

**FILED**

April 29, 2026

**Hon. Darren J. Del Sardo, P.J.Cv.**

**Hon. Darren J. Del Sardo, P.J.Cv.**

Superior Court of New Jersey  
Law Division – Civil Part  
Passaic County  
Passaic County Courthouse  
77 Hamilton Street, 3<sup>rd</sup> Floor  
Chambers/Courtroom 322  
Paterson, New Jersey 07505

**PREPARED BY THE COURT:**

**IN THE MATTER OF THE  
DECLARATORY JUDGMENT  
ACTION OF THE BOROUGH  
OF BLOOMINGDALE,  
PASSAIC COUNTY PURSUANT  
TO P.L. 2024, CHAPTER 2  
(N.J.S.A. 52:27D-304.1, et seq.),**

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
PASSAIC COUNTY  
DOCKET NO. PAS-L-000283-25

Civil Action

Mt. Laurel Program

**CERTIFICATION OF COMPLIANCE  
AND REPOSE FOR THE  
FOURTH ROUND HOUSING CYCLE**

**THIS MATTER**, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program (“Program”), pursuant to the Complaint for Declaratory Judgment filed on January 28, 2025 (“DJ Complaint”) by the Petitioner, **BOROUGH OF BLOOMINGDALE** (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative

Directive #14-24 (“Directive #14-24”) of the ”Program”, seeking a certification of compliance with the FHA;

**AND THE COURT**, having entered its “*Decision and Order Approving Municipal Housing Element and Fair Share Plan for the Fourth Round Housing Cycle*” on May 1, 2025 (“Approval Order”) for the Municipality to meet and ensure satisfaction of its previously fixed “present need” obligation of 0 affordable housing units, and a “prospective need” obligation of 310 affordable housing units (collectively, the “Fourth Round Affordable Housing Obligation”),<sup>1</sup> and therein authorizing the Municipality to adopt its implementing Ordinance(s) to satisfy its Fourth Round Affordable Housing Obligation;

**AND IT APPEARING** that, the Municipality, upon having given due notice to all interested parties as provided for by the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12, et seq. and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., as required, adopted implementing ordinances and resolutions to ensure implementation of its approved Fourth Round Housing Element and Fair Share Plan (“HEFSP”), incorporating therein any changes from the Program and this Court’s prior Order, and on March 3, 2026, for the implementation of its Fourth Round Affordable Obligation, and thus by or before March 15, 2026;

**AND THE COURT**, having previously and here again determined that the Municipality’s Fourth Round HEFSP is fair and reasonable to the region’s low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984), *aff’d o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West

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<sup>1</sup> Per prior “*Decision and Order Fixing Municipal Obligations for ‘Present Need’ and ‘Prospective Need’ for the Fourth Round Housing Cycle*” of this Court entered on May 1, 2025 (see Trans. ID: LCV20251276845).

Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) and, therefore, approved by the Court;

**AND THE COURT**, having been satisfied and further determined that the Municipality has timely adopted implementing ordinances and resolutions to ensure implementation of its approved Fourth Round HEFSP, incorporating therein any changes from the Program and this Court's prior Order(s), and for the satisfaction of its Fourth Round Affordable Obligation, as provided for and in accordance with N.J.S.A. 52:27D-304.1f (2)(c) of the FHA and Section III.A of Directive #14-24 (as amended), and which Plan contained the elements set forth in the "Addendum" attached to Directive #14-24 (as amended), having thereby qualified for immunity, and for good cause having otherwise been shown:

**IT IS** on this 29th day of April **2026, ADJUDGED AND ORDERED**, as follows:

1. That Exhibit P-1 (the Fourth Round HEFSP), Exhibit P-2 (Special Adjudicator's Report), and Exhibit P-3 (adopted Implementing Ordinance(s)), are hereby admitted into evidence and entered into the record.

2. That the Municipality has provided adequate notice of its proposed Implementing Ordinance(s) for implementation of its approved Fourth Round HEFSP to the public and all interested parties and in strict accordance with the Court's prior Approval Order.

3. That the Municipality's approved Fourth Round HEFSP and constituent compliance mechanisms contained therein, and the Implementing Ordinance(s), are hereby determined to be fair and reasonable to the interests of the region's low- and moderate-income households and to represent a realistic opportunity for the provision of affordable housing in accordance with the Mt. Laurel doctrine, and specifically in accordance with the principles set

forth in Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984), *aff'd o.b.* 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

4. That the Municipality and those parties implicated or otherwise involved and referenced therein are directed and ordered to proceed, *forthwith*, to implement the approved Fourth Round HEFSP and approved compliance mechanisms contained therein and in accordance with its terms.

5. That the Municipality's immunity from builder's remedy and/or exclusionary zoning litigation, be, and is hereby continued and shall remain in full force and effect for the Fourth Round period of July 1, 2025 to June 30, 2035, *subject, however*, to revocation or other Order of the Court that does or may hereafter issue, on notice of motion to the Municipality and all interested parties and good cause shown, at any time during the pendency of the Fourth Round Housing cycle..

6. **That the Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of this Certification of Compliance and Repose and the Municipality's adopted Fourth Round HEFSP.**

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on the Petitioner, Petitioner's counsel, and counsel for all Challengers upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:

**/s/ Darren J. Del Sardo**

**HON. DARREN J. DEL SARDO, P.J.Cv.**

*Designated Mt. Laurel Judge – Passaic Vicinage*

(X) By the Court.

**EXHIBIT P-1**

# **Borough of Bloomingdale**

## **AFFORDABLE HOUSING ADMINISTRATIVE AGENT**

*Policies and Procedures Manual*

**MARCH 2026**

## **Administration of Affordable Units**

Prepared by:

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## Borough of Bloomingdale

### Administration of Affordable Units Operating Manual

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## EXECUTIVE SUMMARY

This Operating Manual, prepared for **Borough of Bloomingdale** hereafter referred to as “Municipality”, (1) sets forth the policies and procedures for placing eligible individuals and families into the Municipality’s affordable units and (2) provides instructions for working with developers, owners and landlords as new affordable units become available. This document is designed to ensure compliance with the State’s Uniform Housing Affordability Controls (“UHAC”) (N.J.A.C. 5:80-26.1 et seq.) and with the Municipality’s Affordable Housing Ordinance, its Affirmative Marketing Plan if applicable, and other local laws and requirements. In addition to being a valuable tool for the Municipality’s Administrative Agent and Municipal Housing Liaison as we implement Affordable Housing in the Municipality, it will also be a resource for other Affordable Housing professionals and interested members of the public to understand the intricacies of implementing a program such as this.

This manual details the tasks involved in the day-to-day administration of Affordable Housing units under the direct control and oversight of the Municipality. This document covers how new units are created and priced and how units are marketed to prospective applicants. Other information includes the following: waiting list and random selection procedures; required and permitted preferences; procedures for determining income eligibility; resale by income-eligible owners of affordable property to other eligible buyers; process for property managers to fill affordable rental vacancies; refinancing and mortgage modification procedures; waivers of program requirements. The administrative steps outlined in this manual are the thread that holds the fabric of the entire program together, setting out the fundamental obligations and responsibilities of the program administrators.

This manual reflects changes to UHAC that went into effect in December 2025. These UHAC changes impact every aspect of the Administration of affordable units from income qualification to deed restrictions and there are many outstanding questions about the applicability of the rules and how to implement the regulations. Future changes to the manual will be required after The Department of Community Affairs (DCA) launches its educational program for Administrative Agents. In addition, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) has indicated on their website that they will be publishing and an updated “Understanding UHAC” manual that will provide additional clarification to Administrative Agents on the updated regulations.

The **Glossary** at the end of this Operating Manual provides definitions of terms, abbreviations and acronyms used throughout the Operating Manual.

## I. INTRODUCTION

The purpose of this manual is to describe the policies and procedures used to create Affordable Housing units in the Municipality and fill them with income-eligible families.

The policies outlined in this manual are derived from the December 2025 version of UHAC (N.J.A.C. 5:80-26.1 et seq.) The manual will be updated after DCA launches its educational program for Administrative Agents and NJHMFA publishes additional guidance on their website. This manual does not include all provisions of UHAC, and UHAC is a companion document to this manual. Instead, this manual highlights instances where additional guidance is provided by the NJHMFA, DCA staff or by local ordinance. The manual also provides additional clarification and direction on items that are not in UHAC in order to ensure fairness to applicants, owners, and renters.

### **I-A. What is Affordable Housing?**

Affordable Housing, unlike market-rate housing, has affordability controls establishing initial set prices and rents, and then controlling annual increases for many years. For example, new units that fall under these controls will be restricted for at least 30 years. The New Jersey Affordable Housing rules consider housing to be “affordable” if the household<sup>1</sup> expends approximately 28% or less of the household’s gross income on housing costs. See footnote below and Glossary for definition of “**Household**.” Affordable Housing is priced to be affordable to households earning up to 80% of the area median income for the region in which the Affordable Housing is located.

An Affordable Housing unit for the purposes of this manual can be specifically defined herein as “a housing unit proposed or created pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (“**Affordable Unit**”).

The Affordable Units referenced in this manual are not the same as public housing units that are funded largely by governmental programs such as those administered by the U.S. Department of Housing and Urban Development (“**HUD**”) programs and that are owned, operated and managed by a public housing authority (“**PHA**”). As defined by HUD, “public housing was established to provide

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<sup>1</sup> In accordance with US Department of Housing and Urban Development (“**HUD**”) definitions and UHAC practice, “**household**” references the number of persons in the unit and not the size of the unit. See for example, HUD’s definition of household as “[o]ne or more persons occupying a housing unit” -- in other words, the number of persons in the home. HUD website accessed June 13, 2016. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/library/glossary/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/glossary/), See also, UHAC regulation N.J.A.C. 5:80-26.4, “In determining the initial rents and initial sales prices for compliance with the Affordability Average requirements for restricted units ... the following standards shall be used: 1. A studio shall be affordable to a one-person household.”

decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in all sizes and types, from scattered single-family houses to high rise apartments for elderly families. There are approximately 1.2 million households [in the US] living in public housing units[.]”<sup>2</sup> Some municipalities create their own PHAs which operate and manage public housing within the municipality.

## I-B. Who Qualifies for Affordable Housing?

To be eligible for Affordable Housing in New Jersey, a household’s income must be below the established income limit for the region in which the Affordable Housing is located. There are three eligibility levels: very low, low, and moderate. A moderate-income household is classified as earning less than 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income, and a very low-income household is classified as earning less than 30 percent of median income. See Glossary for definitions of “**Low- Income Household**” and “**Very Low-Income Household**”. There are different median incomes in each of the six Affordable Housing regions shown in Figure 1 below, with the Municipality located in **Region 1**. The income limits are adjusted annually.

**Figure 1: Affordable Housing Regions**

Regions	Counties
1	Bergen, Hudson, Passaic, Sussex
2	Essex, Morris, Union, Warren
3	Hunterdon, Middlesex, Somerset
4	Mercer, Monmouth, Ocean
5	Burlington, Camden, Gloucester
6	Atlantic, Cape May, Cumberland, Salem

## I-C. Equal Housing Opportunity

Title VIII of the Civil Rights Act of 1968 (the “**Fair Housing Act**”), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability.

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<sup>2</sup> [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph), US HUD Website, accessed June 7, 2016.

The **New Jersey Law Against Discrimination** (“**LAD**”) prohibits discrimination when selling or renting property. The law covers owners, agents, employees and brokers and makes it unlawful to refuse to rent, show or sell property based on a person's race, creed, color, national origin, nationality, ancestry, marital status, domestic partnership or civil union status, familial status, affectional or sexual orientation, gender identity or expression, sex, or mental and physical disability, including AIDS and HIV-related illness. In addition, the LAD prohibits discrimination in the housing context based on one's source of lawful income or rent subsidy.

The **New Jersey Fair Chance in Housing Act** prohibits a housing provider from considering arrests or charges not resulting in a conviction, expunged convictions, executively pardoned convictions, vacated or nullified convictions, juvenile adjudications of delinquency, or sealed records. Housing providers cannot ask about or consider a potential tenant's criminal history – including on their initial application materials, in interviews, or in any other way – before making a conditional offer of housing. There are two exceptions for when a landlord may inquire about criminal histories without making a conditional offer: A conviction for the manufacture or production of methamphetamine on the premises of federally assisted housing; and A conviction that requires the applicant to register as a sex offender for life.

## **II. CREATION OF NEW UNITS**

This manual applies to UHAC eligible units whether for rent or for purchase, 100 percent affordable developments, market-to-affordable projects, gut-rehab projects, and other innovative Affordable Housing mechanisms. It does not apply to projects exempt from portions of UHAC including low-income housing tax credit projects and group homes. (See UHAC for a full list of exempt programs.)

### **II-A. Review Project Requirements**

When a new project is planned, the administrative agent designated by the Municipality for the administration of Affordable Units (the “**Administrative Agent**”) will gather the information about the development. The first step is to review development approvals and/or developer agreements, the Housing Element and Fair Share Plan, and the municipal Affordable Housing Ordinance, including its Affirmative Marketing Requirements if applicable.

### **II-B. New Purchase Units**

#### ***1. Initial Pricing and Bedroom Distribution of Purchase Units***

The Administrative Agent will determine the initial pricing stratification in compliance with UHAC. The Administrative Agent will also review the municipal housing ordinance and other planning documents to determine if units are prior round units and if there any other additional requirements when setting initial sale prices.

The pricing calculation will take into consideration costs that exist at that time including such factors as the mortgage rate, tax rate, equalization ratio, condominium/homeowner association fee, and Private Mortgage Insurance (“**PMI**”). PMI must be included in the pricing calculation even if a new development will provide financing that will not require PMI. This will ensure that the price is affordable at future sales when PMI will be required. The maximum restricted sales price (“**MRSP**”) will be affected by mortgage interest rates when an affordable Unit is initially priced. At resale, the prevailing mortgage interest rate will be used to determine the affordability of that particular unit to the applicant household. 2

#### ***2. Upgrades from Builder***

The builder may offer buyers of new Affordable Units the opportunity to purchase upgrades such as granite countertops or hardwood flooring at additional cost. If upgrades are offered, the following guidelines apply:

- a. These upgrades must be optional. The buyer must be able to choose NOT to purchase the upgrades and be able to buy the base home at or below the MRSP.
- b. The sale price of the home will be at or below the MRSP without the cost of the upgrades.
- c. All future sales will be based on the sale price without the upgrades. In other words, the buyer will not be able to recoup the cost of the upgrades at the next sale.
- d. The buyer cannot finance more than the MRSP. As a result, the buyer will not be able to finance the cost of the upgrades.

**3. Deed Restriction**

Affordable Units created under this program will be deed restricted as affordable for a period of at least 30 years. All legal instruments to secure the affordability will be modeled after the applicable instruments published in the UHAC Appendices. The affordability control period start date for each unit begins when the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.

A market-rate appraisal will be required to calculate the repayment amount on the affordable Recapture Mortgage Note. (This amount is the difference between the market appraisal and the affordable sale price and is due at the first non-exempt sale at the end of the control period.) The developer is responsible for providing the market rate appraisal. One appraisal can be used for similar unit types (all one bedrooms that are the same models, for example) if the appraisal is less than six months old. If the buyer's mortgage company completes a market-rate appraisal, that appraisal can be used instead. (See additional discussion in Section V.)

**4. Earnest Money (Deposit) for Ownership Properties**

The Affordable Housing rules do not specify a minimum or a maximum amount that a buyer must put down on a property when the Purchase Agreement and/or Contract of Sale is executed. However, while not required, a down payment is recommended because banks will almost never lend without a 5% minimum contribution.

**II-C. NEW RENTAL UNITS****1. Initial Pricing and Bedroom Distribution of Rental Units**

Rents will be set according to the pricing guidelines outlined in UHAC. The Administrative Agent will also review the municipal housing ordinance and other planning documents to determine if units are prior round units and if there are any other additional requirements when setting initial rents.

**2. Deed Restriction**

Control periods shall be at least 30 years as applicable unless otherwise indicated for rental units that meet the definition of prior round units. Other than for prior round units, control periods for restricted rental units shall be at least 40 years. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent. All legal instruments to secure the affordability will be modeled after the applicable instruments published in UHAC.

The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction.

The units cannot be “swapped” during the control period. *For example, after the deed restriction is filed, the affordable designation of the unit cannot be changed from a Low-Income to a Moderate-Income unit.* Moreover, it is important to note that the prevailing regulations (UHAC) do not require annual recertification, and therefore while the unit remains as a Low/Moderate-Income unit during the term of the deed restriction, the income of the current tenant is no longer relevant following initial eligibility. The same rules relating to initial eligibility certification and no annual recertifications will continue to apply to each subsequent tenant throughout the duration of the deed restriction.

### 3. Mandatory and Optional fees

At vacancy, all fees for affordable tenants will comply with the current UHAC regulations summarized below. If a tenant had previously signed a lease, the existing fee structure may be maintained until the tenant vacates the unit.

**Figure 1: Rental Fees**

<b>1. Certificate Of Occupancy Fees</b>	Prohibited
<b>2. Move-In Fees</b>	Prohibited
<b>3. Move-Out Fees</b>	Prohibited
<b>4. Mandatory Internet Fees</b>	Prohibited
<b>5. Mandatory Cable Fees</b>	Prohibited
<b>6. Mandatory Utility Submetering Fees</b>	Prohibited
<b>7. Parking Fees</b>	Prohibited EXCEPT developments may charge parking fees for 1 car if the development has fewer than one and a half off-street parking spaces per unit.
<b>8. Amenity Fees</b>	Any fee structure that would remove or limit affordable renters’ access to any amenities or services that are required or included for market-rate renters is prohibited.
<b>9. Pet Fees</b>	Pet fees may not exceed \$30.00 per month per household (not per pet) and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
<b>10. Optional Fees (storage spaces, bike share programs, party room rental)</b>	Permitted but may not exceed the amounts charged to market-rate tenants.
<b>11. Application Fees (including credit check)</b>	Fees greater than 5% of rent prohibited.

Utility allowances are factored into the initial pricing and are not considered mandatory or optional fee.

The developer may require that all renters purchase *rental insurance*. The rental insurance cost is not considered a mandatory fee and will not be included in the initial rental calculation or part of the minimum income calculation.

#### **4. Hold Fees**

After the household passes the landlord's tenant selection criteria, the landlord *may* choose to collect an additional fee from the applicant to process the Affordable Housing application. Landlords may choose to implement this optional fee so only serious applicants move through the income certification process. If this optional fee is collected, the following rules apply:

- The fee cannot be higher than one month's rent.
- If the applicant is income-certified and rents the unit, the fee will be applied to the first month rent and/or down payment.
- If the applicant is income certified and they choose not to rent the unit, the landlord is not required to return the fee.
- If the applicant is determined to not be income eligible, the landlord must return the fee.

#### **5. Security Deposit**

Security deposits for Affordable Units are governed by New Jersey Landlord-Tenant regulations. The requirements are the same for Affordable Units as they are for market-rate units.

#### **6. Tenant Selection Criteria**

Affordable units are "private" market units (as opposed to public housing units) where rents are set (and deed restricted as to time) to be affordable to very low, low, and moderate income persons. Although deed restricted, the units still are under the "control" of the private owner/landlord, with oversight by the Administrative Agent. Accordingly, other than the set rent and deed restriction requirement, the landlord may establish its own non-discriminatory legal criteria for tenant selection. Such tenant selection criteria must be the same in renting Affordable Units as for leasing market rate units. All tenant selection criteria must comply with all New Jersey landlord tenant law including the New Jersey Fair Chance in Housing Act.

### III. MARKETING OF UNITS, WAITING LIST, AND MATCHING HOUSEHOLDS TO AVAILABLE UNITS

The following section describes the steps that will be taken to identify very low, low, and moderate income families that may be interested in renting and purchasing Affordable Units created by the Municipality. All marketing initiatives must comply with the Affirmative Marketing rules established by UHAC, as presently set out in NJAC 5:80-26.16 and in accordance with any additional Affirmative Marketing Plan developed by the Municipality.

Development-specific Affirmative Marketing Plans would outline required marketing, including paid advertising that must be conducted before a random selection is completed. (See Random Selection and Waiting List Priority in Section B, below.)

While the waiting list is open, Affirmative Marketing will continue in the form of listing of units on NJHRC.gov, affordablehomesnewjersey.com, and/or quarterly mailings to community groups, major employers, and government agencies in the New Jersey Affordable Housing region where the Municipality is located. If the waiting list is ever closed because of the long length of the list, paid advertising as outlined in the Affirmative Marketing Plan will be required to reopen the waiting list.

#### **III-A. Preliminary Application**

All households that wish to be considered for Affordable Housing must submit a preliminary application. Households will be encouraged to submit their preliminary application online. For those applicants who do not have internet access, the Administrative Agent will work with interested applicants by phone and mail. The preliminary application will include questions about household income and its composition in order to determine preliminary eligibility. Please note that preliminary eligibility is based solely on self-reported information by the applicant and is in no way a guarantee of eligibility.

If the applicant indicates that their total household income is below the moderate income limit for their family size, they will be eligible for placement in the applicant pool. The Administrative Agent will also set a minimum income that is required to be added to the waiting list. (See *Minimum Income Requirements* in this Chapter.) Applicants will be required to provide written documentation of their income at the time of the full income certification as discussed in *Chapter IV*.

#### **III-B. Random Selection and Waiting List Priority**

The Administrative Agent will assign random numbers to each applicant through a computerized random number generator thereby creating a waiting list.

After the list of applications submitted during the initial lottery period is exhausted, the priority of preliminary applications is established by the date that the household submits their preliminary application (“**Interest Date**”).

At the time a unit is available, a separate list of applicants is created for each property, deriving from a municipality-specific waiting list of applicants who have added themselves to that waitlist up to the day of the creation of the separate development list.

