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EDEN LANE CONDOMINIUM ASSOCIATION, INC., Plaintiff, -vs- TOWNSHIP OF HANOVER, a Municipal Corporation of the State of New Jersey, AYSHA AND SHAHIDA AKBAR, TACHUN LIN AND JENYI LIN-CHERN, SHASHI AND MANISH MAL MOTRA, SONG AND YUNCHUNG LEE, TRACY CROTTY, DIANE UJFALUSSY, PATRICIA BARISCIANO, VASILIOS A. TSINONIS, MICHAEL BATTISTA, ALEXANDER DEROSE, LAUREN CAPAVANNI, SAMUEL VASSALLO, ALBERT HAINES, JR., JERROLD MICHAEL KLAUS, LORI CONVERSO, MOHEB ABDOU AND MIRA KALDAS, DAVID FERRIGNO, STEPHANIE TASIN, MARY WOTASEK, FAINA PASICHENKO, MARY JO SENKIER, KEVIN AND HUNG HUYNH, HOLLY GROSSO, JUSTIN YEN, NEREIDA ROSADO, GINA GONDEVAS, NILESH AND KRUTI MEHTA, PHAN HUYNH, JOSEPHINE MCKENNA, ROBIN PRUSIN, TAMMY TILLETT, JOSEPH ECHANDIA, DONNA MELILLO, DONNA M. RIZZO, MARISA DEL SORDI, ADELE KOZLOWSKY, JOHN ENGLE, JESSICA SELLITTO, MADELINE LUCIVERO, KARLENE GREEN, MARC T. SIEKA, BERNADETTE QUIOGUE, LUZ DIVINA CRUZ, HETAL PATEL, MICHAEL	**SUPERIOR COURT OF NEW JERSEY, LAW DIVISION – MORRIS COUNTY** **CIVIL ACTION** DOCKET NO.: MRS-L-000413-23

AND CYNTHIA WYDNER, NICOLE AND MICHAEL CRAIG, ALEJITA ORTIZ, ROSEANNE TINEBRA, BARBARA GREENBERG, TRUDI WITTENBERT, MARY NEMEC, ANNETTE DOBBS, JOHN AND TERRY STOLFI, MICHAEL RICCARDI, WILLIAM KEYSER, JOY CAPRONI, VICTOR RISTOPPIA, PRITI SITWALA, DEBRA HENDLER, GLORIA M. BORGES, ADRIAN S. CLEMENTE, SUSAN MAZZARELLA, PRASANTA AND NIHARIKA DAS, RAJKUMARI GAUR, TERRY A STELLA, AND RAJENDRA GANDHI,

Defendants.

TOWNSHIP OF HANOVER, a municipal body of politic and corporate governed and organized under the laws of the State of New Jersey,

Counterclaim Plaintiff,

-vs-

EDEN LANE CONDOMINIUM ASSOCIATION, INC,

Counterclaim Defendant(s).

DEFENDANT/COUNTERCLAIM PLAINTIFF TOWNSHIP OF HANOVER'S TRIAL BRIEF

Of Counsel & On the Brief:
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Township of Hanover

Dated: June 27, 2025

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PRELIMINARY STATEMENT

50 years ago, the New Jersey Supreme Court decided S. Burlington Cty. NAACP v. Township of Mount Laurel ("Mt. Laurel I"), 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808 (1975). Coincidentally, Mt. Laurel I was decided in the face of a significant National and State housing shortage; yet, while Mt. Laurel I was winding through the New Jersey Courts, President Nixon abruptly suspended all federal housing subsidy programs in January 1973.

Now, this Court is faced with the same housing shortage once again. As Plaintiff's counsel has repeatedly argued throughout the State's new Affordable Dispute Resolution Program, this Court cannot stand by idly and allow for the loss of any affordable housing. (See 159 Challenges filed by Plaintiff's Counsel on behalf of the New Jersey Builder's Associations in February 27, 2025). These are the realities of our time once again. It is precisely why the Council on Affordable Housing (COAH) declared existing affordable units to be a "precious resource" that municipalities must have the first right to preserve and protect in 1989. It is exactly why the New Jersey Appellate Division held "[e]xtending affordability controls on existing housing prevents the loss of much needed affordable housing." In re N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 84 (App. Div. 2007).

The reality of this case is that the Court is called upon to decide whether a municipality has the right to protect and preserve its affordable housing stock, and the interests of its low-and-moderate income resident owners thereof, from the callous and indifferent actions of an overreaching condominium association. For the Eden Lane Condominium Association ("Plaintiff") to argue otherwise is nothing short of a disingenuous attempt to confuse this Court on the facts and the law.

Ignoring the uncontested fact that each of the 66 Affordable Units in the Eden Lane inclusionary development are "95/5 units" first constructed in 1993; Plaintiff attempts to hide its

brazen actions through the cloak of a declaratory judgment action in a contrived and round-about attempt to have the Court either overlook or overturn the Township's legitimate actions to preserve the continued affordability of this precious resource.

Indeed, Plaintiff would have the court disregard that at least 64 of the 66 Affordable Unit owners all wish to maintain the affordability controls on these units, and the benefits that come with it.

In order for Plaintiff to succeed, this Court must overturn: the Township's actions to extend the affordability controls on these Affordable Units in 2018; the Township's ordinances adopted to protect and preserve the Affordable Units in Eden Lane; and this Court's prior decision affirming and approving the Township's actions to extend the affordability controls and preserve the maintenance fee rates for these Affordable Units.

Instead, Plaintiff attempts to side-step these issues, through hollow legal arguments based on wholly inapplicable non-binding case law on rental units, units constructed and sold/rented well before the first affordability control regulations came into existence in 1989; and cases concerning deed restrictions on flag lots relying on an outdated restatement of restrictive covenants that New Jersey Courts no longer follow.

When consideration is given to the factual evidence about the Eden Lane Affordable Units and New Jersey regulatory history on affordability controls, Plaintiff's arguments quickly fall apart. The conclusion becomes inescapable that the Township has veritably had the right to extend the affordability controls on its existing affordable housing stock since the first iteration of the regulations pertaining to the "Controls on Affordability" were adopted by the Council on Affordable Housing (COAH) effective July 17, 1989 — ***over four years before construction on the first of the 66 Affordable Units in Eden Lane was completed in August of 1993.***

Since July 17, 1989 the regulation, known as the "Municipal rejection of the repayment option" has been set forth in each iteration of COAH's regulations ((see N.J.A.C. 5:92-12.8 (effective July 17, 1989), N.J.A.C. 5:93-9.9 (effective June 6, 1994), N.J.A.C. 5:94-4.16 (effective December 20, 2004); N.J.A.C. 5:97-6.14 (effective June 2, 2008)); and every iteration of the Housing and Mortgage Finance Agency's Housing Affordability Controls ("UHAC'), including at N.J.A.C. 5:80-26.25 (effective December 20, 2004, and readopted without change effective December 20, 2010 and October 16, 2017, respectively).

At present, the regulation currently exists virtually unchanged under the HMFA's December 20, 2024 iteration of the UHAC, and is merely recodified at N.J.A.C. 5:80-26.26 under the title "Municipal rejection of repayment option on 95/5 units."

In case of any doubt, last year the Legislature amended the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., when it adopted L. 2024, c.2. At that time, the Legislature also made clear by statute, the municipality's long-permitted right to extend the affordability controls on its existing affordable housing stock at N.J.S.A. 52:27D-321f and N.J.S.A. 52:27D-311a.

Through smoke and mirrors, Plaintiff would also this Court ignore the real-life consequences of Plaintiff's purported "equalization." Meanwhile, Plaintiff has failed to provide any evidence to establish that its capital reserves for Eden Lane were underfunded or that it was in financial disarray. Rather, the reality is Plaintiff has significant capital reserves for the continued maintenance of the common areas of Eden Lane. The reality also is, if Plaintiff is awarded its requested relief, the cost of living for *each* of the 66 low-and moderate-income families would abruptly increase by approximately $243 monthly and $3,000 annually.

Plaintiff's requested relief is nothing short of unconscionable. It flies directly in the face of the *Mount Laurel* doctrine and violates the FHA, as amended by L. 2024, c2., the Township's

Court and COAH authorized R-M District Code and the "Affordable Housing Code" the Township was directed to adopt in order obtain a Final Judgment of Compliance and Repose in the Township's Third Round 2015 Action.

The *Mount Laurel* doctrine is founded on the Court's recognition that municipalities must exercise their police powers to assure an adequate supply of affordable housing in furtherance of the public health, safety, and general welfare.

Just as the *Mount Laurel* doctrine imposes a constitutional obligation on municipalities to create affordable housing opportunities; a municipality must be given wide latitude in exercising these very same police powers to protect and preserve the existing affordable housing stock it was obligated to create.

The Township now urges this Honorable Court to stand-up for the Township, the 66 Affordable Unit Owners that are being charged to sue themselves, and the protected class. The Court should standby its prior order and support the Township's right to protect and preserve its existing affordable housing stock by extending the affordability controls and maintaining the common area maintenance fee rates for these 95/5 Affordable Units. If the Court does not, the Fair Housing Act and the Mount Laurel doctrine will be rendered meaningless, and the affordable housing trust funds the Township has expended to preserve these units will have been wasted.

LEGAL ARGUMENT

POINT I

PLAINTIFF FAILS TO OVERCOME THE PRESUMPTION OF VALIDITY OWED TO THE TOWNSHIP'S ACTIONS, AND THIS COURT'S PRIOR DECISION APPROVING THE TOWNSHIP'S ACTIONS TO PRESERVE THE LOW-AND MODERATE-INCOME UNITS AND REDUCED MAINTENANCE FEE RATE MUST STAND.

For Plaintiff to succeed in this action, this Court would need to declare the Township no longer has the right to preserve the 66 Affordable Units in Eden, both for the protected class of residents that currently own and reside therein, and the future protected class families qualifying to purchase same in the future.

The Court would first need to overturn a library of the Township's affordable housing ordinances for the R-M Multifamily District in which Eden is situated. The very same ordinances which have existed since 1984; and have ***always*** required: **a minimum affordability control period of "at least thirty (30) years;"** an affordable housing set-aside of 22%; and reduced homeowners association fees to make the Affordable Units affordable for the protected class.

The very same ordinances that Stephen Eisdorfer requested the Township adopt and the Honorable Eugene Surpentelli, J.S.C. approved in September 1984. (See Township's Final Judgment of Compliance, dated September 24, 1984 at Bates# J-00001 thru J-00030 of Joint Ex. **"J-1"**). The very same ordinances COAH approved and required the Township amend in 1999. (See Joint Statement of Fact[1]s at p.12:¶¶57-58); (see also Ordinance No. 28-99 at Joint Ex. "**J-19**"). The very same ordinances and actions this Court, the Court Appointed Special Master, and Fair Share Housing Center (FSHC) approved in the Township's Third Round Action entitled In the Matter of the Application of the Township of Hanover, under Docket No.: MRS-L-1635-15,

[1] Citations to the relevant portions of the parties Joint Stipulated Facts filed on June 12, 2025 shall hereinafter be referred to in abbreviated form as "JSF".

(the "2015 Action").(See Special Master's Report at Joint Ex. "**J-23**"); see also Order on Fairness and Preliminary Compliance at Joint Ex. "**J-24**"); (see also Final Judgment of Compliance at Bates#J-00786 Joint Ex. "**J-25**").

Therefore, before addressing the Township's well-supported material facts and law, it is fundamentally important to make clear Plaintiff's burden of proof at trial.

A. The Township's Official Action to Extend the Affordability Controls and the Township's Ordinances Maintaining the Affordable Housing Set Aside and Affordable Units Lower Maintenance Fee Rates are Presumed Valid.

A presumption of validity and correctness shields the Township Committee's legislative action in adopting Resolution No.:132A-18 on July 12, 2018 and the Township's Ordinances set forth at §72-13C of the Township's Affordable Housing Code; as well as §§ 166-4, 166-177, 166-180M(1) and 166-180M(6)(e) of the Township R-M District Code which govern the Eden Lane inclusionary development.

Ordinances and resolutions are legislative acts, authorized to be passed upon by the Township Committee pursuant to the Home Rule Act, N.J.S.A. 40:48-1, et, seq. See Inganamort v. Borough of Fort Lee, 72 N.J. 412, 417-19 (1977) ("Inganamort II")(recognizing that both ordinances and resolutions are entitled to a presumption of validity, and a municipality may exercise its delegated power by a resolution when authorized by statute or state regulation)(citing Fraser v. Teaneck Tp., 1 N.J. 503, 507 (1949)(holding that when a statute or regulation authorizes municipal action by resolution it may be done so, and recognizing as "well settled that where a statute fails to indicate whether the power should be exercised by ordinance or resolution it may be done by either means.")

"A municipal ordinance under review by a court enjoys a presumption of validity and reasonableness." State v. Clarksburg Inn, 375 N.J. Super. 624, 632 (App. Div. 2005). "Municipal

ordinances are normally liberally construed in favor of the municipality and are presumed valid, with the burden of proving otherwise placed upon the party seeking to overturn the ordinance." State v. Golin, 363 N.J. Super. 474, 481-82 (App. Div. 2003)(internal citations omitted).

