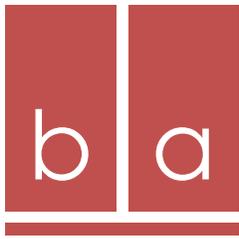


Amendment to 2018 Housing Element and Fair Share Plan

Adopted October 25, 2023

Borough of Tenafly | Bergen County, New Jersey





Community Planning
Land Development and Design
Landscape Architecture

B U R G I S
ASSOCIATES, INC.

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

Amendment to 2018 Housing Element and Fair Share Plan

Borough of Tenafly
Bergen County, New Jersey

Prepared for the Borough of Tenafly
Planning Board

BA# 4023.03

The original document was appropriately signed and sealed on October 26, 2023 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners

Joseph H. Burgis, AICP, PP
Professional Planner #2450

David Novak, AICP, PP
Professional Planner #6269

Members of the Borough of Tenafly Planning Board

Mary Beth Wilmit, Chairperson
Nichole Osborne, Vice Chairperson
Mark Zinna, Mayor
Venugopal Menon, Council Member
Craig Feinberg
Ted Nevins
Dan Oelsner
Julia Park
Jon Warms
Daniel Simchi, Alternate #1
Linda Khorozian, Alternate #2

MLUL Officer/Planning Board Secretary

Amanda Booth

Planning Board Attorney

Jeffrey A. Zenn, Esq.
Cullen and Dykman, LLP

Planning Board Engineer

David Hals, P.E.
Schwanewede/Hals Engineering

Borough Planning Consultant

Joseph H. Burgis PP, AICP
David Novak PP, AICP
Burgis Associates, Inc.

Borough Attorney

Wendy Rubinstein Quiroga, Esq.
Weiner Law Group LLP

Affordable Housing Attorney

Edward Buzak, Esq.
Surenian, Edwards, Buzak & Nolan LLC

Contents

Introduction	1
Section 1: Overview of 2018 HE&FSP	2
1.1: 2018 HE&FSP Components to Address Prior Round	2
1.2: 2018 HE&FSP Components to Address RDP	3
1.3: 2018 HE&FSP Components to Address Unmet Need	3
Section 2: Component Updates.....	4
2.1: The Serpentine Road Site	4
2.2: The Dean Drive Site and the Dean Drive Overlay Site	5
2.3: The Highwood Avenue Site.....	6
2.4: The West Railroad Avenue Site.....	7
Section 3: HE&FSP Amendments	8
3.1: Prior Round Components.....	8
3.2: Amendments to Third Round Components to Address RDP.....	9
3.4: Amendments To Third Round Components to Address Unmet Need	10
Appendix A: Revised Settlement Agreement.....	11
Appendix B: Spending Plan	12

Tables

Table 1: Affordable Housing Obligations.....	2
Table 2: 2018 HE&FSP Components to Address Prior RDP	2
Table 3: 2018 HE&FSP Components to Address RDP	3
Table 4: 2018 HE&FSP Components to Address Unmet Need	3
Table 5: Borough Obligations	8
Table 6: Amendment to HE&FSP Components to Address Third Round RDP	9
Table 7: Amendment to HE&FSP Components to Address Unmet Need	10

Introduction

The following **Amendment to the 2018 Housing Element and Fair Share Plan (HE&FSP)** outlines the revised manner in which the Borough of Tenafly will address its affordable housing obligation. This amended plan has been prepared pursuant to a revised Settlement Agreement between the Borough of Tenafly and the Fair Share Housing Center (FSHC) dated April 17, 2023 (see Appendix A).

It is divided into the following sections:

1. Section 1: Overview of the 2018 HE&FSP

The first section of this amended plan provides an overview of the previously adopted 2018 HE&FSP. It identifies the Borough's affordable housing obligations as well as the components proposed by that plan to address those obligations.

2. Section 2: Updates to Components

Section 2 provides a brief summary of four components identified by the previously adopted 2018 HE&FSP to partially address the Borough's affordable housing obligations. These components include: the Serpentine Road Site; the Dean Drive Site; the Dean Drive Overlay Site; and the Highwood Avenue Site. Updates regarding these components are provided.

In addition, Section 2 further discusses the West Railroad Avenue Site which, while not included in the 2018 HE&FSP, received Planning Board approval which will result in the production of affordable units.

3. Section 3: HE&FSP Amendments

Based upon the updates discussed in the prior section, Section 3 identifies amendments to the 2018 HE&FSP.

As a result of the amendments discussed herein, the Borough now has Third Round Realistic Development Potential (RDP) of forty-two (42) units which it will satisfy through several components totaling forty-eight (48) credits.

Furthermore, as a result of the amendments discussed herein, the Borough now has a Third Round Unmet Need of five hundred one (501) units. The Borough will continue to partially address this unmet need through several overlay districts which may collectively produce a total of two hundred ten (210) units, including forty-four (44) affordable units.

Section 1: Overview of 2018 HE&FSP

The Borough’s Housing Element and Fair Share Plan (HE&FSP) was adopted on November 7, 2018. As detailed in that plan, the Borough was assigned the following affordable housing obligations pursuant to a settlement agreement between Tenafly and FSHC dated June 12, 2018. The manner in which these obligations were to be addressed are summarized herein.

Table 1: Affordable Housing Obligations

Category	Number of Affordable Units
Rehabilitation Obligation	4
Prior Round Obligation (1987-1999)	159
Third Round Prospective Need Obligation (1999-2025)	501

1.1: 2018 HE&FSP Components to Address Prior Round

As noted in Table 1, the Borough was assigned a Prior Round Obligation of one hundred fifty-nine (159) units. The Borough received a Prior Round judgment of compliance and repose which established a realistic development potential (RDP) of thirty-eight (38) units which was later adjusted to sixty-seven (67) units.

The Borough addressed this Prior Round RDP through the components identified in Table 2 below. As shown, those components comprised a total of seventy-six (76) credits. After applying those seventy-six (76) credits as well as thirty-five (35) existing credits of subsidized senior housing from the Tenafly Senior Housing site, the remaining Prior Round unmet need constituted forty-eight (48) units.

Table 2: 2018 HE&FSP Components to Address Prior RDP

Plan Component	Units	Rental Units	Applicable Rental Bonus	Unused Credits	Total Units/Credits
Accessory Apartments	10	0	0	0	10
Arc Group Home	5	5	^A 5	0	10
Brightview Tenafly Assisted Living	9	9	0	0	9
Tenafly Special Needs Housing	10	10	^A 10	0	20
The Plaza at Tenafly	17	0	0	0	17
The Crossings at Tenafly	9	5	^A 1	^B 4	10
Total	60	29	16	4	76

^A Rental bonus may only account for twenty-five (25%) percent (16 units) toward Prior Round RDP

^B Four bonus credits could not be applied from this development due to sixteen (16) unit constraint noted in Footnote A

A

1.2: 2018 HE&FSP Components to Address RDP

In addition, the 2018 HE&FSP established a Third Round Prospective Need RDP of ten (10) units. This was informed by two mechanisms: a vacant land adjustment (VLA) which resulted in a RDP of five (5) units; and a proposed one hundred percent affordable housing development located along Serpentine Road which was anticipated to generate five (5) units of either special needs or veterans housing.

The components identified by the 2018 HE&FSP to address the Borough's RDP are identified in Table 3 below. As shown, these components were anticipated to contribute a total of twenty-one (21) credits. These twenty-one (21) credits were to reduce the total Prospective Round Obligation to four hundred eighty (480) units.

Table 3: 2018 HE&FSP Components to Address RDP

Plan Component	Block	Lot	Units	Unit Type
Dean Drive Site	906	2, 3, 4	5	Family
Piermont Road Site	1304	2	7	Family
Highwood Avenue Site	1006	1, 2, 3	4	Family
Serpentine Road Site	715	11, 12, 13	5	Special Needs/Veterans
Total			21	

1.3: 2018 HE&FSP Components to Address Unmet Need

Finally, the 2018 HE&FSP identified a collective unmet need of five hundred twenty-eight (528) units. This consisted of the remaining Prior Round unmet need of forty-eight (48) units and the remaining Prospective Round unmet need of four hundred eighty (480) units. The 2018 HE&FSP proposed to partially address this unmet need through several overlay zones which are summarized in Table 4 below. As shown, these overlay districts were to produce a total of two hundred sixty-four (264) units including fifty-five (55) units of affordable housing.

Table 4: 2018 HE&FSP Components to Address Unmet Need

Plan Component	Block	Lot	Total Units	Affordable Units
Harold Street.	1105	21-23, 37-40	32	7
Dean Drive	906	1	54	11
Riveredge Road/Tenafly Road	1009	1-5, 11	14	3
South Summit Street/Riveredge Road	1010	1	5	1
Riveredge Road/W. Railroad Road	1010	3	5	1
Block 1305	1305	1-5	32	7
Block 1306 Lot 1.01	1306	1.01	8	2
Block 1308	1308	1-11	75	15
Block 1302	1302	1, 2	39	8
Total			264	55

Section 2: Component Updates

The following section contains a brief summary of four components identified by the previously adopted 2018 HE&FSP to partially address the Borough's affordable housing obligations. Updates regarding these components are provided.

2.1: The Serpentine Road Site

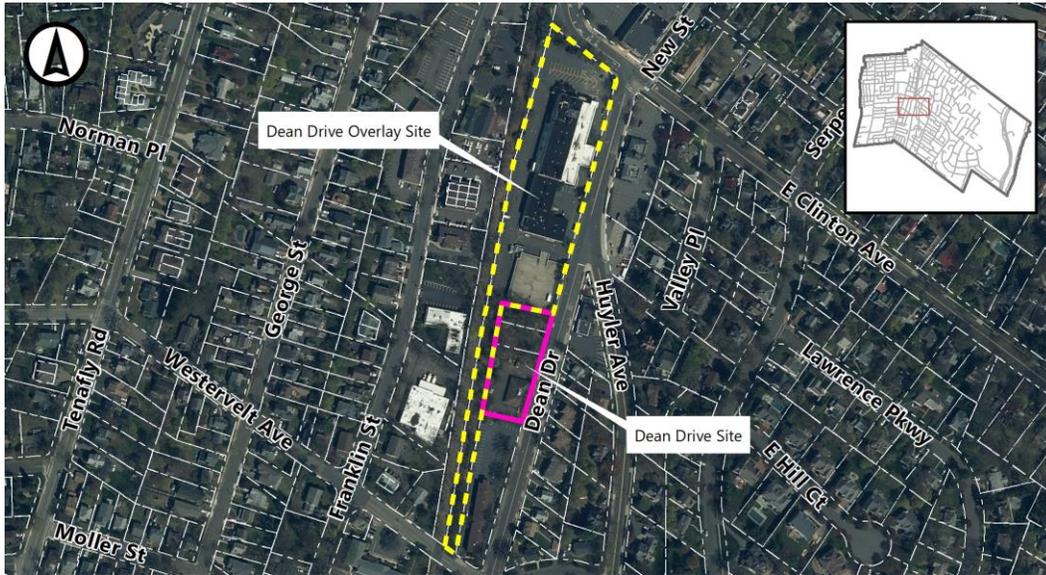


The Borough obtained approval from the Court on April 13, 2017 to utilize up to \$1,300,000 from its Affordable Housing Trust Fund to acquire three properties located along Serpentine Road, which are identified by municipal tax records as Block 715 Lots 11, 12, and 13. The 2018 HE&FSP noted that the Borough intended to work with a nonprofit organization to develop five units of either special needs or veterans housing through the construction of new units or the rehabilitation of the existing structures on site.

