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December 29, 2025

File No. 30931-1

VIA E-COURTS

The Honorable Sapp-Peterson
Richard J. Hughes Justice Complex
25 Market Street, PO Box 006
Trenton, 08625

RE: IMO of the Application of the Township of Montclair, Essex County
Docket No. ESX-L-000297-25

Letter Brief in Response to Sarah Avery's First Amended Challenge

Dear Judge Sapp-Peterson:

Pursuant to Your Honor's most recent directive at the December 17 and 23, 2025 mediations, please accept the following letter brief on behalf of the Township of Montclair ("Township") opposing the challenge of Montclair resident Sarah Avery ("Avery" or "Avery Challenge") to the Township's 2025 Housing Element and Fair Share Plan ("2025 HEFSP") submitted pursuant to P.L. 2024 c.2 ("Amended FHA") and Directive #14-24, promulgated by the Administrative Office of the Courts ("Directive #14-24").

I. Introduction and Procedural History

The Amended FHA and Directive #14-24 require municipalities to adopt a housing element and fair share plan ("HEFSP"), as provided for by the "Fair Housing Act," P.L. 1985, c.

COUNSEL WHEN IT MATTERS.SM

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222 (C.52:27D-301 et al), and propose drafts of the appropriate zoning, other ordinances, and resolutions to implement its present and prospective obligation on or before June 30, 2025.

Montclair Township is designated as a Qualified Urban Aid Municipality¹ (“Urban Aid Municipality”). As an Urban Aid Municipality, the Township has a present or rehabilitation need of one hundred and thirty-two (132) units and a prospective need of zero (0) units. Pursuant to the Amended FHA, an Urban Aid Municipality is exempt from responsibility for any fair share prospective need obligation for the upcoming 10-year round. N.J.S.A. 52:27D-304.3. Despite that fact, the Township produced a fourth round HEFSP on June 25, 2025 with a proposed plan for meeting its present need obligation, maintaining its current inventory, and creating more affordable units in the future because the Township values the advancement of affordable housing.

The Amended FHA and Directive #14-24 permit an interested party to file a response on or before August 31, 2025, alleging that the municipality’s HEFSP is not compliant with the Fair

¹ A QUA Municipality is defined as a municipality that, as of July 1 of the year prior to the beginning of a new round, is designated by the DCA, pursuant to N.J.S.A. 52:27D-178, to receive State aid and the municipality meets at least one of the following criteria:

(a) The ratio of substandard existing deficient housing units currently occupied by low-and moderate-income households within the municipality, compared to all existing housing in the municipality, is greater than the equivalent ratio in the region; (b) The municipality has a population density greater than 10,000 persons per square mile of land area; or (c) The municipality has a population density of more than 6,000, but less than 10,000 persons per square mile of land area, and less than five percent vacant parcels not used as farmland, as measured by the average of (i) The number of vacant land parcels in the municipality as a percentage of the total number of parcels in the municipality; and (ii) The valuation of vacant land in the municipality as a percentage of total valuations in the municipality. N.J.S.A. 52:27D-304.3



Housing Act (“FHA”) and/or the Mount Laurel Doctrine. N.J.S.A. 52:27D-304.1.f(2)(b). Such allegation must be based on whether the HEFSP, as proposed, is compliant with the FHA and the Mount Laurel Doctrine. Id. A challenge filed by an interested party must specify with particularity which sites or elements of the HEFSP do not comply with the FHA or the Mount Laurel Doctrine and the basis for alleging such noncompliance. Id.

To resolve a challenge, the Amended FHA provides that the Affordable Housing Dispute Resolution Program (“Program”) shall apply an objective assessment standard to determine whether or not the municipality’s HEFSP is compliant with the FHA and the Mount Laurel doctrine. Id. Challenges that do not meet the standards required by the Amended FHA are to be dismissed. Directive #14-24.III(C). (Emphasis added).

Avery submitted a timely challenge on August 28, 2025. It should also be noted that Avery submitted her first amended challenge on November 11, 2025. Although the Township will answer Avery’s first amended challenge at Your Honor’s direction, it should be noted that the Amended FHA does not provide a mechanism for the amendment of challenges, especially after the August 31, 2025 deadline.