For Plaintiff to prevail in setting aside the Township's actions, Plaintiff must show the Township Committee's actions to be "*more than debatable, [it] must be shown to be arbitrary or capricious, contrary to law, or unconstitutional*." Downtown Residents for Sane Dev. v. City of Hoboken, 242 N.J. Super. 329, 332 (App. Div. 1990). Simply put, Plaintiff fails to do so.

The standard of review applicable to succeed in challenging municipal action at trial mustn't be understated, as it differs from the less deferential "substantial evidence" standard applicable for challenging decisions of planning and zoning boards. Powerhouse Arts. Dist. Neighborhood Ass'n v. City Council of Jersey City, 413 N.J. Super. 322, 332 (App. Div. 2010), certif. denied, 205 N.J. 79 (2011) The substantial evidence standard requires that decisions of planning and zoning board be "grounded in 'sufficient' or 'substantial evidence' in the record." Id. at 332. It necessitates zoning and planning boards to support their decision by setting forth "particularized findings on an application for a zoning variance, for example . . . ." Id. at 332 (citing Rowatti v. Gonchar, 101 N.J. 46, 51-52 (1985).

In contrast, the Township's actions, whether by resolution or ordinance, are not required to be grounded in sufficient or substantial evidence, because such action "is a discretionary decision of broader application." Id. at 332-33. "[A] municipal ordinance ordinarily does not require any formal findings of fact, or consequently, the presentation of 'evidence . . . providing a factual foundation for the ordinance [.]'" Id. at 332 (quoting Hirth v. City of Hoboken, 337 N.J. Super. 149, 165-66 (App. Div. 2001).

The judicial role in reviewing the Township's resolution to extend the affordability controls and to maintain the affordable housing set-aside and the lower maintenance fee rates for the Affordable Units is "tightly circumscribed". Zilinsky v. Zoning Bd. of Adjustment of Verona, 105 N.J. 363, 368(1987)[internal citations omitted]. "The question is not whether the ordinance will work in every circumstance, but whether there are conceivable circumstances under which … [the ordinance] will advance the general welfare." Zilinsky, 105 N.J. at 368. "A mere difference of opinion as to how an ordinance will work will not lead to a conclusion of invalidity; 'no discernible reason' is the requisite standard." Id. at 368-69 [internal citations omitted]. "[T]he provision must be upheld if *any set of facts* can reasonably be conceived to support it." Ibid. [internal citations and alterations omitted].

"If an ordinance has both a valid and invalid purpose, courts should not guess which purpose the governing body had in mind, but should uphold the ordinance." Brown v. City of Newark, 113 N.J. 565, 584 (1989)(citing Riggs v. Long Beach Twp., 109 N.J. 601, 613 (1998)). "Courts should not question the wisdom of an ordinance, and if the ordinance is debatable, it should be upheld." Riggs, 109 N.J. at 611.

Importantly, here Plaintiff makes no allegation or argument that the Township's ordinances or action to extend the affordability controls impinge on a fundamental constitutional right. Unless municipal action impinges upon a fundamental constitutional right, a municipal ordinance will be evaluated under a "rational basis" standard. Sente v. Mayor of Clifton, 66 N.J. 204, 218 (1974).

Thus, in determining whether municipal action is arbitrary or unreasonable, courts "courts place a heavy burden on the proponents of invalidity." Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 234-35 (2001). "*Only a showing of 'clear and compelling evidence' may overcome this presumption.*" Cona v. Twp. of Washington (Gloucester County), 456 N.J. Super. 197, 215 (App.

Div. 2018)[emphasis added](quoting Spring Lake Hotel & Guest House Ass'n v. Spring Lake, 199 N.J. Super. 201, 210 (App. Div. 1985)).

The challenger of municipal action can overcome the presumption of validity "'***only by proofs that preclude the possibility that there could have been any set of facts*** known to the legislative body … [that] would rationally support a conclusion that the enactment is in the public interest.'" Vineland Const. Co. Inc. v. Twp. of Pennsauken, 395 N.J. Super. 230, 256 (App. Div. 2007)[emphasis added][alterations in original](quoting Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610(App. Div. 1998))[additional internal quotations omitted].

At trial Plaintiff is unable to meet the high burden of proof required to overcome the presumption of validity tethered to the Township's actions in rejecting the repayment option and extending to affordability controls on the Affordable Units by Resolution No.:132A-18 adopted by the Township Committee pursuant to N.J.A.C. 5:93-9.9 of COAH's "Controls on Affordability," and N.J.A.C. 5:80-26.25 of the prior iteration of the UHAC. Likewise, Plaintiff cannot overcome the presumption of validity with respect to the Township's Affordable Housing ordinances maintaining the lower common area maintenance fee rates for affordable units set forth at §72-13C of the Township's Affordable Housing Code, (see Joint Ex. "J-21") or the affordable housing set-aside requirements and the control period of "at least thirty years" set forth at Eden Lane set forth at §§166-177, 166-180M(1) and 166-180M(6)(e) of the Township R-M District Code. (See Joint Ex. "**J-19**" thru "**J-20**").

Lastly, in order for Plaintiff to succeed in this matter, this Court would have to undo its prior order approving the manner of the Township's extension of the affordability controls in the Township's 2015 Action. It would also require that this Court to undo each of the declarations of restrictive covenants executed by the 33 affordable unit owners, and order the return of the

affordable housing trust fund monies the Township expended for each of the affordable unit owners to execute and record the declarations of restrictive covenants in the chain-of-title.

POINT II

THE AFFORDABLE UNITS IN EDEN LANE ARE 95/5 UNITS, AND SINCE JULY 17, 1989 THE TOWNSHIP HAS HAD THE RIGHT TO DECIDE WHETHER TO EXTEND OR RELEASE THE AFFORDABLE UNITS FOLLOWING THE EXPIRATION OF THE INITIAL CONTROL PERIOD.

It is undisputed and is stipulated that the 66 Affordable Units in Eden Lane are "95/5 units" under the UHAC. The Township's legal authority to take action to extend the affordability controls on each of the 66 Affordable Units within Eden Lane is founded upon Article IV, Section VII, Paragraph 11 of the New Jersey Constitution, N.J. Const. art. IV, § 7,¶11; N.J.S.A. 40:48-2 of the New Jersey "Home Rule Act"; the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (FHA); N.J.A.C. 5:92-12.8 of COAH'S initial "Controls on Affordability"; N.J.A.C. 5:93-9.9 of COAH'S combined First and Second Round Substantive Rules adopted in 1994; N.J.A.C. 5:80-26.25 of the HMFA's UHAC regulations applicable from December 2004 until December 20, 2024; N.J.A.C. 5:80-26.26 of the current iteration of the UHAC; and the *Mount Laurel* Doctrine. Yet Plaintiff's completely disregards the law on municipal police powers. Instead, Plaintiff primarily argues the UHAC does not apply to this matter. Simply put, Plaintiff is completely wrong factually and as a matter of law.

The relevant facts as to the 66 Affordable Units are as follows:

- The 66 Affordable Units in Eden Lane are "95/5 units"; (see p.14, ¶77 of JSF);
- Construction was not completed on the first of the 66 Affordable Units until **August of 1993** (see p.6, ¶11 of JSF)(see also Joint Ex. "**J-15**");
- In 1997, the Township adopted a Housing Element and Fair Share Plan ("HEFSP") and petitioned COAH for combined First and Second Round substantive certification in accordance with N.J.S.A. 52:27D-313 of the 1985 version of the Fair Housing Act and

COAH's prior round rules at N.J.A.C. 5:93 et seq (see p.12, ¶¶53-56 of JSF; see also Joint Ex. "**J-16,**" "**J-17**", and "**J-18**");

- At that time all 66 of the Affordable Units in Eden Lane (then referred to as "Eden Mill Village") were restricted ownership units the Township included in its 1997 HEFSP submitted to COAH (see p.12, ¶¶55 of JSF; see also Joint Ex. "**J-16,**" "**J-17**", and "**J-18**");

- On August 4, 1999, COAH approved the Township's HEFSP and granted substantive certification to the Township pursuant to COAH's prior round rules under N.J.A.C. 5:93. (see p.12, ¶¶54-56 of Joint Stipulated Facts; see also Joint Ex. "**J-17**" and "**J-18**");and

- The Township received 66 credits from COAH for all 66 of Affordable Units in Eden Lane. Id.

Based upon the above facts, all 66 Affordable Units in Eden Lane are restricted ownership units that were part of the Township's housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93. The 66 Affordable Units in Eden Lane are by UHAC definition "95/5 units" and are not market-rate units that were financed under "UHORP" or "MONI," as defined in N.J.A.C. 5:80-26.2 of the UHAC.

All 66 Affordable Units are "95/5 units" as defined under N.J.A.C. 5:80-26.2 of the UHAC. With regard to the "Control periods for ownership units" under N.J.A.C. 5:80-26.5 of the prior iteration of the UHAC, and N.J.A.C. 5:80-26.6 of the 2024 iteration of the UHAC, the 66 Affordable Units are "95/5 units" "subject to the option and price restriction rules set forth at N.J.A.C. 5:80-26.20 through 26.26" of the UHAC. See N.J.A.C. 5:80-26.5(a)(3)(2004); see also N.J.A.C. 5:80-26.6(a)(2)(2024).[2]

[2] During the pendency of this action, N.J.A.C. 5:80-26.5(a) and the option and price restrictions of the HMFA's UHAC effective beginning on December 20, 2004 were re-adopted and recodified through emergency rulemaking on December 20, 2024 and are currently set forth at N.J.A.C. 5:80-26.6(a), and N.J.A.C. 5:80-26.21 through 26.27, respectively of the current version of the UHAC. However, the relevant regulatory text of the prior version of the UHAC pertaining to 95/5 Units and the Municipal rejection of repayment option on 95/5 units" previously set N.J.A.C. 5:80-26.5(a)(3) and N.J.A.C. 5:80-26.25 has not otherwise changed, and is currently set forth at N.J.A.C. 5:80-26.6(a)(2) and N.J.A.C. 5:80-26.26. For purposes of this litigation the analysis remains the same and the provisions in effect prior to December 20, 2024 will be cited to.

In case of any doubt, last year the Legislature amended the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., when it adopted L. 2024, c.2. At that time, the Legislature also made clear by statute, the municipality's long-permitted right to extend the affordability controls on its existing affordable housing stock at N.J.S.A. 52:27D-321f and N.J.S.A. 52:27D-311a.

Accordingly, the Township is authorized to extend the Affordability Controls on the 66 Affordable Units at the end of the initial control period pursuant to the relevant provisions of COAH's original "Controls on Affordability" which took effect on July 17, 1989, and which have since been adopted in each iteration of the UHAC at N.J.A.C. 5:80-26.1 et seq. And which is now statutorily recognized pursuant to N.J.S.A. 52:27D-321f and N.J.S.A. 52:27D-311a.

A. The 66 Affordable Units are "95/5 Units," as Defined by the UHAC, and Subject to the Township's Right to Extend the Affordability Controls.

The UHAC is the current iteration of the affordability control regulations and were adopted by the HMFA by emergency rulemaking on December 20, 2024. Prior thereto, the HMFA's second iteration of the UHAC was adopted in December 2004. Before the 2004 iteration of the UHAC, three agencies, COAH, the Department of Community Affairs, and the HMFA "each adopted distinct sets of rules establishing controls on the affordability of housing." In re Adoption of Uniform Housing Affordability Controls, 390 N.J. Super. 89, 95-96 (App. Div. 2007). The HMFA adopted the UHAC "[t]o remedy inconsistent and overlapping aspects of the prior regulations … ." Id. at 96.

N.J.A.C. 5:80-26.1 sets forth the "purpose and applicability," of the UHAC and in relevant part states: "[t]his subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act … ." Id. The section further states that "[u]nless expressly stated otherwise herein, this subchapter

shall apply to all restricted units [that receive COAH credit under the Fair Housing Act] ***regardless of the date on which the units were created*** . . . ." Id. [emphasis added].

Under N.J.A.C. 5:80-26.2 of the UHAC, a "95/5 unit" is defined as "a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93 before October 1, 2001." N.J.A.C. 5:80-26.2.

In the HMFA's 2004 regulatory responses to public comments, it explained the UHAC applied to all low-and moderate-income units that that received "COAH Credit"; and that "95/5 units" are units that are part of a housing element that received substantive certification pursuant to N.J.A.C. 5:93 before October 1, 2001. (See of Relevant portions of HMFA' Responses to Public Comments published in the New Jersey Register on December 20, 2004, 36 N.J.R.5713(a) (Dec. 20, 2004), at Joint Ex. "**J-33**").

