approximately 21,826.

**Table 10: Population Growth  
City of Summit, New Jersey**

<b>Year</b>	<b>Total Population</b>	<b>Numerical Change</b>	<b>Percentage Change</b>
1920	10,174	-	-
1930	14,556	4,382	43.1%
1940	16,165	1,609	11.1%
1950	17,929	1,764	10.9%
1960	23,677	5,748	32.1%
1970	23,620	-57	-0.2%
1980	21,071	-2,549	-10.8%
1990	19,757	-1,314	-6.2%
2000	21,131	1,374	7.0%
2010	21,457	326	1.5%
2014	21,826	369	1.7%

*Source: U.S. Census; 2014 American Community Survey Five Year Estimate*

2. Age Characteristics. The City's age characteristics are outlined in the table below. As shown, the City's population has aged slightly since 1990, which is consistent with national trends. The City's median age is estimated to have increased from 38.0 in 1990 to 40.7 in 2014. As of 2014, 29.7% of the City's population was under 19 years of age, while 12.0% of the population was 65 years and older.

Table 11: Age Characteristics (1990-2014)  
City of Summit, New Jersey

<b>Age</b>	<b>1990 Number</b>	<b>Percent</b>	<b>2000 Number</b>	<b>Percent</b>	<b>2010 Number</b>	<b>Percent</b>	<b>2014 Number</b>	<b>Percent</b>
Under 5 years	1,251	6.3%	1,815	8.6%	1,462	6.8%	1,310	6.0%
5 to 19 years	3,138	15.9%	4,118	19.5%	5,131	23.9%	5,173	23.7%
20 to 24 years	1,123	5.7%	688	3.3%	696	3.2%	655	3.0%
25 to 34 years	3,444	17.4%	3,023	14.3%	1,980	9.2%	2,226	10.2%
35 to 44 years	2,982	15.1%	3,953	18.7%	3,516	16.4%	3,383	15.5%
45 to 54 years	2,628	13.3%	2,886	13.7%	3,751	17.5%	3,863	17.7%
55 to 64 years	2,078	10.5%	1,879	8.9%	2,378	11.1%	2,597	11.9%
65 to 74 years	1,717	8.7%	1,373	6.5%	1,239	5.8%	1,310	6.0%
75 to 84 years	1062	5.4%	1047	5.0%	865	4.0%	939	4.3%
Above 85 years	334	1.7%	349	1.7%	439	2.1%	371	1.7%
<b>Total</b>	<b>19,757</b>		<b>21,131</b>		<b>21,457</b>		<b>21,826</b>	
<b>Median Age</b>	<b>38.0</b>		<b>37.3</b>		<b>39.7</b>		<b>40.7</b>	

Source: U.S. Census 1990, 2000, 2010; 2014 American Community Five Year Estimate

3. Average Household Size. From 1980 to 2014, the average household size for the City has increased slightly from 2.69 persons in 1980 to an estimated 2.78 persons in 2014. This increase is contrary to the experience of most suburban New Jersey communities.

Table 12: Average Household Size (1970-2013)  
City of Summit, New Jersey

<b>Year</b>	<b>Average Household Size</b>
1980	2.69
1990	2.54
2000	2.67
2010	2.77
2014	2.78

Source: 1980, 1990, and 2000 Census; 2010 & 2014 American Community Survey Five Year Estimate

4. Household Income. Detailed housing income figures are shown in Table 13 below. As shown, the median income for the City's households has increased by approximately 30.7% since 1999, which was greater than the County's increase of approximately 25.4%. The City's median income has historically been higher than the County's median income.

Table 13: Household Income Distribution (1999-2014)  
City of Summit, New Jersey

Income Category	1999 Number	1999 Percent	2008	2014 Number	2014 Percent
Less than \$10,000	349	4.4%	185	2.4%	310
\$10,000 to \$14,999	264	3.3%	83	1.1%	94
\$15,000 to \$24,999	386	4.9%	504	6.6%	402
\$25,000 to \$34,999	410	5.2%	262	3.4%	281
\$35,000 to \$49,999	647	8.2%	655	8.6%	636
\$50,000 to \$74,999	1,088	13.8%	766	10.0%	766
\$75,000 to \$99,999	1,026	13.0%	834	10.9%	647
\$100,000 to \$149,999	1,289	16.3%	1,382	18.1%	1,437
\$150,000 to \$199,999	608	7.7%	836	11.0%	743
\$200,000 or more	1,826	23.1%	2,121	27.8%	2,488
<b>Total</b>	<b>7,893</b>	<b>100.0%</b>	<b>7,628</b>	<b>100.0%</b>	<b>7,804</b>
Median Household Income	\$92,964		\$115,606		\$121,509
Morris County Median	\$55,339		\$66,355		\$69,396

Source: U.S. Census 2000; 2008 American Community Survey Three Year Estimate; 2014 American Community Survey Five Year Estimate

5. Housing cost-burden. Households that pay more than thirty percent (30%) of their income for housing are considered to be cost-burdened, and may have difficulty affording basic necessities such as food, clothing, transportation, and medical care. Despite the fact that the City has a higher median income than the County, the 2014 ACS estimates that approximately 34.7% and 42.5% of owner- and renter-occupied housing units, respectively, have housing costs greater than thirty percent (30%) of their incomes.

Table 14: Housing Cost as Percentage of Income (2014)  
City of Summit, New Jersey

Percentage of Income	Owner-occupied Number	Owner-occupied Percent	Renter Number	Renter Percent
Less than 20 percent	2,388	43.4%	707	33.3%
20 to 29 percent	1,207	21.9%	515	24.2%
30 percent or more	1,913	34.7%	904	42.5%
<b>Occupied Units</b>	<b>5,508</b>	<b>100.0%</b>	<b>2,126</b>	<b>100.0%</b>

Sources: 2014 American Community Survey 5-Year Estimate (Note: Does not include households with zero or negative income)

## D. EMPLOYMENT ANALYSIS

The MLUL requires that the housing element include data on employment characteristics in the community. The following is noted with respect to employment status and related information.

1. Employment Status. Table 15 provides information on the employment status of City residents aged 16 and over. Historically, nearly two-thirds of the City's population over the age of 16 is in the civilian labor force. Since 2000, the City's unemployment rate has declined, from 4.2% to 3.3%, which is consistent with trends throughout the State. The City's unemployment rate is lower than both the County's and the State's unemployment rates, which are 5.1% and 5.2%, respectively.

Table 15: Employment Status- Population 16 & Over (2000-2014)  
City of Summit, New Jersey

<b>Employment Status</b>	<b>2000</b>	<b>2010</b>	<b>2014</b>
	<b>Number</b>	<b>Percent</b>	<b>Number</b>
In labor force	10,473	65.3%	10,091
Civilian labor force	10,473	65.3%	10,091
Employed	10,216	63.7%	9,439
Unemployed	257	1.6%	652
Armed Forces	0	0.0%	0
Not in labor force	5,566	34.7%	5,522
Total Population 16 and Over	16,039		15,613
			16,562

Source: U.S. Census 2000; 2008 American Community Survey 3-Year Estimate; 2014 American Community Survey 5-Year Estimate

2. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of employed Summit residents.

Table 16: Employed Residents Age 16 and Over, By Occupation (2000-2014)  
City of Summit, New Jersey

<b>Occupation</b>	<b>2000</b>	<b>2008</b>	<b>2014</b>
	<b>Number</b>	<b>Percent</b>	<b>Number</b>
Management, Professional and related occupations	5,983	58.6%	5,478
Service Occupation	1,079	10.6%	1,490
Sales and Office Occupations	2,287	22.4%	2,340
Farming, fishing and forestry occupations	11	0.1%	10
Construction, extraction and maintenance	358	3.5%	565
Production, transportation and material moving occupations	498	4.9%	139
Total	10,216	100.0%	10,022
			10,040
			100.0%

Source: U.S. Census 2000; 2008 American Community Survey 3-Year Estimate; 2014 American Community Survey 5-Year Estimate

Table 17: Employed Residents Age 16 and Over, By Industry (1990-2014)  
 City of Summit, New Jersey

<b>Industry</b>	<b>2000 Number</b>	<b>Percent</b>	<b>2008 Number</b>	<b>Percent</b>	<b>2013 Number</b>	<b>Percent</b>
Agriculture, forestry, fishing, hunting and mining	20	0.2%	23	0.2%	0	0.0%
Construction	371	3.6%	606	6.0%	423	4.2%
Manufacturing	1,087	10.6%	503	5.0%	1,007	10.0%
Wholesale trade	298	2.9%	151	1.5%	289	2.9%
Retail trade	773	7.6%	494	4.9%	698	7.0%
Transportation and warehousing, and utilities	218	2.1%	132	1.3%	263	2.6%
Information	685	6.7%	367	3.7%	420	4.2%
Finance, insurance, real estate and rental and leasing	2,004	19.6%	2,299	22.9%	2,120	21.1%
Professional, scientific, management, administrative and waste management services	1,673	16.4%	2,064	20.6%	1,821	18.1%
Educational, health and social services	1,847	18.1%	1,969	19.6%	1,974	19.7%
Arts, entertainment, recreation, accommodation and food services	476	4.7%	611	6.1%	579	5.8%
Other services	490	4.8%	595	5.9%	288	2.9%
Public administration	274	2.7%	208	2.1%	158	1.6%
<b>Total</b>	<b>10,216</b>	<b>100.0%</b>	<b>10,022</b>	<b>100.0%</b>	<b>10,040</b>	<b>100.0%</b>

Source: U.S. Census 2000; 2008 American Community Survey 3-Year Estimate; 2014 American Community Survey 5-Year Estimate

As it can be seen from the two prior tables, the City's residents have typically been employed in management, professional and related occupations. Finance, insurance, real estate and rental and leasing have been the primary fields of industry, followed closely by professional, scientific, management, administrative and waste management services.

## E. HOUSING AND EMPLOYMENT PROJECTIONS

The following section identifies recent development trends in Summit.

1. Probable Future Employment and Regional or Community Factors Impacting Upon Future Municipal Employment. Employment in the City has consistently increased since 2004, from 13,911 to 17,035, with losses only seen in 2009 and again in 2012. Assuming the current economic climate continues and recognizing the limited availability of vacant land for new non-residential developments, only minor changes in employment characteristics are anticipated. Based upon the fully developed character of the community's non-residentially zoned areas, few additional jobs are anticipated to be created locally.

Table 18: Covered Employment Trends 2004-2015  
City of Summit, New Jersey

Year	Number of Jobs	Change in Number of Jobs	Percent Change
2004	13,911	-	-
2005	14,218	307	2.2%
2006	14,750	532	3.7%
2007	14,951	201	1.4%
2008	16,774	1,823	12.2%
2009	15,229	-1,545	-9.2%
2010	15,825	596	3.9%
2011	15,999	174	1.1%
2012	15,708	-291	-1.8%
2013	16,288	580	3.7%
2014	16,605	317	1.9%
2015	17,035	430	2.6%

Sources: Department of Labor and Workforce Development

2. Projection of the Municipality's Housing Stock. Since 2000, the City has issued 293 Certificates of Occupancy (CO's) and 206 demolition permits regarding residential development. This equates to an average of five CO's issued per year.

**Table 19: Trend in Residential Development**  
**Analysis of Certificates of Occupancy and Demolition Permits, 2000-2014**  
**City of Summit, New Jersey**

<b>Year</b>	<b>COs Issued</b>	<b>Demo Permits Issued</b>	<b>Difference</b>
2000	4	6	-2
2001	8	14	-6
2002	14	11	3
2003	10	8	2
2004	26	15	11
2005	13	16	-3
2006	18	13	5
2007	21	14	7
2008	12	14	-2
2009	57	7	50
2010	13	9	4
2011	12	4	8
2012	14	9	5
2013	38	25	13
2014	12	23	-11
2015	21	18	3
<b>16 YR Total</b>	<b>293</b>	<b>206</b>	<b>87</b>
<b>16 YR Avg.</b>	<b>18</b>	<b>13</b>	
<b>Yearly Average</b>			<b>5</b>

*Source: New Jersey Department of Community Affairs*

3. Probable Future Construction of Housing Affordable to Low and Moderate Income Households (2015-2025). The following section provides information on probable future construction of housing affordable to low and moderate income households.

## **Section II: Fair Share Obligation**

## SUMMARY OF FAIR SHARE OBLIGATION

As previously noted, the state of the prospective need affordable housing obligations for municipalities throughout New Jersey continues to be in flux, given the fact that neither the Courts, COAH, nor the legislature have yet to develop a definitive set of housing-need numbers that are universally accepted. Thus far, two sets of numbers have been promulgated and widely discussed. These include numbers prepared by Econult Solutions on behalf of a consortium of municipalities known as the Municipal Joint Defense Group, of which Summit is a part, and numbers prepared by Dr. David Kinsey on behalf of the Fair Share Housing Center. Their numbers for the City of Summit are as follows:

<u>Indice</u>	<u>Econsult</u>	<u>FSHC</u>
Rehabilitation	149	131
Prior Need Obligation	171	171
Prospective Need Obligation	183	1,446

Ultimately, a Settlement Agreement which was executed by the City and by Kevin Walsh for FSHC sets forth the extent of Summit's affordable housing obligations. The parties have agreed upon the following obligations for the period from 1987 through July 1, 2025.

<b>Econsult</b>	
1. Rehabilitation Obligation:	131
2. Prior Round Obligation	171
3. Prospective Need Obligation	567

The City of Summit is essentially fully developed and, thus is entitled to adjust this obligation in accordance with a procedure set forth in COAH's second round rules. As such, the Settlement Agreement established that the City's realistic development potential (RDP) is thirty-six units. As provided by the Second Round regulations, an RDP analysis is intended to determine which sites in a municipality are the most likely sites to develop for low- and moderate-income housing. The City's RDP was essentially calculated through a three-step process.

1. **Vacant Land Adjustment.** First, a vacant land adjustment (VLA) was undertaken pursuant to the Second Round regulations. An inventory of all vacant property in the City was initially prepared, followed by an assessment of environmental constraints and other factors that allow a municipality to delete sites or portions of sites from the vacant land inventory. The regulations permit a municipality to eliminate properties characterized as: agricultural lands; environmentally sensitive lands which are characterized by steep slopes, wetlands, and flood plain areas; historic and architecturally important sites; active recreational lands; conservation, parklands and open space lands, and; individual sites not suitable for low and moderate income housing.

Ultimately, the VLA conducted for Summit established that the City has 54 acres of vacant land, but only 2.34 acres are vacant developable land that are devoid of the aforementioned environmentally sensitive features and of a minimum required area to be calculated for the purposes of the VLA.

Given the permitted multi-family densities set forth in the local zoning ordinance, the Special Master appointed by the Court to oversee the City's affordable housing planning suggested that a presumptive density of twelve units per acre should be applied to the 2.34 acres, and a twenty percent set-aside was then imposed. This formula resulted in a RDP of six units. See Map 1 and its accompanying Table 22 located at the end of this section for an identification of the vacant sites analyzed during this process.

2. **Pending Applications.** In addition to the VLA noted above, the Special Master indicated that pending multi-family development applications that are before the City's Planning Board and Zoning Board of Adjustment as of September 2016 should be included in the determination of RDP. Three development applications were identified, which are identified in the table below.

**Table 20: Development Applications Approved by City's Boards  
City of Summit, New Jersey**

<b>Development</b>	<b>Location</b>	<b>Acres</b>	<b>Unit Count</b>
Sunrise Assisted Living	River Road	1.33	80 (assisted living) units Includes 8 AH units
Multi-Family	27-31 Euclid Ave	0.44	6 units Includes 1 AH unit
Multi-Family	4-6 Ashwood Ave	0.44	8 units Includes 2 AH Units

The three pending development applications above would produce a total of eleven (11) affordable units.

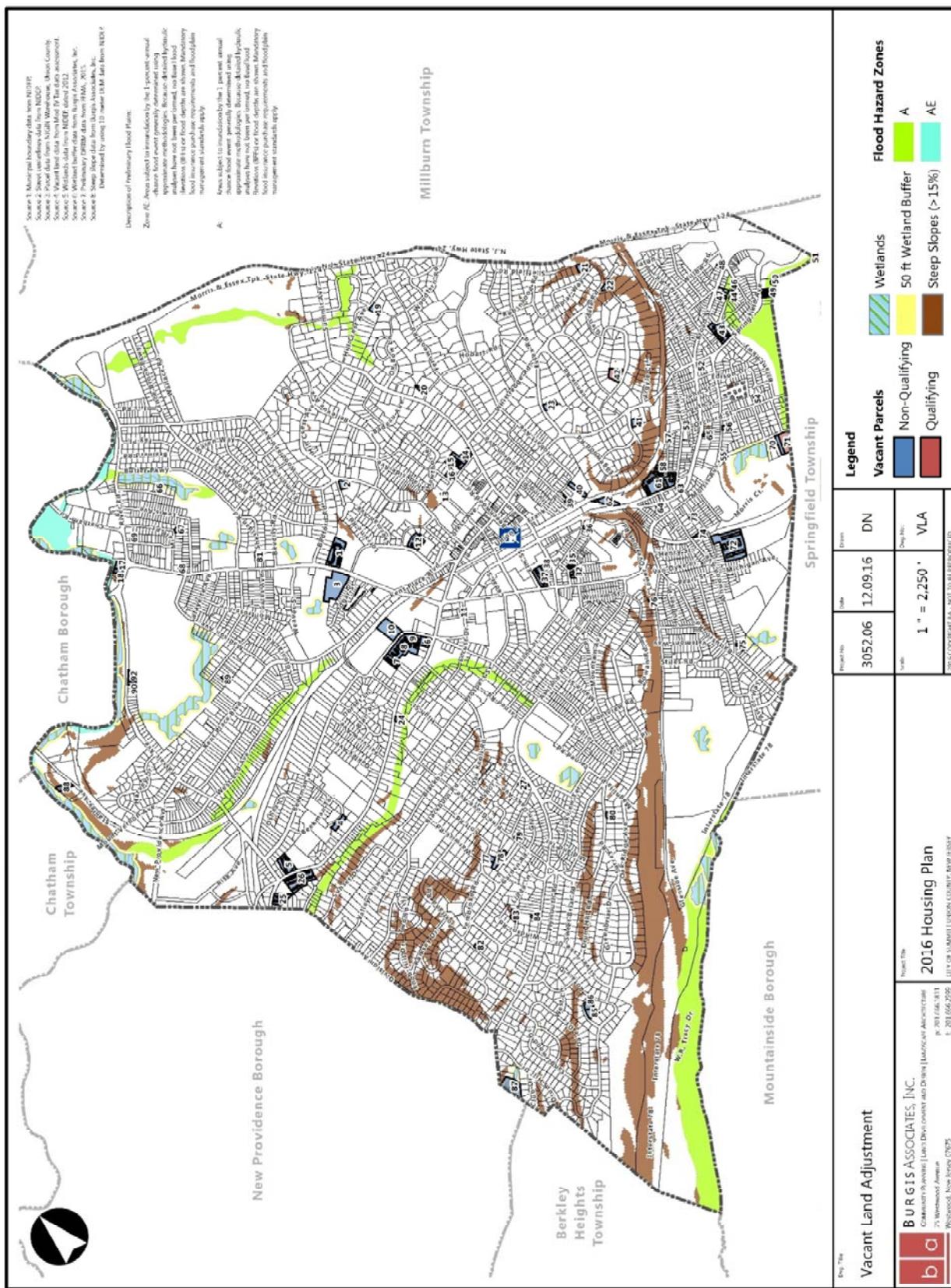
3. **Existing Affordable Housing Developments.** Finally, a review of those existing affordable housing projects which were not needed to address the City's prior need obligation were identified. These affordable housing developments include the following:

**Table 21: Existing Affordable Housing Developments  
City of Summit, New Jersey**

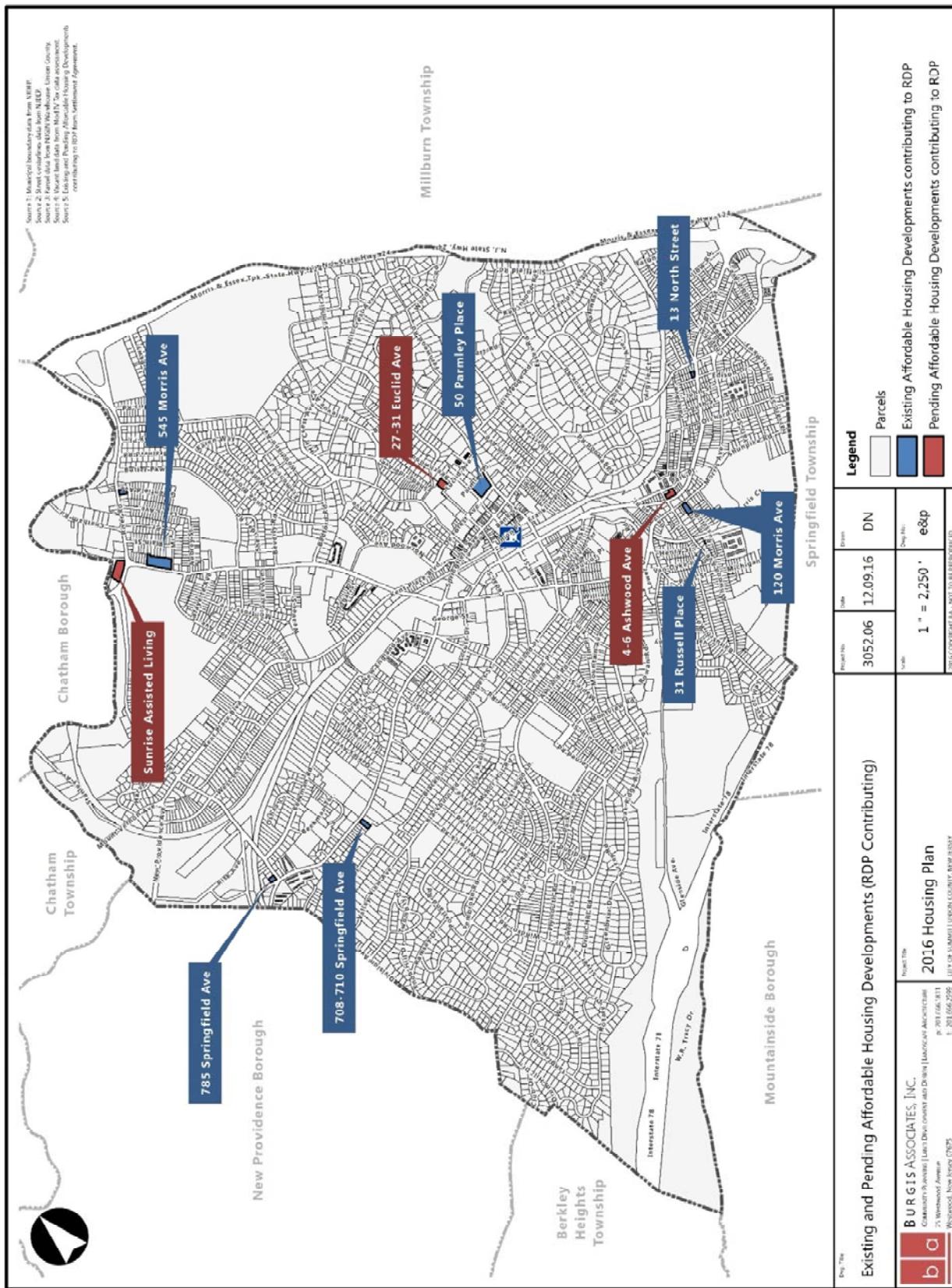
<b>Development</b>	<b>Description</b>	<b>Unit Count</b>	<b>Status</b>
50 Parmley Place	Parmley	2	Approved. Constructed
13 North Street	Summit Place Off-Site Obligation	3	Approved. Constructed
120 Morris Ave	Tiger Baron	2	Approved. Constructed
31 Russell Place	68-72 Franklin Place Off-Site Obligation	2	Approved. Constructed
708-710 Springfield Ave	Summit Place Off-Site Obligation	4	Approved. Constructed
785 Springfield Ave	Providence Crossing	2	Approved. Not Constructed
545 Morris Ave	Promenade (AKA DP Morris)	4	Approved. Constructed
Total		19	

These seven developments, resulting in an RDP of 19, are also identified in the map referenced above which identifies development applications pending before the City's land use boards. These 19 units, plus the aforementioned 6 from the VLA and 11 from pending applications, result in an RDP of 36 units.

Map 1: Vacant Land Adjustment



Map 2: Existing and Pending Affordable Housing Sites



**Table 22: Vacant Land Adjustment**  
**City of Summit, New Jersey**

ID#	Block	Lot	Property Location	Owner	Comments	Total Area (ac.)	Developable Area (ac.)	Developable
1	1203	2	417 MORRIS AVENUE	KENT GARDENS CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area	2.12		No
2	1203	24	116 WOODLAND AVE	MUSALLAM, RAMZI & LEA	Lot too small to qualify for RDP Analysis	0.55		No
3	1302	45	412 MORRIS AVENUE	SUMMIT PARK CONDO LLC	Does not qualify for RDP Analysis. Common Area.	3.70		No
4	1702	23	14 HILLVIEW TERR	BLASI, JOHN R & MARY W	Site observation of parcel developed with a driveway connecting adjacent parcel to Hillview Terrace.	0.64		No
5	1702	64	777 SPRINGFIELD AVENUE	SUMMIT EXECUTIVE HOUSE CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	1.23		No
6	1803	1	50 NEW ENGLAND AVENUE	BEACON SQUARE TOWNHOUSE CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	0.63		No
7	1803	17	90 NEW ENGLAND AVENUE	WELLINGTON PLACE CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	0.65		No
8	1803	18	68-86 NEW ENGLAND AVENUE	NEW ENGLAND GARDENS CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	2.84		No
9	1803	19	54 NEW ENGLAND AVENUE	WELLINGTON PLACE CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.40		No
10	1804	6	67-75 NEW ENGLAND AVE	RAINE COURT AT SUMMIT CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	2.21		No
11	1806	1	1 GEORGE ST	FLANAGAN, SEAN T.	Lot too small to qualify for RDP Analysis	0.12		No
12	1903	4	25 NORWOOD AVENUE	NORWOOD AVENUE CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	1.14		No
13	1905	10	5 MAPLE ST	BOURAS PROPERTIES, LLC	Lot too small to qualify for RDP Analysis	0.03		No
14	2004	1	1 EUCLID AVENUE	STRATHMORE HOUSE CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	1.00		No
15	2004	2	11 EUCLID AVENUE	STRATHMORE HOUSE CONOD ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.92		No
16	2004	5	23 EUCLID AVENUE	STRATHMORE HOUSE CONDO ASSOCIATION	Lot too small to qualify for RDP Analysis	0.31		No
17	201	8	26 RIVER RD	MESERLIAN, BRIAN	Lot too small to qualify for RDP Analysis	0.51		No
18	201	9	22 RIVER RD	MAZCO REAL ESTATE, INC.	Lot too small to qualify for RDP Analysis	0.31		No
19	2105	29	149 HILLCREST AVE	CORBETT, JAMES M. & TIFFANY K	Lot too small to qualify for RDP Analysis	0.64		No
20	2201	1.01	37 RIDGE ROAD	YODER, THOMAS B & JEAN	Lot too small to qualify for RDP Analysis	0.24		No
21	2403	8	68 TEMPLAR WAY	OWENS, JAMES R GABRIELSON	Lot too small to qualify for RDP Analysis	0.63		No
22	2406	1	8 FRIAR TUCK CIRCLE	SHETTY, URMILA%SHETTY-ALVA	Lot too small to qualify for RDP Analysis	0.57		No
23	2501	10	9 ESSEX ROAD	TAGGART,E.M,MOLE,H.E.III,MOLE,M.C.	Lot too small to qualify for RDP Analysis	0.61		No
24	2802	5	626 SPRINGFIELD AVENUE	BLECKNER FAMILY, L.L.C.	Lot too small to qualify for RDP Analysis	0.30		No
25	2901	2	800 SPRINGFIELD AVENUE	SUMMIT VILLAGE CONDO	Does not qualify for RDP Analysis. Common Area.	0.92		No
26	2901	4	768 SPRINGFIELD AVENUE	SUMMIT WEST CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	2.35		No
27	3106	3	4 CRESTWOOD AVE	RALL, VIVIAN E	Lot too small to qualify for RDP Analysis	0.15		No
28	3106	5	117 ASHLAND	117 ASHLAND CORPORATION	Lot too small to qualify for RDP Analysis	0.13		No
29	3307	13	17-19 BEAUVOIR AVE	AHS HOSPITAL CORPORATION	Lot too small to qualify for RDP Analysis	0.11		No

