

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

Council Meeting Date:

Date Adopted:

TITLE: RESOLUTION OF THE COUNCIL OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION STATE OF NEW JERSEY APPROVING THE AFFORDABLE HOUSING SPENDING PLAN

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

WHEREAS, on April 1, 2019, the Borough of New Providence ("Borough") signed an amended settlement agreement with Fair Share Housing Center ("FSHC") as well as Beckton Dickinson, Inc. ("BD") and Murray Hill, LLC, a successor to Linde North America, Inc. ("Linde") as well as a second settlement agreement on that same date with Linde, both of which established the Borough's fair share obligation and preliminarily approved the Borough's compliance mechanisms in accordance with the March 10, 2015 decision of the Supreme Court, which transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing ("COAH") to designated Mount Laurel trial judges within the Superior Court; and

WHEREAS, on April 5, 2019, Honorable Karen Cassidy, A.J.S.C. held a Fairness Hearing and subsequently on April 8, 2019 issued a Court Order approving the settlement agreements between the Borough and FSHC, BD, and Linde; and

WHEREAS, pursuant to the April 8, 2019 Court Order, the Borough must implement a Spending Plan in accordance with N.J.A.C. 5:93-5.1, et. seq.; and

WHEREAS, the Borough of New providence has prepared a Spending Plan consistent with P.L.2008, c.46 COAH regulations and the settlement agreements entered into between the Borough, FSHC, BD, and Linde; and

WHEREAS, the Borough desires to submit its Spending Plan to the Court in connection with the Compliance Action for its review and approval.

NOW THEREFORE BE IT RESOLVED, the Mayor and Council of the Borough of New Providence in the County of Union, and the State of New Jersey hereby adopts the Spending Plan that is attached hereto as Exhibit A.

DRAFT

BOROUGH OF NEW PROVIDENCE

AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

JULY 2019

Borough of New Providence

Union County, New Jersey

Prepared By:



Heyer, Gruel & Associates

Community Planning Consultants

236 Broad Street, Red Bank, NJ 07701

(732) 741-2900

The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12

Susan S. Gruel, P.P. #1955

M. McKinley Mertz, AICP, P.P. #6368

Contents

| | |
|--|----|
| INTRODUCTION | 3 |
| 1. REVENUES FOR CERTIFICATION PERIOD | 4 |
| Projected Revenues | 5 |
| 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS | 6 |
| 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS..... | 6 |
| Affordability Assistance (N.J.A.C. 5:93-8.16) | 7 |
| Administrative Expenses (N.J.A.C. 5:93-8.16) | 8 |
| 4. EXPENDITURE SCHEDULE | 9 |
| SUMMARY | 10 |

DRAFT

INTRODUCTION

The Borough of New Providence, Union County has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on January 4, 2008 and adopted by the Borough on March 10, 2008. The ordinance established the New Providence Affordable Housing Trust Fund. An amended ordinance was prepared and adopted on May 22, 2017 via Ordinance 2017-09. Ordinance 2017-09 updates the development fee ordinance to current standards.

As of June 4, 2019, the Affordable Housing Trust Fund established by the Borough and held at Investors Bank, had a balance of \$515,072.27. 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 this separate, interest-bearing affordable housing trust fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93, or applicable regulations, as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the period of third round "substantive certification," the Borough of New Providence considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;

Erickson Living

A component of the settlement agreement with Linde North America, Inc. (see Appendix B), was an additional residential development fee on top of the standard nonresidential development fee for the construction of an addition to the Lantern Hill Retirement Community on 575 Mountain Avenue (Block 320 Lot 18.01). The Lantern Hill Retirement Community is currently located at 603 and 535 Mountain Avenue (Block 320 Lots 15 and 17). Pursuant to the settlement agreement, the Borough anticipates approximately \$474,000 in a residential development fee in addition to the non-residential development fee, as set forth in N.J.S.A. 40:55D-8.3 et. seq.

