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Borough of Mount Arlington

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF MOUNT ARLINGTON, a Municipal Corporation of the State of New Jersey, Plaintiff/Petitioner	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO.: MRS-L- Civil Action (Mount Laurel) **COMPLAINT FOR DECLARATORY JUDGMENT**

Declaratory Plaintiff/Petitioner, the Borough of Mount Arlington, County of Morris, State of New Jersey (hereinafter "**Mount Arlington**" or the "**Borough**"), a municipal corporation and body politic organized under the laws of the State of New Jersey, with principal offices located at 419 Howard Boulevard, Mount Arlington, New Jersey, 07856 by way of Complaint for Declaratory Judgment ("**DJ Action**") as authorized under Directive #14-24 of the Administrative Office of the Courts (the "**Directive**") says:

NATURE OF ACTION

1. Mount Arlington is a municipal corporation of the State of New Jersey.

2. The New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("**Mount Laurel IV**"), citing S. Burlington County. NAACP v. Township of Mount Laurel ("**Mount Laurel I**"), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide "a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing," Id., citing S. Burlington County NAACP v. Township of Mount Laurel ("**Mount Laurel II**"), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the "**Mount Laurel Doctrine**").

3. On March 20, 2024, Governor Murphy signed P.L.2024, c.2. (hereinafter "**A4**") into law, amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (the "**Act**") and establishing a framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine for the years 2025 – 2035 (the "**Fourth Round**").

4. Pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the "**Directive**"), implementing the Affordable Housing Dispute Resolution Program (the "**Program**"), a municipality seeking certification of its affordable housing obligations and Housing Element and Fair Share Plan in accordance with Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located.

5. Through this DJ Action, Mount Arlington seeks the following declaratory relief:

(a) Declaring Mount Arlington has established Jurisdiction for the Program by the filing of this DJ Action within forty-eight hours after the adoption of a binding resolution to confirm its present and prospective affordable housing obligations;

(b) Declaring Mount Arlington's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by Mount Arlington on January 21, 2025, attached hereto as **Exhibit A**;

(c) Declaring Mount Arlington has prepared and adopted a Fourth Round Housing Element and Fair Share Plan ("**4th Round HEFSP**"), in accordance with A4 and the Act, which will be adopted by the Borough's Land Use Board and subsequently endorsed by the Borough's Municipal Council, no later than June 30, 2025, which may include adjustments permitted by law, including, but not limited to i) a "windshield survey" or similar survey which accounts for a lower estimate of present need; ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; iii) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); iv) an adjustment to the Land Capacity Factor; and/or v) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan;

(d) Declaring Mount Arlington immune from all exclusionary zoning litigation, including but not limited to the builder's remedy lawsuits, during the pendency of the process outlined in A4 and the Act; and

(e) Declaring Mount Arlington in compliance with A4 and the Act and issue a certificate of compliance and immunity from exclusionary zoning litigation in accordance with A4 and the Act, as well as the Directive for the Fourth Round, ending on June 30, 2025; and

(f) Declaring such other relief the Court deems right and proper.

JURISDICTION AND VENUE

6. This action is brought pursuant to the New Jersey Declaratory Judgments Act, N.J.S.A. 2A: 16:50 et seq.

7. This action is also being filed in accordance with P.L.2024, c.2., the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329, and Administrative Directive #14-24, dated December 13, 2024 (the "**Directive**"), implementing the Affordable Housing Dispute Resolution Program (the "**Program**").

8. Venue is proper in Morris County, pursuant to the Directive, as Mount Arlington is situated in Morris County.

FACTUAL AND PROCEDURAL BACKGROUND

9. Pursuant to Mount Laurel IV, Mount Arlington filed a declaratory judgment action on July 7, 2015, entitled "In the Matter of the Application of the Borough of Mount Arlington" Docket No. MRS-L-1657-15, seeking a judicial declaration that its Housing Element and Fair Share Plan ("3rd Round HEFSP") satisfied the "fair share" of the regional need for very low - low- and moderate-income housing, pursuant to the Mount Laurel Doctrine, which culminated in a settlement agreement with Fair Share Housing Center ("FSHC") on June 13, 2018.

10. On April 30, 2020, the Court entered a Final Judgment of Compliance and Repose, granting the Borough immunity from Builder's Remedy lawsuits until July 1, 2025.

11. A4 required the New Jersey Department of Community Affairs (the "**DCA**") to produce non-binding estimates of need for present and prospective need for low- and moderate-income housing in each municipality for the Fourth Round on or before October 20, 2024.

