Amended Settlement Agreement between the Borough of Chatham and 23 S. Passaic Owner, LLC and 33 S. Passaic Owner, LLC

This settlement agreement is entered into on the 9th day of December 2025 by and between the Borough of Chatham (the "Borough") and 23 S. Passaic Owner, LLC and 33 S. Passaic Owner, LLC (collectively "Owners") in consideration of the mutual promises set forth below;

WHEREAS, on January 28, 2025, the Borough filed a 4th Round declaratory judgment action captioned I/M/O the Application of the Borough of Chatham, Docket No. MRS- L-238-25 (the "**DJ action**"), seeking a determination that it complied with its 4th Round affordable housing obligations under the Amended Fair Housing Act (the "**AFHA**"), and the Borough filed an adopted 4th Round Housing Element and Fair Share Plan (the "**4th Round HEFSP**") in the DJ action on June 19, 2025, and the Borough filed its endorsement of the 4th Round HEFSP in the DJ action on June 24, 2025; and

WHEREAS, on August 27, 2025, Owners filed a challenge to the 4th Round HEFSP ("Owner's Challenge"); and

WHEREAS, Owners are the owner of real property located in the Borough and identified as Block 121, Lots 12 and 13 (the "Property") on the Borough's tax map, which is located in the Borough's B-4 Zoning District; and

WHEREAS, as part of the Borough's Third Round HEFSP, the Borough, in 2016, adopted a zoning ordinance that permits inclusionary development in the B-4 Zone

by Ordinance No. 16-11 adopted on October 24, 2016 (the "Third Round B-4 Ordinance"); and

WHEREAS, to date no affordable housing has been constructed on the Property pursuant to the Third Round B-4 Ordinance; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1(f)(1)(a), the look back provision of the AFHA, the Borough has determined the B-4 Zoning Ordinance applicable to the Property requires modifications to provide for a realistic opportunity for the production of affordable housing on the Property; and

WHEREAS, Owner is amenable to fully and finally resolving Owner's Challenge premised upon the right to construct a 29-unit residential inclusionary development on the Property pursuant to the terms set forth herein; and

WHEREAS, the Parties wish to enter into this Agreement setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Program and County Mount Laurel Judge's approval of this Agreement as part of the DJ Action.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

A. General

1. Owners will present two proposed development options for the property in no more than two (2) meetings to be held in the municipal building which shall be open to the public but for which there will not be a quorum of governing body, planning board and/or Historic Preservation Commission members present. One of the development proposals shall be for a completely residential project and the other

development proposal shall be for a project that includes a ground floor commercial component in accordance with standards referenced in paragraph B.2 below. Owners shall respond to public questions and comments. Owners shall have the right to incorporate comments received at the meeting in its sole discretion. Owners shall participate in a second meeting (if necessary, e.g., if the first meeting is determined to be sufficient by the Owners and the Borough, a second meeting may not be necessary). Borough shall expeditiously schedule each of these meetings to conclude within sixty (60) days of signing this Agreement.

2. In the event of any legal challenges to this Settlement or the Property Ordinance (hereinafter defined and attached hereto as Exhibit B), including a challenge by any third party, the the Parties agree to diligently defend any such challenge and the Parties shall cooperate with each other regarding said defense.
3. The Borough has an obligation to maintain the rezoning of the Property (the Property Ordinance) for the duration of the Fourth Round, to July 1, 2035 and shall not amend the ordinance unless mutually agreed upon by the Parties.
4. Once the Owners apply to the Planning Board for site plan approval, the Owners' application will be referred to the Borough Historic Preservation Commission ("HPC") as set forth in N.J.S.A. 40:55D-110 where the HPC may provide advice to the Planning Board. The Owner shall be required to attend one (1) meeting before the HPC but the Owner may elect to attend a second meeting before the HPC in the Owner's sole discretion.

B. Zoning and Design Standards

1. Mezzanines shall be permitted in market rate units but there shall be no exterior facing windows or patio doors along the pitched exterior of the roof system facing South Passaic, Bowers Lane and Post Office Plaza, above the third floor.
2. If the Borough elects the development proposal which includes a ground floor commercial space, Borough cannot require more than 1,500 SF, and larger space would be in the discretion of the Owners.