2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers.

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units. No other funds have been or are anticipated to be collected.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

Projected Revenues

| Projected Revenues-Housing Trust Fund - 2019 - 2025 | | | | | | | | | |
|---|---|----------|-----------|-----------|----------|----------|----------|----------|--------------------|
| SOURCE OF FUNDS | Trust Fund balance as of 06/04/2019 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | Total Revenue |
| Historical Balance | \$515,072 | | | | | | | | \$515,072 |
| (a) Projected Development Fees: | | | | | | | | | |
| 1. General | - | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$350,000 |
| 2a. Erickson Res | - | - | \$237,000 | \$237,000 | - | - | - | - | \$474,000 |
| 2b. Erickson Non-Res | - | - | \$702,000 | \$702,000 | - | - | - | - | \$1,404,000 |
| (d) Interest | - | \$225 | \$4,451 | \$4,451 | \$225 | \$225 | \$225 | \$225 | \$10,026 |
| Total | \$515,072 | \$50,225 | \$288,292 | \$288,292 | \$50,225 | \$50,225 | \$50,225 | \$50,225 | \$2,753,098 |

To calculate the projection of revenue anticipated from the general development fees, roughly 12 years (2007 through March 2019) of construction data for the Borough, acquired from the New Jersey Department of Community Affairs, was examined. Additionally, all previous transactions within the Affordable Housing Trust Fund were considered.

The proposed expansion of the Lantern Hill Retirement Community, a CCRC facility located at 603 Mountain Avenue and managed by Erickson Living, is anticipated to expand their CCRC facility onto the adjacent property, 575 Mountain Avenue (Block 320 Lot 18.01). The development of 575 Mountain Avenue, governed by a Court-approved settlement agreement, is anticipated to develop approximately 540 independent living units and 108 health care units. Pursuant to the settlement agreement, Erickson Living will pay the required non-residential development as well as a residential development fee for incremental development of the site that is greater than 17 units per acre. Based on the calculations found in the settlement agreement, this could amount to an additional \$474,000, half to be paid to the Borough prior to building permits and the other half to be paid prior to certificate of occupancy.

In terms of calculating the non-residential development that is anticipated to be collected from Erickson Living, an analysis of the assessed value of the previous CCRC development at 603 and 535 Mountain Avenue was conducted. The project at 603 Mountain Avenue is still under construction, and so the assessed value of the buildings at 535 Mountain Avenue was used. The Borough therefore anticipates a collection of approximately \$1,404,000 in non-residential development fees from Erickson Living. As is the case for the non-residential development fees, the Borough expects to collect half prior to building permits and the other half prior to the issuance of a certificate of occupancy.

The Borough therefore projects a total of \$2,228,000 will be collected between June 1, 2019 and December 31, 2025. An additional \$10,026 in interest is projected to be earned. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. In conjunction with the existing trust fund balance of \$515,072, the Borough projects total trust fund revenues and interest of \$2,753,098 through December 31, 2025.

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 New Providence:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with New Providence's development fee ordinance for both residential and non-residential developments.

(b) Distribution of development fee revenues:

The Administrative Agent and the Municipal Housing Liaison will manage the projects outlined in this Spending Plan and the Housing Element and Fair Share Plan.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

The following represent the anticipated affordable housing projects within the Borough of New Providence that will utilize Trust Fund monies. In the event funding sources as identified within this Spending Plan prove inadequate to complete the affordable housing programs, the Borough shall provide sufficient funding to address any shortfalls through bonding.

(a) **Rehabilitation program**

The Borough will dedicate \$376,549 to rehabilitation of substandard rental units. Pursuant to the Housing Element and Fair Share Plan, the Borough will implement a Borough-wide rental rehabilitation program to supplement the County owner rehabilitation program.

