

**RESOLUTION APPROVING A CONSENT ORDER
AND
MODIFYING A COURT ORDER**

WHEREAS, Bedminster Township, Somerset County, received a judgment of compliance and order for repose in 1984 for its housing element and fair share plan from the Honorable Eugene D. Serpentelli, A.J.S.C., and this plan addressed the court-determined affordable housing obligation of 819 units; and

WHEREAS, the judgment was modified in 1987 to reduce Bedminster's affordable housing obligation to 698 units, to extend the period of repose until December 31, 1995 and to require Bedminster to petition the Council on Affordable Housing (COAH) for substantive certification of its housing element and fair share plan; and

WHEREAS, Bedminster petitioned COAH for substantive certification of its housing element and fair share plan and COAH granted Bedminster substantive certification on May 1, 1996, for a plan satisfying its COAH-determined affordable housing obligation of 177 units (24 rehabilitation/ 153 new construction) and creating a surplus of 559 units; and

WHEREAS, one of the projects for which the township receives COAH credit towards its Mount Laurel obligation is the 102-unit Hills Cortland and Hills Parkside affordable housing complex, owned and operated by Hills Parkside Associates (HPA); and

WHEREAS, in a letter dated February 10, 2003, the Bedminster Hills Housing Corporation (BHHC), the court-appointed administrative entity, was informed that HPA would no longer require the re-income-qualifying of its existing tenants and would not pay the previously agreed upon \$150 /unit/year fee; and

WHEREAS, Bedminster responded in a letter dated March 31, 2003, that should HPA fail to

remit re-certification fees by April 1, 2003, the township would seek COAH relief; and

WHEREAS, Bedminster submitted such a Motion on May 5, 2003, requesting that COAH Order HPA to continue to pay the annual rental and recertification administration fee; and

WHEREAS, in a letter dated May 29, 2003, HPA opposed Bedminster's motion and cross-moved, requesting that COAH postpone action until the Somerset County Superior Court commented on HPA's cross-motion, which it received on June 2, 2003, requesting the Court modify the original Order; and

WHEREAS, Judge Serpentelli held oral argument on HPA's Motion on July 11, 2003 and on July 25, 2003, denied HPA's Motion to modify the existing Order without prejudice and granted to "COAH plenary jurisdiction to resolve all the issues raised, including the power to modify the terms of the 'Supplemental Final Order of Compliance' entered on December 22, 1997 and the Parkside Neighborhood Condominium Declaration of Covenants, Conditions and Restrictions of Leasing referenced in that Order"; and

WHEREAS, the township argues that HPA is obligated to continue to pay an annual fee in part because the original, court-approved deed restriction of 1987 granted HPA the ability, at the end of the first 15 years of deed restriction, to choose unit tenure and HPA's election to hold these units as rentals necessitates that HPA continue to pay the fee; and

WHEREAS, Bedminster also asserts that the Supplemental Order of Final Compliance, entered December 12, 1997 requires payment as "the township shall collect a rental administration fee from the unit owner for the functions performed and provided by that entity..."; and

WHEREAS, Bedminster claims these issues were further memorialized in the court's 1997 Second Agreement of Amendment to the Parkside/Cortland Declarations, which stated that the units cannot be leased or rented without approval of the BHHC, and should such permission be granted, that BHHC "...shall collect a rental administration fee from the unit owner for the functions performed and provided by that entity..."; and

WHEREAS, HPA claims that COAH does not have jurisdiction and authority to modify a court judgment and that circumstances have changed since the 1984 Order mandating annual payments, and as such, it would be inequitable to continue to impose the fee on HPA; and

WHEREAS, HPA states that the courts have consistently held municipalities responsible for eliminating cost-generative requirements unrelated to protecting the public health and safety and claims the continuation of these fees is a disincentive to the creation of affordable housing; and

WHEREAS, HPA claims Bedminster can point to no specific language in any documents that would require continued recertification of existing tenants; and

WHEREAS, COAH heard this motion on the papers at its November 5, 2003 meeting and tabled the motion until the parties met for further discussion on December 4, 2003; and

WHEREAS, a final agreement with a Rider was received by COAH on March 31, 2004, executed by all parties (Stephen Eisdorfer for Hills Parkside and Hills Cortland Associates, Edwin Schmierer for Bedminster Hills Housing Corporation and Jeffrey Lehrer for the Township of Bedminster); and

WHEREAS, this agreement, attached as Exhibit A, stipulates that HPA will pay an annual fee of \$6,000 a year for all annual administrative tasks rendered by BHHC to these 102 COAH-credited affordable housing units at Hills Cortland and Hills Parkside; and

WHEREAS, this \$6,000 fee will be adjusted annually based upon any increase in the cost of living index, as calculated by the US Department of Labor, and the fee will be paid in equal quarterly installments commencing January 1, 2004; and

WHEREAS, the agreement also stipulates that this fee shall be in place of any additional fees paid by owners of these units to the BHHC in connection with the operation of rental units, including certification or recertification of eligibility of tenants; and

WHEREAS, HPA will submit an annual rent roll for the 102 units at Cortland and Parkside to both COAH and BHHC, and this certified statement will set forth rents for each affordable unit

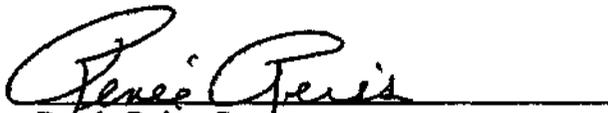
and the aggregate rents such that COAH and BHHC may confirm that the average charges for these units remain within COAH's low-income category and do not exceed 49.9 percent of the regional median household income for households of similar size; and

WHEREAS, this certification of the rent roll is necessary as the original Court order creating these units stipulated that they be low-income units and COAH continues to grant low-income credits to Bedminster for these units, as stipulated in its substantive certification;

NOW THEREFORE BE IT RESOLVED that COAH accepts this agreement and orders the consent order and rider, attached as Exhibit B, to be executed and filed with the Somerset County Clerk.

BE IT FURTHER RESOLVED, that the Consent Order shall be filed with the Somerset County Clerk, as a modification of paragraph 7 and 8 of the Supplemental Final Order of Compliance entered by the New Jersey Superior Court on December 27, 1997 in the matter of Alan-Deane Corporation v. Township of Bedminster, et al, Docket No.: L-36896-70PW and the matter of Lynn Chieswick, et al, v. Township of Bedminster, Docket No.: L-28061-61PW, said Supplemental Final Order of Compliance having been previously recorded in the Office of the Somerset County Clerk on January 22, 1998, in Deed Book 2158, at page 569.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on 4/7/04


Renée Reiss, Secretary
Council on Affordable Housing