The household with the highest lottery number (or oldest Interest Date) may not always be the next person contacted for a specific available unit because of factors impacting waiting list priority. In addition to age-restricted requirements, these factors include the number of persons in the household, household income level, households with a person with physical disabilities, veterans preference, regional preference, and New Jersey preference as may be established in the Municipal Affordable Housing Ordinance. The municipality has selected to use a regional preference and to use a New Jersey preference and to use a veterans preference, which appears in the municipality's Affordable Housing Ordinance. Each of these six waiting list priority factors are further described in *Figure 2*. In addition, with respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

### **III-C. Matching Applicants on Waiting list to Available Units**

When an applicant becomes eligible to be offered an Affordable Unit, they will be asked to complete an Interest Form. The Interest Form will assess whether they continue to meet the income requirements and whether they remain interested in purchasing or renting a specific unit or unit type.

The Administrative Agent will strive to fill available affordable units as quickly as possible in order minimize vacancy times and thereby assisting more households with affordable housing. Instead of inviting one applicant at a time for each available unit, the Administrative Agent will invite a group of households that meet the eligibility requirements to complete an Interest Form for each available unit. This method reduces the time it takes to fill an affordable housing vacancy. Waiting list priority will be established by the factors outlined in *Figure 2*. Households will have 24 hours to respond to the Interest Form to determine if they are interested in being potentially referred to the unit. If they do not want to pursue the unit or even if they do not respond at all, they will **not** be removed from the waiting list and will be notified of the next available vacancy. The Administrative Agent will prescreen the applicant's responses to the Interest Form.

**Figure 32: Additional Factors Impacting Waiting List Priority**

<b>1. Age-Restricted</b>	Only households that meet the age-restricted requirements will be offered age-restricted units.
<b>2. Regional Preference</b>	Municipalities may choose to give preference to households that live or work in the local Affordable Housing region. The municipality has elected to give preference to households that live or work in the local Affordable Housing region, such regional preference shall be established by ordinance. In such instance, applicants who indicate that they live or work in the Affordable Housing region will be contacted before those outside the region. Once those applicants are exhausted, applicants outside the region will be contacted.
<b>3. New Jersey Preference</b>	Subordinate to the regional preference, the municipality may choose to give preference to households that live and/or work in New Jersey.
<b>4. Household Size (Number of Members)</b>	Whenever possible, there will be at least one person for each bedroom. If the waiting list is exhausted and there are no households with a person for each bedroom, units will be offered to smaller sized households that do not have a person for each bedroom. An applicant household cannot be required to take an Affordable Unit with a greater number of bedrooms as long as overcrowding is not a factor. (A maximum of two people are permitted per bedroom.) A household can be eligible for more than one unit category. An applicant may request a reasonable accommodation for an extra bedroom to accommodate large medical equipment. Applicants must provide Doctor's note at time of income certification.
<b>5. Maximum Minimum Income</b>	Only households that are under the income limit of the Affordable Unit AND meet the minimum income requirements will qualify to apply for the next Affordable Unit. See <i>Figure 5</i> for a full discussion of minimum income requirements.
<b>6. Fully Accessible Units</b>	A household with a person with physical disabilities will get preference on the waiting list for accessible units because of the very limited number of handicapped accessible units. Applicants must provide a letter from their doctor stating what kind of accommodation they require as a result of their disability.
<b>7. Veterans Preference</b>	The Municipality and developer may enter into an agreement to provide preference to veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c. 171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. If applicable, veterans who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy.

Another way the Administrative Agent will strive to minimize vacancy times is by determining when to invite applicants to submit a full application during the screening process. There are three primary avenues. All applicants applying for the same unit will follow the same path.

1. **Referral after Interest Form** - For most resales, applicants are referred to the seller of the affordable home after the Interest Form is submitted and screened before being invited to submit a full application. This method is generally preferred because each resale unit varies in condition and finishes. Not requiring applicants to submit full applications prior to referral allows applicants to see the opportunity before they invest time completing the full income certification application with supporting documents.
2. **Referral after Full Application Prescreen** – For all rental units and some sale units, potentially eligible applicants will be invited to submit a full income certification application after the interest form is screened. CGP&H will also prescreen the full income certification application. Ineligible applicants will be notified that they do not qualify for the unit based on self-reported information. This prescreening of the full application does not include a review of required supporting documentation. Potentially eligible applicants will be referred to the landlord or owner after the full application prescreen.
3. **Referral after Full Income Certification** – In some cases, applicants will be referred to the landlord or owner after the applicant is fully income certified.

Another way the Administrative Agent can expedite the filling of vacancies is by contacting all eligible households for a specific unit when the waiting list is very short. This approach allows the Administrative Agent to move through the waiting list as quickly as possible. Waiting list priority will be established by the factors outlined in *Figure 2*. If more than one household qualifies and is interested, the household with the highest priority number will be offered the unit first.

### III-D. Determining Preliminary Eligibility

The Administrative Agent will review the Interest Form to determine whether the applicant meets or continues to meet the requirements to rent or purchase the unit. All information will be verified during the full application process. The following sections describe the factors that will be reviewed to determine preliminary eligibility as well as final eligibility during the full income certification process.

#### 1. **Regional and State Preference**

Should a municipality determine that households that live or work within the Municipality's Affordable Housing Region and/or New Jersey are to be given preference in being contacted, such preferences shall be set out in the municipality's Affordable Housing Ordinance. Upon the adoption of such an ordinance, the Administrative Agent will confirm that the household either lives or works within the region and/or New Jersey. If they no longer live or work within the region and/or New Jersey, they will remain on the waiting list for consideration after all in-region and/or in-state applicants have been considered. The municipality does have a regional preference. The municipality does have a New Jersey preference.

## 2. Determining Household Composition

The household is composed of all permanent members of the household, and the composition will determine both the size of the unit needed by the household and the maximum income limit of that household. Some household members may be considered in the bedroom calculation who are not counted in the maximum income calculation as shown in *Figure 3*. If applicant's divorce decree states that both parents share legal and residential custody but the former spouse has primary custody for school purposes, the child may be included in the applicant's household when determining household size during the income certification process.

**Figure 3: Determining Household Size (Number of Members)**

	<b>Maximum Household Income Limit</b>	<b>Bedroom Size Calculation</b>
<b>Foster Children</b>	Do not count in household (do not include foster care income either)	Count
<b>Live in Health Aid or Nanny</b> (This must be a paid position and proof of contract with caregiver is required)	Do not count (Must provide proof that person is hired)	Count
<b>Child Whose Primary Residence is Not the Applicant Household</b>	Do not count unless custody is 50/50 (see narrative)	Count
<b>Unborn Child</b>	Count (Cannot ask for documentation because of privacy)	Count
<b>Child being adopted</b>	Count	Count
<b>Full time college student not living at home</b> (Full time student is a member of the household reported to the IRS as a dependent who is enrolled in a degree seeking program for 12 or more credit hours per semester)	Count (Do not count any part time income earned where part time is any income earned on less than a 35 hour work week)	Count

## 3. Maximum Income Limits

The Administrative Agent will confirm that the household's income reported on the Interest Form falls under state mandated maximum income limit for the unit for which they are applying. Maximum income limits are provided annually by the NJ HMFA for each of the six Affordable Housing regions.

#### **4. Minimum Income Requirements**

Unlike maximum income limits, the State does not set minimum income limits. Instead, the State provides different income-to-housing expense ratios for rental and purchase units and different standards for age-restricted homes. The purpose of these ratios is to provide guidelines so applicants will be able to sustain their monthly housing expenses in the Affordable Units.

Evaluating minimum income requirements is complicated because the permitted ratio of monthly income that can be spent on housing expenses varies for different unit types and waivers are permitted. *Figure 4* details the minimum income ratios that will be utilized at each stage of the outreach process as well as during the full income certification. Since waivers from UHAC are allowed (see below), outreach is extended to households that do not quite meet the minimum income requirements. *For example, UHAC stipulates that households must not pay more than 35 percent of their monthly income for housing expenses if they are purchasing a home unless they meet a waiver requirement. When a specific home is for sale, outreach is expanded to all households whose housing expenses are under 37 percent instead of 35 percent. At the time of income certification, the exact percentage and whether they meet a waiver requirement is confirmed.*

Precise waiver requirement standards are not stipulated in UHAC, and *Figure 4* provides guidance when evaluating waiver requests. The State permits the Administrative Agent to give waivers to households to purchase a unit when their existing monthly housing expenses exceed 35 percent of their monthly income under the following conditions:

- The household can provide evidence that they have completed a HUD-certified home budgeting course; and
- The household obtains a firm mortgage loan commitment at the higher housing expense percentage of income level from a licensed financial institution.

Likewise, rental waivers may be given under the circumstances described below, and the household must receive a budgeting counseling class.

- The household can document that the housing expense of the Affordable Unit is less than the housing expenses of their current housing; or
- The household currently pays more in rent and the proposed rent will reduce the household's housing costs; or
- The household has consistently paid more than 35 percent (40 percent for households eligible for Age-Restricted Units) of eligible monthly income for rent in the past and has proven its ability to pay; or
- The household is currently in substandard or overcrowded living conditions;
- The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
- 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. (This includes applicants with a Section 8 Voucher.)

When reviewing a waiver request, the Administrative Agent may take into consideration whether the applicant is receiving other assistance such as SNAP Benefits (Food Stamps).

#### **5. Regional Asset Limit**

The administrative agent shall deny the certificate of eligibility if the applicant household meets income eligibility requirements but possesses net household assets valued at an amount greater than the Regional Asset limit published annually by NJMFA. Administrative agents shall determine household net assets in accordance with the procedure for calculating "net family assets" stipulated at 24 CFR 5.603(b), as it may be updated from time to time.

The estimated net value of an applicant's primary residence shall be excluded from the calculation of net total assets if any of the following apply:

- The applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, as applicable) exceed 38 percent of the household's eligible monthly income;
- The applicant is receiving assistance for the residence pursuant to 24 CFR 982.620 or pursuant to the Homeownership Option at 24 CFR 982;
- The applicant jointly owns the residence with an owner-occupant who is not part of the applicant household and with whom the applicant does not reside;
- The residence is a restricted ownership unit subject to the requirements of this subchapter or a unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, including any 95/5-restricted unit;
- Any member of the applicant household is a victim of domestic violence, as defined by the Prevention of Domestic Violence Act of 1991, P.L. 1991, c. 261 (N.J.S.A. 2C:25-17 et seq.); or
- The applicant demonstrates that the residence is not suitable for occupancy, according to any of the criteria listed at 24 CFR 5.618(a)(2)(i) through (v).

The administrative agent must accept self-certification from any member of an applicant household claiming to be a victim of domestic violence for purposes of the exception.

Figure 4: Minimum Income Calculations <sup>1</sup>

<b>RENTALS</b>		
<i>Monthly Housing Expense Calculation is rent + utilities not included in rent – monthly rental Assistance (if accepted by landlord)</i>		
	<b>FAMILY UNITS</b>	<b>AGE-RESTRICTED UNITS</b>
<b>To Submit Preliminary Application</b>	Any household with income over <b>\$8,000/year</b>	Any household with income over <b>\$8,000/year</b>
<b>To Be Invited To Submit Interest Form</b>	<b>37%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup>	<b>42%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup>
<b>To Be Invited To Submit Full Application</b>	<b>37%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup>	<b>42%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup>
<b>To Be Income Certified To Rent Unit</b>	<b>35%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup> If applicant meets minimum income requirement with rent only, case manager will review utility allowance <sup>3</sup>	<b>40%</b> of income toward housing expenses <b>45%</b> of income toward housing expenses with rental waiver <sup>2</sup> If applicant meets minimum income requirement with rent only, case manager will review utility allowance <sup>3</sup>
<b>UHAC Requirement (Without Waiver)</b>	<b>35%</b> of income toward Housing Expenses	<b>40%</b> of income toward housing expenses
<b>OWNERSHIP</b>		
<i>Monthly Housing Expense Calculation is mortgage cost +HOA fee + property tax + insurance</i>		
	<b>FAMILY AND AGE-RESTRICTED UNITS</b>	
<b>To Submit Preliminary Application</b>	Any household with income over <b>\$8,000/year</b> .	
<b>To Be Invited To Submit Interest Form</b>	<b>37%</b> of income toward housing expenses No minimum down payment required	
<b>To Be Invited To Submit Full Application</b>	<b>37%</b> of income toward housing expenses	
<b>To Be Income Certified To Purchase Unit</b>	<b>35%</b> of income toward housing expenses <b>37%</b> of income toward housing expenses with ownership waiver <sup>2</sup>	
<b>UHAC Requirement (Without Waiver)</b>	<b>35%</b> of income toward housing expenses	
<sup>1</sup> Minimum income and percentages may be adjusted as needed to administer the program. Minimum income should not restrict eligible applicants and is designed to prevent applicants who do not have enough income from being added to the waiting list. All minimum income requirements will be clearly posted on the Administrative Agent's website. <sup>2</sup> Rental and Purchase waiver requirements are explained in the <i>Minimum Income</i> Section of this Chapter (see Section 4). <sup>3</sup> The utility allowance review will determine whether the applicant will be able to afford the monthly expenses. This is sometimes required because the new utility allowance greatly exceeds the original utility pricing or their household's actual utility costs may be less because of energy improvements.		

**6. Separated Applicants**

Separated applicants who have not finalized their divorce settlement agreement cannot purchase an affordable home until the spouse signs a form stating that they are releasing any claim right or interest in the affordable home being purchased. If the spouse refuses to sign the release, the applicant can request a judge to require the spouse to sign the form.

In order to calculate the household income of separated applicants at the time of the full income certification for both rental and sale properties, the applicant will need to provide a settlement agreement, divorce decree, or a division of assets signed by both parties.

**III-E. Annual Updates**

In order to keep the waiting list current, households will be asked to update their contact and other qualifying information on the waiting list annually. Households that do not update their information will be removed from the waiting list.

**III-F. Full Application**

Households will be invited to submit a full application to purchase or rent an affordable unit in order for the Administrative Agent to determine the income eligibility of the household. Applicants will have seven (7) days to submit the income application and seven (7) day extensions are permitted for a total of two weeks (14 days). Applicants will be advised that they may request an extension. All applicants will be provided a minimum of 14 days to complete their application.

The initial seven (7) day deadline with possible seven (7) extension is provided instead of an initial two week (14 days) deadline in order to assist applicants and reduce vacancy times.

### **III-G. Removal from the Waiting List**

Applicants on the waiting list for Affordable Housing can be removed from the list for any of the following reasons:

1. The applicant's income exceeds the income guidelines;
2. The applicant does not have the minimum income to purchase or rent any units in the portfolio;
3. The applicant assets exceeds the Regional Asset limit;
4. The applicant requests to be removed;
5. The applicant submits fraudulent information during the income certification process;
6. The applicant fails to submit the complete application on time (this includes failure to provide documentation needed to verify income and other required documents);
7. The applicant fails to respond to an inquiry in a timely manner;
8. The applicant does not cooperate or is abusive with staff, property managers, or the sellers of Affordable Units;
9. The applicant does not meet the credit requirements or other tenant selection criteria required by the landlord;
10. The applicant is unable to secure a mortgage;
11. The applicant does not attend a budgeting/home buyer counseling class if such is required (e.g., for a waiver);
12. The applicant does not respond to requests to purchase or rent a unit;
13. The applicant does not submit an annual update; or
14. The applicant has been approved to rent or purchase a unit in the Municipality.

Applicants who are removed from the waiting list may reapply. If approved to rent or purchase a unit in the Municipality, they may reapply for other opportunities in the Municipality.

### **III-H. Income Certified Applicants on the Waiting List**

Under certain circumstances, an applicant may be fully income certified but they do not proceed with the purchase or renting of the unit. In this case, the applicant will resume their original position on the waiting list. They will be contacted in the same priority outlined in this Chapter. In other words, being fully income certified will not result in any priority on the waiting list over other applicants. If the applicant does not sign a contract or lease within six months of the income certifications, the certification will expire.

In the future, the Administrative Agent shall accept household income determinations made within the previous 180 days by another administrative agent that has successfully completed DCA's Education Program. This is not applicable at this time because the Education Program has not been made available and therefore no Administrative Agents have successfully completed the program.

## **IV. DETERMINING INCOME ELIGIBILITY**

To be eligible for consideration for an Affordable Unit, a household must be determined to be income eligible.

The administrative agent shall determine household income in accordance with the procedure for calculating annual income at the time of initial occupancy and assistance, stipulated at 24 CFR 5.609, as it was in effect on December 20, 2024, and described in Chapter 5 of HUD [page=2782] Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, which is available at:

[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hsg/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3).

### **IV-A. Proof of Income and Other Supporting Documents**

Extensive supporting documents are required to document the household's income and other qualifying criteria. The full list of required supporting documentation is provided in *Figure 5*.

During the course of the income certification, applicants may be required to submit additional documentation to establish the household composition and income. While it is impossible to list all examples of additional documentation, some examples of additional documentation are described below. The Administrative Agent may require that documentation is notarized.

- Private mortgage documentation (bank statement of party lending the money, letter with terms of private mortgage);
- Proof of gift for down payment (bank statement of party gifting the money, letter with terms of private mortgage);
- Proof of rental assistance from family, friend, or community group;
- Death Certificate of spouse when applicant is a recent widow or widower;
- Notarized letter from employer explaining overtime that will be offered to employee;
- Itemized explanation of deposits in bank accounts;
- If there are other household members that appear to be living in the household now but are not part of the household as it was when applying for housing, the applicant will have to provide a notarized letter explaining the current and existing household composition;
- If there is someone listed on the applicant's bank statement that is not included in their household applying for Affordable Housing, the applicant will be required to show proof that the person does not reside with the applicant; and

Notarized letter regarding withdrawal from 401K accounts or pensions (For example, if funds were withdrawn last year, will the applicant be making a withdrawal this year?)

**Figure 5: Required Supporting Documents**

<b>Identification</b>
<input type="checkbox"/> Personal photo identification: Driver's License, passport, or State ID
<b>Income Related Documents – Provide All That Apply</b>
<input type="checkbox"/> Employment Income: 4 most recent consecutive pay stubs for all employed household members <input type="checkbox"/> Social Security: Most recent award letter <input type="checkbox"/> Temporary Assistance for Needy Families (TANF): Voucher or other verification <input type="checkbox"/> Pension: Letter from pension fund setting forth outlays and benefits received <input type="checkbox"/> Child Support: Current statement from NJ child support website, court order or notarized letter re: child support status <input type="checkbox"/> Alimony: Current statement from NJ website or notarized letter regarding alimony support status <input type="checkbox"/> Military Pay: Verification of military pay <input type="checkbox"/> Workers' Compensation: Statement showing benefits <input type="checkbox"/> Unemployment Benefits: Statement showing benefits <input type="checkbox"/> Self Employed or Own Business: Year to date profit & loss statement (not required if submitting K-1 with taxes) <input type="checkbox"/> 1099 for Independent Contractors (Profit and loss statements are not permitted)
<b>Bank Statements &amp; Other Accounts (Including JOINT ACCOUNTS)</b>
<input type="checkbox"/> Checking Account: All pages of statements for the last 6 consecutive months <input type="checkbox"/> Savings Account Statements Including CD's: All pages of statements for the last 6 consecutive months <input type="checkbox"/> Other Account Statements: Most recent statement for other assets such as retirement accounts, 401k's, stocks, bonds, & trusts
<b>Tax Returns</b>
<input type="checkbox"/> Federal Tax Return: All pages of 1040 Federal Tax Return for the past 3 consecutive years (copies of signed returns to validate the copy) <input type="checkbox"/> State Tax Return: All pages for the past 3 consecutive years <input type="checkbox"/> Notarized tax waiver letter if unable to provide taxes
<b>If Applicant Owns a Home, Condo, and/ or Rental Property, the Following is Required</b>
<input type="checkbox"/> Current mortgage statement <input type="checkbox"/> Investment property lease agreement (if applicable) <input type="checkbox"/> Current year tax assessment record <input type="checkbox"/> Real estate listing if this property is for sale <input type="checkbox"/> Contract with the realtor listing property if property is for sale <input type="checkbox"/> Foreclosure notice (LIS PENDENS, etc.) if the property is in foreclosure
<b>Other</b>
<input type="checkbox"/> Divorce Decree: All pages of divorce decree & settlement agreement <input type="checkbox"/> Full Time Student Over 18: School schedule to document full time status <input type="checkbox"/> Section 8: Voucher ( <b>RENTAL ONLY</b> ) <input type="checkbox"/> Mortgage Preapproval ( <b>OWNERSHIP ONLY</b> )

## IV-B. Final Eligibility Determinations

After the household's annual income and composition is determined and verified, the Administrative Agent will make the final eligibility determination. Requirements related to household composition, Regional Asset Limit, down payments, etc. outlined in *Chapter III* will also be verified.

Households determined to be eligible will receive an eligibility letter notifying them of their eligibility determination, in writing within five days of completion of the eligibility determination. When a household is determined ineligible, the household will be notified in writing and advised of the reasons for the ineligibility and that it may submit additional proof and request that the decision be reconsidered by the Administrative Agent. Such request for reconsideration shall be made by the applicant within five (5) business days of receipt of notice of denial of ineligibility. If an applicant for affordable housing is again determined to be ineligible by the Administrative Agent, then the Municipal Housing Liaison (see Chapter 7) will attempt to mediate the decision or policy to the satisfaction of all parties. Any situation that the Municipal Housing Liaison is unable to resolve will be forwarded to the Division of Local Planning Services (Division) for further appeal and review. The determination of the Division shall be a final administrative action.

## IV-C. Misrepresentation of Information in Application

When the applicant submits their full application, the applicant certifies that all information provided in the application is complete and true as to the entire household. If the applicant makes false statements or provides fraudulent documentation, the applicant will be determined ineligible immediately. They may reapply for Affordable Housing but they will lose their position on the waiting list.

## IV-D. Changes to Income and/or Household Composition after Submittal

Prior to the certification process and a determination of eligibility, a household may supplement its application. Once the full application has been submitted with the applicant certifying that all information is complete and true, the applicant enters the Eligibility Period. During this one to two-week timeframe during which the household's eligibility is being reviewed, the applicant is not permitted to change the employment status of any household member in order to become eligible for Affordable Housing nor change the household composition from what is listed on the application. *For example, the applicant cannot add a member to their household, subtract a member, quit a job, or get a new job, or a raise during the Eligibility Period.* See Glossary for definition of "**Eligibility Period**". If the applicant does make changes during this Eligibility Period, the household will be determined ineligible and lose their position on the waiting list. However, the applicant may reapply with their new income and/or household composition and will be assigned a new position on the waiting list.