(b) **Renovation to the Elizabeth Barabash Manor**

The Elizabeth Barabash Manor is a 100% affordable age-restricted development that consists of 22 low-income rental units. The property is owned by the Borough. The facility was constructed in 1997 and is in need of some significant renovations. The Borough will dedicate \$650,000 from its trust fund to help renovate and update the facility.

(c) **Renovation of Group Homes**

There are currently six different group home facilities in New Providence. The Borough will make available \$250,000 from the trust fund to provide support to the group homes who need assistance in rehabilitation their facilities.

(d) **Creation of New Group Homes**

New Providence will dedicate \$100,000 to support the creation of new group homes within the Borough.

Affordability Assistance (N.J.A.C. 5:93-8.16)

Projected minimum affordability assistance requirement:

| Affordability Assistance | | |
|---|----------|-------------|
| Actual balance through 06/04/2019 | | \$515,072 |
| Projected Development fees 2019-2025 | + | \$2,228,000 |
| Projected Trust Fund Interest 2019-2025 | + | \$10,026 |
| Total | = | \$2,753,098 |
| 30 percent requirement | x 0.30 = | \$825,929 |
| PROJECTED MINIMUM Affordability Assistance Requirement 06/01/2019 through 12/31/2025 | = | \$825,929 |
| PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 06/01/2019 through 12/31/2025 | ÷ 3 = | \$275,310 |

As per the requirements regarding the use of funds for affordability assistance laid out in N.J.A.C. 5:93-8.16, the Borough is required to dedicate at least 30 percent of all development fees collected and interest earned to provide affordability assistance to low-, and moderate-income households. In addition, at least one-third of the affordability assistance shall be used to provide affordability assistance to very-low income households. The Borough, therefore, will dedicate at least \$825,929 from the affordable housing trust fund to render units more affordable, including \$275,310 to render units more affordable to households earning 30 percent or less of median income by region as follows:

- For-sale units in the form of down-payment assistance, homeowner assistance loans for Condominium or Homeowner Association fees, and homeowner assistance loans for mortgage payments up to two months or less in arrears to forestall foreclosure (Appendix A).
- For-rent units in the form of security deposit assistance and rental assistance, which are enhanced for very low-income households (Appendix A).

Administrative Expenses (N.J.A.C. 5:93-8.16)

| Administrative Expenses | | |
|---|----------|------------------|
| Actual balance through 06/04/2019 | | \$515,072 |
| Projected Development fees 2019-2025 | + | \$2,228,000 |
| Projected Trust Fund Interest 2018-2025 | + | \$10,026 |
| Total | = | \$2,753,098 |
| 20 percent cap | x 0.20 = | \$550,620 |

No more than 20% of revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop and implement: a rehabilitation program; a new construction program; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with monitoring requirements.

Moving forward, the Borough projects that \$550,620 will be available from the affordable housing trust fund to be used for administrative purposes, including but not limited to:

- Administration and expenses associated with Borough's affordable housing units.
- Expenses associated with the creation and implementation of the Borough Rental Rehabilitation Program.
- Expenses associated with the preparation and implementation of the Housing and Fair Share Plan and monitoring of the current and future housing programs for the Borough of New Providence.

4. EXPENDITURE SCHEDULE

| Program | Projected Expenditures Schedule 2019-2025 | | | | | | | |
|--|---|------------------|--------------------|------------------|------------------|------------------|------------------|--------------------|
| | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | Total |
| Rental Rehabilitation Program | \$37,549 | \$40,000 | \$50,000 | \$50,000 | \$60,000 | \$70,000 | \$70,000 | \$376,549 |
| Renovation of Elizabeth Barabash Manor | - | - | \$650,000 | - | - | - | - | \$650,000 |
| Renovation of Group Homes | - | \$100,000 | \$100,000 | \$50,000 | - | - | - | \$250,000 |
| Creation of New Group Homes | - | \$100,000 | - | - | - | - | - | \$100,000 |
| | | | | | | | | |
| Affordability Assistance | \$70,000 | \$90,000 | \$90,000 | \$120,000 | \$140,000 | \$150,000 | \$165,929 | \$825,929 |
| | | | | | | | | |
| Administration | \$70,000 | \$70,000 | \$70,000 | \$70,000 | \$80,000 | \$80,000 | \$110,620 | \$550,620 |
| | | | | | | | | |
| Total | \$180,000 | \$210,000 | \$1,040,000 | \$290,000 | \$320,000 | \$330,000 | \$383,098 | \$2,753,098 |

