

TOWNSHIP OF MONTVILLE

ORDINANCE NO. 2024 - 05

AN ORDINANCE OF THE TOWNSHIP OF MONTVILLE, COUNTY OF MORRIS, STATE OF NEW JERSEY, REPEALING ORDINANCE NO. 2020-05, AND: (i) EXTENDING THE AFFORDABILITY CONTROL PERIOD ON FORTY-TWO AFFORDABLE RENTAL UNITS FOR AN ADDITIONAL THIRTY YEARS; and (ii) RELEASING THE AFFORDABILITY CONTROLS PERIOD FOR ONE HUNDRED TWENTY-SIX AFFORDABLE RENTAL UNITS.

WHEREAS, within the Township of Montville there exists a multi-family rental development hereinafter referred to as “Rachel Gardens,” located at 63 Chapin Road, Pine Brook, New Jersey 07058, known as Block 184, Lots 4 and 6 on Tax Map 20 of the Township of Montville; and

WHEREAS, Rachel Gardens is an inclusionary family rental development consisting of 764 total units; and

WHEREAS, presently there are one hundred sixty-eight (168) rental units within Rachel Gardens that are reserved for occupancy by low-and moderate-income persons (hereinafter the “Affordable Units”) as defined under the New Jersey Fair Housing Act (P.L. 1985, c. 222) (N.J.S.A. § 52:27D-301 et, seq.) (the “FHA”); and

WHEREAS, the 168 Affordable Units in the Rachel Gardens Development are subject to the Act and the Township’s ordinances, and are either efficiency, (1) bedroom, two (2) bedroom, or three (3) bedroom rental units; and

WHEREAS, the 168 Affordable Units were constructed over the course of years with certificates of occupancy being issued at varying dates between December 1991 and February 1999; and

WHEREAS, the 168 Affordable Units were always intended to be income restricted for a period of at least thirty (30) years commencing on the date the Affordable Units first received certificates of occupancy for low-and moderate-income households, but no separate affordable housing agreement or deed restriction governing the terms and administration of the Affordable Units was ever recorded in the chain of title for the Rachel Gardens property with the Office of the Morris County Clerk; and

WHEREAS, a portion of the 168 Affordable Units that first received certificates of occupancy between December 1991 and 1994 were separately controlled by two separate deed restrictions required pursuant to the Federal Low-Income Housing Tax Credit (LIHTC) program under Section 42 of the Federal Tax Reform Act of 1986, P.L., 99-514, as amended, and which were administered in the State of New Jersey by the Housing Mortgage and Finance Agency (“HMFA”); and

WHEREAS, as the end of the initial thirty-year (30) affordability control period on the earliest occupied Affordable Units within Rachel Gardens approached, the owner(s) of Rachel Gardens began advising certain tenants renting the Affordable Units that it was the owner's position that the affordability control period for certain units was coming to a conclusion and that rents for the Affordable Units would no longer be income restricted; and

WHEREAS, this resulted in the Township receiving complaints from the Affordable Unit tenants concerned about their housing stability and their ability to remain tenants of Rachel Gardens; and

WHEREAS, in response to same, on July 21, 2020, the Township Committee of the Township of Montville adopted on second reading Ordinance 2020-05, which provided for the extension of the affordability controls for all 168 Affordable Units within Rachel Gardens for at least an additional thirty (30) year period; and

WHEREAS, following same, the owner(s) of Rachel Gardens filed a lawsuit against the Township, which remained ongoing for several years and which ultimately resulted in the resolution of the matter via formal Settlement Agreement last dated January 3, 2024 ("Settlement Agreement") and which was approved and entered as an Order of the Court on January 31, 2024; and

WHEREAS, under the terms of the Settlement Agreement, the Township and the owners of Rachel Gardens have reached an agreement whereby, amongst other things, the Township will extend the affordability controls on forty-two (42) low-and moderate-income units situated within Buildings 2500, 3200 and 4000 of the Rachel Gardens property for an additional thirty (30) year term commencing on February 17, 2029 and extending through February 16 2059 (hereinafter the "Extended Affordable Units"); and

WHEREAS, under the terms of the Settlement Agreement, it has been further agreed by and between the Township and the owners of Rachel Gardens that subject to certain terms and conditions, the Township is to release the remaining one-hundred twenty-six (126) Affordable Units situated in Buildings 1200, 1500, 1900, 2200, 2500, 3200 and 4000 from the affordability controls by ordinance ("Released Units"); and