ID#	Block	Lot	Property Location	Owner	Comments	Total Area (ac.)	Developable Area (ac.)	Developable
30	3307	14	21 BEAUVOIR AVE	OVERLOOK HOSPITAL ASSN% C. MOODY	Lot too small to qualify for RDP Analysis	0.09		No
31	3307	15	25 BEAUVOIR AVE	ATLANTIC HEALTH SYSTEM- C.MOODY	Lot too small to qualify for RDP Analysis	0.09		No
32	3307	16	27 BEAUVOIR AVE	AHS HOSPITAL CORPORATION	Lot too small to qualify for RDP Analysis	0.12		No
33	3307	32	28 BEAUVOIR AVE	AHS HOSPITAL CORPORATION	Lot too small to qualify for RDP Analysis	0.08		No
34	3307	33	1 BEAUVOIR PL	ATLANTIC HEALTH SYSTEM- C.MOODY	Lot too small to qualify for RDP Analysis	0.10		No
35	3307	34	3 BEAUVOIR PL	AHS HOSPITAL CORPORATION	Lot too small to qualify for RDP Analysis	0.11		No
36	3307	56	4 WALNUT ST	G PROPERTIES, LLC	Lot too small to qualify for RDP Analysis	0.20		No
37	3311	14	30-42 ELM STREET	ELM STREET CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	1.10		No
38	3311	3	20 SUMMIT AVENUE	SUMMIT AVENUE CONDO ASSOC	Does not qualify for RDP Analysis. Common Area.	0.15		No
39	3401	15	32 FRANKLIN PL	JCP&L CO.-% TAX DEPT.	Lot too small to qualify for RDP Analysis	0.29		No
40	3401	19	14 FRANKLIN PL	GRABKO, W & A	Lot too small to qualify for RDP Analysis	0.62		No
41	3401	50	73 EDGEWOOD RD	SITARZ,ANNELEISE L.	Lot too small to qualify for RDP Analysis	0.64		No
42	3502	17	34 PROSPECT HILL AVENUE	MORIARTY, MARY EILEEN	Qualifies.	1.03	1.03	Yes
43	3702	27	91 SUMMIT AVENUE	BRIANT PARK HOMES CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	1.43		No
44	3703	4	10 GROVE STREET	DIAZ, RAMON C & GLADYS	Lot too small to qualify for RDP Analysis	0.27		No
45	3703	5	6 GROVE STREET	LA VECCHIA, SALVATORE & JOSEPHINE	Lot too small to qualify for RDP Analysis	0.15		No
46	3704	10	7 GROVE STREET	ALATARAY, A. & ROSELLE A. M.	Lot too small to qualify for RDP Analysis	0.17		No
47	3704	7	52 BROAD STREET	ZOTTI, LEONARD & LINA	Lot too small to qualify for RDP Analysis	0.22		No
48	3706	8	41 BROAD ST	JRP REALTY, LLC	Lot too small to qualify for RDP Analysis	0.11		No
49	3801	3	54 SPRINGFIELD AVENUE	SAWYER ESTATES CONDO ASSOCIATION	Lot too small to qualify for RDP Analysis	0.63		No
50	3801	6	48 SPRINGFIELD AVENUE	CHIDESTER JNT.VENTURE%BRIANTCOMMON	Lot too small to qualify for RDP Analysis	0.20		No
51	3801	7	36 SPRINGFIELD AVENUE	K & K DEVELOPERS, INC.%BRIANT PARK	Lot too small to qualify for RDP Analysis	0.03		No
52	3902	1	118 SPRINGFIELD AVE	ARMOR, LLC % TRAP ROCK BREWERY	Lot too small to qualify for RDP Analysis	0.22		No
53	3907	5	38 PARK AVENUE	BIRDSALL, W A & COMPANY	Lot too small to qualify for RDP Analysis	0.09		No
54	3909	34	114 ORCHARD STREET	CALABRESE, JOHN A & JOYCE F	Lot too small to qualify for RDP Analysis	0.18		No
55	3915	1	74 MORRIS AVENUE	PILGRIM BAPTIST CHCH %TINA RUSSELL	Lot too small to qualify for RDP Analysis	0.14		No
56	3915	9	52 MORRIS AVENUE	52 MORRIS AVENUE CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.31		No
57	4002	19	40 ORCHARD STREET	ALONSO, ALBERT & ZULMA A	Lot too small to qualify for RDP Analysis	0.13		No
58	4002	27	22 ORCHARD STREET	ROOSEVELT GARDENS CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.17		No
59	4002	28	20 ORCHARD STREET	ROOSEVELT GARDEN CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.14		No
60	4002	30	10-16 ORCHARD STREET	ROOSEVELT COMMONS CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	0.17		No
61	4002	31	103 PARK AVENUE	ROOSEVELT COMMONS CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	2.84		No
62	4002	36	261 BROAD STREET	CCK&K REALTY, L.L.C.	Lot too small due to railroad easement which consumes approximately half of the property area.	0.90	0.45	No

ID#	Block	Lot	Property Location	Owner	Comments	Total Area (ac.)	Developable Area (ac.)	Developable
63	4006	5	80 PARK AVE	SCHEPPE, ADAM, JR.	Lot too small to qualify for RDP Analysis	0.11		No
64	4008	8	220 BROAD STREET	GARGIULO, RICHARD F. & JOAN M.	Lot too small to qualify for RDP Analysis	0.15		No
65	4009	20	148 BROAD ST	SIMPSON, ANDERSON & DOROTHY	Lot too small to qualify for RDP Analysis	0.17		No
66	401	70	28 GREENFIELD AVE	KALINICHENKO, VIKTOR & APARINA, ANNA	Lot too small to qualify for RDP Analysis	0.18		No
67	402	14	40 MIELE PL	ZHAO, MICHELLE	Lot too small to qualify for RDP Analysis	0.37		No
68	402	3	531-33 MORRIS AVE	FESTIVE WORKS LLC	Lot too small to qualify for RDP Analysis	0.12		No
69	403	30	4 PLAIN ST	DP47 RIVER RD. ASSC.	Lot too small to qualify for RDP Analysis	0.17		No
70	4101	32	47 SHUNPIKE RD	CELGENE CORP. ATTN:ACCTS.PAYABLE	Lot too small to qualify for RDP Analysis	0.54		No
71	4101	33	53 SHUNPIKE RD	MORRIS AVE INVEST%CELGENE ACCTSPAYB	Qualifies. Environmental constraints limit developable area.	1.31	1.25	Yes
72	4102	23	9-80 EGGERS COURT	SUMMIT VIEW LLC CONDO ASSOCIATION	Does not qualify for RDP Analysis. Common Area.	4.04		No
73	4209	3	11 RUSSELL PL	FAITOUTE, WILLIAM R & GLORIA P	Lot too small to qualify for RDP Analysis	0.11		No
74	4209	9	25-27 RUSSELL PLACE	RUSSELL PLACE CONDO ASSOCIATION	Lot too small to qualify for RDP Analysis	0.28		No
75	4301	19	124 ASHWOOD AVE.	GINOCCHIO, MELISSA ANN, TRUSTEE	Lot too small to qualify for RDP Analysis	0.21		No
76	4501	42	41 GLEN SIDE AVE	AHS HOSPITAL CORPORATION	Lot too small to qualify for RDP Analysis	0.22		No
77	4701	16	30 COLT RD	LONE PEAK LLC	Lot too small to qualify for RDP Analysis	0.35		No
78	4701	16.01	PINE GROVE AVENUE (REAR)	WHITE, WILLIAM & LORI -LONE PEAK LLC	Does not qualify due to recent deeded subdivision between lots 15 and 16	0.90		No
79	4702	5	114 PINE GROVE AVE	CORNOG, ELWOOD C JR & JUDITH M	Lot too small to qualify for RDP Analysis	0.16		No
80	4801	19	14 DRUID HILL RD	RAINERO, STEVEN J. & RENEE E.	Lot too small to qualify for RDP Analysis	0.35		No
81	507	22	2 SCHOOL AVENUE	491 MORRIS AVENUE, LLC	Lot too small to qualify for RDP Analysis	0.25		No
82	5202	4	15 PORTLAND ROAD	OFFRAY, CLAUDE V JR & GLORIA	Lot too small to qualify for RDP Analysis	0.35		No
83	5203	15	14 CLEVELAND ROAD	GIBSON, CAROLYN M	Lot too small to qualify for RDP Analysis	0.40		No
84	5203	6	233 ASHLAND RD	GIBSON, H T JR & C M	Lot too small to qualify for RDP Analysis	0.18		No
85	5305	8	10 HIGHLAND DR	ALLAN, HARRY & CONNAUGHTON, ALICIA	Lot too small to qualify for RDP Analysis	0.71		No
86	5305	9	6 HIGHLAND DRIVE	SHEEHAN, MARY K.	Lot too small to qualify for RDP Analysis	0.36		No
87	5601	2.01	360 MOUNTAIN AVE	FISH, THOMAS W.	Does not qualify for RDP Analysis due to environmental constraints limiting developable area.	1.78	0.78	No
88	601	4	50 STANLEY AVENUE	ZECCA, ORESTE & IMMACOLATA	Lot too small to qualify for RDP Analysis	0.56		No
89	701	20.01	REAR EVERGREEN ROAD	MOLLER, GREGORY	Lot too small to qualify for RDP Analysis	0.17		No
90	701	92	171 PASSAIC AVENUE	THE SUMMIT PROPERTY CO.%MERCK & CO	Lot too small to qualify for RDP Analysis	0.20		No
91	701	93	173 PASSAIC AVE	THE SUMMIT PROPERTY CO.%MERCK & CO	Lot too small to qualify for RDP Analysis	0.17		No
92	701	94	177 PASSAIC AVENUE	MERCK SHARP & DOHME CORP	Lot too small to qualify for RDP Analysis	0.43		No

## **Section III: Fair Share Plan**

## A. PLAN: OVERVIEW

As noted in the prior Section, the Settlement Agreement executed by the City of Summit and by Kevin Walsh for FSHC established that the City has a 36 unit RDP and a combined unaddressed Prior Round Need and Unmet Need of 653 units. The City is obliged to affirmatively address its RDP, while the unmet need number is more aspirational. The City plans to address this need in the following manner.

1. Affordable Housing Credits to Be Applied to 36 Unit RDP. The Settlement Agreement entitles the City to apply fifty affordable housing credits to be applied to address the City's 36 unit RDP, Prior Round and Unmet Need obligations. As detailed in the table below, these credits consist of: completed group homes (10 units of credit); completed affordable housing units (20 credits) and; the affordable housing units presently pending before the City's land use boards (11 credits).

**Table 23: Existing 41 Unit of Credits**  
City of Summit, New Jersey

<b>Category</b>	<b>Block</b>	<b>Lot</b>	<b>Property Location</b>	<b>Owner/Operator/Description</b>	<b>Units/Bedrooms</b>
Group Homes	246	4	43 Glendale Avenue	Our House, Inc.	4
	3908	7.01-7.06	39 Morris Ave	Habitat for Humanity	6
Existing Developments	2606		50 Parmley Place		2
	3901	10	13 North Street	Summit Place's Off-Site Obligation	3
	4209	1	120 Morris Ave	Tiger Baron	2
	4210	2	31 Russell Place	68-72 Franklin Place Off-Site Obligation	2
	2901	24	708-710 Springfield Ave	Summit Place Off-Site Obligation	4
	1604	7	785 Springfield Ave	Providence Crossing	2
	404	1-4	545 Morris Ave	Promenade	5
Pending Construction	201	8-11	River Road	Sunrise Assisted Living	8
	1905	7-9	27-31 Euclid Ave	Multi-Family	1
	4006	2	4-6 Ashwood Ave	Multi-Family	2
<b>Total</b>					<b>41</b>

\* Rental bonus can only account for 25% (42 units) towards the prior round obligation.

2. Overlay Zoning. An overlay zone is a zoning district that encompasses one (or more) underlying zones, and permits an additional use (or uses) over and above the uses permitted in the underlying zone. When used within the context of a multi-family affordable housing overlay, a property owner is entitled to continue to use the property as it has historically been used, has the right to change the existing use to another permitted use, and even enlarge/expand that existing use, but is also entitled to use the property for multi-family residential use with an affordable housing set-aside as provided for in the multi-family affordable housing overlay.

In addition to the fifty credits noted above, Summit has agreed to attempt to address at least a portion of its unmet need through eight overlay zones wherein inclusionary housing developments would be permitted. The location of these overlay zones is identified below and mapped on an accompanying map depicting their location. A density of twelve units per acre is imposed here, except where the areas may have an existing density that is greater than that. It is notable that six of the eight overlay zones permit multi-family housing, although they may not all require an affordable housing set-aside. A 15-20% set-aside is to be imposed on all overlay zones, based on whether the affordable units are for rent or sales, respectively. These overlays could, at least theoretically, generate as many as 75 affordable housing units. Each of these areas are described in the following Plan Components section.

**Table 24: Overlay Zones Overview**  
City of Summit, New Jersey

<b>Overlay Zone</b>	<b>Location</b>	<b>Area (ac)</b>	<b>Total Units</b>	<b>Affordable Units</b>
1	Broad Street and Park	4.51	54	11
2	Park Ave	0.42	5	1
3	Park, Summit, Industrial Place, Broad	4.30	51	10
4	Morris, Plain, Aubrey Street	2.04	24	5
5	Springfield Ave, Union Place, Beachwood Road, Maple Street, Glenwood Place	14.26	171	34
6	Deforest Ave	4.19	50	10
7	Park Ave	0.76	9	2
8	Morris Ave	0.91	11	2
<b>Total</b>		<b>31.39</b>	<b>375</b>	<b>75</b>

3. Amendments to Existing Zoning. The City has also agreed to amend its zoning ordinance to impose fifteen percent or twenty percent affordable housing set-asides for rental or for sale units, respectively, in the City's twelve existing multifamily zones. These zoning districts are shown in the accompanying table and map. The zoning must provide multi-family developers with the opportunity to demonstrate that a proposed development warrants a zoning enhancement to compensate for the affordable housing requirement. Enhancements may include such elements as the provision of additional density; a monetary subsidy from the City's affordable housing trust fund; bulk-design waivers; a payment in lieu of taxes, or; other forms of relief.

Table 25: Multi-Family Zone Districts  
City of Summit, New Jersey

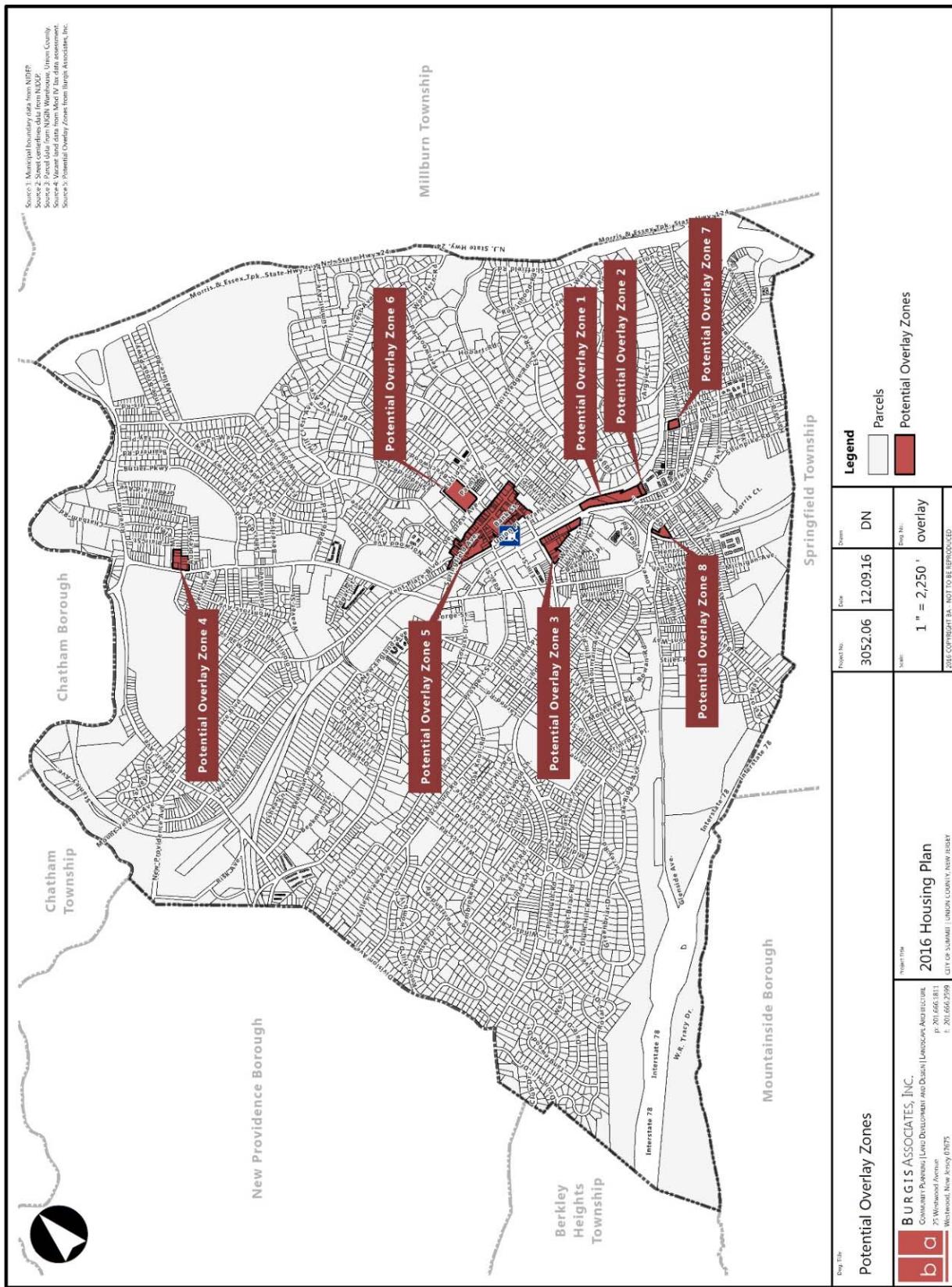
<b>Zone</b>	<b>Location</b>	<b>Permitted Housing</b>
B	Business Zone	Residential uses above the first floor
CBRD	Central Retail Business District	Residential uses above the first floor
GW-I	Gateway I Zone	Townhouses, apartments, mixed-use
GW-II	Gateway II Zone	Townhouses, brownstones, multi-family
MF	Multiple-Family Residential Zone	Townhouses, apartments
MF/TOD	Multi-Family	Townhouses, brownstones, multi-family
MFT:	Multi-Family Tower Residential Zone	Townhouses, apartments
NB	Neighborhood Business Zone	Residential uses above the first floor
ORC	Office Residential Character	Mixed use
ORC-1	Office Residential Character	Mixed use, up to 4 units
TH-1	Townhouse 1 Zone	Townhouses
TH-2	Townhouse 2 Zone	Townhouses

4. New Affordable Units. The Settlement Agreement establishes that the City will facilitate the development of fifty new rental/ownership affordable housing units on various sites between the date of the signing of the Settlement Agreement and July 1, 2025. At least one-half ( $\frac{1}{2}$ ) of these units shall be made available to families. Since these units are intended to be directed towards unmet need, the Settlement Agreement does not commit the City to use local funds – other than Affordable Housing Trust Funds – to render the development of these units economically feasible. See the attached Settlement Agreement in the Appendix for additional details specifying the efforts the City is expected to reasonably make toward this 50 unit goal over the next nine year implementation period, as well as details regarding an annual reporting regimen.

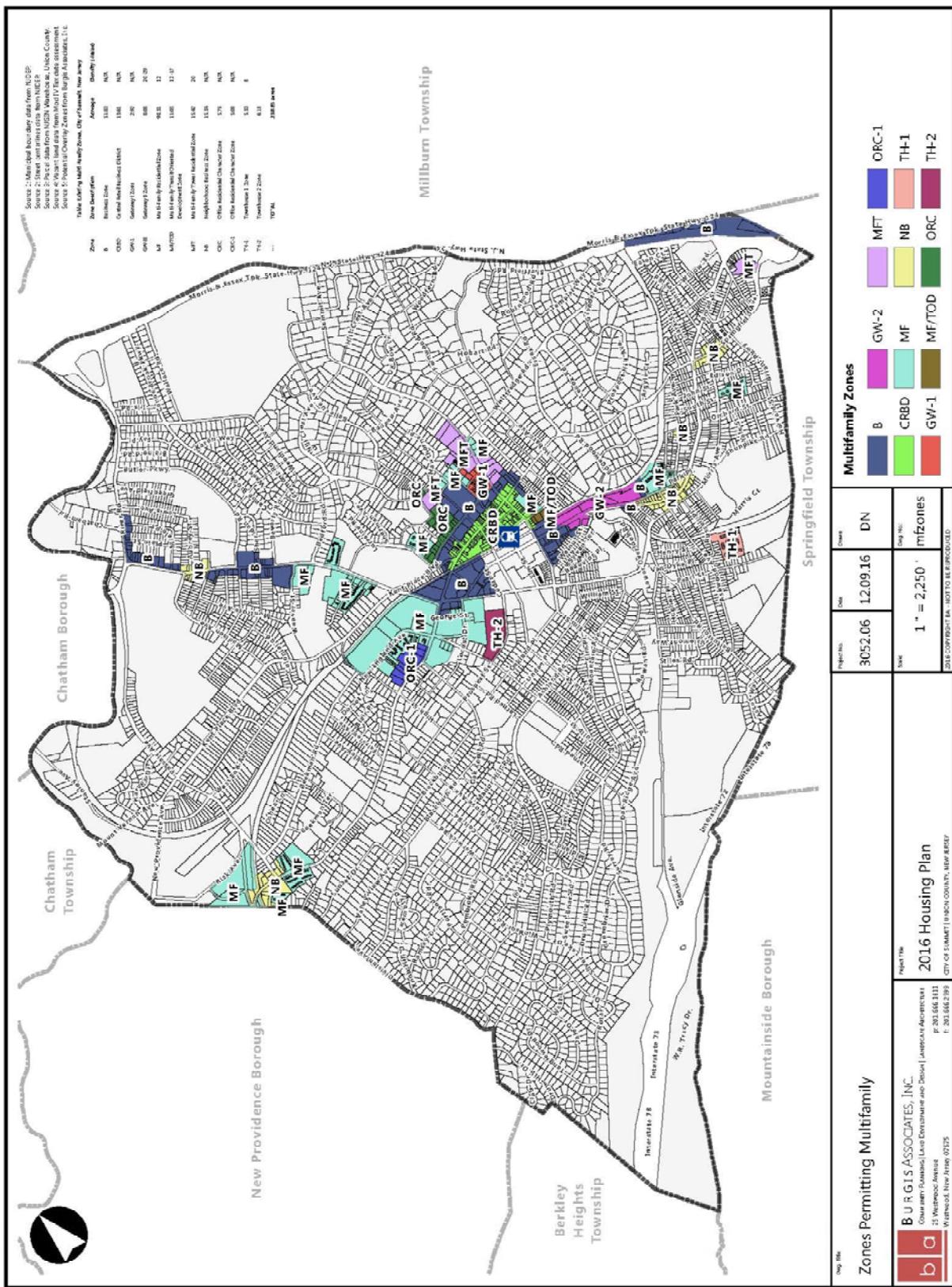
In addition, the following is noted with respect to the City's plan to address its affordable housing obligations.

1. Regional Contribution Agreement. The Settlement Agreement acknowledges the City's execution of a Regional Contribution Agreement with the City of Elizabeth for twenty-six units of credit. These 26 credits have been applied against the City's remaining Unmet Need.
2. Rental Bonus Credits. The Settlement Agreement also notes that the City may be entitled to as many as nine rental bonus credits. However, the Agreement ultimately defers this specific finding until the Compliance Hearing on the City's adopted Housing Element and Fair Share Plan.
3. Rental Component. COAH regulations stipulate that at least 25 percent of a municipality's prospective round obligation must be addressed with rental housing.
4. Development Fees. The City will impose development fees as permitted by COAH's prior round rules. The funds generated by the collection of development fees will be applied directly towards any activity approved for addressing the municipal fair share. The City must devote at least 30 percent of the revenues collected from development fees to render units more affordable, as per N.J.A.C. 5:93-8.16.

Map 3: Potential Overlay Zones



#### Map 4: Existing Multi-Family Zones Map



Development fees of one (1.0%) percent of the equalized assessed value will be collected on residential development. For non-residential development, development fees of two (2.0%) percent of the equalized assessed value will be collected.

5. Existing Housing Trust Fund. As of December 31, 2016 the City has \$1,883,333 in its Housing Trust Fund.
6. Rehabilitation Share. The City will continue to implement its rehabilitation program to address its 131 unit rehabilitation share in accordance with the rules established in prior rounds. Specifically, COAH regulations establish the following:

"Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component."

The regulations further establish that an average of \$10,000 shall be assigned per each unit of a municipality's rehabilitation component. At a minimum, the City must set aside a total of \$1,310,000 for its rehabilitation program, of which \$440,000 is to be set aside in the first year of substantive certification while an additional \$150,000 will be provided for each subsequent year of the substantive certification period until the rehabilitation share is met, if funds were expended from the initial outlay. Funds will be made available to income-qualified households who participate in the program.

7. Spending Plan. The City of Summit's Spending Plan is set forth in Appendix 5 of this report.

## B. PLAN: OVERLAY COMPONENTS

The following section identifies the eight overlay zones that are part of the Housing Plan.

1. **Proposed Overlay Zone 1.** Proposed Overlay Zone 1 is located to the southeast of the City's central business district, near the intersection of Broad Street and Park Avenue in the GW-2 Zone. It presently contains the Salerno Duane auto dealership, and is comprised of the lots noted in the table below.

Table 26: Proposed Overlay Zone 1  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
3303	1	255-269 Broad Street	1.25
4002	34	231-253 Broad Street, 111-113 Park	2.36
4002	36	261 Broad Street	0.90
<b>Total</b>			<b>4.51</b>



Image 1: Overlay Zone 1 Location  
Source: BingMaps. (Lot Line approximate)

At a proposed overlay density of twelve units per acre with a twenty-percent set-aside, following the yard, coverage and height requirements of GW-2 zone multi-family housing provisions, this site could potentially accommodate up to fifty-four dwellings, including eleven affordable units.

2. **Proposed Overlay Zone 2.** Proposed Overlay Zone 2 is located to the southeast of the City's central business district, in a Business Zone, and is immediately adjacent to Overlay Zone 1. It presently contains a two-story stone structure containing retail and residential uses. It is comprised of the following lots:

**Table 27: Proposed Overlay Zone 2**  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
4002	32	105-107 Park Ave	0.42
	<b>Total</b>		<b>0.42</b>



*Image 2: Overlay Zone 2 Location*  
Source: BingMaps. (Lot Line approximate)

At a proposed density of twelve units per acre with a twenty-percent set-aside, following the yard, coverage and height requirements of the B zone's multi-family housing provisions, this site could potentially generate five units, including one (1) affordable unit.