SUMMARY

The Borough of New Providence intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93 and consistent with the housing programs outlined in its Housing Element and Fair Share Plan.

As of June 4, 2019, the Borough's trust fund has a balance of \$515,072. New Providence anticipates an additional \$2,228,000 in revenues and interest by December 31, 2025. The Borough will dedicate \$376,549 towards its rental rehabilitation program, \$652,000 to the renovation of the Elizabeth Barabash Manor, \$250,000 toward the renovation the existing group homes within the Borough, \$100,000 toward to creation of new group homes, \$825,929 to render units more affordable, and \$550,620 to administrative costs.

| SPENDING PLAN SUMMARY | |
|---|----------------------|
| Balance as of June 4, 2019 | \$515,072 |
| Projected REVENUE June 1, 2019 to December 31, 2025 | |
| Development fees | + \$2,228,000 |
| Payments in lieu of construction | + \$0 |
| Other funds | + \$0 |
| Interest | + \$10,026 |
| TOTAL REVENUE + CURRENT BALANCE | = \$2,753,098 |
| EXPENDITURES | |
| Funds used for Rental Rehabilitation, Renovation, Group Homes | - \$1,376,549 |
| Affordability Assistance | - \$825,929 |
| Administration | - \$550,620 |
| Excess Funds for Additional Housing Activity | = \$0 |
| TOTAL PROJECTED EXPENDITURES | = \$2,753,098 |
| REMAINING BALANCE | = \$0 |

SPENDING PLAN APPENDIX A
FOR-SALE UNIT AFFORDABILITY ASSISTANCE
AND RENTAL UNITS AFFORDABILITY ASSISTANCE PROGRAM

BOROUGH OF NEW PROVIDENCE
FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM
AND RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM

FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM

Down Payment Loan Program

The Borough will offer a Down Payment Assistance Loan program to qualified purchasers of households earning 80% or less of median income of the housing region. To be eligible for the loan, the qualified Buyer must be able to supply 3% of the down payment with the Buyer's own funds, plus additional closing costs that exceed the amount of the loan. No gifts or other loans may be used to fund the 3% down payment amount but may be used to fund additional closing costs. The loan amount may be made up to ten percent (10%) of the purchase price.

The Borough must approve the Buyer 's qualifications and need for the loan. The loan has no prepayment penalty. It is due and payable when the Buyer resells, borrows against the property or refinances the First Purchase Money Mortgage. The loan may be subordinated only to the First Purchase Money Mortgage. When calculating the borrowing capacity of the homeowner and the equity in the property, this loan must be included. The Buyer must sign a mortgage and mortgage note to the Borough.

Payment of Closing Costs

Eligible Buyers may receive payment of closing costs, i.e., title work and policy, reasonable attorney's fees for closing of title, preparation of survey, homeowner's insurance, recording fees, and other necessary closing expenses to third parties, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3,000) per unit. Utility deposits, i.e., gas and electric, paid to utility companies are to be returned to the Borough Affordable Housing Trust Fund upon resale of the unit. The buyer will execute documents required to secure payment to New Providence.

Payment of Lender Fees

Eligible Buyers may receive payment of lender fees, i.e., mortgage points, application fees, appraisal fees, bank attorney review fees, and necessary mortgage closing expenses, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3000) per unit.