Avery challenges the adoption and endorsement of the Township’s HEFSP. Her challenge alleges that the Township has a history of racism and practice of segregation. The Township will not respond to those claims since claims of discrimination do not fall within the jurisdiction of the Program, as discussed with Your Honor during the settlement conference on December 17, 2025. The challenge also consists of two (2) counts, which allege that Montclair has failed to provide

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adequate oversight and monitoring for affordable housing inventory and the administration of affordable housing programs.

On September 16, 2025, the Township filed a joint response submission denying Avery's substantive claims and any willful non-compliance allegations, and reaffirmed its commitment to transparent monitoring under the FHA. The Township continues to deny the allegations in the Avery Challenge.

Furthermore, Avery is not challenging any sites or elements in the HEFSP that relate to the Township's plan to address an obligation pursuant to the fourth round since the Township does not have such an obligation. The majority of Avery's claims indicate an apparent misunderstanding of the Fair Housing Act, Uniform Housing Affordability Controls ("UHAC") and other applicable rules and regulations. Thus, the Avery Challenge does not meet the standards for a challenge in the Amended FHA and should be dismissed.

In lieu of the Avery Challenge being dismissed and in light of Your Honor's order to respond to the Avery Challenge, the Township submits the following.

II. Background

To the extent paragraphs 1-15 warrant a response, below are selected answers prepared in response.



13. Avery alleges that a series of units that Montclair claimed to reduce its rehabilitation share² were improperly sold as market rate units prior to the expiration of their proposed deed restriction. She provides the examples of 27 New Street and 47 Mission Street with expirations of 2021 and 2025 respectively.
- The 2009 addendum to the Township's 2008 HEFSP lists both properties as proposed to be rehabilitated by the Essex County Rehabilitation Program ("HIP"), which offers rehabilitation grants to homeowners who rent to income qualified tenants at affordable levels. If the ownership is transferred within a ten (10) year period, a lien is recorded against the property and it must be paid off.

The 2025 HEFSP provides a list of units that were successfully rehabilitated by the HIP that the Township received credit for. Neither 27 New Street or 47 Mission Street were included in the list, thus, the Township did not receive credit for those two (2) units.

² "Rehabilitation share" means the number of deficient housing units occupied by low- and moderate-income households within a municipality, established in accordance with the provisions of N.J.A.C. 5:94-2.1(b) that must be addressed in a Fair Share Plan.



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Further, the Township does not have records of any proposed deed restrictions. An OPRA request from Essex County related to these units has not been answered as of the date of this response³.

14. Avery alleges that variances granted by the Montclair Board of Adjustment have eliminated “Naturally Occurring Affordable Housing” or “NOAH”, and instead have led to the creation of luxury housing. She alleges that this has created a hardship for the former residents of this neighborhood, further exacerbated the affordable housing crisis, and has created a substantial detriment to the public good.
- Avery provides zero evidence that connects the Montclair Board of Adjustment’s approval of variances in various land development applications with the elimination of affordable

³ Alternatively, it is suspected that both properties were foreclosed upon and then sold via Sheriffs Sale in 2016 and 2019 respectively. Second round COAH rules³ permitted judgments of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) to extinguish controls on affordable housing units. Although the Township does not have notice of the foreclosures, the rule also provides that failure of the financial institution to provide notice of a foreclosure action shall not impair any of the financial institution’s rights to recoup loan proceedings nor negate the extinguishment of controls nor invalidate the foreclosure. N.J.A.C. 5:93-9.13.

Thus, if the properties were foreclosed upon, any controls would have been extinguished and the properties would have been permitted to be sold at a sheriffs sale.



housing. The Township's Board of Adjustment's decisions to grant variances met the legal criteria required by the Municipal Land Use Law.