## V. OWNERSHIP PROGRAM

At each purchase, Affordable Housing documents are executed that restrict units as Affordable Units. The process of finding a buyer is explained in depth in *Chapter III*. In addition, the buyer must be income certified as outlined in *Chapter IV* and information about establishing new ownership projects is also included in *Chapter II*.

The following outlines the process of selling and purchasing an affordable home.

### **V-A. Selling an Affordable Home (Resale)**

#### **1. Request an Intent to Sell Package**

When an owner wants to sell its affordable home, the first step is to request an Intent-To-Sell package. The owner, as “**Seller**”, cannot start the process of selling its home until it makes this request and receives the package from the Administrative Agent.

#### **2. Calculate the MRSP (Maximum Restricted Sales Price)**

The Administrative Agent will calculate the MRSP of the affordable home based on the last sale price and the last sale date. The annual increase issued is applied for each year the owner has owned the home. However, there is no increase if the owner has owned the home for less than a year. *For example, if an owner purchased an affordable home in March 2015 and requested to sell the home in January 2016, the MRSP is the price the owner paid for the home.*

In addition, if the owner requests to sell their home and the state has not released the annual increase for that year yet, no annual increase for the current year will be applied. *For example, if an owner requests to sell their home in February 2015, and the 2015 increase has not been released, the MRSP will not include an increase for 2015.*

Owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit based on capital improvements. All adjustments for capital improvements are subject to 10-year straight-line depreciation. Eligible capital improvements are:

- Those that render the unit suitable for a larger household or the addition of a bathroom.
- The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at UHAC.

No increase for capital improvements is permitted if:

- The improvements were not approved in advance by the Administrative Agent; or
- The maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage.

The Administrative Agent will prepare the Intent to Sell Package and send it to the Seller. This package will include:

- Form for the owner to sign and return, formally requesting to sell home;
- The MRSP of the unit;
- An overview of the process of selling an affordable home in this program;
- Blank Purchase Agreement;
- Summary of fees charged by the Administrative Agent/Municipality related to selling of the affordable home;
- Request for digital photographs to be utilized in the marketing of the home; and
- Request for additional information about the home to be utilized in marketing the home such as recent renovations and unit amenities.

### **3. Start Affirmative Marketing Process**

When the Administrative Agent receives the signed Intent to Sell Form back, it will begin the process of looking for a buyer for the unit. This process is outlined in *Chapter III* of this manual. The Administrative Agent will refer interested buyers directly to the Seller. The Seller will be responsible for showing the home to interested buyers. Buyers cannot enter into a contract with the buyer unless they are income certified by the Administrative Agent and next on the waiting list.

## **V-B. Buying an Affordable Home**

### **1. Preliminary Application and Prescreen**

In order to be considered to purchase an affordable home, interested buyers must submit a preliminary application. The process outlined in *Chapter III* will be followed even if the Seller has found a buyer interested in purchasing the property. The unit must be affirmatively marketed to other eligible households on the waiting list first.

### **2. Income Certification**

When a household would like to purchase the home, it will notify the Administrative Agent, and if it is next on the waiting list, it will be invited to submit a full application. The income certification process is described in detail in *Chapter IV*. A mortgage pre-approval must be submitted with the application as well as proof that the buyer has the recommended minimum down payment if required by the bank or provided at buyer's option. Buyers will be advised that they will also be responsible for closing costs, but they will not be required to show proof of funds at the time of the income certification.

### **3. Mortgage Provider**

The Administrative Agent will provide prospective buyers with a list of mortgage companies that have financed deed restricted Affordable Units recently. If the prospective buyer chooses to utilize a different lender, the Administrative Agent will provide the lender copies of the Affordable Housing documents for their review after the buyer is income certified.

A buyer may borrow money to purchase the home from a friend or family member (sometimes referred to as a “*Private Mortgage*”.) To proceed with the application, the Administrative Agent will require proof that the lending party has the funds (bank statement of the party who is lending the money, for example) and a notarized letter signed by both parties with the terms of the loan (monthly payment, interest, etc.). If the money is a gift, this should be noted in the letter. The lending party in a Private Mortgage situation MAY NOT be on the deed to the Affordable Unit.

#### **4. Down Payment**

In order to encourage homeowner investment and a sense of direct involvement in the homeownership process, it is strongly recommended that the buyer provide 5 percent of the purchase price as down payment. In addition, as a practical matter, applicants are highly unlikely to receive a mortgage without at least a 5 percent down payment. The funds may be provided as a gift (e.g., from a family member or friend) if the funds do not have to be repaid, and proof of the gift must be provided at the time of income certification (see above).

Some municipalities offer a down payment assistance grant program. In such cases, the minimum down payment requirement is governed by specific program requirements. The Administrative Agent will maintain a list of down payment assistance programs that may become available and provide program information to buyers.

#### **5. Separated Spouses**

Separated applicants who have not finalized their divorce settlement agreement cannot purchase an affordable home until the spouse signs a form stating that they are releasing any claim right or interest in the affordable home being purchased. If the spouse refuses to sign the release, the applicant can request a judge to require the spouse to sign the form.

#### **6. Cosigners on Deeds and/or Mortgages Are Not Permitted**

If a buyer for Affordable Housing cannot obtain a mortgage, a family member or friend CANNOT obtain a mortgage and allow the affordable buyer to reside in the home. Anyone on the deed and/or mortgage is considered part of the buyer’s household and must be included in the income certification and must reside in the home as its primary residence.

However, not all household members are required to be on the mortgage and/or deed. For example, if a household is composed of the buyer and its roommate, both the buyer and the roommate will be included in the income certification. The roommate is not required to be on the deed or the mortgage.

## V-C. Purchase Agreement and Contracts For Sale

As the buyer and seller enter into negotiations, the purchase agreement is an “internal”, not legally binding, DCA generated document between them to establish and ensure that the unit will be affordable to the buyer. It stipulates such terms as the MRSP of the unit, the agreed upon purchase price, the amount of good faith deposit, and the items to be included in the sale price of the unit (“**Purchase Agreement**”). All these terms are then set out in the contract for sale. Typically, the Purchase Agreement is signed after the buyer has been income certified, however under certain circumstances the Purchase Agreement may be amended and signed after the income certification process (see Section 4 below).

The contract for sale is a legal contract between the buyer and seller, finalizing the negotiations between buyer and seller and setting out all material terms of the transaction (“**Contract for Sale**”). The Contract for Sale can only be executed after the household is income certified.

Copies of both the Purchase Agreement and Contract for Sale should be sent to the Administrative Agent immediately upon execution.

### **1. MRSP and “Extras”**

The Purchase Agreement includes a section for the Seller to list items that may be sold separately at a price agreed upon by the buyer and seller. The price to be paid for items of personal property shall not be used as a mechanism to avoid or circumvent the limitations on the resale price of the unit itself. The personal property for sale cannot become a contingency of the house sale. If this separate transaction occurs, it cannot be incorporated into the Mortgage or Contract of Sale.

These “extras” do not include items of property that are permanently affixed to the unit such as countertops and flooring or were part of the original sale. These permanently affixed items are to be included in the MRSP and no additional compensation is permitted to the owner. As stated in UHAC, N.J.A.C. 5:80-26.9: “Upon the resale of a restricted unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price.”

### **2. Accepting and Rejecting Offers**

The Seller of the home must accept offers from the next buyer on the waiting list whose income is certified and who offers to purchase the home for the MRSP. The Seller cannot reject an offer at the MRSP from the first eligible person on the waiting list for any reason such as the buyer not making a cash purchase. In the contract, the Seller can include a requirement that the buyer be able to close in a reasonable amount of time, such as two months.

Buyers may make offers at less than the MRSP. The seller may choose to accept such an offer but is not required to accept such lower offers.

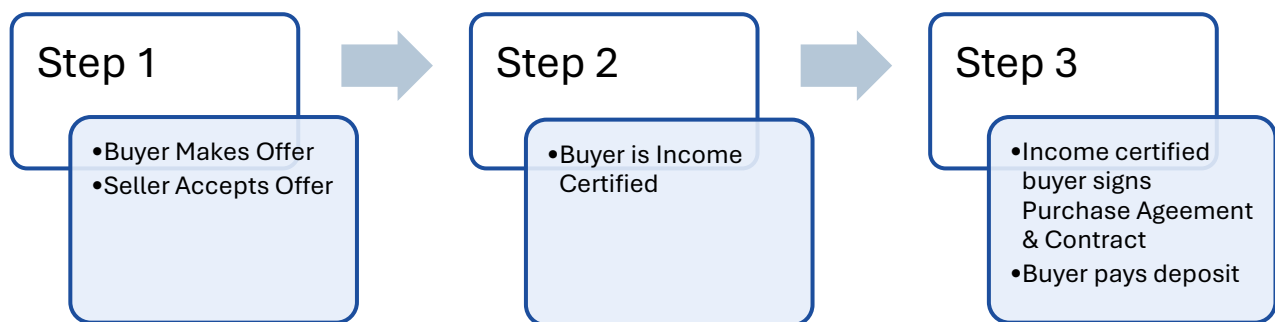
### 3. Good Faith Deposit/Earnest Money

It is not required, but the seller may choose to collect a good faith deposit or earnest money at the time the Purchase Agreement is signed.

### 4. Purchase Agreement and Income Certification

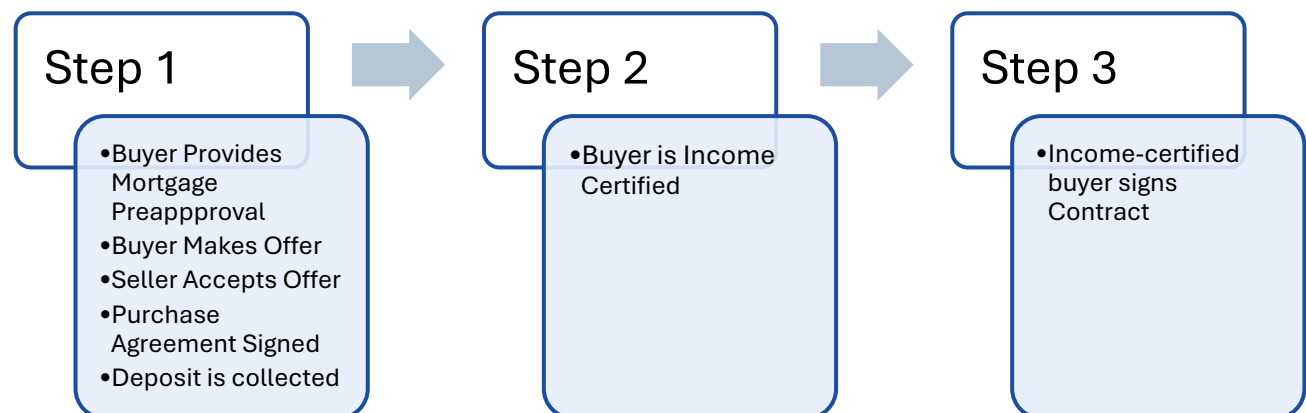
The Purchase Agreement is typically signed only after the household is income certified. (See *Figure 6 below.*) Under this process, the Purchase Agreement clearly states that only an income certified household may sign a purchase agreement. See [Glossary](#) for definition of “**Certified Household**”. This process will be utilized for most resales, and it is the most effective process for selling homes if there is not a high demand for the home.

**Figure 6: Purchase Agreement Signed After Income Certification**



However, under certain circumstances, the Administrative Agent may amend the Purchase Agreement to permit a buyer who is not yet income certified to sign the Purchase Agreement. These circumstances include new developments where demand is very high for the units. Under this approach, as shown *Figure 7*, the Purchase Agreement will clearly state that the Purchase Agreement is contingent on the income certification by the Administrative Agent of the buyer as a Low or Moderate-Income household and, in the event that the household is determined not to be income eligible or does not submit a complete application, then the Purchase Agreement is invalid.

**Figure 7: Purchase Agreement with Non-Income Certified Buyer**



## V-D. Attorneys

New Jersey does not require that attorneys participate in real estate transactions. However, while not a requirement, it is recommended that both the buyer and seller hire an attorney to draft the contract and represent them during the transaction.

## V-E. Realtors

A realtor is not required for the sale of the affordable home because the Administrative Agent will refer interested buyers from the waiting list. However, some Sellers may choose to hire a realtor to conduct additional marketing and show the home. This is permitted under the following circumstances:

- The Seller provides the realtor's contact information to the Administrative Agent so that the Administrative Agent can inform the realtor of the MRSP, preliminary application, income certification process, and other Affordable Housing requirements;
- All interested buyers referred by the realtor, must submit a preliminary application and will be contacted following the process outlined in Chapter III; and
- Any realtor fee is subtracted from the MRSP. In no circumstances will the price of the home exceed the MRSP.

## V-F. Coordination of Closing

After the home goes under contract, the Administrative Agent will maintain regular contact with the buyer, seller, and/or their attorneys as well as the mortgage provider. The Administrative Agent will answer questions about the Affordable Housing documents and assist to resolve any issues that arise before closing.

### 1. Required Legal Documents

The Administrative Agent will prepare the Affordable Housing documents. If 95/5 is currently being used, we will continue to use 95/5 for resales if the control period has not expired. Resale of Affordable Units: Requirement for a Market Rate Appraisal

A market rate appraisal will be required to calculate the repayment amount on the affordable Recapture Mortgage Note. (This amount is the difference between the market appraisal and the affordable sale price and is due at the first non-exempt sale at the end of the control period. The repayment amount is paid to the Municipality.)

For new units, the developer is responsible for providing the market rate appraisal. If the buyer's mortgage company completes a market-rate appraisal, that appraisal can be used instead.

For resales, the buyer must provide the market rate appraisal. If the buyer's mortgage company will not be completing a market rate appraisal or it is a cash deal, the buyer must pay for a market rate appraisal. *This buyer will be notified of this requirement as soon as the Purchase Agreement is signed because the unit cannot close without the market appraisal.*

## **2. Closing Fees**

If applicable, required closing fees paid by the Seller are due at the time of closing and must be included on the Settlement Statement. The fee cannot be waived.

The only exception is if the unit is bank owned as the result of a foreclosure action and the lenders (such as FHA, Fannie Mae, or Freddie Mac) are statutorily prevented from paying closing fees.

## **3. Closing Checklist**

At the closing, the Administrative Agent will review the Affordable Housing rules with buyer including the following:

- When the unit is sold in the future, the owner must contact the Administrative Agent. The unit cannot be sold for more than the MRSP, and it must be sold to an income Certified Household;
- All refinancing, including lines of credits, secured by the Affordable Unit, must be approved in advance and in writing by the Administrative Agent. The total amount of all debt may not exceed 95 percent of the MRSP of the home;
- The Affordable Unit must be the owner's primary residence;
- No renting of this unit is permitted except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent (see Waiver section for more information); and

Prior to closing, the Administrative Agent will obtain a copy of the Closing Disclosure for the Affordable Housing file that is executed at closing between the buyer and seller to confirm that:

- The sale price listed on the Closing Disclosure does not exceed the MRSP; and
- The buyer has not financed more than 95 percent of the sale price and that the buyer is not receiving cash back at closing.

Following closing, the Administrative Agent will obtain one original set of documents and distribute the copies as follows:

- Original of Mortgage, deed, discharges and Restrictive Covenant (if applicable) to the attorney or title company that handled the closing for recording.
- Copy of all documents is provided to the buyer.
- Original of Mortgage Note and copies of all other documents are kept by the Administrative Agent for the Affordable Housing file.

## **V-G. Refinance Requests**

Affordable home owners are permitted to refinance their mortgages or incur some form of additional debt on their home, such as a home equity loan. The owner must notify the Administrative Agent who will review the request to confirm that the total debt is not more than 95 percent of the current MRSP. If the total debt exceeds 95 percent of the MRSP, the request will be denied. If the request is under 95 percent, the request will be approved.

Reverse mortgages are not prohibited by UHAC. However, lenders have historically not approved reverse mortgages on deed restricted affordable properties because of the refinance limits. Any requests for reverse mortgages should be carefully reviewed to ensure that there is no way the loan amount will exceed 95 percent of the MRSP.

If there is a fee to review the refinance request, the refinance review will not be started until the fee is submitted via certified check or money order.

As clearly stated in the Restrictive Covenant, the owner is forbidden from refinancing or taking an equity loan, a secured letter of credit, or any other mortgage obligation or other debt without advanced, written approval from the Administrative Agent.

### **V-H. Annual Mailing**

The Administrative Agent will send a mailing to each of the affordable owners annually. This newsletter will provide the owner with information about how to get in touch with the Administrative Agent if they want to sell their home or refinance their mortgage. It will also remind them of other important Affordable Housing requirements.

The envelope will be marked “do not forward”, and if it is returned by the post office, the Administrative Agent will follow-up with the owner to determine if the owner is no longer living in the home.

### **V-I. Report that Owner is Not Living in the Unit and/or Renting Unit**

When the Administrative Agent obtains indications that an owner is not living in the unit, the Administrative Agent will investigate the allegation. The Administrative Agent will gather as many details as possible such as how long the owner has not been living in the unit; if anyone else is living there (i.e. renters); and if there is anyone else that will corroborate the allegations.

The Administrative Agent will also contact the Municipal Division of Tax Collection to determine where the tax bills are being sent. If they are sent to a different address than the property address on file with the Administrative Agent, then this is an indication that the owner is leasing the Affordable Unit.

The Administrative Agent will send a letter to the owner asking that it call the Administrative Agent within seven days. If the letter is returned, this will also suggest that the owner is not living in the unit. If the owner receives the letter and calls the Administrative Agent, the Administrative Agent will ask the owner about the allegations and request that they provide proof of residency, including copies of their driver’s license and utility bills. The Administrative Agent may also determine it is necessary to do an address search on the owner.

If it is determined that the owner is not living in the home, the enforcement provisions outlined in *Chapter VIII* will apply.

## V-J. Non-payment of Condominium/Homeowner Association Dues, Taxes, Mortgages, and Foreclosure

When the Administrative Agent receives a report that the owner is falling behind in home owner association dues, taxes, and/or mortgage payments, it will immediately reach out to the owner. The purpose of this outreach is to:

- Educate the owner on the risks of not paying their condominium or homeowner association dues, taxes, and/or mortgage payments;
- Determine whether the owner has experienced a temporary or permanent loss of income;
- Recommend that they contact their condominium/homeowner association and/or mortgage company to see if they can set-up a repayment plan;
- Refer them to foreclosure prevention resources; and
- Advise them of the MRSP of their home if they are interested in selling the home before they become further behind.

The Administrative Agent will track the status of the unit and coordinate closely with the Municipality through its Tax Collection and/or Assessor's Office, as well as its Corporation Counsel, in order to be updated as to any water and sewer fees that are in arrears and any foreclosures on Affordable Units. Additionally, the Administrative Agent will notify the Municipal Corporation Counsel if it becomes aware that the home is in foreclosure or a lien has been placed on the unit by the condominium/homeowner association.

All deed restrictions must clearly specify that the affordability controls remain in effect despite the entry and enforcement of any judgment of foreclosure.

## V-K. Waivers

The Administrative Agent has authority to grant waivers from some of the Affordable Housing rules. The Administrative Agent will complete a waiver request form for each request it receives outlining the details of the request and its decision to approve or deny the request.

### 1. Request to Rent Affordable Unit

Requests to rent a unit will only be approved on a temporary basis if the owner will be required to leave the area for a temporary period of time, such as military deployment. Each request will be reviewed by the Administrative Agent (as permitted by UHAC) based on the specific circumstances of the request. *Another example of where a request for waiver possibly would be approved is where the owner needs to go to another area to care for a sick relative for a short period (such as three months or less). A request for a waiver in order to move to another city to "try out" a new job for six months most likely would not be a basis for an approval.*

The Administrative Agent will determine the maximum rent based on the initial affordability pricing of the unit, and will select the tenant through Affirmative Marketing and random selection. Other

requests to rent units will be denied. These include requests from owners who would like to rent their home because they are unable to sell the unit for the full MRSP.

## **2. Request to Sell to a Higher Income Household**

After an Affordable Unit has been affirmatively marketed for over 120 days and if there is no interested income-eligible purchaser for the Affordable Unit after 120 days, the owner may request an income waiver, that is, that the Affordable Unit be affirmatively marketed and sold to someone in a higher income level (a very-low-income unit to be sold to a low-income household; a low-income unit to be sold to a moderate-income household; and a moderate-income unit to be sold to a non-income eligible household). The following conditions will apply:

- If granted, this waiver will only apply to this sale, and the original income restriction will remain for future sales.
- At no time will the sale price of the home exceed the MRSP which is based on the income level that the unit is controlled for. In other words, granting a waiver will not increase the MRSP and the owner will not receive a higher sale amount as a result of the waiver.
- The Administrative Agent will provide the Division a description of the of the efforts to market and sell the unit to income-eligible households and request that the Division determine that there are an insufficient number of income eligible purchasers and issue a waiver to permit the sale of the home to a higher income household.

The first factor the Administrative Agent will consider in reviewing these requests is how long it takes to sell a similar Affordable Unit in the current housing market. It is not unusual for an Affordable Unit to be offered for sale for six months or more before a qualified buyer is found. The waiver request will not be considered until the Affordable Unit has exceeded the “typical” time period it takes to sell a home under current market conditions.

Next, the Administrative Agent will review the sale price of the Affordable Unit. The inability to sell a unit for the MRSP shall not, in and of itself, be considered an appropriate reason for granting a waiver. The Administrative Agent will review the sale price of recent, comparable affordable homes and determine if the owner should consider lowering the price. The condition of the unit and whether the Seller has consented to show the Affordable Unit to interested applicants will be factored into this analysis.

If the Affordable Unit has been affirmatively marketed for at least 120 days, the unit has been for sale longer than other Affordable Units typically take to sell with the sale price comparable to other sales, the owner has shown the Affordable Unit to interested buyers, and there is no interested income-eligible buyer, the Administrative will seek a waiver from the Division.