Administration

New Providence's Affordability Assistance Programs will be managed by the Borough Affordable Housing Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. The following administrative process is applied to the For-Sale Unit Affordability Assistance Program:

1. The Buyer contacts the Administrative Agent to confirm that he/she wants to receive Down Payment Assistance.
2. The Buyer must present proof to the Administrative Agent that he/she is qualified for Affordable Housing in the Borough.

3. Buyer must produce an exact copy of a signed Real Estate Contract for an affordable housing unit in New Providence, which indicates clearly the full amount of the purchase price. Buyer must provide the Administrative Agent with the full name, address, phone number, and fax number of the Buyer's Attorney or Settlement Agent so that the Attorney or Settlement Agent can review and approve any and all documents required for the loan.
4. The Administrative Agent contacts the Realtor or Developer for confirmation of the sale of the unit, and the name of the Attorney handling the sale for the Developer at closing.
5. The amount of the Down Payment Assistance loan is verified (not to exceed ten percent of the Purchase Price) so that a Mortgage Note, Mortgage, and Repayment Agreement can be prepared by the Administrative Agent.
6. The amount of the Down Payment Assistance must be disclosed to the Lender, so that the Lender can accurately prepare the First Mortgage documents. The Buyer must give a copy of the First Mortgage Commitment to the Administrative Agent upon receipt of same, so that the Lender can receive full information about the Down Payment Assistance Loan, which shall constitute a Second Mortgage on the premises. The Lender must approve the secondary financing. The Borough Affordable Housing Attorney will contact the Lender once the Affordable Housing Attorney has a copy of the First Mortgage Commitment.
7. The New Providence Finance Department will generate the necessary forms and obtain Borough Council approval for it to issue an Affordable Housing Trust Fund check payable to the Seller's Attorney or Settlement Agent, so that the Down Payment Assistance check can be deposited into the Seller's Attorney Trust Account or Settlement Agent Trust Account pending Closing of Title. The letter and check to the Seller's Attorney or Settlement Agent shall state that the deposit money must be returned to the Borough if the closing is canceled, or if the sale is declared null and void. If there is a Closing of Title, the Down Payment Assistance money shall be released to the Seller. This money shall be shown on the Closing Statement as a deposit, with credit given at closing to the Buyer. The Buyer must fully execute the Mortgage Note, Mortgage, and Repayment Agreement at the Closing of Title before any money is released.
8. The Seller's Attorney or Settlement Agent shall verify that the Mortgage Note, Mortgage, and Repayment Agreement have been properly executed, and shall file the original Mortgage with the County Clerk to protect the Borough Second Mortgage on the property and return the Filed Mortgage to Affordable Housing Attorney along with the original Mortgage Note and Repayment Agreement.

RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM

Rental Assistance

The Borough of New Providence may offer a Rental Assistance Program that will be managed by the Administrative Agent. Eligible recipients of the program are renters who qualify for a very-low, low- or moderate-income rental unit. The following assistance is available to very-low, low- and moderate-income households:

1. Payment of "moving expenses" based upon verified receipts, in an amount not to exceed five hundred dollars (\$500.) per family.
2. Rent subsidies for up to 5 years, based upon number of bedrooms in apartment.
 - a) One-bedroom, low-income unit – \$55 per month subsidy.
 - b) One-bedroom, moderate-income unit – \$100 per month subsidy.
 - c) Two-bedroom, low-income unit – \$100 per month subsidy.
 - d) Two-bedroom, moderate-income unit – \$200 per month subsidy.
 - e) Three-bedroom, low-income unit -- \$150 per month subsidy.
 - f) Three-bedroom, moderate-income units -- \$250 per month subsidy.
3. Utility deposit assistance.

The following assistance is available to very low-income households:

1. Payment of "moving expenses" based upon verified receipts, in an amount not to exceed one thousand five hundred dollars (\$1,500.) per household.
2. Rental security deposit – Deposits paid to landlord to be returned to the Borough's Affordable Housing Trust Fund upon termination of tenancy.
3. Rent subsidies for up to 5 years, based upon number of bedrooms in apartment.
 - a) One-bedroom – \$75 per month subsidy.
 - b) Two-bedroom – \$125 per month subsidy.
 - c) Three-bedroom -- \$175 per month subsidy.
4. Utility deposit assistance.