WHEREAS, the release of the remaining 126 Affordable Units shall take effect thirty years from the date of issuance of the initial certificate of occupancy for each respective Released Unit; and

WHEREAS, as a condition of this release, under the terms of the Settlement Agreement, the owner(s) of Rachel Gardens, and its successors and assigns have agreed to continue to honor the State regulated low-and moderate-income rental rate applicable for this region for each tenant of a Released Unit that continues to income-qualify as a low-income household or moderate-income household annually, and for those tenants who no longer income qualify, such monthly rental amount shall not exceed the lesser 30 percent of his/her eligible gross monthly household income or the

market rate rent for a similarly situated unit in Rachel Gardens relative to the number of bedrooms and square footage; and

WHEREAS, municipalities within the State of New Jersey are required by the FHA to provide for their fair share of housing affordable to households of low- or moderate-income in accordance with the provisions of the FHA for an appropriate period of time; and

WHEREAS, pursuant to N.J.S.A. § 52:27D-321 of the FHA, in 1985 the Legislature delegated administrative authority and responsibility to the HMFA to establish programs to assist municipalities in providing low-and moderate-income housing (“affordable housing”), and to establish requirements and controls to ensure that such housing continues to remain affordable and occupied by low-and moderate-income households as defined under the FHA; and

WHEREAS, pursuant to this delegated authority, in 2004 the HMFA adopted an updated comprehensive set of rules for the establishment and administration of uniform affordability controls on all affordable housing rental developments in this State, the most recent version of which is set forth at Title 5, Chapter 80, subchapter 26 of the New Jersey Administrative Code (N.J.A.C. §§ 5:80-26.1 thru -26.26), known as the Uniform Housing Affordability Control (“UHAC”) regulations; and

WHEREAS, the FHA, the UHAC, and the Township’s Affordable Housing Ordinances now govern the control, use, sale and rental of restricted affordable housing units and affordable developments throughout this State created under the Act, and establishes uniform standards as to: (i) the minimum applicable period(s) of time in which the ownership, sale, use and rental of such affordable housing is to remain restricted to low and moderate income households, otherwise known as “Affordability Control Period(s)” or “Control Period(s)”; (ii) the rental amounts for such affordable units; and (iii) the method and manner in which a municipality is permitted to exercise its right to release or extend the Control Period(s) on affordable housing in this State created pursuant to the FHA; and

WHEREAS, N.J.A.C. §§ 5:80-26.11 and -26.12 of the UHAC, governs the affordability control period(s) for affordable rental units constructed subsequent to the FHA, and in relevant part establishes that the Affordability Control Period(s) for restricted rental units shall commence on the first date that a certified affordable household occupies the respective unit and shall remain subject to the affordability controls and restrictions for a period of at least 30 years; and

WHEREAS, N.J.A.C. § 5:80-26.11 of the UHAC further provides that the Affordability Control Period(s) do not automatically expire upon conclusion of the 30-year period, and each restricted rental unit shall remain subject to the requirements of the UHAC until the municipality in which the affordable unit is located elects to release the unit from such requirements by adoption of an ordinance; and

WHEREAS, pursuant to the Township’s powers to enact ordinances to regulate and control residential rental rates set forth under N.J.S.A. 40:48-2 of the Home Rule Act, and in accordance with the Township’s authority under the FHA, and the UHAC, and the Settlement Agreement between the Township and the owner(s) of Rachel Gardens, the Mayor and Township Committee of the Township of Montville have determined that the most desirable means to promote an adequate supply of low-and moderate income rental housing in the Township is to release one-hundred and twenty-six (126) affordable units (the “Released Units”) from the affordability controls, subject to certain conditions, and to extend the affordability controls on the remaining forty-two (42) affordable units (the “Extended Affordable Units”) for an additional thirty (30) year term in accordance with the Settlement Agreement.