3. **Proposed Overlay Zone 3.** Proposed Overlay Zone 3 is located to the south of the City's central business district, in a Business Zone, and is bounded by Summit Ave to the west, Broad Street to the north, and Walnut Street to the east. Industrial place also traverses through the central portion of the proposed overlay zone. The area

is developed with variety of commercial, retail, light industrial and auto-related uses. It is comprised of the following lots:

Table 28: Proposed Overlay Zone 3

City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
3309	10	19 Summit Ave	0.17
3309	11	21 Summit Ave	0.10
3309	12	23 Summit Ave	0.44
3309	13	25 Summit Ave	0.17
3309	14	27 Summit Ave	0.84
3309	15	9 Industrial Place	0.20
3309	16	15 Industrial Place	0.17
3309	17	15-21 Industrial Place	0.06
3309	17.01	17 Industrial Place	0.09
3310	1	31-5 Summit Ave	0.22
3310	2	324-326 Broad Street	0.15
3310	3	320-22 Broad Street	0.12
3310	3.01	312-14 Broad Street	0.12
3310	3.02	316-18 Broad Street	0.13
3310	4	308-10 Broad Street	0.13
3310	5	290 Broad Street	0.50
3310	6	288 Broad Street	0.13
3310	7	278-288 Broad Street	0.57
<b>Total</b>			<b>4.30</b>



*Image 3: Overlay Zone 3 Location*

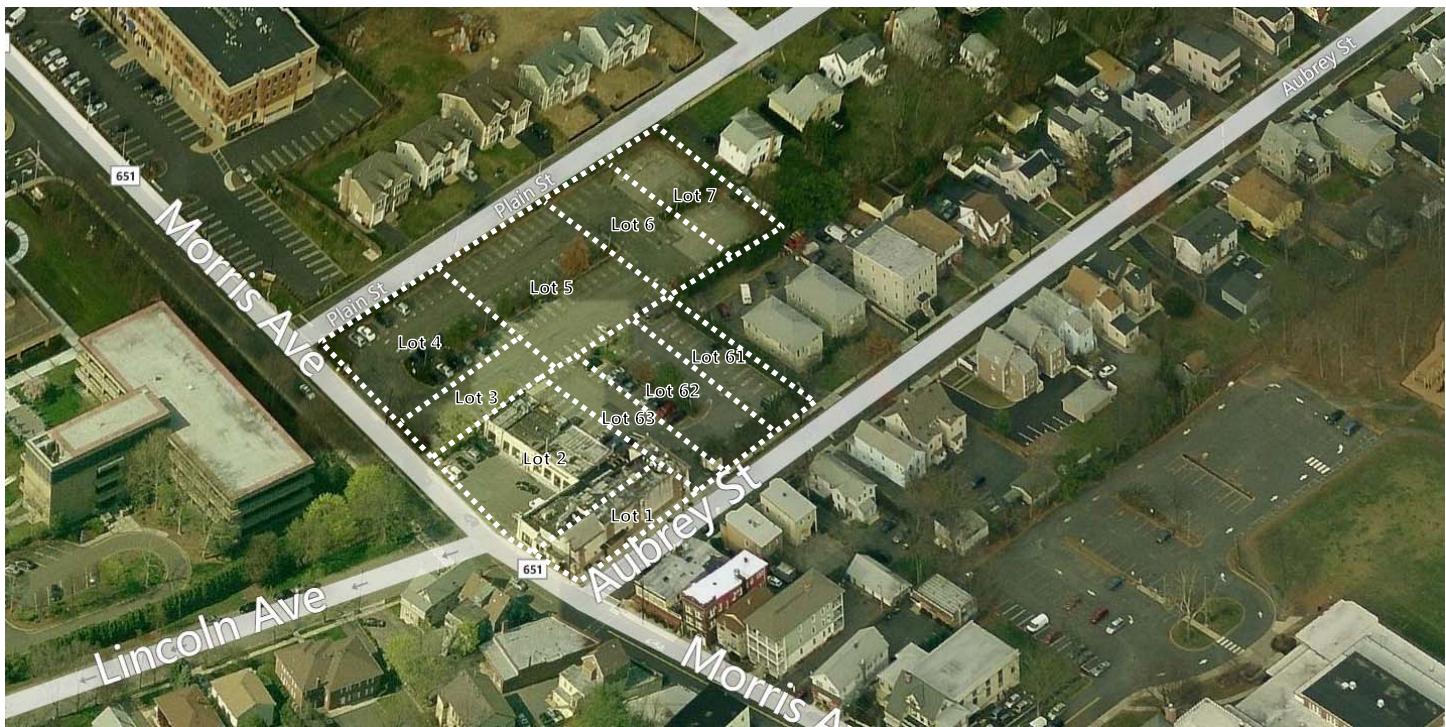
Source: BingMaps. (Lot Line approximate)

At a proposed density of twelve units per acre with a twenty-percent set-aside, following the yard, coverage and height requirements of the B zone's multi-family housing provisions, this site could potentially generate fifty-one units, including ten affordable units.

4. **Potential Overlay Zone 4.** Proposed Overlay Zone 4 is located near the northerly portion of the City, in a B Zone, and is bounded by Plain Street to the west, Morris Ave to the south, and Morris Ave to the east. The area is presently developed with a commercial building located near the corner of Morris Ave and Aubrey Street, as well as a large surface parking area. It is comprised of the following lots:

Table 29: Proposed Overlay Zone 5  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
402	1	527 Morris Ave	0.09
402	2	529 Morris Ave	0.28
402	3	531-33 Morris Ave	0.12
402	4	535 Morris Ave	0.24
402	5	44 Plain Street	0.41
402	6	42 Plain Street	0.20
402	7	40 Plain Street	0.20
402	61	10 Aubrey Street	0.16
402	62	8 Aubrey Street	0.16
402	63	6 Aubrey Street	0.17
<b>Total</b>			<b>2.04</b>



*Image 4: Overlay Zone 4 Location*

Source: BingMaps. (Lot Line approximate)

At a proposed a density of twelve units per acre with a twenty-percent set-aside, following the yard, coverage and height requirements of the B zone's multi-family housing provisions, this site could potentially generate twenty-four units, including five affordable units.

5. **Potential Overlay Zone 5.** Potential Overlay Zone 5 is located in the City's CRBD central business district. It consists of the following lots:

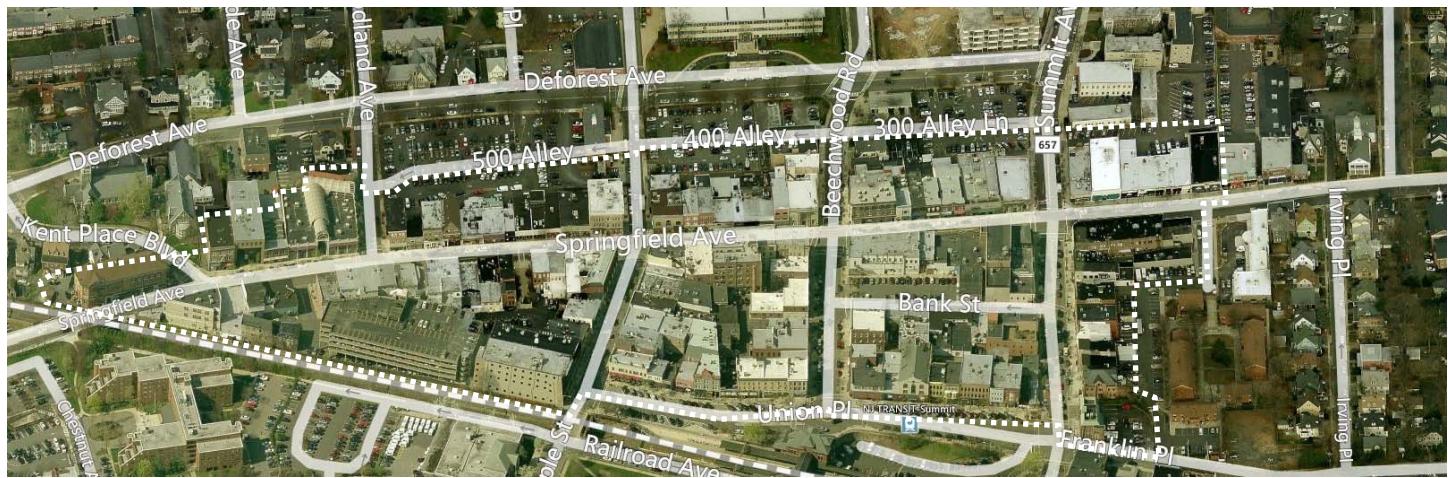
**Table 30: Proposed Overlay Zone 5**  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
1908	1	367 Springfield Ave	0.15
1908	2	371 Springfield Ave	0.07
1908	3	375-379 Springfield Ave	0.15
1908	4	381 Springfield Ave	0.05
1908	5	383-385 Springfield Ave	0.10
1908	6	387 Springfield Ave	0.07
1908	7	389 Springfield Ave	0.07
1908	8	395-397 Springfield Ave	0.15
1909	1	401 Springfield Ave	0.13
1909	2	407-409 Springfield Ave	0.12
1909	3	411-13-17 Springfield Ave	0.18
1909	4	419 Springfield Ave	0.04
1909	5	423-429 Springfield Ave	0.17

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
1909	6	431-437 Springfield Ave	0.13
1909	7	441 Springfield Ave	0.05
1909	8	443-445 Springfield Ave	0.06
		447-461 Springfield Ave	
1911	1-1.22	(ACERAGE CONSOLIDATED FOR LOTS 1-1.22)	0.46
1911	2	463-469 Springfield Ave	0.13
1911	3	475 Springfield Ave	0.17
1911	4	485-487 Springfield Ave	0.13
1912	18	2-4-6 Kent Place Boulevard	0.18
2601	1	9 Union Place	0.06
2601	2	11 Union Place	0.06
2601	3	13 Union Place	0.06
2601	4	17-19 Union Place	0.11
2601	5	21 Union Place	0.06
2601	6	25 Union Place	0.06
2601	7	31-37 Union Place	0.11
2601	8	39-45 Union Place	0.20
2602	1	13 Beechwood Road	0.09
2602	2	17 Beechwood Road	0.04
2602	3	18-22 Bank Street	0.11
2602	4	12 Bank Street	0.15
2602	5	10 Bank Street	0.05
2602	6	90 Summit Ave	0.05
2602	7	88 Summit Ave	0.04
2602	8	84 Summit Ave	0.09
2603	1	21-5 Beechwood Road	0.27
2603	2	27 Beechwood Road	0.16
2603	3	358 Springfield Ave	0.04
2603	4	356 Springfield Ave	0.07
2603	6	350 Springfield Ave	0.33
2603	7	344-346 Springfield Ave	0.04
2603	8	96-98 Summit Ave	0.05
2604	1	341 Springfield Ave	0.16
2604	2	343-5-7-9 Springfield Ave	0.21
2604	3	353 Springfield Ave	0.11
2604	4	355 Springfield Ave	0.07
2604	5	357 Springfield Ave	0.07
2604	6	359 Springfield Ave	0.06
2604	7	361-365 Springfield Ave	0.16
2604	8	37 Beechwood Road	0.06

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
2608	5	321 Springfield Ave	0.14
2608	6	333 Springfield Ave	0.33
2608	8	107-113 Springfield Ave	0.84
2614	1	67 Summit Ave	0.27
2614	2	71 Summit Ave	0.11
2614	3	73 Summit Ave	0.06
2614	4	75-77 Summit Ave	0.06
2614	5	83-85-87 Summit Ave	0.11
2614	6	89 Summit Ave	0.09
2614	7	93-95 Summit Ave	0.09
2614	8	97-99 Summit Ave	0.16
2614	9	330-342 Springfield Ave	0.34
2614	10	326 Springfield Ave	0.07
2614	11	46 Glenwood Place	0.06
2703	1	494 Springfield Ave	0.02
2703	2	482-488 Springfield Ave	0.12
2703	4	478 Springfield Ave	0.09
2703	5	466-474 Springfield Ave	0.25
2703	7	462 Springfield Ave	1.40
2703	8	458 Springfield Ave	0.07
2703	9	446-456 Springfield Ave	0.16
2703	10	440-444 Springfield Ave	0.06
2703	11	438 Springfield Ave	0.06
2703	12	434 Springfield Ave	0.08
2703	13	430-432 Springfield Ave	0.07
2703	14	428 Springfield Ave	0.08
2703	15	426 Springfield Ave	0.06
2703	16	420 Springfield Ave	0.07
2703	17	412-414 Springfield Ave	0.06
2703	18	408-410 Springfield Ave	0.09
2703	20	402-404 Springfield Ave	0.07
2703	21	27-29 Maple Street	0.03
2703	22	23-33 Maple Street	0.05
2703	23	35-39 Maple Street	0.08
2703	24	41-45 Maple Street	0.19
2703	25	47-49-51 Maple Street	0.21
2704	1	46-50 Maple Street	0.12
2704	2	44 Maple Street	0.05
2704	3	42 Maple Street	0.05
2704	4	38-40 Maple Street	0.13
2704	5	34-36 Maple Street	0.11

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
2704	6	28-30-32 Maple Street	0.17
2704	7	26 Maple Street	0.04
2704	8	396 Springfield Ave	0.06
2704	9	392 Springfield Ave	0.09
2704	10	374-382 Springfield Ave	1.18
2704	11	67-71 Union Place	0.14
2704	12	73-75 Union Place	0.04
<b>Total</b>			<b>14.26</b>



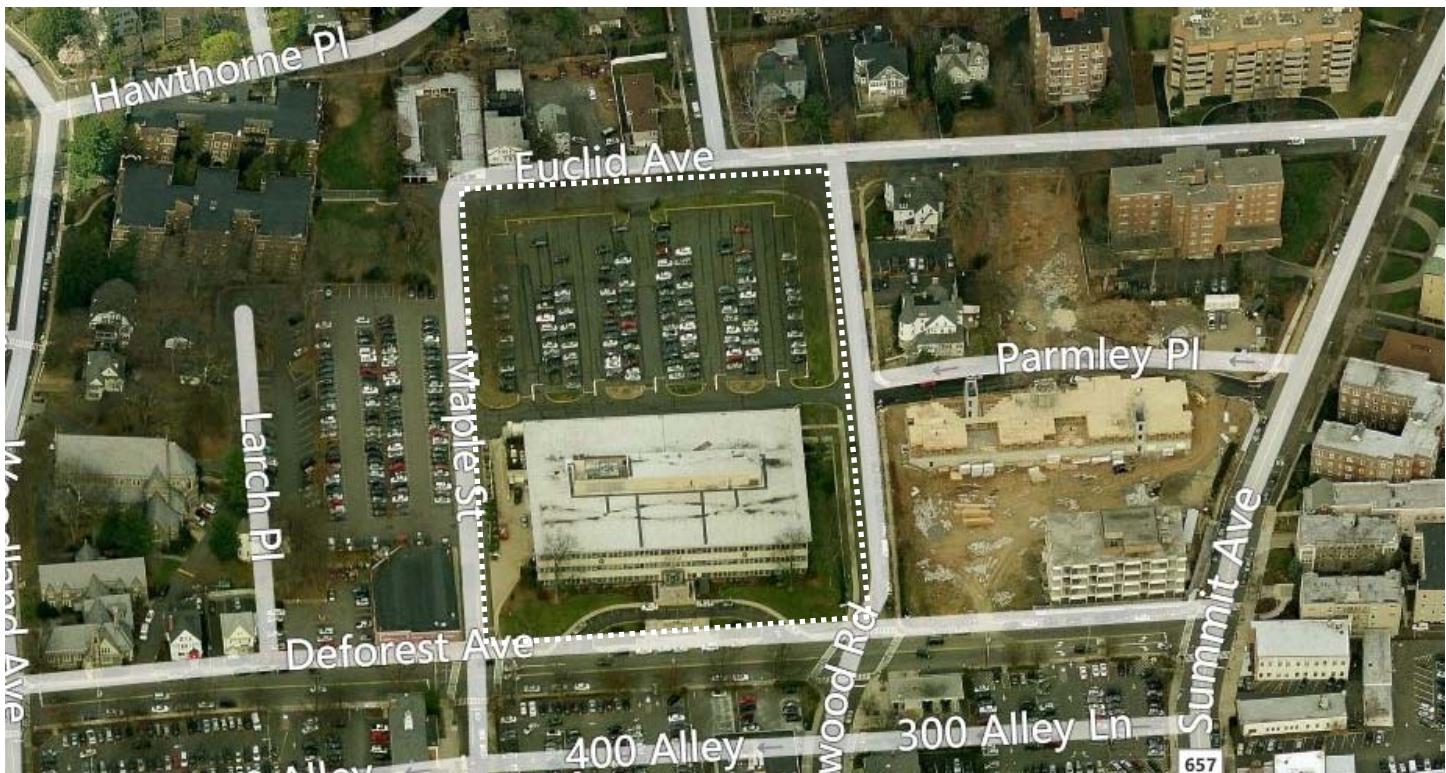
*Image 5: Overlay Zone 5 Location*  
Source: BingMaps. (Lot Line approximate)

At a proposed density of twelve units per acre with a twenty-percent set-aside, following the applicable provisions set forth for multi-family use in the CRBD Zone regarding yard, coverage and height regulations, this site could potentially generate one hundred and seventy-one units, including thirty-four affordable units.

6. **Potential Overlay Zone 6.** Potential Overlay Zone 6 is located to the immediate north of the City's central business district, in a B Zone, and is bounded by Maple Street to the west, Euclid Ave to the north, Beachwood Road to the east, and Deforest Ave to the south. It is presently developed with a large office building and an associated surface parking area. It is comprised of the following lots:

**Table 31: Proposed Overlay Zone 6**  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
1906	1	25 De Forest Ave	4.19
<b>Total</b>			<b>4.19</b>



*Image 6: Overlay Zone 6 Location*

*Source: BingMaps. (Lot Line approximate)*

At a proposed density of twelve units per acre with a twenty-percent set-aside, pursuant to the multi-family yard, coverage and height requirements in the B Zone, this site could potentially generate fifty units, including ten affordable units.

7. **Proposed Overlay Zone 7.** Proposed Overlay Zone 7 is located near the southwesterly corner of the City, in a single family zone, and is bounded by Orchard Street to the south and Park Ave to the east. The property is presently developed with a single-family dwelling. It consists of the following lots:

**Table 32: Proposed Overlay Zone 7**

**City of Summit, New Jersey**

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
4002	17	39 Park Ave	0.76
<b>Total</b>			<b>0.76</b>



*Image 7: Overlay Zone 7 Location*

Source: BingMaps. (Lot Line approximate)

At a proposed density of twelve units per acre with a twenty-percent set-aside, this site could potentially generate nine units, including two affordable units. It is recommended that the yard, coverage and height standards for multifamily use in the B Zone be applied here.

8. **Proposed Overlay Zone 8.** Proposed Overlay Zone 8 is located near the southerly portion of the City. The site is presently developed with the Italian American Club. It consists of the following lots:

**Table 33: Proposed Overlay Zone 8**  
City of Summit, New Jersey

<b>Block</b>	<b>Lot</b>	<b>Property Address</b>	<b>Area (ac)</b>
4208	1	146 Morris Ave	0.91
<b>Total</b>			<b>0.91</b>



*Image 7: Overlay Zone 7 Location*

*Source: Bing Maps. (Lot Line approximate)*

At a proposed density of 13.25 units per acre with a twenty-percent set-aside, this site could potentially generate twelve units, including three affordable units. Regulatory controls to effectuate this density should include a minimum lot size of 0.75-acre; minimum front, side, and rear yards of 12 feet, provided that the yard abutting the former railroad right-of-way shall be permitted to be a minimum of 7 feet; building and impervious coverages of 30 percent and 60 percent, respectively; and a maximum two-story building height.

## Appendices

## **A-1: Draft Affordable Housing Multifamily Set-Aside**

## **Article 11**

### **Affordable Housing Multifamily Set-Aside**

**Note: Any New Language is Underlined and Italicized.**

#### **35-11.1 QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR MULTIFAMILY DEVELOPERS**

All zones or districts in which multi-family developments are permitted shall be subject to a mandatory set-aside of affordable dwelling units and shall provide affordable dwellings on site in accordance with the requirements of this section.

- A. Any multifamily development of five (5) or more dwelling units in a multifamily residential development that is not a rental development described below in paragraph B. shall provide an affordable housing set-aside such that twenty (20%) percent of the dwelling units on site shall be affordable dwellings. As an example, if five (5) units are proposed on a site, at least one (1) affordable unit must be constructed on site.
- B. Any multifamily development of five (5) or more dwelling units in a multifamily residential development that is a rental development shall provide an affordable housing set-aside such that fifteen (15%) percent of the dwelling units on site shall be affordable units. At least ten (10%) percent of the affordable dwellings shall be affordable to households earning thirty (30%) percent or less of the median income for the COAH region.
- C. Where the set-aside requirement of twenty (20%) percent in paragraph A., above, or fifteen (15%) percent in paragraph B., above, results in fractional unit, the total set-aside requirement shall be split into an on-site construction component and a payment-in-lieu contribution. As an example, if a set-aside is calculated to be two and four-tenths (2.4) units, a total of two (2) units would be required to be constructed on site, and a payment-in-lieu equivalent to four-tenths (0.4) of a unit must be paid into the City affordable housing trust fund in accordance with N.J.A.C. 5:97-6.4(c).

#### **35-11.2 PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING OBLIGATION OF RESIDENTIAL DEVELOPERS**

- A. For all residential development, an applicant shall satisfy its affordable housing production obligation through on-site housing production in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH's regulations.
- B. The other alternative mechanisms permitted under COAH's regulations include (a) the purchase of an existing market-rate unit at another location in the community and its conversion to an affordable price-restricted unit in accordance with COAH's criteria, regulations and policies, and/or (b) participation in reconstruction and/or buy-down/write-down, buy-down/rent-down programs. An applicant shall only be entitled to satisfy its affordable housing obligation via one or more of the alternative mechanisms set forth above if the applicant demonstrates to the Common Council that one or more of the alternatives better advances the goals and policies set forth in the City's housing element and fair share plan. The Common Council shall have the complete discretion to determine whether the alternative(s) better advances the goals and policies set forth in the City's housing element and fair share plan.
- C. Full and complete satisfaction of compliance with the affordable housing requirements of the development shall be a specific, automatic, essential and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the Zoning Board's affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition should be a continuing condition of all Board approvals for development.

(Ord. No. 13-3043)

### 35-11.3 COMPLIANCE WITH COAH'S RULES

The affordable unit(s) to be produced pursuant to the sections 35-11.1 and 35-11.2 above shall be available to a low income individual or household should only one affordable unit be required. Thereafter, each of the affordable units shall be divided evenly between low and moderate income individuals and households except in the event of the applicable formulas resulting in an odd number of affordable units; in which event the unit shall be a low income residential unit. All affordable units shall strictly comply with COAH's regulations and policies including, but not limited to, pricing, phasing, bedroom distribution, controls on affordability, range of affordability, affirmative marketing, and income qualification. It shall be the applicant's responsibility, at its sole cost and expense, to arrange for a COAH and City approved qualification service to ensure full COAH compliance and to file such certificates, reports and/or monitoring forms as may be required by COAH or the Court to verify COAH compliance of each affordable unit. (Ord. No. 13-3043)

## A-2: Draft Development Fee Ordinance

## **ARTICLE 10**

### **AFFORDABLE HOUSING DEVELOPMENT FEES**

**Note: Any New Language is Underlined and Italicized.**

#### **35-10.1 Purpose**

- A. *In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.*
- B. *Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.*
- C. The Common Council finds and declares that the creation and preservation of affordable housing in Summit serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector. The purpose of this Article is to create an Affordable Housing Trust Fund from payment of development fees to assist in the marshaling of public and private monies dedicated to affordable housing projects and programs.
- D. The purpose of the Mandatory Affordable Housing Development Fee regulations is to provide revenues with which to fund rehabilitation of housing units occupied by low and moderate income households, to construct housing for low and moderate income families and/or to fund other programs for low and moderate income housing in order for Summit to meet its responsibility for providing affordable housing pursuant to Mount Laurel II, the Fair Housing Act and other applicable laws. The funds collected pursuant to this Article shall be used exclusively for the production of low and moderate income housing and to offset municipal expenses in developing and administering the program(s) under which low and moderate income housing will be produced to meet Summit's fair share need of affordable housing. No funds shall be expended except in accordance with a Spending Plan approved by the New Jersey Council on Affordable Housing and as provided by N.J.A.C. 5:93-8.15.

#### **35-10.2 Basic requirements**

- A. *This ordinance shall not be effective until approved by the Department pursuant to N.J.A.C. 5:96-5.1*
- B. *The City of Summit shall not spend development fees until the Department has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.*

#### **35-10.3 Definitions**

*The following items, as used in this ordinance, shall have the following meanings:*

- A. *"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.*
- B. *"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished the Council and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011. As such, any and all references to COAH shall mean the Department.*
- C. *"Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.*

- D. *"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.*
- E. *"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).*
- F. *"Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.*

#### ***35-10.4 Residential Development Fees***

- A. Affordable Housing Development Fees shall be paid by all developers other than developers of exempt developments. Such fees shall consist of monies paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules. Affordable Housing Development Fees collected shall be used for the sole purpose of providing low and moderate income housing. This section shall be interpreted within the framework of COAH's rules on development fees.
- B. Fees shall be based on the equalized assessed value of a property determined by the City Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction costs. Final equalized assessed value will be determined at project completion construction by the City Tax Assessor.
- C. *Imposed fees*
  - 1. Within the R-43, R-25, R-15, R-10, R-6, R-5, TH-2, MF, MF/TOD, MFT, GW I, GW II, *B*, NB, *ORC*, *ORC-1*, and *TH-1* Zones, *residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one percent (1%) of the equalized assessed value for residential development provided no increased density is permitted.*
  - 2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six percent (6%) of the equalized value for each additional unit that may be realized. *However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.*
  - 3. The City may collect fees exceeding those permitted above provided that the City enters into an agreement with a developer that offers a financial incentive for paying higher fees. No agreement may provide for a voluntary fee without also providing for a comparable offsetting incentive. All such agreements are subject to Court approval.

#### ***D. Eligible Exactions, Ineligible Exactions, and Exemptions***

- 1. Development fees shall be collected for any development which requires major or minor site plan and/or major or minor subdivision approval and/or planned research office development approval from either the Planning Board or Zoning Board of Adjustment. Development fees shall also be collected from any new single-family or two-family dwelling construction eligible for new home warranty otherwise exempt from site plan or subdivision approval.

2. The City shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.
3. *Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval; for example, a substantial alteration in site layout, development density, or types of uses within a development. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.*
4. *Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.*
5. *Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.*
6. The City exempts the following types of development from the imposition of development fees:
  - a. Nonprofit organizations which have received tax exempt status pursuant to Section 501 (c) (3) of the Internal Revenue Code, providing current evidence of that status is submitted to the City Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges.
  - b. Federal, State, County and local governments.
  - c. Public utilities under the jurisdiction of the New Jersey Board of Public Utilities to the extent that the construction for which approval is sought is of a facility which shall house equipment only and not to be occupied by any employees.
  - d. Developers of low and moderate income housing units provided that the required minimum percentage of residential units in the development are affordable units in accordance with all applicable COAH regulations including but not limited to those establishing minimum set-asides for low and moderate sales and rental housing. Where affordable housing units are required to be constructed and where the developer has been authorized to pay a development fee in lieu of building the affordable housing units, developers shall pay a fee related to the internal rate of subsidization. For purposes of this chapter, the internal rate of subsidization shall be not less than twenty thousand (\$20,000.00) dollars for each affordable unit not built.
  - e. Public uses including public educational and cultural facilities and outdoor and indoor recreational facilities.

#### **35-10.5 Nonresidential Development Fees**

- A. Affordable Housing Development Fees shall be paid by all developers other than developers of exempt developments. Such fees shall consist of monies paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules. Affordable Housing Development Fees collected shall be used for the sole purpose of providing low and moderate income housing. This section shall be interpreted within the framework of COAH's rules on development fees.
- B. Fees shall be based on the equalized assessed value of a property determined by the City Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction costs. Final equalized assessed value will be determined at project completion construction by the City Tax Assessor.

C. Imposed fees

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two percent (2%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots. When a developer develops land for residential purposes, fees shall be calculated as in paragraph C.1, above.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two percent (2%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two percent (2%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
4. The City may secure a higher fee than set forth in paragraph 1. above. The increased development rights that may warrant a higher fee include, but are not limited to, the following: (a) a tax abatement; increased commercial, industrial or other nonresidential square footage; increased commercial, industrial or other nonresidential lot coverage; increased commercial, industrial or other nonresidential impervious coverage; and/or a change in the nonresidential use of the property that enhances the value of the property. The right to collect a higher fee shall be subject to: (a) the City and the developer entering into an agreement with respect to the increased fee/increased development right(s); (b) the increased fee bearing a reasonable relationship to the increased development right(s); and (c) the agreement being approved by a court.
5. In those circumstances where a developer secures the right to an increase in development rights pursuant through the granting of a variance granted pursuant to N.J.S.A. 40:55D-70d ("d-4" or "use" variance), then the additional floor area ratio (FAR) realized (above what is permitted by right under existing zoning) the developer will incur a bonus development fee. However, if the zoning on a site has changed during the two (2) year period preceding the filing of the "d" variance application, the base floor area ratio (FAR) for the purpose of calculating the six (6%) percent bonus development fee shall be the highest floor area ratio (FAR) permitted by right during the two (2) years preceding the filing of the "d" variance application. The base floor area ratio (FAR) shall be subject to the two (2%) percent fee pursuant to paragraph a. above.

D. Eligible Exactions, Ineligible Exactions, and Exemptions for Nonresidential Development

1. Development fees shall be collected for any development which requires major or minor site plan and/or major or minor subdivision approval and/or planned research office development approval from either the Planning Board or Zoning Board of Adjustment.
2. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two percent (2%) development fee, unless otherwise exempted in this Article.
3. The two percent (2%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs, unless otherwise noted in this Article.
4. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

5. *A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.*
6. *If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the City of Summit as a lien against the real property of the owner.*
7. Developments that have received preliminary or final approval prior to the effective date of this Article shall be exempt from development fees unless the developer seeks a substantial change in the approval; for example, a substantial alteration in site layout, development density or types of uses within the development.
8. Developers that convert any portion of an existing residential structure to a non-residential use shall pay a development fee. The development fee shall be based on the increase in the equalized assessed value of the converted structure.
9. The City exempts the following types of development from the imposition of development fees:
  - a. Nonprofit organizations which have received tax exempt status pursuant to Section 501 (c) (3) of the Internal Revenue Code, providing current evidence of that status is submitted to the City Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges.
  - b. Federal, State, County and local governments.
  - c. Public utilities under the jurisdiction of the New Jersey Board of Public Utilities to the extent that the construction for which approval is sought is of a facility which shall house equipment only and not to be occupied by any employees.
  - d. Public uses including public educational and cultural facilities and outdoor and indoor recreational facilities.