## V-L. Requests for Improvements

Capital Improvements that address non-cosmetic replacement or improvements to the property and/or make the home suitable to a larger size household MAY increase the MRSP. (See Section A of this Chapter for more information about how the MRSP may be increased in some instances.)

Capital improvements that may increase MRSP the include:

- Adding a bedroom or bathroom;
- Replacement a leaky roof;
- Installation of a solar energy system owned by the homeowner;
- Installation of energy-efficient windows; and/or
- Replacement of broken appliances with ENERGY STAR-labeled products

In order to be factored into the MRSP at the time of resale, the homeowner must:

- Receive written approval for the improvements prior to commencing upon the work;
- Provide all requested receipts and documents showing proof of completion; and
- Provide proof that work was properly permitted and inspected as required by the municipality.

Improvements that do not increase the MRSP do not need to be approved by the Administrative Agent.

## V-M. Transfer of Ownership to Non-Income Certified Owner

Under the following circumstances, ownership of an Affordable Unit can be transferred to another owner without the new owner being income certified. These circumstances include:

- Transfer of ownership between husband and wife;
- The transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; or  
The transfer of ownership through an executor's deed to a Class A beneficiary (father, mother, grandparents, descendants, spouses, and, generally, civil union partners, or domestic partners).  
This waiver will only apply to this sale, and the original income restriction will remain for future sales.

## V-N. Enforcement

The guidelines for the enforcement of the affordable rules are outlined in *Chapter VIII*.

## **VI. RENTAL PROGRAM**

The following is an overview of the process of filling a rental vacancy. See *New Rental Units* in *Chapter II* for a discussion of allowable fees and landlord-tenant selection criteria and *Chapter III* for a full discussion of management of the waiting list.

### **VI-A. Filling Affordable Rental Vacancy**

#### **1. Landlord Notifies of Vacancy**

Landlords will notify the Administrative Agent when there will be a vacancy. Because of the Affirmative Marketing and income certification requirements, landlords will be advised that it may take up to two months to find a qualified tenant and longer if there is not high demand for a unit.

#### **2. Calculating the Maximum Rent at Vacancy**

The Administrative Agent will determine the Maximum Rent that can be charged to the new tenant. This will be based on initial rent when the first tenant occupied the unit and the annual increases permitted by the NJ HMFA. (Annual rental increases will be calculated even if the landlord did not take all permitted annual increases for the previous tenant.) At the landlord's discretion, the landlord can choose to rent the unit for less than the Maximum Rent determined by the Administrative Agent.

#### **3. Referring Applicants to Landlord**

The Affirmative Marketing process is outlined in *Chapter III* of this manual. After the next household on the waiting list passes the Administrative Agent's preliminary screen, the applicant is referred to the landlord to see the unit. If the applicant wants to rent the unit, they will complete the landlord's application and pay any required landlord fees. (See *New Rental Units* in *Chapter II* for discussion of fees and landlord-tenant selection criteria.)

#### **4. Income Certification and Signing the Lease**

After the applicant is fully income certified, the landlord will be notified that they may execute a lease with a tenant. *Co-signers* are permitted if allowed by landlord. Applicants who are separated and do not have settlement agreements are permitted to rent an Affordable Unit. However, in order to calculate the household income at the time of the full income certification, the applicant will need to provide a division of assets signed by both parties.

A copy of the executed lease must be sent to Administrative Agent.

## VI-B. Lease Renewals

The Administrative Agent will calculate the allowable maximum rent each year.. The Administrative Agent will advise the landlord what the maximum amount of rent is and request the copy of the executed lease for the file. And, unlike some forms of Public Housing, the tenant's right to tenancy at the allowable rent does not vary with any increases or decreases in the tenant's income.

If the landlord chooses not to take the annual increase, the landlord may not take a larger increase the following year. For example, if the landlord does not take the 2015 increase in 2015, they may not take the 2015 and 2016 increase the following year if the current tenant does not move out.

Month-to-month leases are permitted. Additional fees for month-to-month leases are considered "optional fees." See discussion of optional fees in *Chapter II*.

Income certification of tenants is NOT required at the time of lease renewal. Upon leasing an Affordable Unit to a new tenant, the landlord will be permitted to lease at the allowable rent level permitted at that time.

The Administrative Agent will advise landlords of the annually permitted rental increase. All landlords are required to sign and return the Certification of Rental Compliance Form annually. On this form, the landlord certifies that:

1. Rents are within the maximum percentage increases as permitted;
2. Affordable housing tenants are not charged any amenity, parking, application or pet fees that are not in compliance with the affordable housing regulations; and
3. No affordable apartments have been re-rented or subleased to a resident without prior approval in writing by the Administrative Agent.

## VI-C. Adding Additional Household Members to the Lease

The household composition of the rental household may change over time. The Affordable Housing rules do not prohibit the tenant from changing the number of household members on the lease following occupancy. However, all changes to the lease must be approved by the landlord.

However, an applicant cannot change their household composition after they submit the full application or immediately after they are income certified. The household members on the new tenant's lease must match the household members listed on the income certification. This is to prevent applicants from changing their household composition in order to qualify for an Affordable Unit.

## VI-D. Income Designation of Units Are Fixed

The income designation and pricing tier of units are fixed and cannot be changed during the affordability period for any reason. *For example, if Unit 301 is a 3 bedroom Low-Income Unit and unit 201 is a 3 bedroom Moderate-Income unit, the landlord CANNOT change Unit 201 into the Low-Income unit and unit 301 into the Moderate-Income unit.*

## **VI-E. Evictions**

If the affordable tenant fails to pay rent or violates the terms of the lease, the landlord may take action as permitted by New Jersey Landlord Tenant laws.

## **VI-F. Enforcement**

The guidelines for the enforcement of the rental rules are outlined in *Chapter VIII*. In addition to these general enforcement regulations, the following enforcement provisions apply to rental units.

### **1. Leasing affordable Apartments in a Reasonable Amount of Time**

All affordable units must be occupied within a reasonable amount of time and be re-leased within a 60 days of vacating of the unit by a tenant. This period of time may be longer if required by market conditions. If the Administrative Agent becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, the Administrative Agent shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section.

### **2. Fair Housing Violations**

Developers and property management entities shall not discriminate against any person as prohibited by Federal Fair Housing laws or by the New Jersey Law Against Discrimination, N.J.S.A.10:5-1 through 50. The Administrative Agent shall report property managers to the Division, which shall refer such matters to the Office of the Attorney General if they receive any complaints that developers or property managers are discriminating against applicants or residents.

## **VII. APPEALS**

If an applicant for affordable housing is determined to be ineligible by the Administrative Agent, the applicant may submit additional proof and request reconsideration. Such request for reconsideration shall be made by the applicant within five (5) business days of receipt of notice of denial of ineligibility.

If a policy or decision regarding this program is appealed by an outside party, the Municipal Housing Liaison (a position established by Municipal Ordinance) will attempt to mediate the decision or policy to the satisfaction of all parties. Any situations that the Municipal Housing Liaison is unable to resolve will be forwarded to the Division Director of Local Planning Services within the Department of Community Affairs.

## **VIII. MONITORING AND ENFORCEMENT**

### **VIII-A. Monitoring**

All new unit information will be compiled and maintained by the Administrative Agent. 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 Affordable Housing Monitoring System (AHMS) portal, for the previous year from January 1st to December 31st.

### **VIII-B. Enforcement**

The Municipality's Affordable Housing Ordinance provides specific guidelines in the event of breach of any of the guidelines governing the Affordable Units by an owner, developer, or tenant. Please refer to Municipality's Ordinance for the complete list of enforcement activities upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant. Some of these remedies may include, but are not limited to:

- Foreclosure;
- Tenant eviction;
- Municipal fines;
- A requirement for household recertification;
- Acceleration of all sums due under a mortgage;
- Recoupment of any funds from a sale in violation of the regulations;
- Injunctive relief to prevent further violation of the regulations; and
- Entry on the premises.

#### **1. Written Notice**

In accordance with the Municipality's Affordable Housing Ordinance, the Municipality will provide written notice of a violation to a household, developer or tenant of an Affordable Unit advising them of the violation and the related penalty for the violation. If the violation is not corrected within sixty (60) days after the written notice, the Municipality may take the actions outlined in this Chapter.

#### **2. Penalties**

The Municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the Affordable Unit. If the owner, developer, or tenant is found by the court to have violated any provision of the regulations governing Affordable Units, the owner, developer, or tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- A fine of not more than \$2,000 or imprisonment for a period not to exceed 90 days, or both. Each day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

- In the case of an owner who has rented his or her very low, low, or moderate income unit in violation of the regulations governing Affordable Units, payment into the Municipality's Affordable Housing Trust Fund of the gross amount of rent illegally collected; and
- In the case of an owner who has rented his or her very low, low, or moderate income unit in violation of the regulations governing Affordable Units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

The Municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the Affordable Unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.

### **3. Sheriff Sale**

Such judgment shall be enforceable, at the option of the Municipality, by means of an execution sale by the Sheriff, at which time the very low, low, or moderate income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the Municipality fully, including attorneys' fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the very low, low, or moderate income unit. The excess, if any, shall be applied to reimburse the Municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Affordable Housing Trust as established by the Municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

Foreclosure by the municipality due to violation of the regulations governing Affordable Units shall not extinguish the restrictions of the regulations governing Affordable Units as the same apply to the very low, low, or moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the Affordable Unit.

The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the very low, low, or moderate income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the MRSP for which the very low, low, or moderate income unit could have been sold under the terms of the regulations governing Affordable Units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

Failure of the very low, low, or moderate income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the MRSP of the very low, low, or moderate income unit as permitted by the regulations governing Affordable Units.

The owner shall remain fully obligated, responsible, and liable for complying with the terms and restrictions governing Affordable Units until such time as title is conveyed from the owner.

In the event that any provision in this Manual differs from the terms or penalties identified in the most current Affordable Housing Ordinance, then the Affordable Housing Ordinance (as may be from time to time modified, amended and/or revised by relevant New Jersey State laws and/or regulations) shall prevail. The invalidity or nonenforceability of any provision of this Manual in any respect shall not affect the validity or enforceability of any other provision of this Manual in any other respect.

## GLOSSARY

**“Administrative Agent”** means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

**“Affirmative marketing”** means a regional marketing strategy designed to attract buyers and/or renters of Affordable Units pursuant to N.J.A.C. 5:80-26.16.

**“Affordable”** means a sales price or rent within the means of a very low, low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership 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 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”** means housing units restricted to income-eligible very-low, low and moderate income households.”

**“Affordable Housing Development”** means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

"Affordable Housing Monitoring System" or "AHMS" means 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 Unit”** for the purposes of this manual means a housing unit proposed or created pursuant to the Fair Housing Act.

**“Affordability Average”** means the average percentage of median income at which new restricted units in an Affordable Housing development are affordable to very low, low- and moderate-income households.

**“Affordable Housing Ordinance”** means that chapter or section of the municipal ordinance (the rules, regulations and codes enacted by a local government) addressing local affordable housing programs and procedures, as may be amended and supplemented.

“**Agency**” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“**Age-Restricted Unit**” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“**Application**” means both the Preliminary Application and the Full Application submitted by an interested renter or potential homeowner for Affordable Units in the Municipality.

“**Preliminary Application**” means the initial application submitted by all households that wish to express their interest in and be considered for Affordable Housing. This Preliminary Application includes information about household income and composition in order to determine preliminary eligibility.

“**Full Application**” means once an Affordable Unit appropriate for the Household (either to rent or buy) has been identified and the Household is nearing or next on the waiting list, the Household will be asked to submit a full application which requires that the income and household composition be updated and verified. The Administrative Agent will make a determination of the Household’s eligibility.

“**Certified Household**” means a Household that has been certified by an Administrative Agent as A Very Low, Low-Income or Moderate-Income Household.

“**Closing Disclosure Form**” means the form which in October 2015 replaced the commonly used HUD-1 Settlement Statement for residential real estate closings. The Closing Disclosure Form provides details about the mortgage loan selected by the buyer which includes the loan terms, projected monthly payments, and how much the buyer will pay in fees and other costs to obtain the mortgage (“closing costs”).

The lender is required to provide the Closing Disclosure Form to the buyer at least three business days before the closing on the mortgage loan. The Administrative Agent will review the Closing Disclosure Form to confirm that the sale price does not exceed the MRSP and that the buyer is not receiving cash back at closing.

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

**“Compliance certification”** means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality 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).

**“Contract for Sale”** means a legally binding agreement between a buyer and seller for the sale or transfer of real estate. See also, **“Purchase Agreement”**.

**“County-level housing judge”** means a 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.

**“DCA”** means the State of New Jersey Department of Community Affairs.

**“Developer”** means 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 to contract to purchase, or other person having an enforceable proprietary interest in such land.

**“Development”** means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use 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 N.J.S.A. 40:55D-1, *et seq.*

**“Dispute Resolution Program”** means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

**“Division”** means the Division of Local Planning Services within the Department of Community Affairs.

**“Eligibility Period”** means once the Full Application for an Affordable Unit has been submitted with the applicant certifying that all information is complete and true, the applicant enters the Eligibility Period. During this one to two-week time frame, as the Household’s eligibility is being reviewed, the applicant is not permitted to change the employment status of any Household member in order to become eligible for Affordable Housing nor change the Household composition from what is listed on the Full Application. *For example, the applicant cannot add a member to their Household, subtract a member, quit a job, or get a new job, or a raise during the Eligibility Period.* If the applicant does make changes during this Eligibility Period, the Household will be determined ineligible and lose their position on the waiting list. However, the applicant may reapply with their new income and/or Household composition and will be assigned a new position on the waiting list.

**"Equity share amount"** means 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 five percent and may not exceed 30 percent.

**"Exit sale"** means 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.

**"Fair Housing Act"** means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

**"Fair share plan"** means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal 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 municipal land use ordinances and regulations.

**"Full Application"** (see **"Application"**).

**"HMFA"** or **"the Agency"** means 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.).

**"Housing Authority"** means the Public Housing Agency which manages and operates publicly assisted units in the Municipality.

**"HOME Program"** means the HUD funded HOME Investment Partnerships Program that provides formula grants to States and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating Affordable Housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create Affordable Housing for Low-Income Households.

**"Household"** means, in accordance with HUD definitions and UHAC practice, the number of persons in the Affordable unit and not the size of the Affordable unit. See for example, HUD's definition of household as "[o]ne or more persons occupying a housing unit" -- in other words, the number of persons in the home. HUD website accessed 6/13/2016. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/library/glossary/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/glossary/)

See also UHAC regulation N.J.A.C. 5:80-26.4, "In determining the initial rents and initial sales prices for compliance with the affordability average requirements for restricted units ... the following standards shall be used: 1. A studio shall be affordable to a one-person household."

**“Housing Region”** means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

**“HUD”** means the US Department of Housing and Urban Development. **“Interest Date”** means the date on which a Household submits its Preliminary Application thereby establishing its place on the priority list for consideration of Affordable Units.

**“Inclusionary development”** means 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” means a determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

**“LAD”** means the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., prohibits, among other discriminatory actions, discrimination when selling or renting property.

**“Low-income Household”** means a household with a total gross annual household income equal to 50 percent or less of the median household income for the housing region.

**“Low-income unit”** means a restricted unit that is affordable to a low-income household.

**“Market-rate units”** means housing not restricted to very low, low- and moderate-income households that may sell or rent at any price.

**“Maximum Restricted Sales Price”** or **“MSRP”** means the maximum sales price of restricted ownership units within each affordable development upon resale of the Affordable Unit in accordance with UHAC which states that such units “shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. See Glossary for definition of **“Affordability Average.”** In achieving this Affordability Average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.” *For example, a two-bedroom moderate income unit originally sold for \$85,000 and another exactly similar unit originally sold for \$105,000. There always will be a disparate MSRP for resales of these two units. Both moderate income units are priced differently to reach different income levels of moderate income households.*

**“Median income”** means the median income by household size for the applicable housing region as adopted annually.

**“Moderate-income household”** means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income for the housing region.

**“Moderate-income unit”** means a restricted unit that is affordable to a moderate-income household.

**“Municipal Housing Liaison”** or "MHL" means an appointed municipal employee 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 Jersey Housing Resource Center"** or "Housing Resource Center" means 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.

**"95/5 restriction"** means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

**"Non-exempt sale"** means 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.

**"Order for repose"** means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

**“PHA”** means Public Housing Authority. See below for definition.

**“PMI”** means private mortgage insurance. PMI is a type of mortgage insurance used with conventional loans. Like other kinds of mortgage insurance, PMI protects the lender (not the homebuyer) if the homebuyer stops making payments on the loan. PMI is arranged by the lender and provided by private insurance companies. PMI is usually required when the homebuyer has a conventional loan and makes a down payment of less than 20 percent of the home’s purchase price. PMI also is usually required when a homeowner is refinancing with a conventional loan and the owner’s equity is less than 20 percent of the value of the home. <http://www.consumerfinance.gov/>, US Consumer Financial Protection Bureau, accessed August 10, 2016.

**“Preliminary Application”** (see “Application”).

**“Public Housing” “Public Housing Authority”** means those public housing units which are funded largely by governmental programs such as those administered by HUD programs which are owned,

operated and managed by a public housing authority (“**PHA**”). As defined by HUD, “public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in all sizes and types, from scattered single family houses to high rise apartments for elderly families. There are approximately 1.2 million households [in the US] living in public housing units [.]”

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph), HUD Website, accessed June 7, 2016.

“**Purchase Agreement**” means a not legally binding, “internal” generated document between a buyer and seller of residential real estate to establish and ensure that the Affordable Unit will be affordable to the buyer. It stipulates such terms as the Maximum Restricted Sale Price (or Maximum Permitted Resale Price) of the unit, the agreed upon purchase price, the amount of good faith deposit, and the items to be included in the sale price of the unit. (See “Contract of Sale”).

“**Price differential**” means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

“**Prior round unit**” means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

“**Program**” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

**"Random selection process"** means 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.

**"Redevelopment Plan"** means a plan adopted by the Municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or area in need of rehabilitation, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

**"Regional Asset Limit"** means the maximum asset limit as published annually on the Regional Income Limits chart.

**"Regional Preference"** means that in accordance with UHAC, municipalities may wish to give preference to applicant households that live or work in their housing region. If so, the municipality must state this preference as part of its affordable housing ordinance.

**"Rent"** means 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 DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

**"Restricted Unit"** means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under the Urban Homeownership Recovery Program ("UHORP") or the Market Oriented Neighborhood Investment program ("MONI") of the Agency.

**"UHAC"** means the Uniform Housing Affordability Controls adopted by the State of New Jersey and set forth in N.J.A.C. 5:80-26.1, et seq.

**"Very Low-Income Household"** means a household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

**"Very Low-Income Unit"** means a restricted unit that is affordable to a very low-income household.

**"Veterans Preference"** means the municipality and Developer or residential development owner may enter into an agreement to provide a preference for affordable housing to very low, low and moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c. 171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This provision is in accordance with N.J.S.A. 52:27D-311 (j). This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within

90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. After the 120 –day marketing period, veterans will continue to get preference over non-veterans, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage.

**EXHIBIT P-2**

**PREPARED BY THE AFFORDABLE HOUSING PROGRAM:**

In the Matter of the Application of the Borough of Bloomingdale,	Superior Court of New Jersey Law Division, Civil Part  Docket No. PAS-L-283-25  <b>Program Settlement Recommendation - Housing Element and Fair Share Plan</b>
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THIS MATTER, having come before the Affordable Housing Dispute Resolution Program (Program), pursuant to the Complaint for Declaratory Judgment filed in this matter on January 23, 2025 (DJ Complaint) by the Petitioner, Borough of Bloomingdale (Borough), pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (FHA), and in accordance with Administrative Directive #14-24 and its Addenda, seeking a certification of compliance with the FHA;

AND IT APPEARS that on May 1, 2025, the Hon. Darren J. Del Sardo, P.J.Cv. entered an Order as follows:

- (a) Establishing the Borough's Fourth Round "present need" at 0 units;
- (b) Establishing the Borough's Fourth Round "prospective need" at 310 units;

(c) Directing the Borough to prepare and adopt a Housing Element and Fair Share Plan on or before June 30, 2025; and

(d) Granting the Borough immunity from exclusionary zoning litigation; and

AND IT APPEARS that the Borough timely adopted and filed the Borough's Proposed Fourth Round Housing Element and Fair Share Plan (HEFSP);

AND IT APPEARS that a challenge to the Borough's Fourth Round HEFSP was timely filed on August 26, 2025, by interested party: Fair Share Housing Center;

AND the Program having appointed Special Adjudicator Joseph Burgis PP, AICP;

AND the Program Member having conducted settlement conferences on December 5, 2025, and December 23, 2025, at which time all parties reached a settlement. The settlement terms were placed on the record and include, but are not limited to the following:

(a) The Borough's Present Need (Rehabilitation) Obligation is 0 units;

(b) The Borough's Prospective Need Obligation (2025-2035) is 310 units;

(c) The Borough's First and Second Rounds (Prior Round) Obligation is 168 units;

(d) The Borough's Third Round Obligation (1999-2025) is 381 units;

(e) The Borough's Realistic Development Potential (RDP) for the 1<sup>st</sup>/2<sup>nd</sup> (Prior) Round is 27 units. The Borough shall satisfy its 1<sup>st</sup>/2<sup>nd</sup> Round RDP as follows:

### 1<sup>st</sup>/2<sup>nd</sup> Round RDP Obligations Mechanisms

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Health Center at Bloomingdale	Special needs, licensed health care facility	12	0	Rental	Constructed
Center for Humanistic Change	Special Need Group Home	5	5	Rental	Constructed
Mountain Ridge	Inclusionary, family	5	0	For sale	Constructed
<b>Total</b>		<b>22</b>	<b>5</b>		

(f) The Borough's RDP for the 3<sup>rd</sup> Round is 167 units. The Borough shall satisfy its 3<sup>rd</sup> Round RDP as follows:

### 3<sup>rd</sup> Round RDP Obligations Mechanisms

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Avalon Bloomindale	Inclusionary, family	9	9	Rental	Constructed
Gjoni Construction: 120-124 Main Street	Inclusionary, family	3	-	For sale or rental	Approved

46 Star Lake Road	Inclusionary, family	2	-	For sale or rental	Approved
Meer Tract	Inclusionary, family	72	72	Rental	Zoned
<b>Total</b>		<b>86</b>	<b>81</b>		167

(g) The Borough shall meet its 4<sup>th</sup> Round Prospective Need obligation of 310 units through a continuation of a durational adjustment previously granted to the Borough. Notwithstanding this, the Borough shall continue to incentivize redevelopment of its downtown and commercial districts in the B-1, B1A, and BCD zones permitting inclusionary multi-family development at 15 units/acre, within the existing sewer service area. Additionally, it shall increase its affordable housing set-aside to a 20% set-aside for both rental and for-sale units.

