

HILL WALLACK LLP

Thomas F. Carroll, III, Esq. (Attorney ID: 022051983)
Vidhaath Sripathi, Esq. (Attorney ID: 383612022)
21 Roszel Road
P.O. Box 5226
Princeton, New Jersey 08540
(609) 924-0808

Attorneys for Plaintiffs, Mary Lou Angelo, Eileen F. Burke-Malone, Kathleen Burke O'Brien, Mary Guckenberger, Kristina Panetta, Gabrielle La Porta, Denise C. Murphy, Ryan J. O'Prandy, Janice Pacifico, Maribel E. Perdomo, Matthew M. Pincus, Dana Pizzo, Eleonora Poyner a/k/a Eleonora DeVargas, Alainah Robillard, Mary Beth Sheehan, Richard E. Taylor & Janice Taylor, Melissa Wah, Deanna Westendorf, and Tina Rose Yuli

MARY LOU ANGELO, EILEEN F. BURKE-MALONEY, KATHLEEN BURKE O'BRIEN, MARY GUCKENBERGER, KRISTINA PANETTA, GABRIELLE LA PORTA, DENISE C. MURPHY, RYAN J. O'PRANDY, JANICE PACIFICO, MARIBEL E. PERDOMO, MATTHEW M. PINCUS, DANA PIZZO, ELEONORA POYNER a/k/a ELEONORA DEVARGAS, ALAINAH ROBILLARD, MARY BETH SHEEHAN, RICHARD E. TAYLOR & JANICE TAYLOR, MELISSA WAH, DEANNA WESTENDORF, and TINA ROSE YULI,

Plaintiffs,

vs.

THE TOWNSHIP OF COLTS NECK, a Municipal Corporation of the State of New Jersey, and THE GRANDE AT COLTS NECK CONDOMINIUM ASSOCIATION, INC., a Nonprofit Corporation of the State of New Jersey,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY: LAW DIVISION

DOCKET NO.: MON-L-____-

CIVIL ACTION

**COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Malone; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice

Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli (collectively, "Plaintiffs"), by way of Complaint against Defendants, the Township of Colts Neck (the "Township") and The Grande at Colts Neck Condominium Association, Inc. (the "Association") (collectively, "Defendants"), hereby state as follows:

INTRODUCTION

1. The Grande at Colts Neck ("The Grande") is a 276-unit inclusionary condominium development, with 88 affordable housing units (66 for-sale ownership units; 22 rental units), located within the Township of Colts Neck, Monmouth County, the State of New Jersey, where the aforesaid for-sale affordable units were made available for purchase to low- and moderate-income people, provided that such units remain subject to a 30-year period of price controls, as set forth in an Affordable Housing Plan and Master Deed for The Grande. Despite the expiration of the 30-year control period, thereby automatically permitting the sale of the ownership units at fair market value, the Township has unlawfully prevented the affordable unit owners from doing so by imposing additional resale restrictions against them under the purported authority of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), as part of a duplicitous campaign to coerce the affordable unit owners to contractually extend the price controls for an additional 30-year period. This litigation seeks the Court's intervention to declare the Township's misconduct as unlawful, *ultra vires*, and against public policy, and to further settle the legal rights of the affordable unit owners to sell their homes free and clear of any resale restrictions.

2. Specifically, this declaratory judgment action, brought by owners of certain affordable housing units at The Grande (the "Affordable Units"), seeks to declare: (a) the 30-year

period of terms, restrictions, provisions, and covenants applicable to the Affordable Units (the “Affordability Controls”) as expired, thereby permitting the sale of the Affordable Units at fair market value free and clear of any resale restrictions; (b) all resale controls and/or restrictions purported by the Township to be applicable to the Affordable Units under the auspices of the UHAC regulations as inapplicable and unenforceable as a matter of law; (c) the Township’s threatened imposition of a right of first refusal pursuant to UHAC to induce contractual extensions of the Affordability Controls for an additional 30-year period as unlawful, violative of Plaintiffs’ property rights, and against public policy; (d) the Township’s actions to prevent the lawful resale of the Affordable Units at fair market value upon expiration of the Affordability Controls as *ultra vires* and violative of Plaintiffs’ property rights; and (e) the deed restriction requiring payment to the Township of 50% of the difference between the resale price and the regulated maximum sales price of the Affordable Units following the expiration of the Affordability Controls, as further reflected in certain Declarations of Pre-Existing Rights recorded by the Township against the Affordable Units, as invalid, unenforceable, and against public policy.

3. The Township’s unlawful tactics against Plaintiffs to coerce and induce the extension of the Affordability Controls on the Affordable Units for an additional 30-year period are specifically due to the Township’s well-publicized desire to avoid the construction of new affordable housing within its borders to meet its constitutional Fourth Round fair share obligations, pursuant to P.L. 2024, c.2 and the Mt. Laurel doctrine. See Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (hereinafter “Mt. Laurel II”). As set forth in the Township’s proposed Fourth Round Housing Element and Fair Share Plan (“HEFSP”), the Township seeks to reduce the amount of new construction required by its Fourth Round obligations

by claiming credits for anticipated extensions of the Affordability Controls at The Grande, despite the Township already receiving credits for The Grande in the First, Second, and Third Round.