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Township Committee of the Township of Montville, in the County of Morris and State of New Jersey, as follows:

Section 1. Ordinance No. 2020-05 adopted by the Mayor and Township Committee of the Township of Montville on July 21, 2020 is hereby repealed in its entirety and replaced with this ordinance with respect to administration of the one-hundred and sixty-eight low-and-moderate income rental units (“Affordable Units”) situated within the multi-family inclusionary rental development located at 63 Chapin Road, Pine Brook, New Jersey 07058, Block 184, Lots 4 and 6 on Tax Map 20 of the Township of Montville and otherwise known as “Rachel Gardens”.

Section 2. In accordance with the New Jersey Fair Housing Act, N.J.S.A. § 52:27D-301 et, seq. (“FHA”), Title 5, Chapter 80, subchapter 26 of the New Jersey Administrative Code (N.J.A.C. §§ 5:80-26.1 thru -26.26), known as the Uniform Housing Affordability Control (“UHAC”), the Township of Montville’s Affordable Housing Ordinances and the Settlement Agreement executed by the Township and RG Realty Investors, LLC, (“RG”) the current owner of Rachel Gardens, last dated, January 3, 2024 (“Settlement Agreement”), the following one-hundred and twenty-six (126) Affordable Units are hereby released from their affordability controls (hereinafter the “Released Unit(s)”), with such release(s) to take effect to take effect thirty years from the date of issuance of the initial certificate of occupancy for each Released Unit, respectively, as reflected within the “Release Date” column of following schedule:

BUILDING NUMBER	NUMBER OF AFFORDABLE UNITS	RELEASE DATE
1200	26	December 2, 2021
1500	26	April 13, 2024
1900	26	December 30, 2021
2200	26	July 8, 2022
2500	6	February 16, 2029
3200	11	February 16, 2029
4000	5	February 16, 2029
TOTAL	126	

Section 3. At the conclusion of thirty-year control period for each Released Unit set forth above, RG Realty Investors, LLC (“RG”), and/or its successors-in-title, successors-in-interest and/or its assigns shall be obligated to comply with the transition process set forth in section IV of the Settlement Agreement, which such transition process is further established by adoption of this Ordinance as follows:

- A. So long as the then occupant household of a Released Unit (the “Existing Household”) continues to qualify for affordable housing in accordance the Existing Household shall be entitled to remain in his/her Released Unit at the appropriate reduced rental rate applicable by household size and income level then established by the Applicable Regulations, as defined in the Settlement Agreement and Section 8 of this Ordinance, until the Existing Household’s income exceeds 80 percent of the then applicable median income for Mount Laurel Region 2 (Essex, Morris, Union and Warren counties) established by the Applicable Regulations.
- B. Following the “Release Date” set forth above for a respective Released Unit, prior to conclusion of any leasehold term RG Realty Investors, LLC, and/or its successors and assigns shall be permitted to require each Existing Household to complete an annual income qualification process to determine if such Existing Household remains income qualified for occupancy in the expiring Released Unit then-occupied by the Existing Household. The annual income qualification process shall be conducted by a New Jersey Certified Affordable Housing Administrative Agent at the sole and complete cost and expense of the owner of the Rachel Gardens Property. Such income qualification process shall comply with all Applicable Regulations.
- C. If upon completion of the annual income qualification process, the Existing Household of a Released Unit remains income qualified, as having a gross annual income that does not exceed 80 percent of the then applicable median income for Morris County (which is currently Mount Laurel Region 2) applicable for the unit size, the then Existing Household shall be entitled to remain in the applicable Released Unit for an additional twelve (12) month period, irrespective of the Initial Control End Date for that Released Unit, and remain subject to the applicable affordable rental rate amount, by household size and income level (low-income or moderate-income), as then established and required by Applicable Regulations.
- D. If the results of the annual income qualification process establish that the Existing Household of a Released Unit is determined to exceed the income qualifications for occupancy in the Released Unit by having a total eligible gross annual household income in excess of 80 percent of the then applicable median income for Mount Laurel Region 2 (Morris County) for the units size, the affordability controls for that Released Unit shall conclude co-terminus with the later of the Initial Control End Date or the expiration of the prior twelve (12) month leasehold period for that Released Unit, as applicable. However, such an Existing Household shall nonetheless be entitled to a

continued leasehold of the Released Unit then occupied by the Existing Household at a rental amount not to exceed the lesser of: (i) thirty percent (30%) of that Existing Household's eligible gross monthly income; or (ii) the market rate rent for a similarly situated unit within Rachel Gardens relative to bedrooms and square footage.

