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- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this subsection until the Township of Hardyston elects to release the unit from such requirements; however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
 - (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
 - (c) 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.
 - (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this subsection, an amount equal to the difference between the unit's nonrestricted fair market 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.
 - (e) The affordability controls set forth in this subsection shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
 - (f) A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- (9) Price restrictions for restricted ownership units, homeowners' association fees and resale prices.
- (a) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - [1] The initial purchase price for a restricted ownership unit shall be approved 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 foregoing standards.
 - [3] The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the very-low-, low- and moderate-income unit owners and the market unit owners.

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- [4] 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 capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

(10) Buyer income eligibility.

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median-income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- (b) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a very-low- or low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's certified monthly income.

(11) Limitations on indebtedness secured by ownership unit; subordination.

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time 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. 5:80-26.6(b).

(12) Control periods for restricted rental units.

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this subsection until the Township of Hardyston elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) 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, and the deed restriction shall be filed by the developer or seller with the records office of the County of Sussex. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of

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occupancy.

- (c) A restricted rental unit shall remain subject to the affordability controls of this subsection, 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; or
 - [3] The entry and enforcement of any judgment of foreclosure.
- (13) Price restrictions for rental units; leases.
- (a) 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 provided to the administrative agent.
 - (b) No additional fees 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.
 - (c) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this subsection.
- (14) Tenant income eligibility.
- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, 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 median income.
 - [2] Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - [3] Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
 - (b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-, low- 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. 5:80-26.16, 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 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.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection A(14)(b)[1] through [5] above with the administrative agent, who shall counsel the household on budgeting.

(15) Administration.

- (a) The position of Municipal Housing Liaison (MHL) for Township of Hardyston is established by this subsection. The Hardyston Township Council shall make the actual appointment of the MHL by means of a resolution.
- [1] The MHL must be either a full-time or part-time employee of Township of Hardyston.
 - [2] The person appointed as the MHL must be reported to COAH for approval. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
 - [3] The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Hardyston, including the following responsibilities, which may not be contracted out to the administrative agent:
 - [a] Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - [b] The implementation of the affirmative marketing plan and affordability controls;
 - [c] When applicable, supervising any contracting administrative agent;
 - [d] Monitoring the status of all restricted units in the Township of Hardyston's Fair Share Plan;
 - [e] Compiling, verifying and submitting annual reports as required by COAH;
 - [f] Coordinating meetings with affordable housing providers and administrative agents, as applicable; and

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[g] Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

(b) The Township of Hardyston shall designate by resolution of the Township Council of the Township of Hardyston one or more administrative agents to administer newly constructed affordable units in accordance with the Hardyston 2016 Judgment of Compliance, UHAC and applicable COAH rules.

(c) An operating manual shall be provided by the administrative agent(s), to be adopted by resolution of the governing body and subject to approval of COAH. The operating manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).

(d) The administrative agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.14, 5:80-26.16, and 5:80-26.18 thereof, which include:

[1] Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;

[2] Affirmative marketing household certification;

[3] Affordability controls;

[4] Records retention;

[5] Resale and re-rental;

[6] Processing requests from unit owners; and

[7] Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

(e) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

(16) 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 a very-low-, low- or moderate-income 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 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 \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - [b] 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 housing units, payment into the Township of Hardyston 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 very-low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- [2] 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 very-low-, low-, or moderate-income unit.
 - (c) 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 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 fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - (d) 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 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.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing 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 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.
 - (f) 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 maximum resale price for which the very-low-, low- or moderate-income 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 which would have been realized from an actual sale as previously described.
 - (g) 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 maximum resale price of the very-low-, low-, or moderate-income unit as permitted by the regulations governing affordable housing units.
 - (h) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions governing affordable housing units until such time as title is conveyed from the owner.
- (17) Appeals. Appeals from all decisions of an administrative agent designated pursuant to this subsection shall be filed in writing with a court of the State of New Jersey having competent jurisdiction over matters concerning affordable housing enforcement in the State of New Jersey.

B. Affordable housing development fees.

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(1) Purpose.

- (a) In *Holmdel Builders Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- (b) Pursuant to P.L. 2008, c. 46, Section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.
- (c) This subsection establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c. 46, Sections 8 and 32 through 38.¹² Fees collected pursuant to this subsection shall be used for the sole purpose of providing very-low-, low-, and moderate-income housing. This subsection shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.¹³

(2) Definitions. The following terms, as used in this subsection, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing established under the Act, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

DEVELOPER — 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 FEE — Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.¹⁴

EQUALIZED ASSESSED VALUE — The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property

12. Editor's Note: See, respectively, N.J.S.A. 52:27D-329.2 and N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

13. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

14. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).

GREEN BUILDING STRATEGIES — Those 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.

(3) Residential development fees.

(a) Imposed fees.

- [1] Mandatory residential development fees shall be 1.5% of the equalized assessed value for residential development. These fees shall be required in conjunction with application for a building permit for all projects which do not require a land development application approval. All other land development projects will be subject to the incentive zoning and mandatory set-aside provisions of this chapter.
- [2] When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, 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 1.5% of the equalized assessed value on the first two units; and the specified higher percentage up to 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.

- [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 a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- [2] Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for

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this purpose. The fee percentage shall be vested on the date that the building permit is issued.

- [3] Developers of residential structures demolished and replaced as a result of a natural disaster or fire shall be exempt from paying a development fee.

(c) Collection of fees.

- [1] The following procedures shall be followed with respect to the collection of development fees:

- [a] When a cash development fee is to be made in a sum determined by applying a percentage figure against the equalized assessed value of the land and improvements, the following rule shall apply: The value of the property shall be the equalized assessed value of each dwelling unit and the land at the time of project completion or, where feasible, completion of the unit in question.

- [b] The developer shall pay a minimum development fee of \$500 to the Township of Hardyston prior to the commencement of construction.