Commercial space includes but is not limited to traditional retail, co-working, medical office, professional office, personal services and sale of food or beverage,

3. The amended zoning ordinance shall allow a building height of 3 stories and 42 feet measured to the mid-point of pitched roof. Measurement of building height shall exclude the height of rooftop mechanical equipment, parapets, rooftop appurtenances, elevator shafts, rooftop elevator lobby, stair bulkheads, and/or rooftop pergola and/or rooftop open-air space. The amended zoning ordinance shall provide that the building shall have the appearance of a three-story building and shall specify that any mezzanine will not have exterior facing windows or patio doors along the pitched exterior of the roof system facing South Passaic, Bowers Lane and Post Office Plaza, above the third floor. Pursuant to the International Building Code (the "IBC"), any mezzanines and an elevator lobby consisting of 100 SF are not a story. Additionally, the amended zoning ordinance will permit the building to have roof top amenity space.
4. The amended zoning ordinance shall provide that building height shall be measured from the grade at the mid-point of the property line on South Passaic.
5. The amended zoning ordinance shall provide that rooftop open space can be utilized for an amenity deck.
6. The amended zoning ordinance shall provide for a parking ratio of 1.5 to 1 including electric vehicle (EV) credit (e.g. 44 required spaces can be satisfied with 40 physical spaces and 4 EV spaces).
7. The amended zoning ordinance shall provide that there shall be no additional parking requirement for the commercial component, if applicable.
8. Owner shall utilize the hatched area denoted on **Exhibit A attached hereto,** currently designated for use by United Way, for off-street loading and unloading. In exchange, Owner shall provide United Way with one or two parking spaces, as requested by BCUW, in the area currently designated as an access lane to the rear of Owners' property. United Way has advised that this change will be mutually beneficial.

9. The amended zoning ordinance shall provide for the bulk zoning standards currently provided for in the B-4 zone but with the modifications set forth in the bulk/zoning table on **Exhibit B attached hereto** (the "Property Ordinance"). To the extent there is a conflict between the bulk standards set forth in the B-4 zone and the bulk standards set forth in Exhibit B attached hereto, the bulk standards set forth in Exhibit B attached hereto shall control. Finally, the amended zoning ordinance shall provide for the following additional bulk standards:
    i. 100% lot coverage permitted
    ii. 0 foot yard buffer required
    iii. Bay windows can cantilever 2 feet over right of way line above the first floor
10. Streetscape Improvements: The proposed development shall include a minimum of 2,000 SF but no more than 2,300 SF of streetscape enhancement and a parklet between the existing Post Office Plaza parking lot and the proposed building. The Enhancement area shall include portions of the Post Office Plaza site adjacent to the subject property and an easement shall be granted to the Owners to allow these improvements to be constructed. The design of the streetscape improvements shall include landscaping and street trees, hardscape sidewalk, lighting, benches, and approx. 15'x15' landscaped parklet (located closet to S. Passaic Avenue) that are complimentary to the streetscape design along S. Passaic Avenue. A conceptual illustration and example of the intent and the improvement area in question is set forth on **Exhibit C attached hereto,** which shall be subject to modification following landscape/ architect review by Owners. This streetscape enhancement area shall not encroach on any existing parking spaces and shall not result in the loss of any parking spaces.
11. Owner shall design the building to be LEED Silver level but the Owners shall not be, and are not obligated to, obtain a LEED certification because obtaining same will result in unnecessary cost generative requirement. Owners' architect shall provide documentation and complete the LEED score card to confirm the proposed development meets LEED Silver requirements.

C. Affordable Housing Requirements

1. The proposed development that will be constructed by Owners shall be an inclusionary development consisting of a total of no more than 29 units with a 15% set aside for low- and moderate-income units. Four (4) of the no more than 29 units shall be affordable units, and Owners shall make a fractional payment to the Borough's affordable housing trust fund for the 0.35 fractional unit of $63,000.00 (35% of $180,000.00).
    i. If the Borough elects a fully residential project, at Developer's option it may include an additional non-income residential unit to be used solely for Superintendent's occupancy, for a total of 30 units. The inclusion of a Superintendent unit will not require an additional affordable housing contribution, consistent with DCA treatment of such unit designation.
2. The affordable units shall consist of one (1) 1-BR (very low), two (2) 2-BR (1 low and 1 moderate), and one (1) 3-BR (Moderate unit).
3. The size of the affordable units shall be pursuant to Borough Ordinance 165-44 (Studio – 450 SF; 1-BR 600 SF; 2-BR 750 SF; 3-BR 900 SF). If any relief from the DCA or the county Mount Laurel judge is required for these unit sizes, the Borough shall apply for or support an application for such relief regarding affordable unit sizes.

D. Borough's Obligations to Cooperate

1. The Borough is obligated to cooperate with Owners' efforts to obtain any and all necessary and applicable agreements, approvals, and permits from all outside public entities and utilities; such as, by way of example only, Borough of Chatham utility department, the County of Morris, Jersey Central Power and Light, the Morris County Planning Board, the New Jersey Department of Environmental Protection, New Jersey Transit, and the New Jersey Department of Transportation. The Borough agrees to use all reasonable efforts to assist Owner in its undertakings to obtain all these approvals.