AND the parties have executed a written Mediation Agreement memorializing these settlement terms and filed it with the court (attached hereto as Exhibit A);

AND the Borough having represented it intends to adopt an Amended HEFSP in accordance with the terms of the settlement;

AND the Special Adjudicator having issued a written report concluding that the HEFSP and settlement terms comply with the FHA and Mount Laurel doctrine (attached hereto as Exhibit B);

AND the Program Member having determined that the terms of the settlement are fair, reasonable and adequately protects the interests of low and moderate-income residents of the Borough;

AND the Program Member having determined that the terms of the settlement are constitutionally compliant and provide a fair and reasonable opportunity for the Borough to meet its obligations under the FHA and Mount Laurel doctrine;

AND the Program Member having determined that the terms of settlement meet the objective standard for issuance of a compliance certification, conditioned upon the Borough's commitment, as necessary, to revise its HEFSP in accordance with the terms set forth in the Mediation Agreement;

AND for all those reasons, as well as those set forth in the Statement of Reasons (attached hereto as Exhibit C), the Program Member hereby recommends an ORDER directing that:

- (a) The settlement terms as set forth above are approved; and
- (b) In accordance with N.J.S.A. §52:27D-304.1(f)(2)(c), on or before March 15, 2026, the Borough shall adopt and file its Amended HEFSP that contains the terms of the settlement as well as the implementing ordinances and resolutions proposed within the Amended HEFSP; and
- (c) In accordance with the FHA and (Directive #14-24), the Court may order further appropriate judicial review of the Program's determination that the

settlement meets the objective standard for issuance of a compliance certification which may include the scheduling of an HESP Confirmation Hearing (or, if and as may later be determined necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Borough's Amended HEFSP and the issuance of a Certification of Compliance and Repose;

(d) Grant the Borough continued immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Borough's compliance with its order and good faith implementation of the Amended HEFSP and good faith participation in the compliance process.

**Respectfully Submitted by the Program:**

By:

/s/ Paulette M. Sapp-Peterson

**Paulette M. Sapp-Peterson, P.J.A.D. (Retired and temporarily on recall)**

Dated: February 19, 2026

**NEGOTIATED MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING  
DISPUTE RESOLUTION PROGRAM**

In the Matter of the Application of the Borough of Bloomingdale, County of Passaic  
Docket No. PAS-L-283-25

**WHEREAS**, the Borough of Bloomingdale (the “Borough” or “Bloomingdale”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 23, 2025; and

**WHEREAS**, the Court entered an order on May 1, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 0 units and a Prospective Need of 310 units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, the Borough filed its HEFSP on June 19, 2025 (“Adopted HEFSP”); and

**WHEREAS**, FSHC filed, on August 26, 2025, the only challenge to the Borough’s HEFSP, pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b); and

**WHEREAS**, the Borough and FSHC have agreed to amicably resolve the issues set forth in the challenge through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round;

**THEREFORE**, the Borough and FSHC agree:

**Fair Share Obligations**

1. The Borough's Fourth Round Present Need or Rehabilitation Obligation is 0. The Borough's First and Second Rounds Obligation (1987-1999) is 168, the Borough's Third Round Prospective Need Obligation (1999-2025) is 381. The Borough's Fourth Round Prospective Need Obligation (2025-2035) is 310.

**Satisfaction of Fair Share Obligations**

2. The Borough's First and Second Rounds Obligation is 168. The following mechanisms satisfy a portion of the obligation, with the remaining portion subject to a durational adjustment:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS</b>	<b>BONUS</b>	<b>TENURES</b>	<b>STATUS</b>
Health Center at Bloomingdale	Special needs, licensed health care facility	12	0	Rent	Constructed
Center for Humanistic Change	Special needs group home	5	5	Rent	Constructed
Mountain Ridge	Inclusionary, family	5	0	Sale	Constructed
<b>Total</b>		<b>22</b>	<b>5</b>		

3. The Borough's Third Round Obligation is 381. The following mechanisms satisfy a portion of the obligation, with the remaining portion subject to the durational adjustment:

<b>MECHANISM</b>	<b>TYPE</b>	<b>UNITS</b>	<b>BONUS</b>	<b>TENURES</b>	<b>STATUS</b>
Avalon Bloomingdale	Inclusionary, family	9	9	Rent	Constructed
Gjoni Construction: 120-124 Main Street	Inclusionary, family	3		Sale or Rent	Approved
46 Star Lake Road	Inclusionary, family	2		Sale or Rent	Approved
Meer Tract	Inclusionary, family	72	72	Rent	Zoned
<b>Total</b>		<b>86</b>	<b>81</b>		

4. The Borough's Fourth Round Prospective Need Obligation is 310 and shall be met with the continuation of a durational adjustment previously granted to the Borough. Notwithstanding the durational adjustment, for the Fourth Round the Borough shall continue to incentivize redevelopment of its downtown and commercial districts within the existing sewer service area.

The Borough already has substantial areas within the downtown and commercial districts that permit inclusionary development that are within the sewer service. The Borough commits to retaining the inclusionary zoning for these districts and further amending the zoning to require a 20% affordable housing set-aside, regardless of tenure, rather than a 15% set-aside for rental developments and a 20% set-aside only in the case of for-sale developments.

- a. Each of the below zone districts within the Borough currently permit mixed-use redevelopment consisting of first floor nonresidential commercial uses and upper story residential uses, conditioned on the provision of an affordable housing set-aside:
    - i. B-1 Zone District
    - ii. B-1A Zone District
    - iii. BCD Zone District
  - b. Each of the below zone districts solely permit residential inclusionary development
    - i. R-M Zone District (15 du/ac)
4. The Borough is eligible for a durational adjustment, pursuant to N.J.A.C. 5:93-4.3(c), due to a lack of lands within the sewer service area. See the 2025 Housing Plan, including Appendix 2, for additional information. The durational adjustment is consistent with the Borough's location within the Highlands Region and its majority of land – 70% of the Borough (4,155 acres) within the Preservation Area. The Borough's durational adjustment for the First, Second and Third Rounds was approved by Superior Court during the third round. The July 18, 2016 Order issued by the Hon. Thomas F. Brogan, J.S.C., Order Granting Third Round Substantive Certification to the Borough of Bloomingdale, states the Borough "provided a valid basis for claiming a durational adjustment, and approved the stated affordable housing strategies". The Order went on to state, "Pursuant to N.J.A.C. 5:93-4.3, the Borough will durationally adjust the remaining 457 units of its obligation until water or sewer becomes available and in doing so shall comply with the prior round regulations at N.J.A.C. 5:93-4.3." The reference to 457 units reflected the manner in which

the Court was organizing the Borough's affordable housing credits, which differs from the above paragraphs.

- a. The Borough agrees to comply with N.J.A.C. 5:93-4.3 as follows:
  - i. The Borough will seek court approval for, and FSHC will support, a durational adjustment without a waiver for the durationally adjusted portion of Bloomingdale's obligation. In accordance with N.J.A.C. 5:93-4.3(c), the requirement to address the obligation shall be deferred until adequate water and/or sewer are made available. The Borough shall reserve and set aside new sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide sewer capacity. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the Borough shall permit such development.
  - ii. Where the Borough has designated sites for low and moderate income housing that lack adequate sewer and where the DEP or its designated agent approves a proposal to provide sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the Borough shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Court and FSHC, with a copy to the Special Adjudicator, within 90 days of the site's approval by the DEP or its agent.

**Unit Type and Income Distribution Requirements**

5. The Borough and FSHC agree that the Borough's HEFSP as presented above satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to, with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:
- a. Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation exclusive of any bonus credits.
  - b. Family units. Pursuant to N.J.S.A. 52:27D-211(l), the Borough shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to Section 21 of P.L.1985, c.222 (C.52:27D-321).
  - c. Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Prospective Need affordable housing obligation shall be addressed through rental housing, including at least half as available to families with children.
  - d. Very low-income units. Pursuant to N.J.S.A. 52:27D-329.1, 13 percent of all affordable units referenced in this Agreement addressing the Borough's Prospective

Need obligation shall be very low-income units for households earning 30 percent or less of the regional median income, with half of the very low-income units being available to families.

- e. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and (b), and all other applicable law.
  - f. All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the Borough, statutory requirements, and the Prior Round and Third Round regulations.
6. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the below terms shall apply:
- a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
  - b. The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior round of obligations modifying UHAC as to affordability controls longer than the now current regulations or as to very low-income units shall remain in effect as to those prior rounds of obligations.

- c. The Borough agrees that in order to meet the low-income and very low-income requirement of the Fair Housing Act, it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that 50 percent of the affordable units within each bedroom distribution shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low-income households earning 30 percent or less of the regional median income.
- d. The Borough agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
- e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The affirmative marketing plan shall include the following community and regional organizations: FSHC; the Latino Action Network; the New Jersey State Conference of the NAACP; Bergen County NAACP; Passaic County NAACP; Bergen County Urban League; Bergen County Housing Coalition; and the Supportive Housing Association.

**Process for Approval and Implementation**

7. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:
- a. The Borough and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.
  - b. The Program Member shall review the agreement and if satisfied with compliance with the Fair Housing Act shall refer this matter to the Mount Laurel judge for review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.
  - c. The Borough shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required herein and any other adopted ordinances and resolutions on eCourts.
  - d. No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting final compliance certification for the Court's review or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.
  - e. Both parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the parties

reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.


8. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 15, 2026:
  - a. The Borough will adopt a Fourth Round Affirmative Marketing Plan, a Resolution Appointing the Municipal Housing Liaison and a Resolution Appointing the Administrative Agent.
  - b. The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99.
  - c. The Borough will update and adopt its affordable housing ordinance, development fee ordinance, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., and N.J.A.C. after they are adopted and before March 15, 2026.
9. The Borough's Compliance Certification shall be subject to required ongoing monitoring as required by the statute, including NJSA 52:27D-329.2, 329.4, 313 and NJSA.40:55D-8.4 and N.J.A.C. 5:99. The Borough shall provide notice to FSHC of any action filed at the midpoint review.


10. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

**IN WITNESS WHEREOF**, the Parties have executed this Negotiated Mediation Agreement consistent with applicable law on the day and year written below their names:

ATTEST:

BOROUGH OF BLOOMINGDALE

  
\_\_\_\_\_  
Breanna Smith, RMC, CMR  
Borough Clerk,

By:  MICHAEL SOBERNOSTER  
Dated: 12/24/2025

FAIR SHARE HOUSING CENTER, INC.

ATTEST:

*Ariela Rutbeck-Goldman*

By

*Laura S. Smith-Denker, Esq.*

Ariela Rutbeck-Goldman, Esq.  
Counsel for Fair Share Housing Center Dated:

Laura S. Smith-Denker, Esq.,  
Managing Director of Litigation FSHC

12/23/2025

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY

SS.:

COUNTY OF PASSAIC

BE IT REMEMBERED, that on this 24<sup>TH</sup> day of DECEMBER, in the year of our Lord, Two Thousand Twenty Five, before me, the subscriber, personally appeared Michael Sondermeyer, who, being by me duly sworn on his oath, doth depose and make proof to my satisfaction that he is the BUSINESS ADMINISTRATOR of the BOROUGH OF BLOOMINGDALE, a municipal corporation, the corporation named in the within instrument; that BREEANNA SMITH is the MUNICIPAL CLERK of said municipality; that the execution as well as making of this instrument has been duly authorized by proper action of the BOROUGH COUNCIL OF THE BOROUGH OF BLOOMINGDALE; that deponent well and truly knows the corporate seal of said municipality; and the seal affixed to said instrument is such seal and was thereto affixed to said instrument signed and delivered by said MUNICIPAL CLERK as and for the voluntary act and deed of said municipality, in the presence of deponent, who thereupon subscribed her name thereto as witness.

[Print Name and Title Below Signature]

BREEANNA SMITH  
MUNICIPAL CLERK

Sworn and subscribed to before me on the date aforesaid.

[Print Name and Title Below Signature]

Aimee Greenspan - Notary Public

AIMEE GREENSPAN  
NOTARY PUBLIC OF NEW JERSEY  
Commission No. 2457445  
My Commission Expires Feb. 12, 2028

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

|  
| SS

COUNTY OF \_\_\_\_\_ |

I CERTIFY that on the 23 day of December, 2025

Laura S. Smith-Denker, Esq., personally came before me, and this person acknowledged under oath to my satisfaction that:

(a) this person is the Managing Director of Litigation of Fair Share Housing Center, Inc., the entity named in this document.

(b) this document was signed and delivered by Laura S. Smith-Denker, Esq., as Managing Director of Litigation on behalf of Fair Share Housing Center, Inc, as its voluntary act and deed duly authorized by its members; and

(c) this person signed this proof to attest to the truth of the facts.

Laura S. Smith-Denker, Esq.  
Laura S. Smith-Denker, Esq.

Sworn and subscribed to before  
me on the date aforesaid.

Ariela Rutbeck-Goldman

[Print name and title below signature]

Ariela Rutbeck-Goldman

Attorney at Law, State of New Jersey

Bar ID 209022016



COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

PRINCIPALS:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

**B U R G I S**  
ASSOCIATES, INC.

February 12, 2026

Hon. Paulette Sapp-Peterson J.S.C. (ret)  
Affordable Housing Dispute Resolution Program  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625

Re: Borough of Bloomingdale, New Jersey  
Final Special Adjudicator Report  
Docket No. PAS-L-283-25  
BA#: 4425.00

Your Honor,

This report has been prepared in my capacity as Special Adjudicator to assist the Affordable Housing Dispute Resolution Program (the 'Program') with respect to the matter of the Application of the Borough of Bloomingdale, New Jersey, County of Passaic, New Jersey, Docket No. PAS-L-283-25.

This report addresses the following with respect to the Borough's efforts to obtain a judgment of compliance certification (aka judgment of compliance and repose) for their proposed 4<sup>th</sup> Round Housing Element and Fair Share Plan (HE&FSP):

1. Compliance with the Borough's adopted HE&FSP, timely filed with the Program, and which shall be amended and supplemented pursuant to discussions during the mediation process regarding ordinance and related administrative document adoptions.
2. The Borough's HE&FSP received one objection, by Fair Share Housing Center (FSHC) filed August 26, 2025.
3. The following provides a summary of the Borough's participation in the Program:
  - a. January 23, 2025: The Borough filed its Declaratory Judgment with the Program.
  - b. May 1, 2025: The Court entered an Order establishing Townships affordable housing obligation.
  - c. June 4, 2025: The Borough adopted its HE&FSP.
  - d. June 19, 2025: The Borough filed HE&FSP with the Program.
  - e. Aug 26, 2025: FSHC filed Objection to HE&FSP with the Program
  - f. December 5, 2025: Program Member conducted settlement conference with the parties.
  - g. December 23, 2025: Program Member conducted settlement conference with the parties.

h. Various dates: Special Adjudicator participated in calls with the parties and with Program Member.

### Affordable Housing Obligation

Borough of Bloomingdale's affordable housing obligations through four rounds of affordable housing are as follows:

1. 1<sup>st</sup> and 2<sup>nd</sup> Rounds: 168 units, reduced to a 27 unit RDP..
2. 3<sup>rd</sup> Round: 381 units, reduced to a 167 unit RDP with the remaining portion subject to a durational adjustment.
3. 4<sup>th</sup> Round: 310 units, subject to a durational adjustment.
4. Rehabilitation: 0 units.

### Borough's Plan to Address Obligation

The way the Borough is addressing its four rounds of affordable housing obligations is detailed in the accompanying Program Form and is summarized below.

As Special Adjudicator I have reviewed the Township's HE&FSP and supplemental submissions against the New Jersey Fair Housing Act, applicable COAH rules, Uniform Housing Affordability Controls (UHAC), Program Administrative Directives (14-24 and Addendum) and relevant case law. Based on that analysis I note the following:

#### 1<sup>st</sup>/2<sup>nd</sup> Round RDP Obligations Mechanisms

NAME	TYPE	AH UNITS	BONUS	TENURE	STATUS
Health Center at Bloomingdale	Special needs, licensed health care facility	12	0	Rental	Constructed
Center for Humanistic Change	Special Need Group Home	5	5	Rental	Constructed
Mountain Ridge	Inclusionary, family	5	0	For sale	Constructed
Total		22	5		

## 3rd Round RDP Obligations Mechanisms

NAME	TYPE	AH UNITS	BONUS	TENURE	STATUS
Avalon Bloomindale	Inclusionary, family	9	9	Rental	Constructed
Gjoni Construction: 120-124 Main Street	Inclusionary, family	3	-	For sale or rental	Approved
46 Star Lake Road	Inclusionary, family	2	-	For sale or rental	Approved
Meer Tract	Inclusionary, family	72	72	Rental	Zoned
Total		86	81		167

With respect to the 4<sup>th</sup> Round: The Municipality shall meet its 4<sup>th</sup> Round Prospective Need obligation of 310 units through a continuation of a durational adjustment previously granted to the Borough.

Notwithstanding this, the Borough shall continue to incentivize redevelopment of its downtown and commercial districts in the B-1, B1A, and BCD zones permitting inclusionary multi-family development at 15 units/acre, within the existing sewer service area. Additionally, it shall increase its affordable housing set-aside to a 20% set-aside for both rental and for-sale units.

### The Objector

As noted above, one objector, FSHC, filed with the Program. The Borough and FSHC have resolved their issues through mediation, as detailed in the accompanying fully executed Mediation Agreement.

### Findings and Recommendations

Based on the above, I recommend approval of the HE&FSP, subject to the following submissions, to ensure compliance with applicable regulations governing such issues as the following:

1. Adoption of an amended HE&FSP to reflect any required modifications to spending plan, affirmative marketing plans, affordable housing ordinance, etc, as determined necessary.

2. The maximum 30% cap on age-restricted units.
3. Minimally 50% of units being available as family units.
4. Minimally 25% of units being available as rental units.
5. Minimally 13% of all units being available for households earning 30% or less of the regional median income, with half of the very low income units being available to families.
6. Affordable Housing Ordinance amendments as may be required by any new affordable housing amendments with respect to UHAC regulations, including affirmative marketing and spending plan provisions as determined necessary.

Based on all the above, I recommend approval of the Borough Housing Element and Fair Share Plan.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Burgis". The signature is written in a cursive style with a large initial "J" and "B".

Joseph Burgis PP, AICP

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

<p>In the Matter of the Borough of Bloomingdale</p>	<p>Superior Court of New Jersey Law Division, Civil Part</p> <p>Docket No. PAS L-283-25</p> <p><b>STATEMENT OF REASONS</b></p>
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This matter is before the Affordable Housing Dispute Resolution Program (Program), pursuant to the 2024 Amendments to the Fair Housing Act (Act), N.J.S.A. §52:27D-301 to -329.4 and Admin. Off. of the Cts., Admin. Directive #14-24, Civil - Affordable Housing Dispute Resolution Program - Implementation of L. 2024, c. 2. (Dec. 13, 2024). The Act established the Program to attempt to efficiently resolving disputes under the Act through duly appointed Program members. N.J.S.A. §52:27D-313.2. The Program, in its discretion, was authorized to employ Special Adjudicators to assist the Program in rendering determinations, resolving disputes and facilitating communication as required. N.J.S.A. §52:27D-313.2(c).

Under the Act, the Council on Affordable Housing (COAH) was abolished and each municipality is now charged with determining its own present and prospective affordable housing obligations and adopting a Housing Element and Fair Share Plan (HEFSP). N.J.S.A. §52:27D-304.1. Specifically, for the Fourth Round,

each municipality was required to adopt its HEFSP no later than June 30, 2025. Thereafter, any interested party, no later than August 31, 2025, was permitted to file a response with the Program challenging the municipality's HEFSP as not being in compliance with the Act or Mount Laurel doctrine. N.J.S.A. §52:25D-304.1(f)(2)(b).

On January 23, 2025, the Borough of Bloomingdale (Borough) filed a resolution of participation in the Program and a complaint for declaratory judgment seeking a certification of compliance regarding its Fourth Round housing obligation pursuant to N.J.S.A. §52:27D-304.2, -304.3 and -304.1(f)(1)(c). While there were challenges to the calculations of the Borough's Fourth Round Prospective Need Obligation the disputes were resolved. On May 1, 2025, the court entered an order establishing the Borough's Present Need Obligation as "0" and its Prospective Need Obligation as "310." The order further directed the Borough to prepare and adopt its Fourth Round proposed HEFSP no later than June 30, 2025. No parties appealed the order.

The Borough filed its HEFSP on June 6, 2025. Thereafter, Fair Share Housing Center (Fair Share), an affordable housing advocacy group, filed a timely response on August 26, 2025. In its challenge Fair Share focused upon what it contended was the lack of evidence in the HEFSP supporting the continuation of the durational adjustment to the Borough's affordable housing obligation, which had been applied

in prior rounds. It also determined there was insufficient information in the HEFSP addressing the Borough's Third Round built and unbuilt sites.