- [c] The developer shall pay the remaining fee to the Township of Hardyston at the issuance of a certificate of occupancy. At the issuance of the certificate of occupancy, the Tax Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the certificate of occupancy and the amount paid at the time of issuance of the building permit.

- [d] Payments shall be by certified check or bank money order to the Township of Hardyston and shall be deposited in a separate interest-bearing housing trust fund account established by this section.

- [2] A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by Hardyston Township. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(4) Nonresidential development fees.

(a) Imposed fees.

- [1] Within all zoning districts, nonresidential 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 nonresidential construction on an unimproved lot or lots.

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- [2] Nonresidential 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 nonresidential 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 improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- (b) Eligible exactions, ineligible exactions and exemptions for nonresidential development.
- [1] The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
 - [2] The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - [3] Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.
 - [4] A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46, shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
 - [5] If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this subsection within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by Hardyston Township as a lien against the real property of the owner.
- (c) Collection procedures.
- [1] Upon the granting of a preliminary, final or other applicable approval for a nonresidential development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a

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building permit.

- [2] For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- [3] The construction official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- [4] Within 90 days of receipt of that notice, the municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- [5] The construction official responsible for the issuance of a final certificate of occupancy shall notify the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- [6] Within 10 business days of a request for the scheduling of a final inspection, the municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- [7] Should Hardyston Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- [8] Fifty percent of the development fee shall be collected at the time of issuance of the building 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 building permit and that determined at the time of issuance of the certificate of occupancy. No certificate of occupancy shall be issued to the developer until all remaining developer fees have been paid in full.
- [9] Appeal of development fees.
 - [a] A developer may challenge nonresidential 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

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45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Hardyston Township. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the New Jersey State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(5) Affordable Housing Trust Fund.

- (a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- (b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - [1] Payments in lieu of on-site construction of affordable units;
 - [2] Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - [3] Rental income from municipally operated units;
 - [4] Repayments from affordable housing program loans;
 - [5] Recapture funds;
 - [6] Proceeds from the sale of affordable units; and
 - [7] Any other funds collected in connection with Hardyston Township's affordable housing program.
- (c) Within seven days from the opening of the trust fund account, Hardyston Township shall provide an escrow agreement between the municipality and the bank, to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).¹⁵
- (d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities.

(6) Use of funds.

- (a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Hardyston Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable

15. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

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housing units and related costs, accessory apartment, market-to-affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9¹⁶ and specified in the approved spending plan.

- (b) Funds shall not be expended to reimburse Hardyston Township for past housing activities.
- (c) At least 30% 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. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 - [1] Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
 - [2] Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
 - [3] Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (d) Hardyston Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance.
- (e) No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and

16. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

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compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the Affordable Housing Trust Fund.

- (7) **Monitoring.** If applicable, Hardyston Township shall complete all monitoring forms included in monitoring requirements related to the: 1) collection of development fees from residential and nonresidential developers, 2) payments in lieu of constructing affordable units on site, 3) funds from the sale of units with extinguished controls, 4) barrier-free escrow funds, 5) rental income, 6) repayments from affordable housing program loans, and 7) any other funds collected in connection with Hardyston Township's housing program, as well as to the expenditure of revenues and implementation of the 2016 HEFSP as approved pursuant to the Hardyston 2016 Judgment of Compliance. All monitoring reports shall be completed on forms previously designed by COAH.
- (8) **Ongoing collection of fees.** The ability for Hardyston Township to impose, collect and expend development fees shall expire in accordance with Hardyston 2016 Judgment of Compliance, unless Hardyston Township has filed an amended Housing Element and Fair Share Plan with a court of competent jurisdiction, and has received a judgment approving same, together with concurrent or subsequent approval of any amended development fee ordinance. If Hardyston Township fails to renew its ability to impose and collect development fees prior to the expiration of the Hardyston 2016 Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal 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 (N.J.S.A. 52:27D-320). Hardyston Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of the Hardyston 2016 Judgment of Compliance, nor shall Hardyston Township retroactively impose a development fee on such a development. Hardyston Township shall not expend development fees after the expiration of its substantive certification or any renewal or extension thereof.

C. Incentive zoning and mandatory set-asides.

(1) Applicability.

- (a) The requirements contained in this subsection shall be applied in Hardyston Township to all zones except the Crystal Springs portion of the CR (VC) Zone District, which is subject to separate ordinance provisions and an affordable housing developer's agreement for an inclusionary development.
- (b) Responsibility for constructing affordable housing units shall be as provided for under this subsection. Developers that have received final approvals prior to the effective date of this subsection shall be subject to the requirements of their final approvals and exempt from complying with the provisions of this subsection, unless the developer seeks a substantial change in approval, or the plan is abandoned, the approval lapses, or the period of protection pursuant to N.J.S.A. 40:55D-52 expires without extension. For developers that did not receive final

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approvals prior to the effective date of this subsection, then the triggering mechanism for incentive zoning and mandatory set-aside responsibility shall be the issuance of a building permit for new construction that received municipal land use approvals after the adoption of this subsection.

(2) Affordable units required for residential developments.

- (a) Except for residential inclusionary developments which are otherwise required to have a set-aside of low- and moderate-income units, any applicant for a residential development in Hardyston Township that includes four or more residential lots and/or dwelling units shall be required to provide the number of affordable housing units equivalent to 20% of the total number of market-rate units (15% if rental affordable are committed) which will result from the proposed development, with any decimal amount rounded to the next highest whole number. The number of units permitted is based upon the density requirements of the zone district, including the incentive zoning affordable housing units allowed by this subsection.

