

**ORDINANCE NO. 26. 02**

**ORDINANCE AMENDING AND REPLACING CHAPTER 12 “AFFORDABLE HOUSING” TO ESTABLISH REGULATIONS REGARDING ADMINISTRATION OF AFFORDABLE HOUSING PROGRAMS, INCLUDING REGULATION OF VERY-LOW, LOW- AND MODERATE-INCOME HOUSING UNITS CONSISTENT WITH THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC), AND REGULATIONS REGARDING COLLECTION AND ADMINISTRATION OF DEVELOPMENT FEES AND THE ESTABLISHMENT OF AN AFFORDABLE HOUSING TRUST FUND.**

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**WHEREAS**, the Borough Council of the Borough of Paulsboro (“Borough Council”) is authorized pursuant to N.J.S.A. 40:48-2 to enact and amend ordinances, and to amend the Code of the Borough of Paulsboro, as deemed necessary for the preservation of the public health, safety and welfare of the Borough and its residents; and

**WHEREAS**, from time to time, the Borough of Paulsboro (“Borough”) may find it necessary to amend the Borough Code (“Code”) for the purpose of regulating and maintaining the general welfare of the residents of the Borough; and

**WHEREAS**, the State’s Fair Housing Act, N.J.S.A. 52:27D-301 et al. (the “Act”) was adopted to implement the New Jersey Supreme Court ruling in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983), that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region’s present and prospective needs for housing for low- and moderate-income families; and

**WHEREAS**, on March 20, 2024, the New Jersey Legislature amended the Act, pursuant to P.L. 2024, c.2, modifying certain affordable housing methodologies, obligations, and fair share plans (the “Amended Act”); and

**WHEREAS**, the Borough desires to amend its Code to provide consistency with the requirements of the Amended Act and the Uniform Housing Affordability Controls (“UHAC”) and to establish a trust fund in support of very-low, low-, and moderate-income housing.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Paulsboro, County of Gloucester, State of New Jersey, as follows:

**Section 1.** Chapter 12 of the Code of the Borough is hereby created and entitled “Affordable Housing” as set forth below:

Chapter 12 - Affordable Housing

Section I. Introduction and Applicability.

§ 12-1. Title.

This chapter shall be known as the “Affordable Housing Procedures of the Borough of Paulsboro.”

### § 12-2. Introduction.

- A. This Chapter sets forth regulations regarding the very low-, low-, and moderate-income housing units in the Borough of Paulsboro consistent with the provisions outlined in P.L. 2024, Chapter 2, including the amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services (“Division”) at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls (“UHAC”) at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”).
- B. This Ordinance is intended to ensure that very low-, low-, and moderate-income units (“affordable units”) are created with controls on affordability over time and that very low-, low-, and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to affirmative marketing and random selection procedures set forth in UHAC.
- C. The Borough of Paulsboro Joint Land Use Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low-, and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
- D. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L. 2024, Chapter 2, the FHA, N.J.A.C. 5:99, the upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC, as may be amended and supplemented.

### § 12-3. Applicability

- A. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that are proposed to be created pursuant to the Borough’s most recently adopted HEFSP.
- B. This Ordinance shall apply to all developments that contain very low-, low-, and moderate-income housing units included in the HEFSP, including any unanticipated future developments that will provide very-low-, low- and moderate-income housing units.
- C. Projects receiving federal Low Income Housing Tax Credit financing and proposed for credit in the municipality’s most recently adopted HEFSP shall comply with the affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.
- D. Transitional housing units shall be governed by the rules of their sponsoring programs, such as the Recovery Housing Program, authorized by section 8071 of the SUPPORT for Patients and Communities Act, Pub.L. 115-271, § 8071, 132 Stat. 3894 (2018).

### § 12-4. Definitions.

All definitions found in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended, and the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq., shall be incorporated by reference herein. Many of the definitions are reproduced below for ease of reference. In the event of a conflict between the terms of this Ordinance, the Act, and/or the UHAC, the UHAC shall control this Ordinance, and the Act shall control both.

The following terms, when used in this Ordinance, shall have the meanings given in this Section:

#### **ACCESSORY APARTMENTS**

A residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as “accessory dwelling units”.

#### **ACT**

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), and as may be further amended and supplemented.

#### **ADAPTABLE**

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7. "Adaptable," as used with regard to an entrance, means that the plans for the affordable unit include a feasible building plan to adapt the entrance so as to make the affordable unit accessible.

#### **ADMINISTRATIVE AGENT**

The entity designated by the Borough and approved by the Division to administer the Affordability Controls with respect to one or more Restricted Units within the Borough of Paulsboro in accordance with this Chapter, the Act, the Fair Housing Act Regulations, and the Affordability Controls.

#### **AFFIRMATIVE MARKETING**

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

#### **AFFIRMATIVE MARKETING PLAN**

The Borough’s adopted plan of strategies from which the Administrative Agent will choose to implement as part of the Affirmative Marketing requirements.

#### **AFFIRMATIVE MARKETING PROCESS**

The actual undertaking of Affirmative Marketing activities in furtherance of each project with very low-, low-, and moderate-income units.

#### **AFFORDABILITY ASSISTANCE**

The use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

#### **AFFORDABILITY AVERAGE**

An average of the percentage of median income in Region 5 at which restricted units in an affordable development are affordable to low- and moderate-income households.

#### **AFFORDABILITY CONTROLS**

The controls or restrictions placed on a dwelling unit that require the dwelling unit to be affordable to a very-low, low-, or moderate-income household that are imposed pursuant to UHAC, this Chapter, or any other state or federal statute or regulation.

#### **AFFORDABLE**

A sales price or rent within the means of a very-low, low-, or moderate-income household; in the case of an ownership restricted unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, as may be amended and supplemented, and, in the case of a rental restricted unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13, as may be amended and supplemented. –

#### **AFFORDABLE HOUSING DEVELOPMENT**

A development included in the HEFSP, an inclusionary development, a Borough-sponsored affordable housing project, or a 100% affordable development. This includes developments with affordable units on-site or off-site.

#### **AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM**

The dispute resolution program established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

#### **AFFORDABLE HOUSING MONITORING SYSTEM or AHMS**

The Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

#### **AFFORDABLE HOUSING TRUST FUND**

A separate, interest-bearing account held by the Borough for the deposit of development fees, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this Chapter.

### **AFFORDABLE UNIT**

A housing unit proposed or developed pursuant to the Act, and approved for crediting by the Program, the Court and/or created with Affordable Housing Trust Funds.

### **AGE-RESTRICTED HOUSING**

A housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that: (1) all the residents of the development where the unit is situated are 62 years or older; (2) at least 80% of the units are occupied by one person that is 55 years or older; or (3) the development has been designated by the Secretary of HUD as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

### **AGENCY**

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.) and in, but not of, the Department.

### **ALTERNATIVE LIVING ARRANGEMENT**

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat, and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

### **ASSISTED LIVING RESIDENCE**

A facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

### **BARRIER-FREE ESCROW**

The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in the affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

### **BUILDER'S REMEDY**

Court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires the Borough to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques that provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

### **CERTIFIED HOUSEHOLD**

A household that has been certified by an Administrative Agent as a very low-, low-, or moderate-income household..