Regarding affordability control periods for affordable housing ownership units, N.J.A.C. 5:80-26.5(a) of the UHAC along with N.J.A.C. 5:80-26.25 must be considered. N.J.A.C. 5:80-26.5(a), in relevant part provides that:

> (a) Each restricted ownership unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements pursuant to action taken in compliance with (g) below. Prior to such a municipal election, a restricted ownership unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:
>
> 1. [… .]
>
> 2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said

> grant of substantive certification, judgment or grant agreement or contract; and
>
> ***3. 95/5 units are subject to the option and price restriction rules set forth at N.J.A.C. 5:80–26.20 through 26.26.***
>
> [Id. at N.J.A.C. 5:80-26.5 (emphasis added)]

Regarding the option and price restriction rules on 95/5 units, N.J.A.C. 5:80-26.25(a) of the UHAC states the following:

> ***A municipality shall have the right to*** determine that the most desirable means of promoting an adequate supply of low-and moderate-income housing is to ***prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93–9.2.*** Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with COAH. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93–9.8.
>
> [Id. at N.J.A.C. 5:80-26.25(a). (emphases added)].

The HMFA elaborated in its 2004 regulatory responses to public comments on this regulation as to why 95/5 units were being treated differently from other units built before the current regulations:

> When [95/5 units] **received substantive certification**, they became subject to a set of options and price restrictions by virtue of N.J.A.C. 5:93. While the Agency has decided not to continue these options and price restrictions for units coming online after October 1, 2001, **the Agency has deemed it appropriate to preserve the settled expectations of municipalities** and other parties when the 95/5 units received substantive certification. Accordingly, the Agency has carried the 95/5 provisions over into the UHAC at N.J.A.C. 5:80-26.20 through 26.26.
>
> [Id. at Bats#J-1062 of Ex. "**J-33**" (emphasis added)].

As stated above, all 66 Affordable Units in Eden Lane were part of the Township's HEFSP that received combined First and Second Round substantive certification from COAH in accordance with N.J.S.A. 52:27D-313 of the FHA and COAH's prior round rules set forth at N.J.A.C. 5:93 et seq., on August 4, 1999. Accordingly, all 66 Affordable Units in Eden Lane are 95/5 units by definition under the UHAC; and are subject to the Township's right to reject the repayment option and extend the affordability controls in accordance with N.J.A.C. 5:80-26.25 of the prior iteration of the UHAC and N.J.A.C. 5:80-26.26 of the 2024 version of the UHAC.

B. COAH Recognized the Township's Right to Extend Affordability Controls Four Years Before the Affordable Units in Eden Lane were Constructed.

Importantly, the UHAC version at N.J.A.C. 5:80-26.25 (or current version -26.26) is not new. Rather, the HMFA carried over N.J.A.C. 5:80-26.25 (now N.J.A.C. 5:80-26.26) from COAH's original comprehensive "Controls on Affordability" regulations which took effect on July 17, 1989. (See N.J.A.C. 5:92-12.8 of COAH's 1989 "Controls on Affordability" N.J.A.C. 5:92-12.1 through 5:92-12.18, 21 N.J.R. 2020 thru -2023 at Bates#J-01027 to J-01028 of Joint Ex. "**J-31**").

N.J.A.C. 5:92-12.8(a) of COAH'S 1989 "Controls on Affordability," in relevant part, provides:

> ***A municipality shall have the right*** to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is ***to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:92-12.1.*** Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:92-12.7.
>
> [Id. 21 N.J.R. 2022-23 (emphasis added)]

The plain language of N.J.A.C. 5:92-12.8 is clear, and it is virtually identical in all material respects to N.J.A.C. 5:80-26.25 (now N.J.A.C. 5:80-26.26), in declaring that the "municipality shall have the right to determine the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality … ." (*compare:* N.J.A.C. 5:92-12.8; N.J.A.C. 5:80-26.25(a)(2004) and N.J.A.C. 5:80-26.26(a)(2024)).

COAH adopted this regulation **more than four years prior** to construction being complete on the first of the 66 Affordable Units in Eden Lane in August of 1993. Pursuant to N.J.A.C. 5:92-12.1 therein, COAH's 1989 regulations applied to all "***newly constructed*** low-and moderate-income" units after July 17, 1989, and those already constructed that are sold prior to the termination of the control period. See Bates#J-01025 Joint Ex. "**J-31**"; Response to Publics Comments 1 21 N.J.R. 2021 [emphasis added].

In case of any doubt, COAH's 1989 responses to public comments when it adopted the "Controls on Affordability" shed even more light on the applicability of this unequivocally clear regulation, and fully supports the Township's authority to extend the affordability controls on the 66 Affordable Units.

The Court has made clear "judicial deference to agency action is particularly well-suited to [the] review of administrative regulations adopted by COAH [and the HMFA] to implement the Fair Housing Act, 'a new and innovative legislative response to deal with the statewide need for affordable housing.'" In re Township of Warren, 132 N.J. 1, 27 (1993)(quoting Van Dalen v. Washington Township, 120 N.J. 234, 246 (1990)). Courts "give considerable weight to a state agency's interpretation of a statutory scheme that the legislature has entrusted to the agency to administer" because a state agency brings experience and specialized knowledge to its tasks of

administrating and regulating the legislative enactment within the agency's purview. In re Election Law Enforcement Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)(citing Richardson v. Bd. of Trs., Police and Firemen's Ret. Sys., 192 N.J. 189, 196 (2007)).

Ironically, COAH's responses to public comments explain that it was adopting the "Controls on Affordability" at a time when "**New Jersey and the nation are presently facing a situation where the controls on affordability are expiring on low income units created by HUD in the 1960s and 1970s. Therefore, New Jersey is losing affordable units and the subsidy necessary to replace them**." See Bates#J-01025 Joint Ex. "**J-31**", at Response to Public Comment 9 21N.J.R. 2020(a).

COAH's agency responses are also clear in that before the regulations were adoption, COAH first determined "***an affordable housing unit is a precious resource, and efforts should be made to retain or supplement affordable housing, and that municipalities should have the first option to structure programs that accomplish this goal***." Id. Joint Ex. "**J-31**"; at Response to Public Comment 7, 21 N.J.R. 2020(a)[emphasis added]. COAH structured the "Controls on Affordability" "to give municipalities the ability to render decisions on each affordable unit prior to the State exercising any option." Id. Joint Ex. "**J-31**"; at Response to Public Comment 4, 21 N.J.R. 2020(a)[emphasis added].

COAH also made it clear that *municipalities* were able to exercise the right to preserve and extend or release the affordable units from the Township's affordable housing stock at the time the original control period was set to end. COAH's agency responses clearly state that COAH decided "not to 'lock' communities into longer term controls, but rather decided to "***create a situation where responsible public officials could make decisions regarding the continued***

maintenance of affordability as the controls were expiring." Id. Joint Ex. "**J-31**"; Response to Public Comment 5; 21 N.J.R. 2020(a) [emphasis added].

C. The Township has Taken Action to Extend the Affordability Controls, which was Approved by the Court in the Township's 2015 Mount Laurel Compliance Action.

Since COAH's 1989 adoption, the regulation reserving the municipality's right to extend the affordability controls on its affordable housing the has been on the books for over thirty years and remains virtually unchanged under N.J.A.C. 5:80-26.25 of the 2004 version of the UHAC and N.J.A.C. 5:80-26.26 of the 2024 version of the UHAC. (See N.J.A.C. 5:92-12.8 at Joint Ex. "**J-31**"); (see also N.J.A.C. 5:93-9.9 of COAH's "Controls on Affordability," for the Period Beginning June 6, 1994, N.JA.C. 5:93-1, et seq.; 26 N.J.R 2338 at of Joint Ex. "**J-32**").

COAH's second iteration of the "Controls on Affordability" maintained the municipal authority to extend expiring controls by resolution and increased the affordability control term from twenty (20) years to beyond thirty (30). See N.J.A.C. 5:93-9.9. Since then, COAH regulations have maintained municipal authority to extend expiring controls by resolution. See, N.J.A.C. 5:93-9.9; see also N.J.A.C. 5:94-4.16(a) (further endorsed in N.J.A.C. 5:97-6.14).

Likewise, since 1984 Township's R-M District Code has always required that the affordability control period for the Eden Lane Affordable Units be for "**at least 30 years**". (See 1984 R-M Zone §13F at Bates# J-00018 Joint Ex. "**J-1**"); (see also §13(f) of Township Ordinance 32-85 at Bates# J-00042 Joint Ex. "**J-2**"); (see also §166-180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 of Joint Ex. "**J-19**"); (see also 166-180M(6)(c)at Bates#J-00709 of Joint Ex. "**J-20**").

Based upon the UHAC and pursuant to N.J.A.C. 5:93-9.9, while the Township's 2015 Action was pending, on July 12, 2018, the Township Committee of the Township of Hanover adopted Resolution No. 132A-18, extending the affordability controls on all 66 Affordable Units

located within Eden Lane for an additional thirty years in accordance with N.J.A.C. 5:80-26.5(a)3 and -26.25 of the UHAC and N.JA.C. 5:93-9.9. (See Township of Hanover Resolution No. 132A-18, dated July 12, 2018 at Joint Ex. "**J-22**").

Furthermore, owners of 31 of the 66 Affordable Units executed affordable housing deed restrictions reflecting the Township's extensions and extending their affordability controls for an additional 30-year term. The remaining owners of the Affordable Units also wish to execute deed restrictions in the same manner. See "Extension of Declaration of Covenants, Conditions and Restrictions Implementing Affordable Housing Controls" executed by owners of the Eden Lane Affordable Units at Joint Ex. "**J-26**").

Accordingly, the 66 Affordable Units are "95/5 Units" pursuant to the UHAC as they are restricted units that were part of the Township's Housing Element and Fair Share Plan that received credit from COAH pursuant to 5:93 prior to October 1, 2001 and the Township has the right to extend the affordability controls in accordance with N.J.A.C. 5:80-26.6 and N.J.A.C. 5:80-26.26 of the current iteration of the UHAC adopted on December 20, 2024; as well as N.J.A.C. 5:80-26.5(a)(3) and N.J.A.C. 5:80-26.25 of the prior version of the UHAC that was applicable until December 20, 2024.

POINT III

PLAINTIFF IS NOT PERMITTED TO INCREASE THE COMMON AREA MAINTENANCE FEE RATES ON THE AFFORDABLE UNITS, PURSUANT TO THE CONDOMINIUM ACT AND THE TOWNSHIP'S ORDINANCES, AS THE MASTER DEED PREDATES OCTOBER 1, 2001.

With respect to Plaintiff's request to increase the maintenance fee rates for the Affordable Units, such actions are in directly violation of the Township's RM District Code set forth at §§166-177 thru -180 and Affordable Housing Code set forth at §§72-1 thru -24; and will render the Affordable Units unaffordable and place the Township's affordable housing stock at serious risk.

Important to this issue is that 66 Affordable Units in Eden Lane are much different from the Market Rate Units. The 66 Affordable Units are located in several garden apartment buildings situated in an area of the Eden Lane entirely separate and apart from the Market Rate Units. The 66 LMI Units are far smaller in square-footage and size, as compared to the Market Rate Units. The 66 LMI Unit owners also hold a substantially smaller percentage ownership interest in the common areas in comparison to the Market Rate Units. (See JSF at p.6;¶14); (see also Third Amendment to Eden Lane Master Deed, dated July 21, 1993 at Bates# J-00601 thru J-00615 Joint Ex. "**J-14**").

Each of the owners of the Market Rate Units have a higher percentage of ownership interest in the common areas than the Affordable Units owners. (See Bates# J-00588 thru J-00600 of Joint Ex. "**J-14**").

Each of the owners of the Affordable Units have a .1312 % ownership interest in the common areas, or 1/3 of an ownership interest of the common areas as compared to the each of the Market Rate Unit owners. (See Bates# J-00598 thru J-00600 of Joint Ex. "**J-14**").

Each of the owners of the Market Rate Unit have a .3937 % ownership interest in the common areas. (See Bates# J-00588 thru J-00597 of Joint Ex. "**J-14**").

Each individual unit in Eden Lane constitutes a separate parcel of real property that each owner may deal with as he/she would like any other parcel of real property pursuant to N.J.S.A. 46:8B-4. N.J.S.A. 46:8B-17 and N.J.S.A. 46:8B-3(e) of the "Condominium Act," and Eden Lane's Master Deed mandate that the expense of the common elements be allocated proportionately among all owners, determined on the basis of a unit's proportionate undivided interest in the common elements. "[t]he common expenses shall be charged to unit owners according to the percentage of their respective undivided interest in the common elements as set forth in the master deed and amendments thereto … ." N.J.S.A. 46:8B-3(e); Paragraph 2.07 of the Master Deed (defines "common expenses" as "those expenses (including reserves) for which the Unit owners are proportionately liable"). Thanasoulis v. Winston Towers 200 Assoc., 110 N.J. 650, 659 (1988)

Furthermore, Eden Lane is located entirely within and restricted by the Township's R-M District. (See JSF at pp.5-7;¶¶1,15-18). At all times remains subject to the Township's local affordable housing zoning ordinances for the R-M District at §§166-177 thru -180 of the Township's "Land Use and Development Code" ("R-M District Code). (See JSF at p.7;¶¶26); (see also 1984 R-M Zone §3 part 279 Bates# J-00020 Joint Ex. "**J-1**"); (see also relevant portions of Township's "Land Use and Development Code" defining "affordable" at §166-4 and §§166-177 thru -180 of the Township's "R-M Residential Multi-Family District," of Township Ordinance No. 28-99 at Joint Ex. "**J-19**"); (see also Relevant portions of Township's "Affordable Housing Code" at §72-1 thru -24, at Joint Ex. "**J-21**").