- (b) As incentives to internally subsidize the required affordable housing units, a developer may utilize the following:

[1] For residential developments constructing the incentive zoning affordable housing units on site, the developer may be permitted to an overall density increase of 40% over the existing zoning. The administration of any rental affordable units constructed on site will be the responsibility of the developer, unless an alternative arrangement is agreed upon between the developer and the Township. The affordable units may be built on a lot of 1/2 acre or more in size, and may be single-family, duplex, triplex or quadraplex units. The density increases granted for the construction of the affordable units on site, and the use of alternate structures and/or use types for the affordable units, shall not require a "c" or "d" variance.

[2] For residential developments that make payments to the Township of Hardyston in lieu of constructing affordable units, the developer may build up to 1/2 of a market-rate unit for each full contribution toward an affordable unit's costs. The affordable units may be built on a lot of 1/2 acre or more in size, and may be single-family, duplex, triplex or quadraplex units. The density increases granted for the construction of the affordable units on site, and the use of alternate structures and/or use types for the affordable units, shall not require a "c" or "d" variance.

(3) Affordable units optional incentives for nonresidential and mixed-use (residential and commercial) developments.

- (a) At the option of the applicant for development, a nonresidential or mixed-use (residential and commercial) development shall be permitted in Hardyston Township and subject to the requirements of Subsection B, entitled "Affordable housing development fees."

- (b) An applicant for a mixed-use (residential and commercial development) in

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Hardyston Township that elects these optional incentives shall provide an affordable unit for each 5,000 square feet of additional commercial square footage, subject to the following:

- [1] The commercial portion of the project shall be subject to the requirements of Subsection B, entitled "Affordable housing development fees."
 - [2] The residential portion of the development shall be required to provide the number of affordable housing units equivalent to one affordable for every four market residential units.
- (c) As incentives to internally subsidize the required affordable housing units in mixed-use developments, a developer may utilize the following:
- [1] Developers shall be permitted to increase the overall density of the residential units by 40% over the existing zoning.
 - [2] Developers shall be permitted to construct affordable residential units above or beside retail, office and mixed-use uses in order to satisfy the residential affordable housing obligation on site.
 - [3] Developers shall be permitted to demonstrate shared parking for mixed-use developments and, if demonstrated to be reasonable, reduce the parking for the affordable housing portion of the developments by 50%.
- (4) Low- and moderate-income split. Fifty percent of the affordable housing units required to be produced in accordance with Subsection C(2) and (3) hereinabove shall be available to low-income households, and 50% shall be available to moderate-income households, provided that any single remaining unit shall be available only to a low-income household. If only one affordable unit is required, it shall be a low-income unit, unless the Township Council authorizes it to be a moderate-income unit. Thirteen percent of the total affordable housing units shall be affordable to very-low-income households.
- (5) Compliance with COAH's rules and this subsection. All affordable housing units shall fully comply with all applicable substantive rules and policies of COAH, including, unless modified above, but not limited to, bedroom distribution, controls on affordability, household income qualification and eligibility, range of affordability, affirmative marketing and the construction phasing of the market-rate versus the affordable housing units. Thirteen percent of the total affordable housing units shall be affordable to very-low-income households.
- (6) Payments in lieu. Pursuant to N.J.S.A. 52:27D-329.2 and 52:27D-329, a developer of a site zoned for inclusionary development may pay a fee in lieu of building low- and moderate-income units. For any residential development which proposes four or more residential units, the developer shall be required to provide on-site production of affordable housing. For any fractional or partial obligation remaining after the production of the mandated affordable housing units, the developer shall investigate alternative options for the required units and/or partial unit under Subsection C(7). If, after thorough investigation to the satisfaction of the Township Council, none of the

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options are available, the developer shall pay the pro-rata contribution for each new housing unit in an amount agreed to by the applicant and the Township of Hardyston.

(7) Alternative methods of compliance.

- (a) Except for major subdivision or site plan approvals involving four or more units or 10,000 square feet of commercial space which require on-site production of affordable housing units, and further provided the developer obtains, as a condition of approval, written permission from the Hardyston Township Council, the developer may choose to satisfy its affordable housing obligation calculated in accordance with Subsection C(2) and (3), in compliance with one or more of the following alternatives as permitted by COAH's substantive rules as set forth below:

- [1] On-site production of affordable housing units;
- [2] The purchase of an existing market-rate dwelling unit within the municipality and its conversion to an affordably priced and affordably deed-restricted unit;
- [3] The purchase of an existing market-rate dwelling unit within the municipality and its conversion to a supportive and special needs housing facility (i.e., group home); and/or
- [4] Participation in gut rehabilitation and/or buy-down/write-down or buy-down/rent-down programs; and/or
- [5] Payment in accordance with Subsection C(6), above.

- (b) The developer's plan for satisfying the affordable housing obligation created by the proposed development shall be submitted to the Township Planning Board or Zoning Board at the time the application for development is submitted for review and approval and shall be considered a condition for the application being determined "complete." The developer shall obtain written permission from the Township Council endorsing the developer's plan for satisfying the affordable housing obligation after the Council has received a recommendation from the Planning Board.

(8) Other design considerations.

- (a) More than one affordable unit may be on a building lot. Affordable single-family, duplex, triplex and quadraplex structures are hereby permitted in Hardyston Township.
- (b) The affordable housing structures shall be consistent in size and architectural features with the neighborhood or as approved by the Township Planning Board and/or Township Zoning Board of Adjustment.
- (c) Septic systems for the affordable housing units on the same lot (other than in the Hardyston Town Center, which shall be connected to the sewer system) may only share the leach field and shall be maintained with an annual maintenance fee from each unit. Each owner shall maintain other septic system components. Any septic system arrangement under this provision is subject to the Board of Health approval.

