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AVALON HOBOKEN, LLC, **Plaintiff,** **v.** **THE CITY OF HOBOKEN and THE CITY OF HOBOKEN RENT LEVELING AND STABILIZATION BOARD,** **Defendants.**	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY: LAW DIVISION Docket No.: _____ **VERIFIED COMPLAINT** **JURY TRIAL DEMANDED** **(As to all issues triable by jury)**

Plaintiff Avalon Hoboken, LLC ("Plaintiff" or "Avalon"), by and through its attorneys, Greenberg Traurig, LLP and Griffin Alexander, P.C., as and for its Verified Complaint against the Defendants, the City of Hoboken (the "City"), and the City of Hoboken Rent Leveling and Stabilization Board (the "Board"), alleges as follows:

PRELIMINARY STATEMENT

1. This action is necessitated by the City's and the Board's baseless attempt to deprive Avalon of the long-standing rent control exemption applicable to its 217-unit multi-family residential property located at 800 Madison Street, Hoboken (the "Property"). The Property has been exempt from rent control from its

conception in the early 2000's and the City has treated it as exempt since that time. Notwithstanding the City's prior agreements and repeated conduct confirming and ratifying the Property's exempt status, in 2023, Mayor Ravi Bhalla commissioned a covert investigation — done without any notice to Avalon or any opportunity for Avalon to participate in the process — at the conclusion of which Mayor Bhalla unilaterally declared the Property to be subject to the City's rent control and rent leveling ordinance ("Rent Control Ordinance"). The City not only failed to provide any opportunity for Avalon to be heard during the so-called "investigation," but the Mayor and City officials also have declined repeatedly even to meet with Avalon's representatives to discuss the Property, apparently preferring to grandstand before the electorate in lieu of addressing the real issues.

2. The City has been involved in the development of the Property since its nascency. As conceived and implemented by the original developer ("Developer") and the City, the Property was subject to a Redevelopment Agreement pursuant to which the Property would consist of 77% market rate rental units and 23% affordable housing units (with no rent-controlled component) ("Redevelopment Agreement").

3. During construction, the Developer filed for bankruptcy. In the Developer's bankruptcy case, it proposed, as part of its reorganization plan, to sell the Property through the bankruptcy estate free and clear of all encumbrances and restrictions, including the affordable housing requirements and all other restrictions imposed by the Redevelopment Agreement. The City objected to the sale of the Property. The dispute between the Developer and the City gave rise to a lawsuit in this Court (the "State Court Action").

4. In 2011, the Developer and the City entered into a Settlement Agreement ("Settlement Agreement") to resolve the State Court Action and the City's objection to the sale of the Property. The Settlement Agreement included an agreement by the City that the Property consisted of 217 "market rate" units and a release by the City of any and all claims it had or could have asserted related to the Property, including any claim relating to a statement of exemption from rent control as provided by N.J.S.A. 2A:42-84.1 to -84.6. (the "Rent Control Exemption Law" or "RCEA") that was filed by the Developer in October 2010 ("Statement"), roughly six months before the Settlement Agreement. *See infra* ¶ 7.

5. In reliance on the Settlement Agreement and with the consent of the City, the Bankruptcy Court then entered an Order authorizing the sale of the Property "free and clear of all . . . claims . . . restrictions . . . orders or decrees of any court or governmental entity . . . whether known or unknown . . . relating to a period prior to or subsequent to the commencement of this bankruptcy case . . . imposed by agreement, understanding, law equity or otherwise." ("Order").

6. Under the Settlement Agreement and the Order, the City (i) released any and all claims as to the Property including any claim relating to the Statement, (ii) agreed that the Developer had no further obligations under the Redevelopment Agreement and (iii) accepted and agreed that the Property is a 217-unit market rate building exempt from the Rent Control Ordinance.

7. In September 2009, during the pendency of its bankruptcy case, the Developer completed construction of a multi-family residential building on the Property. As a matter of law, upon completion of the building, it was "exempt" under the RCEA from the City's Rent Control Ordinance. In October 2010, the Developer filed with the City its Statement pursuant to the RCEA. The City accepted the Statement without objection and continued to treat the Property as exempt from the Rent Control Ordinance.

8. In April 2013, the City again acknowledged the Property's exempt status when the City's Rent Regulation Officer, acting within her official authority and responsibilities, made the written determination and representation that, after a "careful review" of the City's Rent Regulation and Construction Department files, the Property was exempt from the City's Rent Control Ordinance (the "2013 Exemption Determination"). And again, in November 2013, the City's Rent Regulation Officer, responding to an OPRA request replied and represented that there were no records of "any violation of rent control" relating to the Property (the "City's OPRA Response").

9. As further evidence of Defendants' confirmation of the Property's exempt status, the Rent Regulation Officer took no action with respect to a 2022 legal rent calculation request from a tenant at the Property. Upon information and belief, the Rent Regulation Officer took no action because the Property was considered exempt by the City.

10. At no time since the completion of the building on the Property has the City received the annual rent registration statements required of all non-exempt buildings, nor has the City requested that Avalon or the previous owners file such annual rent registration statements or sought penalties for not filing them. The reason, of course, is that the City recognized that the Property is exempt.

11. Thus, on numerous occasions over nearly two decades (e.g., through the Redevelopment Agreement and the Settlement Agreement, under the Order, through the City's acceptance of the Statement, the 2013 Exemption Determination, the City's OPRA Response, years of not requiring annual rent registration statements or seeking penalties against Avalon or the previous owners, and the 2022 inaction by the Rent Regulation Officer with respect to a 2022 legal rent calculation request from a tenant at the Property), the City repeatedly recognized, reiterated, and agreed that the Property is exempt from the Rent Control Ordinance.

12. The City's acts and actions here — its purported revocation of the Property's exempt status — are a breach of the Settlement Agreement and the Order and violate Avalon's rights under the U.S. Constitution and the New Jersey Constitution.

13. If the City's and the Board's wrongful acts are not reversed, Avalon will be materially damaged. Specifically, the *ex post facto* determination by the Board and the City will diminish the current value of the Property, as non-exempt properties sell at a significant discount when compared to exempt properties. As a result, Avalon — which purchased an exempt property as determined by the City — will be deprived of the benefit of its contractual bargain with the seller of the Property.

14. Moreover, Avalon has invested over $2.6 million in capital improvements since purchasing the Property that it likely would not have invested had the building been subject to rent control. Further, Avalon may improperly be subjected to potential fines in excess of $600,000 and to potential rent reimbursement for up to two years per unit. In addition, without the ability to charge market rents, as authorized by its exempt status, Avalon's reasonable investment-backed expectations will be thwarted. For example, the funds available to maintain and operate the Property as intended and to make capital

improvements will be significantly lessened, as will the "profit" Avalon reasonably expected to realize when it purchased the Property eight (8) years ago.

15. This Court can, and should, reverse the recent *ex post facto* determination of the City and the Board stripping the Property of its exempt status through a covert investigation, instigated by the Mayor for political purposes, without notice to Avalon and without providing Avalon any opportunity to be heard.

16. In fact, the plain language of the Settlement Agreement and Order provide the Property with an unqualified exemption from the Rent Control Ordinance, which this Court should enforce. Alternatively, and at the very least, this Court can, and should, further declare that the Property is compliant with the RCEA, which unconditionally exempts multi-family residential buildings constructed after 1987 from any and all municipal rent control ordinances for 30 years, and award Avalon damages from the City for its wrongful attempt to deprive Avalon of its rights to "exempt" status through improper and unconstitutional means and a violation of a valid and enforceable settlement agreement.

17. This Court can, and should, further declare that the sections the City's Rent Control Ordinance that purport to impose any conditions not specifically set forth in the RCEA are unlawful and null and void.