III. Montclair has provided adequate oversight and monitoring for Affordable Housing Inventory

16. Avery references the "Required Elements of Housing Element and Fair Share Plan ("HEFSP") (Revised June 23, 2025) Section A,3 for the assertion that the final HEFSP must demonstrate that [it] has followed all applicable requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are code compliant or have been rehabilitated to code-compliant.
 - The Township is unaware of what document Avery references above but assumes it is Directive #14-24. The Township's 2025 HEFSP complies with Directive #14-24.
17. Avery alleges that the 2008 HEFSP (including the 2009 addendum) to the 2025 HEFSP reveals numerous errors and inconsistencies.
 - It should be noted that a "fair share plan" is defined as a **plan or proposal**, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to **create a realistic opportunity** to meet the low and moderate income housing need of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Affordable Housing Act, and as further described and defined in N.J.A.C. 5:93. N.J.A.C. 5:91-1.2. (emphasis added).



Furthermore, a "realistic" opportunity means that "there is in fact a likelihood--to the extent economic conditions allow--that the lower income housing will actually be constructed." S. Burlington County NAACP v. Mt. Laurel, 92 N.J. at 221-22 (1983) (Mt. Laurel II). Determining if an opportunity is "realistic" requires application of a practical and objective standard; the court must decide "whether there is in fact a likelihood—to the extent economic conditions allow—that the lower income housing will actually be constructed." Id. “Municipalities need not guarantee that the required amount of affordable housing will be built, but must only adopt land use ordinances that create a realistic opportunity to meet the regional need and their own rehabilitation.” Matter of Twp. of Bordentown, 471 N.J. Super. 196, 219 (App. Div. 2022).

As such, the 2008 HEFSP, 2009 addendum, and the Fourth Round Plan are fluid documents meant to outline the Township’s plan to provide realistic opportunities to achieve its affordable housing obligation. Neither are set in stone, nor are they intended to be.

18. Avery alleges that the 2025 HEFSP reports that eighty-five (85) units were built through redevelopment, but that it should have been at least one hundred and seventy (170) units because Montclair Ordinance Section 347-156 contains a twenty (20) percent set-aside for affordable housing. She also states that “There is no evidence that a financial analysis was performed to determine whether the developer’s payment to the Affordable Housing Trust Fund (“AHTF”) provided a greater benefit to the community than building an additional 85 units of affordable housing as required by Montclair Code would have”.



- Montclair Ordinance Section 347-156(A) requires that any development containing five (5) or more dwelling units include at least 20% or one in five of the total number of units of affordable units.

However, the Township's 20% set aside does not automatically apply to redevelopment plans. The Local Redevelopment and Housing Law ("LRHL") authorizes a municipality that has designated a redevelopment area, provided for a tax abatement within that area, and has adopted a housing element pursuant to N.J.S.A. 40:55D-28, to require a redeveloper to set aside affordable housing units or contribute to an affordable housing trust fund. N.J.S.A. 40A:12A-4.1. However, the LRHL does not require a specific percentage or even require a set aside. It permits either a set aside or a payment in lieu of producing affordable units. Although the current Township Ordinance requires a 20% set aside, a redevelopment plan, when adopted, supersedes applicable provisions of the development regulations of the municipality or constitutes an overlay zoning district within the redevelopment area. N.J.S.A. 40A:12A-7(C); Cox, *New Jersey Zoning and Land Use Administration*, § 11-5 (2024).

Each redevelopment plan adopted by the Township Council establishes appropriate set asides for affordable housing that reflect the complex characteristics of each area as permitted by law.

In her challenge, Avery asserts that a financial analysis was not performed when determining whether to accept a payment in lieu of affordable housing, however, a financial analysis was not required by Montclair Township Ordinance Section 347-156.



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19. Avery alleges that the 2025 HEFSP includes six (6) units at Glenridge Avenue, an increase of four (4) units from the 2008 HEFSP, however, the completed project has four (4) residential units and two (2) commercial units. She concludes that the two (2) commercial units should not be counted as affordable units.
 - The Township agrees that commercial units should not be counted as affordable units and asserts that the two (2) extra units accounted for in the 2025 HEFSP was a typo. Included is Exhibit A, a copy of the mortgage and subordination agreement for the property that confirms the number of units as four (4).
20. Avery questions the number of affordable units for the Montclair Inn, an affordable senior citizen housing project proposed in the 2008 HEFSP that was projected to produce seventeen (17) units.
 - As discussed above, the 2008 HEFSP is the Township's plan or proposal by which the Township proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing need of its region. It is not set in stone, thus, subject to change.