## **CHOICE**

The no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

## **COAH OR THE COUNCIL**

The Council on Affordable Housing, which was established in, but not of, DCA pursuant to the Act, and was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

## **COMMISSIONER**

The Commissioner of the Department of Community Affairs.

## **COMPLIANCE CERTIFICATION**

The certification obtained by the Borough pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the Borough from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a “judgment of compliance” or “judgment of repose.” The term “compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

## **CONSTRUCTION**

New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

## **COUNTY-LEVEL HOUSING JUDGE**

The judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

## **DEPARTMENT or DCA**

The State of New Jersey Department of Community Affairs.

## **DEFICIENT HOUSING UNIT**

Housing that: (a) is over fifty years old and overcrowded; (b) lacks complete plumbing; or (c) lacks complete kitchen facilities.

## **DEVELOPER**

Any person, partnership, association, company, or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or any other person having an enforceable proprietary interest in such land.

## **DEVELOPMENT**

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other

structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

#### **DEVELOPMENT FEE**

Money paid by a developer pursuant to Section III “Development Fees” of this Chapter, including any fee on development authorized pursuant to N.J.S.A. 52:27D-329.2, the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., and N.J.A.C. 5:99-3.

#### **DIVISION**

The Division of Local Planning Services within the Department of Community Affairs.

#### **DWELLING UNIT**

Any room or group of rooms or any part thereof located within a building and forming a single habitable unit with facilities which are used, or designed to be used for living, sleeping, cooking, and eating. A dwelling unit shall include a market-rate unit and an affordable unit.

#### **EMERGENT OPPORTUNITY**

A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

#### **EQUALIZED ASSESSED VALUE OR EAV**

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

#### **EQUITY SHARE AMOUNT**

The product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than 5% and may not exceed 30%.

#### **EXIT SALE**

The first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

#### **EXCLUSIONARY ZONING LITIGATION**

Litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged

noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

#### **EXTENSION OF EXPIRING CONTROLS**

The extension of the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

#### **FAIR HOUSING ACT or FHA**

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., as may be amended and supplemented.

#### **FAIR HOUSING ACT REGULATIONS**

The regulations adopted by the DCA pursuant to the Act and codified at N.J.A.C. 5:99, et seq.

#### **FAIR SHARE OBLIGATION**

The total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

#### **FAIR SHARE PLAN**

The plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to N.J.S.A. 52:27D-304.1(f)(2)(a), by which the Borough of Paulsboro proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of Housing Region 5 and which details the affirmative measures the Borough of Paulsboro proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the Borough's housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the Borough's land use ordinances and regulations.

#### **HMFA OR THE AGENCY**

The New Jersey Housing and Mortgage Finance Agency, established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

#### **HOUSEHOLD INCOME**

A household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

#### **HOUSING ELEMENT**

The portion of the Borough's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28(b)(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the Borough's fair share

of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the Borough's present and prospective obligation for affordable housing, determined pursuant to N.J.S.A. 52:27D-304.1(f).

**HOUSING REGION**

A geographic area established pursuant to N.J.S.A. 52:27D-304.2(b)(1).

**INCLUSIONARY DEVELOPMENT**

A residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

**JUDGMENT OF COMPLIANCE OR JUDGMENT FOR REPOSE**

A determination issued by the Superior Court approving the Borough's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

**LOW-INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 50% or less of the regional median income for households of the same size.

**LOW-INCOME UNIT**

A restricted unit that is affordable to a low-income household.

**MAJOR SYSTEM**

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building, which include but are not limited to weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement, and load-bearing structural systems.

**MARKET-RATE UNITS**

Any dwelling unit that is not an affordable unit.

**MODERATE-INCOME HOUSEHOLD**

A household with a total gross annual household income in excess of 50% but less than 80% of the regional median income for households of the same size.

**MODERATE-INCOME UNIT**

A restricted unit that is affordable to a moderate-income household.

**MONI**

The no-longer-active Market Oriented Neighborhood Investment (MONI) Program, as it was authorized by the Agency.

**MUNICIPAL DEVELOPMENT FEE ORDINANCE**

An ordinance adopted by the Borough Council that authorizes the collection of development fees.

**MUNICIPAL HOUSING LIAISON**

The employee appointed by the governing body who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

#### **NEW CONSTRUCTION**

The creation of a new housing unit under regulation by a code enforcement official, regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

#### **NEW JERSEY AFFORDABLE HOUSING TRUST FUND or NJAHTF**

An account established pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the “Neighborhood Preservation Nonlapsing Revolving Fund” and “Balanced Housing” mean the NJAHTF.

#### **NEW JERSEY HOUSING RESOURCE CENTER OR HOUSING RESOURCE CENTER**

The online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

#### **NON-EXEMPT SALE**

Any sale or transfer of ownership of a restricted unit to one’s self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary; and the transfer of ownership by court order.

#### **NON-RESIDENTIAL DEVELOPMENT**

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community, which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

#### **NON-RESIDENTIAL DEVELOPMENT FEE**

The fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

#### **ORDER FOR REPOSE**

An Order of the Superior Court protecting a municipality from a builder's remedy lawsuit for a period of time from the entry of a Judgment of Compliance. A Judgment of Compliance often results in an Order for Repose.

#### **RANDOM SELECTION PROCESS**

A lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)(3). This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis

#### **RCA**

A regional contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

#### **RECONSTRUCTION**

Any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

#### **REGIONAL MEDIAN INCOME**

The median income by household size for the applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

#### **REHABILITATION**

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

#### **RENT**

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by the Department for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

#### **RESTRICTED UNIT**

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of UHAC, but does not include a market-rate unit financed under UHORP, MONI, or CHOICE.

**SPENDING PLAN**

A method of allocating contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et al. for the purpose of meeting the housing needs of low- and moderate-income individuals.

**SUPPORTIVE HOUSING HOUSEHOLD**

A very low-, low- or moderate-income household certified as income eligible by an Administrative Agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney-Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant's self-identification of household members on the affordable housing application.

**SUPPORTIVE HOUSING SPONSORING PROGRAM**

A grant or loan program that provides financial assistance for the development of a supportive housing unit.

**SUPPORTIVE HOUSING UNIT**

A restricted rental unit that is affordable to very low-, low-, or moderate-income households and is reserved for occupancy by a supportive housing household. A supportive housing unit is intended to provide long-term, community-based housing for individuals with intellectual or developmental disabilities, as defined at N.J.S.A. 30:6D-25(b). Such units must be leased subject to the affordability controls established herein; remain subject to Affirmative Marketing requirements, household certification, and Administrative Agent oversight; and may, with the approval of the Municipal Housing Liaison and the Administrative Agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal

Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and the project's Affirmative Marketing Program. A supportive housing unit may, with the approval of the Administrative Agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services. Supportive housing units are also referred to as permanent supportive housing units.

#### **TRANSITIONAL HOUSING**

Temporary housing that: (a) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (b) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (c) is licensed by the department; and (d) allows households to remain for a minimum of six months.

#### **UHAC**

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq., as may be amended and supplemented.

#### **UHORP**

The Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency's Board.