The Program appointed Special Adjudicator Joseph Burgis (SA) PP, AICP, to assist the Program Member and the parties during negotiations and settlement conferences and, upon conclusion of the settlement conferences, to provide a written recommendation to the Program Member. The Program Member and SA conducted informal settlement discussions with the parties on December 5, 2025, during which the Borough agreed to provide the requisite documentation to support its durational adjustment position and Third Round activity related to its affordable housing obligation. Thereafter, the parties, with the assistance of the SA, continued their discussions and negotiations. The Borough provided Fair Share with the necessary information and documentation to address its concerns. Both parties reported to the SA that a settlement had been reached.

The terms of the settlement were placed on the record on December 23, 2025, and are detailed, at length, in the Mediation Agreement, which is attached to the Program Settlement Recommendation. The agreement confirms that the Borough's First, Second, and Third Round Obligations were partially satisfied with the remaining obligations for each of those rounds with the Borough's entitlement to a durational adjustment. Additionally, the Borough agreed to adopt a 20% affordable housing set-aside, regardless of tenure for rental and for-sale developments.

The SA authored a written report recommending that the compliance certification be issued, subject to the Borough's satisfaction of the terms and conditions of the Mediation Agreement. A copy of the SA's written report is also attached to the Program Settlement Recommendation. The Borough's governing body adopted a resolution agreeing to the terms of the settlement and authorizing its approval. The agreement resolves all outstanding issues between the parties for the Fourth Round and its affordable housing obligations for all prior rounds.

A municipality has a constitutional obligation to provide a "realistic opportunity" for the development of its fair share of affordable housing. S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 221 (1983) (Mount Laurel II). Determining if an opportunity is "realistic" requires application of a practical and objective standard, necessitating consideration "whether there is in fact a likelihood—to the extent economic conditions allow—that the lower income housing will actually be constructed." Id. 221-22. "Municipalities need not guarantee that the required amount of affordable housing will be built, but must only adopt land use ordinances that create a realistic opportunity to meet the regional need and their own rehabilitation share." In re Adopt. of N.J.A.C. 5:94 & 5:95 by N.J. Council on Affordable Housing, 390 N.J. Super. 1, 54 (App. Div. 2007).

Where there has been a settlement between a municipality and an interested party by December 31, 2025, the Program "shall review the fair share plan and

housing element for consistency and to determine whether it is compliant with the [Act] . . . and the Mount Laurel doctrine and issue a compliance certification for purposes of issuing a compliance certification, unless these objective standards are not met.” N.J.S.A. §27D-304.1(f)(2)(b). Compliance with the Act and the Mount Laurel doctrine is achieved when the HEFSP is fair and reasonable, evidenced by mechanisms which "adequately protect[] the interests of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built." E./W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328. (App. Div. 1996).

Applying objective standards here, the Borough is located within the Highlands Region and Preservation area. It demonstrated its continued entitlement to a durational adjustment to its affordable housing obligations. It provided the requisite documentation of its continuing commitment to implementing mechanisms to encourage development should sewer services become available in the future. It also increased the percentage of affordable housing set-asides for rental and for-sale sites to be developed. from 15% to 20%.

The settlement agreement between the Borough and Fair Share meets the objective standard for issuance of a compliance certification, conditioned upon its commitment, as necessary, to revise its [HEFSP] in accordance with the terms set forth in the settlement agreement. N.J.S.A. §52:27D-304.1(f)(2)(b). This determination is subject to further appropriate judicial review in accordance with the

Act and Admin. Off. of the Cts., Admin. Directive #14-24, Civil - Affordable Housing Dispute Resolution Program - Implementation of L. 2024, c. 2. (Dec. 13, 2024). Such review may include the scheduling of an HESP Confirmation Hearing (or, if and as may later be determined necessary by the Mount Laurel judge), a Fairness/or Compliance Hearing to consider approval of the Borough's Amended HEFSP and the issuance of a certification of Compliance and Repose.

**Respectfully Submitted by the Program:**

By:

/s/ Paulette M. Sapp-Peterson  
**Paulette M. Sapp-Peterson, P.J.A.D. (Retired and temporarily on recall).**

Dated: February 19, 2026

**EXHIBIT P-3**

ADOPTED: MARCH 3, 2026APPROVED: [Signature]  
MAYORDATE: 3/3/2026ATTEST: [Signature]  
MUNICIPAL CLERKOrdinance No. 4-2026  
Introduced: February 17, 2026  
Adoption: March 3, 2026

Ordinance No. 4-2026

Affordable Housing Ordinance

Borough of Bloomingdale, Passaic County

**AN ORDINANCE REPEALING EXISTING CHAPTER 12, AFFORDABLE HOUSING, OF THE CODE OF THE BOROUGH OF BLOOMINGDALE, IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 12, AFFORDABLE HOUSING, PROVIDING COMPREHENSIVE REGULATIONS FOR THE ADMINISTRATION OF AFFORDABLE HOUSING AND ADDRESSING THE CURRENT REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING BLOOMINGDALE BOROUGH'S AFFORDABLE HOUSING FAIR SHARE OBLIGATION**

**Whereas**, the Borough of Bloomingdale adopted a Round 4 Housing Element and Fair Share Plan in June 2025 that addressed the Round 4 affordable housing obligation; and

**Whereas**, the Borough of Bloomingdale entered into a Mediation Agreement with Fair Share Housing Center on December 24, 2025 that requires the Borough to take several actions, including updating the regulations implementing the Round 4 Housing Element and Fair Share Plan; and

**Whereas**, the Borough's affordable housing regulations, Chapter 12, do not reflect the recently adopted amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., the Fair Housing Act Regulations of the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., or the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq.; and

**Now Therefore Be It Ordained**, by the Borough Council of the Borough of Bloomingdale, Passaic County, New Jersey, that the Code of the Borough of Bloomingdale is hereby amended to repeal existing Chapter 12, Affordable Housing, and replace it with a new Chapter 12, Affordable Housing.

**SECTION 1. Chapter 12, Affordable Housing, of the Code of the Borough of Bloomingdale, shall be replaced as follows:**

12-1. Affordable Housing Regulation

12-1.1. Introduction & Applicability

- a. This Chapter of the Code sets forth sets forth regulations regarding the creation, use occupancy, administration and preservation of very low-, low- and moderate-income affordable housing units in the Borough of Bloomingdale consistent with the Mount Laurel doctrine; the New Jersey Fair Housing Act, as amended by P.L 2024, c.2, N.J.S.A. 52:27D-301 et seq., (hereinafter the "Act," "FHA" or "FHA-2"); the regulations promulgated pursuant thereto by the New Jersey Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., and the Housing and Mortgage Finance Agency's ("HMFA") Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq.; and the Borough's Fourth Round Housing Element and Fair Share Plan ("HEFSP").
- b. This Chapter 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 in accordance with the applicable statutory and regulatory requirements. The provisions of this Chapter shall apply to all inclusionary developments, individual affordable units, and 100 percent affordable

Ordinance No. 4-2026  
Introduced: February 17, 2026  
Adoption: March 3, 2026

housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below.

- c. The Borough of Bloomingdale Planning 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 Chapter implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of the Mt. Laurel doctrine, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1 et seq, as may be amended and supplemented.
- e. **Applicability**
  - 1. Except where specifically exempted hereinafter, the provisions of this Chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.
  - 2. Except where specifically exempted hereinafter, this Chapter shall also apply to any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
  - 3. Projects receiving federal Low Income Housing Tax Credit financing shall be required to follow the UHAC unless exempt pursuant to N.J.A.C. 5:80-26.1, including but not limited to developments with anticipated funding from the Federal Low Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code. Developers, landlords, and program sponsors for LIHTC shall be required to comply with administration and affirmative marketing of the affordable units within such developments.
  - 4. A waiver from any provision of this Code may be granted by the County-level Mount Laurel Judge, the Program or any trial court if it would advance the interests of low-and moderate-income households or if strict compliance would cause an unreasonable result.
- f. **Interpretation**
  - 1. In the event of any ambiguity, the provisions of this Code shall be interpreted and liberally construed in favor of the Borough.
  - 2. Nothing herein is intended to modify the Borough's right to rely upon the most favorable version of the Council on Affordable Housing's regulations on municipal credits, adjustments and compliance mechanisms at N.J.A.C. 5:93 and 5:97, unless such regulations are contradicted by statute or more recently adopted regulation, including P.L. 2024, c.2, or have been held invalid by binding court precedent in accordance with N.J.S.A. 52:27D-311m.

#### 12-1.2. Definitions

As used herein the following terms shall have the following meanings:

"Accessory apartments" means 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".

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"Act" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

"Administrative agent" means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

"Affirmative marketing" means 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" means the municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

"Affirmative Marketing Process" or "Program" means the actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

"Affordability assistance" means 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" means an average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

"Affordable" means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

"Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means 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" or "AHTF" means that non-lapsing, revolving trust fund established in DCA 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 AHTF.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

"Age-restricted housing" means 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 percent of the units are

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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" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

"Assisted living residence" means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregating dining and to ensure 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" means 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 a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

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

"Certified household" means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

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

"COAH" or the "Council" means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that 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" means the Commissioner of the Department of Community Affairs.

"Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L. 2024, c. 2 (C.52:27D-304.1), that protects the municipality 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" means 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" means a 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.

"DCA" and "Department" mean the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Department" means the New Jersey Department of Community Affairs.

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“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means 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” means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

“Dispute Resolution Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

“Division” means the Division of Local Planning Services within the Department of Community Affairs.

“Emergent opportunity” means 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” means 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” means 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 five percent and may not exceed 30 percent.

“Exit sale” means 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” means 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” means extending 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 share obligation” means 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” means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal 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 municipal land use ordinances and regulations.

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"FHA" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Green Building Strategies" means the strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

"HMFA" or "the Agency" means 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" means 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" means the portion of a municipality'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 municipality'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 municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

"Housing region" means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

"Inclusionary development" means 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" means a determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

"Low-income household" means a household with a household income equal to 50 percent or less of the regional median income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means 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 or load bearing structural systems.

"Mixed use development" means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

"Moderate-income household" means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

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"MONI" means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

"Municipal housing liaison" or "MHL" means an appointed municipal employee 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.

"Municipal affordable housing trust fund" means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), 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.

"Municipal development fee ordinance" means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

"New construction" means 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" means an account established pursuant to N.J.S.A. 52:27D-320.

"New Jersey Housing Resource Center" or "Housing Resource Center" means 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.

"95/5 restriction" means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

"Non-exempt sale" means 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.

"Nonprofit" means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

"Non-residential development" means:

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

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

"Order for repose" means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the prior approval of the payment of funds to the municipality by a developer when affordable units were not produced on a site zoned for an inclusionary development. The statutory permission for payments in lieu of constructing affordable units was eliminated per P.L. 2024, c.2.

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

"Qualified Urban Aid Municipality" means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

"Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

"Price differential" means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including, but not limited to, any affordable unit that: (1) was created pursuant to a judgment, court order, builder's remedy, or settlement resolving any Mount Laurel or exclusionary zoning litigation prior to March 20, 2024; (2) received substantive certification from COAH; (3) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (4) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1), (2) or (3) above; or (5) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

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"Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

"Random selection process" means 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 administrator" means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

"RCA project plan" means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

"Reconstruction" means 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.

"Recreational facilities and community centers" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

"Regional contribution agreement" or "RCA" means a 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.

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

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

"Rent" means 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 DCA for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

"Residential development fee" means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

"Spending plan" means a method of allocating funds 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-

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329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

"State Development and Redevelopment Plan" or "State Plan" means the plan prepared pursuant to sections 1 through 12 of the "State Planning Act," P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L. 1985, c. 398 (C.52:18A-200).

"Supportive housing household" means 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" means grant or loan program which provided financial assistance to the development of the unit.

"Supportive housing unit" means a restricted rental unit, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. Supportive housing units are also referred to as permanent supportive housing units.

"Transitional housing" means temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

"Treasurer" means the Treasurer of the State of New Jersey.

"UHAC" means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

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

"Unit type" means 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

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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" means a household with a household income less than or equal to 30 percent of the regional median income.

"Very-low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Very-low-income unit" means a restricted unit that is affordable to a very-low-income household.

"Veteran" means a veteran as defined at N.J.S.A. 54:4-8.10.

"Veterans' preference" means 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 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

"Weatherization" means 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 rehabilitation.

**12-1.3. Monitoring and Reporting Requirements**

- a. In accordance with the Act and N.J.A.C. 5:99 et seq., the Borough is required to annually provide updated affordable housing monitoring activity and affordable housing trust fund activity through the Department's Affordable Housing Monitoring Service on or before February 15 annually.
- b. All developers, program sponsors and landlords of developments or projects containing affordable housing in the Borough shall be required to provide all necessary information related to the status of construction and occupancy of each affordable unit within the respective developer, program sponsor or landlord's development to the municipality's Municipal Housing Liaison by no later than January 2 annually for the previous year.

**12-1.4. New Construction.** Per the definition of "New Construction," this section governs the creation of new affordable housing units regardless of the means by which the units are created. Newly constructed units may include new residences constructed or created through other means.

- a. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.
- b. Completion Schedule (previously known as phasing). 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:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10
50	50

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75	75
90	100

- c. Design. The following design requirements apply to affordable housing developments, excluding prior round units.
1. Design of 100 percent affordable developments:
    - (a) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
    - (b) Each bedroom in each restricted unit must have at least one window.
    - (c) Restricted units must include adequate air conditioning and heating.
  2. Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.
    - (a) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
    - (b) Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.
    - (c) Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.
    - (d) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
    - (e) Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.
    - (f) Each bedroom in each restricted unit must have at least one window.
    - (g) Restricted units must be of the same unit type as market-rate units within the same building.
    - (h) Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

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3. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:
  - (a) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
  - (b) Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
  - (c) Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses shall be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
  - (d) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
  - (e) Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
  - (f) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
  - (g) Each bedroom in each restricted unit must have at least one window; and
  - (h) Restricted units must include adequate air conditioning and heating.
- 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. Low/moderate split and bedroom distribution.
  1. Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.

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2. In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units.
  3. Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.
  4. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
    - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
    - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
    - (c) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total number of low- and moderate-income units. The number may be rounded up when the calculation results in a fraction of .5 or greater and if the development includes a minimum of 1 two-bedroom affordable unit and 1 three-bedroom affordable unit. The number of units may be rounded down when calculation results in a fraction of .4 or less.
    - (d) At least 30% of all low- and moderate-income units, shall be two-bedroom units. The number of units may be rounded up when the calculation results in a fraction of .5 or greater, or rounded down where the calculation results in a fraction of .49 or less.
    - (e) At least 20% of all low- and moderate-income units, shall be three-bedroom units.
    - (f) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
  5. Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.
- f. Accessibility requirements.
1. Any new construction shall be adaptable; 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.

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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;
  - (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 not all of the foregoing accessibility requirements can be satisfied, then an interior accessible route of travel shall be provided 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 municipality 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 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. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

#### 12-1.5. Affordable Housing Programs

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- a. Pursuant to the Act and the UHAC regulations at N.J.A.C. 5:80-26.1 et seq. the Borough shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions." By way of example only, the following is a non-exhaustive list of potential crediting mechanisms the Borough may rely upon.
- b. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10). The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
1. Units are 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).
  2. Units 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.
  3. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
  4. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
  5. Occupancy shall not be restricted to youth under 18 years of age.
  6. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
  7. The bedrooms and/or units shall comply with UHAC with the following exceptions:
    - (a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
    - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
  8. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.
  9. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.

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10. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
  - (a) An Affirmative Marketing Plan in accordance with D1 above; and
  - (b) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.
11. The sponsor/owner shall complete annual monitoring as directed by the MHL.
- c. Extension of Expiring Controls Program. This program is administered in accordance with prevailing law.
- d. Supportive Housing and Group Homes. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
  1. Units are 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).
  2. Units 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.
  3. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
  4. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
  5. Occupancy shall not be restricted to youth under 18 years of age.
  6. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
  7. The bedrooms and/or units shall comply with UHAC with the following exceptions:
    - (a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
    - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
  8. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed

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restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

9. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.
10. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
  - (a) An Affirmative Marketing Plan in accordance with vii.(a) above; and
  - (b) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.
11. The sponsor/owner shall complete annual monitoring as directed by the MHL.

#### 12-1.6. Regional Income Limits.

- a. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- b. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
- c. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

#### 12-1.7. Maximum Initial Rents And Sales Prices.

- a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.
- b. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
- c. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income. The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent (rounded up) of the restricted units.
- d. 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, provided that at least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.
- e. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median

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income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.

- f. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers.
- g. Notwithstanding the foregoing, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by such prior ordinance. Consistent with the Borough's prior ordinance, homeowner's associations shall not be permitted to increase the percentage of common area maintenance fees for any 95/5 Unit or Prior Round Unit that first received an initial certificate of occupancy prior to December 20, 2004 unless the 95/5 Unit or Prior Round Unit has been released from the affordability controls and the Borough has not otherwise taken action to extend the initial affordable control period for an additional period of time.
- h. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
  1. A studio or efficiency unit shall be affordable to a one-person household;
  2. A one-bedroom unit shall be affordable to a one and one-half person household;
  3. A two-bedroom unit shall be affordable to a three-person household;
  4. A three-bedroom unit shall be affordable to a four and one-half person household; and
  5. A four-bedroom unit shall be affordable to a six-person household.
- i. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
  1. A studio or efficiency unit shall be affordable to a one-person household;
  2. A one-bedroom unit shall be affordable to a one and one-half person household; and
  3. A two-bedroom unit shall be 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.
- j. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.

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- k. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- l. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual 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." Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

#### 12-1.8. Affirmative Marketing.

- a. Developers, program sponsors and landlords of affordable developments shall be required to comply with the Borough's most recently court approved Affirmative Marketing Plan with respect to the marketing of initial sales and rentals and resales and re-rentals of affordable units within the Borough.
- b. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- c. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is 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 Housing Region 1 and is required to be followed throughout the period of deed restriction.
- d. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
  - 1. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
  - 2. There shall be a regional preference for all households that live and/or work in Housing Region 1 comprising Passaic, Bergen, Hudson and Sussex Counties.
  - 3. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
  - 4. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing

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restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

- e. The Affirmative Marketing Process describes the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.
- f. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- g. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website.
- h. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- i. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- j. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

#### 12-1.9. Selection of Occupants of Affordable Housing Units.

- a. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
- b. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

#### 12-1.10. Occupancy Standards.

- a. 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:
  1. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
  2. Provide a bedroom for every two adult occupants;
  3. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
  4. Avoid placing a one-person household into a unit with more than one bedroom.

#### 12-1.11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- a. The initial control periods for restricted ownership units shall be for a period of at least 30 years and in accordance with the UHAC, as may be amended and supplemented, with the Borough reserving the right to extend the affordability control period for an additional period of time thereafter.

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- b. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
- c. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
- d. 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.
- e. For any newly constructed affordable unit, after the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
  - 1. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
  - 2. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
  - 3. Notwithstanding the foregoing, nothing herein shall eliminate or alter the right of the Borough to extend the affordability controls of any 95/5 units or Prior Round Units.
    - (a) 95/5 units. The Borough may elect to release any 95/5 unit from the affordability controls only by formal action taken by the Borough Council after the initial control period ends. At the time of closing of the first non-exempt sale following the release of the 95/5 unit from its controls, the seller of the 95/5 unit shall pay to the municipality 95 percent of the difference between the actual sale price and the regulated maximum resale price that would be applicable for the 95/5 unit were the control period still in effect.
    - (b) Non-95/5 Prior Round Units. The Borough may elect to release any non-95/5 Prior Round Units from the affordability controls only by formal action taken by the Borough Council after the initial control period ends. At the time of closing of the first non-exempt sale following the release of the non-95/5 Prior Round Unit from its controls, the seller of the Prior Round Unit shall pay to the municipality an amount equal to the difference between the unit's non-restricted fair market value and the regulated maximum resale price that would be applicable for the Prior Round unit were the control period still in effect.
- f. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- g. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- h. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market

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value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

i. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

j. Extensions of Affordability Controls on Ownership Units

1. The Borough retains the right and power to preserve its existing and any newly constructed very low-income, low-income and moderate-income affordable ownership units located within the Borough by extending the initial affordable control period for an additional period of time beyond the original control period established in any judgment of compliance, judgment of repose or other judgment, court order, grant of substantive certification, master deed, affordable housing plan, affordable housing agreement, deed restriction, restrictive covenant, declaration of restrictive covenants, public offering statement, contract, settlement agreement, grant agreement, developer's agreement or other agreement. The Borough retains and reserves this right extend the affordability controls on all existing and any newly constructed affordable ownership units within the Borough regardless of the date the affordable unit(s) was/were created.

2. The right of the Borough to extend the affordability controls on any restricted ownership unit shall not otherwise be limited or circumscribed by any term, condition or provision contained within any master deed, affordable housing plan, affordable housing agreement, deed restriction, restrictive covenant, declaration of restrictive covenants, public offering statement, contract, settlement agreement, grant agreement, developer's agreement or other agreement.

3. The Borough shall exercise such right by ordinance adopted by the Borough Committee.

4. During the initial control period and any extended control period, no seller of a restricted unit in the Borough may utilize the repayment option or exit sale, but may sell the restricted unit to another qualifying household at the then applicable maximum resale price determined by the Agency.

12-1.12. Price Restrictions for Restricted Ownership Units and Resale Prices.

a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:

1. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.

2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.

(a) If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.

(b) If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to 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

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3. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
    - (a) Those that render the unit suitable for a larger household or the addition of a bathroom.
    - (b) The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d).
  4. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

12-1.13. Buyer Income Eligibility.

- a. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.
- b. Notwithstanding the foregoing, 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 if and only 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. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit

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and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

- c. 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.
  - d. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a 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, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
    - 1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;
    - 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
    - 3. The household is currently in substandard or overcrowded living conditions;
    - 4. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments
- 12-1.14. Limitations on Indebtedness Secured by Ownership Unit; Subordination.
- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
  - b. 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 restricted ownership 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).
- 12-1.15. Control Periods for Restricted Rental Units.
- a. Control periods for units that meet the definition of prior round units shall be pursuant to the UHAC and shall remain subject to the requirements of this ordinance for a period of at least 30 years, with the Borough reserving the right to extend the affordability controls for an additional period of time in accordance with the Act and UHAC.
  - b. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period

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of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with applicable law.