Since 1984 the Township's R-M District provisions have also regulated the Affordable Units with respect to the total principle, interest, property taxes, insurance and homeowner's association assessments for such affordable units to maintain the affordability of the low-and moderate-income units. (See JSF at p.7;¶¶26); (see also 1984 R-M Zone §3 part 279 Bates# J-

00020 Joint Ex. "**J-1**"); (see also relevant portions of Township's "Land Use and Development Code" defining "affordable" at §166-4 and §§166-177 thru -180 of the Township's "R-M Residential Multi-Family District," of Township Ordinance No. 28-99 at Joint Ex. "**J-19**"); (see also Relevant portions of Township's "Affordable Housing Code" at §72-1 thru -24, at Joint Ex. "**J-21**").

Since 2019, Eden Lane also became subject to Township's affordable housing regulations set forth at Chapter 72 of the Township's "Affordable Housing Code." (See true and accurate copy of relevant portions of Township's "Affordable Housing Code" §72-1 thru -24, at Joint Ex. "**J-21**"). The Township adopted these separate regulations in November 2019 as part of its 2015 Action. Id.

The R-M District exists to provide for affordable housing in accordance with the *Mount Laurel* doctrine and the FHA. §166-177 of the Township's R-M District requirements, titled "Primary intended use," makes clear that the Township established the R-M District zoning requirements to provide for affordable low-and moderate-income inclusionary developments. (See 1984 R-M Zone §§1, 13A & 13F at Bates# J-00011, J-00016 thru J-00018 Joint Ex. **"J-1"**); (see also §§13A & 13F of Township Ordinance 32-85 at Bates# J-00040 to J00042 Joint Ex. "**J-2**"); (see also §§166-180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 Joint Ex. "**J-19**"); (see also §§166-177 & 166-180M(6)(c) at Bates#J-00704, Bates#J-00706 of Joint Ex. "**J-20**")Id.

Under the definition section of the Township's Land Use and Development Code, "affordable" is defined in relevant part, as "[h]aving a sales price or rent within the means of a low-or moderate-income household as defined in N.J.A.C. 5:93-7.4 … ." (See §166-4). Also, under §166-180M(6)(e) of the R-M District requirements, titled "Continuing controls on

affordability," the Township requires *both* the initial and resale pricing of all Affordable Units in Eden Lane to comply with N.J.A.C. 5:93-7.4 and N.J.A.C. 5:93-9 of COAH's First and Second Round Substantive rules. (See §166-180M(6)(e) and §166-4 and §§166-177 thru -180 of the Township's "R-M Residential Multi-Family District," of Township Ordinance No. 28-99 at Joint Ex. "**J-19**")

Regarding Maintenance Fees, subpart "(h)" of N.J.A.C. 5:93-7.4, in relevant part, states:

> Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after down payment of five percent, the monthly principal, interest, homeowner and private mortgage insurances, property taxes … **and condominium or homeowner fees do not exceed 28 percent of the eligible monthly income**. **Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers.** Once established with the master deed, the percentage shall not be amended without prior approval from the Council.
>
> [N.J.A.C. 5:93-7.4(h)][emphasis added].

Since 2019 Eden Lane has also been subject the Township's Affordable Housing Code §§72-1 thru -24. (See true and accurate copy of relevant portions of Township's "Affordable Housing Code" §72-1 thru -24, at Joint Ex. "**J-21**"). The Township's Affordable Housing Code was reviewed and approved by the Court, the Court Appointed Special Master and FSHC in the Township's 2015 Action.

Consistent with N.J.A.C. 5:93-7.4(h), and N.J.A.C. 5:80-26.6(b) of the UHAC, §72-3 of the Township's Affordable Housing Code defines "affordable" by incorporating N.J.A.C. 5:80-26.6 of the UHAC into the Affordable Housing Code. N.J.A.C. 5:80-26.6(b) of the UHAC is

analogous to N.J.A.C. 5:93-7.4(h), in that it also requires that the "monthly carrying costs of the unit, **including** principal and interest, taxes, homeowner and private mortgage insurance and **condominium or homeowner association fees** do not exceed 28 percent of the eligible monthly income of the appropriate household size … ." See N.J.A.C. 5:80-26.6(b)[emphasis added].

Consistent with N.J.A.C. 5:80-26.6(e), under §72-13C of the Township's Affordable Housing Code, the Township preserves and protects against the increase of any pre-existing maintenance fee rates for any affordable units within an inclusionary development that pre-dated the UHAC's effective date of adoption in October 2001. §72-13C of the Township's Affordable Housing Code states: "[t]he master deeds of inclusionary developments shall provide no distinction between the condominium or homeowners' association fees and special assessments paid by low-and moderate-income purchasers and those paid by market purchasers, ***unless the master deed for the inclusionary project was executed prior to the enactment of the UHAC***." [emphasis added]. (See Bates# J-00730 at Joint Ex. "**J-21**").

The Township adopted §72-13C to prevent any inconsistency with the Township's pre-existing ordinances governing affordable housing under §166-4 and -180M(6)(e) which remain to any R-M District inclusionary developments which came into existence prior to October 1, 2001. In addition, §72-13C complies with N.J.A.C. 5:80-26.6(e) of the UHAC, which expressly includes a carve-out for affordable units existing in an inclusionary development prior to October 1, 2001. N.J.A.C. 5:80-26.6(e) states:

> **[C]ondominium units subject to a municipal ordinance adopted before October 1, 2001, which provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection shall have such fees and assessments governed by said ordinance.**

[N.J.A.C. 5:80-26.6(e)][emphasis added].

This provisions of the UHAC has since been further strengthened by the 2024 UHAC emergency rulemaking amendments, and is now set forth at N.J.A.C. 5:80-26.7(e). This provision of the UHAC now provides:

> **Condominium or homeowner association fees and special assessments charged to affordable units shall be based on the common interest percentage and the full build-out budget.** Affordable units in a condominium or homeowner association subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance. **If the affordability controls on such units are extended by the municipality or by agreement between the municipality and the affordable homeowner, the existing fee structure will be maintained. Any increase to the homeowner association fee, condominium association fee, or amenity fee that would cause an owner of an affordable unit to exceed the housing costs specified in this subchapter is prohibited. If renovations or charges related to a special assessment do not impact or benefit affordable units, affordable unit owners may not be subject to the special assessment charge.**
>
> [N.J.A.C. 5:80-26.7(e)[emphasis added].

Here, the Eden Lane Affordable Units were first constructed in August 1993, and the Township's R-M District ordinances pre-date October 1, 2001. The reduced Maintenance Fee rate of 33% was always factored into the both the original sale and any resale pricing for the Affordable Units so that sale and resale pricing would not exceed 28 percent of the Affordable Unit Owners' eligible monthly income.

Since the 1/3 Maintenance Fee rate was factored into the initial sale and resale pricing for each of the existing 66 Affordable Units, the maintenance fee rate cannot now be increased by Plaintiff because it would ultimately exceed 28 percent of the Affordable Unit Owner's eligible monthly income and render the Affordable Units unaffordable.

Accordingly, if Plaintiff were to now increase the Maintenance Fee rates for these Affordable Units, it will directly violate the Township's local zoning regulations which restrict same under the Township's definition of "affordable" at §166-4 and the Township's R-M District 22% set-aside requirement for affordable low-and moderate-income housing and restricting the sale and resale pricing of the Affordable Units at §§166-177, 166-180M(1) and 166-180M(6)(e).

A. Any Increase in the Maintenance Fee Rates for the Affordable Units Violates the UHAC and the Township's Approved R-M District and Affordable Housing Codes.

In addition, any increase in the Maintenance Fees is in direct violation of the provisions of the UHAC at N.J.A.C. 5:80-26.6(b), N.J.A.C. 5:80-26-6(e) and §72-13C of the Township's "Affordable Housing Code".

The UHAC was enacted in 2001. The Township's R-M District continue to remain in effect at the current date, as does the Master Deed. Accordingly, the established 1/3 Maintenance Fee rate for the Eden Lane Affordable Units falls within the pre-2001 crave out established by the UHAC; and preserved by the Township under §72-13C of its Affordable Housing Code. The Association cannot now seek to change same in any manner.

As such, it clear that the Association cannot increase the maintenance fee rates on any of the 66 Affordable Units, as any such increase constitutes a direct violation of the at §72-13C of the Township's Affordable Housing Code, as well as §§ 166-4, 166-177, 166-180M(1) and 166-180M(6)(e) of the Township R-M District Code.

The present scenario is similar to what the HOA Cedar Brook Condominium Association, Inc., attempted to do to the affordable units in the Township of Branchburg in 2017. (See Opinion issued by the Honorable Yolanda Ciccone, A.J.S.C., dated July 30, 2018 in the case entitled: Township of Branchburg v. Cedar Brook, SOM-L-1095-17 (Law Div. 2018)(at Joint Ex. "**J-35**")

Unlike the Township of Hanover, Branchburg did not have an ordinance restricting such increases. Id. at p. 2 of Ex. Y. Yet even then Judge Ciccone ruled that in light of the public polices of our State Cedar Brook could not increase the maintenance fee rates for the affordable units, and allowed Branchburg to adopt an ordinance restricting such increases.

This Court, like Judge Ciccone in Branchburg must take this opportunity to protect all 66 of the Affordable Unit Owners from being subjected to increases in their Maintenance Fee Rates. Any increases will render these Affordable Units unaffordable.

POINT IV

THE TOWNSHIP DOES NOT HAVE A CONTRACTUAL AGREEMENT WITH PLAINTIFF PRECLUDING THE TOWNSHIP FROM EXTENDING THE AFFORDABILITY CONTROLS ON THE 66 AFFORDABLE UNITS, AND ANY SUCH AGREEMENT WOULD BE UNENFORCEABLE AS AGAINST PUBLIC POLICY.

Plaintiff attempts to argue that the Township's authority to extend the affordability controls on the Affordable Units is circumscribed by Plaintiff's unfiled and unsigned Master Deed and Affordable Housing Plan. Plaintiff seems to claim that its Master Deed and Affordable Housing Plan somehow is constitutes a contractual agreement that is binding on the Township, precludes the Township from extending the affordability controls. Plaintiff's arguments in this regard are fatally flawed for multiple legal and factual reasons.

First, Plaintiff arguments ignore basic laws on contractual arrangements with local government entities. Contracting with a public body is subject to particular principles which circumscribe both a public corporate body's authority to contract and the authority of public employees to enter into contracts on behalf of a public corporation. See 10 Eugene McQuillin, The Law of Municipal Corporations, 29.2 (3d Ed. Revised 2009).

Governmental bodies enter into contracts only "by formal action[.]" City of Jersey City v. Roosevelt Stadium Marina, Inc., 210 N.J. Super. 315, 327 (App. Div. 1986), certif. denied, 110 N.J. 152 (1988). Additionally, "[a] public body may only act by resolution or ordinance … ." Kress v. LaVilla, 335 N.J. Super. 400, 410 (App. Div. 2000)(quoting Midtown Properties, Inc. v. Township of Madison, 68 N.J. Super. 197, 208 (Law Div. 1961)).

A public corporation "cannot be bound in contract, express or implied, unless the officer or employee has authority to enter into such contract on behalf of the corporation." St. Barnabas Med. Ctr. V. Cty of Essex, 111 N.J. 67, 79 (1988). "The legal principal cannot be too often repeated, that a public corporation is not bound by acts of its agents coming within the apparent

scope of their power and authority. Their authority to act must be explicit and direct that the corporation be bound." Giardini v. Mayor of Dover, 101 N.J.L. 444, 446 (Sup. Ct. 1925)(internal quotes and citation omitted).

"It is too well established to cite authority for the proposition that while a public body may make contracts as an individual, it can only do so within its express or implied powers and those who deal with a municipality are charged with notice of limitations imposed by law upon the exercise of that power." Kress, 335 N.J. Super. at 410 (internal citation omitted).

Against this legal backdrop, Plaintiff's entire case fails. To this point in particular, the Master Deed and Affordable Housing Plan Plaintiff relies upon are not signed by an authorized representative of the Township. Indeed, the Master Deed is unsigned. Meanwhile, Plaintiff's Affordable Housing Plan is only signed by William A. Baker, Jr, as President of Baker Firestone Companies, Inc., the immediate prior predecessor/developer of the subject property. Neither document includes the signature of an authorized representative of the Township, or even a signature line for execution by an authorized representative from the Township. Ibid.

Relatedly, Plaintiff has not produced a resolution or ordinance adopted by the Township Committee authorizing a representative from the Township to execute the Master Deed or Affordable Housing Plan. The Township Planning Board's Resolutions granting Amended Preliminary Site Plan Approval or Final Site Plan Approval makes no mention of same.

Plaintiff also fails to point to any explicit provision in the Master Deed or Affordable Housing Plan establishing the Township expressly or implicitly waived its authority to preserve its affordable housing stock by extending the affordability controls at the time the original affordability control period is set to expire.