18. As a result of the foregoing, the Mayor's interference with the Property's exempt status and the actions taken by the City and the Board are arbitrary, capricious and unreasonable, and violate Avalon's rights under the Settlement Agreement, the Order, the U.S. Constitution, the New Jersey Constitution, the State's Rent Control Exemption Law, and New Jersey common law. And, in any event, Defendants should be estopped from changing their 20-year history of accepting and acknowledging the Property's exempt status.

PARTIES

19. Plaintiff, Avalon Hoboken, LLC, is a Delaware limited liability company and the owner and operator of the Property located at 800 Madison Street, Hoboken, New Jersey 07030, commonly known as "Avalon Hoboken." Avalon Hoboken is a wholly owned subsidiary of AvalonBay Communities, Inc.

20. Defendant, City of Hoboken, is a municipal corporation organized under state law in the "city" form of government. Hoboken is located within Hudson County, New Jersey.

21. Defendant, the City of Hoboken Rent Leveling and Stabilization Board, is a public entity of Hoboken with offices located at 94 Washington Street, Hoboken, New Jersey 07030, established pursuant to New Jersey law and City of Hoboken's municipal ordinance.

22. The Board is empowered to execute, consistent with New Jersey law, the City's Rent Control Ordinances (CITY OF HOBOKEN, N.J., CODE pt. II, ch. 155). The Board's members are appointed by the Mayor. The Board is authorized to, and does, employ, among others, a Rent Regulation Officer whose duties expressly include determinations of exempt and non-exempt status (which determinations can be appealed to the Board).

23. In this regard, the Board and its Rent Regulation Officer are statutorily tasked with, among other things, enforcing the City's Rent Control Ordinance.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action under the New Jersey Constitution.

25. Venue is proper in this county pursuant to New Jersey Court Rule 4:3-2(a) because the City and the Property are located in the County of Hudson.

THE RELEVANT FACTS OF THE CITY'S AND THE BOARD'S WRONGFUL CONDUCT

26. As a matter of New Jersey statutory law, multi-family residential buildings constructed after 1987 are exempt from any and all municipal rent control ordinances. The Rent Control Exemption Law ("RCEA") provides, in relevant part:

> In any municipality which has enacted or which hereafter enacts a rent control or rent leveling ordinance, . . . those provisions of the ordinance which limit the periodic or regular increases in base rentals of dwelling units ***shall not apply*** **to multiple dwellings constructed after the effective date of this act [*i.e.*, June 25, 1987**] for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for 30 years following completion of construction**,** whichever is less.

N.J.S.A. 2A:42-84.2(a) (emphasis added).

27. The RCEA specifically uses the term "shall not apply" to ensure that municipalities do not attempt to undercut the purposes of the law, one of which is to incentivize the construction of sufficient housing in New Jersey. The legislative intent of the RCEA is stated clearly within the act:

> **[t]he Legislature deems it to be necessary for the public welfare to increase the supply of newly constructed rental housing to meet the need for such housing in New Jersey**. **In an effort to promote this new construction, the Legislature enacted [the RCEA] the purpose of which was to exempt new construction of rental multiple dwelling units from municipal rent control so that the municipal rent control or rent leveling ordinances would not deter the new construction**. … To eliminate any confusion and to facilitate the construction of new rental units for which there is no initial mortgage financing, section 1 of P.L.1999, c.291 amends section 2 of P.L.1987, c.153 (C.2A:42-84.2) to add a subsection b. to that section in order to clarify the Legislature's intent of providing an exemption from municipal rent control ordinances, except those adopted under the authority of P.L.1966, c.168 (C.2A:42-74 et seq.), **by specifying that the period of time for exemption from rent control in such instances shall be 30 years following completion of construction**.
>
> N.J.SA. 2A: 42-82.5(b) (emphasis added).

28. In short, the New Jersey Legislature passed the RCEA to address a significant and meaningful matter of public import, namely, ensuring an adequate supply of apartments for New Jersey's residents. In doing so, the New Jersey Legislature explicitly found that the public's interest in sufficient housing opportunities outweighs a municipality's interest in enforcement of municipal rent control laws.

29. In that regard, the RCEA does not contain any limitations or conditions upon the exemption of multi-family buildings from municipal rent control ordinances; instead, it specifically uses the imperative phrase "shall not apply."

30. In fact, the RCEA expressly *prohibits* municipalities from enacting any ordinances, or taking other action, to interfere with the purpose and intent of the RCEA. Specifically, N.J.S.A. 2A:42-84.5, entitled "Exemptions from rent control, leveling, stabilization; legislative intent," provides:

> [i]t is the intent of [the Rent Control Exemption Law] that the exemption from rent control or rent leveling ordinances afforded [hereunder] shall apply to any form of rent control, rent leveling or rent stabilization, whether adopted now or in the future, and by whatever name or title adopted, which would limit in any manner the periodic or regular increases in base rentals of dwelling units of multiple dwellings constructed after the effective date [hereof]. **No municipality, county or other political subdivision of the**

> **State, or agency or instrumentality thereof, shall adopt any ordinance, resolution, or rule or regulation, or take any other action, to limit, diminish, alter or impair any exemption afforded pursuant to [this Act]**. (emphasis added).

31. Accordingly, the RCEA provides a 30-year exemption from municipal rent control, at the end of which an exempt property becomes subject to a city's rent control laws.

32. To ensure a city has notice of a new construction of multi-family projects and when an exemption period begins and ends, an owner files with the city a notice advising of the name of the owner of the property, the number of units of the property, the location/address of the property, and the date on which the 30-year exemption expires. Further, notice to the property's tenants (included in their leases) is also required whereby tenants are informed that their occupancy is not subject to rent control laws during the term(s) of their leases.

33. While N.J.S.A. 2A:42-84.4 provides that the owner of a new construction that is exempt from rent control under N.J.S.A. 2A:42-84.2(a) must file a rent exemption statement, the law does not provide for any penalty for the failure to file a written statement with the municipal construction official. It also does not state that (i) the written statement must be filed before a building may be exempt under N.J.S.A. 2A:42-84.2(a), or (ii) that if a written statement is not filed, a building will lose its exemption under N.J.S.A. 2A:42-84.2(a).

34. In fact, the legislative history of the statute expressly states that the purpose of filing the statement is to enable a municipality to "keep track" of the date a property becomes exempt and the date it loses that exemption under the Statute.

35. Just prior to the expiration of the exemption period, owners are required to provide a second notice of expiration of the exemption status and then, after the exemption period expires, comply with the local rent control ordinance (if any). In Hoboken, upon expiration of an exemption, owners must notify the City of the rental rates being charged each year through the filing of a rent registration statement and the City thereafter has jurisdiction to oversee the rental rates being charged.

The Development of the Property and Related Bankruptcy Case

36. The City is no stranger to the Property and its development. Rather, the Property was part of, and subject to, the Redevelopment Agreement between a local developer, Frank Raia, and the City. Raia's rights and obligations under the Redevelopment Agreement — as related to the Property — were assigned to Tarragon Corp., which owned the Property through Block 88 Development, LLC and, ultimately, 800 Madison Street Urban Renewal, LLC (all, "Developer" as defined above).

37. Pursuant to the Redevelopment Agreement, the City and the Developer agreed that the Developer could build a multiple dwelling building on the Property that would include market rate units and a certain percentage of affordable housing units.

38. In January 2009, the Developer filed for bankruptcy in the U.S. Bankruptcy Court in the District of New Jersey making the Property, as part of the bankruptcy estate, subject to the Bankruptcy Court's jurisdiction.

39. Construction of the Property was not completed, and a certificate of occupancy was not issued, until September 8, 2009, while the bankruptcy was still pending.