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- (d) Affordable housing units must comply with the accessibility requirements of N.J.A.C. 5:94-3.14.¹⁷
- (9) Construction of affordable units. Residential units shall be constructed on a schedule in accordance with the COAH regulations as set forth below:

Percentage of Market-Rate Units Completed	Minimum Percentage of Very-Low-, Low- and Moderate-Income Units Completed
25	0
25 plus 1 unit	10
50	50
75	75
90	100

- (10) Housing permitted. Incentive zoning affordable housing is a permitted use in every residential and nonresidential zoning district, except industrial zone districts, to the extent that production of affordable housing units is mandated by this subsection.
- (11) Appeals. Developers subject to this inclusionary incentive zoning and mandatory set-aside subsection may appeal to the reviewing board pursuant to N.J.S.A. 40:55D-70c(1) hardship standards to demonstrate to the satisfaction of the Board that the increased density or intensity and/or reduced costs do not provide an appropriate level of compensation commensurate with the amount of affordable housing required. The reviewing board may grant relief, including, but not limited to, additional incentives or reductions in the affordable units required or any combination thereof deemed appropriate by the Board to eliminate the "hardship" and provide sufficient incentives.

17. In accordance with N.J.S.A. 52:14B-5.1b, Chapter 94, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning December 20, 2004, expired on 9-11-2016.

APPENDIX E

2016
Hardyston Township
Affordable Housing Trust Fund
Spending Plan

October 2016

Hardyston Township
Sussex County, New Jersey

Prepared By:

Carrine Piccolo-Kaufer, AICP, PP
Township Planner

Hardyston Township

Affordable Housing Trust Fund Spending Plan

INTRODUCTION

Hardyston Township has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq. and/or N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:94-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was adopted by the municipality on July 18, 2000 and amended on June 9, 2009. The ordinance establishes the Hardyston Township affordable housing trust fund for which this spending plan is prepared.

As of August 31, 2016, Hardyston Township collected \$3,005,933.64 in revenue, expended \$2,262,122.66, resulting in a balance of \$743,810.98. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of market to affordable units, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Sussex Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

Hardyston Township petitioned COAH for substantive certification on December 19, 2008 and received certification on May 14, 2009. COAH approved the Township Spending plan prepared as part of the 3rd round petition on May 14, 2009. As of the date of approval of the 2008 Spending Plan the Township's Trust Fund had a balance of \$1,996,331.31. From May 15, 2009 through August 31, 2016, Hardyston Township collected an additional \$333,965.24 in development fees, payments in lieu of construction, other funds, and/or interest. In addition the Township collected \$663,437.09 in revenue from the resale of Market to Affordable units. In addition From May 15, 2009 through August 31, 2016, Hardyston Township expended funds on affordable housing activities as detailed in section 4 of this spending plan.

The following spending plan is organized into six sections; which are as follows:

1. Revenues for Certification Period
2. Administrative Mechanisms to Collect and Distribute Funds
3. Description of Anticipated Use of Affordable Housing Funds
4. Expenditure Schedule
5. Excess or Shortfall of Funds

6. Barrier Free Escrow

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the 10 year period of substantive certification (2016-2026), Hardyston Township considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL)

Hardyston Township has not included payments in lieu in the projection of revenue for the period of third round substantive certification.

(c) Other funding sources:

Resale of the remaining 2 Market to Affordable Units

(d) Projected interest:

The projected interest earned will be calculated based on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

Projected Revenues-Housing Trust Fund - 2016-2026													
SOURCE OF FUNDS	Pre 9/1/16	9/1/16 - 12/31/16	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	Total
(a) Non-Residential Development Fees:													
1. Approved Development													
None													\$0
2. Development Pending Approval													
None													\$0
(b) Residential Development Fees													
1. Approved Development													
Crystal Springs			\$12,000	\$15,000	\$15,000	\$15,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$207,000
Brescia Farms		\$4,000	\$4,000	\$4,000.00	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000			\$60,000
Estell Manor			\$9,000	\$9,000.00	\$9,000	\$13,500	\$13,500	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$99,000
(c) Payments In Lieu													\$0
(d) Other Funds (Specify source(s))													
1. Market to Affordable Sales			\$228,000										\$228,000
Balance 8/31/2016 (including housing activity & interest)	\$743,811												
Subtotal		\$4,000	\$253,000	\$28,000	\$32,000	\$36,500	\$46,500	\$42,000	\$42,000	\$42,000	\$34,000	\$34,000	\$594,000
(e) Interest		\$420	\$16,461	\$17,439.23	\$18,143	\$18,946	\$19,969	\$20,893	\$21,817	\$22,741	\$23,489	\$24,237	\$204,557
Total		\$4,420	\$269,461	\$45,439.23	\$50,143	\$55,446	\$66,469	\$62,893	\$63,817	\$64,741	\$57,489	\$58,237	\$798,557

Hardyston Township projects a total of \$798,557.00 in revenue to be collected between August 31, 2016 and December 31, 2026. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Hardyston Township:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Hardyston Township's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

The Planning or Zoning Board Secretary will notify the Land Use office whenever a preliminary, final, or other applicable approval is granted for a development which is subject to a development or payment in lieu fee. When a request for a building permit is made, the Land Use office determines if the project is subject to the imposition of a fee.

The Land Use office will notify the Township Tax Assessor in order to calculate the approximate value of the project and set the fee based on the equalized assessed value for both residential and non-residential developments. Payments in lieu will be assessed at \$180,267 per unit of obligation in accordance with the Township's current Growth Share Ordinance. In the event a new inclusionary zoning ordinance is adopted and a new payment in lieu is established the new fee shall take precedent.

The balance of the development fee will be paid by the developer to the Township's municipal clerk at the issuance of the certificate of occupancy. The funds are then forwarded to the Township's Financial Officer for deposit in the affordable housing trust fund.