#### 35-10.6 Collection Procedures

- A. *Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.*
- B. *For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.*
- C. *The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.*
- D. *Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.*

- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the City of Summit fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- H. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- I. Appeal of development fees
  - 1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the City of Summit. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - 2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the City of Summit. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

#### 35-10.7 Affordable Housing Trust Fund

- A. All development fees shall be deposited with the Chief Financial Officer in a separate designated interest-bearing housing trust fund. The development fees placed in the housing trust fund shall be deemed "dedicated revenues" as such term is defined in N.J.S.A. 40A:4-36. In establishing the housing trust fund, Summit shall provide whatever express written authorization may be required by the bank utilized by the City in order to permit COAH to direct the disbursement of development fees pursuant to Section 35-10.9B of this chapter. No money shall be expended from the housing trust fund unless the expenditure conforms to a Spending Plan approved by the court.
- B. If the court determines that Summit is not in conformance with the court's grant of a Judgment of Repose, the court is authorized to direct the manner in which all development fees collected pursuant to this Article shall be expended. The City shall enter into an escrow agreement with the bank in which the fees are to be deposited to enable the court to enforce the Spending Plan approved by the court or take such other measures as the court deems appropriate.
- C. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - 1. Payments in lieu of on-site construction of affordable units;

2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. Rental income from municipally operated units;
4. Repayments from affordable housing program loans;
5. Recapture funds;
6. Proceeds from the sale of affordable units; and
7. Any other funds collected in connection with [insert municipal name]'s affordable housing program.

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Department.

#### 35-10.8 Use of Funds

- A. The expenditure of all funds shall conform to a spending plan approved by the Department. Funds deposited in the housing trust fund may be used for any activity approved by the Department to address the City of Summit's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse Summit for housing activities that preceded the entry of a Judgment of Repose for the current housing cycle by a court.
- C. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
  2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The City of Summit may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- E. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and

*compliance with the Department's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.*

### **35-10.9 Monitoring**

- A. The City shall collect information on each applicant for low and moderate income housing on forms approved by COAH. Such report shall include:
  - a. Monitoring forms approved by COAH.
  - b. An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and
  - c. An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in paragraph b. above.
- B. The City shall evaluate the results of its affirmative marketing activities and file a report with the court annually.

### **35-10.10 Ongoing collection of fees**

- A. *The ability for the City of Summit to impose, collect and expend development fees shall expire with its judgment of compliance unless the City of Summit has filed an adopted Housing Element and Fair Share Plan with the Department, has petitioned for substantive certification, and has received the Department's approval of its development fee ordinance. If the City of Summit fails to renew its ability to impose and collect development fees prior to the expiration of judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The City of Summit shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the City retroactively impose a development fee on such a development. The City of Summit shall not expend development fees after the expiration of its substantive certification or judgment of compliance.*

### **35-10.11 Penalties**

- A. In the event that any of the conditions set forth in paragraph B below occur, the court or its designee shall be authorized, on behalf of the City, to direct the manner in which all development fees collected pursuant to this Article shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of the court or its designee upon receipt by the City Clerk and Chief Financial Officer of written notification from the court or its designee that such a condition has occurred. In furtherance of the foregoing, the City shall, in establishing a bank account pursuant to N.J.A.C. 5:93-8.15 and paragraph F. of this section, ensure that Summit has provided whatever express written authorization which may be required by the bank to permit the court or its designee to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the court or its designee upon receipt by the City Clerk and Chief Financial Officer.
- B. Occurrence of the following may result in the court or its designee taking an action pursuant to the paragraph above:
  - 1. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1c. within the time limits imposed by the court;
  - 2. Failure to meet deadlines for information required by the court in its review of a housing element, development fee ordinance, or plan for spending fees;
  - 3. Failure to proceed through the court processes toward a Judgment of Repose in a timely manner;

4. Failure to address any conditions the court may impose for approval of a plan to spend development fees within the deadlines imposed by the court;
5. Failure to address the any conditions the court may impose for a Judgment of Repose within deadlines imposed by the court;
6. Failure to submit accurate monitoring reports within the time limits imposed by the court;
7. Failure to implement the spending plan for development fees within the time limits imposed by the court, or within reasonable extensions granted by the court;
8. Expenditure of development fees on activities not permitted by the court;
9. Revocation of the Judgment of Repose by the court; or
10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

#### **35-10.12 EXPIRATION OF AFFORDABLE HOUSING DEVELOPMENT FEE REGULATIONS**

The regulations in Article 10 shall expire if:

- A. The court revokes the Judgment of Repose the City anticipates that the court will enter in the ongoing affordable housing litigation.
- B. The Judgment of Repose expires prior to the City filing an adopted Housing Plan Element with COAH or the court and seeking COAH's or the court's approval of the Housing Plan Element.
- C. The court denies the City's efforts to secure approval of its Housing Plan Element and Fair Share Plan in its current form or in a form acceptable to the City and the court.

## **A-3: Existing Affirmative Marketing Ordinance**

**ARTICLE 12**  
**AFFIRMATIVE MARKETING OF AFFORDABLE UNITS**

**35-12.1 AFFIRMATIVE MARKETING OF AFFORDABLE UNITS**

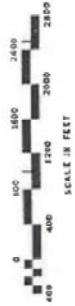
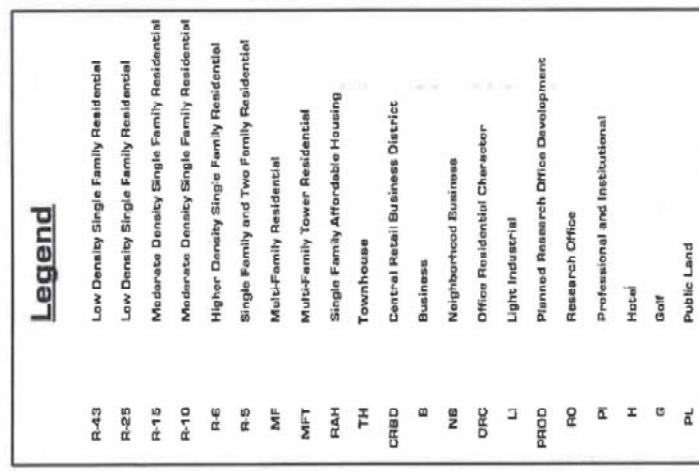
- A. The City of Summit shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marking plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are at least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Essex, Union, Warren and Morris counties.
- D. The Administrative Agent designated by the City of Summit shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- G. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the City of Summit.

(Ord. No. 09-2887 § 2)

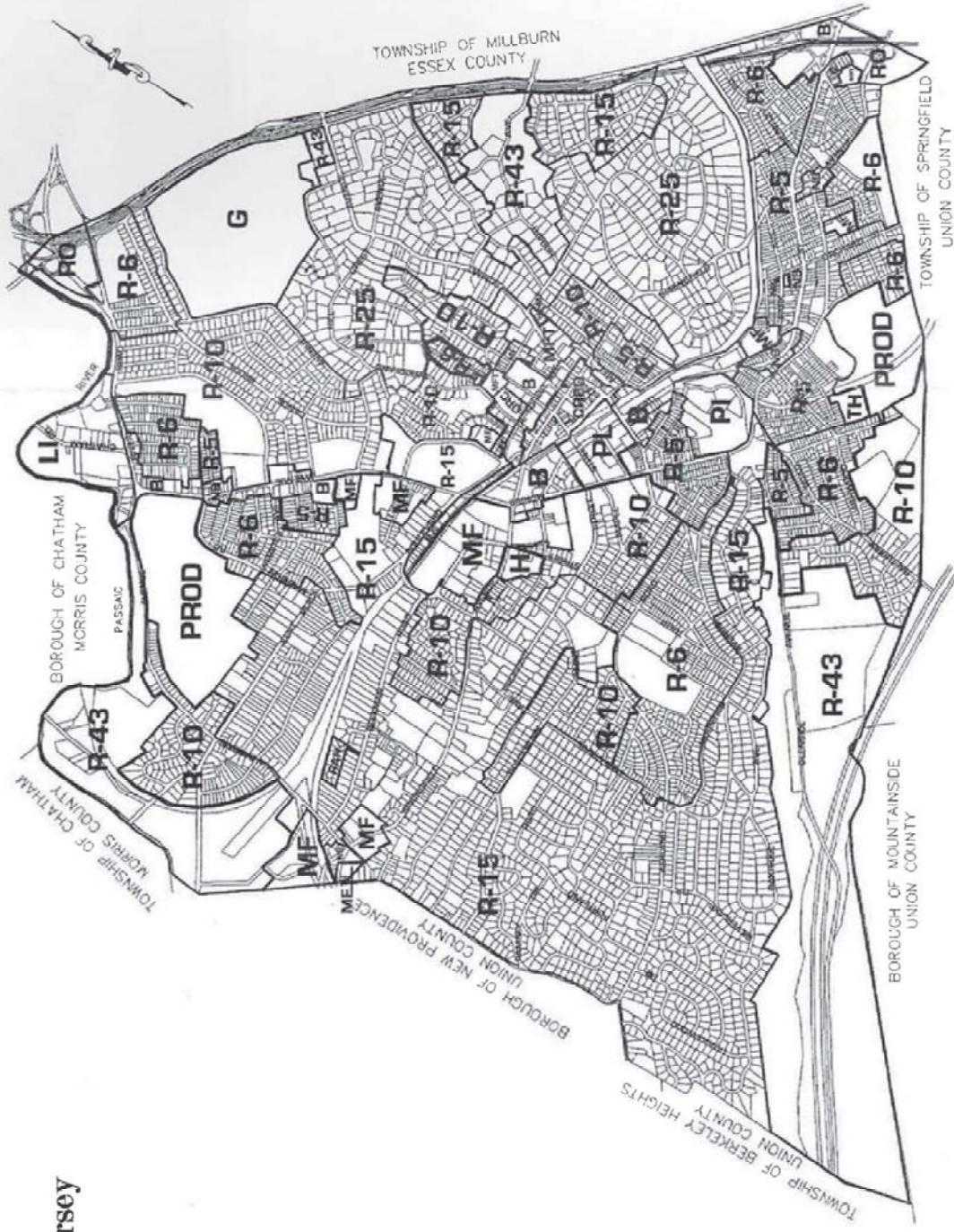
## A-4: City of Summit Land Use Map

# Land Use Plan Map

## City of Summit Union County, New Jersey



Prepared by Heyer, Gruel & Associates, PA



## A-5: Adopted Spending Plan

**RESOLUTION OF THE CITY OF SUMMIT, COUNTY OF UNION  
ADOPTING AN AFFORDABLE HOUSING SPENDING PLAN AND  
REQUESTING JUDICIAL REVIEW AND APPROVAL OF SAME**

March 20, 2018

WHEREAS, regulations adopted by the New Jersey Council on Affordable Housing (“COAH”) have consistently required a municipality with an Affordable Housing Trust Fund to receive approval of a Spending Plan by COAH prior to spending any of the funds in its Trust fund, and

WHEREAS, these regulations required a Spending Plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds;
5. A schedule for the expenditure of all affordable housing trust funds;
6. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing;
7. A plan to spend the trust fund balances in accordance with the implementation schedule within the Spending Plan and approved by a settlement agreement;
8. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the Plan, and
9. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the City of Summit has prepared an amended Spending Plan consistent with the City’s Settlement Agreement with Fair Share Housing Center, and

WHEREAS, because COAH is no longer a functioning administrative agency, it has announced that it will not approve any Spending Plan, including the City’s, and

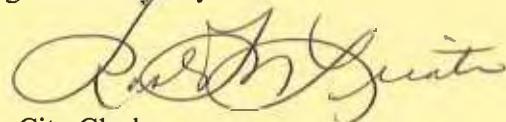
WHEREAS, the City of Summit shall, therefore, seek review and approval of amended Spending Plan as part of its obligations under the Settlement Agreement between the City of Summit and Fair Share Housing Center.

NOW THEREFORE BE IT RESOLVED BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT, COUNTY OF UNION, NEW JERSEY,

That it hereby adopts and endorses the Spending Plan attached hereto.

BE IT FURTHER RESOLVED THAT the City of Summit hereby requests that the Special Master and/or the Court review and approve its Spending Plan.

I, Rosalia M. Licatese, Municipal Clerk of the City of Summit, do hereby certify that the foregoing resolution was duly adopted by the Common Council of the City of Summit at a public meeting held on March 20, 2018, a quorum being present and voting in the majority.

  
City Clerk

REVISED 3-20-18  
City of Summit  
Affordable Housing Trust Fund Spending Plan

## INTRODUCTION

The City of Summit, Union County, has prepared a Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:91-1 et seq. and N.J.A.C. 5:93-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing and establishing the City of Summit affordable housing trust fund was adopted by the City in 2003.

As of December 31, 2017, the City of Summit has a balance of \$1,839,806 in its affordable housing trust fund. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in PNC Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

### 1. REVENUES FOR CERTIFICATION PERIOD

It is anticipated that, during the period of Third Round substantive certification, the City of Summit will add an additional \$3,031,568 to its affordable housing trust fund. This is detailed below.

- (a) Development fees: The City anticipates that \$2,992,416 in development fees will be generated between January 1, 2018 and December 31, 2025. This figure is based on the following assumptions:
  1. *Residential Development Fees:* Since 2010, the City of Summit has collected an average of \$190,152 per year in residential development fees for its Affordable Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$1,521,216 in residential development fees over the next 8 years.
  2. *Non-Residential Development Fees:* During the years since 2007 that the City of Summit collected non-residential development fees, the City collected an average of \$183,900 per year in non-residential development fees for its Affordable

Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$1,471,200 in non-residential development fees over the next 8 years.

- (b) Payment in lieu (PIL): The City of Summit does not currently anticipate the contribution of any payments in lieu toward the municipal affordable housing trust fund during the period of Third Round substantive certification.
- (c) Other Funds: The City of Summit does not currently anticipate the contribution of any other funds toward the municipal affordable housing trust fund during the period of Third Round substantive certification.
- (d) Projected interest: Since 2010, the City of Summit has collected an average of \$4,894 per year in interest for its Affordable Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$39,152 in total interest over the next 8 years.

**PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND**  
**2018 THROUGH 2025**

SOURCE OF FUNDS	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development fees:									
Residential Development	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$1,521,216
Non-Residential Development	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$1,471,200
(b) Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(c) Other Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(d) Interest	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$39,152
<b>Total</b>	<b>\$378,946</b>	<b>\$3,031,568</b>							

In sum, the City of Summit projects a total of \$3,031,568 in revenue to be collected between January 1, 2018 and December 31, 2025. This projected amount, when added to Summit's trust fund balance of \$1,839,806 as of December 31, 2017, results in a total anticipated trust fund balance of \$4,871,374 available to fund and administer the City's affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the City:

- (a) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Summit's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.8), and as may be amended.
- (b) Distribution of development fee revenues: The release of development fee revenues requires consideration by the City's Affordable Housing Subcommittee and authorization by the Common Council.

## 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

- (a) Rehabilitation. The City has a rehabilitation obligation of 131 units. In order to fully satisfy its rehabilitation obligation, the City of Summit will commit to spend a minimum of \$10,000 per unit, for a total of \$1,310,000. COAH's regulations require municipalities to set aside sufficient funds to address one-third of their rehabilitation obligation within one year of substantive certification of their plan. In addition, municipalities are required to set aside sufficient funds to address one-sixth of their rehabilitation obligation each subsequent year of the substantive certification period until the entire obligation is funded. As such, the City will set aside \$440,000 for the first year following substantive certification, and an additional \$150,000 each subsequent year following substantive certification until the rehabilitation share is met. If the City can participate in a County rehabilitation program, or if at the time of mid-point review the \$1,310,000 is not needed, it can be re-allocated to another eligible purpose, including facilitation of construction toward the goal of 50 units of affordable housing.
- (b) New Construction. The City proposes to contribute a total of \$1,200,000 from its Affordable Housing Trust Fund to Habitat for Humanity for the construction of 12 affordable units on the Italian-American Club site. It is anticipated that the release of the funds will be in two installments, with the first installment to be released upon securing land use development approvals and the second installment to be released at the start of construction.
- (c) Affordability Assistance. Pursuant to N.J.A.C. 5:93-8.16(c), the City will commit to spend at least 30% of the revenues collected from development fees towards

affordability assistance to low- and moderate-income households. However, development fees collected to finance a rehabilitation program or new construction project are exempt from this requirement. As set forth above, the City of Summit is proposing to contribute \$2,510,000 for rehabilitation and new construction projects from the collection of development fees. Therefore, the City will dedicate 30% of the residual money less of its proposed rehabilitation and new construction expenditures towards its affordability assistance program. As shown in the table below, the City projects that approximately \$489,118 will be available from the affordable housing trust fund for this purpose through 2025, one-third of which will be need to be dedicated toward affordability assistance for very-low income households. The City's affordability assistance program will include down payment assistance, special condominium assessment assistance, emergency repair assistance, emergency/hardship mortgage payment assistance, rental assistance.

Actual development fees + interest 7/17/08-12/31/17		\$2,219,182
Development fees projected 1/1/2018-12/31/2025	+	\$2,992,416
Interest projected 1/1/2018-12/31/2025	+	\$39,152
Less rehab & housing activity expenditures 7/17/08-12/31/17	-	\$1,096,902
Less rehab & housing activity expenditures 1/1/18-12/31/25	-	\$2,510,000
Total	=	\$1,643,848
30 percent requirement	x 0.30 =	\$493,154
Less affordability assistance expenditures through 12/31/17	-	\$4,036
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2018-12/31/2025	=	\$489,118
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2018-12/31/2025	÷ 3 =	\$163,039

(d) Administrative Expenses. Per N.J.A.C. 5:93-8.16(e), no more than 20% of the revenues collected from development fees shall be expended on administration. The City projects that a maximum of \$944,311 of housing trust funds will be permitted to be used for administrative purposes through 2025. Projected administrative expenditures, subject to the 20% cap, include the salaries and benefits for municipal employees and consultant fees necessary to develop or implement the following:

1. An updated Housing Element and Fair Share Plan.
2. A rehabilitation program.
3. An affirmative marketing program.
4. An affordability assistance program.

Actual development fees + interest earned through 12/31/17	+	\$3,836,112
Development fees projected 1/1/2018-12/31/2025	+	\$2,992,416
Interest projected 1/1/2018-12/31/2025	+	\$39,152
Total	=	\$6,867,680
20 percent requirement	x 0.20 =	\$1,373,536
Less administrative expenditures through 12/31/17	-	\$429,225
PROJECTED MAXIMUM Administrative Expenses Requirement 1/1/2018-12/31/2025	=	\$944,311

#### 4. EXPENDITURE SCHEDULE

The City of Summit intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule on the following page parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTED EXPENDITURE SCHEDULE 2018 - 2025

PROJECTS/PROGRAMS	Number of Units Projected	PROJECTED EXPENDITURE SCHEDULE 2018 - 2025								
		2018	2019	2020	2021	2022	2023	2024	2025	Total
Rehabilitation	131	\$440,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$120,000		\$1,310,000
New Construction										
1. Habitat for Humanity	12		\$600,000	\$600,000						\$1,200,000
Subtotal	143	\$440,000	\$750,000	\$750,000	\$150,000	\$150,000	\$150,000	\$120,000		\$2,510,000
Affordability Assistance		\$61,140	\$61,140	\$61,140	\$61,140	\$61,140	\$61,140	\$61,140	\$61,138	\$489,118
Administration		\$118,039	\$118,039	\$118,039	\$118,039	\$118,039	\$118,039	\$118,038	\$944,311	
Total		\$619,179	\$929,179	\$929,179	\$329,179	\$329,179	\$329,179	\$299,179	\$179,176	\$3,943,429

## 5. EXCESS OR SHORTFALL OF FUNDS

Pursuant to the Housing Element and Fair Share Plan, the governing body of the City of Summit will adopt a resolution agreeing to fund any shortfall of funds required for implementing the plan. In the event that a shortfall of anticipated revenues occurs, the City of Summit will handle the shortfall of funds through adopting a resolution with an intent to bond.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be reserved for additional affordable housing activity necessary to address unmet need.

### SUMMARY

The City of Summit intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93-8.16 and consistent with the housing programs outlined in the City's Housing Element and Fair Share Plan.

The City of Summit has a balance of \$1,839,806 as of December 31, 2017, and anticipates an additional \$3,031,568 in revenues through 2025 for a total of \$4,871,374. During the Third Round period of substantive certification through 2025, the City will agree to fund approximately \$1,310,000 towards rehabilitation of existing housing units, approximately \$1,200,000 towards Habitat for Humanity for new affordable housing construction, a minimum of \$489,118 towards an affordability assistance program, and approximately \$944,311 towards administrative costs.

Any shortfall of funds will be offset by an alternative funding source to be identified by the City. If no alternative funding is available, the City of Summit will utilize the resolution of intent to bond to provide the necessary funding. The municipality will dedicate any excess funds or remaining balance toward additional affordable housing activity necessary to address unmet need.

SPENDING PLAN SUMMARY		
Balance as of December 31, 2017		\$1,839,806
PROJECTED REVENUE 1/1/2018-12/31/2025		
Development fees	+	\$2,992,416
Payments in lieu of construction	+	\$ 0
Other funds	+	\$ 0
Interest	+	\$39,152
SUBTOTAL REVENUE	=	\$3,031,568
TOTAL REVENUE	=	\$4,871,374
EXPENDITURES		
Funds used for Rehabilitation	-	\$1,310,000
New Construction: Habitat for Humanity	-	\$1,200,000
Affordability Assistance	-	\$489,118
Administration	-	\$944,311
TOTAL PROJECTED EXPENDITURES	=	\$3,943,429
REMAINING BALANCE (Reserved for Additional Affordable Housing Activity Necessary to Address Unmet Need, including facilitating construction toward the goal of 50 affordable housing units.)	=	\$927,945

## **A-6: Settlement Agreement**

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

**In the Matter of the City of Summit, County of Union, Docket No.  
UNN-L-2440-15**

**THIS SETTLEMENT AGREEMENT** ("Agreement") made this 21st day of September, 2016, by and between:

**CITY OF SUMMIT**, a municipal corporation of the State of New Jersey, County of Union, having an address at 512 Springfield Avenue, Summit, New Jersey 07901 (hereinafter the "City" or "Summit");

And

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

**WHEREAS**, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the City filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended 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 City simultaneously sought and ultimately secured an Order protecting Summit from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, the immunity secured by Summit remains in force as of the date of this Agreement; and

**WHEREAS**, the trial court appointed Philip B. Caton, P.P., F.A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

**WHEREAS**, with Mr. Caton's assistance, Summit and FSC 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 City and FSC 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 lower-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 Third Round 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 City and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Summit's "Rehabilitation" obligation is 131.
2. Summit's "Prior Round" obligation is 171.
3. Summit's allocation of the Round 3 regional need is 567.

4. FSHC and the City agree that Summit 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 City 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 567-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May 2016 calculation of the City's Third Round fair share obligation.

5. Pursuant to the framework set forth in N.J.A.C. 5:93-4.2 and as agreed upon by FSHC, the City, and Special Master Caton, Summit's current Realistic Development Potential (hereinafter "RDP") is 36.

6. **Satisfaction of Rehabilitation Obligation:** The City shall satisfy its Rehabilitation obligation by continuing to collaborate with the Summit Housing Authority to implement its Rehabilitation Program as well as the Union County Home Improvement Program.

7. **Credits and Satisfaction of the City's RDP:** The City has satisfied its RDP and has additional credits as follows:

Site #	Bloc k	Lot	Property Location	Number of Bedrooms	Owner/Operator
1	401	50	1 Greenfield Avenue	2	Our House, Inc.
2	2406	4	43 Glendale Avenue	4	Our House, Inc.
3	1302	81.01	390 Morris Avenue-Unit 1	2	Our House, Inc.
4	1302	81.03	390 Morris Avenue-Unit 3	2	Our House, Inc.
5	1302	81.31	390 Morris Ave. - Unit 31	2	Our House, Inc.
6	4002	31.34	103 Park Ave-Unit E205	2	Our House, Inc.
7			39 Morris Ave	6	Habitat For Humanity
<b>Total</b>				<b>20 Credits</b>	

Additional credits include the following:

<u>Existing Project Location</u>		<u>Unit Count</u>
50 Parmley Place:		2 units
13 North St:	Summit Place's Off-Site Obligation	3 units
120 Morris Ave:	Tiger Baron	2 units
31 Russel Pl	68-72 Franklin Pl Off-Site Obligation	2 units
708-710 Springfield Ave:	Summit Pl Off-Site Obligation	4 units
785 Springfield Ave:	Providence Crossing	2 units
545 Morris Ave:	Promenade	4 units
	<u>Subtotal</u>	<u>19 units</u>
<u>Pending Project Location</u>	<u>Acres</u>	<u>Unit Count</u>
Sunrise Assisted Living River St	1.33 ac	8 units
Multi-Family 27-31 Euclid Ave	0.44 ac	1 units
Multi-Family 4-6 Ashwood Ave	0.44 ac	2 units
	<u>Subtotal</u>	<u>11 units</u>
	<b>Total:</b>	<b>50 Credits</b>

Thus, in total, and for purposes of this settlement agreement, the City is currently entitled to 50 credits to apply to its 36-unit RDP. Subject to confirmation by the Special Master prior to the City's Compliance Hearing, the City is also entitled to as many as 9 rental bonuses, for a maximum of 59 Mount Laurel credits.

The City also executed a 26-unit Regional Contribution Agreement with the City of Elizabeth, which was approved by the Council on Affordable Housing on November 9, 2005, which shall be applied to the unmet need.

8. **Actions to Capture Additional Affordable Housing Opportunities:** For the purposes of settlement, the City agrees to take the following actions to address all, or a portion of, the remaining portion of its Prior Round obligations and its allocation of the Round 3 regional need, which total 653 units:

- a. Subject to all MLUL provisions, including the required notice and public hearings, the City will adopt Mount Laurel overlay zoning ordinances consistent with the report issued by Joseph H. Burgis, P.P., A.I.C.P., the City's consulting planner, dated December 7, 2015 as modified by the report dated October 1, 2016 and attached hereto as Exhibit A.
- b. Subject to all MLUL provisions, including the required notice and public hearings, the City will also amend the zoning ordinances on the sites currently zoned for multi-family apartments to impose a mandatory 15 percent affordable housing set-aside for rental units and a mandatory 20 percent set aside for for-sale units. Developers shall have the opportunity to demonstrate that the set aside percentages set forth above render the proposed project to

be economically infeasible and, upon the provision of satisfactory proofs, may seek relief such as, but not limited to, additional density, a monetary subsidy from the City's Mount Laurel trust fund, bulk/design waivers, a payment in lieu of taxes, or other forms of relief, provided that they shall not be permitted to seek reductions in the set aside required by this agreement and the implementing ordinances.

9. For the purposes of settlement, the City shall not seek any Mount Laurel credits in Summit presently administered by the Summit Housing Authority (SHA). However, the City reserves the right to seek such credits at a later date, and FSHC equally reserves the right to challenge such credits if the issue arises in the future. FSHC also reserves the right to pursue a legal challenge to the "residency preference" associated with the SHA senior site and any other units in the City administered by the Summit Housing Authority now or in the future. All references to SHA units receiving credit in COAH's online systems, including the CTM system, will be deleted by the City within 30 days of the approval of this Agreement by the Court.

10. The City'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 City 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. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, the City shall formally withdraw its pending Motion for Summary Judgment on the "unmet need" issue.

12. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, FSHC shall formally dismiss its pending counterclaims against the City and shall not seek counsel fees or any other similar costs against the City.

13. During period between now and July 1, 2025, Summit shall take all reasonable steps needed to achieve the goal of facilitating the construction of fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments, subject to the following parameters.

Because these units are intended to meet what is termed as "unmet need," Summit shall not be required to adopt a "Resolution of Intent to Bond" and is not being required to use funds other than Affordable Housing Trust Funds to render the associated development proposals economically feasible. The City acknowledges, however, that a Resolution of Intent to Bond, a Resolution of Need, tax abatement or other similar financial mechanism require formal actions by the governing body and may be required under certain affordable housing laws or as a condition precedent to the award of certain public subsidy programs. Since such actions are often necessary to develop the affordable housing units contemplated in this paragraph, the City shall not take any action, or inaction, to thwart a development proposal unless it can demonstrate that such action or inaction would violate applicable law or construction of the development in question would violate principles of sound land use planning.

- a. At least half of the 50 units shall be available to families.

