

**RESOLUTION
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RESOLUTION OF THE BOROUGH OF KENILWORTH, COUNTY OF UNION, AUTHORIZING THE MAYOR TO EXECUTE A MEDIATION AGREEMENT BETWEEN THE BOROUGH OF KENILWORTH AND FAIR SHARE HOUSING CENTER

WHEREAS, pursuant to the March 2024 amendments to the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (the “FHA”), the Borough of Kenilworth (hereinafter “Borough”) filed a Declaratory Judgment Action on January 16, 2025 with the Affordable Housing Dispute Resolution Program (hereinafter “the Program”) and the Court; and

WHEREAS, in order to maintain immunity from all Mount Laurel lawsuits, the Borough was required to prepare a Fourth Round Housing Element and Fair Share Plan (the “Fourth Round HEFSP”), which the Borough’s Planning Board adopted, the Borough Council endorsed, and the Borough submitted to the Program and the Court for review on June 25, 2025; and

WHEREAS, Fair Share Housing Center (“FSHC”) filed a challenge with the Program and the Court to the Borough’s Fourth Round HEFSP on August 31, 2025; and

WHEREAS, in order to resolve FSHC’s challenge before the Program and the Court, the Borough and FSHC negotiated a settlement and drafted a Mediation Agreement, which outlines a global settlement between the Borough and FSHC, and sets forth certain deadlines that must be met by the Borough moving forward in the process, so that the Borough can obtain a Compliance Certification approving its Fourth Round HEFSP, which will give the Borough immunity from all Mount Laurel lawsuits, including builder’s remedy lawsuits, through July 1, 2035; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF KENILWORTH:

That the Borough Council hereby authorizes and directs the Mayor of the Borough of Kenilworth to execute the Mediation Agreement between the Borough and Fair Share Housing Center, which is attached hereto as Exhibit A.

	MOVED	SECONDED	YES	NAY	ABSTAIN	ABSENT	
Councilman Patrick Boyle			x				
Councilman Joseph Finistrella	x		x				
Councilwoman Toni Giordano Picerno		x	x				
Councilman William Mauro			x				
Councilman Douglas Piper			x				
Councilman Savino Scorese			x				
Mayor Linda Karlovitch							
ON CONSENT AGENDA	Yes			No	x		

I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Kenilworth at a Meeting held on Dec. 10, 2025.


Laura Reinertsen, Borough Clerk



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Exhibit A

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

In the Matter of the Application of the Borough of Kenilworth, County of Union
Docket No. UNN-L-235-25

WHEREAS, the Borough of Kenilworth (the “Borough” or “Kenilworth”) 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-391 et. seq. (the “Fair Housing Act”) on January 16, 2025; and

WHEREAS, the Court having entered an order on March 27, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 35 units and a Prospective Need of 208 units, which no party appealed, and ordered 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 25, 2025 (“Adopted 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 31, 2025; and

WHEREAS, the Borough and FSHC have agreed to amicably resolve the issues set forth in the FSHC 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; and

THEREFORE, the Borough and FSHC agree:

Fair Share Obligations

1. The Borough’s Present Need or Rehabilitation Obligation is 35, the Borough’s Prior Round Obligation (1987-1999) is 83, the Borough’s Third Round Obligation (1999-2025) is 271, and the Borough’s Fourth Round Prospective Need (2025-2035) is 208.

Satisfaction of Fair Share Obligations

2. The Borough will address its Present Need obligation through participation in the Union County Home Improvement Program.

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3. For the Fourth Round, the Borough has conducted a Vacant Land Adjustment (“VLA”) which shows the Borough has a Realistic Development Potential (“RDP”) of 31. The Borough has a combined Prior Round, Third Round, and Fourth Round unmet need of 531.
4. The Borough will address its Fourth Round RDP of 31 as follows:

MECHANISM	LOCATION	TYPE	UNITS	BONUS	TENURES	STATUS
25 North 26 th Street Redevelopment Plan	Block 183, Lot 9	Redevelopment – Family Rentals	25	6	Rental	Adopted*
Total			25	6		

**The Borough submitted a letter to the Program and the Court on August 21, 2025 that included the adopted Redevelopment Plan for the site, along with a Redevelopment Agreement, a PILOT Agreement and a consistency review for the site.*

5. The Borough will address its combined Unmet Need of 531, through the following mechanisms:

MECHANISM	LOCATION	TYPE	UNITS	TENURES	STATUS
North Michigan Ave Overlay Zone* (20 units / acre & 20% set-aside)	North Michigan Ave (22.71 total acres)	Inclusionary	91	TBD	Proposed
Market Street Overlay Zone (20 units / acre & 20% set-aside)	Market Street (14.47 total acres)	Inclusionary	57	TBD	Proposed
West Sumner Avenue Overlay Zone (20 units / acre & 20% set-aside)	West Sumner Avenue (12.28 total acres)	Inclusionary	46	TBD	Proposed
Mark Road Overlay Zone (20 units / acre & 20% set-aside)	Mark Road (39.74 total acres)	Inclusionary	159	TBD	Proposed
Mandatory Set-Aside Ordinance (MSO)	Borough-wide	MSO		TBD	Drafted**

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** A minimum of 11.25 acres from the North Michigan Avenue Overlay Zone are considered “likely to redevelop” to satisfy the minimum 25% “likely to redevelop” requirement of the Borough’s Fourth Round Unmet Need in accordance with the Amended Fair Housing Act.*

*** The draft of the Mandatory Set-Aside Ordinance was included in the Borough’s HEFSP as Appendix G. The draft ordinance includes a 20% set aside for both rental and for-sale units.*

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, 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.

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- 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 applicable Prior Round and Third Round regulations.
7. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a trial court order, 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 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 said ordinances comply 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

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applicable law. The affirmative marketing plan shall include the following community and regional organizations: FSHC; the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206).

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 amended Fourth Round HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a Fourth Round Compliance Certification, as follows:
 - a. The Borough and FSHC shall present this mediation agreement to the Program member for review, subject to final execution by FSHC and an authorized representative of the Borough, once a resolution is adopted by the Borough Council authorizing the execution of the mediation agreement within thirty days of presentation to the Program.
 - 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 a Compliance Certification, 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 Paragraph 9. No later than March 15, 2026, the Borough shall file the information required by Paragraph 9, along with any other relevant 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 final Fourth Round Compliance Certification for the Court's review, or identify any remaining issues of compliance that may still be disputed, at which point the court shall schedule a case management conference to review any such disputes.

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- 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.
9. The Borough and FSHC agree that the 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 January 9, 2026. FSHC shall provide feedback by February 2, 2026:
 - a. The Borough shall provide draft zoning for the North Michigan Avenue Overlay Zone, Market Street Overlay Zone, the West Sumner Avenue Overlay Zone and the Mark Road Overlay Zone by January 9, 2026 and adopt it by 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 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 the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2035. 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.

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11. 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 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.
12. 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

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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.

Attest:

BOROUGH OF KENILWORTH

Print Name:

By: _____

Date: _____

Attest:

FAIR SHARE HOUSING CENTER

Print Name:

By: _____

Date: _____