40. Under the RCEA, upon completion of construction, the Property was "exempt" for a period of 30 years from completion, from any and all municipal rent control, rent stabilization and rent leveling ordinances, in this case, the City's Rent Control Ordinance. The Property, at that time, remained subject to the affordable housing requirements in the Redevelopment Agreement.

41. Part of the Developer's plan of reorganization in the Bankruptcy included selling the Property free and clear of all encumbrances and restrictions, including the affordable housing restrictions imposed by the City in the Redevelopment Agreement. The City objected to such a sale.

42. In October 2010, pursuant to N.J.S.A. 2A:42-84.4, the Developer filed its Statement with the City's Municipal Construction Official stating that the Property was exempt from the City's Rent Control Ordinance pursuant to N.J.S.A. 2A:42-84.1 to -84.6. *See* **Exhibit A** hereto.

43. Having been intimately involved with the development of the Property through the Redevelopment Agreement and as a party to the Bankruptcy proceedings, the City was already well aware of the information provided in the Statement and the exempt status of the Property. Moreover, the City did not object to the Statement or to the treatment of the Property as exempt from its Rent Control Ordinance.

44. In February 2011, as authorized by an Order of the Bankruptcy Court, the Developer entered into a Purchase and Sale Agreement (the "2011 PSA") with a stalking horse bidder in the connection with its efforts to sell the Property out of the Bankruptcy. The 2011 PSA contemplated the sale of the Property free and clear of all encumbrances and restrictions on the Property, including the affordable housing requirements set forth in the Redevelopment Agreement.

45. In addition, the 2011 PSA, which was served on all parties to the Bankruptcy, including the City, required any new lease executed by the Developer to "include[] the **current rent control exemption notices and provisions**" and "**provide[] for payment of monthly rent at the rates currently in effect for the Property, subject only to changes required by market conditions . . . .**"

46. When the Developer sought final approval for the sale of the Property to the stalking horse bidder, the City asserted an informal objection on the grounds that the Property could not be transferred free and clear of its obligations under the Redevelopment Agreement, including any and all affordable housing restrictions set forth in the Redevelopment Agreement.

47. On March 21, 2011, the Developer filed a separate claim against the City in the Law Division seeking the discharge of certain obligations under the Redevelopment Agreement.

48. In April 2011, the City and the Developer executed the Settlement Agreement to resolve all of the claims asserted, or that could have been asserted, between them, including all claims related to the Property. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit B**.

49. In the Settlement Agreement the City and the Developer agreed that:

A. The Property consisted of "217 **market rate** residential units . . . ." (emphasis added)

B. The Settlement Agreement was executed to "fully, completely and finally resolve, terminate and settle all disputes, claims and actions which were asserted or could have been asserted with respect to or in any way relating to the Property . . . ."

C. The City would receive $2 million from the sale of the Property.

D. The Property was in compliance with all applicable zoning and planning codes.

E. "[A]ny subsequent owner of the Property shall be released from all obligations . . . to construct, operate or maintain affordable housing on the Property . . . ."

50. The Settlement Agreement also contained a broad release through which the City released all "claims . . . of every name and nature, known or unknown . . . at law or in equity, asserted or unasserted, arising from or related to the Property . . . ."

51. The Settlement Agreement expressly stated that it was binding upon the successors and assigns of the parties.

52. Upon execution of the Settlement Agreement, the City consented to the sale of the Property through the 2011 PSA and to the Bankruptcy Court's Order approving the sale, which was entered by the Court on April 12, 2011. The PSA and the Settlement Agreement were attached to the Order. A true and correct copy of the Order is attached hereto as **Exhibit C**.

53. The 2011 PSA attached to the Order (an Order the City had itself approved) included the requirement that any lease entered by the Developer before closing include the "current rent control exemption notices and provisions" and required rent to be subject only to changes in "market conditions."

54. The Order authorized the Developer to sell the Property, pursuant to the 2011 PSA, "free and clear from any and all Interests and restrictions, including, but not limited to . . . other local affordable housing laws which may relate to the Property . . . ."

55. The Order defines "Interests" broadly and includes "restrictions, judgments, orders or decrees of any court or governmental entity . . . whether known or unknown…noticed or unnoticed . . . whether arising,

accruing, incurred or relating to a period prior to or subsequent to the commencement of this bankruptcy case, and whether imposed by . . . law, equity or otherwise . . . ."

56. The plain language of the Settlement Agreement and the Order demonstrates an agreement amongst the parties, and binding upon the parties' successors and assigns, that the Property's rent control exemption would be unqualified, as the Property was sold free and clear of any restrictions of any governmental entity.

57. Upon information and belief, the City received the two million dollars due under the Settlement Agreement as consideration for its promises made thereunder, and, until the Mayor's and the Board's recent, improper conduct, complied with the terms of the Settlement Agreement.

58. Avalon, and its predecessors in interest, relied upon the City's acceptance of the Statement, the Settlement Agreement, and treatment of the Property as exempt in leasing the Property's units to tenants, obtaining financing for the Property, and in reporting of financial results. Avalon, and its predecessors in interest, also relying on the City's treatment of the Property as exempt, advised potential tenants and tenants of the Property's exempt status through, *inter alia*, each tenant's lease. A true and correct example of a tenant lease with rent exemption addendum is attached hereto as **Exhibit D**. There are 217 units, which typically have a one-year lease term. Thus, over the years of Avalon's ownership, Avalon has reiterated the City's treatment of the Property as exempt literally thousands of times.

59. The City's Rent Control Ordinance require owners of non-exempt (i.e., rent controlled) properties to file annual Rent Registration Statements. *See*, HOBOKEN, N.J., CODE § 155-30. Avalon's predecessors in interest never filed a Rent Registration Statement.

60. Despite the fact that no Rent Registration Statements were ever filed, neither the City nor its Rent Regulation Officer ever sought, requested or demanded that such annual statements be filed, nor sought penalties for the owner's purported failure to file such rent registration statements, thereby evidencing that the City and the Rent Regulation Officer considered the Property exempt.

In 2013, the Rent Regulation Officer Determines, Yet Again, That the Property is Exempt

61. The City's treatment of the Property as exempt was further affirmatively confirmed when, on April 12, 2013, the Board, acting duly through the authority vested in its Rent Regulation Officer, confirmed its determination in writing representing that the Property was exempt from the Rent Control Ordinance through the 2013 Exemption Determination. See **Exhibit E** hereto. This determination was specifically within the authority of the Rent Regulation Officer who, pursuant to the Rent Control Ordinance "shall make all determinations regarding the eligibility of a newly constructed dwelling for an exemption."

62. In the 2013 Exemption Determination, Suzanne Hetman, the then-Rent Regulation Officer, specifically stated that her determination and representation that the Property was exempt had been made "after a careful review" of the City's Rent Control and Construction Code office files.

63. The City's Rent Control Ordinance, state in relevant part:

> The Rent Regulation Officer is hereby granted and shall have the right to exercise, in addition to other powers herein granted, all powers set forth under § 155-19, except the power to promulgate rules and regulations.
>
> HOBOKEN, N.J., CODE pt. II, ch. 155, art. III, § 155-22.

64. Section 155-19 of the City of Hoboken Code, in turn, provides that the powers of the Board include, in relevant part:

> The Rent Leveling and Stabilization Board shall have the right to exercise, in addition to other powers herein granted, all powers necessary and appropriate to carry out and execute the purpose of this entire chapter, including the right to the exercise of equitable authority to depart from the strict interpretation of the provisions of this chapter in instances where fairness requires equitable intervention. These powers of equity, however, do not permit the Rent Leveling and Stabilization Board to act in contravention to the purposes of this chapter nor in an arbitrary, capricious or unreasonable manner.
>
> HOBOKEN, N.J., CODE pt. II, ch. 155, art. III, § 155-19.