- b. Summit shall not be required to facilitate construction of a single, 50-unit all-affordable development and agrees, to the maximum extent possible, to rely on non-profit developers to develop the 50 units of affordable housing;
- c. Upon completion and compliance with applicable laws and rules, Summit shall receive "credits" against its 50-unit goal for the pending development by Habitat for Humanity on the "Italian-American Club" site and/or resulting from any of the zoning actions referenced in this paragraph of this Agreement;
- d. Within the first three years following the execution of this Agreement, and in accordance with the provisions set forth in N.J.A.C. 5:93-5.5, the City shall prepare a document that identifies the site or sites and measures through which it intends to facilitate the development of the 50 new affordable units;
- e. This document shall also identify the developer(s) who will develop the 50 new affordable units and enter into developers' agreements with each developer subject to the limitations expressed in subparagraph i. below;
- f. Between the third and the sixth year, Summit shall make all reasonable efforts to facilitate the development approvals and to support applications for the funding needed to achieve the goal of 50 new affordable units;
- g. Between the sixth and tenth year, the City shall make all reasonable efforts to facilitate the actual construction of the developments needed to achieve the goal of 50 new affordable units;
- h. The City shall (i) provide an annual Status Report on the above-referenced actions, including identifying what steps have been taken in the previous year and what steps are anticipated in the following year; (ii) shall conduct a duly-noticed meeting of its Mount Laurel subcommittee during February of each year which shall include on the agenda a discussion of the Status Report; and (iii) shall also discuss the Status Report as an agenda item during a public meeting of the governing body and receive public comment regarding that report during February of each year. The City agrees to provide Fair Share Housing Center and clergy organizations in Summit with 30 days' notice of these meetings.
- i. The parties recognize that Summit may make all reasonable efforts and still not achieve the development of 50 units of affordable sales/ownership housing in 100% affordable developments as contemplated by this agreement and may not accomplish interim steps toward the development of those units. Public subsidies may not be available or other unanticipated factors may arise. Nevertheless, Summit agrees to take all reasonable efforts to overcome barriers, whether identified or not in this agreement, in order to develop 50 units of affordable sales/ownership housing in 100% affordable developments.

14. The City's obligation to provide fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments may be reduced to forty (40) at the City's option, which option shall be exercised within twelve (12) months of the date on which this agreement is effective, if the City amends its zoning ordinance covering at least 6.3 acres in the Overlay Zoning Districts identified in Exhibit A to permit an additional story in inclusionary developments. Within twelve (12) months of the execution of this agreement, Summit shall advise FSHC and the Special Master whether it has exercised this option. Summit agrees to adopt all necessary implementing ordinances necessary to exercise this within fifteen (15) months following the execution of this agreement.

15. The City agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families. Affordability assistance for low and very low-income households will be addressed in the spending plan to be adopted in the future in accordance with this agreement.

16. To the extent that Summit is entitled to any "bonus credits" to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). Furthermore, the City will be entitled to additional rental bonus credits generated by projects that may be developed under this Agreement up to the maximum of 9 rental bonuses for which it is eligible based on its Third Round obligation.

17. At least 50 percent of the units addressing the Third Round Prospective Need, including RDP and 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.

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

19. At least half of the units addressing the Third Round Prospective Need including RDP and unmet need, in total must be available to families.

20. The City agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the City claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its prior round and Round 3 fair share obligations including RDP and unmet need.

21. The City 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, East Orange NAACP (P.O. Box 127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206), Affordable Housing Professionals of New Jersey, and the New Jersey Housing Resource Center. As part of its regional affirmative marketing strategies during implementation of its fair

share plan, the City and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

22. 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 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 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 City, 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.

23. Upon full execution of this Agreement, Summit shall place this agreement on file in the City's municipal building and file a copy with the Court for the upcoming scheduled Fairness Hearing, at which the City 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. Summit shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Summit's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings can be held concurrently or sequentially, which shall be decided by the Court with consultation by the Special Master, Summit, and FSHC. Although it is expected that the Special Master will provide the majority of the required testimony, Summit shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the City's Fair Share Plan. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the City's Fair Share Plan, the parties agree that the City 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 Summit's immunity from all Mount Laurel lawsuits through July 2, 2025.

24. 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 Summit's Round 3 obligation is decreased to 454 or less, with any relevant appeal periods having passed, the City may file a proposed form of Order, on notice to FSHC and the City's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the City 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 address the remaining portion of the City's allocation of the Round 3 regional

need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that 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 City prevails in reducing its prospective need for Round 3, the City may carry over any resulting surplus credits to Round 4.

25. The City shall prepare a Spending Plan which shall include measures to expend Trust Funds to address the 50 units contemplated in Paragraph 13 above and shall be approved by the Court during, or prior to, a 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 City and Fair Share Housing Center agree that the expenditures of funds contemplated in the City'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 City 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 Fair Share Housing Center and the service list in this matter and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The CTM system shall also be used for this purpose if possible.

26. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the City 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 City 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.

27. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this agreement. The City 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 City 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 City will post on its municipal website, with a copy provided to Fair Share Housing Center and the service list previously used in this matter, 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.

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

28. This agreement may be enforced by the City or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County. If FSHC determines that such action is necessary, the City 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.

29. 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 City 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*.

30. 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.

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

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

33. 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.

34. The City 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 City and FSHC and that there are

no representations, warranties, covenants or undertakings other than those expressly set forth herein.

35. The City and FSHC acknowledge that this Agreement was not drafted by the City and FSHC, but was drafted, negotiated and reviewed by representatives of the City and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The City and FSHC expressly represent 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.

36. 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 City and FSHC.

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

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

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the City 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 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  
E-mail: [kevinwalsh@fairsharehousing.org](mailto:kevinwalsh@fairsharehousing.org)

**TO THE CITY:**

Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian & Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Phone: (732) 612-3100  
Telecopier: (732) 612-3101  
Email: [maj@surenian.com](mailto:maj@surenian.com)

Albert E. Cruz, Esq.  
DiFrancesco Bateman  
15 Mountain Boulevard

Warren, NJ 07059  
Phone: (908) 757-7800  
Telecopier: (908) 757-8039  
Email: acruz@newjerseylaw.net

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

Michael Rogers, City Administrator  
City of Summit  
512 Springfield Avenue  
Summit, NJ 07901  
Phone: (908) 277-9419  
Telecopier: (908) 273-2977  
Email: mrogers@cityofsummit.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.

**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:**

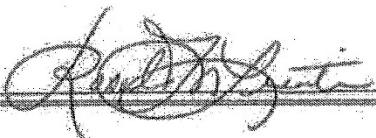
By:

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

10/14/2016

Witness/Attest:

**CITY OF SUMMIT:**



By:

Nura Radest  
On Behalf of the City of Summit

Dated: 10/14/16

## **A-7: Court Order Approving Settlement Agreement**

JEFFREY R. SURENIAN AND ASSOCIATES, LLC  
Brielle Galleria  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
(732) 612-3100  
Attorneys for Declaratory Plaintiff, City of Summit  
Jeffrey R. Surenian (Attorney ID: 024231983)  
Michael A. Jedziniak, Esq. (Attorney ID: 012832001)

FILED

OCT 31 2016

CAMILLE M. KENNY  
J.S.C.

IN THE MATTER OF THE  
APPLICATION OF THE CITY OF  
SUMMIT, COUNTY OF UNION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-2440-15

Civil Case  
(*Mount Laurel II*)

ORDER APPROVING SETTLEMENT  
AGREEMENT BETWEEN THE CITY OF  
SUMMIT AND FAIR SHARE HOUSING  
CENTER

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC on behalf of declaratory plaintiff, City of Summit (hereinafter "the City" or "Summit") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the City's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having granted the City immunity from all Mount Laurel lawsuits from the time of the filing of the City's Declaratory Judgment action (hereinafter "DJ Action"); and the Court having appointed Phillip B. Caton, P.P., F.A.I.C.P. as the Special Mount Laurel Master (hereinafter the "Special Master"); and Fair Share Housing Center ("FSHC") having participated in the City's DJ Action as an interested party and not by way of formal Motion to Intervene; and FSHC's expert, Dr. David Kinsey, P.P., F.A.I.C.P. having issued an expert report that calculated Fair Share obligations for all of the municipalities in the state; and the City having hired Econsult Solutions, Inc., which produced its own expert report calculating Fair Share obligations for all municipalities in the state; and the

City's professionals and Kevin D. Walsh, Esq. of FSHC having engaged in mediation supervised by the Special Master and thereafter having agreed upon a formal Settlement Agreement (attached hereto as Exhibit A and referred to hereinafter as the "Agreement"), which was executed by Kevin D. Walsh, Esq. on behalf of FSHC; and the City Council having adopted a resolution on October 5, 2016 (attached hereto as Exhibit B) authorizing the Mayor to execute the Agreement; and the Mayor having executed same; and the Court having scheduled a Mount Laurel Fairness Hearing on October 17, 2016 to consider whether the terms of the Agreement are fair and reasonable to low and moderate income households of the region; and the City having provided adequate notice of the Fairness Hearing to the public, all known affordable housing advocates in the region and interested parties; and no written objections to the Agreement having been filed in response to the notice; and the City having filed an Affidavit of Public Notice with the Court on October 13, 2016 to providing documentary proof of adequate notice; and the Special Master having reviewed the Agreement and, on October 26, 2016, having issued a Master's Report (hereinafter "Report") evaluating the fairness of the Agreement; and the Master having concluded in his Report that the Agreement is fair and reasonable to the region's low and moderate income households; and the Master having further recommended in his Report for the Court to approve the Agreement; and the City having provided the Court and the Special Master and FSHC with all relevant documents prior to the Hearing and in conjunction with its efforts to secure approval of the Agreement; and the Court having conducted the Fairness Hearing on October 31, 2016; and FSHC having participated in the Hearing and having expressly supported the proposed Agreement as advancing the interests of the region's low and moderate income households; and other members of the public being present and having stated no objections to the Agreement; and the Special Master having testified in support of the conclusions set forth in his Report and to respond to questions posed by the Court and counsel for the City and FSHC; and the Court having accepted as evidence in the record the Agreement, Resolution, Affidavit of

Public Notice, and the Master's Report; and the Court having considered the documents on the record and the Special Master's testimony; and, as a result of the foregoing, the Court having made at the conclusion of the Hearing various findings of fact and determinations of law as set forth on the record; and good cause therefore appearing:

IT IS on this 31 day of October, 2016, ORDERED AND ADJUDGED as follows:

1. The City published sufficient notice of the Fairness Hearing which (a) provided all interested parties with a sufficient opportunity to meaningfully submit comments, objections, or support for the proposed Agreement in advance of the Hearing; and (b) provided interested parties with the opportunity to participate in the Hearing at the discretion of the Court.

2. Pursuant and to the standards articulated by Judge Skillman in Morris County Fair Housing Council v. Boonton Township, 197 N.J.Super. 359 (Law Div. 1984) and further addressed by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286 N.J.Super. 311 (App. Div. 1996), the Court hereby accepts and approves the Agreement and concludes that said Agreement is fair, reasonable, and adequately protects the interests of the region's lower-income persons.

3. FSHC's Counterclaims are hereby dismissed.

4. The City's pending Motion for Summary Judgment concerning the "unmet need" issue is withdrawn.

5. On or before February 28, 2017, the City shall (a) file with the Court a duly-adopted and endorsed Housing Element and Fair Share Plan, including a Spending Plan, reflecting all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), along with all necessary implementing ordinances and exhibits; (b) provide copies of all documents filed with the Court to the Special Master and Fair Share Housing Center for review and comment.

*at 10:30 AM*

6. On April 17, 2017, the Court will hold a Compliance Hearing to consider approving the City's Housing Element and Fair Share Plan.

7. Notice for the Compliance shall be published by the City on or before March 1, 2017.

8. On or before March 31, 2017, FSHC and any other interested parties shall file any objections to the City's adopted and endorsed Housing Element and Fair Share Plan.

9. On or before April 7, 2017, the City shall file its response to any objections.

10. On or before April 14, 2017, the Special Master shall file a Master's Report opining whether the City's Housing Element and Fair Share Plan creates a realistic opportunity to satisfy the City's fair share of affordable housing.

11. Upon such a finding, the Court shall issue a Judgment of Compliance and Repose or the judicial equivalent of substantive certification pursuant to the New Jersey Fair Housing Act which, once entered, will maintain Summit's immunity from all Mount Laurel lawsuits through July 1, 2025.

12. The City's current immunity from Mount Laurel lawsuits shall remain in force subject to further order of the Court.

13. Pursuant to the Settlement between the City and FSHC, the City's Present Need or Rehabilitation Obligation is 131, the City's Prior Round Obligation is 171, and the City's allocation of the Round 3 regional need is 567.

14. Pursuant to the Settlement between the City and FSHC, the City's Realistic Development Potential (RDP) is 36 units.

15. The City has completely satisfied its RDP and, subject to confirmation by the Special Master prior to the Compliance Hearing, is entitled to twenty three (23) surplus credits which includes up to nine (9) "rental bonus credits."

16. The City has proposed to adopt an adequate plan to meet its unmet need which includes the remaining portion of its Prior Round obligations and its allocation of the Round 3 regional need after available credits and bonuses and which total 653 units.

17. The Court also notes that, on November 9, 2005, the City executed and fully-funded a 26-unit COAH-approved Regional Contribution Agreement with the City of Elizabeth.

18. Counsel for the City shall provide copies of this Order to all counsel of record and the Court's Master within seven (7) days of receipt.

  
HONORABLE CAMILLE M. KENNY, J.S.C.

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

In the Matter of the City of Summit, County of Union, Docket No.  
UNN-L-2440-15

**THIS SETTLEMENT AGREEMENT** ("Agreement") made this 21st day of September, 2016, by and between:

**CITY OF SUMMIT**, a municipal corporation of the State of New Jersey, County of Union, having an address at 512 Springfield Avenue, Summit, New Jersey 07901 (hereinafter the "City" or "Summit");

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 City filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended 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 City simultaneously sought and ultimately secured an Order protecting Summit from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, the immunity secured by Summit remains in force as of the date of this Agreement; and

**WHEREAS**, the trial court appointed Philip B. Caton, P.P., F.A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

**WHEREAS**, with Mr. Caton's assistance, Summit 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 City 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 lower-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 Third Round 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 City and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Summit's "Rehabilitation" obligation is 131.
2. Summit's "Prior Round" obligation is 171.
3. Summit's allocation of the Round 3 regional need is 567.
4. FSHC and the City agree that Summit 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 City 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 567-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May 2016 calculation of the City's Third Round fair share obligation.

5. Pursuant to the framework set forth in N.J.A.C. 5:93-4.2 and as agreed upon by FSHC, the City, and Special Master Caton, Summit's current Realistic Development Potential (hereinafter "RDP") is 36.

6. **Satisfaction of Rehabilitation Obligation:** The City shall satisfy its Rehabilitation obligation by continuing to collaborate with the Summit Housing Authority to implement its Rehabilitation Program as well as the Union County Home Improvement Program.

7. **Credits and Satisfaction of the City's RDP:** The City has satisfied its RDP and has additional credits as follows:

<b>Site #</b>	<b>Bloc k</b>	<b>Lot</b>	<b>Property Location</b>	<b>Number of Bedrooms</b>	<b>Owner/Operator</b>
1	401	50	1 Greenfield Avenue	2	Our House, Inc.
2	2406	4	43 Glendale Avenue	4	Our House, Inc.
3	1302	81.01	390 Morris Avenue-Unit 1	2	Our House, Inc.
4	1302	81.03	390 Morris Avenue-Unit 3	2	Our House, Inc.
5	1302	81.31	390 Morris Ave. - Unit 31	2	Our House, Inc.
6	4002	31.34	103 Park Ave-Unit E205	2	Our House, Inc.
7			39 Morris Ave	6	Habitat For Humanity
<b>Total</b>				<b>20 Credits</b>	

Additional credits include the following:

<u>Existing Project Location</u>		<u>Unit Count</u>
50 Parmley Place:		2 units
13 North St:	Summit Place's Off-Site Obligation	3 units
120 Morris Ave:	Tiger Baron	2 units
31 Russel Pl	68-72 Franklin Pl Off-Site Obligation	2 units
708-710 Springfield Ave:	Summit Pl Off-Site Obligation	4 units
785 Springfield Ave:	Providence Crossing	2 units
545 Morris Ave:	Promenade	4 units
	<u>Subtotal</u>	<u>19 units</u>
<u>Pending Project Location</u>	<u>Acres</u>	<u>Unit Count</u>
Sunrise Assisted Living River St	1.33 ac	8 units
Multi-Family 27-31 Euclid Ave	0.44 ac	1 units
Multi-Family 4-6 Ashwood Ave	0.44 ac	2 units
	<u>Subtotal</u>	<u>11 units</u>
	<u>Total:</u>	<u>50 Credits</u>

Thus, in total, and for purposes of this settlement agreement, the City is currently entitled to 50 credits to apply to its 36-unit RDP. Subject to confirmation by the Special Master prior to the City's Compliance Hearing, the City is also entitled to as many as 9 rental bonuses, for a maximum of 59 Mount Laurel credits.

The City also executed a 26-unit Regional Contribution Agreement with the City of Elizabeth, which was approved by the Council on Affordable Housing on November 9, 2005, which shall be applied to the unmet need.

8. **Actions to Capture Additional Affordable Housing Opportunities:** For the purposes of settlement, the City agrees to take the following actions to address all, or a portion of, the remaining portion of its Prior Round obligations and its allocation of the Round 3 regional need, which total 653 units:

- a. Subject to all MLUL provisions, including the required notice and public hearings, the City will adopt Mount Laurel overlay zoning ordinances consistent with the report issued by Joseph H. Burgis, P.P., A.I.C.P., the City's consulting planner, dated December 7, 2015 as modified by the report dated October 1, 2016 and attached hereto as Exhibit A.
- b. Subject to all MLUL provisions, including the required notice and public hearings, the City will also amend the zoning ordinances on the sites currently zoned for multi-family apartments to impose a mandatory 15 percent affordable housing set-aside for rental units and a mandatory 20 percent set aside for for-sale units. Developers shall have the opportunity to demonstrate that the set aside percentages set forth above render the proposed project to

be economically infeasible and, upon the provision of satisfactory proofs, may seek relief such as, but not limited to, additional density, a monetary subsidy from the City's Mount Laurel trust fund, bulk/design waivers, a payment in lieu of taxes, or other forms of relief, provided that they shall not be permitted to seek reductions in the set aside required by this agreement and the implementing ordinances.

9. For the purposes of settlement, the City shall not seek any Mount Laurel credits in Summit presently administered by the Summit Housing Authority (SHA). However, the City reserves the right to seek such credits at a later date, and FSHC equally reserves the right to challenge such credits if the issue arises in the future. FSHC also reserves the right to pursue a legal challenge to the "residency preference" associated with the SHA senior site and any other units in the City administered by the Summit Housing Authority now or in the future. All references to SHA units receiving credit in COAH's online systems, including the CTM system, will be deleted by the City within 30 days of the approval of this Agreement by the Court.

10. The City'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 City 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. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, the City shall formally withdraw its pending Motion for Summary Judgment on the "unmet need" issue.

12. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, FSHC shall formally dismiss its pending counterclaims against the City and shall not seek counsel fees or any other similar costs against the City.

13. During period between now and July 1, 2025, Summit shall take all reasonable steps needed to achieve the goal of facilitating the construction of fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments, subject to the following parameters.

Because these units are intended to meet what is termed as "unmet need," Summit shall not be required to adopt a "Resolution of Intent to Bond" and is not being required to use funds other than Affordable Housing Trust Funds to render the associated development proposals economically feasible. The City acknowledges, however, that a Resolution of Intent to Bond, a Resolution of Need, tax abatement or other similar financial mechanism require formal actions by the governing body and may be required under certain affordable housing laws or as a condition precedent to the award of certain public subsidy programs. Since such actions are often necessary to develop the affordable housing units contemplated in this paragraph, the City shall not take any action, or inaction, to thwart a development proposal unless it can demonstrate that such action or inaction would violate applicable law or construction of the development in question would violate principles of sound land use planning.

- a. At least half of the 50 units shall be available to families.

- b. Summit shall not be required to facilitate construction of a single, 50-unit all-affordable development and agrees, to the maximum extent possible, to rely on non-profit developers to develop the 50 units of affordable housing;
- c. Upon completion and compliance with applicable laws and rules, Summit shall receive "credits" against its 50-unit goal for the pending development by Habitat for Humanity on the "Italian-American Club" site and/or resulting from any of the zoning actions referenced in this paragraph of this Agreement;
- d. Within the first three years following the execution of this Agreement, and in accordance with the provisions set forth in N.J.A.C. 5:93-5.5, the City shall prepare a document that identifies the site or sites and measures through which it intends to facilitate the development of the 50 new affordable units,
- e. This document shall also identify the developer(s) who will develop the 50 new affordable units and enter into developers' agreements with each developer subject to the limitations expressed in subparagraph i. below;
- f. Between the third and the sixth year, Summit shall make all reasonable efforts to facilitate the development approvals and to support applications for the funding needed to achieve the goal of 50 new affordable units;
- g. Between the sixth and tenth year, the City shall make all reasonable efforts to facilitate the actual construction of the developments needed to achieve the goal of 50 new affordable units;
- h. The City shall (i) provide an annual Status Report on the above-referenced actions, including identifying what steps have been taken in the previous year and what steps are anticipated in the following year; (ii) shall conduct a duly-noticed meeting of its Mount Laurel subcommittee during February of each year which shall include on the agenda a discussion of the Status Report; and (iii) shall also discuss the Status Report as an agenda item during a public meeting of the governing body and receive public comment regarding that report during February of each year. The City agrees to provide Fair Share Housing Center and clergy organizations in Summit with 30 days' notice of these meetings.
- i. The parties recognize that Summit may make all reasonable efforts and still not achieve the development of 50 units of affordable sales/ownership housing in 100% affordable developments as contemplated by this agreement and may not accomplish interim steps toward the development of those units. Public subsidies may not be available or other unanticipated factors may arise. Nevertheless, Summit agrees to take all reasonable efforts to overcome barriers, whether identified or not in this agreement, in order to develop 50 units of affordable sales/ownership housing in 100% affordable developments.

14. The City's obligation to provide fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments may be reduced to forty (40) at the City's option, which option shall be exercised within twelve (12) months of the date on which this agreement is effective, if the City amends its zoning ordinance covering at least 6.3 acres in the Overlay Zoning Districts identified in Exhibit A to permit an additional story in inclusionary developments. Within twelve (12) months of the execution of this agreement, Summit shall advise FSHC and the Special Master whether it has exercised this option. Summit agrees to adopt all necessary implementing ordinances necessary to exercise this within fifteen (15) months following the execution of this agreement.

15. The City agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families. Affordability assistance for low and very low-income households will be addressed in the spending plan to be adopted in the future in accordance with this agreement.

16. To the extent that Summit is entitled to any "bonus credits" to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). Furthermore, the City will be entitled to additional rental bonus credits generated by projects that may be developed under this Agreement up to the maximum of 9 rental bonuses for which it is eligible based on its Third Round obligation.

17. At least 50 percent of the units addressing the Third Round Prospective Need, including RDP and 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.

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

19. At least half of the units addressing the Third Round Prospective Need including RDP and unmet need, in total must be available to families.

20. The City agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the City claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its prior round and Round 3 fair share obligations including RDP and unmet need.

21. The City 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, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206), Affordable Housing Professionals of New Jersey, and the New Jersey Housing Resource Center. As part of its regional affirmative marketing strategies during implementation of its fair

share plan, the City and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

22. 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 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 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 City, 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.

23. Upon full execution of this Agreement, Summit shall place this agreement on file in the City's municipal building and file a copy with the Court for the upcoming scheduled Fairness Hearing, at which the City 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. Summit shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Summit's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings can be held concurrently or sequentially, which shall be decided by the Court with consultation by the Special Master, Summit, and FSHC. Although it is expected that the Special Master will provide the majority of the required testimony, Summit shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the City's Fair Share Plan. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the City's Fair Share Plan, the parties agree that the City 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 Summit's immunity from all Mount Laurel lawsuits through July 2, 2025.

24. 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 Summit's Round 3 obligation is decreased to 454 or less, with any relevant appeal periods having passed, the City may file a proposed form of Order, on notice to FSHC and the City's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the City 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 address the remaining portion of the City's allocation of the Round 3 regional

need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that 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 City prevails in reducing its prospective need for Round 3, the City may carry over any resulting surplus credits to Round 4.

25. The City shall prepare a Spending Plan which shall include measures to expend Trust Funds to address the 50 units contemplated in Paragraph 13 above and shall be approved by the Court during, or prior to, a 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 City and Fair Share Housing Center agree that the expenditures of funds contemplated in the City'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 City 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 Fair Share Housing Center and the service list in this matter and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The CTM system shall also be used for this purpose if possible.

26. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the City 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 City 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.

27. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this agreement. The City 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 City 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 City will post on its municipal website, with a copy provided to Fair Share Housing Center and the service list previously used in this matter, 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.

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

28. This agreement may be enforced by the City or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County. If FSHC determines that such action is necessary, the City 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.

29. 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 City 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*.

30. 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.

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

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

33. 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.

34. The City 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 City and FSHC and that there are

no representations, warranties, covenants or undertakings other than those expressly set forth herein.

35. The City and FSHC acknowledge that this Agreement was not drafted by the City and FSHC, but was drafted, negotiated and reviewed by representatives of the City and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The City and FSHC expressly represent 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.

36. 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 City and FSHC.

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

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

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the City 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 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  
E-mail: [kevinwalsh@fairsharehousing.org](mailto:kevinwalsh@fairsharehousing.org)

**TO THE CITY:** Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian & Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Phone: (732) 612-3100  
Telecopier: (732) 612-3101  
Email: [maj@surenian.com](mailto:maj@surenian.com)

Albert E. Cruz, Esq.  
DiFrancesco Bateman  
15 Mountain Boulevard

Warren, NJ 07059  
Phone: (908) 757-7800  
Telecopier: (908) 757-8039  
Email: acruz@newjerseylaw.net

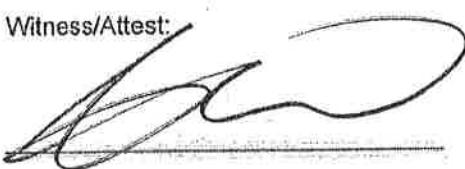
**WITH A COPY TO THE  
CITY ADMINISTRATOR:**

Michael Rogers, City Administrator  
City of Summit  
512 Springfield Avenue  
Summit, NJ 07901  
Phone: (908) 277-9419  
Telecopier: (908) 273-2977  
Email: mrogers@cityofsummit.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.

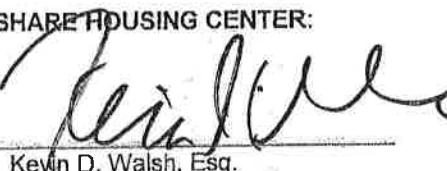
**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:



**FAIR SHARE HOUSING CENTER:**

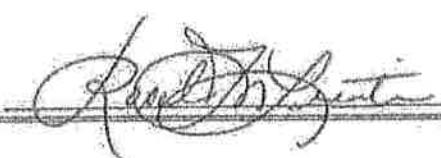
By:

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

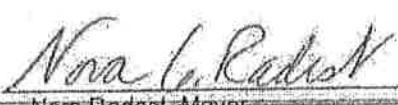
10/14/2016

Witness/Attest:

**CITY OF SUMMIT:**



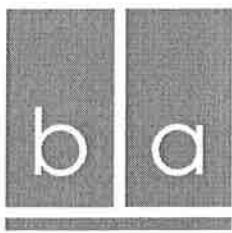
By:

  
Nora Radest, Mayor  
On Behalf of the City of Summit

Dated:

10/14/16

# EXHIBIT A



COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

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

B U R G I S  
A S S O C I A T E S , I N C .

October 1, 2016

Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian and Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730

Re: City of Summit Housing Plan  
Settlement Agreement  
RDP, VLA, Crediting & Mapping  
BA#: 3052.06

Mike,

Pursuant to your request, I have prepared the following information regarding the City's Realistic Development Potential (RDP), an identification of credits that the City may apply to address RDP and unmet need, an identification of prospective overlay zones to assist the City in meeting its unmet need, and a tabulation of all of the existing multi-family residential zones in the City along with the acreage in these zones. Discussions with the Court Master assisted in this effort. The analysis included a refined vacant land analysis calculation, an identification of development applications that are pending before the City's Planning Board and Zoning Board of Adjustment that the Court Master has indicated are applicable to the determination of RDP along with existing affordable housing projects applicable to RDP, and an enumeration of credits to meet this need. This information is presented in text and mapped form.

The analysis indicates the City has a 36 unit RDP; there are sufficient credits to address this obligation.

The following is offered for your consideration.

1. Realistic Development Potential (RDP)

A refined Realistic Development Potential (RDP) analysis was prepared at the behest of the Court Master. This analysis indicates the City of Summit has a 36 unit RDP. This calculation is function of:



a. Vacant Land Adjustment (VLA): Our original VLA indicated the City has an RDP of three units. This was determined by analyzing the amount of vacant developable land in the City and applying COAH's minimum presumptive density of six units per acre and then applying a twenty percent set-aside to determine RDP, per COAH's regulations. This analysis was presented to the Court Master.

