

**MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE  
RESOLUTION PROGRAM**

In the Matter of the Application of the Borough of Monmouth Beach, County of Monmouth  
Docket No. MON-L-298-25

**WHEREAS**, the Borough of Monmouth Beach (the “Borough” or “Monmouth Beach”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. Seq. (the “Fair Housing Act”) on January 23, 2025; and

**WHEREAS**, the Court entered an order on April 1, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 0 units and a Prospective Need of 47 units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, the Borough having filed its HEFSP on June 26, 2025 ( the “HEFSP”); and

**WHEREAS**, FSHC having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 30, 2025; and

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

**THEREFORE**, the Borough and FSHC agree as follows:

## **Fair Share Obligations**

1. The Borough's Present Need or Rehabilitation Obligation is 0, the Borough's Prior Round Obligation (1987-1999) is 70, the Borough's Third Round Obligation (1999-2025) is 123, the Borough's Fourth Round Prospective Need (2025-2035) is 47.

## **Satisfaction of Fair Share Obligations**

2. The Borough's Prior Round Obligation was adjusted via a court-approved Vacant Land Adjustment to an RDP of 7 units for its combined Prior and Third Round and has been met with the following mechanisms:
  - Market to Affordable Program— 4 units and 1 bonus credit for 5 total credits. See adjustments to this requirement in the Fourth Round Prospective Need Section below.
  - 37 Wharfside (completed) – 1 unit. The Borough purchased this condominium unit and leases it to a very low-income household.
3. The Borough's Third Round Unmet Need Obligation of 185 units has been met with the following mechanisms, which shall continue into the Fourth Round:
  - Affordable Housing Overlay Zone (Lots 32 and 33 in Block 26, Lots 19, 20.01, and 21.01 in Block 27, and Lots 26 and 29-38 in Block 45).
  - Borough-Wide Set-Aside Ordinance with a twenty percent set aside.
  - Development Fee ordinance.
4. The Borough's Fourth Round Prospective Need Obligation is 47, with an RDP of 0. The parties agree that the Fourth-Round unmet need shall be addressed with the following mechanisms:

MECHANISM	TYPE	UNITS	TENURES	STATUS
Market to -Affordable- Purchase one 1- bedroom unit and one 2-bedroom unit within the Wharfside Development and deed restrict and sell/lease as an affordable housing unit.		2		To be done.

The Borough shall purchase one 1-bedroom unit and one 2-bedroom unit in the Wharfside Development and either sell and/or rent them to 1 moderate income household and 1 low-income household. FSHC and the Borough agree that these purchases and subsequent buy-down shall satisfy the RDP from the Third Round.

Wharfside overlay Zone. The Borough shall adopt the Wharfside Drive Affordable Housing Overlay zone which will allow for inclusionary affordable housing development for sale or rental housing, the density of which shall not be more than 20 units per acre with a bedroom mix of affordable housing units subject to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. on the property designated as Block 13, Lot 9.01 on the tax map of the Borough of Monmouth Beach.

#### Unit Type and Income Distribution Requirements

1. 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.
2. 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; the Latino Action Network; the New Jersey State Conference of the NAACP, the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton Branches of the NAACP, Senior Citizens United Community Services (SCUCS), Solutions To End Poverty Soon (STEPS), OCEAN, Inc. and the Supportive Housing Association.

#### **Process for Approval and Implementation**

3. 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 3 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 final compliance certification 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. 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.

4. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by February 1, 2026:
  - a. The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the regulations at N.J.A.C. 5:99.
  - b. The Borough will adopt the ordinance establishing the Wharfside Overlay ordinance.
  - 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 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.
5. The Borough and FSHC recognize that substantial changes in circumstances affecting the Borough's RDP are possible pursuant to the holding in *Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393, (2002) and related law. In the event such a substantial changed circumstance occurs, the Borough shall have one hundred twenty (120) days to present to the trial court and FSHC a plan to address such change in circumstances on notice and opportunity to be heard from FSHC. The Borough agrees that any additional RDP generated due to changed circumstances must be addressed in a manner that is consistent with controlling law.
6. The Borough's Compliance Certification shall be subject to required ongoing monitoring as follows:

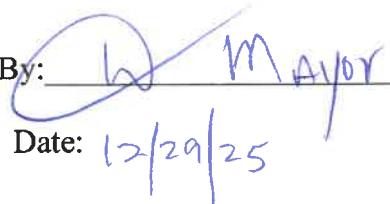
- a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential 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 1<sup>st</sup> to December 31<sup>st</sup>. This reporting shall also include a status of the Borough's purchasing of the market-to-affordable units pursuant to the above.
- 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. The parties agree to address the status of the Wharfside Overlay zone in two years following the granting of compliance certification. Should the Overlay have failed to produce affordable housing units in that two year period, the parties agree to work in good faith to identify other sources of potential affordable housing

production, including but not limited to identifying potential sites or units for a group home or special needs services with a reputable service provider.

- d. 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.
7. 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.

**BOROUGH OF MONMOUTH BEACH**

By:  Mayor  
Date: 12/29/25

**FAIR SHARE HOUSING CENTER**

By: Laura S. Smith-Denker, Esq.  
Date: 01/06/2025