Subsequent to the adoption of the 2018 HE&FSP, the Borough received additional approval from the Court on September 1, 2020 to allocate an additional \$600,000 for the acquisition of property located at 1 Serpentine Road, which is identified by municipal tax records as Block 715 Lot 14. In that approval, it was noted that this property is immediately adjacent to the three aforementioned lots and as a result of such, its acquisition would increase the total acreage of the project area thus enabling the potential development of additional affordable units. The Borough ultimately acquired this property by way of Ordinance #20-24, which was adopted on December 21, 2020.

The Borough now plans to partner with Bergen County's United Way for the construction of a sixteen (16) unit affordable development consisting of family units. To assist with the construction of this development, the Borough will allocate an additional \$200,000 from its affordable housing trust fund to subsidize a portion of the project.

2.2: The Dean Drive Site and the Dean Drive Overlay Site



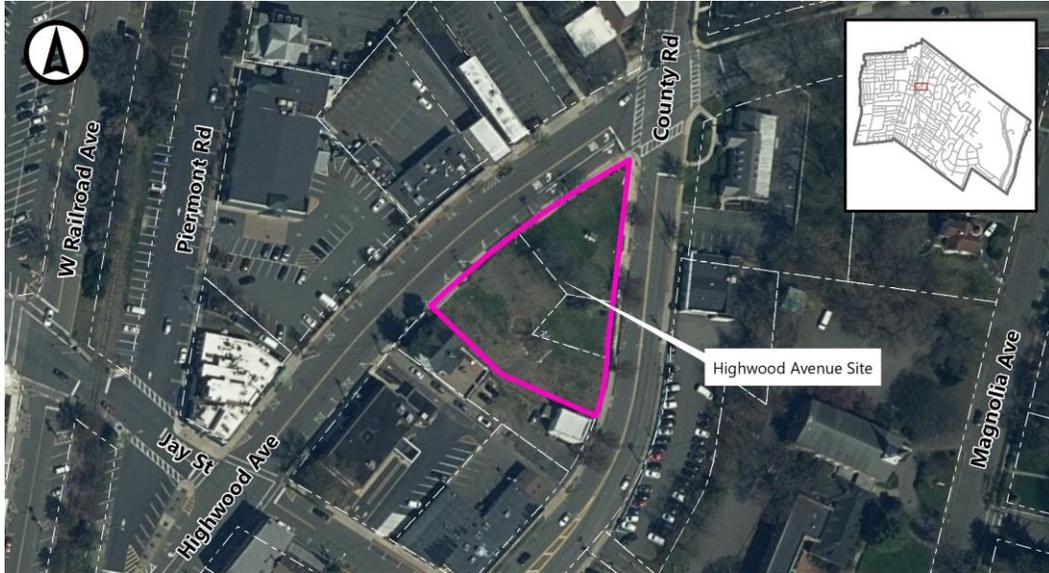
Two components identified by the 2018 HE&FSP to address the Borough's RDP and Unmet Need are both located along Dean Drive.

- ❖ **Dean Drive Site.** The Dean Drive Site is located between 123 and 131 Dean Drive. It is identified by municipal tax records as Block 906 Lots 2, 3, and 4. The site was previously included in the Borough's prior 2008 HE&FSP. Both the 2008 and 2018 plans included a concept plan which indicated that the site could potentially be developed with twenty (20) total units including five (5) affordable units which were to be applied to the Borough's RDP. Pursuant to this concept plan, the MF-I-2 Multifamily Inclusionary Housing District 2 was adopted by the Borough to permit an inclusionary housing development at this site.
- ❖ **Dean Drive Overlay Site.** The Dean Drive Overlay Site is located at 145 Dean Drive. It is identified by municipal tax records as Block 906 Lot 1. The site is presently developed with the Clinton Inn Hotel and Event Center. The 2018 HE&FSP proposed an overlay zone which would permit a mixed use inclusionary housing development consisting of fifty-four (54) total units including eleven (11) affordable units which were to be applied to the Borough's unmet need. Pursuant to this proposal, the AHO-4 Affordable Housing Overlay Zone-4 was adopted by the Borough to permit a mixed use multifamily development at this site.

Following the adoption of the MF-I-2 District and the AHO-4 Overlay District, the Mayor and Council of the Borough of Tenafly authorized the Planning Board via Resolution #R19-328 (dated September 10, 2019) to conduct a preliminary investigation to determine if the properties located between 123 and 145 Dean Drive constituted an "Area in Need of Redevelopment." Following a public hearing conducted on February 12, 2020, the Planning Board determined and ultimately recommended that the entirety of that study area constituted a Non-Condemnation Area in Need of Redevelopment.

Pursuant to that recommendation, the Mayor and Council adopted Resolution #R20-129 on March 10, 2020 designating Block 906 Lots 1, 2, 3, and 4 as a Non-Condemnation Redevelopment Area. Accordingly, the Borough adopted the 123-145 Dean Drive Redevelopment Plan on July 18, 2022. This plan enables the redevelopment of the site as a hotel and assisted living/congregate care facility. Ten percent of the assisted living/congregate care facility's beds are required to be set-aside as affordable, provided that no fewer than eleven (11) beds are reserved as such.

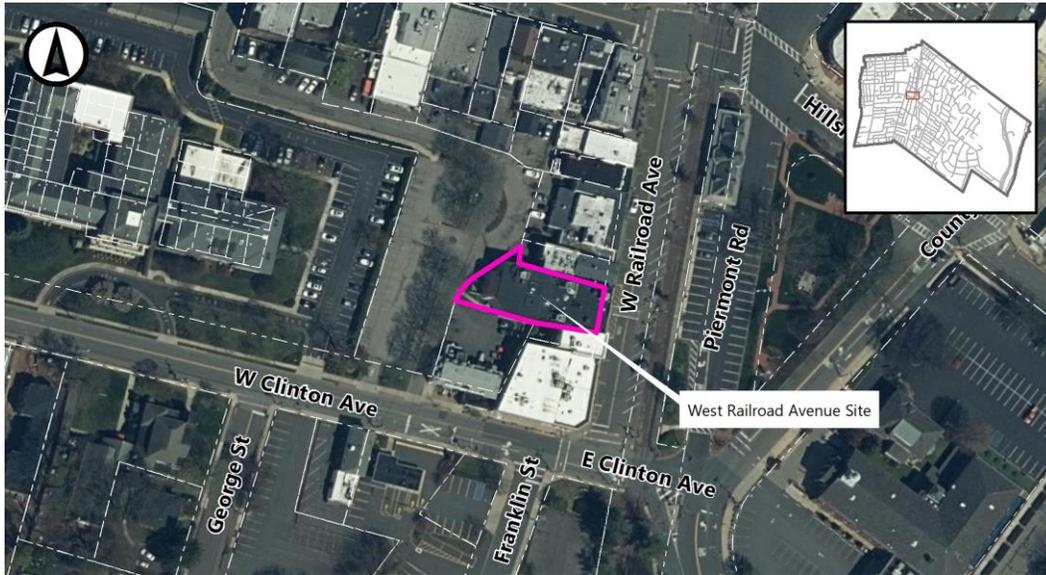
2.3: The Highwood Avenue Site



The 2018 HE&FSP identified the Highwood Avenue Site as a component to address the Borough's RDP. The site, which is identified by municipal tax records as Block 1006 Lots 1, 2, and 3, is located at the intersection of Highwood Avenue and County Road. The HE&FSP recommended that the site be rezoned to permit a total of seventeen (17) units including four (4) affordable units. Pursuant to this recommendation, the Borough adopted the MF-I-4 Multifamily Inclusionary Housing District to permit an inclusionary housing development at this site.

Subsequent to the adoption of the MF-I-4 District, the owner of the Highwood Avenue Site expressed concerns regarding the feasibility of constructing a multifamily development at this location due to an inability to install below-grade parking resulting from a high water table as well as the presence of a required Bergen County right-of-way (ROW) dedication. In consideration of such, the owner of the site has requested that the Borough revert its zoning to a nonresidential district.

2.4: The West Railroad Avenue Site



The West Railroad Avenue Site is located at 4.5-5 West Railroad Avenue and is identified by municipal tax records as Block 1101 Lot 19. The 2018 HE&FSP did not originally include this component. Nevertheless, subsequent to the adoption of the 2018 HE&FSP, the Planning Board granted site plan approval as well as variance and design waiver relief for the construction of a mixed-use building consisting of eighteen (18) residential units including three (3) affordable units.

Section 3: HE&FSP Amendments

As a result of the updates provided in Section 2, the following amendments are hereby provided for the Borough's 2018 HE&FSP. These amendments are reflective of a revised Settlement Agreement signed between the Borough and FSHC dated April 17, 2023.

As previously noted, the Borough's affordable housing obligations were established by the initial Settlement Agreement signed between the Borough and FSHC dated June 12, 2018. These are reiterated below and remain unchanged.

Table 5: Borough Obligations

Category	Number of Affordable Units
Rehabilitation Obligation	4
Prior Round Obligation (1987-1999)	159
Third Round Prospective Need Obligation (1999-2025)	501

3.1: Prior Round Components

The components to address the Borough's Prior Round Obligation are reiterated below and remain unchanged. As detailed in Section 1, the Borough was assigned a Prior Round Obligation of one hundred fifty-nine (159) units. The Borough received a Prior Round judgment of compliance and repose which established a RDP of sixty-seven (67) units. The components to address the Borough's prior round comprised a total of seventy-six (76) credits. After applying those seventy-six (76) credits as well as an additional thirty-five (35) existing credits from the Tenafly Senior Housing site, the remaining prior round unmet need consists of forty-eight (48) units.

Plan Component	Units	Rental Units	Applicable Rental Bonus	Unused Credits	Total Units/Credits
Accessory Apartments	10	0	0	0	10
Arc Group Home	5	5	^A 5	0	10
Brightview Tenafly Assisted Living	9	9	0	0	9
Tenafly Special Needs Housing	10	10	^A 10	0	20
The Plaza at Tenafly	17	0	0	0	17
The Crossings at Tenafly	9	5	^A 1	^B 4	10
Total	60	29	16	4	76

3.2: Amendments to Third Round Components to Address RDP

As a result of the changes discussed herein, the Borough's RDP is hereby adjusted from ten (10) units to forty-two (42) units. This is informed by the Borough's previous VLA which generated a RDP of five (5) units as well as the Third Round components identified in Table 6 which comprise thirty-seven (37) affordable units.

The Borough will address its Third Round RDP through the components identified in the following table. Changes from the 2018 HE&FSP are summarized below:

- ❖ **Dean Drive Site.** The Dean Drive Site was updated to reflect the eleven (11) affordable assisted living units required in the 123-145 Dean Drive Redevelopment Plan. The unit type has also been changed from family units to assisted living.
- ❖ **Serpentine Road Site.** The number of units to be generated by the Serpentine Road Site increased from five (5) units to sixteen (16) units. The unit type has also been changed from special needs/veterans' housing to family units.
- ❖ **Highwood Avenue Site.** The Highwood Avenue Site has been removed.
- ❖ **West Railroad Avenue Site.** The West Railroad Avenue Site has been added which will provide three (3) affordable family units.

As shown, these components comprise a total of forty-eight credits.