In a recent discussion with the Court Master it was suggested that a presumptive density of twelve units per acre would be more appropriate to utilize, given the magnitude of the City's multi-family densities set forth in the local zoning ordinance. The application of this density would result in an RDP base upon vacant developable of six units. This is based on a total of 2.34 acres of vacant developable land (pursuant to the COAH methodology), applying a twelve unit per acre density to this figure, and then imposing a twenty percent set-aside to the calculation.

Calculation: 6 unit RDP

b. Pending Applications: The table set forth in Section 2 below indicates there are eleven units of affordable housing that are part of five pending development applications before the City's planning and zoning boards. According to the Court Master they are to be counted towards RDP.

Calculation: 11 unit RDP

Thus, the VLA and pending applications noted in Section 2 below establish a 17 unit RDP.

c. Additional existing Affordable Housing Applicable to the RDP calculation: The table set forth in Section 3 below indicates nineteen units of existing affordable housing, per the comments by the Court Master, are to be counted as RDP due to the timing of their development.

Calculation: 19 unit RDP

These 19 units, in conjunction with the 17 units noted above, results in a 36 unit RDP. As detailed elsewhere, this 36 unit RDP is addressed through at least 65 credits that may be applied to this RDP.

2. Development Applications Pending Before City's Planning Board and Zoning Board of Adjustment and Vacant Land Adjustment Applicable to Realistic Development Potential (RDP)

The following development applications are presently before the City's approving authorities. Note that I have not included those applications that pertain to house additions, driveways serving single family houses, and the like.

<u>Project</u>	<u>Location</u>	<u>Acres</u>	<u>Unit Count</u>
Sunrise Assisted Living	River St	1.33 ac	80 units assisted living incl 8 AH units
Multi-Family	51 DeForest Ave	0.23 ac	4 units
Multi-Family	27-31 Euclid Ave	0.44 ac	6 units incl 1 AH unit
Two Two-Family	248-250 Morris Ave	0.34 ac	4 units
Multi-Family	4-6 Ashwood Ave	0.44 ac	8 units incl 2 AH units (Re-approved)

The accompanying map presented at the end of this report depicts where these applications are located. As can be seen, in all cases but one, these sites are located in areas that are already zoned for multi-family residential use.

These five developments encompass 2.78 acres. Assuming a development density of 20 units per acre and a 20 percent set-aside, this would generate an 11 unit RDP. This, plus the 6 unit RDP from the vacant land adjustment that has been calculated previously would result in the aforementioned 17 unit portion of the RDP.

### 3. Existing Affordable Housing Projects Applicable to Realistic Development Potential (RDP)

The following existing affordable housing projects generate 19 RDP units, as follows:

50 Parmley Place:		2 units
13 North St:	Summit Place's Off-Site Obligation	3 units
120 Morris Ave:	Tiger Baron	2 units
31 Russel Pl	68-72 Franklin Pl Off-Site Obligation	2 units
708-710 Springfield Ave:	Summit Pl Off-Site Obligation	4 units
785 Springfield Ave:	Providence Crossing	2 units
545 Morris Ave:	Promenade (AKA DP Morris)	4 units

These seven projects are identified on the same map referenced above, attached hereto, that identifies development applications pending before the City's Planning Board and Zoning Board of Adjustment.

These units, in conjunction with the other units noted above, indicates the City has a total RDP of 36 units.

### 4. Credits

There are a total of 50 credits that may be applied to address this RDP. These include the following.

#### a. Group Homes (20 units)

The number of special needs group homes in the community is as follows, generating 20 units of credit:

Site #	Block	Lot	Property Location	# of Bedrooms	Owner/Operator
1	401	50	1 Greenfield Avenue	2	Our House, Inc.
2	2406	4	43 Glendale Avenue	4	Our House, Inc.
3	1302	81.01	390 Morris Avenue-Unit 1	2	Our House, Inc.
4	1302	81.03	390 Morris Avenue-Unit 3	2	Our House, Inc.
5	1302	81.31	390 Morris Avenue-Unit 31	2	Our House, Inc.
6	4002	31.34	103 Park Avenue-Unit E205	2	Our House, Inc.
7			39 Morris Ave	6	Habitat For Humanity
<b>Total</b>				<b>20</b>	

- b. Units From Existing Affordable Housing Projects (19 units): These 19 units are those listed in Section 3 above.
- c. Units From Pending Development Applications: (11 units) These 11 units are those listed in Section 2 above.

In addition, there are up to nine rental bonus credits that are likely applicable to this crediting process.

#### 5. Overlay Zones

A second map that is attached hereto identifies eight overlay zones wherein affordable housing overlay zones may be considered. They are identified as follows:

PROPOSED OVERLAY ZONE 1			
BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
3303	1	255-269 BROAD STREET	1.25
4002	34	231-253 BROAD111-113 PARK	2.36
4002	36	261 BROAD STREET	0.90
TOTAL ZONE 1 ACERAGE			4.51

PROPOSED OVERLAY ZONE 2			
BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
4002	32	105-7 PARK AVE	0.42
TOTAL ZONE 2 ACERAGE			0.42

PROPOSED OVERLAY ZONE 3

BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
3309	10	19 SUMMIT AVE	0.17
3309	11	21 SUMMIT AVE	0.10
3309	12	23 SUMMIT AVE	0.44
3309	13	25 SUMMIT AVE	0.17
3309	14	27 SUMMIT AVE	0.84
3309	15	9 INDUSTRIAL PLACE	0.20
3309	16	15 INDUSTRIAL PL	0.17
3309	17	15-21 INDUSTRIAL PL	0.06
3309	17.01	17 INDUSTRIAL PL	0.09
3310	1	31-5 SUMMIT AVE	0.22
3310	2	324-326 BROAD ST	0.15
3310	3	320-22 BROAD ST	0.12
3310	3.01	312-14 BROAD ST	0.12
3310	3.02	316-18 BROAD ST	0.13
3310	4	308-10 BROAD ST	0.13
3310	5	290 BROAD STREET	0.50
3310	6	288 BROAD STREET	0.13
3310	7	278-288 BROAD ST	0.57
TOTAL ZONE 3 ACERAGE			4.30

PROPOSED OVERLAY ZONE 4

BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
402	1	527 MORRIS AVE	0.09
402	2	529 MORRIS AVE	0.28
402	3	531-33 MORRIS AVE	0.12
402	4	535 MORRIS AVENUE	0.24
402	5	44 PLAIN ST	0.41
402	6	42 PLAIN ST	0.20
402	7	40 PLAIN ST	0.20
402	61	10 AUBREY ST	0.16
402	62	8 AUBREY ST	0.16
402	63	6 AUBREY ST	0.17

TOTAL ZONE 4 ACERAGE 2.04

PROPOSED OVERLAY ZONE 5

BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
1908	1	367 SPRINGFIELD AVE	0.15
1908	2	371 SPRINGFIELD AVE	0.07
1908	3	375-379 SPRINGFIELD AVE	0.15
1908	4	381 SPRINGFIELD AVE	0.05
1908	5	383-385 SPRINGFIELD AVE	0.10
1908	6	387 SPRINGFIELD AVE	0.07
1908	7	389 SPRINGFIELD AVE	0.07
1908	8	395-397 SPRINGFIELD AVE	0.15
1909	1	401 SPRINGFIELD AVE	0.13
1909	2	407-409 SPRINGFIELD AVE	0.12
1909	3	411-13-17 SPRINGFIELD AVE	0.18
1909	4	419 SPRINGFIELD AVE	0.04
1909	5	423-429 SPRINGFIELD AVE	0.17
1909	6	431-437 SPRINGFIELD AVE	0.13
1909	7	441 SPRINGFIELD AVENUE	0.05
1909	8	443-445 SPRINGFIELD AVE	0.06
1911	1-1.22	447-461 SPRINGFIELD AVE (ACERAGE CONSOLIDATED FOR LOTS 1-1.22)	0.46
1911	2	463-469 SPRINGFIELD AVE	0.13
1911	3	475 SPRINGFIELD AVE	0.17

1911	4	485-487 SPRINGFIELD AVE	0.13
1912	18	2-4-6 KENT PLACE BLVD	0.18
2601	1	9 UNION PL	0.06
2601	2	11 UNION PL	0.06
2601	3	13 UNION PL	0.06
2601	4	17-19 UNION PL	0.11
2601	5	21 UNION PL	0.06
2601	6	25 UNION PL	0.06
2601	7	31-37 UNION PL	0.11
2601	8	39-45 UNION PL	0.20
2602	1	13 BEECHWOOD RD	0.09
2602	2	17 BEECHWOOD RD	0.04
2602	3	18-22 BANK STREET	0.11
2602	4	12 BANK ST	0.15
2602	5	10 BANK ST	0.05
2602	6	90 SUMMIT AVE	0.05
2602	7	88 SUMMIT AVE	0.04
2602	8	84 SUMMIT AVE	0.09
2603	1	21-5 BEECHWOOD RD	0.27
2603	2	27 BEECHWOOD ROAD	0.16
2603	3	358 SPRINGFIELD AVE	0.04
2603	4	356 SPRINGFIELD AVE	0.07
2603	6	350 SPRINGFIELD AVE	0.33
2603	7	344-346 SPRINGFIELD AVE.	0.04
2603	8	96-98 SUMMIT AVE	0.05
2604	1	341 SPRINGFIELD AVE	0.16
2604	2	343-5-7-9 SPRINGFIELD AVE	0.21
2604	3	353 SPRINGFIELD AVE	0.11
2604	4	355 SPRINGFIELD AVE	0.07
2604	5	357 SPRINGFIELD AVE	0.07
2604	6	359 SPRINGFIELD AVE	0.06
2604	7	361-365 SPRINGFIELD AVE	0.16
2604	8	37 BEECHWOOD RD	0.06
2608	5	321 SPRINGFIELD AVE	0.14
2608	6	333 SPRINGFIELD AVE	0.33
2608	8	107-113 SPRINGFIELD AVE	0.84
2614	1	67 SUMMIT AVENUE	0.27

2614	2	71 SUMMIT AVE	0.11
2614	3	73 SUMMIT AVE	0.06
2614	4	75-77 SUMMIT AVE	0.06
2614	5	83-85-87 SUMMIT AVE	0.11
2614	6	89 SUMMIT AVE	0.09
2614	7	93-95 SUMMIT AVE	0.09
2614	8	97-99 SUMMIT AVE	0.16
2614	9	330-342 SPRINGFIELD AVE	0.34
2614	10	326 SPRINGFIELD AVE	0.07
2614	11	46 GLENWOOD PL	0.06
2703	1	494 SPRINGFIELD AVE	0.02
2703	2	482-488 SPRINGFIELD AVE	0.12
2703	4	478 SPRINGFIELD AVE	0.09
2703	5	466-474 SPRINGFIELD AVE	0.25
2703	7	462 SPRINGFIELD AVE	1.40
2703	8	458 SPRINGFIELD AVE	0.07
2703	9	446-456 SPRINGFIELD AVE	0.16
2703	10	440-444 SPRINGFIELD AVE	0.06
2703	11	438 SPRINGFIELD AVE	0.06
2703	12	434 SPRINGFIELD AVE	0.08
2703	13	430-432 SPRINGFIELD AVE	0.07
2703	14	428 SPRINGFIELD AVE	0.08
2703	15	426 SPRINGFIELD AVE	0.06
2703	16	420 SPRINGFIELD AVE	0.07
2703	17	412-414 SPRINGFIELD AVE	0.06
2703	18	408-410 SPRINGFIELD AVE	0.09
2703	20	402-404 SPRINGFIELD AVE	0.07
2703	21	27-29 MAPLE ST	0.03
2703	22	23-33 MAPLE ST	0.05
2703	23	35-39 MAPLE ST	0.08
2703	24	41-45 MAPLE ST	0.19
2703	25	47-49-51 MAPLE ST	0.21
2704	1	46-50 MAPLE ST	0.12
2704	2	44 MAPLE ST	0.05
2704	3	42 MAPLE ST	0.05
2704	4	38-40 MAPLE ST	0.13
2704	5	34-36 MAPLE ST	0.11

2704	6	28-30-32 MAPLE ST	0.17
2704	7	26 MAPLE ST	0.04
2704	8	396 SPRINGFIELD AVE.	0.06
2704	9	392 SPRINGFIELD AVE	0.09
2704	10	374-382 SPRINGFIELD AVENU	1.18
2704	11	67-71 UNION PL	0.14
2704	12	73-75 UNION PL	0.04

TOTAL ZONE 5 ACERAGE 14.26

PROPOSED OVERLAY ZONE 6			
BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
1906	1	25 DE FOREST AVE	4.19
TOTAL ZONE 6 ACERAGE			4.19

PROPOSED OVERLAY ZONE 7			
BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
4002	17	39 PARK AVE	0.76
TOTAL ZONE 7 ACERAGE			0.76

PROPOSED OVERLAY ZONE 8			
BLOCK	LOT	PROPERTY ADDRESS	ACREAGE
4208	1	146 MORRIS AVE	0.91
TOTAL ZONE 8 ACERAGE			0.91

These overlay areas, totaling 31.39 acres, are developed, but have redevelopment potential. In an effort to encourage additional affordable housing construction, they are being identified as potential affordable housing overlay zones. At twelve units per acre with a twenty percent set-aside, these areas have the potential for as many as 75 affordable housing units.

#### 6. Existing Multi-Family Zones in the City of Summit

It is also notable that the City of Summit has extensive areas of the community that are already zoned for multi-family housing. The accompanying table and map identifies the twelve zone districts that permit multi-family housing. These twelve zones encompass 238.83 acres, representing 6.2 percent of the City's total area. These 238.83 acres account for 7.4 percent of the parcels in the City (exclusive of roads).

**Table: Existing Multi-Family Zones, City of Summit, New Jersey**

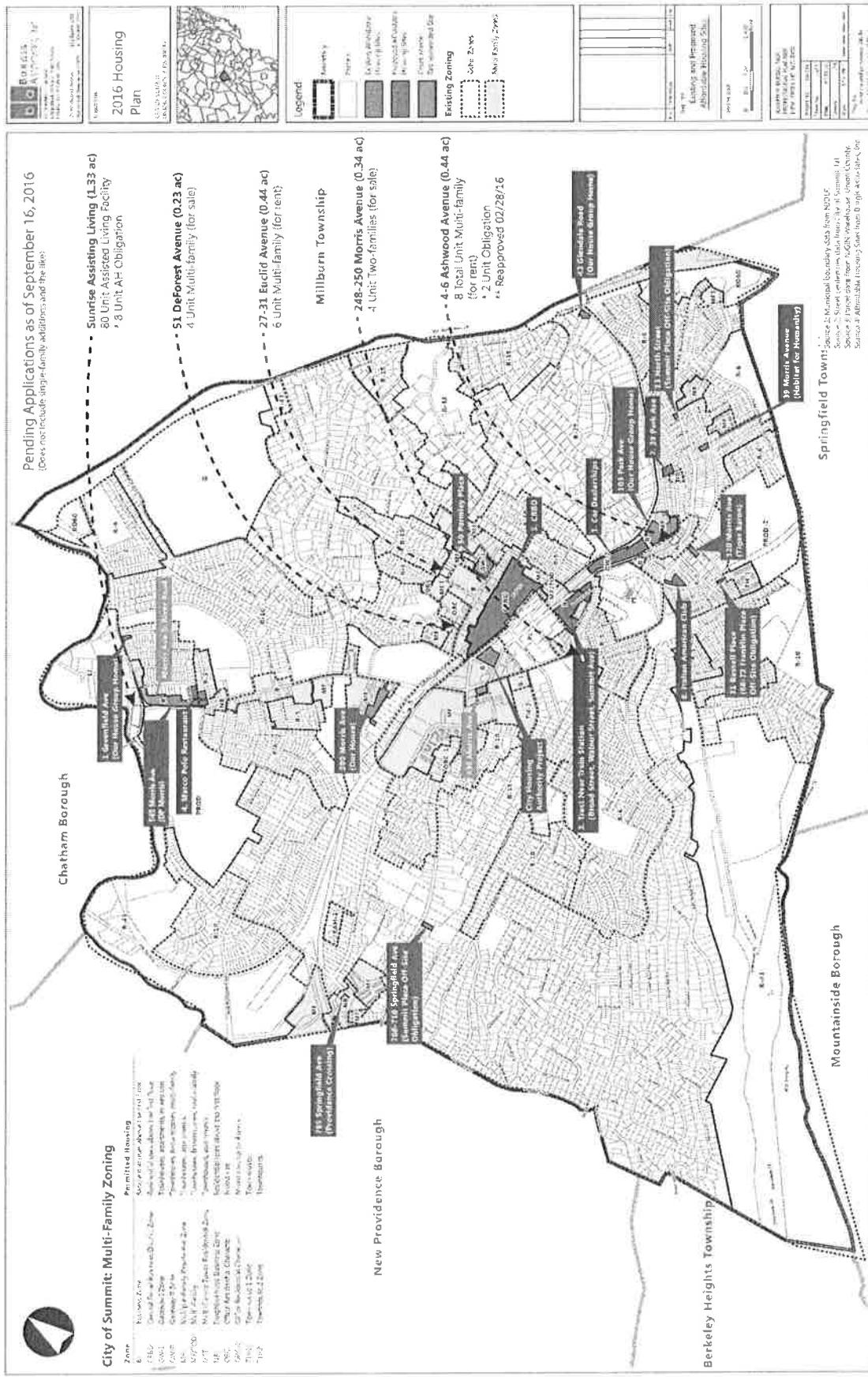
<b>Zone</b>	<b>Zone Description</b>	<b>Acreage</b>	<b>Density (du/ac)</b>
B	Business Zone	51.80	N/A
CRBD	Central Retail Business District	13.61	N/A
GW-1	Gateway I Zone	2.92	N/A
GW-II	Gateway II Zone	8.08	20-29
MF	Multi-Family Residential Zone	98.31	12
MF/TOD	Multi-Family Transit Oriented Development Zone	11.03	12-17
MFT	Multi-Family Tower Residential Zone	15.42	20
NB	Neighborhood Business Zone	15.34	N/A
ORC	Office Residential Character Zone	5.76	N/A
ORC-1	Office Residential Character Zone	5.08	N/A
TH-1	Townhouse 1 Zone	5.30	8
TH-2	Townhouse 2 Zone	6.18	
---	<b>TOTAL</b>	<b>238.83 acres</b>	

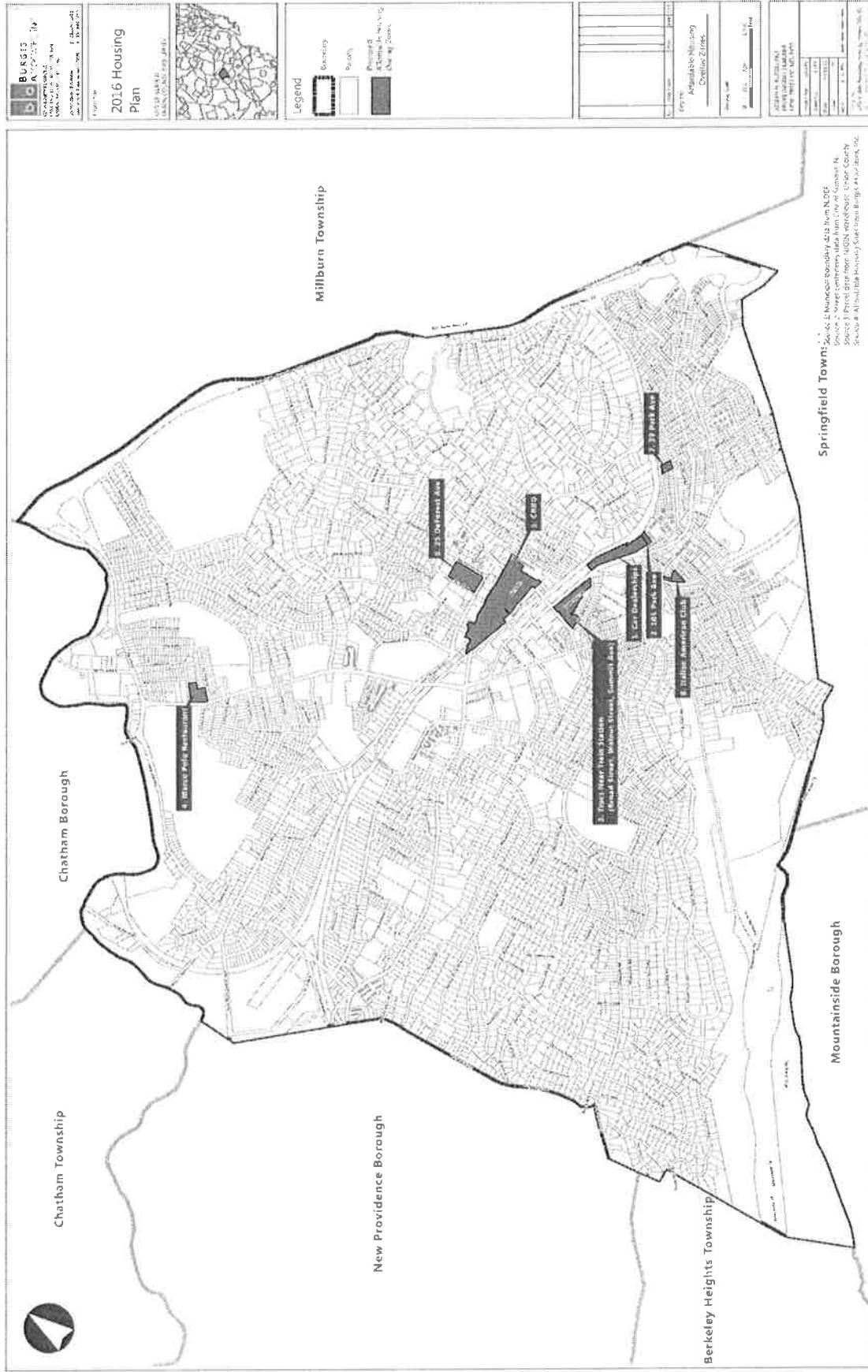
I trust this is sufficient for your needs. Do not hesitate to call if you have any questions.

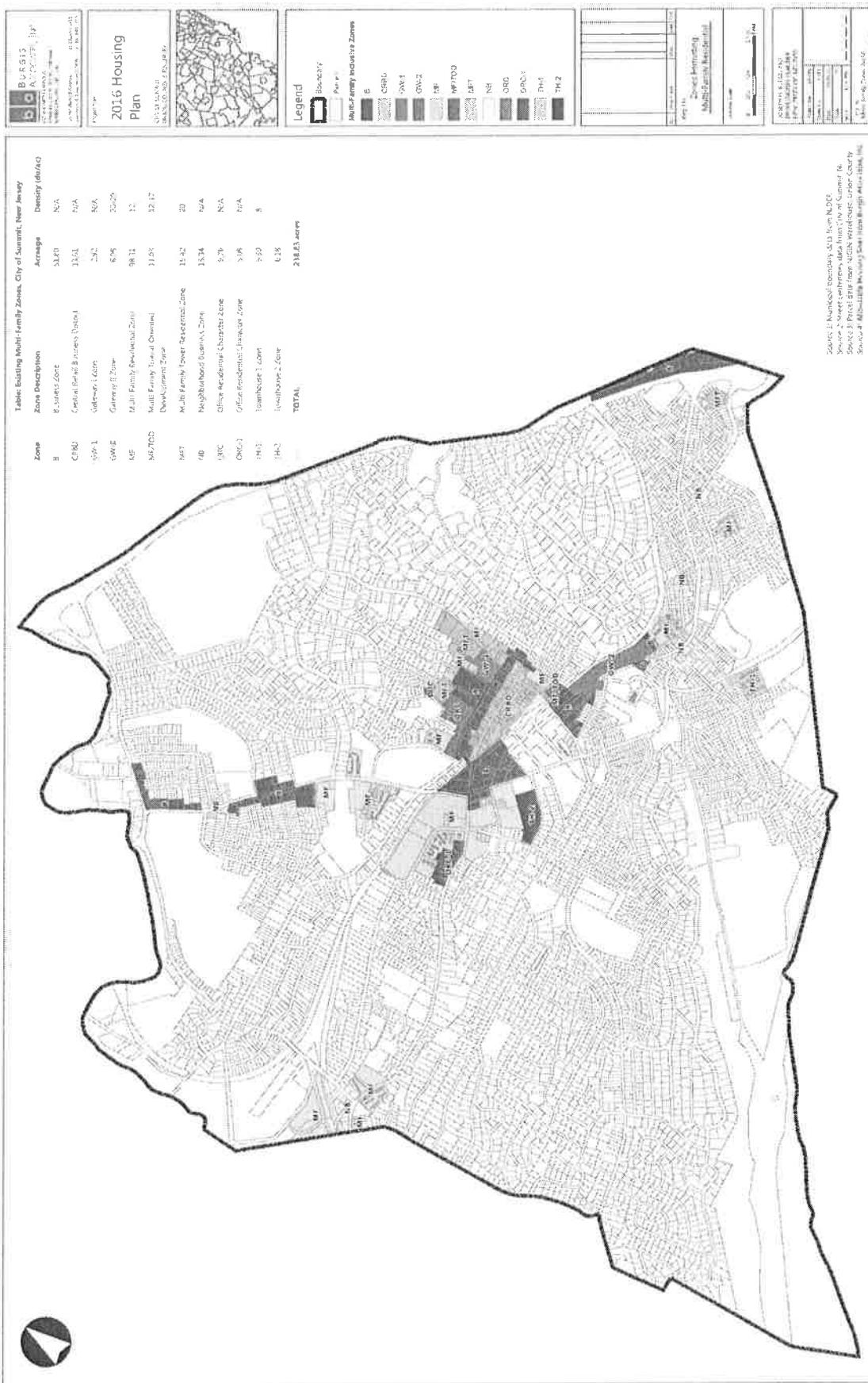
Joe

Encl.

cc: Phil Caton, Paul Cascais, Michael Rogers







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RECEIVED OCT 31 2016  
**FILED**  
OCT 31 2016  
CAMILLE M. KENNY  
J.S.C.

IN THE MATTER OF THE  
APPLICATION OF THE CITY OF  
SUMMIT, COUNTY OF UNION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-2440-15

Civil Case  
(*Mount Laurel II*)

ORDER APPROVING SETTLEMENT  
AGREEMENT BETWEEN THE CITY OF  
SUMMIT AND FAIR SHARE HOUSING  
CENTER

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC on behalf of declaratory plaintiff, City of Summit (hereinafter “the City” or “Summit”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the City’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the City immunity from all Mount Laurel lawsuits from the time of the filing of the City’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed Phillip B. Caton, P.P., F.A.I.C.P. as the Special Mount Laurel Master (hereinafter the “Special Master”); and Fair Share Housing Center (“FSHC”) having participated in the City’s DJ Action as an interested party and not by way of formal Motion to Intervene; and FSHC’s expert, Dr. David Kinsey, P.P., F.A.I.C.P. having issued an expert report that calculated Fair Share obligations for all of the municipalities in the state; and the City having hired Econsult Solutions, Inc., which produced its own expert report calculating Fair Share obligations for all municipalities in the state; and the

City's professionals and Kevin D. Walsh, Esq. of FSHC having engaged in mediation supervised by the Special Master and thereafter having agreed upon a formal Settlement Agreement (attached hereto as Exhibit A and referred to hereinafter as the "Agreement"), which was executed by Kevin D. Walsh, Esq. on behalf of FSHC; and the City Council having adopted a resolution on October 5, 2016 (attached hereto as Exhibit B) authorizing the Mayor to execute the Agreement; and the Mayor having executed same; and the Court having scheduled a Mount Laurel Fairness Hearing on October 17, 2016 to consider whether the terms of the Agreement are fair and reasonable to low and moderate income households of the region; and the City having provided adequate notice of the Fairness Hearing to the public, all known affordable housing advocates in the region and interested parties; and no written objections to the Agreement having been filed in response to the notice; and the City having filed an Affidavit of Public Notice with the Court on October 13, 2016 to providing documentary proof of adequate notice; and the Special Master having reviewed the Agreement and, on October 26, 2016, having issued a Master's Report (hereinafter "Report") evaluating the fairness of the Agreement; and the Master having concluded in his Report that the Agreement is fair and reasonable to the region's low and moderate income households; and the Master having further recommended in his Report for the Court to approve the Agreement; and the City having provided the Court and the Special Master and FSHC with all relevant documents prior to the Hearing and in conjunction with its efforts to secure approval of the Agreement; and the Court having conducted the Fairness Hearing on October 31, 2016; and FSHC having participated in the Hearing and having expressly supported the proposed Agreement as advancing the interests of the region's low and moderate income households; and other members of the public being present and having stated no objections to the Agreement; and the Special Master having testified in support of the conclusions set forth in his Report and to respond to questions posed by the Court and counsel for the City and FSHC; and the Court having accepted as evidence in the record the Agreement, Resolution, Affidavit of

Public Notice, and the Master's Report; and the Court having considered the documents on the record and the Special Master's testimony; and, as a result of the foregoing, the Court having made at the conclusion of the Hearing various findings of fact and determinations of law as set forth on the record; and good cause therefore appearing:

IT IS on this 31 day of October, 2016, ORDERED AND ADJUDGED as follows:

1. The City published sufficient notice of the Fairness Hearing which (a) provided all interested parties with a sufficient opportunity to meaningfully submit comments, objections, or support for the proposed Agreement in advance of the Hearing; and (b) provided interested parties with the opportunity to participate in the Hearing at the discretion of the Court.