- E. The annual income qualification process shall be conducted no more than once annually.
- F. Consistent with the provisions of UHAC and the Applicable Regulations: (i) the affected tenant of the respective Released Unit shall be entitled to the Administrative Agent's income qualification file for the tenant; (ii) the Township's Affordable Housing Administrative Agent shall be entitled to reasonable immediate access to all third-party Administrative Agent's files and records with respect to annual income qualifications for the Existing Households of Rachel Gardens to confirm the accuracy of any income qualification decisions; and (iii) the Township and the affected Existing Household shall have the right to appeal and/or dispute the Administrative Agent's decision to disqualify an Existing Household on the basis of income or change a low-and moderate-income household's income qualification level to a moderate or market rate level.

Section 4. In accordance with the UHAC, the FHA, the Township's Affordable Housing Ordinances and section III of the Settlement Agreement, the Township of Montville does hereby determine that it is desirable to promote the adequate supply of affordable housing in the Township by extending the Affordability Controls and maintaining compliant affordable housing covenants, conditions and deed restriction(s) on forty-two (42) low-and moderate-income affordable rental units (the "Extended Affordable Units" located in Rachel Gardens as reflected by building and unit number in the following schedule:

BUILDING	UNIT NUMBER	BEDROOMS	INCOME LIMIT*
2500	2501	2	Moderate
2500	2502	3	Moderate
2500	2503	1	Very low (ADA)
2500	2504	1	Low
2500	2505	3	Moderate
2500	2506	2	Very Low
2500	2507	1	Moderate
2500	2508	1	Low
2500	2509	2	Low
2500	2510	3	Very Low
2500	2511	1	Moderate
2500	2512	1	Moderate
2500	2513	1	Moderate

2500	2514	3	Low
2500	2515	2	Moderate
2500	2518	2	Low
2500	2519	3	Low
2500	2523	3	Low
2500	2524	2	Low
2500	2526	2	Moderate
3200	3201	2	Moderate
3200	3202	3	Very Low
3200	3203	1	Very Low (ADA)
3200	3204	1	Moderate
3200	3205	3	Low
3200	3206	2	Very Low
3200	3209	2	Moderate
3200	3210	3	Low
3200	3214	3	Moderate
3200	3215	2	Low
3200	3218	2	Moderate
3200	3219	3	Moderate
3200	3223	3	Moderate
3200	3224	2	Moderate
3200	3226	2	Moderate
4000	4001	2	Low
4000	4002	3	Moderate
4000	4003	1	Low (ADA)
4000	4009	2	Low
4000	4010	3	Moderate
4000	4018	2	Low
4000	4019	3	Moderate

Section 5. The forty-two (42) Extended Affordable Units have an initial affordability control end date of at least thirty (30) years and is set to end on or after February 16, 2029 (“Initial Control Period”). Upon adoption of this ordinance in accordance with law, the initial thirty (30) year Control Period governing the Affordability Controls, covenants, conditions and deed restrictions on each of the forty-two (42) Extended Units listed in Section 4 of this Ordinance shall be extended for at least an additional thirty (30) year term (“Period of Extended Controls”).

Section 6. The Period of Extended Controls shall commence upon the date in which the Initial Control Period(s) specific to each of the 42 Extended Affordable was originally set to end, and shall continue to run with the land thereafter for a minimum of at least an additional thirty (30) year term, and which shall end on or after February 16, 2059. Following the end of the additional thirty (30) Period of extended Controls, release of the Affordability Controls for each of the forty-two (42) Extended Units shall be affected in the same manner as the Released Units, as set forth in Section 3 of this Ordinance and section IV of the terms of the Settlement Agreement.