65. Accordingly, the ratifying determination and representation by the City's duly-authorized Rent Regulation Officer in 2013 of the exempt status of the Property was specifically within the scope of her official duties as delegated and defined by the City's ordinances.

66. In November 2013, Ms. Hetman, in response to an OPRA request believed to be submitted from a previous owner, stated that "[n]o responsive records exist in this department" relating to any violation of the rent control ordinances of the City. A true and correct copy of the November 2013 OPRA Response is attached hereto as **Exhibit F**.

67. In 2014 and 2015, Avalon's predecessor in interest did not file annual rent registration statements. And, again, the City took no action during those years.

In 2016, Avalon Acquires the Property in Reliance on the City's Determinations of Exempt Status

68. In 2016, Avalon purchased the Property for approximately $129,000,000. During its due diligence for the acquisition, Avalon obtained, among other things, the Statement, the 2013 Exemption Determination and the November 2013 OPRA Response, which are part of the City's public records relating to Property. Avalon reasonably relied upon the RCEA, the 2013 Exemption Determination, the Statement, the public records and the history of the City treating the Property as exempt, as evidencing the fact that the Property was exempt and that the City had properly deemed the Property exempt from the City's Rent Control Ordinance.

69. In fact, the seller confirmed in the Purchase and Sale Agreement that it had not received any notice from the City that it was in violation of the City's Rent Control Ordinance. To wit, the Purchase and Sale Agreement stated: "To Seller's actual knowledge and except as set forth in the Environmental Reports, Seller has not received any written notice from governmental authorities advising Seller of any violation of any law or regulation applicable to the Property which has not been cured, including, without limitation, any applicable laws or regulations relating to zoning, building code, **rent control**, or the presence (now or in the past), on, under or affecting the Property, of asbestos, mold, lead, radon, or hazardous materials, wastes or substances."

70. Avalon's reasonable reliance on the City's actions and the public record the City had created evidencing the Property's exempt status directly influenced the value of the Property, and therefore the purchase price Avalon paid for the Property. Rent-controlled properties typically sell for significantly less

than exempt buildings, for obvious reasons. Were rent control imposed now, in contravention of the RCEA and after the City (i) agreed that the Property was exempt, (ii) had represented in writing that the Property was exempt, and (iii) treated it as such for fourteen (14) years, the value of the Property would materially decrease, resulting in a loss to Avalon in an amount to be proven at trial, thereby *ex post facto* impairing the benefit of Avalon's bargain with its seller.

71. Additionally, since its purchase, Avalon has invested significant funds to improve the Property. Had the Property not been exempt from rent control, Avalon would have approached its improvement of or investment in the Property in a different way.

72. Further, when a building is constructed with the intent that it will be a rent-controlled building, municipalities may provide PILOT programs and related municipal concessions. No PILOT program was provided with respect to the Property, nor were any other municipal concessions or accommodations granted.

73. As a result, the Property has been paying property taxes as an exempt building since it was constructed in 2009, rather than paying reduced taxes as a rent-controlled building. Through this period of time, the City has accepted the payment of taxes by Avalon and its predecessors in interest.

From 2016 to 2023, the City Continued to Treat the Property as Exempt After Avalon's Acquisition

74. Following Avalon's acquisition of the Property, it continued to operate the Property as exempt, and it did not file the annual rent registration statements required of non-exempt property owners from 2016 to present. Again, neither the City nor the Board objected to or penalized Avalon's decision not to file annual rent registration statements, nor did they make any request for such filing.

75. As recently as September 2022, the City acknowledged that the Property was exempt. Indeed, in in the fall of 2022, the Ms. Hetman, who was still serving as Rent Regulation Officer and had previously sent the 2013 Exemption Confirmation and the November 2013 OPRA response, served a Legal Rent Calculation Request on Avalon with respect to two (2) tenants residing at the Property (the "2022 Rent

Calculation Request").[1] A true and correct copy of the 2022 Legal Rent Calculation Request is attached hereto as **Exhibit G**.

76. In response, on or about September 21, 2022, Avalon, through counsel, informed the Rent Regulation Officer that she was mistaken in her request and that the Property was not subject to the City's Rent Control Ordinance. A true and correct copy of the September 21, 2022 letter is attached hereto as **Exhibit H**.

77. Avalon received no further communication or determination from the Rent Regulation Officer. Accordingly, the decision to take no further action with respect to the 2022 Rent Calculation Request is further evidence of the determination from the City that the Property was exempt.

February 2023: The City Amends the Rent Control Ordinance to Conflict with the RCEA

78. Notwithstanding the clear proscription contained in the Rent Control Exemption Act, less than a year ago, in February 2023, the City, in obvious derogation of the RCEA, amended its ordinance to condition the RCEA's exemption on a builder/developer filing with the City a written rent exemption statement identifying the property as one which had "as of right" exempt status under N.J.S.A. 2A:42-84.1 within a specified time period.

79. While the RCEA does require the filing of the rent exemption statement, it does not condition the absolute exemption it grants upon the filing of the Statement.

April 2023: The City, Without Notice or a Hearing, Changes its Mind as to the Property's Exemption

80. The City and the Board's long-standing treatment of the Property as exempt began to shift on April 14, 2023 when Hoboken Mayor, Ravi Bhalla, sent a letter to Avalon informing it that its recent rent increases were "unconscionable." In the letter, the Mayor, who has no direct authority with respect to rents in either exempt or non-exempt buildings, significantly overstepped his authority and demanded that Avalon "roll back" its rent increases. This demand was improper and was motivated by the Mayor's own

[1] A Rent Calculation Request is meant to determine the amount of legal rent a tenant should pay pursuant to the City's Rent Control Ordinances (HOBOKEN, N.J., CODE pt. II, ch. 155).

political ambitions and not by legitimate governmental or public interest concerns. A true and correct copy of the April 14, 2023 letter is attached hereto as **Exhibit I**.

81. Within days of the Mayor's April 14, 2023 letter, Avalon reached out to the Mayor's office and requested a meeting with the Mayor in order to, among other things, provide to the Mayor the history of the rent increases at the Property, which were in no way "unconscionable" but reflective of market forces. Avalon had no obligation to attempt to meet with the Mayor, as the Mayor is without authority to interject himself in rent issues within the City, but sought to do so as a good citizen of the City.

82. Avalon's requests to meet with the Mayor were flatly declined.

83. On April 20, 2023, Avalon was able to speak briefly with the Mayor and his chief of staff by phone and was again told the Mayor was not willing to meet in person. In this conversation, the Mayor again — improperly and without authority — demanded that Avalon roll back its rent increases at the Property. No mention was made by the Mayor or his chief of staff regarding whether the City's Rent Control Ordinance applied to the Property.

84. The very next day, April 21, 2023, without any meeting, proceedings or hearings, the City's outside legal counsel wrote to Avalon, stating that they were engaged to "investigate the exemption status of the Avalon Hoboken . . . ." The City's outside legal counsel went on to state its determination that the Property was not exempt from the Rent Control Ordinance and that Avalon should "proceed accordingly in compliance with the City's Rent control Ordinance." A true and correct copy of the April 21, 2023 letter is attached hereto as **Exhibit J**.

85. The City's outside legal counsel's letter did not request or allow for any response at which Avalon could discuss with the City or the Board, their 2013 Exemption Confirmation or own historic practice deeming the Property exempt for over twenty (20) years.

86. Three days later, April 24, 2023, the Mayor again interjected himself in the process by having his chief of staff send an email to Avalon to "make sure" it had received the City attorneys' letter

and to "be guided accordingly." A true and correct copy of the April 24, 2023 letter is attached hereto as **Exhibit K**.