2. Pursuant and to the standards articulated by Judge Skillman in Morris County Fair Housing Council v. Boonton Township, 197 N.J.Super. 359 (Law Div. 1984) and further addressed by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286 N.J.Super. 311 (App. Div. 1996), the Court hereby accepts and approves the Agreement and concludes that said Agreement is fair, reasonable, and adequately protects the interests of the region's lower-income persons.

3. FSHC's Counterclaims are hereby dismissed.

4. The City's pending Motion for Summary Judgment concerning the "unmet need" issue is withdrawn.

5. On or before February 28, 2017, the City shall (a) file with the Court a duly-adopted and endorsed Housing Element and Fair Share Plan, including a Spending Plan, reflecting all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), along with all necessary implementing ordinances and exhibits; (b) provide copies of all documents filed with the Court to the Special Master and Fair Share Housing Center for review and comment.

*at 10:30 AM*

6. On April 17, 2017, the Court will hold a Compliance Hearing to consider approving the City's Housing Element and Fair Share Plan.

7. Notice for the Compliance shall be published by the City on or before March 1, 2017.

8. On or before March 31, 2017, FSHC and any other interested parties shall file any objections to the City's adopted and endorsed Housing Element and Fair Share Plan.

9. On or before April 7, 2017, the City shall file its response to any objections.

10. On or before April 14, 2017, the Special Master shall file a Master's Report opining whether the City's Housing Element and Fair Share Plan creates a realistic opportunity to satisfy the City's fair share of affordable housing.

11. Upon such a finding, the Court shall issue a Judgment of Compliance and Repose or the judicial equivalent of substantive certification pursuant to the New Jersey Fair Housing Act which, once entered, will maintain Summit's immunity from all Mount Laurel lawsuits through July 1, 2025.

12. The City's current immunity from Mount Laurel lawsuits shall remain in force subject to further order of the Court.

13. Pursuant to the Settlement between the City and FSHC, the City's Present Need or Rehabilitation Obligation is 131, the City's Prior Round Obligation is 171, and the City's allocation of the Round 3 regional need is 567.

14. Pursuant to the Settlement between the City and FSHC, the City's Realistic Development Potential (RDP) is 36 units.

15. The City has completely satisfied its RDP and, subject to confirmation by the Special Master prior to the Compliance Hearing, is entitled to twenty three (23) surplus credits which includes up to nine (9) "rental bonus credits."

16. The City has proposed to adopt an adequate plan to meet its unmet need which includes the remaining portion of its Prior Round obligations and its allocation of the Round 3 regional need after available credits and bonuses and which total 653 units.

17. The Court also notes that, on November 9, 2005, the City executed and fully-funded a 26-unit COAH-approved Regional Contribution Agreement with the City of Elizabeth.

18. Counsel for the City shall provide copies of this Order to all counsel of record and the Court's Master within seven (7) days of receipt.

*Camille M. Kenny*  
HONORABLE CAMILLE M. KENNY, J.S.C.

# EXHIBIT A

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

**In the Matter of the City of Summit, County of Union, Docket No.  
UNN-L-2440-15**

**THIS SETTLEMENT AGREEMENT** ("Agreement") made this 21st day of September, 2016, by and between:

**CITY OF SUMMIT**, a municipal corporation of the State of New Jersey, County of Union, having an address at 512 Springfield Avenue, Summit, New Jersey 07901 (hereinafter the "City" or "Summit");

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 City filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended 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 City simultaneously sought and ultimately secured an Order protecting Summit from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, the immunity secured by Summit remains in force as of the date of this Agreement; and

**WHEREAS**, the trial court appointed Philip B. Caton, P.P., F.A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

**WHEREAS**, with Mr. Caton's assistance, Summit 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 City 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 lower-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 Third Round 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 City and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Summit's "Rehabilitation" obligation is 131.
2. Summit's "Prior Round" obligation is 171.
3. Summit's allocation of the Round 3 regional need is 567.
4. FSHC and the City agree that Summit 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 City 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 567-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May 2016 calculation of the City's Third Round fair share obligation.
5. Pursuant to the framework set forth in N.J.A.C. 5:93-4.2 and as agreed upon by FSHC, the City, and Special Master Caton, Summit's current Realistic Development Potential (hereinafter "RDP") is 36.
6. **Satisfaction of Rehabilitation Obligation:** The City shall satisfy its Rehabilitation obligation by continuing to collaborate with the Summit Housing Authority to implement its Rehabilitation Program as well as the Union County Home Improvement Program.
7. **Credits and Satisfaction of the City's RDP:** The City has satisfied its RDP and has additional credits as follows:

<b>Site #</b>	<b>Block</b>	<b>Lot</b>	<b>Property Location</b>	<b>Number of Bedrooms</b>	<b>Owner/Operator</b>
1	401	50	1 Greenfield Avenue	2	Our House, Inc.
2	2406	4	43 Glendale Avenue	4	Our House, Inc.
3	1302	81.01	390 Morris Avenue-Unit 1	2	Our House, Inc.
4	1302	81.03	390 Morris Avenue-Unit 3	2	Our House, Inc.
5	1302	81.31	390 Morris Ave. - Unit 31	2	Our House, Inc.
6	4002	31.34	103 Park Ave-Unit E205	2	Our House, Inc.
7			39 Morris Ave	6	Habitat For Humanity
<b>Total</b>				<b>20 Credits</b>	

Additional credits include the following:

<u>Existing Project Location</u>		<u>Unit Count</u>
50 Parmley Place:		2 units
13 North St:	Summit Place's Off-Site Obligation	3 units
120 Morris Ave:	Tiger Baron	2 units
31 Russel PI	68-72 Franklin PI Off-Site Obligation	2 units
708-710 Springfield Ave:	Summit PI Off-Site Obligation	4 units
785 Springfield Ave:	Providence Crossing	2 units
545 Morris Ave:	Promenade	4 units
	<b>Subtotal</b>	<b>19 units</b>
<u>Pending Project Location</u>	<u>Acres</u>	<u>Unit Count</u>
Sunrise Assisted Living River St	1.33 ac	8 units
Multi-Family 27-31 Euclid Ave	0.44 ac	1 units
Multi-Family 4-6 Ashwood Ave	0.44 ac	2 units
	<b>Subtotal</b>	<b>11 units</b>
	<b>Total:</b>	<b>50 Credits</b>

Thus, in total, and for purposes of this settlement agreement, the City is currently entitled to 50 credits to apply to its 36-unit RDP. Subject to confirmation by the Special Master prior to the City's Compliance Hearing, the City is also entitled to as many as 9 rental bonuses, for a maximum of 59 Mount Laurel credits.

The City also executed a 26-unit Regional Contribution Agreement with the City of Elizabeth, which was approved by the Council on Affordable Housing on November 9, 2005, which shall be applied to the unmet need.

8. **Actions to Capture Additional Affordable Housing Opportunities:** For the purposes of settlement, the City agrees to take the following actions to address all, or a portion of, the remaining portion of its Prior Round obligations and its allocation of the Round 3 regional need, which total 653 units:

- a. Subject to all MLUL provisions, including the required notice and public hearings, the City will adopt Mount Laurel overlay zoning ordinances consistent with the report issued by Joseph H. Burgis, P.P., A.I.C.P., the City's consulting planner, dated December 7, 2015 as modified by the report dated October 1, 2016 and attached hereto as Exhibit A.
- b. Subject to all MLUL provisions, including the required notice and public hearings, the City will also amend the zoning ordinances on the sites currently zoned for multi-family apartments to impose a mandatory 15 percent affordable housing set-aside for rental units and a mandatory 20 percent set aside for for-sale units. Developers shall have the opportunity to demonstrate that the set aside percentages set forth above render the proposed project to

be economically infeasible and, upon the provision of satisfactory proofs, may seek relief such as, but not limited to, additional density, a monetary subsidy from the City's Mount Laurel trust fund, bulk/design waivers, a payment in lieu of taxes, or other forms of relief, provided that they shall not be permitted to seek reductions in the set aside required by this agreement and the implementing ordinances.

9. For the purposes of settlement, the City shall not seek any Mount Laurel credits in Summit presently administered by the Summit Housing Authority (SHA). However, the City reserves the right to seek such credits at a later date, and FSHC equally reserves the right to challenge such credits if the issue arises in the future. FSHC also reserves the right to pursue a legal challenge to the "residency preference" associated with the SHA senior site and any other units in the City administered by the Summit Housing Authority now or in the future. All references to SHA units receiving credit in COAH's online systems, including the CTM system, will be deleted by the City within 30 days of the approval of this Agreement by the Court.

10. The City'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 City 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. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, the City shall formally withdraw its pending Motion for Summary Judgment on the "unmet need" issue.

12. Upon approval of this Settlement Agreement via duly-noticed Fairness Hearing, FSHC shall formally dismiss its pending counterclaims against the City and shall not seek counsel fees or any other similar costs against the City.

13. During period between now and July 1, 2025, Summit shall take all reasonable steps needed to achieve the goal of facilitating the construction of fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments, subject to the following parameters.

Because these units are intended to meet what is termed as "unmet need," Summit shall not be required to adopt a "Resolution of Intent to Bond" and is not being required to use funds other than Affordable Housing Trust Funds to render the associated development proposals economically feasible. The City acknowledges, however, that a Resolution of Intent to Bond, a Resolution of Need, tax abatement or other similar financial mechanism require formal actions by the governing body and may be required under certain affordable housing laws or as a condition precedent to the award of certain public subsidy programs. Since such actions are often necessary to develop the affordable housing units contemplated in this paragraph, the City shall not take any action, or inaction, to thwart a development proposal unless it can demonstrate that such action or inaction would violate applicable law or construction of the development in question would violate principles of sound land use planning.

- a. At least half of the 50 units shall be available to families.

- b. Summit shall not be required to facilitate construction of a single, 50-unit all-affordable development and agrees, to the maximum extent possible, to rely on non-profit developers to develop the 50 units of affordable housing;
- c. Upon completion and compliance with applicable laws and rules, Summit shall receive "credits" against its 50-unit goal for the pending development by Habitat for Humanity on the "Italian-American Club" site and/or resulting from any of the zoning actions referenced in this paragraph of this Agreement;
- d. Within the first three years following the execution of this Agreement, and in accordance with the provisions set forth in N.J.A.C. 5:93-5.5, the City shall prepare a document that identifies the site or sites and measures through which it intends to facilitate the development of the 50 new affordable units;
- e. This document shall also identify the developer(s) who will develop the 50 new affordable units and enter into developers' agreements with each developer subject to the limitations expressed in subparagraph i. below;
- f. Between the third and the sixth year, Summit shall make all reasonable efforts to facilitate the development approvals and to support applications for the funding needed to achieve the goal of 50 new affordable units;
- g. Between the sixth and tenth year, the City shall make all reasonable efforts to facilitate the actual construction of the developments needed to achieve the goal of 50 new affordable units;
- h. The City shall (i) provide an annual Status Report on the above-referenced actions, including identifying what steps have been taken in the previous year and what steps are anticipated in the following year; (ii) shall conduct a duly-noticed meeting of its Mount Laurel subcommittee during February of each year which shall include on the agenda a discussion of the Status Report; and (iii) shall also discuss the Status Report as an agenda item during a public meeting of the governing body and receive public comment regarding that report during February of each year. The City agrees to provide Fair Share Housing Center and clergy organizations in Summit with 30 days' notice of these meetings.
- i. The parties recognize that Summit may make all reasonable efforts and still not achieve the development of 50 units of affordable sales/ownership housing in 100% affordable developments as contemplated by this agreement and may not accomplish interim steps toward the development of those units. Public subsidies may not be available or other unanticipated factors may arise. Nevertheless, Summit agrees to take all reasonable efforts to overcome barriers, whether identified or not in this agreement, in order to develop 50 units of affordable sales/ownership housing in 100% affordable developments.

14. The City's obligation to provide fifty (50) new rental/ownership affordable units within the City in 100% scattered site affordable housing developments may be reduced to forty (40) at the City's option, which option shall be exercised within twelve (12) months of the date on which this agreement is effective, if the City amends its zoning ordinance covering at least 6.3 acres in the Overlay Zoning Districts identified in Exhibit A to permit an additional story in inclusionary developments. Within twelve (12) months of the execution of this agreement, Summit shall advise FSHC and the Special Master whether it has exercised this option. Summit agrees to adopt all necessary implementing ordinances necessary to exercise this within fifteen (15) months following the execution of this agreement.

15. The City agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families. Affordability assistance for low and very low-income households will be addressed in the spending plan to be adopted in the future in accordance with this agreement.

16. To the extent that Summit is entitled to any "bonus credits" to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). Furthermore, the City will be entitled to additional rental bonus credits generated by projects that may be developed under this Agreement up to the maximum of 9 rental bonuses for which it is eligible based on its Third Round obligation.

17. At least 50 percent of the units addressing the Third Round Prospective Need, including RDP and 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.

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

19. At least half of the units addressing the Third Round Prospective Need including RDP and unmet need, in total must be available to families.

20. The City agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the City claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its prior round and Round 3 fair share obligations including RDP and unmet need.

21. The City 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, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206), Affordable Housing Professionals of New Jersey, and the New Jersey Housing Resource Center. As part of its regional affirmative marketing strategies during implementation of its fair

share plan, the City and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

22. 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 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 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 City, 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.

23. Upon full execution of this Agreement, Summit shall place this agreement on file in the City's municipal building and file a copy with the Court for the upcoming scheduled Fairness Hearing, at which the City 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. Summit shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Summit's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings can be held concurrently or sequentially, which shall be decided by the Court with consultation by the Special Master, Summit, and FSHC. Although it is expected that the Special Master will provide the majority of the required testimony, Summit shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the City's Fair Share Plan. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the City's Fair Share Plan, the parties agree that the City 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 Summit's immunity from all Mount Laurel lawsuits through July 2, 2025.

24. 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 Summit's Round 3 obligation is decreased to 454 or less, with any relevant appeal periods having passed, the City may file a proposed form of Order, on notice to FSHC and the City's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the City 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 address the remaining portion of the City's allocation of the Round 3 regional

need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that 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 City prevails in reducing its prospective need for Round 3, the City may carry over any resulting surplus credits to Round 4.

25. The City shall prepare a Spending Plan which shall include measures to expend Trust Funds to address the 50 units contemplated in Paragraph 13 above and shall be approved by the Court during, or prior to, a 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 City and Fair Share Housing Center agree that the expenditures of funds contemplated in the City'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 City 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 Fair Share Housing Center and the service list in this matter and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The CTM system shall also be used for this purpose if possible.

26. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the City 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 City 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.

27. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this agreement. The City 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 City 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 City will post on its municipal website, with a copy provided to Fair Share Housing Center and the service list previously used in this matter, 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.

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

28. This agreement may be enforced by the City or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County. If FSHC determines that such action is necessary, the City 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.

29. 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 City 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*.

30. 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.

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

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

33. 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.

34. The City 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 City and FSHC and that there are

no representations, warranties, covenants or undertakings other than those expressly set forth herein.

35. The City and FSHC acknowledge that this Agreement was not drafted by the City and FSHC, but was drafted, negotiated and reviewed by representatives of the City and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The City and FSHC expressly represent 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.

36. 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 City and FSHC.

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

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

39. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the City 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 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  
E-mail: [kevinwalsh@fairsharehousing.org](mailto:kevinwalsh@fairsharehousing.org)

**TO THE CITY:** Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian & Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Phone: (732) 612-3100  
Telecopier: (732) 612-3101  
Email: [maj@surenian.com](mailto:maj@surenian.com)

Albert E. Cruz, Esq.  
DiFrancesco Bateman  
15 Mountain Boulevard

Warren, NJ 07059  
Phone: (908) 757-7800  
Telecopier: (908) 757-8039  
Email: acruz@newjerseylaw.net

**WITH A COPY TO THE  
CITY ADMINISTRATOR:** Michael Rogers, City Administrator  
City of Summit  
512 Springfield Avenue  
Summit, NJ 07901  
Phone: (908) 277-9419  
Telecopier: (908) 273-2977  
Email: mrogers@cityofsummit.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.

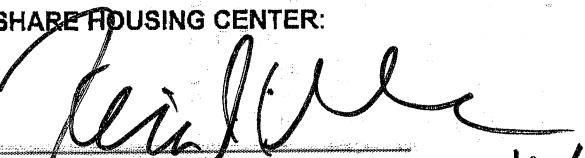
**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:



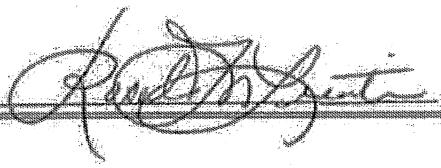
**FAIR SHARE HOUSING CENTER:**

By:

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

10/14/2016

Witness/Attest:



**CITY OF SUMMIT:**

By:

  
Nora Radest, Mayor  
On Behalf of the City of Summit

Dated: 10/6/16

# **EXHIBIT B**

RESOLUTION OF THE GOVERNING BODY OF THE CITY OF SUMMIT  
AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT WITH FAIR  
SHARE HOUSING CENTER

October 5, 2016

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), on July 2, 2015, the City filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine," and

WHEREAS, the City simultaneously sought, and ultimately secured, a protective order providing Summit immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the trial judge also reappointed Philip B. Caton, P.P., F.A.I.C.P. as the "Special Master," as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, with assistance from the Special Master, Summit and Fair Share Housing Center ("FSHC") engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto as Exhibit A; and

WHEREAS, through this process, the City and FSHC agreed upon the City's affordable housing obligations and the compliance techniques necessary for Summit to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the City and FSHC also agreed that Summit would present the Settlement Agreement to the Trial Judge for approval via duly-noticed Mount Laurel "Fairness Hearing," and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1) it avoids the expenditure of finite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, and on the recommendation of the City's Special Mount Laurel Counsel, the City Council finds that it is in the best interests of Summit to execute the attached Settlement Agreement with FSHC and to take various other actions delineated below which will ultimately result in approval of the City's Fair Share Plan which, in turn, will maintain the City's immunity from all Mount Laurel lawsuits for the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT, COUNTY OF UNION, STATE OF NEW JERSEY, AS FOLLOWS:

1. The it does hereby authorize and direct the Mayor and City Clerk to execute the attached Settlement Agreement and to provide a copy of same to the City's Special Mount Laurel Counsel as soon as practicable thereafter.
2. The City hereby directs its Special Mount Laurel Counsel to file the fully-executed Settlement Agreement with the Court and take all actions reasonable and necessary to secure an Order approving the Settlement Agreement and ultimately to secure judicial approval of the City's Fair Share Plan, as may be amended by the Land Use Board pursuant to the Agreement and subject to the public hearing process set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq.

I, Rosalia M. Licatese, certify that the foregoing Resolution was duly adopted by the governing body of the City of Summit at a regular meeting held on Wednesday, October 5, 2016, a quorum being present and voting in the majority.



City Clerk

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, City of Summit

By: Jeffrey R. Surenian, Esq. (Attorney ID: 024231983)

Michael A. Jedziniak (Attorney ID: 012832001)

**IN THE MATTER OF THE  
APPLICATION OF THE CITY OF  
SUMMIT, COUNTY OF UNION**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY  
**DOCKET NO.: UNN-L-2440-15**CIVIL ACTION – *MOUNT LAUREL***CONDITIONAL ROUND 3 JUDGMENT  
OF COMPLIANCE**

THIS MATTER having been opened to the Court by Michael A. Jedziniak, Esq. of Jeffrey R. Surenian and Associates, LLC on behalf of declaratory plaintiff, City of Summit (hereinafter “the City” or “Summit”) via a Declaratory Judgment Action (“DJ Action”) filed on July 2, 2015 in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) and requesting judicial approval of the City’s amended Housing Element and Fair Share Plan; and the Court having granted the City immunity from all Mount Laurel lawsuits commencing from July 2, 2015; and the City’s immunity currently remaining in force; and the Court having appointed Phillip B. Caton, P.P., F.A.I.C.P. as the Special Mount Laurel Master; and Fair Share Housing Center (“FSHC”) having participated in the City’s DJ Action as an Intervenor; and the City and FSHC having entered into a Settlement Agreement on or around October 5, 2016, which was approved at a properly noticed Fairness Hearing held by the Court on October 31, 2016, as memorialized in an Order entered by the Court on that same day; and said Settlement Agreement having established the City’s “fair share” obligations and the

compliance mechanisms through which the City would satisfy same; and the City having subsequently prepared an amended Housing Element and Fair Share Plan (“Fair Share Plan”) and all supporting documentation in accordance with the Settlement Agreement and the recommendations of the Court Master; and the City’s Planning Board having adopted the Fair Share Plan on January 23, 2017; and the City Common Council having endorsed the Fair Share Plan on January 31, 2017; and in order to help satisfy its affordable housing obligations, the City having prepared Mount Laurel overlay zones to capture affordable housing opportunities if and when the opportunity arises; and the Fair Share Plan and all supporting resolutions, ordinances, and other documents having been submitted to the Court and the Court Master for review and approval; and said documents having been put on file for public inspection; and the Court having scheduled a Compliance Hearing for May 30, 2017 to consider whether the City’s Fair Share Plan satisfies its fair share obligations; and the City having provided sufficient public notice of the Compliance Hearing; and Special Master Caton having filed a Compliance Hearing Report regarding the City’s Fair Share Plan to the Court on May 24, 2017; and the Court having conducted the Compliance Hearing on May 30, 2017; and Michael A. Jedziniak, Esq. and Joseph H. Burgis, P.P., A.I.C.P., on behalf of the City, Kevin Walsh, Esq., on behalf of FSHC, and Special Master Caton having appeared at the Compliance Hearing; and Special Master Caton having recommended for the Court to grant the City a Conditional Round 3 Judgment of Compliance, subject to revocation should the City fail to address a number of conditions within 90 days of this Order; and the Court having entered as evidence the City’s Fair Share Plan and supporting documents, the City’s Affidavit of Public Notice, the Special Master’s Compliance Report, and other relevant documents; and the Court having considered the documents on the record, the Special Master’s testimony, Mr. Burgis’ testimony, and the arguments of counsel;

and, as a result of the foregoing, the Court having made at the conclusion of the Hearing various findings of fact and determinations of law as set forth on the record; and for good cause shown:

IT IS on this 25<sup>th</sup> day of September, 2017, ORDERED AND ADJUDGED as follows:

1. The City provided sufficient notice of the Compliance Hearing to the public and all interested parties.
2. The City of Summit's Fair Share Plan is hereby approved, and the City is granted a Conditional Round 3 Judgment of Compliance pursuant to the Fair Housing Act (N.J.A.C. 52:27D-301, et seq.), applicable Council on Affordable Housing (COAH) procedural and substantive regulations, and Mount Laurel case law, including the New Jersey Supreme Court's decision in In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV").
3. The City's Conditional Judgment of Compliance shall remain in effect for ten (10) years, commencing on July 2, 2015 and ending on July 2, 2025, during which the City will have immunity from any and all Mount Laurel lawsuits, including "builders remedy lawsuits," "constitutional compliance actions," and any other lawsuit brought under Mount Laurel principles.
4. The City's Present Need or Rehabilitation Obligation is 131 units, the City's Prior Round Obligation is 171 units, and the City's Round 3 allocation of the regional need is 567 units.
5. The City is entitled to a Prior Round and Round 3 Vacant Land Adjustment with a Realistic Development Potential ("RDP") of thirty six (36) units.
6. The City's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstances occurs either

with the RDP or the remaining portion of its allocation of the Round 3 regional need, the City shall have the express right to address the issue without any negative impact on its immunity from all Mount Laurel lawsuits or any form of related litigation claiming that the RDP should be increased.

7. The City's "Unmet Need" is 653 units, comprised of the sum of its Prior Round and Round 3 obligations.

8. The City's amended Spending Plan shall include measures to expend Trust Funds to address the 50 units of 100% scattered site affordable housing developments contemplated in the FSHC Settlement Agreement to the extent that such measures are necessary to render the development of these units to be economically-feasible.

9. This Conditional Judgment of Compliance is subject to revocation unless Special Master Caton concludes that the City has satisfied the twelve (12) conditions identified in Special Master Caton's "Master's Report for a Mount Laurel Compliance Hearing," dated May 24, 2017.

10. Said conditions shall be satisfied within ninety (90) days of receipt of this Order, subject to extension upon good cause shown and recommendation of Special Master Caton.

11. During this 90-day period, the City shall confer with, and provide all relevant documents to, Special Master Caton and Fair Share Housing Center prior to taking any formal action to satisfy the conditions referenced above.

12. Upon the conclusion of the aforementioned 90-day period, Special Master Caton shall file a Supplemental Compliance Report with the Court as soon as practicable, which shall include, *inter alia*, a statement of whether, in the Special Master's opinion, the City has satisfied the conditions set forth above.

13. If the Master concludes that the City has not satisfied the conditions, the Court shall issue a Show Cause Order providing the City an opportunity to demonstrate why this Conditional Judgment of Compliance should not be revoked.

14. If the Master concludes that the City has satisfied the conditions, the Court shall enter a Final Round 3 Judgment of Compliance and Repose without the need for further hearings before the Court.

15. Notwithstanding the provisions of above, either party may request a Case Management Conference for purposes of scheduling a hearing to contest the conclusions set forth in the Master's Supplemental Compliance Report. The party contesting the conclusions shall request the Case Management Conference within seven (7) days of receipt of the Master's Supplemental Compliance Report.

16. The City's immunity from all Mount Laurel lawsuits shall remain in effect until further Order of the Court.

17. FSHC's request for the Court to correct the scrivener's error and internal inconsistency in the Summit Settlement Agreement and to adjust the City's Fair Share obligation to 30 percent of the Round 3 obligation calculated in the expert report issued by David N. Kinsey, PhD, P.P., F.A.I.C.P., dated May of 2016, is hereby denied.

18. FSHC waives any right to pursue an action against Summit with regard to the issues set forth in Paragraph 17 above. *See attached letter of the Com. to*

19. The City shall forward a copy of this Order to the Special Master and the Service List within seven (7) days of receipt.

  
HONORABLE CAMILLE M. KENNY, J.S.C.