Rental assistance does not need to be repaid by the tenant. The amount of the rental supplement will be calculated initially based on the tenant's actual income and the rent level of the affordable units to help bring the total shelter costs down to 30% of the total household income or lower, if warranted by the particular household circumstances. If the tenant wishes to renew the lease, he/she must be re-income qualified and the rental supplement will be recalculated. If the tenant no longer qualifies for the rental assistance, he/she may renew the lease and stay in the unit but will no longer receive rental assistance.

Administration

New Providence's Rental Unit Affordability Assistance Programs will be administered by the Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. After an applicant is income qualified by the Administrative Agent pursuant to the Uniform Housing Affordability Controls, the applicant will complete and provide an affordability assistance application to the Administrative Agent.

For qualified and approved payment of moving expense, the Administrative Agent will follow the Borough purchasing and requisition process for generating a check that is made out to the applicant. Once the check is produced, the Administrative Agent provides it to the applicant.

For qualified and approved payment of utility deposit, the Administrative Agent follows the Borough purchasing and requisition process for generating a check that is made out to the utility company. Once the check is produced, the Administrative Agent provides it to the applicant for payment to the utility company.

The affordability assistance recipient will sign a contract with the Borough of New Providence that states, at a minimum: the amount of funds granted, interest information, procedures, duration and conditions of affordability assistance, and repayment information if required.

The availability of any Affordability Assistance Programs must be noticed to all tenants of affordable units within the Borough and provided to all administrative agents of affordable units within New Providence and advertised on the Borough's website.

An income eligible occupant or applicant for an affordable unit within the Borough may not be denied participation in the Affordability Assistance Program(s) unless funding is no longer available.

SPENDING PLAN APPENDIX B

**2019 Settlement Agreement between the Borough and Murray Hill, LLC (successor to
Linde North America, Inc.)**

AFFORDABLE HOUSING AGREEMENT

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

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

and

MURRAY HILL, LLC. as successor to LINDE NOTH AMERICA, INC., a Delaware corporation with a business address of 200 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807 ("*Linde*" or "*Developer*").

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

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

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

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

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

WHEREAS, Linde desires to develop the 100 Mountain Property with an age-restricted inclusionary development consisting of 297 multifamily units (townhouses and apartments) of which at least fifty-nine (59) units will be restricted for affordable housing ("*Inclusionary*

Development") as generally shown in the concept plan attached as **Exhibit A** ("*Inclusionary Concept Plan*") and the draft ordinance, attached as **Exhibit B** ("*Inclusionary Ordinance*"); and

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

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

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

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

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

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

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

ARTICLE I – PURPOSE

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

1.2 The Parties agree that the Properties are available, approvable, developable and suitable for the proposed Inclusionary Development and CCRC Development as those terms are used in this Agreement. No representations are made as to sewer capacity associated with the

development of this site except that the Borough is not aware of any sewer capacity issues for these Properties.

ARTICLE II – BASIC TERMS AND CONDITIONS

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

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

ARTICLE III – REZONING

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

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

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

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

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

3.2.1. Definitions.

a. Continuing Care Retirement Community "CCRC":

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

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

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

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

c. Independent Living Unit ("ILU"):

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

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

a. Each ILU shall be considered to be one unit.