2. It is understood that the proposed development will require review by the HPC. The Borough agrees that the HPC's review will be limited to one meeting unless Owners agrees to attend a second meeting but that decision shall be entirely within the discretion of Owners. While the HPC is not a party to this agreement, the Borough will request the HPC to expeditiously schedule Owners application for a meeting.
3. The Borough and the Planning Board shall not impose any unnecessary cost generative requirements on the proposed development. "Unnecessary cost generative requirements" are defined as those requirements referenced in N.J.A.C. 5:93-10.2(a)(1) thru (6).
4. Owners agree that all of the provisions set forth above which shall be included in the amended zoning ordinance that the Borough will adopt for the property and which apply to the proposed development are not unnecessary cost generative requirements.
5. While the Planning Board is not a party to this agreement, the Borough will request the Planning Board process Owner's applications with reasonable diligence, expedite the processing of Owner's development applications, and cooperate in scheduling special meetings, if necessary.

E. Utilities

1. The Borough represents there is adequate potable water and sewer capacity to service the proposed project.

F. Procedure

1. The Parties will jointly present this settlement agreement and proposed ordinance to the Program for review and approval by the Program and County Mount Laurel Judge. If the Program and County Mount Laurel Judge approve this settlement agreement, Owners shall withdraw the Owners' Challenge within 48 hours of the approval of this settlement agreement. As it pertains to the Property, Owner shall not directly or indirectly oppose or undertake any action to interfere with the Program or Court's adjudication of the Borough's 4th Round HEFSP, or the entry of a

Final Judgment regarding same. Owner shall also not directly or indirectly oppose or undertake any action to interfere with the Program or Court's approval and/or implementation of the 4th Round HEFSP, as it may be amended in any form, unless the 4th Round HEFSP deprives Owner of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede Owner from securing such approvals as it needs to develop the Property as set forth herein and pursuant to the Property Ordinance.

2. The Borough shall adopt the amended zoning ordinance required under this settlement agreement no later than March 15, 2026.

3. In the event of any legal challenges to the Court's approval of this Agreement including a challenge by any third party, the Parties agree to diligently defend any such challenge and the Parties shall cooperate with each other regarding said defense.

On behalf of the Borough of Chatham, with the authorization

of the governing body:

Carolyn Dempsey December 9, 2025

Carolyn Dempsey, Mayor

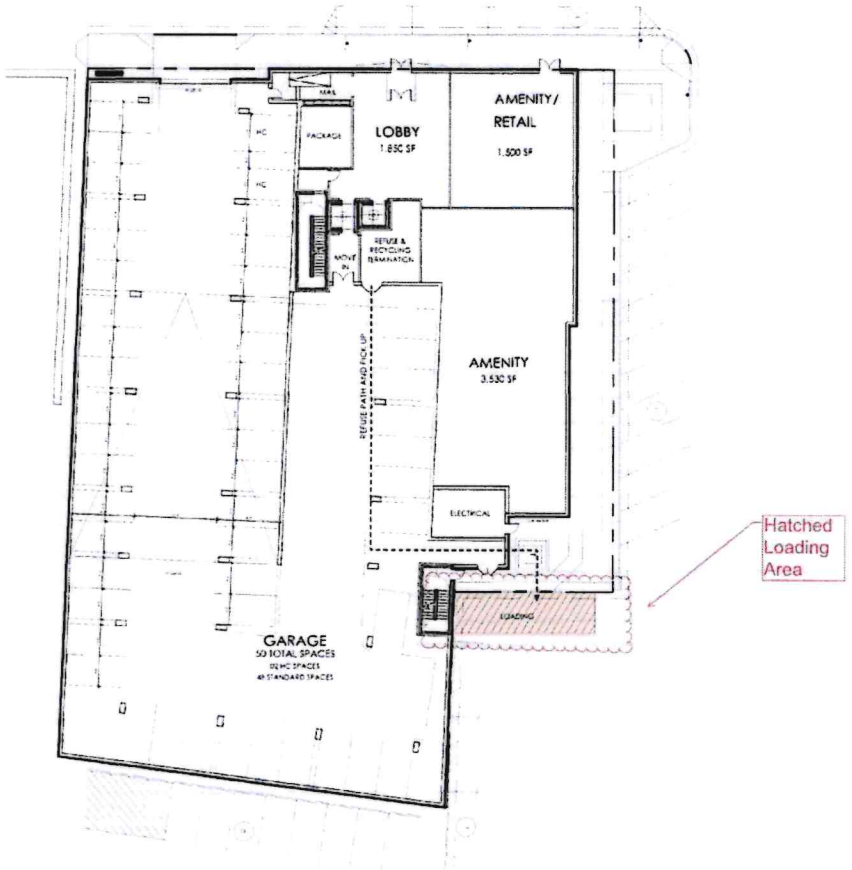
On behalf of 23 S. Passaic Owner, LLC and
33 S. Passaic Owner, LLC