Montclair Inn is an affordable housing facility for seniors. It is considered a special needs housing project and documented as "congregated living" in the 2025 HEFSP.

Under the UHAC, bedrooms are permitted to be counted as individual units if they are within restricted units that are group homes or other arrangements in which



households live in distinct bedrooms and share kitchen and plumbing facilities, central heat, and common areas, or provider-managed housing. N.J.A.C. 5:80-26.4(b)(2).

The tax assessor confirmed that there are twenty-two (22) bedrooms at the Montclair Inn. A copy of the tax cards with the amount of bedrooms highlighted and the Township's website with the number of bedrooms is provided as Exhibit B.

21. Avery states that Montclair Mews had thirty-six (36) affordable units per the 2008 HEFSP which has been reduced to twenty (20) units per the 2025 HEFSP.

- As noted above, the 2008 HEFSP is the Township's plan and subject to change.

The Township implemented an extension of affordability controls outreach program that focused on the for-sale Montclair Mews units, which were set to expire. The 2008 HEFSP proposed that the program would extend the controls for thirty-six (36) units.

Instead, the program successfully extended the controls for twenty (20) units. The Township exercised its right of first refusal, as authorized by UHAC, to purchase, renovate, and sell three (3) of these units with new affordability controls. The Township was also able to secure the extension of deed restrictions for seventeen (17) unit owners through its voluntary extension of controls program. The program included a site visit and a review of necessary improvements. The Township provided a \$10,000 payment from its Affordable Housing Trust Fund and required a final inspection to ensure the funds were used as intended.

Overall, the Township achieved twenty (20) extensions from the Montclair Mews project. Documentation of the Montclair Mews deed restriction extensions were



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provided in Appendix C. A 2011 status report and a sample set of proof of inspection, payment, and corresponding pictures of improvements for Units 6C2, 6E1, 6G2, and 6H2 are provided as Exhibit C.

22. Avery asserts that in 2016, there were eighteen (18) deeds registered for seventeen (17) affordable units in the Montclair Mews that reported \$10,000 each in consideration in exchange for extending the affordability controls on those seventeen (17) units for a total of \$170,000. She states that payments made from Montclair's Affordable Housing Trust Fund to extend controls total \$160,000, a deficiency of \$10,000.

- It should be noted that Avery provides no documentation to support her claim. Regardless, please refer to the Township's answer to #21. Payments were made via purchase order to all seventeen (17) units. Samples were provided as Exhibit C.

23. The Township does not understand the entire substance of No. 23, but from what the Township gleans, Avery asserts that the affordability controls on "these eighteen (18) deeds" expired between May 2009 and February 2014 and were extended for a term of twenty (20) years instead of a term of thirty (30) years.

- Avery provides no documentation to support this claim. A review of the deeds from Appendix C indicate that a minimum of thirty (30) years was recorded as the duration of the deed restriction.

24. Avery asserts that "By Talley's own admission, none of the Montclair Mews units for which affordability controls were extended, were inspected to determine that the units were rehabilitated, even though Montclair Township Ordinance Chapter 65-3(A)(1)



requires rehabilitated units to comply with the New Jersey Housing Code pursuant to N.J.A.C. 5:28.

- Avery provides no evidence to support this claim, and the Township denies this claim.

As described above, the Township exercised its right of first refusal, as authorized by the UHAC, to purchase, renovate, and sell three (3) of these units with new affordability controls. The Township was also able to secure the extension of deed restrictions for seventeen (17) unit owners through its voluntary extension of controls program. Avery cites to Montclair Township Ordinance Chapter 65-3(A)(1), which was amended in its entirety on May 22, 2018 by Ordinance No. O-18-024. It was not in effect at the time of the extensions. Regardless, Montclair Township Ordinance Chapter 65-3(A)(1) refers to a rehabilitation program mechanism designed to renovate deficient housing. It does not apply to extensions of affordability controls pursuant to the UHAC. Each of the units were inspected to ensure that the funds provided for rehabilitation were used appropriately and according to its authorizing resolution.

