MEDIATION AGREEMENT FAIR SHARE HOUSING CENTER AND THE BOROUGH OF CHATHAM

In the Matter of the Application of the Borough of Chatham, County of Morris,
Docket No. MRS-L-238-25

WHEREAS, the Borough of Chatham (the "Borough" or "Chatham") filed a declaratory judgment action pursuant to N.J.S.A. 52:27D-301, et seq. (the "Fair Housing Act" OF "FHA) on January 28, 2025 which included an adopted and endorsed resolution of participation in the Affordable Housing Dispute Resolution Program (the "Program"); and

WHEREAS, the Court entered an order on April 24, 2025, setting the Borough's Fourth Round fair share obligations as a Present Need of 8 units and a Prospective Need of 181 units, which no party appealed, and ordering the Borough to file a Fourth Round Housing Element and Fair Share Plan ("4th Round HEFSP") by June 30, 2025; and

WHEREAS, the Borough filed its 4th Round HEFSP on June 19, 2025; and

WHEREAS, FSHC filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the 4th Round HEFSP on August 29, 2025; and

WHEREAS, the following other challenges were filed pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the 4th Round HEFSP: (1) 23 South Passaic Owner LLC and 33 South Passaic Owner LLC on August 27, 2025, and (2) Danbro Properties on August 31, 2025; and

WHEREAS, the Borough and FSHC have agreed to amicably resolve the issues set forth in FSHC's challenge through this mediation agreement and present this agreement for review by the Program and referral to the Morris County Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, and the mediation agreement, if approved, will result in a compliance certification for the Borough for the Fourth Round;

THEREFORE, the Borough of Chatham and FSHC agree as follows:

Fair Share Obligations

1. The Borough's Fourth Round Present Need or Rehabilitation Obligation is 8, Prior Round Prospective Need Obligation (1987-1999) is 77, Third Round Prospective Need Obligation (1999-2025) is 337, and Fourth Round Prospective Need (2025-2035) is 181.

Satisfaction of Fair Share Obligations

2. The Borough shall satisfy its Fourth Round Present Need Obligation through participation in the Morris County Housing Rehabilitation Program to identify at least eight (8) units in need of repair and assist income qualified renters and homeowners with funding repairs.
3. The Borough's Prior Round Prospective Need Obligation of 77 was adjusted pursuant to a Vacant Land Adjustment ("VLA") to a 23-unit Realistic Development Potential ("RDP") and has been met with the following mechanisms:

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
Chatham @ Willows (B 106, L 1.34, 11.36, 1.38, 1.40, 1.42, 1.44, 1.46, 1.48)	Family	8		For-Sale	Completed
Willows Courts	Family	2	2	Rental	Completed
River Commons	Family	2	2	Rental	Completed
Chestnut Ridge	Senior	4		Rental	Completed
Averett (B 98, L 2)	Family	1		Rental	Completed
Howardson Property	RCA	2			Completed
Total		**19**	**4**		

4. The Borough's Third Round Obligation is 337, which was adjusted pursuant to a VLA to a 71-unit RDP and has been or shall be met with the following mechanisms:

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
The Ivy (B 135, L 9, 10, 11, and 12)	Family	37	17	Rental	Completed
17-37 Bowers Lane (B 122, L 13 to 17)	Family	5 to 7*		Rental	Zoned
4 Watchung Avenue (B 134 L 1)	Family	6 to 8*		Rental	Zoned
Extension of Expiring Controls (Schindler Court)	Family	8		For-Sale	Completed
*The range is due to the 15% affordable set-aside for rental units and 20% set-aside for for-sale units.					
Total		**56 to 60**	**17**		

a. The Borough's combined Third Round and Prior Round unmet need of 320 affordable units was addressed in accordance with the compliance mechanisms detailed in Paragraph 8 of the June 14, 2021 Settlement Agreement between the Borough and FSHC. Those mechanisms shall be maintained, including the mandatory set-aside ordinance, with the following amendments to increase the likelihood that they shall generate affordable housing to address the Borough's substantial unmet need.