87. Thus, in a two-week period in April 2023, without any input from Avalon, and without any hearing, meeting or formal proceedings and in disregard of (a) the City's own prior determinations, (b) the Settlement Agreement and Bankruptcy Court Order, (c) the affirmative written representations contained in the 2013 Exemption Determination and the November 2013 OPRA Response, (d) the fourteen year history of the Property owner not filing annual rent registration statements without any objection by the City and (e) the Rent Regulation Officer's September 2022 acknowledgement of the Property's exempt status, the Mayor, unilaterally, improperly and retroactively decided to change the Property's status from exempt to non-exempt.

May 2023 to December 2023: The Rent Regulation Officer and Board Rubber Stamp the Mayor's Decision Without Providing Due Process to Avalon

88. The City's unilateral determination was then forced upon the Rent Regulation Officer and the Board, whose members, as noted above, serve at the pleasure of the Mayor.

89. As a result of the Mayor's improper actions, and instigated by the City through orchestrated tenant meetings, during the next several months, tenants at the Property filed Legal Rent Calculation Requests with the Rent Regulation Officer ("2023 Rent Calculation Requests"). True and correct copy of a representative example of the 2023 Legal Rent Calculation Requests is attached hereto as **Exhibit L**.

90. In response, Avalon again advised the Rent Regulation Officer that the Property is — and had always been — exempt from rent control. A true and correct copy of a representative example of Avalon's correspondence to the Rent Regulation Officer is attached hereto as **Exhibit M**.

91. Only six months before, when this exact situation had arisen, the Rent Regulation Officer was reminded that the Property was exempt and did not pursue the 2022 Rent Calculation Request.

92. Nonetheless, following the Mayor's unilateral and unlawful decision to place the Property on the non-exempt rolls, the Rent Regulation Officer reversed course and for the first time in the Property's history "determined" that the tenants' rents should be calculated pursuant to the City's Rent Control

Ordinance. A true and correct copy of a representative example of the Rent Regulation Officer's correspondence is attached hereto as **Exhibit N**.

93. The Rent Regulation Officer's 2023 determination was inconsistent with (i) the RCEA, (ii) the 2010 determination made when the Board and the City accepted and acted upon the Statement, (iii) the Settlement Agreement and Bankruptcy Court Order (iv) the over 20-year history of the City treating the Property as exempt, (v) the 2013 Exemption Determination, which, again, expressly stated that the Property was exempt and the November 2013 OPRA Response; and (vi) the Rent Regulation Officer's actions in response to the 2022 Rent Calculation Request.

94. Avalon appealed the Rent Regulation Officer's 2023 determinations. A true and correct copy of a representative example of the appeal correspondence is attached as **Exhibit O**.

95. After multiple communications with the Board, Avalon agreed to limit its initial appeal brief to solely the legal issue of whether the Property was exempt from rent control.[2] As a result, Avalon presented legal arguments to the Board explaining the legal reasons the City's Rent Control Ordinance does not apply to the Property.

96. The Board scheduled a hearing to consider whether the Property was exempt from the City's Rent Control Ordinance on August 30, 2023 ("August 2023 Hearing"). A true and correct copy of the Board's notice and August 2023 Hearing Transcript is attached hereto as **Exhibit P**.[3] No decision was made as to whether the Property is exempt from the City's Rent Control Ordinance during the hearing.

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[2] Avalon had other grounds to appeal the Rent Regulation Officers' determinations, including, *inter alia,* that the determinations appeared to extend beyond the 2-year statute of limitations and certain calculations were incorrect. Such arguments have not been heard by the Board and Avalon reserves all rights to assert all other arguments should this matter be remanded back to the Board for any reason.

[3] During the August 2023 Hearing, a member of the Board argued that the 2013 Exemption Determination was improper because it came from the Rent Regulation Officer instead of from the Board itself. That contention was nothing more than an attempt by the Board to act in derogation of the City's Rent Control Ordinances, which states in relevant part: "The Rent Regulation Officer is hereby granted and shall have the right to exercise, in addition to other powers herein granted, all powers set forth under § 155-19, except the power to promulgate rules and regulations." HOBOKEN, N.J., CODE pt. II, ch. 155, art. III, § 155-22. In other words, the Rent Regulation Officer has the same powers as the Board itself.

97. Despite prior communication from the Board that the hearing was limited to the legal issue of whether the Property was exempt from the Rent Control Ordinance, while the August 2023 Hearing was in progress, the Board stated that it wanted to hear from fact witnesses and further stated that it would provide Avalon with a list of topics for document production and witness testimony in advance of the next hearing date. The Board carried the hearing until October 11, 2023 ("October 2023 Hearing").

98. Between the August and October hearings, Avalon's counsel followed up with the Board multiple times, seeking the precise list of factual information that the Board wanted in advance of the October 2023 Hearing, as promised by the Board or, in the alternative an adjournment in order to adequately prepare for the resumed hearing. This was particularly important because as noted, the Board had previously indicated the hearing would only address the legal issue of exemption and therefore it was unclear what additional factual information was needed for the Board to decide that issue. On October 9, 2023, 2 days before the October 2023 Hearing, the Board took the position that it would not provide such a list and directed Avalon to review the August hearing transcript for what was needed.

99. Prior to the October 2023 Hearing, Avalon provided the Board additional documentation and evidence in support of its claim of exemption. That documentation included leases for the Property with the rent control exemption language and the letters relating to the September 2022 Legal Rent Calculation Request. *See* Exhibits D and G.

100. During the October 2023 Hearing, a true and correct copy of the transcript of which is attached hereto as **Exhibit Q**, the Board refused to accept or consider Avalon's additional documentation. Instead, Avalon's witness read the 2022 Rent Calculation Request into the record. *See* Exhibit Q at 175-95.

101. During the October 2023 Hearing, the Rent Regulation Officer did not appear as a witness and no evidence was introduced to support the Rent Regulation Officer's determination that, after twenty (20) years and without any change in the operation of the Property, the Property was suddenly subject to rent control. *See* Exhibit Q at 154-63. Remarkably, the Board took the position that it was Avalon's

obligation to ensure that a municipal official whose acts and actions were at issue, attended the hearing. *Id.* at 156-59.

102. Also during the October 2023 Hearing, the Board improperly permitted a non-attorney tenant advocate to speak on behalf of the tenants. The tenant advocate, Kevin Weller, did not address any of the relevant legal issues, including those relating to the 2013 Exemption Determination, nor did he address the substantive merits of Avalon's appeal, but instead engaged in irrelevant and emotional appeals to the Board, and launched personal attacks on Avalon's counsel. *Id.* at 208-26.

103. In contrast to the liberality afforded to the tenant advocate, during the October 2023 Hearing, the Board often interrupted and refused to let Avalon's counsel speak. *Id.* at 149 *et seq*.

104. Although the City ordinance specifically empowers the Board to incorporate equitable considerations[4] in its determinations, the Board did not consider the plaint text of the RCEA, the history of the Property's exempt status, the City's acceptance of the Statement, the 2013 Exemption Determination, its own September 2022 actions in acknowledging the exempt status of the Property, or the 14-year history of the Property's owners not filing annual rent registration statements. Nor did the Board consider the impact on Avalon which, as a result of, and in reliance upon the City's own public records and its long history of the treatment of the Property as exempt, purchased the Property at what, had the Property been non-exempt, would be a significantly inflated price.

105. In derogation of its obligations under the law and in equity, at the conclusion of the October 2023 Hearing, the Board passed a motion for a resolution that referenced neither the 2013 Exemption Determination nor the 2022 Rent Calculation Request deeming the Property exempt. *Id*. at 232-36. That resolution, however, was not finalized and executed until December 13, 2023.

106. Upon information and belief, the Board's decision was a direct result of the Mayor's prior, unilateral and wrongful determination that the Property was non-exempt, as well as upon the Board Chair,

[4] Section 155 - 19 provides that the Board and the Rent Regulation Officer have "the right to the exercise of equitable authority to depart from the strict interpretation of the provisions of this chapter in instances where fairness requires equitable intervention . . . ."