#### **UNIT TYPE**

The type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily/flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

#### **VERY LOW-INCOME HOUSEHOLD**

A household with a total gross annual household income equal to 30% or less of the regional median income for households of the same size.

#### **VERY LOW-INCOME UNIT**

A restricted unit that is affordable to a very low-income household. Very-low-income units are a subset of low-income units.

#### **VETERAN**

A veteran as defined at N.J.S.A. 54:4-8.10.

#### **VETERANS' PREFERENCE**

The agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50% of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

## WEATHERIZATION

Building insulation (for attic, exterior walls, and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows, and replacement doors, and is considered a major system for purposes of a rehabilitation program.

### Section II. Affordable Housing Trust Fund.

#### § 12-5. Establishment of Affordable Housing Trust Fund.

- A. There is established within the Borough a separate, interest-bearing affordable housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from non-residential developers and proceeds from the sale of units with extinguished controls to be used and applied solely for the purposes set forth herein.
- B. All funds collected from developers or other persons pursuant to developer's agreements, settlement of litigation, by donation, or from sale of Borough property intended for or designated as funds to be used in connection with the satisfaction of the Borough's obligation under the Fair Housing Act or similar statute shall be deposited into the affordable housing trust fund in accordance with this Chapter.
- C. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - (1) payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality, and if approved by a municipality prior to March 20, 2024 (see P.L.2024, c.2);
  - (2) developer contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - (3) rental income from municipally operated units;
  - (4) repayments from affordable housing program loans;
  - (5) recapture funds;
  - (6) proceeds from the sale of affordable units; and
  - (7) any other funds collected in connection with the Borough's affordable housing program.
- D. The Borough shall provide the Department with written authorization, in the form of a three-party escrow agreement between the Borough, the financial institution in which the Affordable Housing Trust Fund has been established, and the Department, to permit the Department to direct the disbursement of the funds as required by law.
- E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.
- F. It is permissible for the chief financial officer to deposit such funds into the general depository interest-bearing account of the Borough, provided a separate accounting for such money is maintained.
- G. In the event the Borough receives funds from any governmental sources or from a private organization authorized by the county, state or federal government to engage in funding for affordable housing projects which are required to be held in a separate account, the Chief Financial Officer shall be authorized to establish such separate account and to provide for the keeping of appropriate records thereon but such funds shall be otherwise considered as part of the affordable housing trust fund.

- H. Disbursements from the affordable housing trust fund shall be made by the Chief Financial Officer upon authorization of the Mayor and Council by resolution carried by the affirmative votes of the majority of the full membership of the Borough Council. Expenditures may be authorized from the affordable housing trust fund for any of the purposes set forth in the Spending Plan.

§ 12-6. Basic Requirements

- A. The Borough's Housing Element and Fair Share Plan shall include a Spending Plan for current funds in the municipal affordable housing trust fund and projected funds through the current round.
- B. The Borough shall annually, on or before February 15 of each year for trust fund activity through December 31 of the previous year, provide the Department with a detailed accounting of its municipal Affordable Housing Trust Fund activity to the Department on the Affordable Housing Monitoring System (AHMS) portal, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended.
- C. All fees shall be committed for expenditure within four (4) years from the date of collection unless otherwise directed by the Department. Fees not committed by the time set forth in this section shall be transferred to the New Jersey Affordable Housing Trust Fund for use in Housing Region 5.

§ 12-7. Use of Funds

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market-to-affordable or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted by the Court and specified in the approved spending plan.
- B. Affordable Housing Trust Funds shall not be expended:
- (1) To reimburse for activities which occurred prior to the adoption of this Ordinance; or
  - (2) On administrative costs, attorney fees, or court costs to obtain a judgment of repose;
  - (3) to contest a determination of the Borough's fair share obligation; or
  - (4) On costs of any challenger in connection with a challenge to the Borough's obligation, housing element, or fair share plan.
- C. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable

units included in the Borough's Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

- (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
- (2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

D. Not more than 20% of the revenues collected from development fees shall be expended on administration, in accordance with rules of the Department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1(f)(1) and (2) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program.

#### § 12-8. Emergent Affordable Housing Expenditures.

Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

### Section III. Development Fees.

#### § 12-9. Purpose

This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the Act, N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low-, and moderate-income housing in accordance with a Court-approved Spending Plan.

#### § 12-10. Non-residential Development fees

- A. Within all zoning districts, a fee is imposed on all non-residential developers, unless otherwise exempted below, as follows:
- (1) A fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
  - (2) A fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - (3) When an existing structure is demolished and replaced, unless the structure is demolished and replaced as a result of a fire, flood, or natural disaster:
    - (a) A fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of

the newly improved structure, i.e. land and improvement, at the time a final certificate of occupancy is issued.

(b) If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

- B. Eligible exactions, ineligible exactions and exemptions for non-residential development.
- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
  - (2) The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, changes in use within existing footprint, reconstruction, renovations, or repairs.
  - (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to N.J.S.A. 40:55D-8.4, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
  - (4) A developer of a non-residential development exempted from the non-residential development fee as set forth above shall be subject to it at such time the basis for the exemption no longer applies, and, in that event, shall make the payment of the non-residential development fee within three (3) years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - (5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough as a lien against the real property of the owner.

§ 12-11. Collection procedures.

- A. Upon the granting of a preliminary, final, or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit that the development is subject to a development fee.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.

- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in N.J.S.A. 40:55D-8.6(b).
- H. 50% of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at issuance of the building permit and that determined at issuance of the certificate of occupancy.
- I. Appeal of development fees.
  - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - (2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 12-12. Ongoing collection of fees

- A. The ability to impose, collect, and expend development fees shall continue so long as the Borough retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- B. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund.

Section IV. Affordable Housing

§ 12-13. Monitoring and Reporting Requirements

- A. The municipality shall provide electronic monitoring data to the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS).
- B. On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.
- C. On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.
- D. All monitoring information required to be made public by the FHA shall be available to the public on the Department's website.

§ 12-14. Municipality-wide Mandatory Set-Aside

- A. A development, other than a single-family detached development, providing a minimum of five (5) new housing units at a density of six (6) or more units per acre, created through a municipal rezoning or zoning board action permitting multi-family residential housing where not previously permitted, a use or density variance, or a new or amended redevelopment plan or rehabilitation plan, is required to include in the development a minimum affordable housing set-aside of 20%.
- B. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. The developer shall provide a fractional subsidy payment for the fraction of a unit less than 0.5. The fractional subsidy payment shall be calculated as the fractional unit multiplied by the base subsidy payment amount currently established by the municipality as the average subsidy reflected in financial pro formas for 100% affordable housing or subsidized developments in the Borough or Region 5 on file with the Borough. For example, if seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units; per the requirements above, the developer shall pay into the municipal affordable housing trust fund a fractional subsidy payment equal to the dollar amount established by the municipality multiplied by 0.4.
- C. All affordable units shall be governed by this Chapter, the controls on affordability, including bedroom distribution, and affirmatively marketed to Housing Region 5 in conformance with UHAC, any successor regulation(s), and all other applicable laws.
- D. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units just below the threshold.
- E. The requirements of this section shall not give any developer the right to any such rezoning, variance, redevelopment designation, or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the Borough to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.