Indeed, Plaintiff ignores several key provisions contained within the Master Deed and Affordable Housing Plan which evidence the Township was not waiving, but rather preserving its continued authority over the affordable resale and affordability controls for the 66 Affordable Units.

Specifically, paragraph 11.49 of the Master Deed, in relevant part explicitly states: "**all resales shall be subject to the rules and regulations set forth in the Zoning Ordinance of the Township of Hanover** … [.]" (See Master Deed at Bates#J-00515 to J-00516 of Joint Ex. "**J-11**. (emphasis added)]. Subsection (9) of paragraph 11.49 of the Master Deed also states:

> **(9) Neither Grantor nor the Association shall amend or alter the provisions of Paragraph 11.49 of this Plan or the Affordable Housing Plan without first obtaining approval of the Township of Hanover. Any such approved amendments or modifications shall be in writing and shall contain proof of such municipal approval and shall not be effective unless and until the same are recorded in the Office of the Morris County Clerk.**
>
> [Id.][emphasis added]

This is clear evidence of the Township's unequivocal intention to maintain authority and control over the preservation of the 66 Affordable Units after the original control period expired. In fact, all of the Township's relevant affordable zoning ordinances have included a provision requiring that developers of affordable housing "submit a plan for resale or rental controls to ensure that the units remain affordable to low and moderate income households **for at least thirty (30) years.**" ((See 1984 R-M Zone §13F at Bates# J-00018 Joint Ex. "**J-1**");(see also §13(f) of Township Ordinance 32-85 at Bates# J-00042 Joint Ex. "**J-2**") (see also §166-180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 of Joint Ex. "**J-19**") (see also 166-180M(6)(c)at Bates#J-00709 of Joint Ex. "**J-20**") [emphasis added].

The Township is no longer bound by the 1984 Settlement Agreement with the Public Advocate resolving its original Mount Laurel case, as it has since constructed well over the 250 low-and moderate-income units it was obligated to construct under the 1984 Final Judgement of Compliance. (See ¶10 of 1984 Settlement Agreement at Bates# J-00008 of Joint Ex. "**J-1**(See also Special Master's Report at Joint Ex. "**J-23**").

Even so, enumerated paragraph 6D of the Settlement Agreement between Township and Public Advocate indicates that as far back as 1984 there would be some State Agency affordability controls. (See ¶6D of 1984 Settlement Agreement at Bates# J-00007 thru J-00008 of Joint Ex. "**J-1**").

As stated in Point I, supra, *more than four years prior to the construction of the 66 Affordable Units* in Eden Lane, on July 17, 1989 COAH adopted its first set of comprehensive affordability control regulations. Pursuant to N.J.A.C. 5:92-12.1, COAH's initial affordability control regulations applied to all "*newly constructed* low-and moderate-income" units after July 17, 1989.

POINT V

THE TOWNSHIP'S AUTHORITY TO PROTECT AND PRESERVE THE AFFORDABLE UNITS BY EXTENDING THE AFFORDABILITY CONTROLS AND RESTRICTING INCREASES TO THE MAINTENANCE FEE RATES IS ESTABLISHED BY THE HOME RULE ACT, MOUNT LAUREL DOCTRINE AND THE UHAC.

This case boils down to the legality of a local economic and housing regulations adopted by the Township for the purposes of preserving and maintaining its existing affordable housing stock, including the 66 Affordable Units in Eden Lane. The circumstances of this case embody yet another reason why it must be left to responsible municipal decisionmakers to create, protect and preserve affordable housing.

A. The Case Precedent and Clear Law on Municipal Powers under the Home Rule Act and Mount Laurel Fully Support the Township's Position.

The Township's legal authority to take action to extend the affordability controls and preserve the common area maintenance fee rates for each of the 66 Affordable Units in Eden Lane is founded upon Article IV, Section VII, Paragraph 11 of the New Jersey Constitution, N.J. Const. art. IV, § 7,¶11; N.J.S.A. 40:48-2 of the New Jersey "Home Rule Act"; the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and the FHA, N.J.S.A. 52:27D-301 et seq..

The Court has repeatedly and consistently upheld local economic regulations as a valid exercise of municipal police power under N.J.S.A. 40:48-2 of the Home Rule Act, "[w]hen the means chosen bear a rational relationship to a legitimate state objective and are not arbitrary, capricious, or unreasonable, courts will sustain a legislative enactment." Roman Check Cashing v. N.J. Dep't of Banking & Ins., 169 N.J. 105, 110 (2001).

Pointedly, a municipality's power to adopt local economic regulations to create and preserve affordable housing is broader than the FHA and it is not relegated to zoning. Rather, it implicates the Township's general police powers for protection of the public health, safety and

general welfare. When it comes to local economic regulations, municipalities enjoy a vast reservoir of police power to enact ordinances related to same under the New Jersey Home Rule Act.

"A municipality in the exercise of its police power clearly may seek to address housing problems." Holmdel Builders Ass'n v. Township of Holmdel, 121 N.J. 550, 568 (1990)(citing Dome Realty, Inc. v. City of Paterson, 83 N.J. 212 (1980); Inganamort v. Borough of Fort Lee, 62 N.J. 521 (1973). This is consistent with Article IV, Section VII, Paragraph 11 of the New Jersey Constitution, which in relevant part provides: "[t]he provisions of this Constitution and of any law concerning municipal corporations formed for local government [. . .] shall be liberally construed in their favor." N.J. Const. art IV, §7, ¶11

"Home rule is basic in our government. It embodies the principle that the police power of the State may be invested in local government to enable local government to discharge its role as an arm or agency of the State and to meet other needs of the community." Inganamort, 62 N.J. at 528 (upholding local rental control ordinances as a valid exercise of municipal authority under N.J.S.A. 40:48-2 of the Home Rule Act to assist in the prevention of homelessness).

When it comes to local economic regulations, municipalities enjoy a vast reservoir of police power to enact ordinances related to same under the New Jersey Home Rule Act. In particular, the Court has consistently held N.J.S.A. 40:48-2 of the Home Rule Act to be "a reservoir of police power." Inganamort, 62 N.J. at 536. Time-and-again the Court has upheld municipal ordinances concerning economic and social legislation enacted pursuant to the general municipal police power set forth at N.J.S.A. 40:48-2 of the Home Rule Act. See Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 559-564 (1975)(compiling Federal and New Jersey Supreme Court decisions upholding local economic regulations on real and personal property); see also

Nebbia v. New York, 291 U.S. 504 (1934)(upholding local economic regulations on federal constitutional grounds); Brunetti v. Borough of New Milford, 68 N.J. 576 (1975)(upholding rent control ordinances on New Jersey and Federal constitutional grounds).

Like any other municipal ordinance, a strong presumption of validity accompanies municipal ordinances concerning economic and social legislation enacted pursuant to a municipality's police power. Brown v. City of Newark, 113 N.J. 565, 571-72 (1989)(upholding ordinances regulating peddlers). Such "municipal actions enjoy a presumption of validity." Bryant v. City of Atlantic City ("Bryant"), 309 N.J. Super. 596, 610 (App. Div. 1998).

Economic regulations need be only rationally related to a legitimate state purpose to pass constitutional must. Brown v. City of Newark, 113 N.J. at 572. Such regulations will be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for same. See F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993).

Time-and-again the Court has upheld municipal action concerning economic and social legislation pursuant to the general municipal police power set forth at N.J.S.A. 40:48-2 of the Home Rule Act. See Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 559-564 (1975)(compiling Federal and New Jersey Supreme Court decisions upholding local price regulation ordinances on real and personal property).

In fact, the Court has consistently held N.J.S.A. 40:48-2 of the Home Rule Act to be a "a reservoir of police power." Inganamort I, 62 N.J. at 536. Therefore, "municipalities have broad power to enact and enforce ordinances to protect the public health, safety, and welfare." Brown, 113 N.J. at 571. Thus, in considering challenges to economic regulations adopted by municipalities pursuant to their general police powers set forth under N.J.S.A. 40:48-2, the New Jersey Supreme Court has made clear, "[l]egislatures, both state and local are better situated than

courts to make policy decisions concerning public health, safety, and welfare." Brown, 113 N.J. at 571.

Indeed, in Inganamort I, the Court held "*[t]he police power is vested in local government to the very end that the right of property may be restrained when it ought to be because of a sufficient local need.*" Inganamort I, at 538 [emphasis added].

The court's inquiry into local affordable housing regulations must "inevitably consider the complex factors that contribute to the persistent and substantial shortage of low-and moderate-income housing … . This inquiry necessarily begins with [the Mount Laurel doctrine]." Holmdel Builders Ass'n, 121 N.J. at 562 (1990). Therefore, the inquiry begins with the New Jersey Supreme Court's seminal decisions in: S. Burlington Cty. NAACP v. Township of Mount Laurel ("Mt. Laurel I"), 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808 (1975); S. Burlington Cty. NAACP v. Township of Mount Laurel ("Mt. Laurel II"), 92 N.J. 158 (1983); Hills Dev. Co. v. Bernards ("Mt. Laurel III"), 103 N.J. 1 (1986); and as most recently reaffirmed by the Court In re N.J.A.C. 5:96 & 5:97 ("Mt. Laurel IV"), 221 N.J. 1 (2015).

At the foundation of the *Mount Laurel* doctrine is the recognition by the Court that the need for affordable housing is "universal and constant," and the "proper provision for adequate housing" is "an absolute essential in promotion of the general welfare required in all local land use regulation." Mt. Laurel I, 67 N.J. at 179.

Commensurate with a municipality's constitutional obligation to create reasonable opportunities for the construction of affordable housing, is a municipality's ability to enforce its ordinances to protect its affordable housing stock for the protection of the public welfare. The *Mount Laurel* doctrine is not a one-way street. As aptly put by Justice Pashman in Mt. Laurel I, "[o]nce [a municipality] has adopted a comprehensive plan which properly provides for the

community's fair share of the regional housing needs, it is entitled to be able to enforce that plan through its zoning ordinances." Mt. Laurel I, 67 N.J. at 214 (Pashman, J., concurrence).

In light of the difficulty and complexity with addressing the affordable housing shortages in this State, the Court has interpreted the FHA in a manner that does not limit the ability of municipalities to adopt ordinances and methods for creating and preserving affordable housing. "Under the FHA municipal measures that are simply variants of a COAH-approved method are valid." Holmdel Builders, 121 N.J. at 574. It has long been recognized that municipalities are not only permitted, but *encouraged*, by the Court to be creative in creating other devices and measures to meet affordable housing obligations. See Mt. Laurel II at 265-66. This is because "the broad reach of the zoning authority arises from its character as an aspect of local government's police powers." Holmdel Builders, 121 N.J. at 568.

Importantly, in 2022 the Appellate Division reaffirmed the legal principle that municipalities are not limited by the FHA and the *Mount Laurel* doctrine, explaining that nothing in the FHA or the Mount Laurel doctrine limits a municipality's right to require set-aside units over and above its current need. See Fair Share Housing Center, Inc. v. Zoning Board of City of Hoboken, Case No. A-1499-17, 2022 WL 2103899 (N.J. App. Div. June 9, 2022)(see slip op. at Joint Ex. "**J-34**"). "The *Mount Laurel* doctrine establishes a floor, rather than a ceiling, for what municipalities may do to encourage the addition of affordable housing for low and moderate income individuals." Id. at p. 40.

Furthermore, the Court in Holmdel Builders recognized that municipalities are permitted to rely upon their inherent police powers, including N.J.S.A. 40:48-2 of the Home Rule Act, to adopt local regulations to address affordable housing concerns in addition to the FHA. "The police power enables a municipality to take such actions 'as it may deem necessary and proper for the

good of government, order and protection of persons and property and for the preservation of the public health, safety and welfare of the municipality and its inhabitants.'" Holmdel Builders, 121 N.J. at 568 (quoting N.J.S.A. 40:48-2 of the Home Rule Act).

To this issue, in Mt. Laurel II, the Court explained that in relation to State and local legislative enactments for providing for affordable housing, "it would take a clear contrary constitutional provision to lead us to conclude that that which is necessary to achieve the constitutional mandate is prohibited by the same Constitution. In other words, we would find it difficult to conclude that our Constitution both requires and prohibits these measures." Mt. Laurel II at 273.

The law is well-settled as to the Township's position and the Township's action is in furtherance of the Constitutional obligation and State's public policies on affordable housing. Further, it is unequivocally clear that the court must view the instant application as highly favorable to the Township, after giving full recognition to the *Mount Laurel* doctrine, the presumption of validity tethered to the Township's ordinances, and the Township's authority under the Home Rule Act to adopt local economic regulations to provide and preserve affordable housing opportunities for the protection of the public health, safety and general welfare.