(b) Distribution of development fee revenues:

The Planning Board will adopt and forward a resolution to the Township's governing body recommending the expenditure of development fee/payment in lieu revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body's resolution in accordance with the COAH approved spending plan. Once a request is approved by resolution, the Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) New construction programs and projects (N.J.A.C. 5:97-8.7)

Hardyston Township will dedicate \$270,000 to new construction programs (see detailed descriptions in Fair Share Plan) as follows:

New construction project(s):

- Group Home Project – Municipal Partnership: \$270,000

(b) Municipally Sponsored Rehab Program (N.J.A.C. 5:97 – 8.7)

Hardyston Township will dedicate \$270,000 to a rehab program at approximately \$20,000 per unit. (see detailed descriptions in Fair Share Plan) as follows:

(c) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Actual development fees through 8/31/16		\$2,132,644
Actual interest earned through 8/31/16	+	\$134,389
Development fees projected 2016-2026	+	\$594,000
Interest projected 2016-2026	+	\$204,557
Less housing activity expenditures through 8/31/16	-	\$1,874,506
Total	=	\$1,191,084
30 percent requirement	x 0.30 =	\$357,325
Less Affordability assistance expenditures through 8/31/2016	-	\$16,862
PROJECTED MINIMUM Affordability Assistance Requirement 2016 - 2026	=	\$340,463
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 2016-2026	÷ 3 =	\$113,488

(d) Projected minimum affordability assistance requirement:

Hardyston Township will dedicate \$ 340,463 from the affordable housing trust fund to render units more affordable, including \$113,488 to render units more affordable to households earning 30 percent or less of the median income by region, as follows:

Hardyston Township will offer the following affordability assistance programs:

1. Security Deposit Assistance – The Township will use a portion of the affordable housing trust fund as a revolving security deposit assistance fund. A loan from the fund will be received by an income eligible renter with good credit standing. The security deposit assistance will be in the form of a cash loan equal to the security deposit amount determined by the landlord, and paid to the landlord on behalf of the tenant.

At the termination of the lease, the landlord will return the portion of the security deposit it determines to the Township along with the interest earned. The tenant will repay any difference between the original security deposit amount and the portion returned by the landlord. Funds returned to the municipality will be placed in the affordable housing trust fund to be used for future security deposit assistance.

2. Housing Association Fee Assistance – Hardyston will use a portion of the affordable housing trust fund as a housing association fee assistance fund. A grant from the fund will be received by an income-eligible resident with good credit standing who occupies a low or moderate income unit. The amount of the grant will be determined based on the amount of the fees that exceed 28 percent of the resident's gross income for the time period the fees are charged. When the housing association fees are increased, the grant will be recalculated. Housing association fee assistance does not need to be repaid by the homeowner.
3. Down Payment Assistance – Hardyston will use a portion of the affordable housing trust fund as a down payment assistance fund. The Township will offer interest-free, payment free loans to income-eligible homebuyers with good credit standing who are purchasing low or moderate income units. The loan will be used to assist homebuyers in making their down payments. The homebuyer will not be required to payback the amount of the loan unless the home is sold or ownership is transferred, and no interest will accrue.
4. Affordability Assistance Subsidy to Developers of Inclusionary and 100% Affordable Developments – Hardyston will use a portion of the affordable housing trust fund to provide affordability assistance to very low income households by offering a subsidy to affordable housing developers to buy down the cost of low or moderate income rental units included in the municipal Fair Share Plan and deed restrict them as very-low income units.

Specifically, 13% of the low and moderate income rental units included in the Crystal Springs Village Center and Ridgefield Commons projects.

Administrative Expenses (N.J.A.C. 5:97-8.9)

Administrative Cost Allowance Projections		
Actual Development Fees thru 8/31/2016		\$2,132,644
Actual Interest Earned thru 8/31/16	+	\$134,389
Projected Development Fees 9/1/16-12/31/26	+	\$594,000
Projected Interest 9/1/2016 - 12/31/26	+	\$204,557
Actual Payments In Lieu	+	\$0
Total	=	\$3,065,590
20 % maximum expenditure	x .20 =	\$613,118
Less Admin Expenditures thru 8/31/16	-	\$387,616
Total	=	\$225,502

Hardyston Township projects that \$225,502 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

Hardyston Township will dedicate \$225,502 from the affordable housing trust fund to be used for administrative costs. The majority of the annual administrative expenditures will be for the administration of new construction programs and affordability assistance performed by the staff. Including, the completion of all monitoring requirements, the affirmative marketing of completed affordable units, application intake and placement of households and the research and acquisition of market to affordable units.

Additionally, the Township will utilize funds from the affordable housing trust fund to pay consulting fees and staff salaries related to the preparation and implementation of the Housing Element and Fair Share Plan.

4. EXPENDITURE SCHEDULE

Hardyston Township intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

Program	# of Units	Funds Expended and/or Dedicated	Projected Expenditure Schedule 2009- 2018											
			5/14/09-8/31/2016	8/31/16 - 12/31/16	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
SEED Corp. Group Homes- Municipal Match Requirement	8	\$240,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$240,000
Municipal Partnership - Group Home Project	9	\$0	\$0	\$0	\$120,000		\$150,000	\$0	\$0	\$0	\$0	\$0	\$0	\$270,000
Market to Affordable	8	\$1,634,006	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,634,006
Municipally Sponsored Rehab Program	31	\$0	\$0	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$60,000	\$0	\$0	\$620,000
Total Programs	56	\$1,874,006	\$0	\$80,000	\$200,000	\$80,000	\$230,000	\$80,000	\$80,000	\$80,000	\$60,000	\$0	\$0	\$2,764,006
Affordability Assistance		\$16,863	\$0	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$34,500	\$340,500
Administration		\$375,416	\$25,000	\$25,000	\$35,000	\$25,000	\$25,000	\$21,000	\$22,000	\$22,000	\$20,000	\$15,000	\$15,000	\$225,000
Total		\$0	\$25,000	\$139,000	\$269,000	\$139,000	\$289,000	\$135,000	\$136,000	\$136,000	\$114,000	\$49,000	\$49,500	\$1,455,500

5. EXCESS OR SHORTFALL OF FUNDS

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to provide additional affordability assistance to very low, low, and moderate income households.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with Hardyston Township's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

SUMMARY

Hardyston Township intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated September 2016.