4. Accordingly, this action requests the Court's intervention to prohibit and reverse the unlawful efforts of a wealthy municipality attempting to avoid its affordable housing obligations by depriving low- and moderate-income owners of affordable housing of their right to sell their homes at fair market value upon the expiration of applicable price controls. Such intervention would enable Plaintiffs, as low- and moderate-income people, to use the accumulated appreciation in the value of their homes as a means to improve their economic position and/or escape poverty – a fundamental and essential benefit of home ownership. Plaintiffs are being targeted and denied this right by the Township solely on the basis of their income status, despite 30+ years of good-faith compliance with the now-expired Affordability Controls.

THE PARTIES

5. Plaintiffs, Mary Lou Angelo (26 Parker Pass); Eileen F. Burke-Malone (15 Hancock Pass); Kathleen Burke O'Brien (11 Hancock Pass); Mary Guckenberger (8 Federal Key); Kristina Panetta (9 Parker Pass); Gabrielle La Porta (34 Parker Pass); Denise C. Murphy (1 Hancock Pass); Ryan J. O'Prandy (36 Federal Key); Janice Pacifico (32 Federal Key); Maribel E. Perdomo (20 Federal Key); Matthew M. Pincus (38 Parker Pass); Dana Pizzo (12 Hancock Pass); Eleonora Poyner a/k/a Eleonora DeVargas (hereinafter "Eleonora Poyner") (14 Federal Key); Alainah Robillard (29 Parker Pass); Mary Beth Sheehan (15 Parker Pass); Richard E. Taylor & Janice Taylor (5 Parker Pass); Melissa Wah (1 Parker Pass); Deanna Westendorf (46 Federal Key); and Tina Rose Yuli (36 Parker Pass), are owners of certain affordable housing units located within The Grande.

6. Defendant, the Township of Colts Neck, is a municipal corporation and body politic organized under the laws of the State of New Jersey, with its principal place of business at 1 Veterans Way, Colts Neck, New Jersey 07722.

7. Defendant, The Grande at Colts Neck Condominium Association, Inc., is a nonprofit corporation organized under the laws of the State of New Jersey, with its principal place of business at 1 Colts Neck Boulevard, Colts Neck, New Jersey 07722, and is the homeowners' association for The Grande. The Association is subject to joinder under R. 4:28-1(a), as the Association claims an interest in the subject of this action related to the equalization of Association fees based upon the expiration of the Affordability Controls, and is thus so situated such that disposition of this action in the Association's absence may, as a practical matter, impair or impede the Association's ability to protect that interest. Pursuant to R. 4:28-1(a) and (c), the Association should be joined as a plaintiff, but refused to do so and is thus named as a Defendant in this action.

JURISDICTION AND VENUE

8. Jurisdiction and venue are properly laid in the Superior Court of New Jersey, County of Monmouth, as Plaintiffs and their properties are located in Monmouth County, the Association is located in Monmouth County, the Township is a public entity located in Monmouth County, and the cause of action arose in Monmouth County.

FACTUAL BACKGROUND

9. The Grande is a 276-unit inclusionary condominium development located within the Township near New Jersey Route 18 and Stone Hill Road and designated as Blocks 41.01 and 41.02 on the official tax map of the Township. Of the 276 total units, which are a mix of single-family homes and condominiums, 88 are reserved to be affordable for low- and moderate-income

households. Of the 88 affordable housing units, 22 are rental units and 66 are for-sale ownership units, including those owned by Plaintiffs.

10. Prior to the First Round (1987-1993) of affordable housing obligations under the Mt. Laurel Doctrine, on December 1, 1986, the Township obtained a Judgment of Compliance and Repose in response to certain builder's remedy litigation, which set forth the framework for the Township's plan to address its upcoming First Round affordable housing obligations, including provision to permit the construction of The Grande.

11. In or about 1990, the Township prepared its First Round affordable housing plan in accordance with the 1986 Judgment of Compliance and Repose.

12. Thereafter, in connection with the 1986 Judgment of Compliance and Repose and the 1990 First Round plan, SGS Communities at Colts Neck, L.P. and Schoor Colts Neck Development (the "Developers") filed a development application with the Township and/or its subsidiary bodies to approve the proposed construction of The Grande. Pursuant to that approval, the Township imposed a condition requiring the Developers to adopt an Affordable Housing Plan for The Grande in accordance with the 1986 Judgment of Compliance and Repose.

13. On July 28, 1993, and later revised on September 29, 1993, the Developers completed an Affordable Housing Plan for The Grande (the "Affordable Housing Plan"), which unambiguously identified the affordable housing units at The Grande as created and established pursuant to the 1986 Judgment of Compliance and Repose. In relevant part, the Affordable Housing Plan states:

[T]he owners of the Grande at Colts Neck shall pay \$250,000 to the Township of Colts Neck Affordable Housing Fund pursuant to

Paragraph 6 of the December 1, 1986 Judgment of Compliance and Repose. . .

This Affordable Housing Plan was a condition of approval imposed upon SGS Communities at Colts Neck, L.P. and Schoor Colts Neck Development Corp. by the Approving Authority of the Township of Colts Neck in connection with the application for development of The Grande at Colts Neck, A Condominium. **The Township imposed this requirement** upon SGS Communities at Colts Neck, L.P. and Schoor Colts Neck Development Corp. in an effort to satisfy the December 1, 1986 Judgment of Compliance and Repose of the Superior Court of New Jersey and to satisfy a portion of the Township's constitutional obligation to make affordable housing available within the Township.