- F. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein

§ 12-15. Rehabilitation Programs

- A. The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low-, and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.
- B. Both ownership and rental units shall be eligible for rehabilitation funds.
- C. All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.
- D. The municipality shall dedicate a minimum average hard cost of \$10,000 for each unit to be rehabilitated through this program, and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees, and work write-ups.
- E. The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.
- F. Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:
- (1) If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.
  - (2) If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.
  - (3) Rents in rehabilitated units may increase annually based on the standards in UHAC.
  - (4) At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

§ 12-16. New Construction

- A. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units, unless the affordable housing development or the affordable units are exempt from the requirements of UHAC.
- B. Completion Schedule. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low-, and moderate-income units, whether developed in a single-phase development, or in a multi-phase development:

<b>Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy</b>	<b>Minimum Percentage of and Affordable Units Completed</b>
25%	0%
25% + 1 unit	10%
50%	50%
75%	75%
90%	100%
100%	

- C. Design. All affordable housing developments containing restricted units and affordable units subject to UHAC shall comply with the standards set forth in N.J.A.C. 5:80-26.5.
- D. Utilities.
  - (1) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
  - (2) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).
- E. Income and Bedroom Distribution.
  - (1) All affordable housing developments shall comply with the income distribution and bedroom distribution requirements of N.J.A.C. 5:80-26.4(e), (f) and (g), except that in the event that an affordable housing development cannot fully satisfy the requirements of N.J.A.C. 5:80-26.4(e), (f) and (g), or is unable to provide a full 13%, without round down to the nearest whole number, of the total units due to its small size or other mitigating factor, the developer must obtain the written approval of the DCA and the Municipal Housing Liaison for any modification of those provisions. Because the requirements of N.J.A.C. 5:80-26.4 are an aggregate municipal obligation, prior to applying for any construction permit for an affordable housing development, the developer shall submit a proposed income and bedroom distribution plan of the affordable housing development to the Municipal Housing Liaison for review and approval. The Municipal Housing Liaison may reject or require modifications to the income and bedroom distribution if the Borough is deficient in any bedroom type or income type, based on the need of the Borough, as determined on the date of submission of the proposed income and bedroom distribution plan by the developer to ensure municipal compliance with the bedroom and income distribution requirements of

N.J.A.C. 5:80-26.4. Once approved by the Municipal Housing Liaison, the developer shall fully comply with the bedroom and income distribution plan and shall confirm compliance with the same by submitting the following to the Administrative Agent, who shall, upon request of the Municipal Housing Liaison, provide a copy of the same to the Municipal Housing Liaison:

- (a) Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The Administrative Agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
- (b) The total number of units in the project and the number of affordable units.
- (c) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses/unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The Administrative Agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
- (d) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.

F. Accessibility requirements.

- (1) All new construction in an affordable housing development shall comply with the adaptability requirements set forth in N.J.S.A. 52:27D-123.15; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the Barrier Free Subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
- (2) Notwithstanding the exemption for townhouse dwelling units in the Barrier Free Subcode, the first floor of all townhouse dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode and shall include the following features:
  - (a) An adaptable toilet and bathing facility on the first floor;
  - (b) An adaptable kitchen on the first floor;
  - (c) An interior accessible route of travel; however, an interior accessible route of travel shall not be required between stories within an individual dwelling unit;
  - (d) An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;

- (e) If the foregoing requirements in Subsection F(2)(a) through (d) cannot be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; however, if all of the terms of Subsection F(2)(a) through (d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- (f) An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
  - (i) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
  - (ii) To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
  - (iii) The funds deposited under Subsection F(2)(f)(ii) above shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - (iv) The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
  - (v) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site-impracticable" to meet the requirements. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

§ 12-17. Assisted Living Residence

- A. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.
- B. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.
- C. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.

- D. Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.
- E. Low- and moderate-income residents cannot be charged any upfront fees.
- F. The units shall comply with UHAC with the following exceptions:
  - (1) Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;
  - (2) The deed restriction may be on the facility, rather than individual apartments or rooms;
  - (3) Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60% of median income; and
  - (4) Tenant income eligibility (N.J.A.C. 5:80-26.13(b)); up to 80% of an applicant's gross income may be used for rent, food, and services based on occupancy type, and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.

§ 12-18. Affordable Unit Controls and Requirements.

- A. The requirements of this section apply to all developments that contain affordable units, including any currently unanticipated future developments that will provide affordable units.
- B. Affirmative marketing.
  - (1) The Borough shall adopt an Affirmative Marketing Plan, subject to the approval of the Court, that shall be compliant with N.J.A.C. 5:80-26.16, as may be amended from time to time.
  - (2) The affirmative marketing process is a regional marketing strategy, implemented in accordance with N.J.A.C. 5:80-26.16 and the Affirmative Marketing Plan, designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for age-restricted units or "housing for older persons" as defined in N.J.S.A. 10:5-1 et seq. and age-restricted units as permitted by 42 U.S.C. §3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., to restricted units that are being marketed by a developer, sponsor or owner of restricted units. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Region 5 and covers the period of deed restriction.
  - (3) The Administrative Agent designated by the Borough or the Administrative Agent approved by the Municipal Housing Liaison for a particular affordable housing development shall ensure the affirmative marketing of all restricted units is consistent with the Affirmative Marketing Plan for the Borough, this Section, and UHAC. All developers, owners, and sponsors of restricted units shall comply with the affirmative

marketing requirements set forth herein and required by the Administrative Agent, unless otherwise exempted from affirmative marketing requirements under UHAC.

- (4) In implementing the affirmative marketing plan, the Administrative Agent shall comply with the requirements of N.J.A.C. 5:80-26.16 and N.J.A.C. 5:99-7.2, and shall provide, either through an experienced staff person, through a contract with a HUD-certified housing counselor, or an otherwise experienced entity approved the DCA, counseling services to applicants who are very-low-income households, low-income households and moderate-income households on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (5) The affirmative marketing process for available restricted units shall begin at least four (4) months prior to the expected date of occupancy and may begin before construction commences. The marketing program shall continue until all restricted units are initially occupied and for as long as restricted units are deed restricted and occupancy or re-occupancy of units continues to be necessary.
- (6) The Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website and make available applications or notices thereof in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within Region 5, the Borough municipal building, the Borough library, and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request.
- (7) Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of owner-occupied units, in which case, applications must be accepted for no less than 30 days.
- (8) The costs of advertising and affirmative marketing of the restricted units shall be the responsibility of the developer or owner, unless otherwise determined or agreed to by the Borough. All developers and owners of restricted housing units shall maintain on file with the Municipal Housing Liaison a copy of an executed agreement with a Borough-approved Administrative Agent.
- (9) All developers and sponsors of restricted units shall comply with the affirmative marketing plan and assist in the affirmative marketing of their respective restricted units. Unless otherwise stated in UHAC, supportive housing units must comply with the Affirmative Marketing Plan. The developer or Administrative Agent shall document and report the affirmative marketing plan for the units under their purview to the Municipal Housing Liaison, who shall ensure that developers and Administrative Agents are marketing units in accordance with the provisions of N.J.A.C. 5:80-26.16 and this Section. The developer or Administrative Agent shall also provide proof of publication to the Housing Administrator.
- (10) The Affirmative Marketing Plan shall identify the occupancy preferences set forth in § 12-18.D(1)(a) through (d) below.