- c. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
  - d. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
  - e. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
  - f. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
  - g. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
    - 1. Sublease or assignment of the lease of the unit;
    - 2. Sale or other voluntary transfer of the ownership of the unit;
    - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
    - 4. 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.
  - h. The Borough retains the right and power to preserve all existing and any newly constructed very low-income, low-income and moderate-income rental units constructed in the Borough on or after October 1, 2001 by extending the affordable control period for an additional period of time beyond the original control period established in any judgment of compliance, judgment of repose or other judgment, court order, grant of substantive certification, master deed, affordable housing plan, affordable housing agreement, deed restriction, restrictive covenant, declaration of restrictive covenants, public offering statement, contract, settlement agreement, grant agreement, developer's agreement or other agreement.
    - 1. The right of the Borough to extend the affordability controls on any restricted rental unit shall not otherwise be limited or circumscribed by any term, condition or provision contained within any master deed, affordable housing plan, affordable housing agreement, deed restriction, restrictive covenant, declaration of restrictive covenants, public offering statement, contract, settlement agreement, grant agreement, developer's agreement or other agreement.
    - 2. The Borough shall exercise such right to extend the affordability controls by ordinance adopted by the Borough Committee.
- 12-1.16. Rent Restrictions for Rental Units; Leases and Fees.
- a. The initial rent for a restricted rental unit shall be set by the Administrative Agent.
  - b. A written lease shall be required for all restricted rental 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. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.

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- c. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
    - 1. 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.
  - d. 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. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
  - e. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
  - f. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
  - g. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
  - h. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.
- 12-1.17. Tenant Income Eligibility.
- a. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
    - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.
    - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.
    - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
  - b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the 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:
    - 1. 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;

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2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents reliable anticipated 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.
- c. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

12-1.18. Municipal Housing Liaison.

- a. The Municipal Housing Liaison shall be approved by municipal resolution.
- b. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in N.J.A.C. 5:99-1 et seq.
- c. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
  1. Serving as the 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. The oversight of the Affirmative Marketing Plan and affordability controls.
  3. When applicable, overseeing and monitoring any contracting Administrative Agent.
  4. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
  5. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
  6. Coordinating meetings with affordable housing providers and administrative agents, as needed.
  7. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
  8. 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.
  9. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
  10. Listing on the municipal website contact information for the MHL and Administrative Agents.

12-1.19. Administrative Agent.

- a. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable

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housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.

- b. The fees for administrative agents shall be paid as follows:
1. Administrative agent fees related to rental units shall be paid by the developer/owner.
  2. Administrative agent fees related to initial sale of units shall be paid by the developer.
  3. Administrative agent fees related to resales shall be paid by the seller of the affordable home.
  4. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- c. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- d. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
  2. Affirmative marketing:
    - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
    - (b) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
  3. Household certification.
    - (a) Soliciting, scheduling, conducting and following up on interviews with interested households.
    - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.
    - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
    - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.

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- (f) Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
4. Affordability controls.
- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.
  - (b) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
  - (c) Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
  - (d) Ensuring the issuance of Continuing Certificates of Occupancy, completion of a habitability inspection, or certifications pursuant to N.J.A.C. 5:80-26.11; or if the unit falls under the authority of the New Jersey Bureau of Housing Inspection under the Hotel and Multiple Dwelling Law, a certification of inspection has been issued indicating no violations as to the habitability of the unit exists for the most recent periodic inspection.
5. Records retention.
- (a) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
  - (b) Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
6. Resales and re-rentals.
- (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.
  - (b) Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
7. Processing requests from unit owners.
- (a) Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.
  - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
  - (c) Notifying the municipality of an owner's intent to sell a restricted unit.

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(d) Making determinations on requests by owners of restricted units for hardship waivers.

8. Enforcement.

(a) Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

(b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement 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) Sending annual mailings 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 municipal 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. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

12-1.20. Responsibilities of The Owner of a development containing affordable units.

a. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:

1. 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.

2. The total number of units in the project and the number of affordable units.

3. 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.

4. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.

5. A projected construction schedule.

6. The location of any common areas and elevators.

7. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.

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- b. In addition to a. above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
1. 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.
  2. Provide to the administrative agent a description of any applicable fees.
  3. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
  4. Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
  5. Provide to the administrative agent a proposed form of lease for any rental units.
  6. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
  7. Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
- c. In addition to a. above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
1. Proposed pricing for all units, including any purchaser options and add-on items.
  2. Condominium or homeowner association fees and any other applicable fees.
  3. Estimated real property taxes.
  4. Sewer, water, trash disposal, and any other utility assessments.
  5. Flood insurance requirement, if applicable.
  6. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

#### 12-1.21. Enforcement of Affordable Housing Regulations

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or

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tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

- (a) A fine of not more than \$2,000 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
  - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
  - (c) In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- c. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
- d. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- 1. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
  - 2. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

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3. Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
  4. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
  5. Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
  6. The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
- e. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
- f. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
- g. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies

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available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.

**h. Appeals**

1. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

**12-2. Development Fees.**

**12-2.1. Purpose**

- a. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 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.

**12-2.2. Basic Requirements**

- a. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
- b. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

**12-2.3. Residential Development Fees**

**a. Imposed fees**

1. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
2. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.0% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b. Eligible exactions, ineligible exactions and exemptions for residential development

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1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
4. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.
5. No development fee shall be collected for developers who expand, enlarge or improve existing single family or two-family residences.
6. Developers are exempt from paying development fees for the development of the following specific uses: not-for-profit uses; Federal, State and municipal government uses; churches and other places of worship; and public schools.

#### 12-2.4. Non-Residential Development Fees

- a. Imposition of fees
  1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay 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. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay 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. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. 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

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1. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
  2. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
  - d. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - e. If a property that 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 municipality as a lien against the real property of the owner.

#### 12-2.5. 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.
- 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 by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on 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 construction permit for a development that 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 that 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 associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the municipality 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

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may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).

- h. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

#### 12-2.6. Appeal of development fees

- a. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. 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, R.S. 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.
- b. 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 municipality. 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, R.S. 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.

#### 12-2.7. Affordable Housing Trust Fund

- a. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction.
  2. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit 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 municipal affordable housing program including but not limited to interest earned on fund deposits.
- c. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
- d. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:

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1. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
  2. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
  3. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;
  4. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
  5. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;
  6. Revocation of compliance certification or a judgment of compliance and repose;
  7. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;
  8. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.
- e. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

#### 12-2.8. Use of Funds

- a. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the 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; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; 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; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
- b. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
- c. A portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal 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, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  2. Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in

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the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

- d. No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

#### 12-2.9. Monitoring

- a. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

#### 12-2.10. Ongoing Collection of Fees

- a. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- b. If the municipality 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 established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

#### 12-2.11. Emergent Affordable Housing Opportunities. 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.

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**SECTION 2.**

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

**SECTION 3.**

In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bloomingdale, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of Bloomingdale are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**SECTION 4.**

The Borough Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63.

**SECTION 5.**

After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Bloomingdale for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Governing Body, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**SECTION 6.**

Upon the adoption of this Ordinance after public hearing thereon, the Borough Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Passaic County Planning Board as required by N.J.S.A. 40:55D16. The Clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

**SECTION 7.**

This ordinance shall take effect upon publication and in accordance with the law.



ADOPTED: MARCH 3, 2026  
 APPROVED: [Signature]  
 MAYOR  
 DATE: 3/3/2026  
 ATTEST: [Signature]  
 MUNICIPAL CLERK

Ordinance No. 5-2026  
 Introduced: February 17, 2026  
 Adoption: March 3, 2026

Ordinance No. 5-2026

**Borough of Bloomingdale, Passaic County**

**AN ORDINANCE AMENDING THE LAND USE ORDINANCE**

**OF THE BOROUGH OF BLOOMINGDALE TO AMEND CHAPTER 92 ZONING, ARTICLE XII SCHEDULE OF REGULATIONS TO AMEND THE BOROUGH'S INCLUSIONARY HOUSING DISTRICTS CONSISTENT WITH AND DESIGNED TO EFFECTUATE THE BOROUGH'S ADOPTED 2025 ROUND 4 HOUSING ELEMENT AND FAIR SHARE PLAN AND 2025 MEDIATION AGREEMENT WITH FAIR SHARE HOUSING CENTER**

**WHEREAS**, the Borough adopted a Fourth Round Housing Element and Fair Share Plan in June 2025 in order to satisfy its Round 4 affordable housing obligation; and

**WHEREAS**, the Borough entered into a Mediation Agreement with Fair Share Housing Center on December 24, 2025 in the Matter of the Application of the Borough of Bloomingdale's Housing Element and Fair Share Plan (Docket No.: PAS-L-283-25); and

**WHEREAS**, the Mediation Agreement set forth that the affordable housing set-aside in the B-1, B-1-A, BCD, and R-M Zone districts shall be 20% regardless of tenure; and

**WHEREAS**, the zoning herein is consistent with the Mediation Agreement with Fair Share Housing Center, as well as the 2025 Housing Element and Fair Share Plan; and

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Bloomingdale, Passaic County, New Jersey, that the Code of the Borough of Bloomingdale is hereby amended as follows:

**SECTION 1. Amend Section 92-50 R-M In-Town Apartment and Senior Citizen Housing Zone as follows:**

Additions are shown as **thus**; deletions shown as **~~thus~~**

§ 92-50. R-M In-Town Apartment and Senior Citizen Housing Zone.

The following regulations shall apply in the R-M Zone:

...

D. Development Regulations for garden apartments, and, as a conditional use, apartments for senior citizens.

...

14. Development Regulations for garden apartments, and, as a conditional use, apartments for senior citizens.

(a) A mandatory affordable housing set-aside standard shall apply for any development consisting of five or more new dwelling units.

(b) The set-aside of affordable units **shall be 20% for both for sale and rental units, which are to be offered for sale shall be 20%. The set-aside of affordable units which are to be offered for rental shall be 15%.** For developments where the set-aside results in a decimal, 0.49 and below shall be rounded down and 0.5 and above shall be rounded up.

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- (c) No payments in lieu of the affordable housing set-aside shall be permitted or collected.
- (d) The affordable units shall comply with the Borough's affordable housing regulations in Chapter 12 of the Borough Ordinances. This includes, but is not limited to, affordability controls ~~of not less than 30 years~~, proper distribution of one-, two- and three-bedroom affordable units, proper distribution of very-low-, low- and moderate-income units, and affirmative marketing.
- (e) This standard does not create any entitlement for a property owner or applicant for a zoning amendment, variance, site plan approval, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- (f) ~~Borough may seek to continue its substantive certification by way of the Superior Court of the State of NJ or a future administrative agency with jurisdiction over the certification process. In the event such a court or administrative agency approves a plan that deviates from the set-aside provisions of this section, then the order of the court or the administrative agency shall prevail. Ground floor dwelling units shall be exempt from the requirements listed in 92-55.2P~~

...

**SECTION 2. Amend Section 92-55. B-1 General Business Zone as follows:**

Additions are shown as **thus**; deletions shown as **~~thus~~**

§ 92-55. B-1 General Business Zone.

The following regulations shall apply in the B-1 Zone:

...

- D. Conditional uses to be acted upon by the Planning Board, subject to § 92-24.

...

- 7. Dwelling units above permitted business uses.
  - (a) A mandatory affordable housing set-aside standard shall apply for any development consisting of five or more new dwelling units.
  - (b) The set-aside of affordable units **shall be 20% for both for sale and rental units.** ~~which are to be offered for sale shall be 20%. The set-aside of affordable units which are to be offered for rental shall be 15%.~~ For developments where the set-aside results in a decimal, 0.49 and below shall be rounded down and 0.5 and above shall be rounded up.
  - (c) No payments in lieu of the affordable housing set-aside shall be permitted or collected.
  - (d) The affordable units shall comply with the Borough's affordable housing regulations in Chapter 12 of the Borough Ordinances. This includes, but is not limited to, affordability controls ~~of not less than 30 years~~, proper distribution of one-, two- and three-bedroom affordable units, proper distribution of very-low-, low- and moderate-income units, and affirmative marketing.

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- (e) This standard does not create any entitlement for a property owner or applicant for a zoning amendment, variance, site plan approval, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- (f) ~~The Borough may seek to continue its substantive certification by way of the Superior Court of the State of NJ or a future administrative agency with jurisdiction over the certification process. In the event such a court or administrative agency approves a plan that deviates from the set-aside provisions of this section, then the order of the court or the administrative agency shall prevail. Ground floor dwelling units shall be exempt from the requirements listed in 92-55.2P~~

...

**SECTION 3. Amend Section 92-55.1. B-1-A Commercial Zone as follows:**

Additions are shown as **thus**; deletions shown as ~~thus~~

§ 92-55.1. B-1-A Commercial Zone.

The following regulations shall apply in the B-1-A Zone:

...

- C. Conditional uses. (See § 92-24.)
  - 7. Animal hospitals, veterinary offices, kennels and animal day-care centers.
  - 8. Hotels and motels.
  - 9. Dwelling units above permitted business uses.
    - (a) A mandatory affordable housing set-aside standard shall apply for any development consisting of five or more new dwelling units.
    - (b) The set-aside of affordable units **shall be 20% for both for sale and rental units, which are to be offered for sale shall be 20%. The set-aside of affordable units which are to be offered for rental shall be 15%.** For developments where the set-aside results in a decimal, 0.49 and below shall be rounded down and 0.5 and above shall be rounded up.
    - (c) No payments in lieu of the affordable housing set-aside shall be permitted or collected.
    - (d) The affordable units shall comply with the Borough's affordable housing regulations in Chapter 12 of the Borough Ordinances. This includes, but is not limited to, affordability controls ~~of not less than 30 years~~, proper distribution of one-, two- and three-bedroom affordable units, proper distribution of very-low-, low- and moderate-income units, and affirmative marketing.
    - (e) This standard does not create any entitlement for a property owner or applicant for a zoning amendment, variance, site plan approval, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
    - (f) ~~The Borough may seek to continue its substantive certification by way of the Superior Court of the State of NJ or a future administrative agency with~~

Ordinance No. 5-2026  
 Introduced: February 17, 2026  
 Adoption: March 3, 2026

~~jurisdiction over the certification process. In the event such a court or administrative agency approves a plan that deviates from the set-aside provisions of this section, then the order of the court or the administrative agency shall prevail. Ground floor dwelling units shall be exempt from the requirements listed in 92-55.2P~~

...

**SECTION 4. Amend Section 92-55.2. BCD Bloomingdale Center District Zone as follows:**

Additions are shown as **thus**; deletions shown as ~~thus~~

§ 92-55.2. BCD Bloomingdale Center District Zone (BCD).

The following regulations shall apply in the BCD Zone:

...

C. Conditional uses to be acted upon by the Planning Board, subject to § 92-24.

7. Dwelling units above permitted business uses.

- (a) A mandatory affordable housing set-aside standard shall apply for any development consisting of five or more new dwelling units.
- (b) The set-aside of affordable units **shall be 20% for both for sale and rental units, which are to be offered for sale shall be 20%. The set-aside of affordable units which are to be offered for rental shall be 15%.** For developments where the set-aside results in a decimal, 0.49 and below shall be rounded down and 0.5 and above shall be rounded up.
- (c) No payments in lieu of the affordable housing set-aside shall be permitted or collected.
- (d) The affordable units shall comply with the Borough's affordable housing regulations in Chapter 12 of the Borough Ordinances. This includes, but is not limited to, affordability controls ~~of not less than 30 years~~, proper distribution of one-, two- and three-bedroom affordable units, proper distribution of very-low-, low- and moderate-income units, and affirmative marketing.
- (e) This standard does not create any entitlement for a property owner or applicant for a zoning amendment, variance, site plan approval, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- (f) ~~The Borough may seek to continue its substantive certification by way of the Superior Court of the State of NJ or a future administrative agency with jurisdiction over the certification process. In the event such a court or administrative agency approves a plan that deviates from the set-aside provisions of this section, then the order of the court or the administrative agency shall prevail. Ground floor dwelling units shall be exempt from the requirements listed in 92-55.2P~~

...

Ordinance No. 5-2026  
 Introduced: February 17, 2026  
 Adoption: March 3, 2026

**SECTION 5. Amend Section 92-60 as follows:**

Additions are shown as **thus**; deletions shown as ~~thus~~

**§ 92-60. ~~Reserved.~~ Mandatory Affordable Housing Set-aside.**

- A. A development, other than single-family detached, providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%. For developments where the set-aside results in a decimal, 0.49 and below shall be rounded down and 0.5 and above shall be rounded up.**
- B. This requirement does not apply to any sites or specific zones otherwise identified in the Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.**
- C. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.**
- D. All such affordable units shall be governed by the Borough's affordable housing regulations in Chapter 12 of the Borough Ordinances, including but not limited to controls on affordability, bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.**
- E. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.**
- F. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.**
- G. 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.**

ATTEST:

BOROUGH OF BLOOMINGDALE  
 COUNTY OF PASSAIC  
 STATE OF NEW JERSEY

  
 Breeanna Smith, Clerk

By:   
 John D'Amato, Mayor

**RESOLUTION NO. 2026-3.6  
OF THE GOVERNING BODY OF  
THE BOROUGH OF BLOOMINGDALE**

**RESOLUTION OF THE BOROUGH OF BLOOMINGDALE, COUNTY  
OF PASSAIC AND STATE OF NEW JERSEY ADOPTING AN  
“AFFIRMATIVE MARKETING PLAN” FOR THE BOROUGH OF  
BLOOMINGDALE**

**WHEREAS**, in accordance with P.L. 2024, Chapter 2 and the New Jersey Uniform Housing Affordability Controls (“UHAC”)(N.J.A.C. 5:80-26.1 et seq.), the Borough of Bloomingdale is required to adopt an Affirmative Marketing Plan to ensure that all affordable housing units created are affirmatively marketed to very low-, low- and moderate-income households, particularly those living and/or working within Housing Region 1, the Housing Region encompassing the Borough of Bloomingdale.

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Bloomingdale, in the County of Passaic, State of New Jersey, that the Council does hereby adopt the following Affirmative Marketing Plan:

**Affirmative Marketing Plan**

- A. The Affirmative Marketing Plan is a regional marketing strategy 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 or number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, to housing units which are being marketed by a developer or sponsor of affordable housing. 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 the Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The Municipality is located in Housing Region 1, consisting of Bergen, Hudson, Passaic and Sussex Counties.
- B. The Municipality has a plan to address both its Prior Round Obligation (1987-2025) and its Fourth Round Obligation (2025-2035). This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low-, low- and moderate-income units, including those that are part of the municipality’s Housing Element and Fair Share Plan, and those that may be constructed in future developments not yet anticipated by the Housing Element and Fair Share Plan.

- C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent under contract to the Municipality, or the Administrative Agent of any specific developer approved by the municipality.
- D. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.
- E. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days prior to expected occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low-, low- and moderate-income housing units are initially occupied and for as long as the affordable units remain deed restricted such that qualifying new tenants and/or purchasers continues to be necessary.
- F. The Affirmative Marketing Plan is a continuing program that shall be followed throughout the entire period of affordability restrictions. In implementing the Affirmative Marketing Plan, the Administrative Agent, whether acting on behalf of the Municipality or on behalf of a specific developer, shall meet the following requirements at a minimum:
  - 1. The primary marketing and advertising must be employed at the start of the marketing program and continue until all units are leased or sold or until the number of applications received is at least three times the number of units. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.
  - 2. The advertisements shall, at a minimum, include:
    - a. The name and location of the housing project;
    - b. An address sufficient to find directions to the housing units;
    - c. A range of prices or rents for the affordable housing units;
    - d. The sizes, as measured in number of bedrooms of the affordable housing units;
    - e. The types (that is, family, age-restricted, or supportive) and number of affordable units available;
    - f. The number of units available to very low-, low-, and moderate-income households;
    - g. The accessibility features, if any, of the affordable housing units;
    - h. The maximum income permitted to qualify for the affordable housing units;
    - i. The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)2;

- j. Where applications (paper and online) for the affordable housing units may be found;
  - k. The expected lease-up/closing date(s) for the affordable housing units;
  - l. The expected date of the random selection;
  - m. The business hours when interested households may obtain paper applications for the affordable housing units;
  - n. Contact information, including an email address and phone number that are regularly monitored by the administrative agent;
  - o. The name of the sales agent and/or rental manager; and
  - p. Application fees, if any.
3. Affirmative fair marketing of affordable units must be completed in accordance with the requirements set forth in UHAC at N.J.A.C. 5:80-26.16 in all media and outlets required by the rules.
  4. Each affordable housing development must complete worksheet substantially in the form of the model affirmative marketing worksheet published by the state.
  5. Affordable units must be listed on the New Jersey Housing Resource Center's website ([www.njhrc.gov](http://www.njhrc.gov)) in accordance with N.J.A.C. 5:80-26.16(f)1 at least 60 days before the random selection.
  6. Applications, or notices thereof, used as part of the affirmative marketing program must be available in the following locations:
    - a. Passaic County Administration Building, 401 Grand St, Paterson, NJ 07505. Bergen County Administration Building, 1 Bergen County Plaza, Hackensack, NJ 07601. Hudson County Administration Building, 595 Newark Ave, Jersey City, NJ 07306. Sussex County Administrative Center, 1 Spring St #1, Newton, NJ 07860.
    - b. Passiac Public Library, 195 Gregory Ave, Passaic, NJ 07055. Earl A. Morgan Public Library, 1841 John F. Kennedy Blvd, Jersey City, NJ 07305. North Bergen Public Library, 510 81st St, North Bergen, NJ 07047. Sussex County Main Library, 125 Morris Turnpike, Newton, NJ 07860.
    - c. Fair Share Housing Center, 1 Ethel Lawrence Blvd, Mt Laurel Township, NJ 08054. The Latino Action Network, 13 Birch Dr, Freehold, NJ 07728. New Jersey State NAACP, 4326 Harbor Beach Blvd. # 775, Brigantine, New Jersey 08203. Supportive Housing Association, 185 Valley St, South Orange Village, NJ 07079. Bergen County NAACP, 17 Bennett Rd, Englewood, NJ 07631. Bergen County Urban League, 12 Tenafly Rd #104, Englewood, NJ 07631. Passaic County NAACP, 114 Prospect St, Passaic, NJ 07055. Bergen County Housing Coalition, 392 Main St, Hackensack, NJ 07601
  8. The municipality's Administrative Agent, or the Administrative Agent of a specific developer, shall comply with all requirements set forth in N.J.S.A.