[(emphasis added).]

A true and accurate copy of the Affordable Housing Plan is attached hereto as

Exhibit A.

14. The 1993 Affordable Housing Plan further states that:

The terms, restrictions, provisions, and covenants of the Affordable Housing Plan, and the provisions of the Master Deed referring to and incorporating the Affordable Housing Plan, shall be binding upon the Owner and all heirs, successors, and assigns for 30 years from the initial sale or rental of each Unit. Unless otherwise provided for in this Plan, said conditions shall automatically expire and terminate for each Affordable Condominium thirty (30) years from the date of the initial sale or rental of the Affordable Condominium.

After the period of Affordability expires, the Affordable Condominiums may be sold to any purchaser without price controls, provided that in the case of the first sale after the expiration of the controls, fifty percent (50%) of the difference between the sales price or the fair market value of the unit whichever is greater, and the restricted sales price which could have been obtained by a Qualified Purchaser in the month before the resale controls end, shall be paid to the Township . . .

[Exhibit A at p. 13 (emphasis added).]

15. The Affordable Housing Plan therefore establishes a 30-year period (the “Control Period”) for its terms, restrictions, provisions, and covenants applicable to the affordable units at The Grande, i.e. the Affordability Controls, to “automatically expire and terminate,” commencing from the date of any affordable unit’s initial sale or rental. Furthermore, such Affordability Controls are binding upon successors, and thus run with the land for the duration of the Control Period.

16. The Affordable Housing Plan further provides for a 50% recapture provision requiring Plaintiffs to pay the Township one-half of the difference between the resale price and the restricted sales price. However, as set forth herein, such provision cannot be enforced as same impermissibly restrains the alienability of the Affordable Units.

17. On June 13, 1994, the Developers recorded a Master Deed for The Grande dated June 7, 1994 with the Office of the Clerk of Monmouth County at Deed Book 5319, Page 458, which generally incorporated the Affordable Housing Plan. Specifically, Paragraph 15.09 requires that “[i]n the case of any conflict of any provision of this Master Deed, the Certificate of Incorporation or the By-Laws with any provisions of the Affordable Housing Plan . . . , the requirements of the Affordable Housing Plan . . . shall be deemed to control.” A true and accurate copy of the Master Deed is attached hereto as **Exhibit B**.

18. On August 9, 1994, the Developers recorded a Corrective Master Deed dated July 27, 1994 with the Office of the Clerk of Monmouth County at Deed Book 5336, Page 175, replacing an appended site plan to the June 13, 1994 Master Deed to show the numerical designations of certain units in The Grande. A true and accurate copy of the Corrective Master Deed is attached hereto as **Exhibit C**.

19. On November 18, 1994, the Developers recorded a First Amendment and Supplement to the Master Deed dated November 16, 1994 with the Office of the Clerk of Monmouth County at Deed Book 5364, Page 820. In addition to incorporating additional buildings, units, and improvements into the Master Deed to reflect the Phase II construction of The Grande, the First Amendment and Supplement to the Master Deed incorporated “a summary of the restrictions placed on the owners of Affordable Housing Units as disclosed in the Affordable Housing Plan” for The Grande, which included the same language from the Affordable Housing Plan stating that the “[t]he terms, restrictions, provisions and covenants of the Affordable Housing Plan . . . shall be binding . . . for thirty (30) years from the initial sale or rental of each Affordable Housing Unit . . . [and] said conditions shall **automatically expire and terminate** for each Affordable Housing Unit thirty (30) years from the date of the initial sale or rental . . .” (emphasis added). A true and accurate copy of the First Amendment and Supplement to the Master Deed is attached hereto as **Exhibit D**.

20. Hereinafter, the June 13, 1994 Master Deed; August 9, 1994 Corrective Master Deed; the November 18, 1994 First Amendment and Supplement to the Master Deed; and any subsequent amendments are collectively referred to as the “Master Deed.”

21. In or about 1994, development at The Grande was largely completed with some housing units receiving a Certificate of Occupancy, thereby permitting their initial sale and/or rental. In or about 1995, all units at The Grande were available for initial sale and/or rental.

22. The affordable housing unit owned by Plaintiff, Mary Lou Angelo, was initially sold on December 22, 1994, via Deed recorded on January 6, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5378, Page 53, and thus the Affordability Controls applicable to

this unit expired on December 22, 2024. Plaintiff, Mary Lou Angelo, purchased this unit on October 19, 2015, via Deed recorded on November 30, 2015 with the Office of the Clerk of Monmouth County at Deed Book 9142, Page 1542.

23. The affordable housing unit owned by Plaintiff, Eileen F. Burke-Maloney, was initially sold on June 28, 1995, via Deed recorded on July 7, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5422, Page 673, and thus the Affordability Controls applicable to this unit expired on June 28, 2025.

24. The affordable housing unit owned by Plaintiff, Kathleen Burke O'Brien, was initially sold on June 28, 1995, via Deed recorded on June 29, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5420, Page 85, and thus the Affordability Controls applicable to this unit expired on June 28, 2025. Plaintiff, Kathleen Burke O'Brien, purchased this unit on or about March 24, 2015, via Deed recorded April 6, 2015 with the Office of the Clerk of Monmouth County at Deed Book 9106, Page 6263.