12. On October 18, 2024, in furtherance of such requirement, the DCA issued a report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "**DCA Report**") which established the final calculation and obligations for each municipality in New Jersey, including Mount Arlington.

13. The DCA Report calculated Mount Arlington's Fourth Round obligation as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60.

14. Section 3 of A4 provides "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of A4.

15. Mount Arlington's professionals, including legal counsel and affordable housing consultants, utilized the formulas established in sections 6 and 7 of A4 and thereafter determined to accept the DCA estimate of need as described in the DCA Report.

16. On January 21, 2025. Mount Arlington adopted a binding resolution determining to accept the obligations as outlined in the DCA Report (the "**Resolution**").

17. As the calculation of the Present Need and Prospective Need were calculated in accordance with Sections 6 and 7 of A4, Mount Arlington is entitled to a presumption of validity of the same.

18. In the Resolution, Mount Arlington specifically reserved the right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a 4th Round HEFSP: i) a "windshield survey" or similar survey which accounts for a lower estimate of present need; ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; iii) a Durational

Adjustment (whether predicated upon lack of sewer or lack of water or both); iv) an adjustment to the Land Capacity Factor; and/or v) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan.

19. The Resolution further authorized Mount Arlington's professionals to prepare the 4th Round HEFSP in accordance with A4, the Act, and the Resolution and present the same for adoption prior to June 30, 2025.

COUNT ONE

(JURISDICTION PURSUANT TO A4)

20. Mount Arlington repeats and makes a part hereof each and every allegation contained in preceding paragraphs and incorporates same by reference as though fully set forth herein at length.

21. A4 established the Program to provide a mechanism for effectively resolving disputes involving the Act.

22. A4 thereafter authorized the Director of the Administrative Office of the Courts to establish procedures for the Program.

23. In furtherance of the same, on December 13, 2024, the Acting Administrative Director of the Courts issued the Directive, which promulgated procedures and guidelines to implement the Program.

24. The Directive stated that in order for a municipality to obtain a certification of compliance pursuant to the Act, the municipality shall file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the county in which the municipality is located.

25. Pursuant to the Directive, the declaratory judgment action must be filed within forty-eight hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner. A copy of the municipal resolution must be included with the initial filing.

26. Mount Arlington adopted a binding resolution establishing its present and prospective affordable housing obligations within the timeframe established by A4 and in accordance with the methodology and formula set forth within the Act, a certified copy of which is attached hereto as Exhibit A.

27. Based upon the foregoing, Mount Arlington has established jurisdiction within the Program and before the Superior Court with regard to the DJ Action.

COUNT TWO

(DETERMINATION OF OBLIGATION)

28. Mount Arlington repeats and makes a part hereof each and every allegation contained in preceding paragraphs and incorporates same by reference as though fully set forth herein at length.

29. A4 set forth specific methodology to calculate municipality's present and prospective affordable housing need for the Fourth Round and directed the DCA to apply said methodology and publish a report with its calculations for all of the municipalities in New Jersey.

30. On October 18, 2024, DCA released the DCA Report.

31. Pursuant to the DCA Report, DCA calculated Mount Arlington's Present Need (Rehabilitation Obligation) as 38 and the Prospective Need Obligation (New Construction) as 60.

32. Mount Arlington adopted the Resolution on January 21, 2025, confirming the obligations as set forth in the DCA Report.

33. In the Resolution, Mount Arlington specifically reserved the right to adjust the Fourth Round Obligation calculated by DCA based on certain adjustments outlined therein.

34. The Resolution is attached hereto as Exhibit A.

COUNT THREE

(4th ROUND HOUSING ELEMENT AND FAIR SHARE PLAN)

35. Mount Arlington repeats and makes a part hereof each and every allegation contained in preceding paragraphs and incorporates same by reference as though fully set forth herein at length.

36. A4 states that every municipality shall adopt a housing element and fair share plan as provided for by the Act and propose drafts of appropriate zoning and other ordinances and resolutions to implement its present and prospective needs on or before June 30, 2025.

37. Following adoption of the housing element and fair share plan for the Fourth Round, A4 dictates the municipality shall file the plan with the Program within forty-eight hours after adoption.