C. Occupancy standards.

- (1) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - (a) Ensure each bedroom is occupied by at least one person, except for age-restricted units.
  - (b) Provide separate bedrooms for every two adult occupants;
  - (c) Provide a bedroom for every occupant under the age of 18, unless the household requests a different arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom;
  - (d) Avoid placing a one-person household into a unit with more than one bedroom.
- (2) Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

D. Selection of occupants of restricted units.

- (1) Household certification and referral shall be undertaken in accordance with N.J.A.C. 5:80-26.17. As part of the household certification and referral process, the Administrative Agent shall use a random selection process to select occupants of restricted units and shall apply the occupancy preferences set forth herein. The Borough hereby adopts the following occupancy preferences, which shall be utilized by the Administrative Agent as part of the random selection process, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences:
  - (a) If authorized in an agreement with a developer entered into pursuant to N.J.S.A. 52:27D-311(j), a preference of up to 50% of the restricted units in the affordable housing development shall be made for very-low-, low-, and moderate-income veterans who served in time of war or other emergency;
  - (b) A regional preference for very-low-income households, low-income households, and moderate-income households that reside or work in Region 5;
  - (c) Subordinate to the regional preference, a preference for very-low-, low-, and moderate-income households that reside or work in New Jersey; and
  - (d) If authorized in a redevelopment plan or an agreement with the owner of the restricted unit, with respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or with respect to newly created restricted units created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by rehabilitation or demolition and replacement.
- (2) A list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.
- (3) The Administrative Agent shall utilize the buyer income eligibility requirements set forth in N.J.A.C. 5:80-26.8 for ownership restricted units and the tenant income eligibility requirements set forth in N.J.A.C. 5:80-26.14 for rental restricted units. All

very-low-income households, low-income households, and moderate-income households shall be certified in accordance with N.J.A.C. 5:80-26.17.

E. Utilities.

- (1) Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- (2) Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by the Department for its Section 8 program.

F. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- (1) Control periods for ownership restricted units, including owner-occupied dwelling units that have been rehabbed, shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years.
- (2) Upon expiration of the control period, the recapture lien and recapture note shall be paid at closing at the first exit sale. Failure to pay the recapture note and recapture lien shall cause both the buyer and seller to be jointly and severally liable for repayment.
- (3) For ownership restricted units receiving an extension of affordability controls, the minimum control period shall be not less than 20 years from the date of the original term, provided that the total term, both the original term and the extended term, totals at least 60 years.
- (4) The affordability control period for an ownership restricted unit shall commence on the date the initial certified household takes title to the ownership restricted unit. The date of commencement shall be identified in the deed restriction.
- (5) The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to ownership restricted units. Any owner receiving a notice of intent to foreclose or a complaint in foreclosure must provide a copy to the Municipal Housing Liaison within three (3) business days of receipt.
- (6) An ownership restricted unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the ownership restricted unit meets all code standards upon each transfer of title that follows the expiration of the applicable minimum control period. If the ownership restricted unit is a deficient housing unit, the owner of the ownership restricted unit shall notify the Municipal Housing Liaison and the owner shall be required to make such improvements to the ownership restricted unit in order to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the ownership restricted unit meets all code standards prior to closing.
- (7) Deed Restrictions.
  - (a) Before applying for the first construction permit for any portion of an affordable housing development, the developer or owner shall prepare a deed restriction in form set forth in Appendix P-1 of UHAC and in accordance with the requirements

of N.J.A.C. 5:80-26.6(e), record the same, and submit to the Administrative Agent for the affordable housing development and the Municipal Housing Liaison a copy of the recorded deed restriction, along with a certification by the preparer of the deed restriction certifying that the deed restriction conforms with all of the requirements of UHAC and the deed restriction language set forth in Appendix P-1 of UHAC. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or owner with the records office of the County of Gloucester. If the documents required by this subsection (a) are not provided to the Administrative Agent and the Municipal Housing Liaison prior to the issuance of the construction permit, the Administrative Agent and/or the Municipal Housing Liaison may report this failure to the Division of Local Planning Services within the DCA pursuant to N.J.A.C. 5:80-26.19(f) and may take any other enforcement action permitted under the law. No seller or buyer of an ownership restricted unit shall be excused from adhering to the requirements of UHAC and this Chapter despite failure to record the deed restriction. If the affordable housing development is subject to a homeowner's association or condominium association, the deed restriction set forth in Appendix P-1 of UHAC shall be included in the governing documents of the homeowner's association or condominium association, and said governing documents shall specifically identify the ownership restricted units which are subject to affordability controls.

- (b) At closing for any ownership restricted unit, whether a sale or a resale, the developer or seller shall prepare and record the following, as applicable:
  - (i) For ownership restricted units that are not 95/5 units:
    - (i) deed restrictions in form set forth in Appendices A, C, D-1, D-3 & D-4, of UHAC, as applicable and must identify the date of commencement of the control period and the date on which the control period ends; and
    - (ii) a recapture note and recapture lien in the form set forth in Appendices D-2, L, M, N, O & Q. The deed restriction, recapture note and recapture lien shall be filed by the developer or seller with the records office of the County of Gloucester.
  - (ii) For ownership restricted units that are 95/5 units:
    - (i) a deed restriction in the form set forth at Appendices B & C of UHAC, as applicable; and
    - (ii) a recapture note and recapture lien in the form set forth in Appendices G & H of UHAC. The deed restriction, recapture note, and recapture lien shall be filed by the developer or seller with the records office of the County of Gloucester.
- (c) At closing for any ownership restricted unit, whether a sale or a resale, the developer or seller shall prepare and the buyer shall execute the certificates in the form set forth at Appendices D-3, J or K of UHAC, as applicable.
- (d) All covenants of ownership restricted units must be made by deeds and restrictive covenants, recapture notes and recapture liens in accordance with the forms prescribed in the applicable Appendix of UHAC and shall comply with the

requirements of UHAC. No seller or buyer of a restricted unit shall be excused from adhering to the requirements of UHAC and this Chapter despite failure to record the deed and restrictive covenants. All ownership restricted units shall be deemed to have been made by deeds and restrictive covenants, recapture notes, and recapture liens prescribed in UHAC, and the DCA, the Agency, the Borough, or any party may enforce the restrictions that would have been contained in such instruments as if such instruments had been, in fact, prepared and duly executed. A sale or transfer of ownership made other than in conformity with the requirements of UHAC and this Chapter is an authorized non-exempt sale; thus, all requirements, restrictions, and liens associated with the unit being sold or transferred remain in effect until full satisfaction thereof and compliance with UHAC and this Chapter. No seller or buyer of an ownership restricted unit shall be excused from adhering to the requirements of UHAC and this Chapter despite failure to record the deed restriction, recapture lien, or recapture note.