Table 6: Amendment to HE&FSP Components to Address Third Round RDP

Component	Affordable Units	Bonus Credit	Total Credit	Unit Type
Dean Drive Site	11	0	11	Assisted Living
Piermont Road Site	7	0	7	Family
Serpentine Road Site	16	11	27	Family
West Railroad Avenue Site	3	0	3	Family
Total	37	10	48	

3.4: Amendments To Third Round Components to Address Unmet Need

The Borough has a remaining Third Round Unmet Need of five hundred one (501) units which is informed from the following:

- ❖ **Remaining Prior Round Obligation.** As discussed herein, the Borough has a remaining Prior Round Unmet Need Obligation of forty-eight (48) units.
- ❖ **Third Round Obligation.** The Borough has a Third Round obligation of five hundred one units (501).
- ❖ **Combined Prior and Third Round Obligation.** The remaining Prior Round Unmet Need Obligation and the Third Round Obligation total five hundred forty-nine (549) units.
- ❖ **Subtracting RDP Components.** When subtracting the forty-eight (48) credits to be generated by the amended Third Round Components, the Borough has a remaining Unmet Need of five hundred one (501)units.

The amended components to address the Borough’s Unmet Need are identified in the following table. As a result of the changes summarized herein, the Dean Drive Overlay Site has been removed. As shown, these components produce a total of two hundred ten (210) units, including forty-four (44) affordable units.

Table 7: Amendment to HE&FSP Components to Address Unmet Need

Plan Component	Block	Lot	Total Units	Affordable Units
Harold Street	1105	21, 22, 23, 37, 38, 39, and 40	32	7
Riveredge Road/Tenafly Road	1009	1, 2, 3, 4, 5, 11	14	3
South Summit Street/Riveredge Road	1010	1	5	1
Riveredge Road/W. Railroad	1010	3	5	1
Block 1305	1305	1, 2, 3, 4, 5	32	7
Block 1306 Lot 1.01	1306	1.01	8	2
Block 1308	1308	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11	75	15
Block 1302	1302	1 and 2	39	8
Total			210	44

Appendix A:
Revised Settlement Agreement

FAIR SHARE HOUSING CENTER

Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Rachel N. Lokken, Esq.
Ashley J. Lee, Esq.
Tanushree Bansal, Esq.
Esmé Devenney, Esq.
Will Fairhurst, Esq.

May 15, 2023

Hon. Christine A. Farrington, J.S.C.
Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

Re: **In the Matter of the Borough of Tenafly**, County of Bergen
Docket No. BER-L-6124-15

Dear Judge Farrington:

Please accept this letter on behalf of Fair Share Housing Center (FSHC). The Borough and FSHC have reached the attached amended settlement. As a result, we respectfully request that the Court schedule an Amended Fairness Hearing.

Thank you for your attention to this matter.

Respectfully,



Ashley J. Lee, Esq.
Counsel for Fair Share Housing Center

c: Wendy R. Quiroga, Esq.
Frank Banisch, PP/AICP, Special Master

Borough of Tenafly

MAYOR AND COUNCIL

RESOLUTION #R23-166

OFFERED BY: C. Grossman

SECONDED BY: C. Dayton

At a Meeting of the Mayor and Council of the Borough of Tenafly, County of Bergen, State of New Jersey, held on April 18, 2023.

AUTHORIZING THE EXECUTION OF A NEW SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

WHEREAS, on July 1, 2015, the Borough of Tenafly ("Borough") filed a Complaint in the matter captioned In the Matter of the Application of the Borough of Tenafly, Docket No. BER-L-6124-15 ("DJ Litigation"), seeking a declaration from the New Jersey Superior Court that its Housing Element and Fair Share Plan ("HEFSP") is constitutionally compliant; and

WHEREAS, Fair Share Housing Center ("FSHC") has been designated as an interested party in the DJ Litigation pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV"); and

WHEREAS, the Borough and FSHC engaged in settlement discussions and have come to an agreement resolving all of the differences between them with regard to the DJ Litigation including the satisfaction of the Borough's affordable housing obligation; and

WHEREAS, the terms and conditions of said agreement are set forth in a certain Settlement Agreement dated June 12, 2018; and

Where, the Mayor and council entered into a new agreement dated April 18, 2023,

WHEREAS, the Borough desires to resolve the issues between the Borough and FSHC with regard to the DJ Litigation as set forth in the Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Tenafly, County of Bergen, State of New Jersey as follows:

1. All the terms and conditions of a certain Settlement Agreement by and between the Borough of Tenafly and Fair Share Housing Center, dated April 18, 2023, be and the same are hereby approved, ratified and confirmed by the Borough.
2. The Mayor and Borough Clerk, together with the Borough attorney and other appropriate and applicable officers, employees, professionals and staff of the Borough are hereby authorized and directed to take all steps necessary to effectuate the purposes of this Resolution.

3. This Resolution shall take effect immediately.

CERTIFICATION

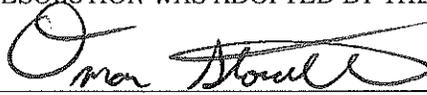
I, Omar Stovall, Borough Clerk of the Borough of Tenafly hereby certify the foregoing to be a true copy of a Resolution adopted by the governing body of the Borough of Tenafly at a duly convened meeting held on April 18, 2023.



Omar Stovall, MPA, RMC, CMR
Borough Clerk

	AYE	NAY	ABSTAIN	ABSENT		AYE	NAY	ABSTAIN	ABSENT
DAYTON	✓				MICHAELS	✓			
GROSSMAN	✓				O'CONNOR	✓			
MENON	✓				PARK	✓			

THIS IS TO CERTIFY THAT THE ABOVE RESOLUTION WAS ADOPTED BY THE MAYOR AND COUNCIL ON APRIL 18, 2023.



Omar Stovall, MPA, RMC, CMR
Borough Clerk



Adam M. Gordon, Esq.
 Laura Smith-Denker, Esq.
 Joshua D. Bowers, Esq.
 Rachel N. Lokken, Esq.
 Ashley Lee, Esq.
 Zoey Chenilz, Esq.
 Tanushree Bansal, Esq.
 Esmé Devenney, Esq.
 Will Fairhurst, Esq.

April 17, 2023

Wendy R. Quiroga, Esq.
 Weiner Law Group
 629 Parsipanny Road
 P.O. Box 0438
 Parsippany, New Jersey 07054

Re: In the Matter of the Borough of Tenafly
 County of Bergen, Docket No. BER-6124-15

Dear Ms. Quiroga:

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

This Settlement Agreement is subject to review and approval by the Court following a duly-noticed fairness hearing and, if approved, shall supersede and replace in its entirety the June 12, 2018 Settlement Agreement between Tenafly and FSHC, which is attached hereto as **Exhibit A**, and was previously approved by the Court following a duly-noticed fairness hearing.

Background

In accordance with Mount Laurel IV, the Borough filed the above-captioned matter on July 1, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Borough appeared before the Court for Case Management Conferences and participated in mediation sessions aimed at resolving this matter.

Through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower- income households.

This Amended Settlement Agreement was necessitated due to the owner of the Dean Drive site proposing an assisted living use rather than family housing, an expansion of the proposed municipally sponsored project, as well as other more minor changes, and the need to replace those lost affordable housing opportunities with others that create a realistic opportunity.

This Settlement Agreement supersedes all prior writings between the parties and, once implemented, will create a realistic opportunity for the construction of a substantial number of new affordable homes for very-low-, low-, and moderate-income households.

Settlement Terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan ("the Plan") that conforms to the terms of this agreement (hereafter "The Agreement") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and Tenafly agree that Tenafly's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report) ¹	4
Prior Round Obligation (pursuant to N.J.A.C. 5:93	159
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	501

FSHC and the Borough agree that Tenafly does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, PP, FAICP. The parties agree to the terms in this agreement solely for the purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends that the 501-unit obligation should be the Borough's Third Round affordable housing obligation because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May 2016 calculation of the Borough's Third Round fair share obligation. The Borough contends that its Third Round obligation is less than 501 units. The parties' acceptance of the Third Round obligation of 501 is solely for the purposes of achieving a settlement of the litigation and is without prejudice to the parties' ability to challenge that Third Round number during any proceedings involving subsequent rounds of affordable housing calculations after July 1, 2025.

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

5. The Borough's efforts to meet its present need include the following: the Borough will continue to implement its rehabilitation program. Per the Amendment to the Borough's Spending Plan approved by the Court on April 13, 2017, the Borough has dedicated \$410,000.03 to fund its rehabilitation program. This is sufficient to satisfy the Borough's present need obligation of 4 units. Since 2018, the Borough has completed 2 rehabilitations, and 2 more units remain as part of this obligation.

6. As noted above, the Borough has a Prior Round prospective need of 159 units. The Borough received a Prior Round judgment of compliance and repose which calculated the Borough's Realistic Development Potential at 38, after applying 35 Prior Cycle Credits, which results in a Prior Round unmet need of 86. Since that time, several of the Prior Round overlay zoning sites to address unmet need have actually developed with affordable housing, and other affordable housing has been created in the Borough. As such, those units are added to the RDP as follows, with corresponding additional rental bonuses as permitted, thus now comprising 76 units and bonuses instead of the 38 unit RDP:

Table 1: Prior Round Obligation (1987-1999)

Plan Component	Status	Units	Rental Units	Applicable Rental Bonus	Unused Credits	Total Units/Credits
Accessory Apartments	Ongoing	10	0	0	0	10
Arc Group Home	Completed	5	5	^A 5	0	10
Brightview Tenafly Assisted Living	Completed	9	9	0	0	9
Tenafly Special Needs Housing (Markay Commons, Kim Site)	Completed	10	10	^A 10	0	20
The Plaza at Tenafly (JMP Tenafly, Shopwell)	Completed	17	0	0	0	17
The Crossings at Tenafly (Grove St.)	Completed	9	5	^A 1	^B 4	10
Total		60	29	16	4	76

^A Rental bonus may account for 25% (16 units) towards the prior round RDP

^B Four (4) bonus credits could not be applied from this development, due to the sixteen (16) unit constraint described in Footnote A

The Borough acknowledges a remaining prior round unmet need obligation of 48 units, which will be addressed in connection with its Third Round prospective need below.

7. As noted above, the Borough has a Third Round prospective need of 501 units. The Borough, as calculated in **Exhibit B**, has a realistic development potential (RDP) of 42 units. That RDP will be satisfied as follows:

Table 2: Proposed 3rd Round Compliance

Plan Component	Units	Bonus Credits	Total Credits	Unit Type
Dean Drive Site	11		11	Supportive Housing (Assisted Living)
Piermont Road Site	7		7	Family
Serpentine Site	16	11	27	Family Rental
W Railroad Ave Site	3		3	Family Rental
Total	37	11	48	

Note: Rental bonus credit may account for 25% (11 units) toward RDP.

8. The Borough agrees to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:
 - a. Dean Drive Site (Block 906, Lots 2, 3 & 4) will be developed as an approximately 110 to 145-bed assisted living facility development with a 10% set-aside of at least eleven (11) affordable housing beds. If more than 110 beds are included in the facility, affordable bed count will increase to meet the 10% set-aside requirement.
 - i. This property was previously included in the Borough's affordable housing plan and expected to produce five (5) family rental affordable housing units. The developer of the site has instead requested a rezoning to permit an assisted living use.
 - ii. The Dean Drive site has been rezoned via a Redevelopment Plan, Dated April 2022, which was adopted via Ordinance No. 22-04 on July 18, 2022.
 - b. Piermont Road Site (Block 1304, Lot 2) consisting of 39,388 square feet to be developed as an inclusionary multi-family development, with a potential mixed use component, at a density of 35.5 units per acre not to exceed 32 units with a 20 percent set-aside requirement for affordable for-sale units and a 15 percent set-aside requirement for affordable rental units.
 - c. The W Railroad Avenue Site (Block 1011, Lot 19) consists of an existing building that previously was occupied as a movie theater. The applicant received approval by the Borough of Tenafly Planning Board, by Resolution dated November 2, 2022, to renovate and expand the existing building to provide a mixed use building consisting of retail and parking on the first floor and a total of 18 residential rental units on the second, third and fourth floors. The project will yield one 1-bedroom, one 2-bedroom and one 3-bedroom affordable units.