"The public policy of this State has long been that persons with low and moderate incomes are entitled to affordable housing." Homes of Hope Inc., v. Eastampton Twp. Plan. Bd., 409 N.J. Super. 330, 337 (App. Div. 2009). Therefore, the provision of affordable housing is an essential government function to promote the general welfare. Id. at 338. Since Mt. Laurel II and the enactment of the FHA, the Court has recognized that "[a]ffordable housing is a goal that is no longer merely implicit in the notion of the general welfare. It has been expressly recognized as a governmental end and codified under the FHA, which is to be construed *in pari materia* with the

[Municipal Land Use Law]." Fair Share Hous. Ctr. v. Twp. of Cherry Hill, 173 N.J. 393, 409 (2001) (quoting Holmdel Builders, 121 N.J. at 567)).

B. The Law Division Cases of Society Hill, Errico and RJB Do Not Apply.

Despite all of the above, Plaintiff almost exclusively relies on the nonbinding Law Division decisions of Soc'y Hill at Piscataway Condo. Ass'n, Inc. v. Twp. of Piscataway, 445 N.J. Super. 435 (Law Div. 2016) (hereinafter "Society Hill"); and Errico v. Tp. of Mahwah, No. BERL18014, 2014 WL 3891227, at *3 (Law Div.. July 28, 2014). Yet neither case was brought by a homeowners associations who were suing the protected class to void the extensions of affordability controls. Unlike this case, the owners of the units sought to void their deed restrictions.

It is well established in New Jersey that the "decision of an inferior court is not binding on a court of coordinate jurisdiction." Manturi v. V.J.V., Inc., 179 N.J. Super. 300, 306 (App. Div. 1981)(citing Wolf v. Home Ins. Co., 100 N.J. Super. 27 (Law Div.), aff'd, 103 N.J. Super. 357 (App. Div. 1968)). "Trial court precedent is not to be considered lightly, but in the absence of an appellate authority in New Jersey, the court is not obliged to follow it." Lackovic v. New England Paper Tube Co., 127 N.J. Super. 394, 398 (Law Div.1974) (quoting Ferraro v. Ferro Trucking Co., Inc., 72 N.J. Super. 519, 523 (Law Div.1962)).

"It is beyond dispute that a trial judge has the responsibility to comply with pronouncements of an appellate court." Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 306 (App. Div. 2010)(quoting Tomaino v. Burman, 364 N.J. Super. 224, 233 (App. Div. 2003). "Trial judges are privileged to disagree with the pronouncements of appellate courts; the privilege does not extend to non-compliance." Jersey City Redevelopment Agency v. Mack Props. Co. No. 3, 280 N.J. Super. 553, 562 (App. Div. 1995)(quoting Reinauer Realty Corp. v. Borough of Paramus, 34 N.J. 406, 415 (1961)).

This Court must disregard the Law Division decisions in Society Hill, Errico and RJB because they are by-in large based on their unique facts of those cases. Instead, the Court should be guided by the Supreme Court's approval of each municipality's right to extend the affordability controls in Mt. Laurel IV. See Mt. Laurel IV, 221 N.J. at 32; and the Appellate Division's 2007 decision, which held that "[e]xtending affordability controls on existing housing prevents the loss of much needed affordable housing." In re N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 84 (App. Div. 2007).

C. The Underlying Facts of Society Hill, Errico and RJB are Inapposite to the Instant Matter.

As already explained *ad nauseum* the relevant facts as to the 66 Affordable Units are as follows:

- The 66 Affordable Units in Eden Lane are "95/5 units"; (see p.14, ¶77 of JSF);
- Construction was not completed on the first of the 66 Affordable Units until **August of 1993** (see p.6, ¶11 of JSF)(see also Joint Ex. "**J-15**");
- In 1997, the Township adopted a Housing Element and Fair Share Plan ("HEFSP") and petitioned COAH for combined First and Second Round substantive certification in accordance with N.J.S.A. 52:27D-313 of the 1985 version of the Fair Housing Act and COAH's prior round rules at N.J.A.C. 5:93 et seq (see p.12, ¶¶53-56 of JSF; see also Joint Ex. "**J-16,**" "**J-17**", and "**J-18**");
- At that time all 66 of the Affordable Units in Eden Lane (then referred to as "Eden Mill Village") were restricted ownership units the Township included in its 1997 HEFSP submitted to COAH (see p.12, ¶¶55 of JSF; see also Joint Ex. "**J-16,**" "**J-17**", and "**J-18**");
- On August 4, 1999, COAH approved the Township's HEFSP and granted substantive certification to the Township pursuant to COAH's prior round rules under N.J.A.C. 5:93. (see p.12, ¶¶54-56 of Joint Stipulated Facts; see also Joint Ex. "**J-17**" and "**J-18**");and
- The Township received 66 credits from COAH for all 66 of Affordable Units in Eden Lane. Id.

In contrast, the units in Society Hill were **constructed and occupied prior to** the enactment of the FHA in July 1985 and before COAH adopted its initial regulation creating the

right in municipalities to extend the affordability controls effective in July 1989. Society Hill, 445 N.J. Super. at 439, 441, 447. "In the matter before me, none of plaintiffs' units were constructed or approved by COAH after July 17, 1989 … ." Soc'y Hill, 445 N.J. Super. at 447. "Instead, each of the affordable housing units at issue in this case was constructed much earlier, pursuant to the *Urban League* litigation. Likewise, all of the relevant documents relating to the deed restrictions pre-date the enactment of the FHA and its implementing regulations." Id. at 447

Also unlike this matter, in Society Hill, "all of the relevant documents relating to the deed restrictions pre-date the enactment of the FHA and its implementing regulations." Therefore, Retired Judge Wolfson created an exception when he determined "[i]nasmuch as none of the Society Hill units were constructed pursuant to, or under the auspices of, COAH or the FHA, the UHAC regulations do not apply to them as a matter of law." Id. at 447.

As explained in Point II, supra. UHAC applies to Eden Lane because these units were first approved, construction and sold **several years after COAH first adopted its affordability control regulations which established in the municipality the right to prohibit the repayment option and maintain the controls on the affordable units in 1989.**

With respect to the RJB decision, that case involved *leasehold units*. RJB did not involve fee-simple affordable units like the 66 Affordable Units in Eden Lane. COAH's 1989 "Controls on Affordability" regulations only included a provision authorizing municipalities to extend the affordability controls fee-simple units. In 1989, COAH's regulations did not include a companion regulation that allowed municipalities the right to extend the affordability controls on leasehold units.

With respect to Errico, the only similarity is that the Township of Hanover settled its initial *Mount Laurel* case in 1984. From there everything diverges. The dispositive factor in Errico was

the express terms of the settlement agreement. The developers/property owners directly negotiated with and were signatories of the settlement in Mahwah's underlying Urban League litigation. The settlement agreement included a comprehensive affordable housing plan, which Mahwah was obligated to comply with. In contrast, in the Township's original *Mount Laurel* litigation, neither he original developer, Calk, nor "Baker Firestone" the developer that finally constructed Eden Lane in 1993 were parties to the Township's first *Mount Laurel* litigation.

The settlement agreement between the Township and the Public Advocate to resolve the Township of Hanover's initial *Mount Laurel* case is also materially different from the settlement agreement in Errico in almost all respects. In the Errico case the settlement agreement included a comprehensive affordable housing development plan that the developer-parties and Mahwah were to abide by which was approximately 150 pages long and was incorporated directly into the court's decision in Urban League of Essex County v. Mahwah Tp., 207 N.J. Super. 169 (Law Div. 1984). The party-developers and Mahwah executed a settlement agreement that bound the parties to a control period that "shall expire no sooner than twenty five (25) years" which the court in Errico took to mean a finite period of time of 25 years. Urban League of Essex, 207 N.J. Super. at 254.

Here the Township's settlement agreement, which merely incorporated the Township's affordable housing ordinances, which amongst other things states: the control period for all low/mod inclusionary developments approved would be for "**at least 30 years**".

In Errico, the Law Division Judge acknowledged that the plain language of the settlement agreement in Urban League of Essex Cty., between Mahwah Township and the party-developers stated Mahwah was not permitted to change the settlement terms to adopt any ordinances as a result of any future legislative enactments to alter the settlement agreement and did not reference any agency regulations. Errico v. Tp. of Mahwah, No. BERL18014, 2014 WL 3891227, at *3

(Law Div. July 28, 2014). "The Settlement Agreement also stated that it would not be affected by any state, county, or local government imposed building moratorium or staging or phasing of construction and/or other legislative developments relating to *Mount Laurel II* housing developments, including but not limited to, the pending N.J. Senate Bills 2046 and 2334 (which both passed on July 2, 1985 and are now known collectively as the New Jersey Fair Housing Act)." Id. "As a consequence, it is clear that all of the parties involved in the Urban League of Essex Cty., decision were aware of the pending Fair Housing Act in the Senate, and the Settlement Agreement specifically mentions that the Fair Housing Act would not affect the resale of the units that were built in Mahwah in accordance with Judge Smith's decision." Id.

No such language is included in the Township's settlement agreement. Rather, enumerated paragraph 10 of the Township's Settlement Agreement with the Public Advocate, expressly provides that the Township is authorized to repeal and amend its affordable housing ordinances upon the construction and occupancy of the affordable units to satisfy its affordable housing obligation. (See ¶10 of 1984 Settlement Agreement at Bates# J-00009 of Joint Ex. "**J-1**").

Lastly, enumerated paragraph 6D of the Township's Settlement Agreement specifically contemplated that any affordable housing units would be subject to New Jersey agency requirements on resale controls, as the provision explains that the Township must take all reasonable steps to foster development of affordable units, including "cooperation with the needs of a developer and the requirements of state and Federal agencies concerning the administration of resale price controls. (See ¶6D of 1984 Settlement Agreement at Bates# J-00007 thru J-00008 of Joint Ex. "**J-1**").

Accordingly, Errico, RJB and Society Hill are entirely inapposite to and do not apply to the instant matter.

C. The Restatement Third of Servitudes Fully Supports Perpetual Affordability Controls.

New Jersey follows the Restatement Third of Property Servitudes in deciding disputes on restrictive covenants. See Citizens Voices Ass'n v. Collings Lakes Civic Ass'n, 396 N.J. Super. 432, 445-447 (App. Div. 2007).

To this point the Court must be careful in applying American Dream at Marlboro, LLC v. Planning Bd. of Tp. of Marlboro, 209 N.J. 161 (2012) in the context of affordable housing deed restrictions. American Dream involved an unrecorded deed restriction imposed on a private developer by a planning board, which precluded the developer from developing on a flag lot. Importantly, in that case the parties did not dispute that the *local planning board* lacked the power to eliminate a previously imposed, but never recorded deed restriction against developing a flag lot. Id. at 169. Rather, it was conceded that it is the courts that have the "equitable power to modify or terminate" such restrictions. Ibid.

The Court in American Dream relied on the general law in Citizens Voices Ass'n v. Collings Lakes Civic Ass'n, 396 N.J. Super. 432 (App. Div. 2007); and various sections of the Restatement (Third) Property: Servitudes (2000). The Appellate Division in Citizens Voices expressly recognized that the "changed-conditions doctrine" may permit a court to modify a covenant, grounded in the implied intent of the parties and public policy.

Fundamentally, American Dream and Citizens Voices did not address application of the Restatement of Property Servitudes in the context of affordable housing restrictions. Had this been the case, the Court and Appellate Division would have necessarily had to consider §3.4(h) of the *Restatement (Third): Property: Servitudes*, which makes clear:

> Programs designed to provide affordable housing depend on severe restraints on alienation to prevent resales at market prices. Such restraints include limitations on the price for which units can be sold, as well as limitations on permissible transferees. They may also include requirements that the owner sell when the owner ceases to be a member of the group for whom the housing is provided. Such restraints are reasonable so long as designed to serve a legitimate purpose and so long as they permit a reasonable opportunity for the owner to transfer the unit.
>
> [Restatement (Third): Property: Servitudes §3.4 cmnt. h (2000)].

As applied to the instant matter, the legal nature of the Township's regulatory right over the resale of affordable housing under COAH's initial "Controls on Affordability" was first addressed by the New Jersey Appellate Division and Supreme Court in Prowitz v. Ridgefield Park Village, 237 N.J. Super. 435, 443 (App. Div. 1989), aff'd o.b., 122 N.J. 199 (1991). Ironically,

Although Prowitz involved the impact of affordable housing resale controls on real property taxation, it is dispositive in the instant matter. Therein, Judge Pressler, writing for the Appellate Panel, elaborated on the purpose, public importance, and legal character of affordable resale controls, explaining that affordable housing resale controls impose a burden on the owner that "is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State's woefully inadequate inventory of affordable housing." Id. at 442-43 (citing N.J.S.A. 52:27D-302). "It is not a potential benefit to any specific affordable-housing unit owner with which the resale restriction is concerned, but rather the benefit to the public that is vouchsafed by indefinitely maintaining that unit in the affordable housing stock. And it is that public benefit which is the *quid pro quo* of the concomitant value-depreciating burden of the restriction." Id. at 443.

Accordingly, the Township respectfully urges that Plaintiff's claims and requested declaratory relief be denied and the Court uphold the Township's actions in extending the

affordability controls for the benefit of the public interest in preserving affordable housing opportunities.