25. Avery asserts that Montclair has failed to appoint a Municipal Housing Liaison.

- Ms. Talley was hired to serve as the Township's municipal housing liaison in 2010. The Township Council will adopt a resolution appointing a Municipal Housing Liaison by the statutory deadline of March 15, 2026.

26. Avery claims that there are ten (10) affordable housing units reported on the 2008 HEFSP with affordability controls that expire after 2025 which are not included on the 2025 HEFSP.



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- As stated above, the 2008 HEFSP is subject to change.
 - a. 14 Mission Street - In the 2009 addendum to the 2008 HEFSP, this unit was proposed to be rehabilitated by HOME Corp and deed restricted until 2026. The unit is included in the 2025 HEFSP on Table 28, page 40.
 - b. 24 Mission Street – The property was included in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and is included on the Table 28, page 40 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by both the DCA Balance Housing Program and Essex County HIP program. It was proposed to be deed restricted from 2002 to 2032 for a total of thirty (30) years. At this point, it is unknown why it was projected for a total of thirty (30) years. The past rules governing the DCA Balance Housing Program, also called the Neighborhood Preservation Balanced Program, require that units funded by the Balanced Housing Program must remain affordable for the time period which is required by N.J.A.C. 5:93-9.2. N.J.A.C. 5:43-3.1(f). A copy of the applicable rule is provided as Exhibit D.

Second round COAH rules dictate length of controls.

It provides that:

“Municipalities receiving State Aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall



adopt measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for a period of not less than 10 years. The administrative entity shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act to contain the deed restriction and mortgage lien adopted by the Council. (See Appendix E)".

N.J.A.C. 5:93-9.2 (b).

The Township is an Urban Aid Municipality that receives State aid. The units are required to be deed restricted for a period not less than 10 years. The property was included in the 2025 HEFSP as a family sale with rental unit for a total of three (3) credits. During the Township's investigation, a mortgage was found which demonstrates that there was a deed restriction for fifteen (15) years beginning on February 1, 2002 and ending at the first non-exempt transfer of title after January 31, 2017. A copy of the deed restriction is provided as Exhibit E.

c. 25 Mission Street – 25 Mission Street was listed in the Township's list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. The Township was unable to locate a



deed restriction for this property in the allotted time and reserves the right to either supplement this response with an executed deed restriction or amend the 2025 HEFSP to remove this property.

d. 53 Mission Street – This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. The Township was unable to locate a deed restriction for this property in the allotted time and reserves the right to either supplement this response with an executed deed restriction or amend the 2025 HEFSP to remove this property.

e. 59 Mission Street – This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. The Township was unable to locate a deed restriction for this property in the allotted time and reserves the right to either supplement this response with an executed deed restriction or amend the 2025 HEFSP to remove this property.



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f. 62 Mission Street – This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. The Township was unable to locate a deed restriction for this property in the allotted time and reserves the right to either supplement this response with an executed deed restriction or amend the 2025 HEFSP to remove this property.

g. 68 Elmwood Avenue - This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. During the Township’s investigation, a mortgage was located which demonstrates that there was a deed restriction for fifteen (15) years beginning on February 1, 2002 and ending at the first non-exempt transfer of title after January 31, 2017. A copy of the deed restriction is provided as Exhibit F.

h. 16 Miller Street - - This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008



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HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the Essex County Home Program, which is referred to as the “Federal HOME Program”. The Federal Home Program requires that twenty (20) years is the minimum period of affordability for new construction or acquisition of newly constructed housing. 24 CFR 92.504

Avery’s Exhibit E-v, page 1 provides a deed dated January 10, 2002 and a corrective deed dated September 20, 2016, which acknowledges that the “cost of rehabilitation of the Property has been satisfied out of the proceeds of a certain loan from the County of Essex under the Federal HOME Program and that the premises to be constructed shall be subject to the affordability requirements contained in 24 Code of Federal Regulation, Part 92... The premises to be acquired shall be subject to the specific provisions for affordability contained in 24 CFR 92.504 for a period of twenty years from the date of completion of the project (issuance of a certificate of occupancy for the use of the premise).