9. The Borough agrees to provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:
 - a. Serpentine Road - Block 715, Lots 11, 12 and 13.

- i. This site was previously included in the Borough’s affordable housing plan and expected to produce five supportive housing units. Since the execution of the earlier agreement the Borough was able to purchase an addition lot, Block 715, Lot 14 and was able to expand the development to permit sixteen (16) family rental units as depicted on the concept plan attached to this agreement as **Exhibit C**.
- ii. The Borough obtained approval from the Court on April 13, 2017 to utilize up to \$1,300,000 from its Affordable Housing Trust Fund to acquire these properties and to work with a non-profit partner (Bergen County United Way) to develop 16 units of family rental housing through the construction of new units.
- iii. In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that, in addition to the \$1,300,000 expenditure from its Affordable Housing Trust Fund, it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The Borough and its non-profit partner will seek available funding from County, State and federal outside sources. The Borough and its non-profit partner shall provide a pro forma of both total development costs and anticipated sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending.
- iv. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including, if applicable, preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement. The Borough shall indicate the entity responsible for undertaking and monitoring the construction and/or overall development activity. The Borough has addressed these essential and requirement elements via the document attached as **Exhibit D**.

10. The 48 units/credits to be created as set forth above, subtracted from the Third Round obligation of 501 units and adding the remaining prior round unmet need obligation of 48 units, results in an unmet need of 501units, which shall be addressed through the following mechanisms:

- a. Overlay Zoning Ordinances - The adoption of overlay zoning ordinances for the nine (9) Overlay Districts set forth below.

Table 3: Unmet Need Obligation

Plan Component	Block/Lot	Acreage (ac)	Density	Total Units	Affordable Units
Harold Street Overlay District	1105/21, 22, 23, 37, 38,39, 40	1.85	18 du/ac	32	7

Riveredge Road/Tenafly Road	1009/1, 2, 3, 4, 5, 11	0.96	15 du/ac	14	3
South Summit Street/Riveredge	1010/1	0.28	18 du/ac	5	1
Riveredge Road/W. Railroad Ave	1010/3	0.25	18 du/ac	5	1
Block 1305 Overlay District	1305/1, 2, 3, 4, 5	2.13	15 du/ac	32	7
Block 1306 Lot 1.01 Overlay	1306/1.01	0.56	15 du/ac	8	2
Block 1308 Overlay District	1308/1 through 11	4.99	15 du/ac	75	15
Potential Overlay Zone D	1302/1 and 2	2.61	15 du/ac	39	8
Total				210	44

- b. The adoption of a Mandatory Set-aside Ordinance. The establishment of a mandatory set-aside requirement of 20% if the affordable units will be for sale and 15% if the affordable units will be for rent, for all new multi-family residential development of five (5) or more new dwelling units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or new redevelopment plan. This provision does not affect residential development on sites that are zoned for inclusionary development as part of the Borough's Housing Element and Fair Share Plan, which are subject to the affordable housing set-aside requirements set forth in the applicable zoning. Neither this mandatory set-aside ordinance nor this settlement agreement gives any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Tenafly to grant such rezoning, variance or other relief.

- 9. The Borough agrees to require 13% of all units constructed after July 1, 2008, with the exception of units subject to preliminary or final site plan approval prior to July 1, 2008, be very low income units, with half of the very low income units being available to families. The Borough will comply with those requirements by requiring that 13% of all units generated as a result of the inclusionary zoning and overlay zoning set forth above or any units generated as a result of the mandatory set-aside ordinance be reserved for very low- income households.

- 10. The Borough shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:
 - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).

- b. At least 50 percent of the units addressing the Third Round RDP and unmet need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the Third Round RDP and unmet need shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round RDP and unmet need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative Prior Round and Third Round fair share obligation.
 - f. Thirteen percent (13%) of all affordable units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, shall be very-low-income units for households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"), with half of the very low income units being available to families.
 - g. 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.
11. In all developments that produce affordable housing, the Borough agrees that the following terms shall apply:
- a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income pursuant to the Fair Housing Act.
 - b. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the Borough, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. If the Borough acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b).
 - c. In inclusionary developments, the affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market units. The Borough shall add

residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.

- d. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
 - e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified in this agreement, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
12. The Borough and/or its Administrator 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):
- a. Fair Share Housing Center, Inc. (510 Park Boulevard, Cherry Hill, New Jersey 08002), the New Jersey State Conference of the NAACP, Bergen County NAACP, Jersey City NAACP, Paterson NAACP, Passaic NAACP, Hoboken NAACP, the Latino Action Network, the Bergen County Housing Authority, Northeast New Jersey Legal Services, Bergen Urban League, Garden State Episcopal CDC, Mount Olive Baptist Church, Urban League Affordable Housing & CDC, Bergen County Housing Coalition, Fair Housing Council of Northern NJ, New Jersey Community Development, Advance Housing, Paterson Habitat for Humanity, Family Promise of Bergen County, Saint Paul's Community Development Corp., Supportive Housing Association of New Jersey, Islamic Center of New Jersey, Monarch Housing Associates, and other appropriate non-profits and Civil Rights organizations that request to be notified of available units, and shall, as part of its regional affirmative marketing strategies during its implementation of any affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units, along with copies of application forms. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with these notice requirements.
 - b. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Borough and/or its Administrative Agent shall also provide notice of all available affordable housing units to the above-referenced organizations and shall ensure all affordable units are posted on the New Jersey Housing Resource Center website in accordance with applicable law.
13. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at 35 percent or less of the regional of median income, 13 percent of affordable units in rental such projects shall be affordable required to households earning be at 30 percent or less of the regional median income., and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with all applicable laws to ensure

that this provision is satisfied. Standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the region that the Borough is located within (i.e. Region 2) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
 - b. The income limits attached hereto as **Exhibit E** are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2022 and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year. The Borough may utilize such tables as prepared by the Affordable Housing Professionals of New Jersey, provided this organization continues to utilize the processes and procedures contained herein in calculating the Regional Income Limits.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
 - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.
14. As an essential term of this settlement, within sixty (60) days of the Court's approval of this Agreement, the Borough shall approve a Housing Element and Fair Share Plan and Spending Plan (to supplement the Amendment to the Borough's Spending Plan approved by the Court on April 13, 2017) consistent with this Agreement after adoption and approval by the Tenafly Planning Board and shall introduce and adopt ordinance(s)

providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement.

15. Upon full execution of this Agreement, Tenafly shall notify the Court so that a Fairness and Final Compliance Hearing shall be scheduled to approve the Agreement and review the Borough's Compliance package.
16. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty percent (20%) than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any one hundred percent (100%) affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
17. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions, beginning to run with the entry of a final judgment approving this settlement 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). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Borough, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
18. On the first anniversary of the Court's approval of this amended Settlement Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the

municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

19. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
20. This Agreement shall be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner and/or planning consultant, as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
21. As part of the 2018 Settlement Agreement, the Borough of Tenafly agreed to pay a negotiated attorney's fees and costs of FSHC in the amount of \$4,000.00. In light of the additional time and resources expended since then by FSHC, including to review compliance documents, negotiate and enter into this amended agreement, and to conduct an additional fairness and compliance hearing, the parties agree FSHC may receive additional attorney's fees and costs of an additional \$20,000.00 to be used at the discretion of FSHC for the provision of affordable housing opportunities/assistance within sixty (60) days after entry Court of an Order approving this Agreement pursuant to a duly-noticed fairness hearing. The Parties further agree that the Borough may enter into additional agreements with other parties to secure the payment of these fees and costs. The Parties agree that neither shall request or otherwise make a claim against the other for payment or reimbursement of any legal fees and/or costs incurred in connection with the within Declaratory Judgment Action and/or any related actions or proceedings other than as stated below in paragraph 23.
22. If an appeal is filed of the Court's approval or rejection of this Agreement, 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 this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.

24. 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.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. 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.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
30. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change

as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC: Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE BOROUGH: The Honorable Mark Zinna, Mayor
Borough of Tenafly
100 Riveredge Road
Tenafly, New Jersey 07670
Phone: (201)568-6100
Telecopier: (201) 568-5567
Email: mzinna@tenafly.net

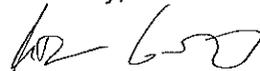
WITH A COPY TO THE MUNICIPAL CLERK: Omar Stovall, Borough Clerk
Borough of Tenafly
100 Riveredge Road
Tenafly, New Jersey 07670
Phone: (201) 568-6100 x 5542
Telecopier: (201) 568-5567
Email: ostovall@tenafly.net

WITH A COPY TO BOROUGH ATTORNEY: Wendy Rubinstein Quiroga, Esq.
Weiner law group, LLP
629 Parsippany Road
Parsippany, New Jersey 07054
Phone: (973) 403-1100
Telecopier: (973) 403-0010
Email: wrquiroga@weiner.law

AFFORDABLE HOUSING ATTORNEY: Edward J.Buzak, Esq.
The Buzak Law Group, LLC
150 River Road, Suite N-4
Montville, New Jersey 07045
Phone: (973) 335-0600
Telecopier: (973) 335-1145
Email: ejbuzak@buzaklawgroup.com

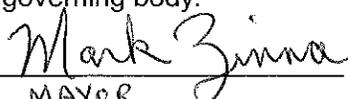
Please sign below if these terms are acceptable.

Sincerely,



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

On behalf of the Borough of Tenafly, with the authorization
of the governing body:



MAYOR

Dated: April 26, 2023

EXHIBIT A

Borough of Tenafly

MAYOR AND COUNCIL

RESOLUTION #R18-216

OFFERED BY: C. Haider

SECONDED BY: C. Park

At a Regular Meeting of the Mayor and Council of the Borough of Tenafly, County of Bergen, State of New Jersey, held on June 12, 2018

AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER

WHEREAS, on July 1, 2015, the Borough of Tenafly ("Borough") filed a Complaint in the matter captioned In the Matter of the Application of the Borough of Tenafly, Docket No. BER-L-6124-15 ("DJ Litigation"), seeking a declaration from the New Jersey Superior Court that its Housing Element and Fair Share Plan ("HEFSP") is constitutionally compliant; and

WHEREAS, Fair Share Housing Center ("FSHC") has been designated as an interested party in the DJ Litigation pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV"); and

WHEREAS, the Borough and FSHC engaged in settlement discussions and have come to an agreement resolving all of the differences between them with regard to the DJ Litigation including the satisfaction of the Borough's affordable housing obligation; and

WHEREAS, the terms and conditions of said agreement are set forth in a certain Settlement Agreement dated June 12, 2018; and

WHEREAS, the Borough desires to resolve the issues between the Borough and FSHC with regard to the DJ Litigation as set forth in the Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Tenafly, County of Bergen, State of New Jersey as follows:

1. All the terms and conditions of a certain Settlement Agreement by and between the Borough of Tenafly and Fair Share Housing Center, dated June 12, 2018, be and the same are hereby approved, ratified and confirmed by the Borough.

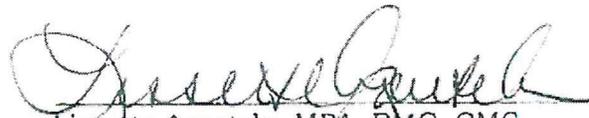
2. The Mayor and Borough Clerk, together with the Borough attorney and other appropriate and applicable officers, employees, professionals and staff of the Borough are hereby authorized and directed to take all steps necessary to effectuate the purposes of this Resolution.