Rafi Cordova's, intention to bring within the rent control laws as many properties as possible. The Mayor's and the Chair's position were motivated not by the facts or by the law, but by their respective political aspirations. Indeed, at the time of the October 2023 Hearing, Board Chair Rafi Cordova was in the midst of a hotly contested election for the City's First Ward Council seat, on which Mayor Bhalla's control of the City Council was dependent.

December 11, 2023: The City Turns the Screws on Avalon

107. On December 11, 2023, before the Board could even adopt its resolution, the Board's attorney issued a letter to Avalon warning that the City was prepared to issue fines against Avalon in an amount of up to $660,000.00 for "failing to comply" with the resolution that had yet to be formally adopted. A true and correct copy of the December 11, 2023 letter is attached hereto as **Exhibit R**. The City thereafter published this letter in local media, in an apparent attempt to curry favor with a portion of the renting and voting populace of the City.

108. It is not coincidental that only two days later, on December 13, 2023, the Mayor announced his candidacy for the congressional seat currently held by Robert Menendez, Jr.

109. In addition, on December 13, 2023, the Board passed a final resolution purporting to strip Avalon and the Property of the rent control exemption. A true and correct copy of the December 13, 2023 resolution is attached hereto as **Exhibit S**.

The Board's and the City's Actions are Wrongful and in Derogation of the Law

110. The Board's action is in derogation of the factual history of the Property and its own acts and actions as described above, and it is also in derogation of the law.

111. Since the Redevelopment Agreement was executed, and for the ensuing twenty (20) years, the Board knew that the Property is exempt from the City's Rent Control Ordinance, which it confirmed through the Settlement Agreement and Order, the 2013 Exemption Determination, the November 2013 OPRA Response, and its own decision not to permit a legal rent calculation request in 2022. Throughout that entire time, the City knew when the Property had become exempt and, if subject to the RCEA's sunset

provision, when the exemption would expire, thereby satisfying the purpose of the notice provision of the RCEA.

112. The City's and the Board's position that the Property is subject to the Rent Control Ordinance is wrong as a matter of law, as a matter of fact, and as a matter of equity.

113. The City's and the Board's acts and actions, taken under color of state law, violate Avalon's s rights under the RCEA, and under the U.S. Constitution and the New Jersey Constitution, 42 U.S.C. §§1983 and 1988, and under New Jersey common law.

114. Avalon has been and will continue to be damaged by the City's and the Board's acts and actions as set forth above.

COUNT ONE

BREACH OF CONTRACT
(Against The City Only)

115. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

116. In 2011, the City and the Developer entered into a Settlement Agreement to resolve all disputes between them arising out of or relating to the Property, including disputes concerning affordable housing requirements at the Property.

117. The Settlement Agreement is a contract between the Developer and the City.

118. Avalon has succeeded to the Developer's rights under the Settlement Agreement.

119. In the Settlement Agreement, the City agreed and acknowledged that the Property consisted of 217 "market rate" rental units.

120. The City also agreed to release the Developer and any future owner of the Property from building or maintaining affordable units at the Property.

121. The City also provided a broad release of any and all claims it had or could have had relating to the Property and confirmed that it was entering into the Settlement Agreement with the intent of resolving all claims it had or could have had arising out of or relating to the Property.

122. The City's current claim that the Statement, which was filed in October 2010, was untimely, predated the Settlement Agreement, and therefore was included within the release contained in the Settlement Agreement.

123. The Settlement Agreement expressly states that it is binding on the successors and assigns of the parties to the Settlement Agreement and, thus, Avalon, as a successor to the Developer is subject to and benefits from the Settlement Agreement.

124. The City's promises and releases in the Settlement Agreement were relied upon by the Bankruptcy Court in issuing an Order authorizing the Developer to sell the Property through the bankruptcy free and clear of all encumbrances, including those contained in the Redevelopment Agreement. The City consented to the entry of that Order and the PSA governing the sale.

125. The 2011 PSA expressly imposed a requirement on the Developer to ensure that any lease executed before the closing of the transaction included a rent exemption notice and that rent was based solely on market forces.

126. The Bankruptcy Court Order made clear that the sale of the property was free and clear of any and all encumbrances or restrictions, including those that could have been applied by the City.

127. The City, by way of its outside counsel's covert investigation and determination that the Property is not exempt from the rent control ordinances and subsequent rubber stamping of that determination by the Rent Regulation Officer and Board, violated the Settlement Agreement and its release.

128. Avalon has been damaged as a result of the City's breach of the Settlement Agreement.

COUNT TWO

ESTOPPEL

129. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

130. Equitable considerations are relevant to assessing governmental conduct and may be invoked to prevent manifest injustice.

131. The City and the Board knew and were aware at all times that (a) the City had entered into the Settlement Agreement and had consented to the entry of the Order, (b) the City is not lawfully permitted to engraft upon the Rent Control Exemption Law any local municipal conditions whatsoever, (c) the Property had been deemed exempt since its construction completion, (d) the Statement was filed by the Developer in 2010; (e) over the course of fourteen (14) years that the Property was operational, the City and the Board had never sought to require Avalon or its predecessor in interest to file annual rent registration reports; (f) its authorized officer had issued the 2013 Exemption Determination and it was part of the public record, (g) its authorized officer issued the November 2013 OPRA Response; and (h) in 2022, the Board had reconfirmed the exempt status when it declined to process a request by a tenant for a legal rent calculation under the Rent Control Ordinance.

132. Further, the City knew that it had expressly agreed in the Settlement Agreement that the Property would consist of market rate units and that it had released, among other claims, the claim that the Statement was 'late filed.'

133. The City and the Board either (a) knew the Rent Control Ordinance did not apply and had not been violated or (b) believed the Rent Control Ordinance applied but engaged in a studied policy not to enforce the Rent Control Ordinance.

134. Through its actions and inactions, including, but not limited to: (a) failing to enforce the City's Rent Control Ordinance as it relates to the Property, (b) confirming the exemption status of the Property via the 2013 Exemption Determination and the City's OPRA Response, (c) confirming the exemption status by failing to continue with or follow-up with the 2022 Rent Calculation Request, and (d) entering into the Settlement Agreement, the Defendants confirmed the exempt status of the Property or exhibited a studied policy not to enforce the City Rent Control Ordinance as they pertained to Avalon.

135. The Defendants, through their actions and inactions, exhibited a policy of treating the Property as exempt from the City's Rent Control Ordinance.

136. Avalon foreseeably relied on the Defendants' actions and inactions in determining that the Property was exempt from the Rent Control Ordinance, when Avalon, *inter alia,* purchased the Property and invested funds to improve the Property.

137. The Defendants, by virtue of their actions and inactions, are estopped from now asserting that the Property is not exempt from the Rent Control Ordinance.

138. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

COUNT THREE

DEFENDANTS' ACTIONS DEPRIVING AVALON OF ITS STATUTORY EXEMPTION VIOLATES THE CONTRACTS CLAUSES UNDER THE UNITED STATES CONSTITUTION (42 U.S.C. §§1983 and 1988) AND THE NEW JERSEY CONSTITUTION

139. Avalon repeats each and every allegation in the foregoing paragraphs as if fully set forth herein.

140. Article I, Section 10 of the United States Constitution, the Contracts Clause, bars any state from passing "any Bill of Attainder, ex post facto Law or Law impairing the Obligation of Contracts."

141. The New Jersey Constitution similarly provides, at Article VII, Paragraph 3 that bars the State from enacting any "ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

142. Since 2009, the owner of the Property has had the right to be exempt from the Rent Control Ordinance and to contract with tenants for rents at mutually agreeable amounts and on mutually agreeable terms and conditions.