The Township supplements the response with the deed dated October 23, 2002 between Homes of Montclair Ecumenical Corp and the current owner, Jason Field as Exhibit G.

i. 24 Miller Street - This property was listed in the Township’s list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and



was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. During the Township's investigation, a mortgage was located which demonstrates that there was a deed restriction for fifteen (15) years beginning on October 1, 2000 and ending at the first non-exempt transfer of title after September 30, 2015. A copy of the deed restriction is provided as Exhibit H.

j. 26 Miller Street - This property was listed in the Township's list of Affordable Housing units as of 8/1/2008 in the 2009 addendum to the 2008 HEFSP and on Table 28 of the 2025 HEFSP. The property was administered by HOME Corp and was proposed to be financed by the DCA Balance Housing Program, which at the time of the proposed deed restriction, required a deed restriction of no less than ten (10) years. During the Township's investigation, a mortgage was located which demonstrates that there was a deed restriction for fifteen (15) years beginning on February 1, 2001 and ending at the first non-exempt transfer of title after January 31, 2016. A copy of the deed restriction is provided as Exhibit I.

27. Avery asserts that "By Talley's own admission, Montclair did not act in accordance with the community's interest resulting in the lost of ten (10) affordable properties listed in number 26 above as reported in The Montclair Times, "High taxes, housing costs spur exist of some black residents" February 10, 2011 (Exhibit E).

- The Township is unable to respond because Exhibit E is not legible. Regardless, the Township denies the allegation.



28. No answer required.

29. Avery states that the 2025 HEFSP includes Supportive Housing at Oxford House 21 Irving Street. She alleges that 21 Irving Street is a single-family residence with four (4) bedrooms, a maximum of two (2) bathrooms and one shared kitchen and living space, but Talley has included it as 9 affordable housing units. She states that it is a single-family residence and cannot count as more than one affordable unit.

- Avery produces no evidence to support her claims. The Township indicates that 21 Irving Street is a group home. Group homes are typically classified as single-family homes. The number of units is based on the number of bedrooms licensed by the State of New Jersey. The UHAC permits bedrooms to be counted as individual units if they are within restricted units that are group homes or other arrangements in which households live in distinct bedrooms and share kitchen and plumbing facilities, central heat, and common areas, or provider-managed housing. N.J.A.C. 5:80-26.4(b)(2). A copy of the directory listing is included as Exhibit J.

30. Avery alleges that Montclair and Talley have failed to comply with the Montclair Code's requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are code compliant or have been rehabilitated to code compliant.

- Avery produces no evidence to support her claims. The Township denies this allegation. The Township adheres to the requirements of its ordinances and meets all requirements



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for extending expiring controls, including ensuring units for which the controls have been extended, are code compliant.

31. Avery alleges that Montclair and Talley have improperly failed to document start dates and lengths of affordability controls applicable to units with expiring controls.

- Avery provides no evidence to support this claim and regardless, the Township denies the claim.

32. Montclair and Talley have improperly included each bed in an additional recovery residence as an affordable housing unit.

- Avery has produced no examples or evidence to support this claim. The Township is unable to respond without examples. Regardless, the Township denies the allegation.

33. Avery alleges that the Township claimed credit to reduce the rehabilitation share for a list of properties with controls expiring after 2025 but the properties were improperly sold or had other issues:

- a) Avery alleges that 113 Claremont Avenue was reported as having affordability controls expiring in 2026, however, the property was sold without a deed restriction on September 28, 2012.
- Similar to Number 13 above, the 2009 addendum lists 113 Claremont as proposed to be rehabilitated by the HIP, however, the 2025 HEFSP does not include 113 Claremont on the list of units where rehabilitation was completed. Thus, the Township did not take credit for the unit and Avery's claim has no merit.