- (e) Within thirty (30) days of the closing, the developer or seller shall submit to the Administrative Agent for the affordable housing development and the Municipal Housing Liaison a copy of the recorded deed restriction, recorded recapture note and recorded capture lien, along with a certification by the preparer of the deed restriction certifying that these documents conform with all of the requirements of UHAC and the deed restriction language set forth in applicable Appendix of UHAC. In the event that a copy of the documents required by this subsection (e) are not provided to the Administrative Agent and the Municipal Housing Liaison within thirty (30) days of closing, Administrative Agent and/or the Municipal Housing Liaison may report this failure to the Division of Local Planning Services within the DCA pursuant to N.J.A.C. 5:80-26.19(f) and may take any other enforcement action permitted under the law.
  - (f) All deed restrictions shall have priority over all mortgages on the property. In accordance with N.J.A.C. 5:80-26.6(l), the entry and enforcement of any judgment of foreclosure on an ownership restricted unit shall not extinguish the affordability controls on the ownership restricted unit.
- (8) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (9) Such affordability controls shall terminate on the first exit sale after the end of the affordability controls, following notice of intent to make an exit sale, unless otherwise extended as set forth in § 12-20.
- (10) In those instances in which control periods expire, the Administrative Agent shall, within sixty (60) days of the expiration of the control period, execute a release, substantially in the form set forth at N.J.A.C. 5:80-26 Appendix F-1, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the Administrative Agent. Upon the expiration of the control period for a restricted

ownership unit established in this section, the owner of the unit may sell it to any purchaser at the fair market price.

G. Price Restrictions for Restricted Ownership Units and Resale Prices.

- (1) Price restrictions and resale prices for ownership restricted units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
  - (a) The Administrative Agent shall approve, in writing, the initial purchase price for an ownership restricted unit.
  - (b) The Administrative Agent shall approve all resale prices for an ownership restricted unit, in writing and in advance of the resale, to assure compliance with this Chapter and UHAC.
  - (c) All owners of an ownership restricted unit must provide at least 30 days' notice to the Administrative Agent of a sale of an ownership restricted unit, unless the Administrative Agent and the Municipal Housing Liaison, both agree in writing to a shorter notice period. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to ensure compliance with the foregoing standards. No resale of any ownership restricted unit shall be made without first obtaining written approval of the resale price from the Administrative Agent. The Administrative Agent shall notify the Municipal Housing Liaison of all sales within ten (10) days of closing. If a recapture payment from repayment of a recapture note or recapture lien is due and owing to the Borough, the Administrative Agent shall notify the Municipal Housing Liaison in writing of that fact, along with the amount of the recapture payment prior to closing.
  - (d) Condominium fees, homeowner association fees, and special assessments shall be calculated in accordance with the requirements of N.J.A.C. 5:80-26.7(e), as may be amended and supplemented.
  - (e) The owners of ownership restricted units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Such application and the determination of the Administrative Agent shall be in accordance with N.J.A.C. 5:80-26.10. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. Capital expenditures for non-cosmetic replacement of items of property or non-cosmetic improvement to property that do not affect the maximum sale price will be factored into calculating a reduction to the recapture amount.

H. Buyer Income Eligibility.

- (1) Buyer income eligibility for ownership restricted units shall be in accordance with N.J.A.C. 5:80-26.8, as may be amended and supplemented, such that very-low-income units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income for Region 5, low-income units shall be reserved for households with a gross household income less than or equal to 50% of median income for Region 5 and moderate-income units shall be reserved for households with a gross household income less than 80% of median income for Region 5.

- (2) If the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit, subject to N.J.A.C. 5:80-26.8(a). Similarly, the Administrative Agent may, subject to the same requirements set forth above in this subsection, permit low-income purchasers to buy very-low-income units where there is an insufficient number of eligible very-low-income purchasers
  - (3) The Administrative Agent shall certify a household as eligible for a ownership restricted unit when the household is a very-low-income household, low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35% of the household's certified monthly income. An Administrative Agent may exercise its discretion to approve a mortgage that exceeds 35% in accordance with the standards set forth in N.J.A.C. 5:80-26.8(b).
- I. Limitations on indebtedness secured by ownership unit; subordination.
- (1) Prior to incurring any indebtedness to be secured by an ownership restricted unit, the owner shall submit to the Administrative Agent notice of intent to incur indebtedness, along with documentary support as determined by the Administrative Agent. The Owner may not incur any indebtedness unless and until the Administrative Agent has determined and confirmed in writing that the proposed indebtedness complies with the provisions of UHAC.
  - (2) With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a ownership restricted unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).
- J. Control periods for rental restricted units.
- (1) Control periods for rental restricted units shall be in accordance with N.J.A.C. 5:80-26.12, unless otherwise extended by the Borough.
  - (2) Deed Restrictions.
    - (a) Prior to applying for the first construction permit for any portion of an affordable housing development, the developer or owner shall prepare a deed restriction in form set forth in Appendix P-2 of UHAC and in accordance with N.J.A.C. 5:80-26.12(e), record the same, and submit to the Administrative Agent for the affordable housing development and the Municipal Housing Liaison a copy of the recorded deed restriction, along with a certification by the preparer of the deed restriction certifying that the deed restriction conforms with all of the requirements of UHAC and the deed restriction language set forth in Appendix P-2 of UHAC. The deed restriction shall have priority over all mortgages on the property, and the

deed restriction shall be filed by the developer or owner with the records office of the County of Gloucester. If documents required pursuant to this subsection (a) are not provided to the Administrative Agent and the Municipal Housing Liaison prior to issuance of the construction permit, the Administrative Agent and/or the Municipal Housing Liaison may report this failure to the Division of Local Planning Services within the DCA pursuant to N.J.A.C. 5:80-26.19(f) and may take any other enforcement action permitted under the law. No seller or buyer of a rental restricted unit shall be excused from adhering to the requirements of UHAC and this Chapter despite failure to record the deed restriction.

- (b) No later than thirty (30) days after issuance of a Certificate of Occupancy for any structure containing rental restricted units, the developer shall prepare a deed restriction in form set forth in Appendix E of UHAC for said structure, record the same, and submit to the Administrative Agent for the affordable housing development and the Municipal Housing Liaison a copy of the recorded deed restriction, along with a certification by the preparer of the deed restriction certifying that the deed restriction conforms with all of the requirements of UHAC and the deed restriction language set forth in Appendix E of UHAC. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Gloucester. A copy of the filed document shall be provided to the Administrative Agent and Municipal Housing Liaison within 30 days of the receipt of a certificate of occupancy. If documents required by this subsection (b) are not provided to the Administrative Agent and the Municipal Housing Liaison within 30 days of receipt of the certificate of occupancy, the Administrative Agent and/or the Municipal Housing Liaison may report this failure to the Division pursuant to N.J.A.C. 5:80-26.19(f) and may take any other enforcement action permitted under the law. No seller or buyer of a restricted unit shall be excused from adhering to the requirements of UHAC and this Chapter despite failure to record the deed restriction.
- (3) A rental restricted unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:
    - (a) Sublease or assignment of the lease of the unit;
    - (b) Sale or other voluntary transfer of the ownership of the unit;
    - (c) The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure;
    - (d) The end of the control period, until the occupant household vacates the unit, or is certified as over-income, and the controls are released in accordance with UHAC
  - (4) All rental restricted units shall be required to obtain a continuing certificate of occupancy or a certified statement from the building inspector stating that the unit meets all code standards upon each new tenant, except where a certificate of occupancy or a continuing certificate of occupancy has been issued in the preceding two years.