143. In 2016, Avalon purchased the Property based, in part, on the owner's right to be exempt from the Rent Control Ordinance, and the purchase price for the Property reflected the Property's exemption.

144. Since 2016, Avalon has exercised its right to be exempt from the Rent Control Ordinance and to contract with tenants for rents at mutually agreeable amounts and on mutually agreeable terms and conditions.

145. The actions of the City and the Board, taken under color of state law, have deprived Avalon of its existing rights to be free from the Rent Control Ordinance and to contract with its tenants for rents at mutually agreeable amounts and on mutually agreeable terms and conditions.

146. The Rent Control Ordinance provide that tenants may seek to collect "rental overcharges" for a period of two years.

147. The Rent Control Ordinance would 'cap' the amount of rent Avalon can seek from tenants at an amount determined by the Board.

148. The agreement through which Avalon acquired the Property was an arms-length contractual arrangement voluntarily entered between Avalon and its predecessor in interest, which agreement (including the purchase price) reflected the exempt status of the Property.

149. The leases between tenants at the Property and Avalon were "arms-length" contractual arrangements voluntarily entered between Avalon and tenants in which the market rent was agreed upon and accepted by each tenant.

150. The wrongful and *ultra vires* acts of the City and the Board, which have impaired the foregoing agreements, do not serve a legitimate public purpose, but instead undermine the clearly articulated public purpose set forth in the Rent Control Exemption Law that preempts municipalities from enacting or enforcing rent control ordinances affecting newly constructed multiple dwellings.

151. The acts and actions of the Board and the City taken under color of state law denies Avalon the consideration for which it bargained in violation of the Contracts Clauses of the United States and New Jersey Constitutions.

152. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

COUNT FOUR

DEFENDANTS' ACTIONS DEPRIVING AVALON OF ITS EXEMPTION CONSTITUTES AN UNCOMPENSATED TAKING IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, PARAGRAPH 20 OF THE NEW JERSEY CONSTITUTION

153. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

154. Under the Fifth Amendment to the United States Constitution no person shall be "deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."

155. Article, Section 20 of the New Jersey Constitution states: "Private property shall not be taken for public use without just compensation."

156. The acts and actions taken by the City and the Board under color of state law wrongfully deprive Avalon of its lawful rights to use the Property as an exempt property under state law.

157. Defendants' acts and actions constitutes an unlawful taking by (a) depriving Avalon of its rights to exempt status, (b) subjecting it to wrongful, potential fines by the City, (c) subjecting it to potential disgorgement to tenants of a portion of rents received for a period of up to two (2) years, (d) capping the amount of rent Avalon can charge from now until the end of its statutory exemption period (when the Property would have become subject to the Rent Control Ordinance) and (e) rendering the Property less valuable than it is as an exempt property.

158. Importantly, there is no public good to be served by *ex post facto* imposing a time limit for filing the notice of exemption with the City, as the purpose of such notice has already been fulfilled: the City already knew the date of construction of the building and the date that its 30-year period for exemption expires.

159. The City and the Board's acts and actions force Avalon to bear a public burden that is expressly preempted by the Exemption Law.

160. The City and the Board's acts and actions improperly and materially interfere with Avalon's reasonable investment-backed rights.

161. The City and the Board's acts and actions constitute a *de facto* and continuing taking without payment of just compensation, in contravention of the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, Paragraph 20 of the New Jersey Constitution.

162. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

COUNT FIVE

THE RESOLUTION VIOLATES AVALON'S RIGHTS UNDER THE DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION (Substantive Due Process, 42 U.S.C. § 1983 and § 1988) AND THE NEW JERSEY CONSTITUTION

163. Avalon repeats each and every allegation in the foregoing paragraphs as if fully set forth herein.

164. Under the Fifth Amendment to the United States Constitution, made applicable to state action through the Fourteenth Amendment, no person shall be "deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."

165. Article I, paragraph 1 of the New Jersey Constitution provides "[all persons [with] certain natural and unalienable rights, among which are those enjoying and defending life, liberty, of acquiring, possessing and protecting property." Encompassed within this State Constitutional provision ensuring such rights is the requirement of due process.

166. At all times relevant to this action, Avalon has had and continues to have a protected constitutional interest in and to the Property, and Avalon also has the right to be free from unlawful action by Defendants, which are acting under color of law with respect to the Property.

167. Defendants' actions were and are not rationally related to a legitimate state interest and/or were and are motivated by bias, bad faith, and/or partisan political reasons or personal reasons unrelated to a proper governmental purpose, and shock the conscience.

168. The City did not provide Avalon a meaningful opportunity to be heard as to its "decision" in April 2023 to change the status of the Property from exempt to non-exempt status, without any hearing,

meeting, conference or public comment and in flagrant disregard of the provisions of the RCEA precluding it from taking the actions it thereafter took.

169. The Board did not provide Avalon a meaningful opportunity to be heard before adopting the Resolution in that it refused to consider relevant evidence, permitted testimony by 'strangers' to the proceeding, refused to accommodate a reasonable adjournment request to facilitate the attendance of the City's own Rent Regulation Officer, and by subjecting Avalon's witness to improper and antagonistic questioning that was demonstrably not intended to elicit facts but rather to "make a record" to support the pre-ordained decision to strip the Property of its exempt status.

170. Defendants' actions violate Avalon's right to substantive due process under the Fourteenth Amendment to the U.S. Constitution, and Avalon has been, and will continue to be, damaged by such actions.

171. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

COUNT SIX

THE ACTS AND ACTIONS OF THE CITY AND THE BOARD IN STRIPPING THE PROPERTY OF EXEMPT STATUS ARE ARBITRARY, CAPRICIOUS AND UNREASONABLE
(Prerogative Writ Under State Law)

172. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

173. Under New Jersey law, judicial review of municipal action is by of action in lieu of prerogative writs governed by New Jersey Court Rule 4:69 in which legal determinations by the municipality are not entitled to deference and are reviewed *de novo*.

174. The City and the Board are political subdivisions of the State and may not act contrary to the State law, their own Agreements or Court Orders.

175. Each of he Board's, the Rent Regulations Officer's and the City's acts and actions are appealed from here, and each such act or action was arbitrary, capricious and unreasonable as they are in contravention of state law and the Settlement Agreement and Order.

176. Through the Settlement Agreement and Order, the Developer and the City agreed that the Property would not be subject to any restrictions that could be imposed by the City, including rent control.

177. In addition, the Rent Control Exemption Law is the exclusive state law governing the eligibility of a property for exemption from municipal rent control and it precludes any municipality from enacting any ordinance limit or impair the exemption of multiple dwellings constructed after the effective date of the Exemption Law.

178. The RCEA preempts local rent control as to eligible exempt properties, and accordingly, the Defendants' acts and actions which are inconsistent therewith are in derogation of the RCEA.

179. The Property satisfied the RCEA as an exempt property as a matter of law.

180. The City and the Board knew and were aware at all times that (a) the Redevelopment Agreement established that the Property would be exempt, (b) the Settlement Agreement recognized that the Property was market rate, (c) the Order and the Settlement Agreement released and barred any claim or right by the City that existed as of 2011; (d) the City is not lawfully permitted to engraft upon the Rent Control Exemption Law any local municipal conditions whatsoever, (f) the Property had been deemed exempt since its construction completion, (g) the Statement was filed by the developer in 2010; (d) over the course of fourteen (14) years the Property was operational, the City and the Board had never sought to require Avalon or its predecessor in interest to file annual rent registration reports; (h) its authorized officer had issued the 2013 Exemption Determination and it was part of the public record, and (i) in 2022, the Board had reconfirmed the exempt status when it declined to process a request by a tenant for a legal rent calculation under the Rent Control Ordinance.