Hardyston Township has a balance of \$743,810.98 as of August 31, 2016 and anticipates an additional \$798,557 in revenues before the expiration of substantive certification for a total of \$1,542,367.98. The municipality will dedicate \$ 620,000 towards a municipally sponsored rehab program that will provide 31 rehab units and \$270,000 towards multiple group home projects that will provide 9 affordable housing units. Hardyston will dedicate \$340,500 to render units more affordable, and \$225,000 for administrative costs. The municipality will dedicate any excess funds toward providing additional affordability assistance to very low, low, and moderate income households.

SPENDING PLAN SUMMARY	
Balance as of 8/31/2016	\$743,811
Projected REVENUE 9/1/2016-12/31/2026	
Development fees	+ \$366,000
Payments in lieu of construction	+ \$0
Other funds	+ \$228,000
Interest	+ \$204,557
TOTAL REVENUE	= \$1,542,368
EXPENDITURES	
Funds used for Rehabilitation	- \$620,000
Funds used for New Construction	
1. <i>Market to Affordable Program</i>	- \$0
2. <i>SEED Corp.- Group Homes</i>	- \$0
3. <i>Municipal Partnership - Group Homes</i>	- \$270,000
Affordability Assistance	- \$340,500
Administration	- \$225,000
Excess Funds for Additional Housing Activity	= \$86,868
1. <i>Additional Affordability Assistance</i>	- \$86,868
TOTAL PROJECTED EXPENDITURES	= \$1,542,368
REMAINING BALANCE	= \$0

APPENDIX F

**THE TOWNSHIP OF HARDYSTON
OPERATING MANUAL FOR THE ADMINISTRATION
OF
AFFORDABLE FOR-SALE & RENTAL UNITS**

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INTRODUCTION

This Operating Manual has been prepared to assist in the administration of for-sale and rental units in the Township of Hardyston Affordable Housing Program. It will serve as a guide to the program staff.

This manual describes the basic content and operation of the program, examines program purposes and provides the guidelines for implementing the program. It has been prepared with a flexible format allowing for periodic updates of its sections, when required, due to revisions in regulations and/or procedures.

This manual explains the steps in the initial sale process, resale process, and rental process. It describes the eligibility requirements for participation in the program, record keeping and overall program administration.

Implementation of any procedure, even if it is not included in this Operating Manual, shall be in accordance with the Federal Fair Housing Act and Equal Opportunities laws¹, the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq.², the substantive rules of the Council on Affordable Housing N.J.A.C. 5:96³ and 5:97⁴ and the affordable housing regulations of the Township of Hardyston (hereafter referred to as the "Regulations").



In accordance with the Federal Fair Housing Act and Equal Opportunities laws it is unlawful to discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status.

What is Affordable Housing?

Affordable housing, unlike market rate housing, has affordability controls limiting the price for at least 30 years. COAH considers housing "affordable" if the household pays approximately 28% or less of the household's gross income on housing costs. 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.

¹ <http://www.hud.gov/offices/fheo/fairhousing/index.cfm>

² <http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html>

³ <http://www.nj.gov/dca/affiliates/coah/regulations/thirdroundregs/596.pdf>

⁴ <http://www.nj.gov/dca/affiliates/coah/regulations/thirdroundregs/597.pdf>

Who Qualifies for Affordable Housing?

In order to be eligible for affordable housing in New Jersey, a household's income must be below the income limit for the region in which the affordable housing is located, either for low or moderate levels. A moderate-income household is classified as earning between 50 percent and 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income. COAH has included a new category for very low-income households, which are classified as earning less than 30 percent of area median income.

The six COAH housing regions are as follows:

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

The COAH Regional Income Limits Chart (Appendix B) provides information about income limits for each of COAH's six housing regions. Each region has different calculated median incomes, which are adjusted annually.

An applicant does not have to currently live in the region in which the applicant is interested in applying for an affordable unit. An applicant's income qualification is determined by the Region Income Limits for where the applicant wants to live.

Local Affordable Housing Programs and Opportunities

The following affordable housing programs and opportunities are available in the Township of Hardyston:

A Market to Affordable Program administered by the Township of Hardyston will provide subsidies for the purchase of 14 for sale affordable units and 7 very-low income family rental units. Units will be scattered throughout the Township and be based on the acquisition of existing market rate units.

The Following Inclusionary Developments are to be Constructed –

1. Crystal Springs Village Center South, located on the south side of Route 94, consists of 436 market rate units, 72 low-income rental affordable units and 71 moderate rental units
2. Ridgfield Commons, located off of Witts End Road, consists of 191 market rate units, 12 low-income for-sale units and 12 moderate for-sale units.

3. Indian Fields Phase IV & V, located along Route 94, south of the Beaver Run Road and Route 94 Intersection, consists of 56 market rate units, 4 low-income for-sale units and 4 moderate for-sale units.
4. Forest Knolls, located at the intersection of Route 94 and Franek Road, consists of 24 market rate units, 2 low income units and 1 moderate income unit.
5. Emerald Estates, located along Wheatsworth Road, consists of 26 market rate units, 2 low-income units and 2 moderate income units.

A copy of the Township of Hardyston Housing Element and Fair Share Plan is available at the Municipal Clerk's Office located at the Hardyston Township Municipal Complex, 149 Wheatsworth Road, Hardyston, NJ 07419.

Other Affordable Housing Programs and Opportunities

Affordable housing is administered by a wide variety of organizations and agencies. COAH does not administer affordable housing but links to affordable housing resources can be found on COAH's website at

<http://www.nj.gov/dca/affiliates/coah/resources/looking.html>.