K. Price restrictions for rental restricted units; leases.

- (1) All rents shall be set in accordance with N.J.A.C. 5:80-26.13. The Administrative Agent shall set the initial rent for a rental restricted unit in accordance with UHAC and this Chapter. Initial rent shall be calculated so as to not exceed 30% of the eligible monthly income for the household size, determined in accordance with N.J.A.C. 5:80-26.4. For assisted living facilities, maximum rents may be up to 80% of eligible monthly income for the household size, inclusive of rent, food and services.
- (2) A written lease shall be required for all rental restricted units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. The lease must specify which tenant-paid utilities are included in the utility allowance and include the most recent chart at the time of lease-up approved by DCA for its Section 8 program. The allowance for utilities must be consistent with § 12-16.D. All lease provisions must comply with applicable law.
- (3) A copy of the current lease for each rental restricted unit shall be provided to the Administrative Agent and the Municipal Housing Liaison within 10 business days of execution.
- (4) No additional fees, operating costs, or charges shall be added to the approved rent (except in the case of units in assisted living residences, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
  - (a) Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
- (5) Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited.
- (6) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Chapter.
- (7) The rent levels of very-low-income units, low-income units and moderate-income units may be increased annually, on the anniversary date of the tenancy of the certified household occupying the rental restricted unit, transitional housing unit, special needs housing unit or supportive housing unit, to an amount calculated pursuant to N.J.A.C. 5:80-26.13(b) and (c), provided that any increase shall not exceed 5% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be governed by the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40. All rental increases must comply with the requirements of N.J.A.C. 5:80-26.13.
- (8) Developers and/or owners of affordable housing developments containing restricted rental units shall comply with the following:

- (a) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the Administrative Agent to whom complaints of excess rent can be issued.
- (b) Notify the Administrative Agent of any change to or increase in any applicable fees imposed upon tenants.
- (c) Notify the Administrative Agent of any change as to the utilities that will be included in the rent.
- (d) Ensure that the utility configuration established at the start of the rent-up process is not altered at any time throughout the restricted period.
- (e) Notify the Administrative Agent of any change and provide to the Administrative Agent a proposed form of lease containing such changes.
- (f) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.

L. Tenant income eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
  - (a) Very-low-income units shall be reserved for households with a gross household income less than or equal to 30% of the median income by household size in Region 5.
  - (b) Low-income units shall be reserved for households with a gross household income less than or equal to 50% of the median income by household size in Region 5.
  - (c) Moderate-income units shall be reserved for households with a gross household income less than 80% of the median income by household size in Region 5.
- (2) The Administrative Agent shall certify a household as eligible for a rental restricted unit when the household is a very-low-income household, low-income household or a moderate-income household, as applicable to the restricted unit, and the rent proposed for the restricted unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of its eligible monthly income for rent in the past and has proven its ability to pay;
  - (c) The household is currently in substandard or overcrowded living conditions;

- (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - (e) The household documents proposed third-party assistance from an outside source, such as a family member, in a form acceptable to the Administrative Agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection L(2)(a) through (e) above with the Administrative Agent, who shall counsel the household on budgeting.
- M. Restricted units that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangement, must be structured such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least 5% of those restricted units.
- N. An owner of any development containing rental restricted units shall comply with the requirements of N.J.A.C. 5:80-26.19(e). All rental restricted units shall be occupied within a reasonable amount of time from issuance of the original certificate of occupancy and be re-leased within a reasonable amount of time upon the vacating of the restricted unit by a tenant. A reasonable amount of time shall be presumptively 60 days, unless otherwise set forth in N.J.A.C. 5:80-26.19(f).
- O. Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.
- P. Developers, owners, and property managers shall not discriminate in the sale or leasing of any affordable units in violation of the New Jersey Law Against Discrimination, N.J.A.S.A. 10:5-1 et seq., or the Federal Fair Housing Laws. Developers, owners, and property managers are also prohibited from requiring any parent, guardian, or other third person to act as a guarantor for any affordable unit.

§ 12-19. Maximum Sales Prices and Initial Rents.

- A. In establishing sales prices and rents of affordable housing units, the Administrative Agent shall follow the procedures set forth at N.J.A.C. 5:80-26.4.
- B. In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:
  - (1) An efficiency unit is affordable to a one-person household;
  - (2) A one-bedroom unit is affordable to a one-and-a-half-person household;
  - (3) A two-bedroom unit is affordable to a three-person household;
  - (4) A three-bedroom unit is affordable to a four-and-one-half-person household; and
  - (5) A four-bedroom unit is affordable to a six-person household.

C. For age-restricted units and assisted living facilities, the following standards apply:

- (1) An efficiency unit is affordable to a one-person household;
- (2) A one-bedroom unit is affordable to a one-and-a-half-person household; and
- (3) A two-bedroom unit is affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.

D. Sales.

- (1) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of the median income, and each affordable development must achieve an affordability average of no more than 55% for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (2) The initial purchase price and the maximum resale price for all restricted ownership units shall be calculated in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, and shall be subject to the limitations on indebtedness set forth in N.J.A.C. 5:80-26.9. Both the initial purchase price and the maximum resale price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- (3) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

E. Rentals.

- (1) The average rent for all affordable units within each affordable housing development shall be affordable to households earning no more than 52% of the regional median income for Region 5.
- (2) The maximum rent for all affordable units within each affordable housing development is affordable to households earning no more than 60% of the regional median income for Region 5. A maximum rent affordable to households earning no more than 70% of regional median income for Region 5 for moderate-income units within affordable housing developments may be utilized where very-low-income units compose at least 13% of the affordable units, provided that the number of affordable units with rent affordable to households earning 70% of regional median income for Region 5 may not exceed one plus the number of very-low-income units in excess of 13% (rounded up) of the restricted units.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. Very low-income units, if required, should be distributed between each bedroom count

as proportionally as possible to the total number of restricted units within each bedroom count, and shall be part of the low-income requirement.

- (4) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Notice must first be provided to the occupant pursuant to N.J.S.A. 2A:18-61(1)(f) and to the Administrative Agent. This increase shall not exceed 5% in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

§ 12-20. Extension of Controls Program.

- A. The Borough may extend any affordability controls upon providing notice and making the payment required in N.J.A.C. 5:80-26.6(h)(6) (ownership units) or N.J.A.C. 5:80-26.12(g) (rental units). In the event that the Borough or the Municipal Housing Liaison notifies any developer or owner that it intends to extend the affordability controls applicable to any affordable unit, the payment made by the Borough shall be used to rehabilitate the affordable unit.
- B. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.

§ 12-21. Municipal Housing Liaison.