i. **23-33 South Passaic (B 121, L 12 & 13).** 23 South Passaic Owners and 33 South Passaic Owners (collectively, "23-33 South Passaic") filed a challenge to the Township's Housing Element and Fair Share Plan with regards to this site on August 27, 2025. The Borough and 23-33 South Passaic have engaged in ongoing, good faith discussions to include the project in the Borough's Third Round Housing Element and Fair Share Plan

so as to provide 4 affordable family units at the Property. The Borough shall provide FSHC with the compliant bedroom and income distribution, as well as a draft UHAC-compliant deed restriction.

ii. **BCUW (formerly Post Office Plaza) (B 121, L 10-& 17, and B 122, L 1-2 & 13-18).** Chatham Borough has partnered with the Bergen County United Way to construct a 100% affordable 15-unit family, non-age-restricted rental development on B 121, Lot 10. This project obtained all required funding and began construction, but construction has since ceased due to actions by the Department of Community Affairs (DCA"). By January 1, 2026, the Borough shall provide evidence that construction will resume forthwith and provide a realistic plan to confirm that construction will be completed within 2026.

iii. **246 Main Street (B 57, L 19).** The Borough shall provide FSHC with the bedroom and income distribution, as well as evidence of UHAC-compliant deed restriction, for these three (3) affordable units created pursuant to the Borough's mandatory set-aside ordinance.

iv. **Gateway Overlay Zones 1 & 2.** Concerns have been raised as to whether the overlay zoning currently in place for Gateway Overlay Zones 1 & 2, as detailed in the June 14, 2021 First Amendment during the Third Round between FSHC and the Borough, remains adequate to address the Borough's unmet need obligations. In the three (3) year period since the zoning was adopted, no parcel in the overlay zones has redeveloped so not affordable housing has been produced. And the nearest affordable housing redevelopment project in the Borough, The Ivy, redeveloped at a density (54 du/a) and with a redevelopment plan and PILOT for that project. The Borough's professionals take the position that the zoning is adequate but have suggested that the Borough may be willing to consider the possibility of adopting a redevelopment plan for the parcels in the overlay zones to strengthen the potential for affordable housing to be produced. To enable a public presentation and consideration of a redevelopment plan before there is litigation as to this compliance mechanism, the parties agree as follows:

1. The Borough shall have six months from January 1, 2026, to provide public notice of a potential draft redevelopment plan for the overlays and to consider whether it would like to proceed with adopting such redevelopment plan. In other words, by July 1, 2026, the Borough would decide following a public process whether to adopt a redevelopment plan.

   If the Borough decides to adopt a redevelopment plan, it shall provide notice in writing and a copy of the draft plan to FSHC and the New Jersey Superior Court on or before July 1, 2026. FSHC shall have thirty (30) days from receipt of said plan to either

comment/object to its terms or to consent to its adoption. If the parties cannot resolve any objection within that thirty (30) days, the dispute shall be submitted to the New Jersey Superior Court for resolution prior to adoption of the plan.

If the Borough decides not to adopt a redevelopment plan, it shall provide notice in writing to FSHC and the New Jersey Superior Court on or before July 1, 2026. FSHC and any other challenger shall have thirty (30) days from receipt of such notice to object in writing with the New Jersey Superior Court to the adequacy of the existing overlay zones to address the Borough's affordable housing obligations. The New Jersey Superior Court shall resolve any such objection and issue any necessary orders.