38. In the Resolution, Mount Arlington authorized its professionals to prepare the 4th Round HEFSP to be adopted prior to June 30, 2025 to address the obligations. The Resolution further reserved the right to adjust the obligations as may be permitted by law, including such adjustments as: i) a "windshield survey" or similar survey which accounts for a lower estimate of present need; ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; iii) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); iv) an adjustment to the Land Capacity Factor; and/or v) an adjustment predicated

upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan.

39. Following adoption of the 4th Round HEFSP by the Borough's Land Use Board and endorsement by the Borough Municipal Council, Mount Arlington shall upload its 4th Round HEFSP to Court within 48 hours of adoption for approval by the Program.

COUNT FOUR

(IMMUNITY)

40. Mount Arlington repeats and makes a part hereof each and every allegation contained in preceding paragraphs and incorporates same by reference as though fully set forth herein at length.

41. Pursuant to A4 and the Act, a municipality that complies with the deadlines in A4 and the Act, both for determining present and prospective affordable housing obligation and for adopting the appropriate HEFSP shall have immunity from exclusionary zoning litigation.

42. Mount Arlington has met the deadline for the adoption and filing of its binding resolution and the filing of the instant matter, in accordance with the Directive and is therefore, is entitled to immunity from exclusionary zoning litigation at this time.

43. After timely filing of the 4th Round HEFSP with the Program, Mount Arlington shall be entitled to immunity from exclusionary zoning litigation through the end of the Fourth Round, or until June 30, 2035.

PRAYERS FOR RELIEF

WHEREFORE, the Borough of Mount Arlington seeks a declaratory judgment for the following relief:

(a) Declaring Mount Arlington has established Jurisdiction for the Program by the filing of this DJ Action within forty-eight hours after the adoption of a binding resolution to confirm its present and prospective affordable housing obligations;

(b) Declaring Mount Arlington's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by Mount Arlington on January 21, 2025, attached hereto as **Exhibit A**;

(c) Declaring Mount Arlington has prepared and adopted its 4th Round HEFSP, in accordance with A4 and the Act, which will be adopted by the Borough's Land Use Board and subsequently endorsed by the Borough's Municipal Council, no later than June 30, 2025, which may include adjustments permitted by law, including, but not limited to i) a "windshield survey" or similar survey which accounts for a lower estimate of present need; ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; iii) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); iv) an adjustment to the Land Capacity Factor; and/or v) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan;

(d) Declaring Mount Arlington immune from all exclusionary zoning litigation, including but not limited to the builder's remedy lawsuits, during the pendency of the process outlined in A4 and the Act; and

(e) Declaring Mount Arlington in compliance with A4 and the Act and issue a certificate of compliance and immunity from exclusionary zoning litigation in

accordance with A4 and the Act, as well as the Directive for the Fourth Round, ending on June 30, 2025;

(f) Declaring such other relief the Court deems right and proper.

McMANIMON, SCOTLAND & BAUMANN, LLC
Attorneys for Plaintiff/Petitioner
Borough of Mount Arlington

By: Jessica CM Almeida
Jessica CM Almeida, Esq.

Dated: January 22, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule. 4:25-4, Jessica CM Almeida, Esq. is hereby designated as Trial Counsel in this matter.

McMANIMON, SCOTLAND & BAUMANN, LLC
Attorneys for Plaintiff/Petitioner
Borough of Mount Arlington

By: Jessica CM Almeida
Jessica CM Almeida, Esq.

Dated: January 22, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with Rule 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration proceeding. There are no other actions or arbitration proceedings in existence or contemplated at this time, and I know of no other party who should be joined in this action. I

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

McMANIMON, SCOTLAND & BAUMANN, LLC
Attorneys for Plaintiff/Petitioner,
Borough of Mount Arlington

By: Jessica CM Almeida
Jessica CM Almeida, Esq.

Dated: January 22, 2025

EXHIBIT A

RES 2025-40

RESOLUTION OF THE BOROUGH OF MOUNT ARLINGTON ESTABLISHING THE BOROUGH'S FOURTH ROUND PRESENT AND PROSPECTIVE AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("**Mount Laurel IV**"), citing S. Burlington County. NAACP v. Township of Mount Laurel ("**Mount Laurel I**"), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide "a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing," Id., citing S. Burlington County NAACP v. Township of Mount Laurel ("**Mount Laurel II**"), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the "**Mount Laurel Doctrine**"); and