- A. There is hereby established the position of Municipal Housing Liaison for the Borough of Paulsboro.
- B. The Municipal Housing Liaison shall be appointed by a duly adopted resolution of the Borough Council and may be a full- or part-time municipal employee. The appointment is subject to review and approval by the DCA.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Paulsboro, including the following responsibilities, which may not be contracted out to the Administrative Agent:
- (1) Serving as the Borough of Paulsboro's primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, Administrative Agents, and interested households;
  - (2) Overseeing the implementation of the Affirmative Marketing Plan and affordability controls by the Administrative Agents, or if no Administrative Agent is selected for an affordable unit, the implementation of the Affirmative Marketing Plan and affordability controls;
  - (3) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.

- (4) Coordinating with the Administrative Agent, municipal attorney, and municipal Construction Code Official to ensure that permits are not issued unless the document(s) required in § 12-1.A(7) and/or § 12-1.A(2) have been duly recorded.
  - (5) When applicable, supervising any contracting Administrative Agent;
  - (6) Monitoring the status of all restricted units in the Borough of Paulsboro's Fair Share Plan;
  - (7) Verifying, certifying, and submitting annual monitoring reports as may be required under the FHA, UHAC, or any implementing regulations;
  - (8) Coordinating meetings with affordable housing providers and Administrative Agents, as needed;
  - (9) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the DCA; and
  - (10) Listing, on the municipal website, contact information for (a) the Municipal Housing Liaison and (b) the Administrative Agent for each completed project with an affordable component within the municipality.
- D. Compensation, if any, shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.

§ 12-22. Administrative Agent.

- A. The Borough shall, subject to the approval of the DCA, designate by resolution of the Borough Council one or more Administrative Agents to administer newly constructed affordable units in accordance with the requirements of the FHA, N.J.A.C. 5:99-1, et. seq., and UHAC. All Administrative Agents shall attend all applicable training courses and satisfy all other educational requirements as set forth in UHAC and shall submit proof of compliance therewith annually on or before December 31 to the Municipal Housing Liaison.
- B. In the event that any owner or developer wishes to change Administrative Agents, any such change shall be in accordance with N.J.A.C. 5:80-26.18, N.J.A.C. 5:99-7.3, and N.J.A.C. 5:99-7.4, and the change must be approved in writing by the Municipal Housing Liaison. In order to obtain approval from the Municipal Housing Liaison for a change in Administrative Agent, the developer, property manager, or owner shall submit the following:
  - (1) A resume or other evidence of experience as an Administrative Agent; and
  - (2) A valid and current Administrative Agent certificate as required pursuant to N.J.S.A. 52:27D-321; and
  - (3) Evidence of satisfactory completion of the DCA's Education Program for each individual serving as an Administrative Agent as described at N.J.A.C. 5:99-9; and
  - (4) A list of all affordable housing projects for which the person or entity is currently serving or has served as an Administrative Agent; and
  - (5) A list of affordable housing projects for which the Administrative Agent has been removed as Administrative Agent, and the reason therefore; and

- (6) The draft operations manual that the Administrative Agent proposes to utilize in the administration of the affordable units.

Approval of any Administrative Agent by the Municipal Housing Liaison shall be in writing. The denial of approval for an Administrative Agent shall be in writing, setting forth the reasons therefore.

- C. All affordable units, whether or not subject to UHAC and regardless of when they were created, shall be administered by an Administrative Agent approved by the Borough. For all new affordable housing developments, the developer must execute an agreement with a Borough-approved Administrative Agent and submit a copy of the same to the Municipal Housing Liaison before applying for a Certificate of Occupancy for any portion of the affordable housing development. An Administrative Agent may administer one or more affordable projects.
- D. The Administrative Agent shall perform the duties and responsibilities as set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.15, 26.17, and 26.19, and N.J.A.C. 5:99-7.1 and -7.2, which includes, but is not limited to:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the DCA;
  - (2) Affirmative marketing;
  - (3) Household certification;
  - (4) Affordability controls;
  - (5) Records retention;
  - (6) Resale and re-rental;
  - (7) Processing requests from restricted unit owners or renters of restricted units;
  - (8) Enforcement
    - (a) Notifying all absentee owners of affordable ownership units that they must either move back to their unit or sell the unit;
    - (b) Obtaining, at the earliest point of contact in the processing of the project or development, written acknowledgement from all developers and sponsors of restricted units that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
    - (c) Mailing, annually, to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)(4);
    - (d) Establishing a program for diverting unlawful rent payments to the Affordable Housing Trust Fund; and
    - (e) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, setting forth procedures for administering the affordability controls.

- (9) Each operating manual shall be adopted by resolution of the governing body and available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).
- (10) Notifying the Municipal Housing Liaison in writing of a violation of any of the regulations governing the affordable unit by an owner, developer, or tenant, including a violation of this Chapter, UHAC, the Act, or the Fair Housing Act Regulations, within five (5) business days of the occurrence. Following submission of a notice of violation, the Administrative Agent shall provide the Municipal Housing Liaison with monthly reports of the status of all violations until the violations have been resolved.
- (11) Preparing and filing all reports and other documents required to be prepared and filed under the UHAC, the Act, the Fair Housing Act Regulations, this Chapter, or the operations manual. At a minimum, the Administrative Agent shall provide the following written reports to the Municipal Housing Liaison.
- (a) Initial Occupancy Report. For each newly created affordable unit, the Administrative Agent shall provide a written report setting forth:
- (i) the date of the initial occupancy;
  - (ii) the amount of the sales price or rent charged;
  - (iii) the amount of all other fees charged, including but not limited to pet fees, condominium fees, and parking fees;
  - (iv) the name(s) of the initial occupant(s) and their household certifications; and
  - (v) A certification from the Administrative Agent certifying as to the accuracy of the information contained in the initial occupancy report.

The Administrative Agent shall update the initial occupancy report quarterly until an initial occupant has been identified for all of the affordable units within a newly constructed affordable housing development and an occupancy Report has been provided to the Municipal Housing Liaison. Quarterly reports shall be due on January 1, April 1, July 1, and October 1 of each year that an initial occupancy report is required to be provided.

- (b) Mid-year Report. The Administrative Agent shall provide a written report mid-year to the Municipal Housing Liaison, which shall contain all of the information required to be reported by the municipality pursuant to N.J.S.A. 52:27D-329.4(a) and (b) and N.J.A.C. 5:99-5.3, as it relates to an affordable housing development and/or an affordable unit. The semi-annual report shall be due on June 30 of each year, so long as the affordable unit remains subject to affordability controls.
- (c) Upon request from the Municipal Housing Liaison, the Administrative Agent shall promptly provide access to all information, books, and records regarding all marketing, leasing, and administration activities relating to the affordable units.
- (d) Notifying the Municipal Housing Liaison of the owner's intent to sell an ownership restricted unit prior to the date of the sale.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Municipal Housing Liaison. A decision by the Municipal Housing Liaison may be appealed to the DCA. The decision of the DCA shall constitute a final administrative action.

Section 2. All other Chapters of the Borough Code remain valid and in effect and are not amended by this Ordinance.

Section 3. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. All other provisions of the Borough Code are ratified and remain in full force and effect.

Section 4. Should any section, clause, sentence, phrase, or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 5. This Ordinance shall take effect immediately upon approval by the Superior Court of New Jersey, Chancery Division, Gloucester County.

  
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Elsie Tedeski, Borough Clerk

**BOROUGH OF PAULSBORO**  
  
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John A. Giovannitti, Mayor