25. The affordable housing unit owned by Plaintiff, Mary Guckenberger, was initially sold on July 12, 1995, via Deed recorded on July 28, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5428, Page 469, and thus the Affordability Controls applicable to this unit expired on July 12, 2025.

26. The affordable unit owned by Plaintiff, Kristina Panetta, was initially sold on May 17, 1995, via Deed recorded on May 26, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5411, Page 748, and thus the Affordability Controls applicable to this unit expired on May 17, 2025. Plaintiff, Kristina Panetta, purchased this unit on February 10, 2020, via Deed recorded with the Office of the Clerk of Monmouth County at Deed Book 9399, Page 6150.

27. The affordable unit owned by Plaintiff, Gabrielle La Porta, was initially sold on May 10, 1995, via Deed recorded on May 17, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5409, Page 529, and thus the Affordability Controls applicable to this unit expired on May 10, 2025. Plaintiff, Gabrielle La Porta, purchased this unit on November 12, 2015, via Deed recorded on November 24, 2015 with the Office of the Clerk of Monmouth County at Deed Book 9141, Page 7688.

28. The affordable unit owned by Plaintiff, Denise C. Murphy, was initially sold on June 29, 1995, via Deed recorded on July 7, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5422, Page 861, and thus the Affordability Controls applicable to this unit expired on June 29, 2025.

29. The affordable unit owned by Plaintiff, Ryan J. O'Prandy, was initially sold on April 28, 1995, via Deed recorded on May 8, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5406, Page 728, and thus the Affordability Controls applicable to this unit expired on April 28, 2025. Plaintiff, Ryan J. O'Prandy, purchased this unit on June 9, 2017, via Deed recorded on July 26, 2017 with the Office of the Clerk of Monmouth County at Deed Book 9238, Page 1193.

30. The affordable unit owned by Plaintiff, Janice Pacifico, was initially sold on June 14, 1995, via Deed recorded on July 3, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5421, Page 382, and thus the Affordability Controls applicable to this unit expired on June 14, 2025. Plaintiff, Janice Pacifico, purchased this unit on April 28, 2006, via Deed recorded on August 7, 2006 with the Office of the Clerk of Monmouth County at Deed Book 8583, Page 8638.

31. The affordable unit owned by Plaintiff, Maribel E. Perdomo, was initially sold on April 20, 1995, via Deed recorded on May 11, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5407, Page 700, and thus the Affordability Controls applicable to this unit expired on April 20, 2025. Plaintiff, Maribel E. Perdomo, purchased this unit on November 4, 2020, via Deed recorded on December 10, 2020 with the Office of the Clerk of Monmouth County at Deed Book 9464, Page 461.

32. The affordable unit owned by Plaintiff, Matthew M. Pincus, was initially sold on December 29, 1994, via Deed recorded on January 11, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5379, Page 215, and thus the Affordability Controls applicable to this unit expired on December 29, 2024.

33. The affordable unit owned by Plaintiff, Dana Pizzo, was initially sold on July 7, 1995, via Deed recorded on July 26, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5427, Page 742, and thus the Affordability Controls applicable to this unit expired on July 7, 2025. Plaintiff, Dana Pizzo, purchased this unit on May 31, 2016, via Deed recorded on July 5, 2016 with the Office of the Clerk of Monmouth County at Deed Book 9173, Page 5686.

34. The affordable unit owned by Plaintiff, Eleonora Poyner, was initially sold on April 26, 1995, via Deed recorded on May 8, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5406, Page 554, and thus the Affordability Controls applicable to this unit expired on April 26, 2025.

35. The affordable unit owned by Plaintiff, Alainah Robillard, was initially sold on January 11, 1995, via Deed recorded on January 20, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5381, Page 486, and thus the Affordability Controls applicable

to this unit expired on January 11, 2025. Plaintiff, Alainah Robillard, purchased this unit on May 9, 2018, via Deed recorded on July 11, 2018 with the Office of the Clerk of Monmouth County at Deed Book 9299, Page 521.

36. The affordable unit owned by Plaintiff, Mary Beth Sheehan, was initially sold on January 31, 1995, via Deed recorded on February 15, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5387, Page 901, and thus the Affordability Controls applicable to this unit expired on January 31, 2025. Plaintiff, Mary Beth Sheehan, purchased this unit along with her former spouse, James Sheehan, on April 6, 2000, via Deed recorded on April 11, 2000 with the Office of the Clerk of Monmouth County at Deed Book 5924, 934, which was later transferred to the sole ownership of Plaintiff, Mary Beth Sheehan, on November 13, 2009, via Deed recorded on November 30, 2009 with the Office of the Clerk of Monmouth County at Deed Book 8808, Page 5100.

37. The affordable unit owned by Plaintiff, Richard E. Taylor & Janice Taylor, was initially sold on April 27, 1995, via Deed recorded on May 18, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5409, Page 801, and thus the Affordability Controls applicable to this unit expired on April 27, 2025.

38. The affordable unit owned by Plaintiff, Melissa Wah, was initially sold on March 31, 1995, via Deed recorded on April 7, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5400, Page 146, and thus the Affordability Controls applicable to this unit expired on March 31, 2025. Plaintiff, Melissa Wah, purchased this unit on October 17, 2003, via Deed recorded on December 16, 2003 with the Office of the Clerk of Monmouth County at Deed Book 8309, Page 2478.