Individuals interested in applying for affordable housing should contact the Municipal Housing Liaison in the municipality in which they are interested in living. Each municipality under COAH's jurisdiction has a Municipal Housing Liaison who is responsible for administering the municipality's affordable housing program. Some municipalities administer their own affordable housing and have their own application process. If not, the Municipal Housing Liaison can direct applicants to developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality. A list of Municipal Housing Liaisons can be found at <http://www.nj.gov/dca/affiliates/coah/resources/munilaisons.pdf>.

The New Jersey Housing and Mortgage Finance Agency has established New Jersey's Housing Resource Center, an on-line, searchable database of affordable housing in the State. The Housing Resource Center provides a listing posted by developers, landlords, and municipalities of available affordable housing. Available units are listed with contact and application information. Look for the Housing Resource Center at www.njhousing.gov.

The New Jersey Guide to Affordable Housing, which can be found at <http://www.nj.gov/dca/codes/affdhousing/affdhsgguide/index2.shtml>, is a listing compiled by the New Jersey Department of Community Affairs Division of Codes and Standards. It lists all types of affordable housing by county. The housing units on the list have a variety of qualification requirements, including age-restricted housing and housing for the developmentally disabled.

Applicants who do not have access to the Internet should call 211 for assistance

Fair Housing and Equal Housing Opportunities

It is unlawful to discriminate against any person making application to buy or rent a home with regard to race, creed, color, national origin, ancestry, age, marital status, a sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for mortgage or rental payments.

For more information on discrimination or if anyone feels they are a victim of discrimination, please contact the New Jersey Division on Civil Rights at 1-866-405-3050 or <http://www.state.nj.us/lps/dcr/index.html>.

Overview of the Affordable Housing Administration Process

- The Municipal Housing Liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and where appropriate directs applicants to an Administrative Agent, who may be developers, nonprofit agencies, State agencies or consultants that may administer the affordable housing within the municipality.
- The Administrative Agent implements the municipality's Affirmative Marketing Plan.
- The Administrative Agent serves as the initial point of contact for all inquiries generated by the affirmative marketing efforts and sends out pre-applications to interested callers.
- The Administrative Agent, the developer or the affordable housing sponsor will accept these returned pre-applications for a specific period of time, to be specified during advertising. The Administrative Agent will pre-qualify applicants as soon as applications are received. Only preliminary income-eligible applications will be placed in the lottery. Applicants will be notified in writing of eligibility or non-eligibility in advance of the lottery.
- At the end of this pre-application time period, all applications will go to the Administrative Agent where these applications will be randomly selected, through a lottery, to create a pool of applicants. Separate applicant pools will be maintained for applicants interested in rental units and for-sale units.
- When a unit becomes available, the Administrative Agent will interview the applicant households and proceed with the income qualification process. Applicant households seeking for-sale units must obtain a mortgage pre-approval.
- The Administrative Agent must notify applicant households in writing of certification or denial within 20 days of the determination. Once all documents are filed and recorded, and returned to the Administrative Agent for inclusion in the file, the Administrative Agent will process a release of the original documents.
- Once certified, households are further screened to match household size to bedroom size

- Certified households that are approved for a rental affordable housing unit will sign a Disclosure Statement (UHAC Appendix K) and any other applicable documents, which are held in the applicant file. Applicants then make an appointment with the leasing agent. Applicant households seeking rental units proceed with a credit check, which is generally conducted by the developer, affordable housing sponsor or landlord. If approved, the applicant will sign the lease, pay the first month's rent and the security deposit and receive the keys.
- Certified households that are approved for a for-sale affordable housing unit will work with the Administrative Agent to secure a mortgage in a timely fashion and, where applicable, obtain homeownership counseling.
- The Administrative Agent will prepare a Deed, a Recapture Mortgage and Recapture Mortgage Note, and Disclosure Statement (UHAC Appendix J) and may attend the closing for each unit.
- The filing and recording of documents is the responsibility of the buyer's attorney, but the Administrative Agent may also elect to file the documents. Once all documents are filed and recorded, and returned to the Administrative Agent for inclusion in the file, the Administrative Agent will process a release of the original documents.
- The certified household moves into the affordable ownership or rental unit.

Overview of the Resale Process

When an Owner of a restricted for-sale unit wishes to sell, the sale must be processed through the Administrative Agent. At the initial date of purchase, the Owner makes a certification regarding his or her understanding of this requirement.

- Typically, the resale process begins when an Owner inquires about the maximum resale price (MRP) of their unit. At that time the Administrative Agent provides the Seller with a "Notice of Intent to Sell" form and the written "Resale Procedures for Owners Wishing to Sell an Affordable Unit".
- The Owner/Seller returns the completed "Notice of Intent to Sell" form to the Administrative Agent.
- The Administrative Agent reviews the unit and any eligible capital improvements, and calculates the MRP. The MRP is calculated by using COAH's Resale Price Calculator, which is based on COAH's Annual Regional Income Limits Chart.
- The Administrative Agent uses the current applicant pool, which is based on a previous affirmative marketing process, or affirmatively markets the unit and conducts random selection if there is no current applicant pool.
- .
- The first series of preliminarily eligible households (typically 5) from the existing applicant pool that match the bedroom size of the available unit are sent a

“Housing Opportunity Letter” and “Application for Certification” (including a list of required documentation) to complete.

- Interested households complete the application and generally contact the Administrative Agent for an interview. Interested eligible households are certified, and ineligible households are noticed in writing and removed from the applicant pool.
- Certified households must obtain a mortgage pre-approval based on the MRP. The first randomly selected interested certified household from the applicant pool is invited to view the unit and has a limited period of time in which to make an offer (three days is a recommended timeframe). A certified interested household makes an offer.
- The Owner/Seller and the certified interested household (now Buyer) execute a “Contract of Sale.” The Administrative Agent ensures that the Deed, Recapture Mortgage, Recapture Mortgage Note and Disclosure Statement (UHAC Appendix J) form are submitted as part of the closing package to the attorney responsible for the closing or other closing agent.
- The Administrative Agent generally attends the closing to ensure that all necessary documentation is executed and subsequently recorded in the County Clerk’s Office in the county in which the unit is located.
- Annually, the Administrative Agent shall send a mailing to the Owner of the affordable unit reminding them of the rights and requirements of owning an affordable unit.