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

3.2.3 Increased Density: The Developer may elect to develop up to, but not greater than, 24 units per acre, in accordance with the method of calculation set forth above in Section 3.2.2.a and b; however, in addition to the Non-Residential Development Fee, as set forth in N.J.S.A. 40:55D-8.3, et. seq., the Developer agrees to pay an additional Three Thousand

Dollars (\$3,000.00) for each ILU over 17 units per acre and an Additional Development Fee of One Thousand Dollars (\$1,000.00) for each HCU over 17 units per acre, as set forth more particularly below in this Section 3.2.3 (collectively, the "Additional Fee") into the Borough's Affordable Housing Trust Fund. One half of the payment of the Additional Fee shall be due at the time of the application for the building permit, and the balance shall be due prior to the issuance of the certificate of occupancy. The computation of density over which the Additional Fee becomes payable, and payment of the Additional Fee, shall be in accordance with the following provisions:

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

the total number of permitted units, based on assumed acreage of 24.6 acres, is 590 (=24 units/acre x 24.6 acres). Therefore, the 540 ILU's and 108 HCU's are permitted, as they represent 576 units, i.e., less than the 590.

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

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

3.2.4 Parking: Parking for the ILU's within the CCRC Development shall comply with Table 4.4 in the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1, et seq. ("RSIS"), at 1.3 parking spaces per ILU where the number of bedrooms per unit is not shown on the plan, N.J.A.C. 5:21-4.14; and

parking for all HCU's shall be governed by the Nursing Home requirement in New Providence Ordinance 2013-11 (1 parking space for each 2 beds), all subject to such relief as may be granted under RSIS, including de minimis relief under N.J.A.C. 5:21-3.1.

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

ARTICLE IV - DEVELOPER OBLIGATIONS

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

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

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

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

other UHAC requirements and the requirements of the Court, COAH, or a successor agency as to the affordability of the units; (ix) addressing any reasonable monitoring requirements as may be imposed on the Borough with respect to the affordable units. For the purposes of this subparagraph, Parties assume current UHAC regulations and COAH Round 2 regulations (N.J.A.C. 5:93-1, et seq.) shall control.

- 4.3.2 In accordance with N.J.A.C. 5:80-26.11 each Affordable Unit shall remain subject to affordability controls for a minimum 30 year control period and until the municipality in which the unit is located elects to release the unit from such requirements.
- 4.3.3 The Parties agree that the Affordable Units are to be included in the Compliance Plan to be approved and credited by the Court in the Compliance Action and treated as age restricted affordable rental units, and that the credits will be applied as the Borough deems fit.
- 4.3.4 Developer will cooperate with and support the Borough's subsequent request for entry of a judgment of compliance provided that the Borough's Compliance Plan includes the Property consistent with this Agreement and will support the settled upon fair share, including any vacant land analysis and/or realistic development potential analysis.
- 4.3.5 Developer shall comply with the following distribution of very-low, low-, and moderate-income units in the Inclusionary Development: very-low (at least 13%) / low (up to 37%) / moderate (no more than 50%). The breakdowns shall therefore be as follows: at least 8 will be very-low, up to 22 will be low, and up to 29 will be moderate.

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

ARTICLE V - OBLIGATIONS OF THE BOROUGH

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

Upon introduction of such Ordinances (the "Rezoning Ordinances"), the Borough shall refer the Rezoning Ordinances to the Planning Board for review and recommendation in accordance with the provisions and requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et. seq ("*MLUL*") or otherwise in accordance with the time frames that may be set by

the Court at the Fairness Hearing. The Rezoning Ordinance for the 100 Mountain Avenue Property shall be adopted by the Borough prior to the Borough seeking and the court granting a Judgement of Compliance and Repose.

5.2 Obligation To Include Project Into Borough's Affordable Housing Plan.

The Borough shall incorporate the Inclusionary Development and, as appropriate, the CCRC Development, into the Compliance Plan for which it seeks the Court's approval.

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

5.4 Obligation to Maintain Proposed Re-Zoning of Property: The Borough agrees that if a decision of a court of competent jurisdiction in Union County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an affordable housing obligation for the Borough for the period 1987-2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Borough shall nonetheless implement the Rezoning Ordinances contemplated by this Agreement and take all steps necessary to support the development of the Inclusionary Development and CCRC Development contemplated by this Agreement.