3. This Resolution shall take effect immediately.

CERTIFICATION

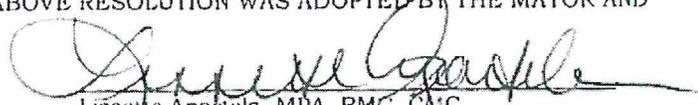
I, Lissette Aportela, Borough Clerk of the Borough of Tenafly hereby certify the foregoing to be a true copy of a Resolution adopted by the governing body of the Borough of Tenafly at a duly convened meeting held on

June 12, 2018.


 Lissette Aportela, MPA, RMC, CMC
 Borough Clerk

	AYE	NAY	ABSTAIN	ABSENT		AYE	NAY	ABSTAIN	ABSENT
BARZELATTO				✓	GROSSMAN	✓			
BASCH	✓				HAIDER	✓			
DAYTON	✓				PARK	✓			

THIS IS TO CERTIFY THAT THE ABOVE RESOLUTION WAS ADOPTED BY THE MAYOR AND COUNCIL ON June 12, 2018


 Lissette Aportela, MPA, RMC, CMC
 Borough Clerk



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

June 12, 2018

The Honorable Peter Rustin, Mayor
100 Riveredge Road
Tenafly, New Jersey 07670

**Re: In the Matter of the Borough of Tenafly
County of Bergen, Docket No. BER-6124-15**

Dear Mayor Rustin:

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

Background

The Borough filed the above-captioned matter on July 1, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. FSHC and the Borough appeared before the Court for Case Management Conferences and participated in mediation sessions aimed at resolving this matter. Through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

Settlement Terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan ("the Plan") that conforms to the terms of this agreement, and through the implementation of the Plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025). The Borough agrees to adopt the Plan within 120 days of the Court's approval of this agreement.
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and the Borough hereby agree that, for settlement purposes, Tenafly will address the following affordable housing obligations:

Rehabilitation Share (per Kinsey Report ¹)	4
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	159
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this settlement agreement)	501

FSHC and the Borough agree that Tenafly does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, PP, FAICP. The parties agree to the terms in this agreement solely for the purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends that the 501-unit obligation should be the Borough's Third Round affordable housing obligation because it is based on the Prior Round methodology and reflects a 30-percent reduction of Dr. Kinsey's May 2016 calculation of the Borough's Third Round fair share obligation. The Borough contends that its Third Round obligation is less than 501 units. The parties' acceptance of the Third Round obligation of 501 is solely for the purposes of achieving a settlement of the litigation and is without prejudice to the parties' ability to challenge that Third Round number during any proceedings involving subsequent rounds of affordable housing calculations after July 1, 2025.

4. For purposes of this settlement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in its January 18, 2017 decision in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough's efforts to meet its present need include the following: the Borough will continue to implement its rehabilitation program. Per the Amendment to the Borough's Spending Plan approved by the Court on April 13, 2017, the Borough has dedicated \$410,000.03 to fund its rehabilitation program. This is sufficient to satisfy the Borough's present need obligation of 4 units.
6. As noted above, the Borough has a Prior Round prospective need of 159 units. The Borough received a Prior Round judgment of compliance and repose which calculated the Borough's Realistic Development Potential at 38, after applying 35 Prior Cycle Credits, which results in a Prior Round unmet need of 86. Since that time, several of the Prior Round overlay zoning sites to address unmet need have actually developed with affordable housing, and other affordable housing has been created in the Borough. As such, those units are added to the RDP as follows, with corresponding additional rental bonuses as permitted, thus now comprising 76 units and bonuses instead of the 38 unit RDP:

Prior Round Obligation (1987-1999)

¹David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

Plan Component	Status	Units	Rental Units	Applicable Rental Bonus	Unused Credits	Total Units /Credits
Accessory Apartments	Ongoing	10	0	0	0	10
Arc Group Home	Completed	5	5	^A 5	0	10
Brightview Tenafly Assisted Living	Completed	9	9	0	0	9
Tenafly Special Needs Housing (Markay Commons, Kim Site)	Under Construction	10	10	^A 10	0	20
The Plaza at Tenafly (JMP Tenafly, Shopwell)	Completed	17	0	0	0	17
The Crossings at Tenafly (Grove St.)	Completed	9	5	^A 1	^B 4	10
Total		60	29	16	4	76

^A Rental bonus may account for 25% (16 units) towards the prior round RDP

^B Four (4) bonus credits could not be applied from this development, due to the sixteen (16) unit constraint described in Footnote A

The Borough acknowledges a remaining prior round unmet need obligation of 48 units, which will be addressed in connection with its Third Round prospective need below.

7. The Borough has implemented or will implement the following mechanisms to address its Third Round prospective need of 501 units and the remaining prior round unmet need obligation of 48 units:

a. The Borough, as calculated in Exhibit A, has a realistic development potential (RDP) of 10 units. That RDP will be satisfied as follows:

Plan Component	Units
Dean Drive Site	5
Piermont Road Site	7
Highwood Avenue Site	4
Serpentine Site	5
Total	21

b. The Borough will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Dean Drive Site (Block 906, Lots 2, 3 & 4) consisting of 21,450 square feet to be developed as an inclusionary multi-family development, with a potential mixed use component, at a density of 28.3 units per acre not to exceed 22 units with a 20 percent set-aside requirement for affordable for-sale units and a 15 percent set-aside requirement for affordable rental units.

Piermont Road Site (Block 1304, Lot 2) consisting of 39,388 square feet to be developed as an inclusionary multi-family development, with a potential mixed use component, at a density of 35.5 units per acre not to exceed 32 units with a 20 percent set-aside requirement for affordable for-sale units and a 15 percent set-aside requirement for affordable rental units.

Highwood Avenue Site (Block 1006, Lots 1, 2 & 3) consisting of 0.66 acres to be developed as an inclusionary multi-family development, with a potential mixed use component, at a density of 25.8 units per acre not to exceed 17 units with a 20 percent set-aside requirement for affordable for-sale units and a 15 percent set-aside requirement for affordable rental units.

- c. The Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Serpentine Road – Block 715, Lots 11, 12 and 13. The Borough obtained approval from the Court on April 13, 2017 to utilize up to \$1,300,000 from its Affordable Housing Trust Fund to acquire these properties and to work with a non-profit partner to develop 5 units of either special needs or veteran's housing through the construction of new units or the rehabilitation of the existing structures on these properties.

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that, in addition to the \$1,300,000 expenditure from its Affordable Housing Trust Fund, evidence of adequate and stable funding must be provided for this non-inclusionary affordable housing development. The Borough and its non-profit partner will seek available funding from County, State and federal outside sources. The Borough and its non-profit partner shall provide a pro forma of both total development costs and anticipated sources of funds and documentation of the funding available to the project, and any applications still pending.

- In addition, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including, if applicable, preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The Borough shall indicate the entity responsible for undertaking and monitoring the construction and/or overall development activity. The Borough will provide this information with respect to this project as part of its Plan.

In the event that the Borough is unable to partner with a non-profit developer to begin construction of the proposed project, or some portion thereof, due to lack of funding or otherwise, within three years of the entry of final judgment in this matter, the Borough, in its sole discretion, within six months after the expiration of the three year period, will either (i) amend its Plan, subject to the review and comment of FSHC and review and approval of the Court, to include valid compliance mechanisms that do not rely on securing outside funding to provide a realistic opportunity for a minimum of 5 family or special needs or veterans affordable housing units beyond other units contemplated in this Agreement; or (ii) will bond to provide funding for the proposed project. If the Borough replaces some or all of the 5 units, all units that replace the 5 units will be in compliance with all terms of this Agreement.

8. The 21 units/credits to be created as set forth above, subtracted from the Third Round obligation of 501 units and adding the remaining prior round unmet need obligation of 48 units, results in an unmet need of 528 units, which shall be addressed through the following mechanisms:

i. Overlay Zoning Ordinances – The adoption of overlay zoning ordinances for the nine (9) Overlay Districts set forth below.

Unmet Need Obligation					
Plan Component	Block /Lots	Acreage (ac)	Density	Total Units	Affordable Units
Harold Street Overlay District	1105/21, 22, 23, 37, 38, 39, 40	1.85	18 du/ac	32	7
Dean Drive Overlay District	906/1	3.64	15 du/ac	54	11
Riveredge Road/Tenafly Road District	1009/1, 2, 3, 4, 5, 11	0.96	15 du/ac	14	3
South Summit Street/Riveredge Road Overlay District	1010/1	0.28	18 du/ac	5	1
Riveredge Road/W. Railroad Ave Overlay District	1010/3	0.25	18 du/ac	5	1
Block 1305 Overlay District	1305/1, 2, 3, 4, 5	2.13	15 du/ac	32	7
Block 1306 Lot 1.01 Overlay District	1306/1.01	0.56	15 du/ac	8	2
Block 1308 Overlay District	1308/1 through 11	4.99	15 du/ac	75	15
Potential Overlay Zone D	1302/1 and 2	2.61	15 du/ac	39	8
Total				264	55

ii. The adoption of a Mandatory Set-aside Ordinance. The establishment of a mandatory set-aside requirement of 20% if the affordable units will be for sale and 15% if the affordable units will be for rent, for all new multi-family residential development of five (5) or more new dwelling units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted or new redevelopment plan. This provision does not affect residential development on sites that are zoned for inclusionary development as part of the Borough's Housing Element and Fair Share Plan, which are subject to the affordable housing set-aside requirements set forth in the applicable zoning. Neither this mandatory set-aside ordinance nor this settlement agreement gives any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Tenafly to grant such rezoning, variance or other relief.

9. The Borough agrees to require 13% of all units constructed after July 1, 2008, with the exception of units subject to preliminary or final site plan approval prior to July 1, 2008, be very low income units, with half of the very low income units being available to families. The Borough will comply with those requirements by requiring that 13% of all units generated as a result of the inclusionary zoning and overlay zoning set forth above or any units generated as a result of the mandatory set-aside ordinance be reserved for very low-income households

10. In implementing this Settlement Agreement, the Borough shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in paragraph 7 above:
 - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round RDP and unmet need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent of the Third Round RDP and unmet need shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round RDP and unmet need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative Prior Round and third round fair share obligation.
11. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, Bergen County NAACP, Jersey City NAACP, Paterson NAACP, Passaic NAACP, Hoboken NAACP, the Latino Action Network, the Bergen County Housing Authority, Northeast New Jersey Legal Services, Bergen Urban League, Garden State Episcopal CDC, Mount Olive Baptist Church, Urban League Affordable Housing & CDC, Bergen County Housing Coalition, Fair Housing Council of Northern NJ, New Jersey Community Development, Advance Housing, Paterson Habitat for Humanity, Family Promise of Bergen County, Saint Paul's Community Development Corp., Supportive Housing Association of New Jersey, Islamic Center of New Jersey, and Monarch Housing Associates, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
12. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning 35 percent or less of the regional median income, 13 percent of affordable units in rental projects shall be affordable to households earning 30 percent or less of the regional median income. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with all applicable laws to ensure that this provision is satisfied.
13. All newly constructed affordable housing units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