52:27D-321.3 et seq. with regard to the affirmative marketing of affordable housing units.

- G. The municipality’s Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Bergen, Hudson, Passaic, and Sussex Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers.
- H. The municipality’s Administrative Agent shall develop, maintain and update a list of major employers in Bergen, Hudson, Passaic and Sussex Counties that will aid in the affirmative marketing program.
- I. A random selection method to select occupants of very low-, low- and moderate-income housing will be used by the municipality’s Administrative Agent, or the Administrative Agent of any specific developer, in conformance with N.J.A.C. 5:80-26.16(d). This Affirmative Marketing Plan provides a state-wide and/or regional preference for very low-, low- and moderate-income households that live and/or work in Housing Region 1, which is comprised of Bergen, Hudson, Passaic and Sussex Counties. Pursuant to the New Jersey Fair Housing Act (C.52:27D-311), a preference for very low-, low- and moderate-income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the municipality prior to the affirmative marketing of the units.
- J. All developers/owners of very low-, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the municipality’s Administrative Agent.

**BE IT FURTHER RESOLVED** that the appropriate municipal officials and professionals are authorized to take all actions required to implement the terms of this Resolution.

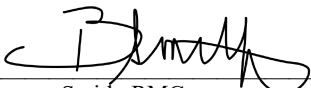
**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

Adopted: March 3, 2026

***Record of Council Vote on Passage***

COUNCIL PERSON	AYE	NAY	Abstain	Absent	COUNCIL PERSON	AYE	NAY	Abstain	Absent
Bronkhurst	X				Hagin	X			
Catalano	X				Schubert	X			
Graziano	X				Yazdi	X			

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Bloomingdale at an Official Meeting held on March 3, 2026.

  
 Brecanna Smith, RMC  
 Municipal Clerk, Borough of Bloomingdale

**RESOLUTION NO. 2026-3.5  
OF THE GOVERNING BODY OF  
THE BOROUGH OF BLOOMINGDALE**

**RESOLUTION OF THE BOROUGH OF BLOOMINGDALE, COUNTY AND STATE OF  
NEW JERSEY APPROVING THE FOURTH ROUND AFFORDABLE HOUSING  
TRUST FUND SPENDING PLAN**

**WHEREAS**, the Borough of Bloomingdale adopted a Development Fee Ordinance in 2023, which was most recently amended in 2026, and which sets forth standards for the collection, maintenance, and expenditure of development fees; and

**WHEREAS**, the municipal Development Fee Ordinance established an Affordable Housing Trust Fund that includes development fee payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments for affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and/or funds collected in connection with the municipality's affordable housing program; and

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the "FHA-2") which governs how municipalities will comply with their affordable housing obligations for the Fourth Round (2025-2035); and

**WHEREAS**, the Borough of Bloomingdale Planning Board adopted the Fourth Round Housing Element and Fair Share Plan on June 4, 2025 following a public hearing thereon all in accordance with the requirements of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq; and

**WHEREAS**, in addition to same, the municipal Affordable Housing Planner has prepared a proposed Fourth Round Affordable Housing Trust Fund Spending Plan consistent with the FHA-2, and applicable regulations, which projects anticipated revenues for the City's Affordable Housing Trust Fund and describes the anticipated expenditures of these funds; and

**WHEREAS**, the Borough filed the 2025 Fourth Round Housing Element and Fair Share Plan, and all relevant supporting documentation and exhibits with the Court and the Program in the 2025 declaratory judgment action; and

**WHEREAS**, the Borough executed a Mediation Agreement with Fair Share Housing Center on December 24, 2025 that states, among other items, that a Fourth Round Spending Plan will be adopted before March 15, 2026; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Bloomingdale, in the County of Passaic, and State of New Jersey, as follows:

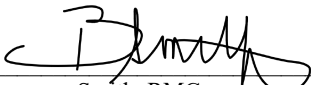
1. The Governing Body of the Borough of Bloomingdale hereby approves the Fourth Round Affordable Housing Trust Fund Spending Plan, attached hereto as Exhibit A; and

2. The Municipal Attorney is hereby directed to file this Resolution and the Borough’s proposed Fourth Round Spending Plan with the Program and Court in the “2025 Action”; and
3. The Municipal Attorney, Municipal Planner, and all other appropriate officials, employees and other professionals of the municipality are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this Resolution such that the Borough maintains its immunity from exclusionary zoning and builder’s remedy litigation; and
4. A certified copy of this Resolution and the Fourth Round Affordable Housing Trust Fund Spending Plan shall remain on file with the Borough for the purpose of public inspection; and
5. The Borough further reserves the right to amend and supplement its Fourth Round Affordable Housing Trust Fund Spending Plan in accordance with applicable law should such further amendments be required or necessary; and

***Record of Council Vote on Passage***

COUNCIL PERSON	AYE	NAY	Abstain	Absent	COUNCIL PERSON	AYE	NAY	Abstain	Absent
Bronkhurst	X				Hagin	X			
Catalano	X				Schubert	X			
Graziano	X				Yazdi	X			

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Bloomingdale at an Official Meeting held on March 3, 2026.

  
 \_\_\_\_\_  
 Breeanna Smith, RMC  
 Municipal Clerk, Borough of Bloomingdale



# **2026 FOURTH ROUND SPENDING PLAN**

HOUSING ELEMENT & FAIR SHARE PLAN  
BLOOMINGDALE BOROUGH  
PASSAIC COUNTY  
NEW JERSEY

February 2026



## Introduction

The Borough of Bloomingdale adopted a Fourth Round Housing Element and Fair Share Plan that addresses its affordable housing obligation in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., as amended by P.L. 2024, c.2. This Spending Plan addresses the anticipated collection of money in the affordable housing trust fund, anticipated expenditures and the method of allocating funds through the end of the Fourth Round, July 1, 2035. The terms herein are consistent with the Fair Housing Act, as well as the Fair Housing Act Regulations, N.J.A.C. 5:99, et seq.

A development fee ordinance creating a dedicated revenue source for affordable housing was initially adopted in 2023. Among other attributes, the ordinance establishes the development fees to be collected and the terms of the Borough's affordable housing trust fund. All development fees, other income, and interest generated by the fund will be kept in an interest-bearing affordable housing trust fund account at Provident Bank.

For the Fourth Round all affordable housing trust fund monies will be collected and spent in accordance with the Fair Housing Act, as amended, the Fair Housing Act Regulations, and shall be consistent with this Spending Plan, as approved by the Program or Court, as described in the sections that follow.

<b>Affordable Housing Trust Fund Summary</b>		
		<b>Total Collected through 12/31/2025</b>
Development Fees	+	\$0
Interest	+	\$4,167
Payments in Lieu of Construction	+	\$138,000
Other Income	+	\$18,623
Expenditures	-	\$131,557
<b>Ending Balance 12/31/2025</b>		<b>\$29,234</b>



## **Fourth Round Revenue**

In calculating a projection of revenue anticipated during the Fourth Round, through July 1, 2035, Bloomingdale Borough considered the following:

1. Development Fees. The Borough anticipates that it will receive a modest amount of residential and nonresidential development fees.
  - A. Residential and nonresidential projects that have had development fees imposed upon them at the time of preliminary or final development approvals.
  - B. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy.
  - C. Future development that is likely to occur based on historical rates of development.
2. Payments in lieu of construction. The Borough does not expect future revenues from this source.
3. Other funding sources. The Borough does not expect revenue from other funding sources.
4. Projected interest. The Affordable Housing Trust Fund is in an interest-bearing account and as such, interest will be collected during the Fourth Round.

Assumptions. Projected residential and non-residential development fees are based on approved development and development trends over the last 5 years.

## **Administrative Mechanism to Collect & Distribute Funds**

The following steps for the collection and distribution of development fee revenues shall apply:

1. Collection of development fee revenues. All collection of development fee revenues will be consistent with the Borough's development fee ordinance and the requirements of the Fair Housing Act set forth at *N.J.S.A. 52:27D-329.2* and the Fair Housing Act Regulations at *N.J.A.C. 5:99-3*.
2. Expenditure and distribution of development fee revenues. The Municipal Chief Financial Officer, in concert with the Borough Clerk will process the distribution of funds.

The release of such funds, with the exception of administrative use of funds within the limits set forth in the Fair Housing Act, requires the adoption of a resolution by the Borough Mayor & Council. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.



Projected Revenue												
Revenue Source	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035 (6 mo.)	Total	
Development Fees	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$500	\$9,500	
Payments-In-Lieu	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Interest	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$700	\$11,950	
<b>Total</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$2,250</b>	<b>\$1,200</b>	<b>\$21,450</b>	



## **Description of Anticipated Use of Affordable Housing Funds**

Bloomington Borough proposes to use the funds in the trust fund for the below listed items, pursuant to the Fair Housing Act, during the Fourth Round:

1. Affordability assistance to very low-, low- and moderate-income buyers and renters of affordable housing units; and

For any other uses of affordable housing trust funds, the Borough will apply to a court of competent jurisdiction or other authority, as the case may be, for an amendment to the Spending Plan.

### **Affordability Assistance**

A municipality shall set aside a portion of its collected development fees and interest earned for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with *N.J.S.A. 52:27D-329.2c(3)* and *N.J.A.C. 5:99-2.5*.

This Spending Plan allocates its anticipated revenues to affordability assistance. Permitted affordability assistance expenditures include but are not limited to down-payment assistance and security deposit assistance, rental assistance, low interest loans and converting low-income units to very-low-income units or creating new very-low-income units.

The Borough will operate security deposit and downpayment programs and will provide funding to buy down the cost of low-and moderate-income homes to convert them to very-low-income homes to fulfill the affordability assistance requirements. See the Appendix to this Spending Plan for additional information.

### **Administration**

Bloomington Borough may use affordable housing trust fund revenue for related administrative costs in an amount not to exceed 20% of the revenue collected from development fees. The table that follows demonstrates that Bloomington has already utilized the permitted administrative expenditures, and in fact has exceeded it. The Borough will not expend the trust fund on administrative expenses until compliance with the maximum of 20% has been achieved.

When within the maximum of 20% expended, permitted administrative expenditures include the following:

1. Borough Attorney, Engineer, Planner and other staff (proportionate) salaries and fees related to plan preparation and implementation, and for such other actions, efforts and expenses as permitted at *N.J.S.A. 52:27D-329.2c(5)* of the Fair Housing Act and the provisions pertaining to same, as set forth in the final adopted version of the Fair Housing Act regulations at *N.J.A.C. 5:99*; and
2. Program administration expenses, such as but not limited to those for the administrative agent.



<b>Administration Expenditures</b>		
Revenue collected through 12/31/2025		\$160,790.58
Non-residential Development Fee Reimbursements	-	\$0.00
Revenue projected through 7/1/2035	+	\$21,450
<b>Total</b>	<b>=</b>	<b>\$182,240.58</b>
20 percent maximum permitted administrative expenses	x 0.20 =	\$36,448.12
Less administrative expenditures through 12/31/2025	-	\$57,409.36
<b><i>Projected Administrative Costs through 7/1/2035</i></b>		<b>=</b>
		<b>\$0</b>



**Expenditure Schedule**

Bloomingtondale Borough intends to spend affordable housing trust funds on affordability assistance and administration during the fourth round.

Program	Projected Expenditures											Total
	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035 (6 mo.)		
Affordability Assistance	\$3,000	\$4,000	\$5,000	\$6,000	\$6,000	\$6,184	\$6,000	\$6,000	\$6,000	\$6,000	\$2,500	\$50,684
Administration	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$3,000</b>	<b>\$4,000</b>	<b>\$5,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,184</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$2,500</b>	<b>\$50,684</b>



## Excess or Shortfall of Funds

Given the lack of mandatory programs that require funding, it is not anticipated that funds from general revenue or bonding will be necessary. Notwithstanding, if funding should fall short of the amount necessary, the Borough of Bloomingdale will seek grants or low-cost loans to meet such shortfall. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to produce additional affordable housing through these programs or pursuant to a Court-approved amendment to this Spending Plan.

## Summary

The Borough will expend affordable housing trust fund revenues pursuant to the Fair Housing Act, the adopted Fair Housing Act Regulations governing such funds and consistent with its Housing Plan and this Spending Plan, as approved by the Court or Program. The following table provides a summary of anticipated collections and expenditures of the Affordable Housing Trust Fund as stated herein.

<b>Spending Plan Summary</b>		
Affordable Housing Trust Fund Balance 12/31/2025		\$29,234
Development fees and interest projected	+	\$21,450
Payments in lieu projected	+	\$0
Other revenue projected	+	\$0
<b>Total</b>	<b>=</b>	<b>\$50,684</b>
Administration	-	\$50,684
Affordability Assistance	-	\$0
<b>Excess Funds</b>	<b>=</b>	<b>\$0</b>



## **Appendix: Affordability Assistance Programs**

### **Security Deposit Assistance**

This program will provide a subsidy to income-qualified low-and moderate-income renters of deed restricted affordable rental units within the Borough to use as a security deposit. The Borough will provide up to \$2,000 as a grant to the qualifying low-and moderate-income renter for use as a security deposit for the deed restricted affordable unit. The goal of the program is to provide financial assistance to income-qualified renters.

Application to the program shall include proof of income qualification by the Borough's Administrative Agent, copy of the lease to rent a deed restricted home/unit that has been signed by the owner, and copy of the deed restriction (current or draft to-be-applied, as may be applicable). Affordability controls shall be embodied in a deed restriction which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time the subsidy is granted by the Borough. The term of the affordability control period shall be for a period of at least 30 years for fourth round sale and prior round units or 40 years for fourth round rental units, with the Borough reserving the right and option to extend the affordability control term for an additional term at the end of the initial control period consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial control period is set to end. Such security deposit shall be consistent with the requirements of the most recent adopted version of the Uniform Housing Affordability Controls in effect at the time the Borough adopts a resolution authority the specific funding assistance for the specific applicant.

Once the applicant provides the required application documents noted above, the Borough will pass a resolution authorizing funding assistance. Upon receipt of the approved municipal resolution, the renter will be provided an agreement for execution. The deed restriction shall be approved by the Borough Attorney and the Borough's Affordable Housing Administrative Agent, and shall be recorded in the chain-of-title by the owner of the property as a condition of any funding assistance from the Borough.

Recipients of Security Deposit Program funds are required to maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, for the duration of the deed restriction and abide by all other requirements of their deed restriction (located in their deed or Affordable Housing Agreement) and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.).

The program is not limited to one or more specific housing types or property locations in Bloomingdale Borough.

### **Down Payment Assistance**

This program will provide a subsidy to income-qualified very-low, low-and moderate-income homebuyers of deed restricted affordable units within the Borough to use as a principal down payment. Subject to trust fund availability, the Borough will provide up to \$20,000 as a grant to the income-qualified homebuyer to be strictly used as a downpayment for the purchase of a deed restricted affordable unit, including assistance to bring down the cost of low-or moderate-income units to make them affordable to very-low-income households. The goal of the program is to incentivize homeownership and to provide financial assistance to income-qualified homebuyers.

Application to the program shall include proof of income qualification by the Borough's Administrative Agent, copy of the contract to purchase a deed restricted fee-simple home that has been signed by the seller, and copy of the deed restriction (current or draft to-be-applied, as may be applicable). Affordability controls shall



be embodied in a deed restriction, recapture note and mortgage for the benefit of the Borough, and which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time the Borough issues the subsidy. The term of the initial affordability control period set forth in the deed restriction, recapture note, and mortgage shall be for a period of at least 30 years for fourth round sale and prior round units or 40 years for fourth round rental units, and shall include a reservation of the Borough's right and option to extend the control period for an additional term at the time the initial control period is set to expire consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial control period is set to end.

Once the applicant provides the required application documents noted above, the Borough will pass a resolution authorizing funding assistance. Upon receipt of the approved municipal resolution, the homeowner will be provided an agreement for execution.

Recipients of Downpayment Assistance Program funds are required to maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, for the duration of the deed restriction and abide by all other requirements of their deed restriction (located in their deed or Affordable Housing Agreement) and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.). The deed restriction, recapture note and mortgage shall be approved by the Borough Attorney and the Borough's Affordable Housing Administrative Agent, and the deed restriction and mortgage shall be recorded in the chain-of-title by the recipient as a condition of any funding assistance from the Borough.

The program is not limited to one or more specific housing types or property locations in Bloomingdale Borough.

### **Very-low Income Conversion Program**

The Borough will provide a grant to developers of inclusionary or 100 percent affordable housing developments or buy down the cost of low- or moderate-income units to make them affordable to very low-income households, which may include special needs and supportive housing opportunities. The goal of the program is to expand affordable housing opportunities for very low income households. The affordability assistance will result in additional very low-income units beyond what is required by state affordable housing rules. The Borough may negotiate with developers on a case-by-case basis to determine the appropriate amount of subsidy required to make the unit affordable to a very low-income household.

A condition of any subsidy shall require the developer to accept, execute and record a Borough approved affordable housing deed restriction and recapture mortgage in favor of the Borough, and require the developer execute a Borough approved recapture note in favor of the Borough. Affordability controls shall be embodied in the deed restriction, recapture note and recapture mortgage, which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time of issuance of the subsidy to the developer. The term of the initial affordability control period set forth in the deed restriction, recapture note and mortgage shall be for a period of at least 30 years, and shall include a reservation of the Borough's right and option to extend the control period for an additional term at the time the initial 30-year control period is set to expire consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial 30 year control period is set to end.

The program is not limited to one or more specific housing types or property locations in Bloomingdale Borough.

**RESOLUTION NO. 2026-1.15  
OF THE GOVERNING BODY OF  
THE BOROUGH OF BLOOMINGDALE**

**APPOINTMENT OF MUNICIPAL HOUSING LIAISON**

**WHEREAS**, pursuant to P.L. 2024, c.2, the Borough of Bloomingdale is required to appoint a Municipal Housing Liaison for the oversight of administration of Bloomingdale's affordable housing program to enforce the requirements of the law and N.J.A.C. 5:80-26.1 et. seq.; and

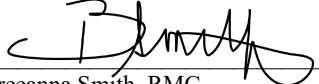
**WHEREAS**, Borough of Bloomingdale has amended Chapter 12 entitled "Municipal Housing Liaison" to provide for the appointment of a Municipal Housing Liaison to administer Bloomingdale's affordable housing program.

**NOW THEREFORE BE IT RESOLVED**, by the Governing Body of Borough of Bloomingdale in the County of Passaic, and the State of New Jersey that Michael Sondermeyer is hereby appointed by the Governing Body of Borough of Bloomingdale as the Municipal Housing Liaison for the administration of the affordable housing program, pursuant to and in accordance with Sections 12-1.4 of the Borough Code.

***Record of Council Vote on Passage***

COUNCIL PERSON	AYE	NAY	Abstain	Absent	COUNCIL PERSON	AYE	NAY	Abstain	Absent
Bronkhurst	X				Hagin	X			
Catalano	X				Schubert				X
Graziano	X				Yazdi	X			

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Bloomingdale at an Official Meeting held on January 6, 2026.

  
 \_\_\_\_\_  
 Breeanna Smith, RMC  
 Municipal Clerk, Borough of Bloomingdale

**RESOLUTION NO. 2026-1.80  
OF THE GOVERNING BODY OF  
THE BOROUGH OF BLOOMINGDALE**

**RESOLUTION OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF PASSAIC AND STATE OF NEW JERSEY, AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN PROFESSIONAL SERVICE CONTRACT TO COMMUNITY GRANTS, PLANNING & HOUSING LLC AS AFFORDABLE HOUSING AGENT AND AUTHORIZING AFFORDABLE HOUSING ADMINISTRATION SERVICES**

**WHEREAS**, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301), et. Seq., the Borough of Bloomingdale is implementing a program to provide affordable housing units to low and moderate income households desiring to live within the Municipality; and has a need to appoint a Affordable Housing Agent for the Borough of Bloomingdale; and

**WHEREAS**, Section 5:80-26.14 of the Rules provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality; and

**WHEREAS**, the Borough is also implementing a local housing rehabilitation program; and

**WHEREAS**, the Local Public Contracts law (N.J.S.A. 40A:11-1, et. seq) requires that the Resolution authorizing the award of contracts for Professional Services without competitive bids and the contract itself must be awarded for public inspection; and

**WHEREAS**, the Borough has received a proposal from Community Grants, Planning & Housing LLC for Affordable Housing Agent for Affordable Housing Administrative Services; and

**WHEREAS**, Community Grants Planning & Housing LLC employs licensed professional planners that are certified affordable housing administrative agents; and

**WHEREAS**, it has been determined that the value of the contract is not to exceed \$2,000; and

**WHEREAS, BE IT FURTHER RESOLVED** that the contract is awarded in accordance with the Schedule A which is on file in the clerk's office; and

**WHEREAS**, the term of this contract for these services is one year from January 1, 2026 through December 31, 2026; and

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the Borough of Bloomingdale grants a professional service agreement with Community Grants, Planning & Housing, LLC which is on file in the Municipal Clerk's Office.

**BE IT FURTHER RESOLVED** that a notice of this action shall be printed once in the Borough's legal newspaper.

**Certification of Funds:**

Pending Budget adoption, I certify the availability of funds, in an amount not to exceed \$2,000.00 from 6-01-20-100-001-028.



Heather Barkenbush, CFO

***Record of Council Vote on Passage***

COUNCIL PERSON	AYE	NAY	Abstain	Absent	COUNCIL PERSON	AYE	NAY	Abstain	Absent
Bronkhurst	X				Hagin	X			
Catalano	X				Schubert				X
Graziano	X				Yazdi	X			

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Bloomingdale at an Official Meeting held on January 6, 2026.



Breeanna Smith, RMC  
Municipal Clerk, Borough of Bloomingdale