WHEREAS, pursuant to Mount Laurel IV, the Borough of Mount Arlington (the "**Borough**") filed a declaratory judgment action on July 7, 2015, entitled "In the Matter of the Application of the Borough of Mount Arlington" Docket No. MRS-L-1657-15, seeking a judicial declaration that its Housing Element and Fair Share Plan ("**3rd Round HEFSP**") satisfied the "fair share" of the regional need for very low - low- and moderate-income housing, pursuant to the Mount Laurel Doctrine; and

WHEREAS, that culminated in a settlement agreement with Fair Share Housing Center ("**FSHC**") on June 13, 2018; and

WHEREAS, on April 30, 2020, the Court entered a Final Judgment of Compliance and Repose, granting the Borough immunity from Builder's Remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. (hereinafter "**A4**") into law, amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (the "**Act**") and establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine for the years 2025 – 2035 (the "**Fourth Round**"); and

WHEREAS, A4 required the New Jersey Department of Community Affairs (the "**DCA**") to produce non-binding estimates of need for present and prospective need for low- and moderate-income housing in each municipality for the Fourth Round on or before October 20, 2024; and

WHEREAS, on October 18, 2024, in furtherance of such requirement, the DCA issued a report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "**DCA Report**") which report established the final calculation and obligations for each municipality in New Jersey, including the Borough; and

WHEREAS, the DCA Report calculated the Borough's Fourth Round obligation as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60; and

WHEREAS, Section 3 of A4 provides "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of A4; and

WHEREAS, the Borough's professionals, including legal counsel and affordable housing consultants, utilized the formulas established in sections 6 and 7 of A4 and have determined to accept the DCA estimate of need as described in the DCA Report; and

WHEREAS, A4 provides that a municipality shall adopt a binding resolution determining the present and prospective fair share obligation no later than January 31, 2025; and

WHEREAS, the Borough's calculation of need is entitled to a "presumption of validity" as it complies with Sections 6 and 7 of A4; and

WHEREAS, the Borough specifically reserves the right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a Fourth Round Housing Element and Fair Share Plan ("**4th Round HEFSP**"): 1) a "windshield survey" or similar survey which accounts for a lower estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); 4) an adjustment to the Land Capacity Factor; and/or 5) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to A4 in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging A4 or calculations of Fourth Round Present or Prospective Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, nothing in A4 requires or can require an increase in the Borough's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the "**Directive**"), implementing the Affordable Housing Dispute Resolution Program (the "**Program**"), a municipality seeking certification with the Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located; and

WHEREAS, the Borough authorizes the filing of a declaratory judgment action pursuant to the Directive within forty-eight hours after the adoption of this resolution to seek compliance with the Act; and

WHEREAS, the Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025; and

WHEREAS, in light of the above, the Borough finds it is in the best interest of the Borough to declare its Fourth Round Present and Prospective Need Obligations, authorize the filing of a declaratory judgment action pursuant to the Directive, and direct its professionals to prepare a 4th Round HEFSP, all in accordance with A4.

NOW THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Mount Arlington, in the County of Morris, New Jersey, as follows:

Section 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. The Borough's Fourth Round obligation is adopted as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60, as described above, and subject to all reservations of rights, including but not limited to:

A. The right to adjust the number based on one or any of the following: a windshield survey, vacant land assessment, durational adjustments, variations in the Land Capacity Factor, and/or regional planning inputs; and
B. The right to revoke this resolution in the event of a successful legal challenge to A4 or the Act, any legislative changes to A4 and signed into law by the Governor, or to the calculations of Fourth Round Present or Prospective Obligations.

Section 3. The Borough authorizes its professionals to file a declaratory judgment action within forty-eight hours after the adoption of this resolution in order to comply with the Directive.

Section 4. The Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025.

Section 5. This resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington and adopted on January 21, 2025.

Ashley N. Todd, Acting Borough Clerk

RES 2025-40

RESOLUTION OF THE BOROUGH OF MOUNT ARLINGTON ESTABLISHING THE BOROUGH'S FOURTH ROUND PRESENT AND PROSPECTIVE AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("**Mount Laurel IV**"), citing S. Burlington County. NAACP v. Township of Mount Laurel ("**Mount Laurel I**"), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide "a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing," Id., citing S. Burlington County NAACP v. Township of Mount Laurel ("**Mount Laurel II**"), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the "**Mount Laurel Doctrine**"); and

WHEREAS, pursuant to Mount Laurel IV, the Borough of Mount Arlington (the "**Borough**") filed a declaratory judgment action on July 7, 2015, entitled "In the Matter of the Application of the Borough of Mount Arlington" Docket No. MRS-L-1657-15, seeking a judicial declaration that its Housing Element and Fair Share Plan ("**3rd Round HEFSP**") satisfied the "fair share" of the regional need for very low - low- and moderate-income housing, pursuant to the Mount Laurel Doctrine; and