Section 7. With respect to the forty-two (42) Extended Units, during the Period of Extended Controls, RG Realty Investors, LLC, and/or its successors-in-title and/or interest and/or its assigns shall be obligated to comply with the Affordable Housing Deed Restriction executed by the Township and RG Realty Investors, LLC and which is to be filed in the Office of the Morris County Clerk, and the following:

- A. During the Period of Extended Controls, sale, rental, use and occupancy of the forty-two (42) Extended Units within the Rachel Gardens Development shall continue to be governed by the UHAC, the Township's Affordable Housing Ordinances and the Applicable Regulations.
- B. During the Period of Extended Controls, the forty-two (42) Extended Units within the Rachel Gardens Development shall be used solely for the purpose of providing rental dwelling units for very-low, low-or moderate-income households in accordance with the schedule listed in Section 4 above, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period and/or Period of Extended Controls, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have the Deed Restriction appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Township's Affordable Housing Administrative Agent, except that such approval is not required prior to a first mortgagee's institution of foreclosure proceedings or acceptance of a deed in lieu of thereof provided that the Affordable Housing Deed Restrictions shall not be extinguished thereby and any subsequent ownership of the Property shall remain subject to the Affordable Housing Deed Restrictions.
- C. During the Period of Extended Controls, no improvements may be made to the forty-two (42) Extended Units within the Rachel Gardens Development that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
- D. During the Period of Extended Controls, the owner of the Rachel Gardens Development shall notify the Township's Affordable Housing Administrative Agent and the Township of any foreclosure actions filed with respect to the Rachel Gardens Development within five (5) business days of service upon the owner.
- E. During the Period of Extended Controls, the owner of the Rachel Gardens Development shall notify the Township's Administrative Agent and the Township within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.
- F. At the conclusion of the thirty (30) year Period of Extended Controls, the

Township shall adopt an ordinance within a reasonable time, which period shall not exceed ninety (90) days, thereafter releasing the forty-two (42) Extended Units from the affordable covenants, conditions and deed restriction(s) in accordance with the Settlement Agreement.

- G. This Ordinance shall constitute evidence that the Control Period(s) on each of the forty-two (42) Extended Units situated within the Rachel Gardens Development have been extended in accordance with the UHAC, the FHA and the Settlement Agreement and the Township of Montville is entitled to at least forty-two (42) new construction credits in addressing any current or future affordable housing obligation imposed on the Township pursuant to the FHA through the extension of affordability controls.

Section 8. Subsequent Change in Law. Although the FHA, UHAC, and the Township of Montville's Affordable Housing Ordinances currently govern the administration of the Affordable Units in Rachel Gardens; the events set forth in sections 2 thru – 7 of this Ordinance with respect to the Released Units and Extended Units will occur on or after certain dates well into the future. Therefore, the potential likelihood exists that the provisions of the FHA, UHAC and the Township's Affordable Housing Ordinances will be repealed or amended, and/or that an additional statutory or regulatory scheme may be implemented for the purpose of administering affordable housing in New Jersey and/or the Township of Montville at the time of the future events set forth above.

The regulations governing the administration of any affordable units that are then applicable at the time of any future event shall be the applicable regulations (the "Applicable Regulations"), as such phrase is utilized and referenced in sections 3 thru -7 of this Ordinance, except that nothing within any of the Applicable Regulations shall relieve RG, RG's successors-in-title, successors-in-interest and/or assigns and any future owner of Rachel Gardens of the obligations to: (i) offer continued tenancies for the 126 Released Units in accordance with sections 2 and 3 of this Ordinance and section "IV" of the Settlement Agreement; (ii) continue to provide rental housing at reduced rental rates for the 42 Extended Affordable Units in accordance with sections 4 thru 7 of this Ordinance and sections "III" and IV"; and (iii) compliance with the terms and conditions of the affordable housing deed restrictions for the 42 Extended Affordable Units in Rachel Gardens.

Section 9. All ordinances of the Township of Montville which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency with respect to the Rachel Gardens property only.

Section 10. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Montville, the provisions hereof shall be determined to govern with respect to the Rachel Gardens property only. All other parts, portions and provisions of the Revised General Ordinances of the Township of Montville are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 11. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, and the remaining portions shall remain in full force and effect.

Section 12. This Ordinance may be renumbered for purposes of codification and shall be included as part of the Township of Montville's code applicable to affordable housing in the Township.

Section 13. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

ATTEST:

Stacy Kostka
Stacy Kostka, Township Clerk

**TOWNSHIP OF MONTVILLE
COUNTY OF MORRIS
STATE OF NEW JERSEY**

Matthew S. Kayne
Matthew S. Kayne, Mayor

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance adopted by the Township Committee of the Township of Montville at a regular meeting held on March 12, 2024

Introduction: 2/27/2024
Public Hearing: 3/12/2024
Adoption: 3/12/2024