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- b) Avery claims that the Township received credit for 56 Pleasant Avenue and that the address does not exist.
- The Township submits that the address may contain a typo. It appears that 56 Pleasant *Way* is an existing address in Montclair. Regardless, the 2025 HEFSP does not list any address close to this as a unit that was credited towards Montclair's rehabilitation obligation.
- c) Avery alleges that the Township claimed credit for 35 Oxford Street and that it was reported to have affordability controls expiring in 2027, however, it was sold without a deed restriction on April 19, 2010.
- Similar to the claims above for 27 New Street, 47 Mission Street, and 113 Claremont, 35 Oxford Street was listed in the 2008 HEFSP as proposed to be rehabilitated by HIP. 35 Oxford Street was not listed in the 2025 HEFSP as a property that was actually rehabilitated by HIP, therefore, the Township did not receive credit for its rehabilitation.
- d) Avery alleges that 90 Gates Avenue was reported as having affordability controls expiring in 2025, yet the property was sold without a deed restriction on February 20, 2007.
- 90 Gates Avenue is another property proposed to be rehabilitated by the HIP in the 2008 HEFSP. However, its rehabilitation never came to fruition according to the 2025 HEFSP, so the Township never took credit for the unit to reduce its rehabilitation share.
34. No response required. The Township denies the allegation.



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35. The Township has met its prior round obligations and has no legal obligation for the Fourth Round.

36. Avery alleges that there are numerous other discrepancies, not limited to the following:

a) Avery claims that 24 Elm Street provided two (2) credits on the 2008 HEFSP as Growth Share Plan credits but that no units were ever created.

- Avery is correct. Page 40 of the 2025 HEFSP indicates that the 2009 HEFSP included a chart of 150 units and 40 bonus credits for a total count of 190 units, which included 24 Elm Street. It also states “Of these projects, the two units at 24 Elm Street and the four units at 53-55 New Street were not created...” Thus, Avery’s claim has no merit.

b) Avery states that the 2008 HEFSP claimed one (1) rehabilitation share plan credit and one (1) growth credit for 19 Elmwood for a total of two (2) affordable units. However, the property is a single-family home and permit history records show that no construction permits were ever issued for the property, despite the 2008 HEFSP claim that 19 Elmwood Avenue contains two (2) affordable units, “1 will be a rehab (second floor) and 1 will be new construction.”

- 19 Elmwood was listed on the 2008 HEFSP as proposed to have the second floor rehabilitated and a new unit constructed by HOME Corp. 19 Elmwood is not listed in the 2025 HEFSP as a project that came to fruition. Thus, the Township did not receive any credit for the unit for either the rehabilitation or growth share for the Third Round.

c) Avery claims that 25 William Street is included in the 2008 HEFSP as three (3) affordable units and that it was increased to six (6) affordable units in the 2025 HEFSP, despite



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no proof that the building was increased in size and a commercial unit on the ground floor. She also alleges that the owner, Homecorp, is delinquent in making tax payments and there is a tax lien on the property in the amount of \$9,501.68 for unpaid real estate taxes and water and sewer assessments.

- 25 William Street is included in the 2008 HEFSP as a HOME Corp unit that has three (3) units/bedrooms and three (3) bonus credits for a total of six (6) credits. It provides that the bonus credits are from its designation as a rental property.
- d) Avery claims that there are tax liens on fifty-four (54) affordable housing units owned by Homecorp reported on the 2025 HEFSP, totaling almost \$100,000, jeopardizing the affordability of those units and creating additional displacement risks. She provides the address and amount of the tax liens.
- Avery provides no proof of her claim. The Township has no legal rights to the listed properties. Regardless, the newly adopted UHAC, effective December 15, 2025, protects an affordable unit from the entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure. N.J.A.C. 5:80-26.12.

IV. Count TWO - Montclair has properly provided adequate oversight and monitoring of Affordable Housing Programs

37. No response required.

38. Avery asserts that the Montclair Home Improvement Program ("Montclair HIP")

Policies and Procedures Manual state that funds may only be used for eligible



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improvements and Montclair HIP literature states that the program targets those in need of major system repairs or replacements, including roofing, electrical, plumbing, heating, addressing both interior and exterior health, safety and code compliance issues.

- Avery is correct. The Montclair HIP Policies and Procedures Manual, created February 5, 2021, provides the eligibility guidelines for the HIP and states that the purpose of the program is to bring substandard housing into compliance with the New Jersey State Housing Code, N.J.A.C. 5:28, the Rehabilitation Subcode, N.J.A.C. 5:23-6, and Chapter 247 of the Township's local property maintenance code.