CONCLUSION

Based upon the foregoing, Defendant/Counterclaim Plaintiff Township of Hanover respectfully urges the Court to deny Plaintiff's request for declaratory relief and enter judgment in favor of the Township of Hanover and the 66 Affordable Unit Owners named as Co-defendants in this matter in order to preserve the Township's existing affordable housing stock within Eden Lane.

Respectfully submitted,
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Township of Hanover

By: /s/ Jonathan Testa
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Dated: June 27, 2025

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EDEN LANE CONDOMINIUM ASSOCIATION, INC., Plaintiff, -vs- TOWNSHIP OF HANOVER, a Municipal Corporation of the State of New Jersey, AYSHA AND SHAHIDA AKBAR, TACHUN LIN AND JENYI LIN-CHERN, SHASHI AND MANISH MAL MOTRA, SONG AND YUNCHUNG LEE, TRACY CROTTY, DIANE UJFALUSSY, PATRICIA BARISCIANO, VASILIOS A. TSINONIS, MICHAEL BATTISTA, ALEXANDER DEROSE, LAUREN CAPAVANNI, SAMUEL VASSALLO, ALBERT HAINES, JR., JERROLD MICHAEL KLAUS, LORI CONVERSO, MOHEB ABDOU AND MIRA KALDAS, DAVID FERRIGNO, STEPHANIE TASIN, MARY WOTASEK, FAINA PASICHENKO, MARY JO SENKIER, KEVIN AND HUNG HUYNH, HOLLY GROSSO, JUSTIN YEN, NEREIDA ROSADO, GINA GONDEVAS, NILESH AND KRUTI MEHTA, PHAN HUYNH, JOSEPHINE MCKENNA, ROBIN PRUSIN, TAMMY TILLETT, JOSEPH ECHANDIA, DONNA MELILLO, DONNA M. RIZZO, MARISA DEL SORDI, ADELE KOZLOWSKY, JOHN ENGLE, JESSICA SELLITTO, MADELINE LUCIVERO, KARLENE GREEN, MARC T. SIEKA, BERNADETTE QUIOGUE, LUZ DIVINA	**SUPERIOR COURT OF NEW JERSEY, LAW DIVISION – MORRIS COUNTY** **CIVIL ACTION** DOCKET NO.: MRS-L-000413-23

CRUZ, HETAL PATEL, MICHAEL AND CYNTHIA WYDNER, NICOLE AND MICHAEL CRAIG, ALEJITA ORTIZ, ROSEANNE TINEBRA, BARBARA GREENBERG, TRUDI WITTENBERT, MARY NEMEC, ANNETTE DOBBS, JOHN AND TERRY STOLFI, MICHAEL RICCARDI, WILLIAM KEYSER, JOY CAPRONI, VICTOR RISTOPPIA, PRITI SITWALA, DEBRA HENDLER, GLORIA M. BORGES, ADRIAN S. CLEMENTE, SUSAN MAZZARELLA, PRASANTA AND NIHARIKA DAS, RAJKUMARI GAUR, TERRY A STELLA, AND RAJENDRA GANDHI, Defendants.
TOWNSHIP OF HANOVER, a municipal body of politic and corporate governed and organized under the laws of the State of New Jersey, Counterclaim Plaintiff, -vs- EDEN LANE CONDOMINIUM ASSOCIATION, INC, Counterclaim Defendant(s).

DEFENDANT/COUNTERCLAIM PLAINTIFF TOWNSHIP OF HANOVER'S STATEMENT OF MATERIAL FACTS

In anticipation of trial, Defendant/Counterclaim Plaintiff Township of Hanover (hereinafter "Township," "Hanover,") submits the following statement facts in addition to the Joint Statement of Facts filed in this matter on June 12, 2025. (See eCourts Transaction Id No. LCV20251748154).

I. The Eden Lane Inclusionary Development & Differences in Size & Percentage of Common Area Ownership Interest Between Affordable and Market Rate Units.

1. The Eden Lane Condominium development ("Eden Lane") is a 298-unit affordable housing inclusionary development located within the "R-M Residential Multi-Family District" (hereinafter "R-M District" or "R-M Zone") of the Township of Hanover. (See p.5-6;¶¶1, 4 of the Joint Stipulated Facts filed on June 12, 2025)[1].

2. There are sixty-six (66) low-and moderate-income fee simple affordable apartments (the "Affordable Units) in Eden Lane. (See JSF at p.6;¶5).

3. The remaining 232 dwelling units in Eden Lane are comprised of market rate "Townhouse Units" and "Manor Home Units" (collectively the "Market Rate Units"). (See JSF at p.6;¶6).

4. Construction on the first of the 66 Affordable Units was not completed until **August 1993**. (See Initial Certificates of Occupancy for the Affordable Units at Joint Ex. "**J-15**").

5. The initial certificates of occupancy for the 66 Affordable Units were issued between August and December of 1993. Id.

6. All 66 Affordable Units are "95/5 Units" as defined under N.J.A.C. 5:80-26.2 of the New Jersey Housing and Mortgage Finance Agency's ("NJHMFA" or "HMFA") "Housing Affordability Controls" ("UHAC"). (See JSF at p.14;¶77).

7. All 66 Affordable Units are located in several garden apartment buildings situated in an area of Eden Lane entirely separate and apart from the Market Rate Units. (See JSF at p.6;¶13).

[1] Citations to the relevant portions of the parties Joint Stipulated Facts filed on June 12, 2025 shall hereinafter be referred to in abbreviated form as "JSF".

8. All 66 Affordable Units are far smaller in square footage and size, as compared to the Market Rate Units. (See JSF at p.6;¶14); (see also Third Amendment to Eden Lane Master Deed, dated July 21, 1993 at Bates# J-00601 thru J-00615 Joint Ex. "**J-14**").

9. Each of the owners of the Market Rate Units have a higher percentage of ownership interest in the common areas than the Affordable Units owners. (See Bates# J-00588 thru J-00600 of Joint Ex. "**J-14**").

10. Each of the owners of the Affordable Units have a .1312 % ownership interest in the common areas, or 1/3 of an ownership interest of the common areas as compared to the each of the Market Rate Unit owners. (See Bates# J-00598 thru J-00600 of Joint Ex. "**J-14**").

11. Each of the owners of the Market Rate Unit have a .3937 % ownership interest in the common areas. (See Bates# J-00588 thru J-00597 of Joint Ex. "**J-14**").

12. Each individual unit in Eden Lane constitutes a separate parcel of real property that each owner may deal with as he/she would like any other parcel of real property pursuant to N.J.S.A. 46:8B-4.

II. The Township's R-M District Affordable Housing Requirements & 1984 Settlement.

13. Eden Lane is and has always been located entirely within the Township's R-M District and has always remained subject to the Township's affordable housing ordinances for the R-M District. (See JSF at pp.5-7;¶¶1,15-18).

14. The Township originally adopted the provisions of the R-M District in 1984. (See JSF at p.6;¶1,15); (see also Township's Final Judgment of Compliance, dated September 24, 1984 at Bates# J-00001 thru J-00030 of Joint Ex. **"J-1"**).

15. The R-M District provisions were adopted in accordance with a settlement agreement reached between the Township, the Public Advocate of the State of New Jersey, the

Morris County Branch of the NAACP and Morris County Fair Housing Council in the Township's initial *Mount Laurel* case entitled: Morris County Fair Housing Council v. Township of Boonton, Docket No.: MRS-L-60001-78 ("MCFHC Action"). Id.

16. This resulted in the Township receiving a Final Judgment of Compliance in the MCFHC Action, issued by the Honorable Eugene Serpentelli J.S.C on September 24, 1984. Id.

17. Neither the original applicant developer nor the successor developer of Eden Lane were plaintiffs in the Township's MCFHC Action. (See Id. at Bates# J-00002 thru J-00005 of Joint Ex. "**J-1**").

18. With respect to the affordability controls, paragraph 6D of the Settlement Agreement expressly contemplated that any affordable housing units developed in the Township would be subject to New Jersey agency requirements on resale controls, as the provision explains that the Township must take all reasonable steps to foster development of affordable units, including "cooperation with the needs of a developer and the requirements of state and Federal agencies concerning the administration of resale price controls." (See ¶6D of 1984 Settlement Agreement at Bates# J-00007 thru J-00008 of Joint Ex. "**J-1**").

19. The Township first adopted the R-M District before any land use applications were filed for the Eden Lane inclusionary development. (See Joint Ex. "**J-1**") (see also Hanover Township Planning Board Resolution, dated November 28, 1989 at Joint Ex. "**J-6**").

20. Since 1984 and continuing to the present date, the Township's R-M District has always included a mandatory affordable housing set aside requirement and a mandatory minimum affordability control period for all affordable units within the R-M District. (See 1984 R-M Zone §§1, 13A & 13F at Bates# J-00011, J-00016 thru J-00018 Joint Ex. **"J-1"**); (see also §§13A & 13F of Township Ordinance 32-85 at Bates# J-00040 to J00042 Joint Ex. "**J-2**"); (see also §§166-

180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 Joint Ex. "**J-19**"); (see also §§166-177 & 166-180M(6)(c) at Bates#J-00704, Bates#J-00706 of Joint Ex. "**J-20**").

21. Prior to construction of the Eden Lane complex, and at all times after construction was completed, the Township's R-M District ordinances have included a provision requiring that developers of affordable housing "submit a plan for resale or rental controls to ensure that the units remain affordable to low and moderate income households **for at least thirty (30) years."** [emphasis added]. (See 1984 R-M Zone §13F at Bates# J-00018 Joint Ex. "**J-1**");(see also §13(f) of Township Ordinance 32-85 at Bates# J-00042 Joint Ex. "**J-2**") (see also §166-180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 of Joint Ex. "**J-19**") (see also 166-180M(6)(c)at Bates#J-00709 of Joint Ex. "**J-20**") [emphasis added].

22. The Township's R-M District provisions have always required a mandatory minimum affordable control period of "**at least 30 years**" and has never limited the length of the control period. (See 1984 R-M Zone §13F at Bates# J-00018 Joint Ex. "**J-1**") [emphasis added]; (see also §13(f) of Township Ordinance 32-85 at Bates# J-00042 Joint Ex. "**J-2**"); (see also §166-180M(6)(c) of Township Ordinance No. 28-99 at Bates# J-00702 of Joint Ex. "**J-19**"); (see also 166-180M(6)(c) at Bates#J-00709 of Joint Ex. "**J-20**") .

23. The Township's local affordable housing zoning ordinances for the R-M District are currently set forth at §§166-177 through -180 of the Township's "Land Use and Development Code". (See Joint Ex. **J-20**).

III. Preliminary and Final Planning Board Approvals for Eden Lane

24. Calk, Inc., ("Calk") was the developer that sought approval from the Township Planning Board to develop the Eden Lane inclusionary development. (See Calk's legal brief in

support of its Motion to Intervene in Township's MCFHC litigation, dated October 23, 1986 at Bates# J-00048 Joint Ex. "**J-3**").

25. On August 15, 1989, Calk filed an amended preliminary site plan application to develop the subject property with the Township of Hanover Planning Board. (See Hanover Township Planning Board Resolution, dated November 28, 1989 at Joint Ex. "**J-6"**).

26. In the 1989 preliminary site plan application, Calk proposed a new site layout for the Eden Lane inclusionary development. Id.

27. The new site layout was necessitated due to the existence of wetlands on the property. Id.

28. On November 28, 1989, the Township Planning Board adopted a resolution approving Calk's amended preliminary site plan application. Id.

29. Calk made an application to the Township Planning Board for final site plan approval in 1991. (See Hanover Township Planning Board Resolution, dated August 27, 1991, at Joint Ex. "**J-7**").

30. On August 27, 1991, the Township Planning Board granted final site plan approval to Calk for the development of the Eden Lane inclusionary development. Id.

IV. The Eden Lane Developer Agreed to be Bound by Whatever Decisions & Ordinances the Township Required About the Affordability Controls.

31. Prior to receiving site plan approvals for the Eden Lane inclusionary development, Calk repeatedly represented to the Township that it agreed to comply with whatever the Township required as to affordability controls for the Affordable Units. (See Joint Ex. "**J-3**").

32. During a March 25, 1986 Township Planning Board hearing on Calk's initial site plan application, Calk's attorney stated to the Planning Board that although Calk submitted some proposed ordinances to the Township for consideration regarding the marketing and control of

future sales, Calk agreed to be guided by whatever ordinances the Township chooses to adopt regarding the marketing and affordability controls over the future sales of the Affordable Units. (See 2T20:L1-9 at Bates# J-00245 Joint Ex. "**J-5**").

33. Calk thereafter filed a motion in New Jersey Superior Court seeking to intervene in the Township's MCFHC Action in the fall of 1986. (See Joint Ex. "**J-3**").

34. In Calk's motion to intervene, Calk's attorney, Alan D. Goldstein, Esq., once again confirmed Calk agreed to whatever ordinances the Township chose to adopt with respect to the affordability controls for the Affordable Units. (See Bates#J00060 to J00061 Joint Ex. "**J-3**").