14. As an essential term of this settlement, within one hundred and twenty (120) days of the Court's approval of this Settlement Agreement, the Borough shall approve a Housing Element and Fair Share Plan and Spending Plan (if necessary to supplement the Amendment to the Borough's Spending Plan approved by the Court on April 13, 2017) consistent with this Agreement after adoption and approval by the Tenaflly Planning Board and shall introduce and adopt ordinance(s) providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement.
15. The parties agree that if a decision of a court of competent jurisdiction over this matter, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation set forth in this agreement, and if that calculation made by a court of competent jurisdiction is memorialized in an unappealable final judgment (or the time to appeal has expired), the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. FSHC agrees to support such an application to amend if filed by the Borough unless FSHC believes the criteria set forth above have not been met. Notwithstanding any such reduction, the Borough shall be obligated to implement this settlement including taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all site specific zoning to address the Third Round RDP; maintaining all mechanisms to address unmet need including any site specific zoning adopted or relied upon in connection with the plan approved pursuant to this settlement agreement; and otherwise pursuing the fulfillment of the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough's obligation is reduced as set forth above, the Borough may carryover any resulting extra credits to future rounds in conformance with the then-applicable law.
16. The Borough shall prepare a Spending Plan within 120 days of the Court's approval of this agreement if necessary to supplement the Amendment to the Borough's Spending Plan approved by the Court on April 13, 2017. The parties to this agreement agree that the Spending Plan will be prepared in accordance with accepted standards to be approved by the court, and that the expenditures of funds contemplated under the Spending Plan approved by the Court constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement 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). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

17. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
18. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:
 - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and, if there are changed circumstances, whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the court regarding these issues.
 - b. For the review of very low income housing requirements required by N.J.S.A.52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
19. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
20. Within 30 days of the entry of an Order approving this Settlement Agreement at a duly-noticed Fairness Hearing, the Borough shall pay \$4,000 in attorney's fees to FSHC.
21. This settlement agreement must be approved by the Court following a fairness and compliance hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996) and the within Declaratory Judgment Action. The Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the Borough's Plan at the fairness and compliance hearing. In the event the Court approves this proposed settlement, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying

protection as provided under the FHA," (collectively "Final Judgment:") 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 and accompanying protections. The "accompanying protection" or repose shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

22. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement and/or Final Judgment, the Parties agree to defend the Agreement and/or Final Judgment on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful at which point, the Parties reserve their right to rescind any action taken in anticipation of or as the result of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.
24. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable except the entry of a Final Judgment. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof unless the Final Judgment is rescinded or vacated. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections unless the Final Judgment is rescinded or vacated.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. 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.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

30. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE BOROUGH:

The Honorable Peter Rustin, Mayor
Borough of Tenafly
100 Riveredge Road
Tenafly, New Jersey 07670
Phone: (201) 568-6100
Telecopier: (201) 568-5567
Email: prustin@tenafly.net

**WITH A COPY TO THE
MUNICIPAL CLERK:**

Lissette Aportela, Borough Clerk
Borough of Tenafly
100 Riveredge Road
Tenafly, New Jersey 07670
Phone: (201) 568-6100 x 5542
Telecopier: (201) 568-5567
Email: laportela@tenafly.net

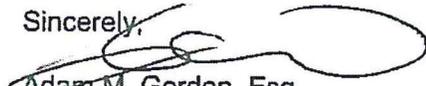
WITH A COPY TO

BOROUGH ATTORNEY:

Edward J. Buzak, Esq.
The Buzak Law Group, LLC
150 River Road, Suite N-4
Montville, New Jersey 07045
Phone: (973) 335-0600
Telecopier: (973) 335-1145
Email: ejbuzak@buzaklawgroup.com

Please sign below if these terms are acceptable.

Sincerely,



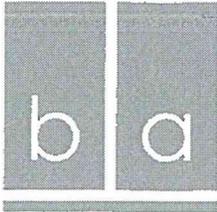
Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the Borough of Tenafly, with the authorization
of the governing body:



Peter Kustin, Mayor

Dated: June 13, 2018



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

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

MEMORANDUM

To: Edward J. Buzak, Esq.
Keli L. Gallo, Esq.

From: David Novak PP, AICP

Subject: Review of the Borough of Tenafly Housing Element and Fair Share Plan
Application of Borough of Tenafly
Docket No. BER-L-6124

Date: June 8, 2018

BA#: 2890.04

Pursuant to your request, the following memorandum is intended to provide a summary of the Borough's realistic development potential (RDP) which was calculated by our office on behalf of the Borough of Tenafly for its Housing Element and Fair Share Plan. As detailed below, the Borough's RDP was ultimately informed by two components: a vacant land adjustment (VLA), and a proposed group/veteran's home.

1. Vacant Land Adjustment. The Borough's realistic development potential was partially calculated by a vacant land adjustment, which was undertaken pursuant to the Second Round regulations. As noted by these regulations, a RDP analysis is intended to determine which sites are most likely to develop for low and moderate income housing. Municipalities may present documentation that eliminates a site or part of a site from its inventory of vacant land. Such eliminating factors include: agricultural lands; environmentally sensitive lands; 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.

The VLA conducted for Tenafly first identified all vacant sites of minimally .83 acres in size. Next, it applied wetland, steep slope, and flood plain information pursuant to the applicable regulations. The remaining acreage that was to be utilized to partially determine the Borough's RDP was then calculated.

The analysis revealed that there are 6.37 acres of vacant land in the Borough. A total of 4.05 acres were comprised of vacant sites that were minimally .83 acres, all of which were devoid of the aforementioned environmentally sensitive features. Pursuant to the applicable regulations, a minimum presumptive density of six (6) dwelling units were imposed on these 4.05 acres, and then a twenty percent (20%) set-aside was imposed on that calculation. This formula resulted in an RDP of five (5) affordable units.

Map 1: Vacant Land Adjustment Borough of Tenafly, New Jersey

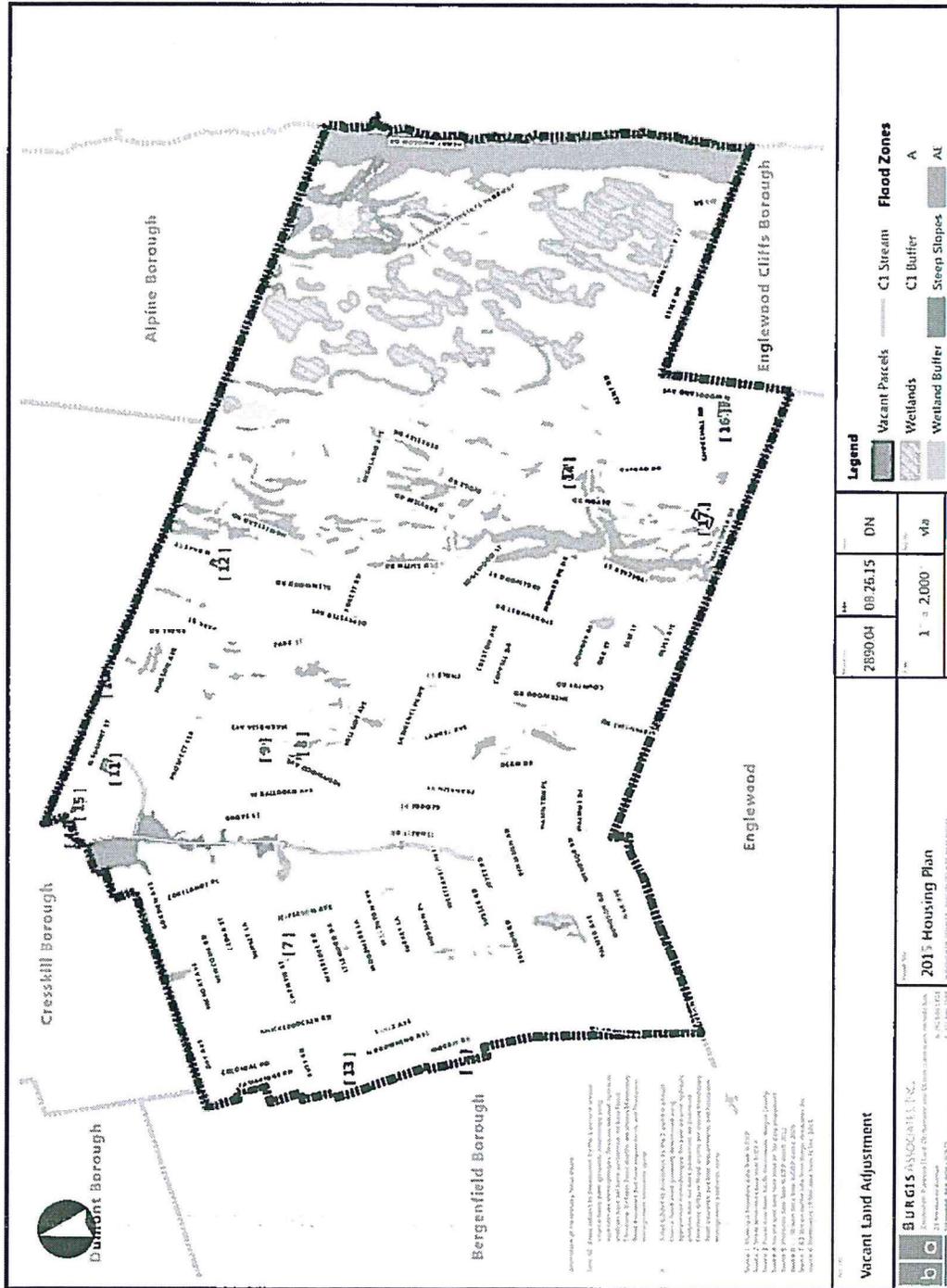


Table 1: Vacant Land Adjustment
Borough of Tenafly, New Jersey

ID	Block	Lot	Location	Owner	Area (ac)	Comments	Developable Area (ac)	Qualifies for RDP?
1	1006	1	71 COUNTY RD	EAST EDGE, LLC	0.22	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
2	1307	6	65 HUDSON AVE	DIASPARRA, ALFONSO & SANDRA	0.12	Does not qualify for RDP Analysis. Lot size is too small. Utilized as a car lot.	N/A	No
3	1307	4	52 MADISON AVE	DIASPARRA, ALFONSO & SANDRA	0.21	Does not qualify for RDP Analysis. Lot size is too small. Utilized as a car lot.	N/A	No
4	1303	1	PIERMONT RD	CRESSKILL COMMONS CONDO ASSOC, INC	0.06	Does not qualify for RDP Analysis. Lot size is too small. Utilized as parking island for adjoining multifamily development in Cresskill.	N/A	No
5	408	9	PLEASANT AVE	VERMILLION ENTERPRISE LLC%GREG YEE	0.11	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
6	1307	3	56 MADISON AVE	DIASPARRA, ALFONSO & SANDRA	0.32	Does not qualify for RDP Analysis. Lot size is too small. Utilized as a car lot.	N/A	No
7	207	26	ESMOND PL	CLARKE, WM C	0.01	Does not qualify for RDP Analysis. Lot size is too small. Appears to be an easement	N/A	No
8	1006	2	63 COUNTY RD	PAPPAS, GREGORY	0.08	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
9	1601	28	104 COUNTY RD	COUNTY ROAD MGMT ASSOC, LLC	0.19	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
10	1401	16	N SUMMIT ST	ARCHER, MARGARET M	0.16	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
11	1307	5	42 MADISON AVE	DIASPARRA, ALFONSO & SANDRA	0.62	Does not qualify for RDP Analysis. Lot size is too small. Utilized as a car lot.	N/A	No
12	209	24	277 RIVEREDGE RD	BOEHM, M. % PAUL WOOD	0.22	Does not qualify for RDP Analysis. Lot size is too small.	N/A	No
13	2306	6	76 OXFORD DR	BERGER, H. TONY	0.96	Qualifies for RDP Analysis.	0.96	Yes
14	1304	2	PIERMONT RD	JND, LLC	0.90	Qualifies for RDP Analysis	0.90	Yes
15	3102	7	80 WOODLAND ST	YANG, YOONKON	0.93	Qualifies for RDP Analysis.	0.93	Yes
16	2102	11	134 CHURCHILL RD	CHASREL ASSOC LLC	1.26	Qualifies for RDP Analysis.	1.26	Yes

* As of September 23, 2015

2. Serpentine Road. In addition to the above VLA analysis, the Borough's RDP was also partially informed by the proposed Serpentine Road group/veteran's home, in which the Borough estimated that the site could potentially yield five (5) units.
3. Total RDP. In summary, a VLA analysis partially indicated that the Borough had a realistic development potential of five (5) units, while the proposed Serpentine Road project is estimated to produce another five (5) units of affordable housing. This results in a total affordable housing RDP of ten (10) units. This is summarized on the following table.