In order to qualify, the condition of each home must be certifiable as being “substandard”⁴, as defined in N.J.A.C. 5:93-1.3. At least one of the following major systems must be in need of replacement or substantial repair: Roof, plumbing (including wells), heating, electrical, sanitary plumbing (including septic systems), load bearing structural systems, and weatherization (building insulation for attic, exterior walls and crawl space, siding to improve energy efficiency, replacement storm windows and storm doors and replacement windows and doors). The HIP program manual specifically states that the related work may include (but is not limited to): lead paint remediation, interior and/or exterior doors, interior and/or exterior hardware, interior stair repair, exterior step repair or replacement, porch repair, wall surface repair, painting, and exterior rain

⁴ “Substandard housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system. N.J.A.C. 5:93-1.3.



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carrying system repair. HIP Manual page 8. The HIP program allows stoves to be replaced if determined to be unsafe.

Ineligible improvements include but are not limited to luxury improvements (improvements which are upgrades/higher than mid-grade and/or strictly cosmetic, carpets, additions, conversions (basement, garage, porch attic, etc.), repairs to structures separate from the living units (detached garage, porch, attic, etc.), furnishings, pools, landscaping, solar panels and generators.

39. Avery claims that a review of invoices paid by the Montclair's Affordable Housing Trust Fund ("AHTF") reveals numerous repairs that are not covered by the HIP: chimney replacement and/or repointing, oil tank removal, basement entry replacement, drywell installation, hot water heaters, front stair replacement, handrail installation.
 - This is false. As outlined in 38 above, the HIP program eligibility outlines that at least one (1) major system must be in need of replacement or substantial repair. Each of the items Avery considers ineligible are eligible per the Montclair HIP program manual. None of the items speak to ineligible items such as "luxury improvements", carpets, additions, conversions, repairs to structures separate from the living units, furnishings, pools, landscaping, solar panels, or generators. Instead, chimney replacement and suspected asbestos inspection or remediation fit in the Montclair HIP eligibility criteria.
40. Avery states that the proposal by the Affordable Housing Administrator, CGP&H, states that as part of the ongoing day-to-day services invoiced on an hourly basis cover the preliminary application process to determine the initial eligibility, ensuring that neither



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the applicant nor the program's time will be wasted. Avery states that an analysis of applications to the HIP between May 2020 and June 2024 reveals eighteen (18) applications that were terminated, and only (6) applications were approved. In addition, five (5) of the applications that were terminated were previously certified as eligible. CGP&H charged the AHTF fees for certifying the applicant's eligibility as well as termination of the application (Exhibit G).

- No response is required.

41. Avery claims that in four (4) of the six (6) approved applications, "miscellaneous" repairs were invoiced.

- Avery provides no evidence of her claims. The Township cannot respond without understanding the specific claim. The Township leaves Avery to her proofs.

42. Avery alleges that (1) of the six (6) applications that were approved, an HVAC contractor was hired to perform repairs which did not include HVAC repairs or installation (Exhibit H, Exhibit F). Furthermore, the HVAC contractor's published address is the same as the property owner, raising conflict of interest issues.

- A Google search of the HVAC Contractor, Adriatic Aire reveals that the contractor engages in hearing repair, heating installation, furnace repair, furnace installation, boiler installation, AC repair, AC maintenance, and AC installation. The services performed by the contractor could fall under those categories and more that are most likely not explicitly provided.



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- The Township is aware of the situation Avery alludes to. The situation was brought to the Township's attention. The Township conducted an investigation and determined that the homeowner, who was very satisfied with the work done by the contractor, agreed to let the contractor use his home address for marketing purposes. The Township forbid this advertising following the investigation. A google search indicates that the 41 Watchung Plaza #353, Montclair, NJ 07042 is the correct address for the contractor.

43. Avery asserts that NJMF Investments LLC is not registered to do business in the state of New Jersey.

- The Township is unable to provide any definitive evidence to dispute this claim at this time, however, a google search indicates that NJMF has engaged in similar business transactions with the Township of East Hanover and Woodbridge. It's possible the contractor is registered under another name.

44. No response required.

45. No response required.

For the reasons provided above, the Township requests that the Avery Challenge be dismissed. We look forward to the Program's guidance in this matter.

Respectfully submitted,

s/Alena C. Hyatt
Alena C. Hyatt