WHEREAS, that culminated in a settlement agreement with Fair Share Housing Center ("**FSHC**") on June 13, 2018; and

WHEREAS, on April 30, 2020, the Court entered a Final Judgment of Compliance and Repose, granting the Borough immunity from Builder's Remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. (hereinafter "**A4**") into law, amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (the "**Act**") and establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine for the years 2025 – 2035 (the "**Fourth Round**"); and

WHEREAS, A4 required the New Jersey Department of Community Affairs (the "**DCA**") to produce non-binding estimates of need for present and prospective need for low- and moderate-income housing in each municipality for the Fourth Round on or before October 20, 2024; and

WHEREAS, on October 18, 2024, in furtherance of such requirement, the DCA issued a report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "**DCA Report**") which report established the final calculation and obligations for each municipality in New Jersey, including the Borough; and

WHEREAS, the DCA Report calculated the Borough's Fourth Round obligation as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60; and

WHEREAS, Section 3 of A4 provides "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of A4; and

WHEREAS, the Borough's professionals, including legal counsel and affordable housing consultants, utilized the formulas established in sections 6 and 7 of A4 and have determined to accept the DCA estimate of need as described in the DCA Report; and

WHEREAS, A4 provides that a municipality shall adopt a binding resolution determining the present and prospective fair share obligation no later than January 31, 2025; and

WHEREAS, the Borough's calculation of need is entitled to a "presumption of validity" as it complies with Sections 6 and 7 of A4; and

WHEREAS, the Borough specifically reserves the right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a Fourth Round Housing Element and Fair Share Plan ("**4th Round HEFSP**"): 1) a "windshield survey" or similar survey which accounts for a lower estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); 4) an adjustment to the Land Capacity Factor; and/or 5) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to A4 in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging A4 or calculations of Fourth Round Present or Prospective Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, nothing in A4 requires or can require an increase in the Borough's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the "**Directive**"), implementing the Affordable Housing Dispute Resolution Program (the "**Program**"), a municipality seeking certification with the Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located; and

WHEREAS, the Borough authorizes the filing of a declaratory judgment action pursuant to the Directive within forty-eight hours after the adoption of this resolution to seek compliance with the Act; and

WHEREAS, the Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025; and

WHEREAS, in light of the above, the Borough finds it is in the best interest of the Borough to declare its Fourth Round Present and Prospective Need Obligations, authorize the filing of a declaratory judgment action pursuant to the Directive, and direct its professionals to prepare a 4th Round HEFSP, all in accordance with A4.

NOW THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Mount Arlington, in the County of Morris, New Jersey, as follows:

Section 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. The Borough's Fourth Round obligation is adopted as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60, as described above, and subject to all reservations of rights, including but not limited to:

A. The right to adjust the number based on one or any of the following: a windshield survey, vacant land assessment, durational adjustments, variations in the Land Capacity Factor, and/or regional planning inputs; and
B. The right to revoke this resolution in the event of a successful legal challenge to A4 or the Act, any legislative changes to A4 and signed into law by the Governor, or to the calculations of Fourth Round Present or Prospective Obligations.

Section 3. The Borough authorizes its professionals to file a declaratory judgment action within forty-eight hours after the adoption of this resolution in order to comply with the Directive.

Section 4. The Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025.

Section 5. This resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington and adopted on January 21, 2025.

Ashley N. Todd, Acting Borough Clerk

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-000177-25

Case Caption: IN THE MATTER OF MOUNT ARLINGTON BORO
Case Initiation Date: 01/22/2025
Attorney Name: JESSICA C M ALMEIDA
Firm Name: MC MANIMON SCOTLAND & BAUMANN LLC
Address: 75 LIVINGSTON AVE SECOND FL ROSELAND NJ 07068
Phone: 9736221800
Name of Party: PETITIONER : Borough of Mount Arlington
Name of Defendant's Primary Insurance Company (if known): None

Case Type: AFFORDABLE HOUSING
Document Type: Complaint
Jury Demand: NONE
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Borough of Mount Arlington? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? NO
If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO **Medical Debt Claim?** NO

I 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 *Rule* 1:38-7(b)

01/22/2025
Dated

/s/ JESSICA C M ALMEIDA
Signed