Table 2: Realistic Development Potential Components

Component	Units
Vacant Land Adjustment	5
Serpentine Road	5
Total	10

EXHIBIT B

Exhibit B

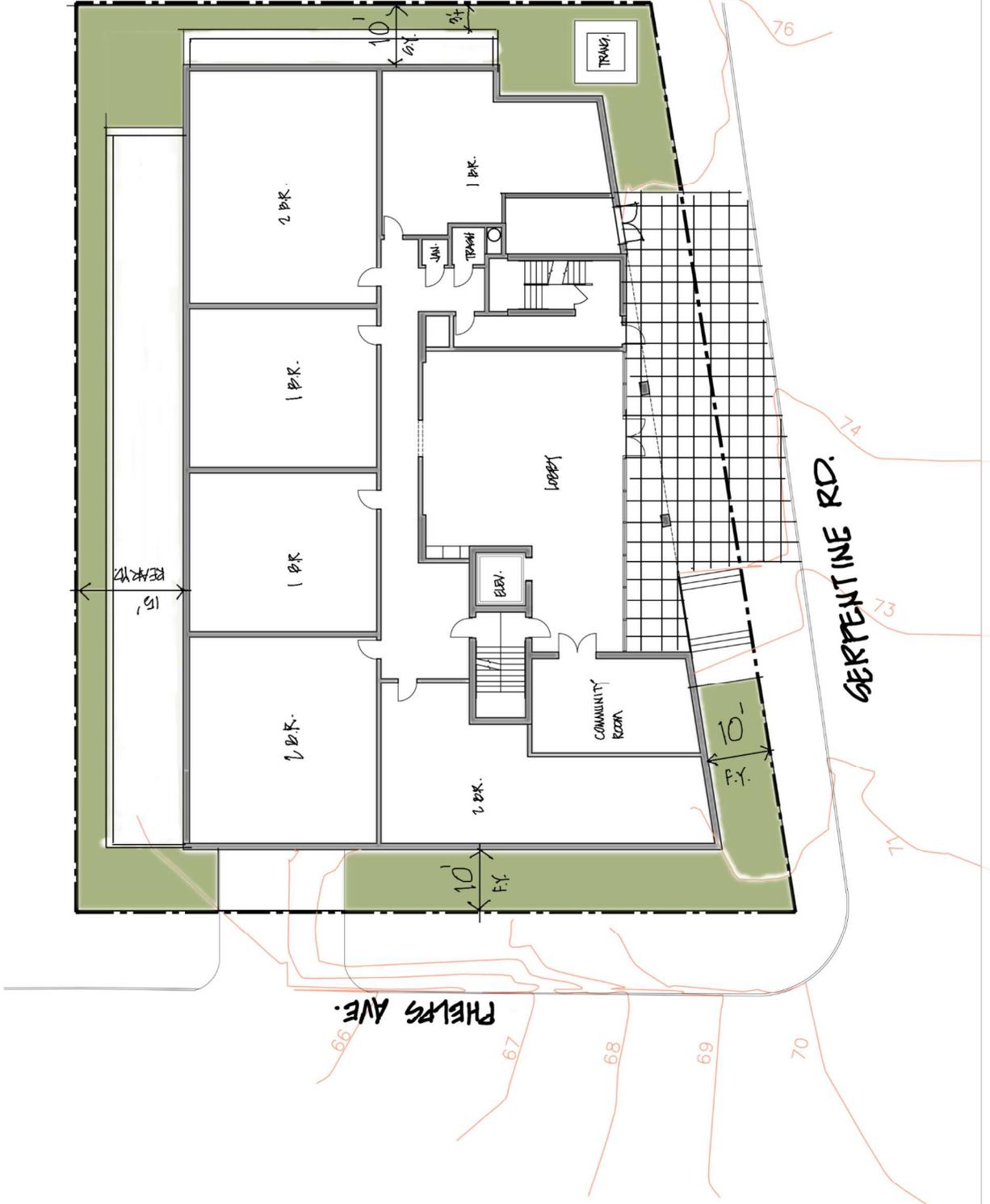
Amended Third Round Components Comprising RDP

The Borough's 2018 HE&FSP identified that the Borough had a Third Round Prospective Need RDP of ten units. This was informed by two contributing factors: a vacant land adjustment (VLA) which resulted in a RDP of five units, as well as a proposed one hundred percent affordable housing development located along Serpentine Road which was anticipated to generate five units of either special needs or veterans housing.

As a result of the proposed changes to the 2018 Settlement Agreement between the Borough and FSHC, the Borough's RDP is hereby adjusted from ten units to forty-two units. This is informed by carrying forward the Borough's previous VLA which generated a RDP of five units and adding it to the thirty-seven units to be generated by amended Third Round components identified in the Table below. Together, the RDP totals forty-two units.

Component	Affordable Units	Unit Type
Dean Drive Site	11	Assisted Living
Piermont Road Site	7	Family
Serpentine Road Site	16	Family
West Railroad Avenue Site	3	Family
Total	37	

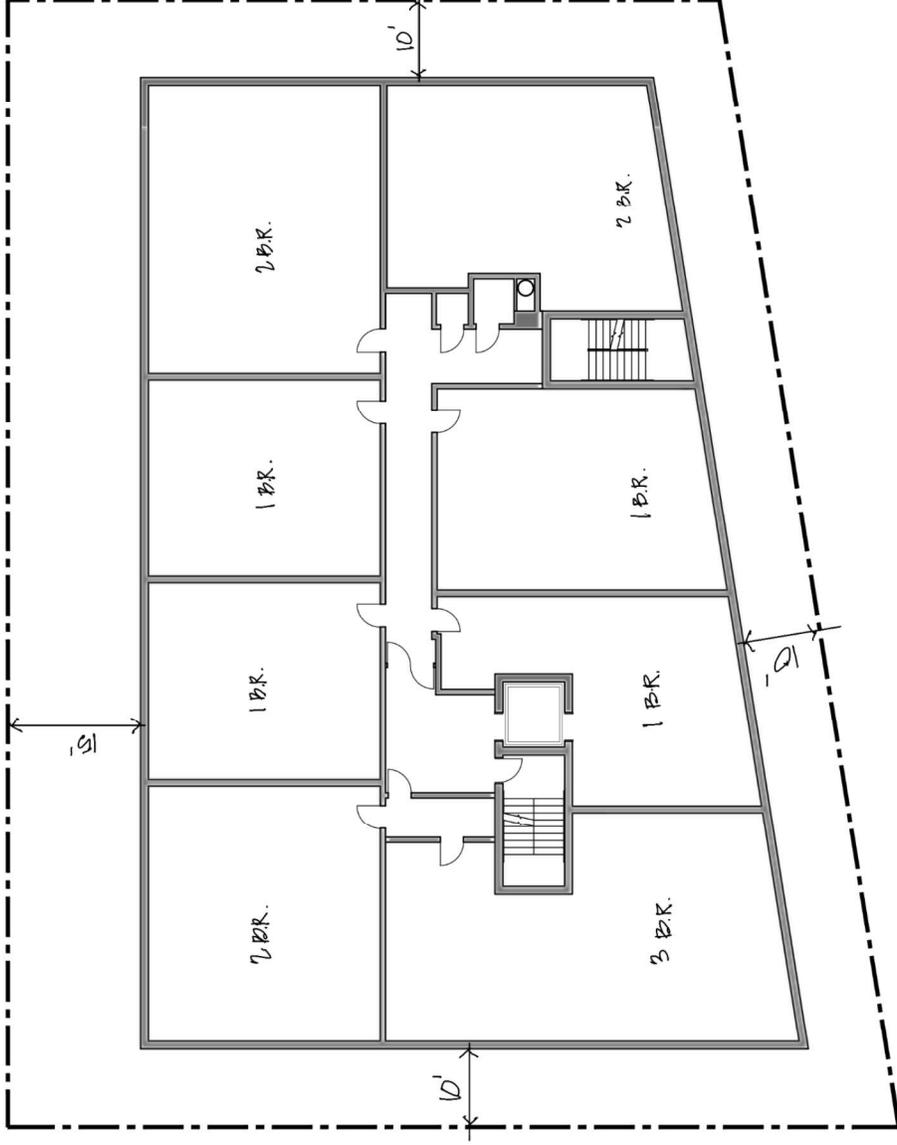
EXHIBIT C



GROUND FLOOR PLAN

1/16" = 1'-0"

6 UNITS - 2 BR./1 B. / 1 P.R.



TYPICAL APARTMENT FLOOR
 1/16" = 1'-0" (FLOORS 2 THRU 4)
 B UNIT/FLOOR

Bergen County's United Way/Madeline Housing Partners

Borough of Tenafly – Serpentine Rd

Preliminary Development Construction Timeline

16 Affordable Family Housing Units/33 Bedrooms

#	Task	Start Date	Finish Date	Responsibility
1	Execute Transfer & Developer Agreement	12/22	2/23	Mayor and Council
2	Engineering & Environmental Soil Testing	3/23	6/23	BCUW/Madeline – Engineer
3	Architectural Plan Development for Site Plan Submission	6/23	8/23	Architect
4	Site Plan Hearing & Approval	7/23	9/23	Attorney
5	Submission to County for County Planning Board Approval		10/23	Engineer
6	Project Bidding	11/23	1/24	BCUW/Madeline
7	Project Financing Process	11/24	1/24	BCUW/Madeline
8	Construction Contract Award		5/24	
9	Submission to Borough's Building Department & Engineering Department for Permits		6/24	General Contractor
10	Construction Begins		9/24	General Contractor
11	Certificate of Occupancy Granted		10/25	Building Department
12	Tax Exempt Application		10/25	BCUW/Madeline – Tax Assessor

Appendix B: Spending Plan

Borough of Tenafly

Bergen County, New Jersey

Spending Plan

October 2023

Introduction

The Borough of Tenafly 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 affordable housing regulations of the New Jersey Department of Community Affairs (the Department) (N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was approved through a Judgment of Compliance on July 2, 2003 and adopted by the municipality.

As of July 31, 2023, the Borough of Tenafly has a balance of \$3,853,351.77. 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 Valley National Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

1. Revenues for Certification Period

It is anticipated that, during the remaining period of Third Round substantive certification, the Borough of Tenafly will add \$1,306,018.48 to its affordable housing trust fund. This is detailed below:

(a) Received Development Fees

As outlined in Table 1, the Borough received \$4,061,201.95 in development fees between 2015 and 2022, representing a yearly average of \$507,650.24. In addition, the Borough collected \$331,851.00 in development fees between January and July of 2023.

(b) Anticipated Development Fees

Utilizing the yearly average calculated in 1.(a) above and subtracting the fees collected from January to July of 2023, it is anticipated that the Borough will collect an additional \$1,191,099.73 during the remaining period of Third Round substantive certification.