39. The affordable unit owned by Plaintiff, Deanna Westendorf, was initially sold on May 9, 1995, via Deed recorded on May 9, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5407, Page 255, and thus the Affordability Controls applicable to this unit expired on May 9, 2025.

40. The affordable unit owned by Plaintiff, Tina Rose Yuli, was initially sold on January 3, 1995, via Deed recorded on January 27, 1995 with the Office of the Clerk of Monmouth County at Deed Book 5383, Page 565, and thus the Affordability Controls applicable to this unit expired on January 3, 2025. Plaintiff, Tina Rose Yuli, purchased this unit on September 15, 2023, via Deed recorded on December 29, 2023 with the Office of the Clerk of Monmouth County at Deed Book 9672, Page 7278.

41. Accordingly, the Affordability Controls applicable to all of the Affordable Units owned by Plaintiffs have expired as of the date of this filing.

42. On November 18, 2003, the Township adopted a Second Round (1993-1999) affordable housing plan to address its then-existing cumulative First and Second Round Mt. Laurel obligations, which became subject to a Judgment of Compliance and Repose dated June 21, 2004 in the case of Westminster Realty Corporation v. Township of Colts Neck, et al., Docket No. MON-L-2954-99, resolving certain builder's remedy litigation against the Township.

43. The Township also received affordable housing credit for The Grande towards its Second Round obligations as part of the June 21, 2004 Judgment of Compliance and Repose.

44. On October 27, 2008, the Township adopted a Third Round (1999-2025) affordable housing plan, but did not receive substantive certification for same, as the Council on Affordable Housing's ("COAH") Third Round rules were overturned and COAH became moribund.

45. On March 10, 2015, the Supreme Court of New Jersey issued its landmark decision in New Jersey Mt. Laurel jurisprudence, In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing (hereinafter referred to as "Mt. Laurel IV"), where the Supreme Court transferred COAH's jurisdiction to review and approve HEFSPs to the courts.

46. To comply with Mt. Laurel IV, the Township filed a declaratory judgment suit on June 12, 2015 to obtain temporary immunity from builder's remedy litigation and a Final Judgment of Compliance and Repose with regard to its Third Round obligations. Following lengthy litigation, the Township and Fair Share Housing Center ("FSHC") executed a Settlement Agreement dated March 18, 2020 resolving the litigation, which was approved by the Hon. Linda Grasso Jones, J.S.C. via Order dated August 13, 2020.

47. However, implementation of the March 18, 2020 Settlement Agreement failed, as the resultant Third Round affordable housing plan was later objected to by the Manasquan River Regional Sewerage Authority and its member municipalities.

48. Following Compliance Hearings on December 6 and 8, 2022, the Hon. Linda Grasso Jones, J.S.C. entered two Orders dated November 21, 2024: (1) an Order requiring the Township to revise its Third Round HEFSP; and (2) a Judgment of Compliance and Repose approving the Township's amended Third Round HEFSP that it submitted on June 15, 2022.

49. The Township also received affordable housing credit for The Grande towards its Third Round obligations, in accordance with the November 21, 2024 Judgment of Compliance and Repose.

50. The Township adopted the amended Third Round HEFSP on February 12, 2025.

51. While the Township was in the aforesaid litigation concerning its Third Round Mt. Laurel obligations, Governor Phil Murphy signed P.L. 2024, c. 2 on March 20, 2024, which amended the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and established new affordable housing compliance rules for the Fourth Round, which commenced in or about July 2025.

52. In accordance with P.L. 2024, c. 2, the Township adopted a resolution committing to the Fourth Round fair share obligation calculated by the New Jersey Department of Community Affairs on January 29, 2025, and subsequently initiated its Fourth Round declaratory judgment action captioned In the Matter of the Application of the Township of Colts Neck, Docket No. MON-L-422-25 (the “Fourth Round Action”).

53. On April 1, 2025, the Hon. Linda Grasso Jones, J.S.C. entered an Order fixing the fair share obligations of the Township and authorizing the Township to prepare its proposed Fourth Round HEFSP.

54. On June 11, 2025, the Township filed its proposed Fourth Round HEFSP. A true and accurate copy of the proposed Fourth Round HEFSP is attached hereto as Exhibit E.

55. As alleged in the Township’s proposed Fourth Round HEFSP, “the Township fully satisfied the . . . [F]irst and [S]econd rounds obligation with the below listed strategies . . . The

Grande[,] [a]n existing 276-family inclusionary development along NJ Route 18 and Stone Hill Road that includes 88 affordable units, including 66 for-sale and 22 rentals.”

56. As set forth in the Township’s proposed Fourth Round HEFSP, “[a]ffordable housing credit for the development was approved as part of the Township’s 2004 Judgment of Compliance and Repose as well as the Township’s November 21, 2024 [T]hird [R]ound Order of Judgment of Fairness and Conditional Compliance and Repose.”

57. As set forth in the Township’s proposed Fourth Round HEFSP, the Township proposes to rely on the affordable housing units at The Grande, yet again, to now address its Fourth Round obligations, stating that:

Extension of expiring affordability controls was by far the affordable housing strategy found to be most appropriate for the Township. . . . The extensions of affordability expiring controls program entails application of a new deed restriction on an existing affordable home whose affordability controls, the deed restriction, expire during the ongoing affordable housing round (currently the [F]ourth [R]ound).