Jacob Feldman, Authorized Signatory

LOADING AREA PROPOSAL

EXHIBIT A

SOUTH PASSAIC AVENUE



01 GROUND FLOOR PLAN
SCALE: 1/16" = 1'-0"
0 8 16 32

CONCEPT PLANS
DATE: 11/03/2023

MINNO WASKO
ARCHITECTS AND PLANNERS
80 LAMBERT LANE, SUITE 105, LAMBERTVILLE, NEW JERSEY 08530 MINNOWASKO.COM
TWO GATEWAY CENTER, SUITE 1700, NEWARK, NEW JERSEY 07102

VERTICAL REALTY CAPITAL | S. PASSAIC AVE
CHATHAM, NEW JERSEY
14-07320-04
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EXHIBIT B

EXHIBIT B: SETTLEMENT ZONING CHART		
PERMITTED USES: RESIDENTIAL / COMMERCIAL PERMITTED ACCESSORY USE: ELECTRICAL TRANSFORMER		
ORD. SECTION	**STANDARD**	**REQUIRED**
SETTLEMENT	MAX. LOT COVERAGE (%)	100
SETTLEMENT	MAXIMUM BUILDING COVERAGE (%)	100
SETTLEMENT	MIN. YARD BUFFER (FT)	0
SETTLEMENT	MIN. FRONT YARD SETBACK (FT)	0
SETTLEMENT	MIN. REAR YARD SETBACK (FT)	0
SETTLEMENT	MIN. SIDE YARD SETBACK (FT)	0
SETTLEMENT	MAX. HEIGHT (FT) (1)	42
SETTLEMENT	MAX. STORIES	3
SETTLEMENT	MAXIMUM BAY WINDOW PROJECTION INTO RIGHT-OF-WAY (FT)	2
SETTLEMENT	MINIMUM PARKING RATIO (SPACES PER RESIDENTIAL UNIT)	1.5
SETTLEMENT	MINIMUM VISITOR PARKING SPACES	0
SETTLEMENT	MINIMUM PARKING SPACES- COMMERCIAL USE	0
SETTLEMENT	ELECTRICAL VEHICLE PARKING	PER STATE ORDINACE
SETTLEMENT	MINIMUM GARAGE AISLE WIDTH (FEET)	24
SETTLEMENT	MAXIMUM DRIVEWAY WIDTH (FEET)	24
SETTLEMENT	STANDARD PARKING STALL WIDTH (FEET)	9
SETTLEMENT	STANDARD PARKING STALL LENGTH (FEET)	18
SETTLEMENT	MAXIIMUM COMPACT STALLS (%)	10
SETTLEMENT	COMPACT PARKING STALL WIDTH (FEET)	8
SETTLEMENT	COMPACT PARKING STALL LENGTH (FEET)	16
SETTLEMENT	MINIMUM BICYCLE PARKING (GARAGE)	1 bicycle per 10 required off street spaces
SETTLEMENT	MINIMUM BICYCLE PARKING (EXTERIOR)	None
SETTLEMENT	SIGNAGE	One sign per use/ tenant. At corner conditions, a secondary sign is permitted for a commercial use. Maximum 25 Sq Ft per sign permitted. Building or canopy mounted signs permitted. Halo or backlit
	(1) BUILDING HEIGHT WILL BE MEAUSRFED FROM THE GRADE AT MID-POINT OF THE PROPERTY LINE ON SOUTH PASSAIC AVENUE (I.e 229.9), BUILDING HEIGHT WILL BE MEASURED TO THE MIDPOINT OF A PITCHED ROOF STRUCTURE. Measurement of Building Height exlcudes mechanical equipment, parapets, rooftop appurtenances, elevator shafts, elevator lobby, stair bulkheads, or rooftop pergola or open-air space.	

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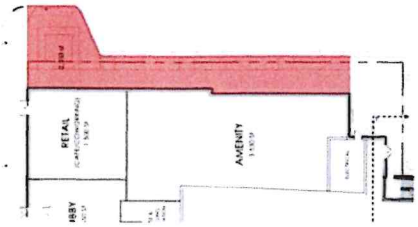
EXHIBIT C



SUBCHAPTER 10 COST GENERATION

5:93-10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52.27D-301 et seq.) incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

5:93-10.2 Standards

(a) In reviewing fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building set-backs, spacing between buildings, impervious surface requirements and open space requirements;

2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive road width, pavement specifications and parking requirements;

4. Excessive requirements for sidewalks and paved paths;

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.