(c) Payment in Lieu (PIL)

The Borough of Tenafly 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.

(d) Other Funds

A total of \$35,932.50 of other funds has been collected between 2015 and 2023. However, the Borough does not currently anticipate the contribution of any additional other funds toward the municipal housing trust fund during the remaining period of Third Round substantive certification.

(e) Received Interest

A total of \$185,923.09 of interest has been collected between 2015 and 2022, representing a yearly average of \$23,240.39. In addition, the Borough collected \$95,813.16 in interest between January and July of 2023, representing a 2023 monthly average of \$13,687.59.

(f) Anticipated Interest

Utilizing the monthly average calculated in 1.(e) for the remainder of 2023 as well as the yearly average calculated in 1.(e) for the years 2024 and 2025, it is anticipated that the Borough will collect an additional \$114,918.75 during the remaining period of Third Round substantive certification.

In sum, the Borough of Tenafly projects a total of \$1,306,018.48 will be collected during the remaining period of Third Round substantive certification. This projected amount, when added to the Borough's current trust fund balance of \$3,853,351.77, results in a total anticipated trust fund balance of \$5,159,370.25 available to fund and administer the Borough's affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

Table 1: Revenues between 2015 and 2025

Source of Funds	Projected Revenues – Affordable Housing Trust Fund 2015 through 2025					
	2015-2022	January-February 2023	Remainder 2023	2024	2025	Total
Development Fees	\$4,061,201.95	\$331,851.00	\$175,799.24	\$507,650.24	\$507,650.24	\$5,584,152.68
Payment in Lieu of Construction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Funds	\$8,682.50	\$27,250.00	\$0.00	\$0.00	\$0.00	\$35,932.50
Interest	\$185,923.09	\$95,813.16	\$68,437.97	\$23,240.39	\$23,240.39	\$396,655.00
Total	\$4,255,807.54	\$454,914.16	\$244,237.22	\$530,890.63	\$530,890.63	\$6,016,740.18

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 Borough of Tenafly:

(a) Collection of Development Fee Revenues

Collection of development fee revenues shall be consistent with the Borough of Tenafly's ordinance for both residential and non-residential developments in accordance with the Department's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of Development Fee Revenues

The administration of Tenafly's development fee spending plan will be undertaken by the governing body and the Borough treasurer. First, the governing body will approve the expenditure of development fee revenues. The governing body will then review the request for consistency with the spending plan. If consistent with the plan, the governing body will adopt a resolution authorizing the use and release of trust fund monies. Upon approval of the governing body resolution, the Borough treasurer will be authorized to release the funds.

3. Description of Anticipated Use of Affordable Housing Funds

The Borough anticipates its affordable housing funds to be utilized as follows:

(a) Rehabilitation

Pursuant to the Settlement Agreement signed between the Borough of Tenafly and Fair Share Housing Center (FSHC) dated June 12, 2018, the Borough has a rehabilitation share of four units. To address this obligation, the Borough will continue its rehabilitation program.

COAH's rules require municipalities to set aside an average of at least \$10,000 per each rehabilitation unit. Furthermore, COAH's rules require 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. As such, the Borough is required to set aside at least \$13,333.33 for the first year following its substantive certification, and an additional \$6,666.67 each subsequent year following substantive certification until its rehabilitation share is met.

In order to better meet the needs of its residents, the Borough has dedicated \$410,000.03 to fund its rehabilitation program. This amount is consistent with the Borough's May 2020 Spending Plan amendment which was approved by the Court on September 1, 2020 as well as with the Borough's aforementioned Settlement Agreement with FSHC

As of July 31, 2023, the Borough has spent \$74,650 on rehabilitation, thus resulting in a remaining rehabilitation balance of \$335,350.03.

(b) New Construction

As established in the Borough's Housing Element and Fair Share Plan (HE&FSP) dated November 7, 2018, an amendment to the Borough's Spending Plan was approved by the Court on April 13, 2017. The Borough received approval to allocate up to \$1,300,000 for the acquisition of three lots located on Serpentine Road which are identified by municipal tax records as Block 715 Lots 11, 12, and 13. The following is noted:

1. Block 715 Lot 11 (11 Serpentine Road) was acquired by the Borough in 2019 for \$512,762.14, plus a \$2,000 appraisal fee, a \$1,000 fee for tenant expenses, and a \$548.36 fee to cancel the property's 2nd quarter taxes.
2. Block 715 Lot 12 (9 Serpentine Road) was acquired by the Borough in 2017 for \$440,191.92, plus a \$1,000 appraisal fee.
3. Block 715 Lot 13 (5 Serpentine Road) was acquired by the Borough in 2017 for \$286,387.20, plus a \$2,300 appraisal fee.

As noted in the 2018 HE&FSP, the Borough proposed to work with a nonprofit partner to develop the site for either a special needs or veterans' housing project. It was estimated at that that four to five units could be achieved on this site.

Subsequently, a separate amendment to the Borough's Spending Plan was approved by the Court on September 1, 2020 to allocate an additional \$600,000 for the acquisition of an additional lot located at 1 Serpentine Road, which is identified by municipal tax records as Block 715 Lot 14. It was noted that this property is immediately adjacent to the three aforementioned lots located along Serpentine Road and, due to that adjacency, its acquisition would increase the total acreage of the project area thus enabling the potential development of additional affordable units. Any excess funds were to be utilized for remediation purposes.

As a result, 1 Serpentine Road was purchased by the Borough for \$575,000 per Ordinance #20-24, adopted on December 21, 2022. An additional \$1,600 was spent on an appraisal fee as well as \$750 for a survey.

Thus, of the \$1,900,000 which has been allocated for this project, \$1,823,539.62 has been expended.

The Borough now seeks to allocate an additional \$200,000 to assist Bergen County United Way with the construction of sixteen affordable family units.

(c) Affordability Assistance

Pursuant to N.J.A.C. 5:93-8.16(c), the Borough will commit to spend at least thirty percent (30%) of the revenues collected from development fees towards affordability assistance to very-low, low- and moderate-income households. One-third of that amount must be dedicated to very low-income households. However, development fees collected to finance a rehabilitation program or new construction project are exempt from this requirement.

The Borough will dedicate thirty percent (30%) of its development revenue fees, less its housing activity (both existing and proposed) and its proposed rehabilitation expenditures, towards its affordability assistance program.

As shown in the accompanying table, the Borough projects that approximately \$818,679.47 will be available from the affordable housing trust fund for this purpose through 2025, one-third of which is required to be dedicated for very-low income households. The Borough's affordability assistance program will include down payment assistance, special condominium assessment assistance, emergency repair assistance, emergency/hardship mortgage payment assistance, and rental assistance.

Table 2: Affordability Assistance Calculation

Actual balance as of 07/31/23		\$3,853,351.77
Development fees projected 2023-2025	+	\$1,191,099.73
Interest projected 2023-2025	+	\$114,918.75
Less housing activity expenditures through 04/01/23	-	\$1,895,088.66
Less New Construction & Supportive/Special Needs expenditures 2023-2025	-	\$200,000.00
Less Rehabilitation housing activity expenditures 2023-2025	-	\$335,350.03
Total	=	\$2,728,931.56
Calculate 30 percent	x .30 =	\$818,679.47
Less Affordability assistance expenditures through 7/31/23	-	\$0.00
Projected Minimum Affordability Assistance Requirement	=	\$818,679.47
Projected Minimum Very Low-Income Affordability Assistance Requirement	÷ 3 =	\$272,893.16

(d) Administrative Expenses

Per N.J.A.C. 5:93-8.16(e), no more than twenty percent (20%) of the revenues collected from development fees shall be expended on administration. The Borough projects that a maximum of \$548,865.58 of housing trust funds will be permitted to be used for administrative purposes through the remaining Third Round substantive certification period. 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.

Table 3: Administrative Expenses

Actual balance as of 7/31/23		\$3,853,351.77
Projected dev fees and interest 2023 thru 2025	+	\$1,306,018.48
Payments-in-lieu of construction and other deposits thru 07/31/2023	+	\$0.00
Less RCA expenditures thru 07/31/23	-	\$0.00
Total	=	\$5,159,370.25
Calculate 20 percent	x .20 =	\$1,031,874.05
Less admin expenditures thru 4/1/23	-	\$483,008.47
Projected maximum available for administrative expenses	=	\$548,865.58

4. Expenditure Schedule

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

Table 4: Expenditure Schedule

Projects/Programs	Number of Units Projected	Expenditure Schedule				
		2015-2022	2023	2024	2025	Total
Rehabilitation	4	\$74,650.00	\$111,783.35	\$111,783.34	\$111,783.34	\$410,000.03
Other Housing Activity	16	\$1,820,438.66	\$200,000.00	\$0.00	\$0.00	\$2,020,438.66
Total	20					
Affordability Assistance		\$0.00	\$272,893.16	\$272,893.16	\$272,893.15	\$818,679.47
Administration		\$470,849.97	\$187,008.03	\$187,008.03	\$187,008.02	\$1,031,874.05
Total		\$2,365,938.63	\$771,684.54	\$571,684.53	\$571,684.51	\$4,280,992.21

5. Excess of Shortfall of Funds

In the event of any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the plan, the Borough of Tenafly will handle the shortfall of funds through adopting a resolution with an intent to bond.

In the event of excess funds, or in the event that the amount spent on administration is less than projected, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be reserved for additional affordable housing activity, including but not limited to the Borough's rehabilitation program, affordability assistance program, or new construction.

6. Summary

The Borough of Tenafly intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq. consistent with the housing programs outlined in the Housing Plan Element dated October 5, 2018 as well as its revised Settlement Agreement dated April 17, 2023.

The Borough of Tenafly has a balance of \$3,853,351.77 as of July 31, 2023 and anticipates an additional \$1,306,018.48 through the remaining period of Third Round substantive certification, for a total of \$5,159,370.25.

As of July 31, 2023, the Borough has dedicated \$1,820,438.66 toward housing activities (including new construction and special needs/supportive housing work) as well as \$74,650.00 toward its rehabilitation program. It has allocated \$470,849.97 toward administrative costs.

For the remainder of this round of certification, the Borough will dedicate an additional \$200,000 toward new construction, an additional \$335,350.03 toward its rehabilitation program, \$818,679.47 to render units more affordable, and an additional \$561,024.08 toward administrative costs. Any additional shortfall of funds will be offset by a resolution to bond. The Borough will dedicate any excess funds or remaining balance toward its rehabilitation program and/or affordability assistance program, or in the alternative toward new construction.

Table 5: Spending Plan Summary

SPENDING PLAN SUMMARY	
Balance as of July 31, 2023	\$3,853,351.77
PROJECTED REVENUE 2023-2025	\$2,497,118.21
Development fees	+ \$1,191,099.73
Payments in lieu of construction	+ \$0.00
Other funds	+ \$0.00
Interest	+ \$1,306,018.48
TOTAL PROJECTED REVENUE	= \$5,159,370.25
PROJECTED EXPENDITURES	
Funds used for Rehabilitation	- \$410,000.03
Funds used for New Construction/Housing Activity	\$2,020,438.66
Affordability Assistance	- \$818,679.47
Administration	- \$1,031,874.05
TOTAL PROJECTED EXPENDITURES	= \$4,280,992.21
EXCESS FUNDS OR REMAINING BALANCE RESERVED FOR ADDITIONAL AFFORDABLE HOUSING ACTIVITY	\$878,378.04
<i>Additional Funds for Rehabilitation, Affordability Assistance, New Construction</i>	- \$878,378.04
REMAINING BALANCE	= \$0.00