181. Through its actions and inactions, including, but not limited to: not to enforcing the Rent Control Ordinance as it relates to the Property, (b) confirming the exemption status of the Property via the

2013 Exemption Determination and the City's OPRA Response, (c) confirming the exemption status by failing to continue with or follow-up with the 2022 Rent Calculation Request, and (d) entering into the Settlement Agreement, the Defendants confirmed the exempt status of the Property or exhibited a studied policy not to enforce the Rent Control Ordinance as they pertained to Avalon.

182. Defendants have no right or authority to contradict, limit, condition or impair the right of a property owner under the Settlement Agreement and Order or to the statutory exemption from municipal rent control ordinances.

183. *A fortiori*, the acts and actions of the Defendants, including, but not limited to, the December 13, 2023 resolution purportedly depriving the Property of exempt status, were arbitrary, capricious and unreasonable.

184. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

COUNT SEVEN

DECLARATORY JUDGMENT

THE RENT CONTROL ORDINANCE UNLAWFULLY IMPOSES ADDITIONAL CONDITIONS TO MAINTAINING AN EXEMPTION UNDER THE RENT CONTROL EXEMPTION LAW AND SHOULD BE DECLARED NULL AND VOID

185. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

186. N.J.S.A. 2A:42-84.2(a) provides that any residential building that is built in any municipality in New Jersey after June 25, 1987, are unconditionally and automatically exempt from any rent control ordinance for (i) the duration of the period of amortization of any initial mortgage loan for the property, or (ii) 30 years after completion of construction of the property, whichever is less:

> In any municipality which has enacted or which hereafter enacts a rent control or rent leveling ordinance, . . . those provisions of the ordinance which limit the periodic or regular increases in base rentals of dwelling units **shall not apply to multiple dwellings constructed after the effective date of this act [*i.e.*, June 25, 1987] for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for 30 years following completion of construction,** whichever is less.

N.J.S.A. 2A:42-84.2(a) (emphasis added).

187. The declaration in N.J.S.A. 2A:42-84.2(a) that it "shall not apply" to multiple dwellings does not contain any preconditions or any other requirements to obtain the statutory exemption. Further, the law prohibits municipalities from imposing any limitations on the RCEA. N.J.S.A. 2A:42-84.5. *A fortiori*, the Property, which was constructed in 2009, is not subject to the City's rent control or rent leveling ordinances.

188. Notwithstanding the foregoing, the City enacted an ordinance that purports to condition the exemption provided under the RCEA on the filing of a rent exemption statement without a prescribed time frame.

189. The City's ordinance is unlawful under the RCEA.

190. The Board, in 'enforcing' the unlawful the City ordinance has itself acted unlawfully.

191. There is an actual and justiciable controversy between Avalon, the Board and the City and the Court should declare as follows:

(a) The Property is exempt from the City's Rent Control Ordinance under the Rent Control Exemption Law;

(b) Section 155-2H of the City's Rent Control Ordinance is unlawful and is null and void to the extent it purports to impose any conditions not specifically set forth in the RCEA.

COUNT EIGHT

DEFENDANTS' LACK OF INTEGRITY AND IMPROPER ACTS AND ACTIONS VIOLATE THE "TURN SQUARE CORNERS DOCTRINE"

192. Avalon repeats each and every allegation in the foregoing paragraphs as though fully set forth herein.

193. Defendants have failed to comport themselves with the standards required of municipal governments and officials, including professionals under the "Turn Square Corners Doctrine."

194. Defendants' words and actions over a period of fourteen years demonstrated that they considered the Property to be exempt from rent control.

195. Municipalities may not conduct themselves as to achieve or preserve any kind of bargaining power or litigation advantage over a property owner. Instead, a municipality and its agents must comport themselves with compunction and integrity, and must forego the freedom of action that private citizens may have in dealing with one another.

196. By enacting and purporting to apply the restrictions contained in the Rent Control Ordinance, taking official action without notice to Avalon and without an opportunity for Avalon to be heard, and the depriving Avalon of its statutory rent control exemption, the Defendants failed to "turn square corners."

197. As a direct and proximate result of Defendants' wrongful acts and actions as pleaded above, Avalon has been and will continue to be damaged.

WHEREFORE, Avalon demands judgment against the Defendants, the City of Hoboken and the City of Hoboken Rent Leveling and Stabilization Board:

A. Voiding any and all actions by the City, the Rent Regulation Official and the Board that would subject the Property to the Rent Control Ordinance or deprive the Property of exempt status under the RCEA;

B. Declaring that the Property is exempt from the City's Rent Control Ordinance indefinitely pursuant to the Settlement Agreement and Order;

C. Alternatively, declaring that the Property is entitled to exempt status under the RCEA and will remain exempt through the remainder of the thirty (30) year statutory period, namely, through September 8, 2039;

D. Declaring that Section 155-2H of the City's Rent Control Ordinance is unlawful and is null and void to the extent it purports to impose any conditions not specifically set forth in the RCEA.

E. Finding that the Defendants acted in an arbitrary, capricious and unreasonable manner, and reversing their actions depriving the Property of its RCEA exemption;

F. Preliminarily and permanently restraining the Defendants from subjecting the Property to the Rent Control Ordinance, enforcing the Rent Control Ordinance against Avalon, or otherwise treating the Property as not exempt from the Rent Control Ordinance, until such time as the Property's exemption comes to its natural conclusion, by maintaining the *status quo*, pending a determination on the instant appeal;

G. awarding compensatory damages;

H. for Avalon's costs of suit, including its reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §§ 1983 and 1988 and the Settlement Agreement; and

I. Such other and further relief the Court deems just and necessary.

Respectfully submitted,

GREENBERG TRAURIG, LLP

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GRIFFIN ALEXANDER, P.C.

By: /s/*Jennifer L. Alexander*
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Attorneys@LawGAPC.com

Dated: January 26, 2024

RULE 4:5-1 CERTIFICATION

I hereby certify that the matter in controversy is not the subject matter of any other civil action in any other court or of a pending arbitration proceeding and that no other such action or arbitration proceeding is contemplated. Further, I hereby certify that there are no non-parties who should be joined in the action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts that are at issue in this action.

Dated: January 26, 2024

GREENBERG TRAURIG, LLP
Attorneys for Plaintiff

By: */s/ Cory Mitchell Gray*
Cory Mitchell Gray

GRIFFIN ALEXANDER, P.C.
Attorneys for Plaintiff

By: /s/ Jennifer L. Alexander
Jennifer L. Alexander

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jason H. Kislin is designated as trial counsel for Plaintiff in this action.

Dated: January 26, 2024

GREENBERG TRAURIG, LLP

Attorneys for Plaintiff

By: */s/ Cory Mitchell Gray*
Cory Mitchell Gray

GRIFFIN ALEXANDER, P.C.
Attorneys for Plaintiff

By: */s/ Jennifer L. Alexander*
Jennifer L. Alexander

VERIFICATION

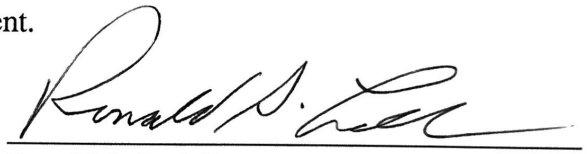
Ronald S. Ladell, being of full age, hereby certifies as follows:

1. I am the Senior Vice President of Development of AvalonBay Communities, Inc., the parent company of Plaintiff Avalon Hoboken, LLC ("Plaintiff" or "Avalon"). I am authorized on behalf of Avalon Hoboken to make this certification.

2. Based upon my personal knowledge and my review of relevant documents and information, including business records maintained by Avalon, I verify that the statements in the foregoing verified complaint are true and correct to the best of my knowledge, information, and belief.

I hereby certify that the foregoing is true. I am aware that if the foregoing is intentionally and willfully false, I am subject to punishment.

Date: January 26, 2024



Ronald S. Ladell