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

ARTICLE VI – MUTUAL OBLIGATIONS

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

6.2 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the introduction and adoption of the Rezoning Ordinances, the

Required Approvals, the development of the Linde Properties consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.3 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (“*Notice[s]*”) shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by facsimile or electronic mail. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days’ notice as provided herein:

TO LINDE: Murray Hill LLC as successor to Linde North America, Inc.
John Mark, Esq.
200 Somerset Corporate Blvd.
Suite 7000
Bridgewater, NJ 08807
Phone: 908-771-4752
E-mail: john.mark@linde.com

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

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

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

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE VII - MISCELLANEOUS

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

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

7.3 Severability: Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

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

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

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

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

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

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

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

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

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

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

7.11 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with

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

7.12 Intentionally Left Blank

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

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

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

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

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

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

[Signature Page to Follow.]

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


Attest:

**MURRAY HILL, LLC. as successor to
LINDE NORTH AMERICA, INC.**

By: Linde Gas North America, LLC, sole member


Name: Craig M. Gianetti, Esq.

**CRAIG M. GIANETTI
Attorney at Law of New Jersey**

By: 
Name: John Mark, Esq.
Title: Secretary

Date: March 29, 2019

Attest:

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

Name:

By: _____
Name:
Title:

Date: _____, 2019

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

Attest:

**MURRAY HILL, LLC. as successor to
LINDE NORTH AMERICA, INC.**

By: Linde Gas North America, LLC, sole member

Name: _____

By: _____


Name: John Mark, Esq.

Title: Secretary

Date: _____, 2019

Attest:

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


Name: WENDI B. BARRY, CLERK

By: _____

Name: ALLEN MORGAN

Title: MAYOR

Date: 4/1/19, 2019

EXHIBIT A

CONCEPT SITE PLAN FOR INCLUSIONARY DEVELOPMENT



DEVELOPMENT PROGRAM

| | |
|--------------------------|---------------------------------|
| TOTAL ACRES: | 21.5 ACRES |
| TOTAL DU per AC: | 13.8 DU/AC |
| TOTAL NO. DU: | 297 DU |
| TOWNHOMES: | 50 DU |
| • TYPICAL UNIT | 28x35 (INTERIOR) 32x35 (END) |
| APARTMENTS: | 247 DU |
| • BUILDING TYPE "A" | 112 DU |
| • BUILDING TYPE "B" | 59 DU |
| • BUILDING TYPE "C" | 32 DU |
| • BUILDING TYPE "D" | 44 DU |
| • TYPICAL UNIT | 1,050 SF |
| BUILDING HEIGHT | |
| • TOWNHOMES | 2 1/2 STORIES |
| • BUILDING TYPE "A,B" | 4 STORIES RESIDENTIAL |
| • BUILDING TYPE "C,D" | OVER 1 LEVEL PARKING |
| PARKING: | |
| • TOWNHOMES (2.4 SP/DU) | 502 SP |
| • APARTMENTS (1.8 SP/DU) | 123 SP |
| • CLUBHOUSE | 451 SP |
| • TYPICAL UNIT | 10 SP |

EXHIBIT B

DRAFT REZONING ORDINANCE

Planned Adult Community (PAC)

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

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

- B. Definitions:

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

- C. Principal permitted uses:

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

- D. Permitted accessory uses:

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

- E. The following bulk standards shall apply:

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

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

I. Buffers

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

J. Signage

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

K. Additional Standards

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

Proposed Ordinance - Linde Property
Borough of New Providence

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

L. Design Standards

Any deviation from the following standards shall trigger waiver relief.

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

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

c. Circulation.

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

d. Utilities.

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

e. Refuse and Recycling.

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

f. Sustainable Building Design

Proposed Ordinance - Linde Property
Borough of New Providence

1. Development shall comply with Energy Star Guidelines.

EXHIBIT C
CONCEPT SITE PLAN FOR CCRC DEVELOPMENT