35. Concerning same, Calk's legal brief in support of its motion to intervene, in relevant part, expressly provides:

> 11. UNITS FIRST OFFERED TO HANOVER RESIDENTS IN AGREEMENT WITH MUNICIPALITY REGARDING MARKETING. **The applicant agreed to whatever ordinances the Township would choose to adopt with respect to marketing and controls of sales units**. [2T20:L1]. **The applicant agreed to comply with whatever ordinance the Township adopted to permit the Township to control the Mt. Laurel commitments** and that if the amount determined to be charged for compliance enforcement for each unit by the municipality was fair that the applicant would pay same. [1T23:L3]. This item is not in issue.
>
> 12. AGREEMENT REGARDING MARKETING AND CONTROL OF UNITS. Same as 11 above.
>
> [Id. at Bates#J00060 to J00061 Joint Ex. "**J-3**"] [emphasis added].

36. While Calk's amended preliminary final site plan application was pending in the fall of 1989, the Township Clerk/Administrator Joseph A. Giorgio, R.M.C., sent correspondence to Calk's representative Ralph A. Loveys, Jr., on October 18, 1989 advising the Council on Affordable Housing ("COAH") promulgated and adopted a new regulation affecting controls on the affordability of low-and moderate-income units set forth at N.J.A.C. 5:92-12.1 et seq; and

enclosed a copy of the regulations and correspondence from COAH providing an explanation of the regulations. (see also Correspondence from Township Business Administrator Joseph A. Giorgio, R.M.C, dated October 18, 1989 at Joint Ex. **"J-8"**).

37. The Township Administrator's letter further instructed Mr. Loveys to review COAH's rules (N.J.A.C. 5:92-12.1 et seq.) and submit comments to Mr. Giorgio as soon as possible. Id.

38. On February 27, 1990 the Township Business Administrator sent follow-up correspondence to Calk's principal representative Ralph A. Loveys, Jr., regarding COAH's new affordability control regulations, and again enclosed a copy of COAH's regulations at N.J.A.C. 5:92-12.1 et seq. and the letter from COAH (See Correspondence from Township Administrator Joseph A. Giorgio, R.M.C., to Calk, Inc., dated February 17, 1990 at Joint Ex. "**J-9**").

39. Mr. Giorgio's letter of February 27, 1990, in relevant part states:

> In my October 18, 1989, correspondence, I requested your opinion and comments as to whether or not you as a developer of one of the five R-M Zone multi-family projects would have a problem if the Township applied this uniform deed restriction regulation to your development and the other four R-M Zones.
>
> I have enclosed another set of the regulations for your careful review. **If I do not receive a response by April 1, 1990, the Township will assume that you are in total agreement with the uniform deed restrictions and will not challenge the Township's implementation of such regulations on your developments**.
>
> [Id. at Bates#J-00312 Joint Ex. "**J-9**" (emphasis added)].

40. Mr. Giorgio has reviewed his files and has no record of receiving any response from Calk objecting to the implementation of such regulations on the Eden Lane development. (See JSF at p. 8;¶33-34).

V. Provisions Master Deed & Affordable Housing Plan

41. Section 6 of the Master Deed explains how the respective percentages of interest in the common areas was arrived at for both the Market Rate and Affordable Unit owners. (See JSF at pp. 9-10; ¶42); (see also Master Deed at Bates#J-00485 of Joint Ex. "**J-11**").

42. Section 11.25 of the Master Deed, in relevant part explains, "**[t]he allocation and assessment of the Association Expenses shall be predicated upon the percentage of interest of each Unit in the Common Elements of the Condominium Property**." (See JSF at pp. 10-11; ¶45); (see also Master Deed at Bates#J-00498 to J-00499 of Joint Ex. "**J-11**") [emphasis added)].

43. Section 11.25 of the recorded Eden Lane Master Deed, which remain unchanged as of the current date, provides as follows:

> **11.25 Maintenance Fees.** That the owner or co-owners of each Unit are (i) personally bound to contribute to the Common Expenses of administration and of maintenance, repair or replacement of the Common Elements and expenses of administering and maintaining the Association and all of its real and personal property **in the proportions set forth hereinafter** and in such amounts as shall, from time to time, be fixed by the Trustees of the Association, and to any other expenses that may be lawfully agreed upon. The Association shall commence the collection of Common Expenses, including reserves, upon the closing of title to the first Unit in the Condominium. **The allocation and assessment of the Association Expenses shall be predicated upon the percentage of interest of each Unit in the Common Elements of the Condominium Property.** No Owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit owned by him.
>
> [Id. (emphasis added)].

44. Paragraph 11.49 in relevant part states:

> **These resale controls shall remain in effect for subsequent resales and shall be administered by the Township of Hanover Affordable Housing Agency and incorporated into appropriate deed restrictions. In addition to the foregoing, all resales shall**

> **be subject to the rules and regulations set forth in the Zoning Ordinance of the Township of Hanover, as well as to the following restrictions:**
>
> [… .]
>
> (6) Owners of Affordable Condominium Units shall maintain them in accordance with the standards of the Market-Priced Condominium Units in the Condominium. Failure to do so shall enable the Association to do so on behalf of the Unit Owner, and the Association shall have a lien on the Unit for the recovery of all sums expended for such purposes, as provided in this Master Deed and the By-laws.
>
> (7) Other than the sums described in subparagraph (6) above, **any and all assessments for Common Expenses upon the Affordable Condominium Units shall be limited to 33% of the assessment levied by the Association Upon the Market-Priced Condominium Units.**
>
> (8) The terms, restrictions, provisions, and covenants of the Affordable Housing Plan, and the provisions of this Master Deed referring to and incorporating the Affordable Housing Plan, shall automatically expire and terminate thirty (30) years from the date of the Affordable Housing Plan.
>
> **(9)** ***Neither Grantor nor the Association shall amend or alter the provisions of Paragraph 11.49 of this Plan or the Affordable Housing Plan without first obtaining approval of the Township of Hanover. Any such approved amendments or modifications shall be in writing and shall contain proof of such municipal approval and shall not be effective unless and until the same are recorded in the Office of the Morris County Clerk.***
>
> [See Master Deed at Bates#J-00515 to J-00516 of Joint Ex. "**J-11**. (emphasis added)].

VI. Township's Combined First & Second Round Substantive Certification

45. In July 1997, the Township adopted its combined First and Second Round housing element and fair share plan ("HEFSP") to address its cumulative affordable housing obligation for

the period of 1987 through 1999 and filed a petition to COAH for substantive certification. (See JSF at p.12:¶53); (see also Joint Exs. "**J-16**" thru "**J-18**").

46. By resolution dated August 4, 1999, COAH granted substantive certification to the Township. (See JSF at p.12:¶54); (see also Joint Exs. "**J-16**" thru "**J-18**").

47. The Township received 66 affordable housing credits for all 66 of the Affordable Units within Eden Lane as part of COAH's grant of First and Second Round substantive certification. (See JSF at p.12:¶¶55-56).

48. At the direction of COAH, the Township was required to amend certain provisions of the Township's R-M District code. (See JSF at p.12:¶¶57-58); (see also Ordinance No. 28-99 at Joint Ex. "**J-19**").

49. In accordance with COAH's directive, the Township amended those provisions of the R-M District when it adopted Ordinance No. 28-99 on December 9, 1999. Id.

VII. Township's Court Approved Extensions of the Affordable Controls in Eden Lane.

50. In accordance with Mt. Laurel IV, on July 2, 2015, the Township filed a Complaint for Declaratory Judgment in the Superior Court of New Jersey, Law Division, Morris County, in the case entitled: In the Matter of the Application of the Township of Hanover, under Docket No.: MRS-L-1635-15, for the purpose of establishing the Township's Third-Round affordable housing obligation and to obtain a judgment of compliance and repose from the Superior Court of New Jersey (the "2015 Action"). (See JSF at p.13¶64).

51. On July 12, 2018, the Township Committee of the Township of Hanover adopted Resolution No.: 132A-18. (See Resolution No.: 132A-18 at Bates# J-00741 Joint Ex. "**J-22**").

52. Pursuant to Resolution No.132A-18, the Township rejected the repayment option on all 66 of the Affordable Units in Eden Lane, and extended the affordability controls for an

additional 30-year term pursuant to N.J.A.C. 5:93-9.9 of COAH's "Controls on Affordability," N.J.A.C. 5:93-9.1 et seq., and N.J.A.C. 5:80-26.25 of the Housing Mortgage and Finance Agency's ("HMFA") Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"). Id.

53. In the 2015 Action, the Court appointed Special Master and FSHC approved the Township's resolution extending the affordability controls on the 66 Affordable Units in Eden Lane and the Township's program for extending affordability controls on its existing affordable housing stock as a compliance mechanism as part of the Township's Third Round HEFSP. (See Special Master's Report at Joint Ex. "**J-23**").

54. The Township's Extension of Declaration of Covenants, Conditions and Restrictions Implementing Affordable Housing Controls ("Extension Declaration"), and the manner in which the affordability controls were extended, was reviewed and approved by the Court, the Court Appointed Special Master and Fair Share Housing Center during the 2015 Action. (See Joint Ex. "**J-23**"); (see also Order on Fairness and Preliminary Compliance at Joint Ex. "**J-24**"); (see also Final Judgment of Compliance at Bates#J-00786 Joint Ex. "**J-25**").

55. As of today's date, the owners of 31 of the 66 owners of the Affordable Units in Eden Lane have executed conforming Extension Declarations, all of which have been recorded in the chain-of-title for the Affordable Units in the Office of the Morris County Clerk. (See "Extension of Declaration of Covenants, Conditions and Restrictions Implementing Affordable Housing Controls" executed by owners of the Eden Lane Affordable Units at Joint Ex. "**J-26**").

VIII. The Township's Ordinances Maintaining the Reduced Assessment Rates for the Affordable Units.

56. Since 1984 the Township's R-M District provisions have also regulated the Affordable Units with respect to the total principle, interest, property taxes, insurance and homeowner's association assessments for such affordable units to maintain the affordability of the

low-and moderate-income units. (See JSF at p.7;¶¶26); (see also 1984 R-M Zone §3 part 279 Bates# J-00020 Joint Ex. "**J-1**"); (see also relevant portions of Township's "Land Use and Development Code" defining "affordable" at §166-4 and §§166-177 thru -180 of the Township's "R-M Residential Multi-Family District," of Township Ordinance No. 28-99 at Joint Ex. "**J-19**"); (see also Relevant portions of Township's "Affordable Housing Code" at §72-1 thru -24, at Joint Ex. "**J-21**").

57. The reduced assessment rates/amounts are restricted and dictated by the provisions of the Township's R-M District Code and the Township's 2019 "Affordable Housing" Code. Id.

58. §166-180M(6)(e) of Township's R-M District requirements and the Township's definition of "affordable" at §166-4 of the Township's Land Use and Development Code, restrict the amount/percentage of Maintenance Fees assessed against the Eden Lane Affordable Units.

59. The Township has established this restriction by expressly incorporating by reference the affordable housing price limits, set forth at N.J.A.C. 5:93-7.4 of COAH's combined First and Second Round Substantive rules, into both §166-4 and 166-180M(6)(e) of the Township's R-M District and "definition" provisions. Id.

60. Under the "definition" section of the Township's Land Use and Development Code, "affordable" is defined in relevant part, as "[h]aving a sales price or rent within the means of a low-or moderate-income household as defined in N.J.A.C. 5:93-7.4 …." Id.

61. Under §166-180M(6)(e) of the R-M District requirements, titled "Continuing controls on affordability," the Township requires *both* the initial and resale pricing of all Affordable Units in Eden Lane to comply with N.J.A.C. 5:93-7.4 and N.J.A.C. 5:93-9 of COAH's First and Second Round Substantive rules. Id.

62. Since 2019, Eden Lane has also been subject to the Township's separate "Affordable Housing" regulations set forth at Chapter 72 of the Township's general legislation code ("Affordable Housing Code). (See true and accurate copy of relevant portions of Township's "Affordable Housing Code" §72-1 thru -24, at Joint Ex. "**J-21**").

63. During the 2015 Action, the Township was requested to and adopted the Affordable Housing Code and same is set forth at Chapter 72 of the Township's Code.

64. §72-13C of the Township's ordinance specifically restricts Eden Lane from increasing the association fees with respect to the 66 Affordable Units, as the Master Deed was adopted prior to the adoption of the UHAC in October 2001; and the Township has had an ordinance in place restricting increases in the rate of the common area maintenance fees for the Affordable Units. (See Bates# J-00730 at Joint Ex. "**J-21**").

Based upon the foregoing facts and circumstances and the legal arguments set forth in the accompanying trial brief, Defendants/Counterclaim Plaintiff Township of Hanover respectfully request this Court deny Plaintiff Eden Lane Condominium's claims in total; uphold the Township's extensions of the affordability controls, maintain the reduced maintenance fee rates for the Affordable Units in Eden Lane, and enter final permanent injunctive relief against Plaintiff, to prevent an future actions by it to increase the Affordable Unit's maintenance fee rates.

Respectfully submitted,
DORSEY & SEMRAU
Attorneys for Defendant/Counterclaim Plaintiff
Township of Hanover

By: */s/ Jonathan Testa*
JONATHAN TESTA, ESQ.

Dated: June 27, 2025