The Township will need to seek an agreement with the property owner (unit owner in the case of for-sale units and landlord in the case of for-rent units) for application of a new deed restriction for not less than 30 years in exchange for a monetary subsidy from the Township. . . .

[T]he Township will maximize efforts to generate affordable housing credits from extension of expiring affordability controls at the Grande . . .

[Exhibit E at p. 25 (emphasis added).]

58. In preparation to seek extensions of the Affordability Controls and prevent early market-rate sale of the Affordable Units, the Township recorded Declarations of Pre-Existing Rights against all Affordable Units in or about January 2025 to require a 50% recapture of the profit made on the market-rate sale of the Affordable Units. The Township did so to limit

Plaintiffs' ability to economically benefit from a market-rate sale in furtherance of its campaign to coerce Plaintiffs into agreeing to extend the Affordability Controls, thereby impermissibly restraining the alienation of Plaintiffs' property.

59. In or about early February 2025, the Township began sending form letter correspondence to owners of affordable housing units at the Grande to propose potential contractual extensions. A true and accurate copy of one such form correspondence dated February 11, 2025 sent from Thomas Trautner, Esq., affordable housing counsel to the Township, to Plaintiff, Gabrielle La Porta, is attached hereto as **Exhibit F**, which states:

As you may be aware, the initial Affordability Controls on your condominium are scheduled to expire, subject to certain requirements being met. . . . **It is the Township's intent, however, to extend Affordability Controls on your unit. . . .**

Even if the Township were unable to reach an agreement with you to extend the Affordability Controls, there is a specific legal process that must be followed when the Affordability Controls expire. **The process is governed by Uniform Housing Affordability Controls (“UHAC”)] . . .**

As set forth in the UHAC Rules, prior to any potential sale, you are required to provide the Township with the enclosed written Notice of Intent to Sell. Based upon the issuance of the Notice of Intent to Sell, **the Township may, within 60 days of the receipt of the written notice, exercise a right of first refusal, which includes the right to purchase your condominium unit at its maximum restricted sale price** based upon the Affordability Controls . . .

In the event the Township does not exercise its right of first refusal, you may thereafter proceed to sell the unit for fair market value . . .

[Exhibit F (emphasis added).]

60. Accordingly, despite the expiration of the Affordability Controls, the Township is attempting to induce contractual extensions of same for the affordable housing units at The Grande, including those of Plaintiffs, by: (a) unlawfully refusing to release the Affordability Controls upon

their expiration, under the auspices of UHAC; (b) unlawfully requiring the owners to notify the Township of their intent to sell despite automatic expiration of the Affordability Controls, under the auspices of UHAC; and (c) unlawfully imposing and threatening a right of first refusal against any potential sale of affordable housing units at The Grande at a restricted sales price, instead of fair market value, under the auspices of UHAC.

61. The Township has no legal authority to exercise or threaten the aforesaid actions under the auspices of UHAC, as UHAC does not apply to the Affordable Units. Specifically, UHAC does not have retroactive application to affordable housing units established pursuant to a Judgment of Compliance and Repose prior to UHAC's adoption, as consistently held by several New Jersey courts, including in Kathleen Errico, et al. v. Township of Mahwah, 2014 WL 3891227, *438 (Law Div. July 28, 2014), Docket No. BER-L-180-14; Society Hill at Piscataway, Inc., et al. v. Piscataway Township, et al., 445 N.J. Super. 435 (Law Div. 2016); and RJB v. Murray v. Bedminster, et al., Docket No. SOM-L-696-18 (Law Div. 2018). In accordance with R. 1:36-3, a true and accurate copy of the Errico opinion is attached hereto as **Exhibit G** and a true and accurate copy of the RJB opinion is attached hereto as **Exhibit H**, with no contrary unpublished opinions known to counsel as of this writing.

62. To the extent the Township asserts UHAC applies retroactively, UHAC requires restrictions concerning the Control Period to be solely controlled by the terms of the authorizing Judgment of Compliance and Repose and/or contracts with the municipality that the affordable housing units became subject to prior to UHAC's adoption.

63. The Affordability Controls at The Grande are thus only controlled by the December 1, 1986 Judgment of Compliance and Repose, the Master Deed, and the Affordable Housing Plan. The Affordable Units are not subject to resale restrictions asserted under the authority of UHAC.

64. The Township, aware of the inapplicability of UHAC to affordable housing units at the Grande, attempted to include additional deed restrictions for certain re-sold units to manufacture UHAC's applicability to the units, improperly stating that “[s]ale and use of the Property is governed by regulations known as [UHAC],” including for the units of Plaintiffs, Mary Lou Angelo; Kathleen Burke O'Brien; Kristina Panetta; Gabrielle La Porta; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Dana Pizzo; Alainah Robillard; and Tina Rose Yuli. Such deed restrictions are unenforceable and invalid to the extent they assert authority under UHAC, which is not applicable to the Affordable Units.

65. With regard to the right of first refusal, which cannot be applied to the Affordable Units under UHAC, the Township's threatened imposition of same is further coercive and constitutes an impermissible restraint on the alienation of property, forcing Plaintiffs and other owners of affordable housing at The Grande to choose between the options of extending the Affordability Controls, as desired by the Township, or losing *all* market rate appreciation in the value of their property.