5. The Borough's Fourth Round Prospective Need Obligation is 181, which was adjusted pursuant to a VLA to an 5-unit RDP and has been or shall be met with the following mechanisms:

MECHANISM	TYPE	AFF. UNITS	BONUS	TENURES	STATUS
AH-1 Municipally Sponsored 100% Affordable Development (B 56 L 14)	Family	4	1	Rental	Proposed
589 Main Street Inclusionary Development (B 29, Lot 2)	Family	2		Rental	Proposed
311 Main Street Inclusionary Development (B 85, Lot 9)	Family	1		Rental	Proposed
Total		7	1		

a. The Borough's remaining Fourth Round unmet need of 173, including the requirement that at least 25% of the unmet need be addressed with parcels likely to redevelop, shall be addressed as set forth in the Borough's adopted June 2025 Housing Element and Fair Share Plan through three credits from the 311 and 589 Main Street sites, and the B-AHO overlay zone on Block 49, Lots 1, 2, 3 and Block

129, Lots 1, 3, 4. At mid-point review, the Borough shall provide FSHC with any update towards progress of redevelopment.

Unit Type and Income Distribution Requirements

6. The Borough and FSHC agree that the Borough's HEFSP as presented above satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to, with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:

    a. Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation exclusive of any bonus credits.

    b. Family units. Pursuant to N.J.S.A. 52:27D-211(l), the Borough shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to Section 21 of P.L.1985, c.222 (C.52:27D-321).

    c. Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Prospective Need affordable housing obligation shall be addressed through rental housing, including at least half as available to families with children.

d. Very low-income units. Pursuant to N.J.S.A. 52:27D-329.1, 13 percent of all affordable units referenced in this Agreement addressing the Borough's Prospective Need obligation shall be very low-income units for households earning 30 percent or less of the regional median income, with half of the very low-income units being available to families.

e. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and (b), and all other applicable law.

f. All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the Borough, statutory requirements, and the Prior Round and Third Round regulations.

7. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the below terms shall apply:

a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.

b. The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior round of obligations modifying UHAC as to affordability

controls longer than the now current regulations or as to very low-income units shall remain in effect as to those prior rounds of obligations.

c. The Borough agrees that in order to meet the low-income and very low-income requirement of the Fair Housing Act, it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that 50 percent of the affordable units within each bedroom distribution shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low-income households earning 30 percent or less of the regional median income.

d. The Borough agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.

e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law The affirmative marketing plan shall include the following community and regional organizations: FSHC; Newark NAACP, Morris Co. NAACP, East Orange NAACP, the Latino Action Network; Housing Partnerships for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc.., and the Supportive Housing Association.

Process for Approval and Implementation

8. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:

    a. The Borough and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.

    b. The Program Member shall review the agreement and if satisfied with compliance with the Fair Housing Act shall refer this matter to the Mount Laurel judge for review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.

    c. The Borough shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 9 and any other adopted ordinances and resolutions on eCourts.

    d. No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting a conditional compliance certification, contingent on the issue reserved pursuant to paragraph 4(a)(iv), for the Court's review or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.

e. The Borough shall have until July 1, 2026 to decide whether to follow the process outlined in paragraph 4(a)(iv) in accordance with the terms therein as to the Gateway Overlay Zones 1 & 2 District and all parties reserve their rights as set forth in said paragraph.

f. Both parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.

9. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of a conditional-compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 1, 2026:

   a. The Borough shall provide revised draft zoning for Block 56, Lot 14; Block 29, Lot 2; Block 85, Lot 9; 23-33 South Passaic (B 121, L 12 & 13); and the Business Affordable Housing Overlay District in accordance with the terms herein by January 1, 2026 for comment, and adopt these zoning ordinances by no later than March 15, 2026.

   b. The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99.

c. The Borough will update and adopt its affordable housing ordinance, development fee ordinance, affirmative marketing plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., and N.J.A.C. after they are adopted and before March 15, 2026.

10. The Borough's Conditional-Compliance Certification shall be subject to required ongoing monitoring as follows:

a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.

b. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

c. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.

11. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate

in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

On behalf of the Borough of Chatham:

Date: Dec. 8, 2025

On behalf of Fair Share Housing Center:

Adam M. Gordon, Esq.

Date: December 3, 2025