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

Brielle Galleria  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
(732) 612-3100  
Attorneys for Declaratory Plaintiff, City of Summit  
By: Jeffrey R. Surenian, Esq. (Attorney ID: 024231983)  
Michael A. Jedziniak (Attorney ID: 012832001)

**FILED**

**JAN 22 2019**

**CAMILLE M. KENNY**  
**J.S.C.**

**IN THE MATTER OF THE  
APPLICATION OF THE CITY OF  
SUMMIT, COUNTY OF UNION**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY**

**DOCKET NO.: UNN-L-2440-15**

**CIVIL ACTION – MOUNT LAUREL**

**FINAL ROUND 3 JUDGMENT OF  
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Michael A. Jedziniak, Esq. of Jeffrey R. Surenian and Associates, LLC on behalf of declaratory plaintiff, City of Summit (hereinafter “the City” or “Summit”) via a Declaratory Judgment Action (“DJ Action”) filed on July 2, 2015 in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) and requesting judicial approval of the City’s amended Housing Element and Fair Share Plan; and the Court having granted the City immunity from all Mount Laurel lawsuits commencing from July 2, 2015; and the City’s immunity having continuously remained in force to the present day; and the Court having appointed Phillip B. Caton, P.P., F.A.I.C.P. as the Special Mount Laurel Master; and Fair Share Housing Center (“FSHC”) having participated in the City’s DJ Action as an Intervenor; and the City and FSHC having entered into a Settlement Agreement on or around October 5, 2016, which was approved at a properly noticed Fairness Hearing held by the Court on October 31, 2016, as memorialized in an Order entered by the Court on that same day; and said Settlement Agreement having established the City’s “fair

share" obligations and the compliance mechanisms through which the City would satisfy same; and the City's professionals and staff having prepared an amended Housing Element and Fair Share Plan ("Fair Share Plan") and all supporting documentation in accordance with the Settlement Agreement and the recommendations of the Court Master; and the City's Planning Board having adopted the Fair Share Plan on January 23, 2017; and the City Common Council having endorsed the Fair Share Plan on January 31, 2017; and in order to help satisfy its affordable housing obligations, the City having adopted Mount Laurel overlay ordinances to capture affordable housing opportunities if and when the opportunity arises; and the Fair Share Plan and all supporting resolutions, ordinances, and other documents having been submitted to the Court and the Court Master for review and approval; and, on September 25, 2017, the Court having conducted a duly-noticed Compliance Hearing and entered a Conditional Round 3 Judgment of Compliance; and said Order being attached hereto as Exhibit A and incorporated by reference hereto; and, subsequent to the entry of the Order, the City having discovered that it was entitled to ten (10) less credits than was contemplated in the Settlement Agreement; and, on February 8, 2018, the City having adopted and endorsed an amended Round 3 Housing Element and Fair Share; and, on April 13, 2018, the City having adopted an amended Spending Plan, being attached hereto as Exhibit B and incorporated by reference hereto; and thereafter, additional issues having been raised by FSHC concerning the City's amended Housing Element and Fair Share Plan and Spending Plan; and the City having adopted a Mount Laurel Mandatory Setaside Ordinance ("MSO") to cover *all* parcels in Summit, rather than merely the parcels in the multifamily zoning districts; and, on December 18, 2018, the City having adopted its amended MSO thereby expanding the scope of its Mandatory Mount Laurel Setaside Ordinance ("MSO") to cover *all* parcels in Summit; and said amended Ordinance being attached hereto as Exhibit C

and incorporated by reference hereto; and, it appearing that FSHC and the City have agreed that the adoption of the Ordinance resolves FSHC's objections to the City's fair share compliance and it appearing that amendments to mechanisms to address unmet need, in accordance with the terms of the Settlement Agreement, will be considered in accordance with the mid-period review required by N.J.S.A. 52:27D-313; and it appearing that the parties have consented to the entry of this order; and for good cause shown:

**IT IS** on this 25 day of January, 2019, **ORDERED AND ADJUDGED** as follows:

1. All of the terms set forth in the City's Conditional Round 3 Judgment of Compliance, dated September 25, 2017 and attached hereto as Exhibit A, remain in full force and effect, except any such terms that are expressly addressed below.
2. The City satisfied the twelve conditions referenced in its Conditional Round 3 Judgment of Compliance.
3. The City's amended Round 3 Housing Element and Fair Share Plan, as supplemented through the adoption of the amended MSO, is approved inasmuch as it addresses the municipality's obligation under the Mount Laurel doctrine and applicable rules and regulations.
4. The City's amended Mount Laurel Spending Plan, dated April 13, 2018 and attached hereto as Exhibit B, is hereby approved.
5. The City's amended MSO, dated December 18, 2018 and attached hereto as Exhibit C, is approved and, in combination with other mechanisms, provides an appropriate response to the City's unmet need.

6. Pursuant to the City's Conditional Round 3 Judgment of Compliance and in light of the terms set forth herein, the City is entitled to repose from any and all Mount Laurel exclusionary zoning lawsuits through July 2, 2025.

7. The City shall forward a copy of this Order to the Special Master and the Service List within seven (7) days of receipt.

  
HONORABLE CAMILLE M. KENNY, J.S.C.



# EXHIBIT A

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, City of Summit

By: Jeffrey R. Surenian, Esq. (Attorney ID: 024231983)

Michael A. Jedziniak (Attorney ID: 012832001)

**IN THE MATTER OF THE  
APPLICATION OF THE CITY OF  
SUMMIT, COUNTY OF UNION**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY  
**DOCKET NO.: UNN-L-2440-15**CIVIL ACTION – *MOUNT LAUREL***CONDITIONAL ROUND 3 JUDGMENT  
OF COMPLIANCE**

THIS MATTER having been opened to the Court by Michael A. Jedziniak, Esq. of Jeffrey R. Surenian and Associates, LLC on behalf of declaratory plaintiff, City of Summit (hereinafter “the City” or “Summit”) via a Declaratory Judgment Action (“DJ Action”) filed on July 2, 2015 in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”) and requesting judicial approval of the City’s amended Housing Element and Fair Share Plan; and the Court having granted the City immunity from all Mount Laurel lawsuits commencing from July 2, 2015; and the City’s immunity currently remaining in force; and the Court having appointed Phillip B. Caton, P.P., F.A.I.C.P. as the Special Mount Laurel Master; and Fair Share Housing Center (“FSHC”) having participated in the City’s DJ Action as an Intervenor; and the City and FSHC having entered into a Settlement Agreement on or around October 5, 2016, which was approved at a properly noticed Fairness Hearing held by the Court on October 31, 2016, as memorialized in an Order entered by the Court on that same day; and said Settlement Agreement having established the City’s “fair share” obligations and the

compliance mechanisms through which the City would satisfy same; and the City having subsequently prepared an amended Housing Element and Fair Share Plan (“Fair Share Plan”) and all supporting documentation in accordance with the Settlement Agreement and the recommendations of the Court Master; and the City’s Planning Board having adopted the Fair Share Plan on January 23, 2017; and the City Common Council having endorsed the Fair Share Plan on January 31, 2017; and in order to help satisfy its affordable housing obligations, the City having prepared Mount Laurel overlay zones to capture affordable housing opportunities if and when the opportunity arises; and the Fair Share Plan and all supporting resolutions, ordinances, and other documents having been submitted to the Court and the Court Master for review and approval; and said documents having been put on file for public inspection; and the Court having scheduled a Compliance Hearing for May 30, 2017 to consider whether the City’s Fair Share Plan satisfies its fair share obligations; and the City having provided sufficient public notice of the Compliance Hearing; and Special Master Caton having filed a Compliance Hearing Report regarding the City’s Fair Share Plan to the Court on May 24, 2017; and the Court having conducted the Compliance Hearing on May 30, 2017; and Michael A. Jedziniak, Esq. and Joseph H. Burgis, P.P., A.I.C.P., on behalf of the City, Kevin Walsh, Esq., on behalf of FSHC, and Special Master Caton having appeared at the Compliance Hearing; and Special Master Caton having recommended for the Court to grant the City a Conditional Round 3 Judgment of Compliance, subject to revocation should the City fail to address a number of conditions within 90 days of this Order; and the Court having entered as evidence the City’s Fair Share Plan and supporting documents, the City’s Affidavit of Public Notice, the Special Master’s Compliance Report, and other relevant documents; and the Court having considered the documents on the record, the Special Master’s testimony, Mr. Burgis’ testimony, and the arguments of counsel;

and, as a result of the foregoing, the Court having made at the conclusion of the Hearing various findings of fact and determinations of law as set forth on the record; and for good cause shown:

IT IS on this 25<sup>th</sup> day of September, 2017, ORDERED AND ADJUDGED as follows:

1. The City provided sufficient notice of the Compliance Hearing to the public and all interested parties.
2. The City of Summit's Fair Share Plan is hereby approved, and the City is granted a Conditional Round 3 Judgment of Compliance pursuant to the Fair Housing Act (N.J.A.C. 52:27D-301, et seq.), applicable Council on Affordable Housing (COAH) procedural and substantive regulations, and Mount Laurel case law, including the New Jersey Supreme Court's decision in In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV").
3. The City's Conditional Judgment of Compliance shall remain in effect for ten (10) years, commencing on July 2, 2015 and ending on July 2, 2025, during which the City will have immunity from any and all Mount Laurel lawsuits, including "builders remedy lawsuits," "constitutional compliance actions," and any other lawsuit brought under Mount Laurel principles.
4. The City's Present Need or Rehabilitation Obligation is 131 units, the City's Prior Round Obligation is 171 units, and the City's Round 3 allocation of the regional need is 567 units.
5. The City is entitled to a Prior Round and Round 3 Vacant Land Adjustment with a Realistic Development Potential ("RDP") of thirty six (36) units.
6. The City's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstances occurs either

with the RDP or the remaining portion of its allocation of the Round 3 regional need, the City shall have the express right to address the issue without any negative impact on its immunity from all Mount Laurel lawsuits or any form of related litigation claiming that the RDP should be increased.

7. The City's "Unmet Need" is 653 units, comprised of the sum of its Prior Round and Round 3 obligations.

8. The City's amended Spending Plan shall include measures to expend Trust Funds to address the 50 units of 100% scattered site affordable housing developments contemplated in the FSHC Settlement Agreement to the extent that such measures are necessary to render the development of these units to be economically-feasible.

9. This Conditional Judgment of Compliance is subject to revocation unless Special Master Caton concludes that the City has satisfied the twelve (12) conditions identified in Special Master Caton's "Master's Report for a Mount Laurel Compliance Hearing," dated May 24, 2017.

10. Said conditions shall be satisfied within ninety (90) days of receipt of this Order, subject to extension upon good cause shown and recommendation of Special Master Caton.

11. During this 90-day period, the City shall confer with, and provide all relevant documents to, Special Master Caton and Fair Share Housing Center prior to taking any formal action to satisfy the conditions referenced above.

12. Upon the conclusion of the aforementioned 90-day period, Special Master Caton shall file a Supplemental Compliance Report with the Court as soon as practicable, which shall include, *inter alia*, a statement of whether, in the Special Master's opinion, the City has satisfied the conditions set forth above.

13. If the Master concludes that the City has not satisfied the conditions, the Court shall issue a Show Cause Order providing the City an opportunity to demonstrate why this Conditional Judgment of Compliance should not be revoked.

14. If the Master concludes that the City has satisfied the conditions, the Court shall enter a Final Round 3 Judgment of Compliance and Repose without the need for further hearings before the Court.

15. Notwithstanding the provisions of above, either party may request a Case Management Conference for purposes of scheduling a hearing to contest the conclusions set forth in the Master's Supplemental Compliance Report. The party contesting the conclusions shall request the Case Management Conference within seven (7) days of receipt of the Master's Supplemental Compliance Report.

16. The City's immunity from all Mount Laurel lawsuits shall remain in effect until further Order of the Court.

17. FSHC's request for the Court to correct the scrivener's error and internal inconsistency in the Summit Settlement Agreement and to adjust the City's Fair Share obligation to 30 percent of the Round 3 obligation calculated in the expert report issued by David N. Kinsey, PhD, P.P., F.A.I.C.P., dated May of 2016, is hereby denied.

18. FSHC waives any right to pursue an action against Summit with regard to the issues set forth in Paragraph 17 above. *See attached letter of the Com. to*

19. The City shall forward a copy of this Order to the Special Master and the Service List within seven (7) days of receipt.

  
HONORABLE CAMILLE M. KENNY, J.S.C.

# **EXHIBIT B**

**RESOLUTION OF THE CITY OF SUMMIT, COUNTY OF UNION  
ADOPTING AN AFFORDABLE HOUSING SPENDING PLAN AND  
REQUESTING JUDICIAL REVIEW AND APPROVAL OF SAME**

March 20, 2018

WHEREAS, regulations adopted by the New Jersey Council on Affordable Housing ("COAH") have consistently required a municipality with an Affordable Housing Trust Fund to receive approval of a Spending Plan by COAH prior to spending any of the funds in its Trust fund, and

WHEREAS, these regulations required a Spending Plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds;
5. A schedule for the expenditure of all affordable housing trust funds;
6. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing;
7. A plan to spend the trust fund balances in accordance with the implementation schedule within the Spending Plan and approved by a settlement agreement;
8. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the Plan, and
9. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the City of Summit has prepared an amended Spending Plan consistent with the City's Settlement Agreement with Fair Share Housing Center, and

WHEREAS, because COAH is no longer a functioning administrative agency, it has announced that it will not approve any Spending Plan, including the City's, and

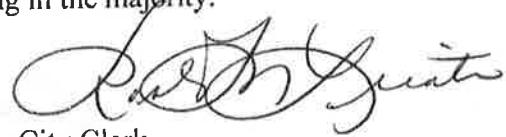
WHEREAS, the City of Summit shall, therefore, seek review and approval of amended Spending Plan as part of its obligations under the Settlement Agreement between the City of Summit and Fair Share Housing Center.

NOW THEREFORE BE IT RESOLVED BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT, COUNTY OF UNION, NEW JERSEY,

That it hereby adopts and endorses the Spending Plan attached hereto.

BE IT FURTHER RESOLVED THAT the City of Summit hereby requests that the Special Master and/or the Court review and approve its Spending Plan.

I, Rosalia M. Licatese, Municipal Clerk of the City of Summit, do hereby certify that the foregoing resolution was duly adopted by the Common Council of the City of Summit at a public meeting held on March 20, 2018, a quorum being present and voting in the majority.

  
City Clerk

REVISED 3-20-18  
City of Summit  
Affordable Housing Trust Fund Spending Plan

## INTRODUCTION

The City of Summit, Union County, has prepared a Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:91-1 et seq. and N.J.A.C. 5:93-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing and establishing the City of Summit affordable housing trust fund was adopted by the City in 2003.

As of December 31, 2017, the City of Summit has a balance of \$1,839,806 in its affordable housing trust fund. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in PNC Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

### 1. REVENUES FOR CERTIFICATION PERIOD

It is anticipated that, during the period of Third Round substantive certification, the City of Summit will add an additional \$3,031,568 to its affordable housing trust fund. This is detailed below.

(a) Development fees: The City anticipates that \$2,992,416 in development fees will be generated between January 1, 2018 and December 31, 2025. This figure is based on the following assumptions:

1. *Residential Development Fees:* Since 2010, the City of Summit has collected an average of \$190,152 per year in residential development fees for its Affordable Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$1,521,216 in residential development fees over the next 8 years.
2. *Non-Residential Development Fees:* During the years since 2007 that the City of Summit collected non-residential development fees, the City collected an average of \$183,900 per year in non-residential development fees for its Affordable

Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$1,471,200 in non-residential development fees over the next 8 years.

- (b) Payment in lieu (PIL): The City of Summit does not currently anticipate the contribution of any payments in lieu toward the municipal affordable housing trust fund during the period of Third Round substantive certification.
- (c) Other Funds: The City of Summit does not currently anticipate the contribution of any other funds toward the municipal affordable housing trust fund during the period of Third Round substantive certification.
- (d) Projected interest: Since 2010, the City of Summit has collected an average of \$4,894 per year in interest for its Affordable Housing Trust Fund. It is anticipated that this annual average will continue during the Third Round. As such, it is estimated that the City will collect approximately \$39,152 in total interest over the next 8 years.

**PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND**  
**2018 THROUGH 2025**

SOURCE OF FUNDS	PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND						Total
	2018	2019	2020	2021	2022	2023	
(a) Development fees:							
Residential Development	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$190,152	\$1,521,216
Non-Residential Development	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$183,900	\$1,471,200
(b) Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(c) Other Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(d) Interest	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$4,894	\$39,152
<b>Total</b>	<b>\$378,946</b>	<b>\$378,946</b>	<b>\$378,946</b>	<b>\$378,946</b>	<b>\$378,946</b>	<b>\$378,946</b>	<b>\$3,031,568</b>

In sum, the City of Summit projects a total of \$3,031,568 in revenue to be collected between January 1, 2018 and December 31, 2025. This projected amount, when added to Summit's trust fund balance of \$1,839,806 as of December 31, 2017, results in a total anticipated trust fund balance of \$4,871,374 available to fund and administer the City's affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the City:

- (a) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Summit's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.8), and as may be amended.
- (b) Distribution of development fee revenues: The release of development fee revenues requires consideration by the City's Affordable Housing Subcommittee and authorization by the Common Council.

## 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

- (a) Rehabilitation. The City has a rehabilitation obligation of 131 units. In order to fully satisfy its rehabilitation obligation, the City of Summit will commit to spend a minimum of \$10,000 per unit, for a total of \$1,310,000. COAH's regulations require municipalities to set aside sufficient funds to address one-third of their rehabilitation obligation within one year of substantive certification of their plan. In addition, municipalities are required to set aside sufficient funds to address one-sixth of their rehabilitation obligation each subsequent year of the substantive certification period until the entire obligation is funded. As such, the City will set aside \$440,000 for the first year following substantive certification, and an additional \$150,000 each subsequent year following substantive certification until the rehabilitation share is met. If the City can participate in a County rehabilitation program, or if at the time of mid-point review the \$1,310,000 is not needed, it can be re-allocated to another eligible purpose, including facilitation of construction toward the goal of 50 units of affordable housing.
- (b) New Construction. The City proposes to contribute a total of \$1,200,000 from its Affordable Housing Trust Fund to Habitat for Humanity for the construction of 12 affordable units on the Italian-American Club site. It is anticipated that the release of the funds will be in two installments, with the first installment to be released upon securing land use development approvals and the second installment to be released at the start of construction.
- (c) Affordability Assistance. Pursuant to N.J.A.C. 5:93-8.16(c), the City will commit to spend at least 30% of the revenues collected from development fees towards

affordability assistance to low- and moderate-income households. However, development fees collected to finance a rehabilitation program or new construction project are exempt from this requirement. As set forth above, the City of Summit is proposing to contribute \$2,510,000 for rehabilitation and new construction projects from the collection of development fees. Therefore, the City will dedicate 30% of the residual money less of its proposed rehabilitation and new construction expenditures towards its affordability assistance program. As shown in the table below, the City projects that approximately \$489,118 will be available from the affordable housing trust fund for this purpose through 2025, one-third of which will be need to be dedicated toward affordability assistance for very-low income households. The City's affordability assistance program will include down payment assistance, special condominium assessment assistance, emergency repair assistance, emergency/hardship mortgage payment assistance, rental assistance.

Actual development fees + interest 7/17/08-12/31/17		\$2,219,182
Development fees projected 1/1/2018-12/31/2025	+	\$2,992,416
Interest projected 1/1/2018-12/31/2025	+	\$39,152
Less rehab & housing activity expenditures 7/17/08-12/31/17	-	\$1,096,902
Less rehab & housing activity expenditures 1/1/18-12/31/25	-	\$2,510,000
Total	=	\$1,643,848
30 percent requirement	x 0.30 =	\$493,154
Less affordability assistance expenditures through 12/31/17	-	\$4,036
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2018-12/31/2025	=	\$489,118
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2018-12/31/2025	÷ 3 =	\$163,039

(d) Administrative Expenses. Per N.J.A.C. 5:93-8.16(e), no more than 20% of the revenues collected from development fees shall be expended on administration. The City projects that a maximum of \$944,311 of housing trust funds will be permitted to be used for administrative purposes through 2025. Projected administrative expenditures, subject to the 20% cap, include the salaries and benefits for municipal employees and consultant fees necessary to develop or implement the following:

1. An updated Housing Element and Fair Share Plan.
2. A rehabilitation program.
3. An affirmative marketing program.
4. An affordability assistance program.

Actual development fees + interest earned through 12/31/17	+	\$3,836,112
Development fees projected 1/1/2018-12/31/2025	+	\$2,992,416
Interest projected 1/1/2018-12/31/2025	+	\$39,152
Total	=	\$6,867,680
20 percent requirement	x 0.20 =	\$1,373,536
Less administrative expenditures through 12/31/17	-	\$429,225
PROJECTED MAXIMUM Administrative Expenses Requirement 1/1/2018-12/31/2025	=	\$944,311

#### 4. EXPENDITURE SCHEDULE

The City of Summit intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule on the following page parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTED EXPENDITURE SCHEDULE 2018 -2025								
PROJECTS/PROGRAMS	Number of Units Projected	2018 - 2025						
		2018	2019	2020	2021	2022	2023	2024
Rehabilitation	131	\$440,000	\$150,000	\$150,000	\$150,000	\$150,000	\$120,000	\$120,000
New Construction								
1. Habitat for Humanity	12	\$600,000	\$600,000					
Subtotal	143	\$440,000	\$750,000	\$750,000	\$150,000	\$150,000	\$120,000	\$2,510,000
Affordability Assistance		\$61,140	\$61,140	\$61,140	\$61,140	\$61,140	\$61,140	\$489,118
Administration		\$118,039	\$118,039	\$118,039	\$118,039	\$118,039	\$118,039	\$944,311
Total		\$619,179	\$929,179	\$929,179	\$329,179	\$329,179	\$299,179	\$179,176
								\$3,943,429

## 5. EXCESS OR SHORTFALL OF FUNDS

Pursuant to the Housing Element and Fair Share Plan, the governing body of the City of Summit will adopt a resolution agreeing to fund any shortfall of funds required for implementing the plan. In the event that a shortfall of anticipated revenues occurs, the City of Summit will handle the shortfall of funds through adopting a resolution with an intent to bond.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be reserved for additional affordable housing activity necessary to address unmet need.

### SUMMARY

The City of Summit intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93-8.16 and consistent with the housing programs outlined in the City's Housing Element and Fair Share Plan.

The City of Summit has a balance of \$1,839,806 as of December 31, 2017, and anticipates an additional \$3,031,568 in revenues through 2025 for a total of \$4,871,374. During the Third Round period of substantive certification through 2025, the City will agree to fund approximately \$1,310,000 towards rehabilitation of existing housing units, approximately \$1,200,000 towards Habitat for Humanity for new affordable housing construction, a minimum of \$489,118 towards an affordability assistance program, and approximately \$944,311 towards administrative costs.

Any shortfall of funds will be offset by an alternative funding source to be identified by the City. If no alternative funding is available, the City of Summit will utilize the resolution of intent to bond to provide the necessary funding. The municipality will dedicate any excess funds or remaining balance toward additional affordable housing activity necessary to address unmet need.

SPENDING PLAN SUMMARY		
Balance as of December 31, 2017		\$1,839,806
PROJECTED REVENUE 1/1/2018-12/31/2025		
Development fees	+	\$2,992,416
Payments in lieu of construction	+	\$ 0
Other funds	+	\$ 0
Interest	+	\$39,152
SUBTOTAL REVENUE	=	\$3,031,568
TOTAL REVENUE	=	\$4,871,374
EXPENDITURES		
Funds used for Rehabilitation	-	\$1,310,000
New Construction: Habitat for Humanity	-	\$1,200,000
Affordability Assistance	-	\$489,118
Administration	-	\$944,311
TOTAL PROJECTED EXPENDITURES	=	\$3,943,429
REMAINING BALANCE	=	\$927,945
(Reserved for Additional Affordable Housing Activity Necessary to Address Unmet Need, including facilitating construction toward the goal of 50 affordable housing units.)		

# **EXHIBIT C**

<b>Ordinance#:</b>	18-3181
Introduction Date:	12/4/18
Hearing Date:	12/18/18
Passage Date:	12/18/18
Effective Date:	12/27/18

**AN ORDINANCE AMENDING CHAPTER XXXV, DEVELOPMENT REGULATIONS ORDINANCE, ARTICLE 11, AFFORDABLE HOUSING MULTIFAMILY SET-ASIDE, SUBSECTION 35-11.1, QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR MULTI-FAMILY DEVELOPERS (amend affordable housing multi-family set-aside)**

*Ordinance Summary: This ordinance will amend the current Article 11, "Affordable Housing Multifamily Set-Aside" of Chapter XXXV, "Development Regulations" of the City Code with revised regulations and standards that govern the development of low and moderate income units for multifamily residential developments of five units or greater that may be approved in the City for rental and for-sale projects. The ordinance is designed to regulate these low and moderate income units in a manner consistent with the regulations of the New Jersey Council on Affordable Housing (COAH) as described in N.J.A.C. 5:93 et seq.; the requirements of the Fair Housing Act of 1985; and the City's adopted Housing Element and Fair Share Plan.*

#### **PURPOSE**

The purpose of this ordinance is to amend the current ARTICLE 11 of Chapter XXXV, **DEVELOPMENT REGULATIONS** of the Code known as "Affordable Housing Multi-family Set-Aside" with revised regulations and standards governing the development of low- and moderate-income units for multifamily residential developments of five units or greater that may be approved in the City for rental and for-sale projects. The ordinance is designed to regulate these low- and moderate-income units in a manner consistent with the regulations of the New Jersey Council on Affordable Housing (COAH) as described in N.J.A.C. 5:93 et seq.; the requirements of the Fair Housing Act of 1985; and, the City's adopted Housing Element and Fair Share Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SUMMIT, as follows:

Section 1. That **ARTICLE 11, AFFORDABLE HOUSING MULTIFAMILY SET-ASIDE, SUBSECTION 35-11.1, QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR MULTIFAMILY DEVELOPERS**, of the Code, be and it is hereby amended and supplemented to read as follows:

### **35-11.1 QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR MULTIFAMILY DEVELOPERS**

~~All zones or districts in which multi-family developments are permitted shall be subject to a mandatory set aside of affordable dwelling units and shall provide affordable dwellings on site in accordance with the requirements of this section.~~

Any multi-family development providing a minimum of five (5) new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan is required to include an affordable housing set-aside in accordance with the requirements of this section. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the City of Summit to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

- A. Any multifamily development of five (5) or more dwelling units in a multifamily residential development that is not a rental development as described below in paragraph B., shall provide an affordable housing set-aside such that twenty (20%) percent of the dwelling units on site shall be affordable dwellings. As an example, if five (5) units are proposed on a site, at least one (1) affordable unit must be constructed on site.
- B. Any multifamily development of five (5) or more dwelling units in a multifamily residential development that is a rental development shall provide an affordable housing set-aside such that fifteen (15%) percent of the dwelling units on site shall be affordable units.
- C. At least thirteen (13%) percent of the affordable dwellings shall be affordable to households earning thirty (30%) percent or less of the median income for the COAH Region.
- D. Where the set-aside requirement of twenty (20%) percent in paragraph A., above, or fifteen (15%) percent in paragraph B., above, results in fractional unit, the total set aside requirement shall be rounded upwards to the next whole number.
- E. Developers shall have the opportunity to demonstrate that the set aside percentages set forth in paragraphs A. and B. above render the proposed project to be economically infeasible and, upon the provision of satisfactory proofs, may seek relief such as, but not limited to, additional density, a monetary subsidy from the City's Mount Laurel trust fund, bulk/design waivers, a payment in lieu of taxes, or other forms of relief, provided that developers shall not be permitted to seek reductions in the set aside required by this ordinance.

## **35-11.2 PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING OBLIGATION OF RESIDENTIAL DEVELOPERS**

A. For all residential development, an applicant shall satisfy its affordable housing production obligation through on-site housing production in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH's regulations.

B. The other alternative mechanisms permitted under COAH's regulations include (a) the purchase of an existing market-rate unit at another location in the community and its conversion to an affordable price-restricted unit in accordance with COAH's criteria, regulations and policies, and/or (b) participation in reconstruction and/or buy-down/write-down, buy-down/rent-down programs. An applicant shall only be entitled to satisfy its affordable housing obligation via one or more of the alternative mechanisms set forth above if the applicant demonstrates to the Common Council that one or more of the alternatives better advances the goals and policies set forth in the City's Housing Element and Fair Share Plan. The Common Council shall have the complete discretion to determine whether the alternative(s) better advances the goals and policies set forth in the City's Housing Element and Fair Share Plan.

C. Full and complete satisfaction of compliance with the affordable housing requirements of the development shall be a specific, automatic, essential and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the Zoning Board's affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition should be a continuing condition of all Board approvals for development.

## **35-11.3 COMPLIANCE WITH COAH'S RULES**

The affordable unit(s) to be produced pursuant to the sections 35-11.1 and 35-11.2 above shall be available to a low-income individual or household should only one affordable unit be required. Thereafter, each of the affordable units shall be divided evenly between low- and moderate income individuals and households except in the event of the applicable formulas resulting in an odd number of affordable units; in which event the unit shall be a low-income residential unit. All affordable units shall strictly comply with COAH's regulations, policies and the Uniform Housing Affordability Controls (UHAC), rules including, but not limited to, pricing, phasing, bedroom distribution, controls on affordability, range of affordability, affirmative marketing, and income qualification. It shall be the applicant's responsibility, at its sole cost and expense, to arrange for a COAH and City approved qualification service to ensure full COAH compliance and to file such certificates, reports and/or monitoring forms as may be required by COAH or the Court to verify COAH compliance of each affordable unit.

## Section 2. SEVERABILITY.

If any paragraph, section, subsection, sentence, sentence clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of such holding shall not affect the validity of the remaining paragraphs or sections hereof.

## Section 3. INCONSISTENCY.

All ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

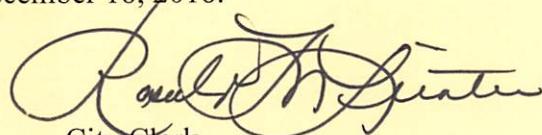
## Section 4. EFFECTIVE DATE.

This Ordinance shall take effect upon final passage and publication according to law and filing with the County Planning Board in accordance with N.J.S.A 40:55D-16.

(Last additions in text indicated by underline; deletions by strikethroughs)

Dated: December 18, 2018

I, Rosalia M. Licatese, City Clerk of the Approved:  
City of Summit, do hereby certify that  
the foregoing ordinance was duly passed  
by the Common Council of said City at  
a regular meeting held on Tuesday  
evening, December 18, 2018.

  
Rosalia M. Licatese  
City Clerk

Nora G. Radist  
Mayor