66. In or about early October 2025, affordable housing counsel for the Township sent further form correspondence to affordable housing owners at The Grande, including Plaintiffs, extending monetary offers of \$40,000.00 for extension of the Affordability Controls on their respective units. Again, the Township cited UHAC and threatened to impose a right of first refusal to coercively induce the extensions of the Affordability Controls, stating – incorrectly and without

legal authority – that “[u]nder any set of circumstances and until such time as a non-exempt sale (for market value) of your unit shall occur after the Township is provided the right of first refusal to purchase your unit at its maximum affordable housing sales price, your unit remains subject to the Affordability Controls.” A true and accurate copy of one such form correspondence dated October 2, 2025 sent from Thomas J. Trautner, Esq., affordable housing counsel to the Township, to Plaintiff, Gabrielle La Porta, is attached hereto as Exhibit I.

67. The Township not only threatened actions against Plaintiffs to coercively induce extensions of the Affordability Controls, the Township further intervened in lawful market-rate sales of the affordable housing units at The Grande under the inapplicable authority of UHAC. Specifically, Plaintiff, Eleonora Poyner, lawfully placed her unit for market-rate sale upon the expiration of the Affordability Controls applicable to the unit and obtained a bona fide offer from a potential purchaser, but the Township forced her to remove the property from the market, asserting that the Township reserved a right of first refusal under UHAC. Despite lacking such authority, the Township usurped an economic opportunity from Plaintiff, Eleonora Poyner, to improve her economic position through the lawful market-rate sale of her home. A true and accurate copy of September 11, 2025 correspondence from the Township’s affordable housing counsel to Plaintiff, Eleonora Poyner, is attached hereto as Exhibit J.

68. On December 9, 2025, Colleen Doran of Towne & Country Management, Inc., the property manager for The Grande and agent of the Association, e-mailed Plaintiff, Alainah Robillard, regarding the Association’s plan to equalize the Association fees and special assessments for common expenses between the affordable and market-rate housing units at The Grande, as such Affordable Units were previously subsidized to pay 1/3 of the common expense fees compared to the market-rate units, per the Affordable Housing Plan. Equalization, however,

necessarily requires a determination that the Affordability Controls on the units to be equalized – including those owned by Plaintiffs – are expired, which is the subject of this litigation. Specifically, the legal rationale provided by Ms. Doran on behalf of the Association states that “The Master Deed was made subject to an ‘Affordable Housing Plan’ which . . . reflects the intention that the Garden Homes [i.e. the Affordable Units] pay 1/3rd of the Common Expenses and provide that **at the expiration of the deed restriction**, the Garden Homes are to pay an equal amount to the Estate Homes [i.e. market rate units].” (emphasis added). A true and accurate copy of the legal rationale attached to Ms. Doran’s December 9, 2025 email correspondence to Plaintiff, Alainah Robillard, is attached hereto as **Exhibit K**.

69. Since the Affordability Controls automatically expired on all Affordable Units, Plaintiffs are entitled to sell their homes for fair market value, free and clear of any restrictions, without being required to comply with UHAC.

COUNT ONE

(Declaratory Relief)

70. Plaintiffs repeat and incorporate each and every allegation set forth above, as if set forth at length herein.

71. As set forth in the Master Deed and Affordable Housing Plan, the Affordability Controls for the Affordable Units, as covenants running with the land, automatically and immediately expired upon 30 years from the date of such units’ initial sale.

72. More than 30 years have passed from the dates of initial sale for all Affordable Units, and thus the Affordability Controls for the Affordable Units have automatically expired and are now free and clear of all restrictions related to market-rate resale.

73. Despite the expiration of the Affordability Controls, the Township is attempting to retroactively impose resale controls against the Affordable Units under the purported authority of UHAC, including but not limited to the threatened and/or actual enforcement of a right of first refusal, a requirement for Plaintiffs to notify the Township of an intent to sell their property, and the indefinite continuation of the Affordability Controls until affirmative release by the Township.

74. The Township's actions to impose the aforesaid resale controls against the Affordable Units pursuant to UHAC are unlawful, as UHAC cannot retroactively apply to affordable housing units created or established prior to its adoption, such as the Affordable Units.

75. The Township's actions and representations to Plaintiffs to induce extension of the Affordability Controls by threatening the enforcement of resale controls under UHAC are unlawful, as UHAC does not apply to the Affordable Units.

76. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, the Township exceeded its regulatory and legislative powers, and further exceeded its delegated powers under the New Jersey Fair Housing Act, P.L. 2024, c.2.

77. The only resale controls applicable to Plaintiffs and the Affordable Units are those fixed by covenants running with the land set forth in the Affordable Housing Plan, the Master Deed, and the individual unit deeds of Plaintiffs, to the extent such covenants do not violate public policy.

78. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, the Township unilaterally modified the covenants running with the land for the Affordable Units, which is unlawful.

79. The Township's actions to manufacture retroactive applicability of UHAC to the Affordable Units by including additional deed restrictions in certain resale deeds during the term of the 30-year control period were also unlawful, and such additional deed restrictions are unenforceable against Plaintiffs, as covenants running with the land cannot be unilaterally modified in a subsequent deed in the chain of title by inserting and/or replacing same with inconsistent language.

80. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, and thus modifying and/or violating the existing covenants running with the land applicable to the Affordable Units, the Township also violated the terms of the 1986 Judgment of Compliance and Repose.

81. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, the Township also unconstitutionally impaired the contractual rights of Plaintiffs by unilaterally modifying the covenants running with the land for the Affordable Units, in violation of the Contracts Clauses of both the United States Constitution, U.S. Const. Art. I, Sect. 10, Cl. 1, and the New Jersey Constitution, N.J. Const. Art. IV, Sect. VII, Para. 3.

82. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, including through intervention in the lawful market-rate sales of certain Affordable Units after expiration of the Affordability Controls, the Township also deprived Plaintiffs of their distinct investment-backed expectations in their homes, thereby constituting an unconstitutional regulatory taking without compensation.

83. Furthermore, the Township's actions to enforce the deed restriction requiring Plaintiffs to pay 50% of the difference between the resale price and regulated maximum sales price

of the Affordable Units, including through the Township's recording of Declarations of Pre-Existing Rights against the Affordable Units referencing such provision, were violative of public policy by creating an impermissible restraint against the alienation of Plaintiffs' properties.

84. By threatening and/or actually enforcing UHAC resale controls against the Affordable Units, the Township misrepresented its legal authority to Plaintiffs in order to duplicitously and coercively induce extensions of the Affordability Controls, which targeted Plaintiffs, and other owners of affordable housing at The Grande, solely due to their income status as low- and moderate-income persons, in direct violation of the Mt. Laurel doctrine.

WHEREFORE, Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Maloney; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli, hereby demand judgment against Defendants, the Township of Colts Neck and The Grande at Colts Neck Condominium Association, Inc., as follows:

- A. Declaring the 30-year period of terms, restrictions, provisions, and covenants applicable to the Affordable Units located within The Grande as expired;
- B. Declaring that Plaintiffs' units may be sold at fair market value, free and clear of any resale restrictions;
- C. Declaring all resale controls and/or restrictions purported by the Township to be applicable to the Affordable Units at The Grande under the auspices of UHAC as inapplicable and unenforceable as a matter of law;

- D. Declaring all deed restrictions, beyond the Affordable Housing Plan and Master Deed, added to the Affordable Units on resale asserting the applicability of UHAC to such units as invalid and unenforceable as a matter of law;
- E. Declaring the Township's threatened imposition of a first right of refusal pursuant to UHAC against the Affordable Units to induce contractual extensions of the Affordability Controls for an additional 30-year period as unlawful and an impermissible restraint on the alienability of Plaintiffs' property;
- F. Declaring the Township's actions to prevent the lawful resale of the Affordable Units at market-rate value free and clear of the Affordability Controls as unlawful and violative of Plaintiffs' property rights;
- G. Declaring the deed restriction in the Affordable Housing Plan requiring recapture payment to the Township of 50% of the difference between the resale price and the regulated maximum sales price of the Affordable Units following the expiration of the Affordability Controls as unenforceable and an impermissible restraint on the alienability of Plaintiffs' property;
- H. Declaring the Declarations of Pre-Existing Rights recorded by the Township against the Affordable Units as invalid, unenforceable, and an impermissible restraint on the alienability of Plaintiffs' property; and
- I. Awarding Plaintiffs costs of suit, attorneys' fees, and any such other relief as the Court deems equitable and just.

HILL WALLACK LLP

Attorneys for Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Malone; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli

/s/ Vidhaath Sripathi
VIDHAATH SRIPATHI, ESQ.

R. 4:5-1(b)(2) CERTIFICATION

The matter in controversy is not the subject of any other action pending in any court or any pending arbitration proceeding, except for the action captioned In the Matter of the Application of the Township of Colts Neck, Docket No. MON-L-422-25. No such other action or arbitration proceeding is contemplated. I further certify that there are no further parties to be joined except as provided herein, subject to amendment upon discovery if necessary.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

HILL WALLACK LLP

Attorneys for Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Malone; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli

/s/ Vidhaath Sripathi
VIDHAATH SRIPATHI, ESQ.

R. 1:4-8(a) CERTIFICATION

I am the attorney for Plaintiffs and hereby certify that the Complaint and all documents attached thereto and referenced therein comport with the requirements of R. 1:4-8(a).

HILL WALLACK LLP

Attorneys for Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Malone; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli

/s/ Vidhaath Sripathi
VIDHAATH SRIPATHI, ESQ.

R. 4:25-4 CERTIFICATION

Pursuant to the requirements of R. 4:25-4, I hereby certify and advise this Court that Vidhaath Sripathi, Esq. is designated as trial counsel for Plaintiffs in this matter.

HILL WALLACK LLP

Attorneys for Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Malone; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli

/s/ Vidhaath Sripathi
VIDHAATH SRIPATHI, ESQ.

R. 1:38-7(b) CERTIFICATION

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future, in accordance with R. 1:38-7(b).

HILL WALLACK LLP

Attorneys for Plaintiffs, Mary Lou Angelo; Eileen F. Burke-Maloney; Kathleen Burke O'Brien; Mary Guckenberger; Kristina Panetta; Gabrielle La Porta; Denise C. Murphy; Ryan J. O'Prandy; Janice Pacifico; Maribel E. Perdomo; Matthew M. Pincus; Dana Pizzo; Eleonora Poyner a/k/a Eleonora DeVargas; Alainah Robillard; Mary Beth Sheehan; Richard E. Taylor & Janice Taylor; Melissa Wah; Deanna Westendorf; and Tina Rose Yuli

/s/ Vidhaath Sripathi
VIDHAATH SRIPATHI, ESQ.