ROLES AND RESPONSIBILITIES

Responsibilities of the Municipal Housing Liaison

The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the Municipal Attorney, where appropriate (see **Responsibilities of the Municipal Attorney**). The primary purpose of the Municipal Housing Liaison is to ensure that all affordable housing projects are established and administered according to the Regulations as outlined in an Operating Manual. The duties of the Municipal Housing Liaison include the following duties, and may include the responsibilities for providing administrative services as described in the next Section under, **Responsibilities of an Administrative Agent**.

Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more Administrative Agents, it is the Municipal Housing Liaison's responsibility to know the status of all restricted units in their community.

Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers, and interested households. The Municipal Housing Liaison serves as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable, the name of the Administrative Agent that manages the units and the contact information for the Administrative Agent.

Compile, verify and submit annual reporting. Administrative Agents are responsible for collecting much of the data that is ultimately included in an annual COAH monitoring report. However, it is the Municipal Housing Liaison's responsibility to collect and verify this data and consolidate it into the annual report to COAH. Any requests from COAH for additional information or corrections will be directed to the Municipal Housing Liaison.

Coordinate meetings with Administrative Agents and Developers/Affordable Housing Sponsors/Owners. When a new affordable unit or series of units is in the planning process, the Municipal Housing Liaison should coordinate a meeting between the Administrative Agent and the developer, affordable housing sponsor or owner. The developer, affordable housing sponsor or owner may serve as their own Administrative Agent, if they meet the applicable requirements and are approved by the municipality and COAH. The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

It is the responsibility of the Municipal Housing Liaison, in conjunction with the Municipal Attorney, to have the affordable housing provisions of any Master Deed and Public Offering reviewed for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.

Provide Administrative Services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next Section under, **Responsibilities of an Administrative Agent.**

Responsibilities of an Administrative Agent

The primary responsibility of an Administrative Agent is to establish and enforce affordability controls and ensure that units in the Administrative Agent's portfolio are sold to eligible households. Administrative Agents must:

Secure written acknowledgement from all developers, affordable housing sponsors and owners that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Create and adhere to an Operating Manual. All Administrative Agents are required to follow the policies and procedures of an Operating Manual, as applicable to the scope of services they have been contracted to perform.

Implement the municipality's Affirmative Marketing Plan. The Administrative Agent, the developer, affordable housing sponsor or owner could be responsible for implementing the Affirmative Marketing Plan adopted by the municipality. At the first meeting with the Municipal Housing Liaison, Administrative Agent and the developer, affordable housing sponsor or owner, this responsibility should be discussed. Affirmative marketing includes conducting regional outreach and advertising for available affordable units. Advertising costs may also be delegated to the developer, but this must be established by ordinance and a condition of approval of the Planning Board or Zoning Board.

Accept applications from interested households. In response to marketing initiatives or by referral from the Municipal Housing Liaison, interested households will contact the Administrative Agent. The Administrative Agent will supply applicants with applications, provide additional information on available units and accept completed applications.

Conduct random selection of applicants for sale/resale or rental of restricted units. The Administrative Agent is responsible for conducting the random selection in accordance with the Affirmative Marketing Plan and any related local ordinances, and as described in the Operating Manual.

Create and maintain a pool of applicant households. This includes reaching out to households in the applicant pool to determine continued interest and/or changes in household size and income.

Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of an Administrative Agent. A written determination on a household's eligibility must be provided within twenty (20) days of the Administrative Agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is an Administrative Agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. An Administrative Agent is required to ensure that all certified applicants execute a Disclosure Statement acknowledging the rights and requirements of owning an affordable unit, in the form of Appendix J of UHAC, as applicable.

Establish and maintain effective communication with owners, property managers, and landlords. Owners, property managers, and landlords of restricted units should be instructed and regularly reminded that the Administrative Agent is their primary point of contact. The Administrative Agent must immediately inform all owners, property managers, and landlords of any changes to the Administrative Agent's contact information or business hours. The Administrative Agent must create and distribute annual mailings to all Owners of affordable units reminding them of the rights and requirements of owning an affordable unit.

Property managers and landlords of rental units should be instructed to immediately contact the Administrative Agent:

- Immediately upon learning that an affordable rental unit will be vacated.
- For review and approval of annual rental increases.

Owners should be instructed to immediately contact the Administrative Agent in the following circumstances:

- If they are considering or have decided to sell their home.
- In the event they wish to refinance their mortgage or take out a home equity loan and, consequently, will be seeking a subordination of their mortgage.
- If they are seeking an increase in the sales price of their unit due to capital improvements.
- If they are seeking a Hardship Waiver to allow them to rent their unit.

Provide annual notification of maximum rents. Each year when COAH releases its low- and moderate-income limits, rental households must be notified of the new maximum rent that may be charged for their unit. The Administrative Agent's contact information must be included on such notification in case the tenant is being overcharged.

Send out annual mailings about restrictions. Administrative Agents must annually mail to all Owners of affordable housing units a reminder of their rights and responsibilities as Owners of an affordable unit.

Preserve affordability controls during the sale of restricted units. Immediately upon being notified of an Owner's intent to sell their property, an Administrative Agent should inform the Owner of the Owner's role in the marketing and sale of the home. An Administrative Agent is responsible for extinguishing the affordability controls with the Seller and re-establishing them with the Buyer. An Administrative Agent is responsible for providing closing attorneys/agents with the appropriate legal instruments.

Ensure cancellations of Recapture Mortgages are effectuated. It is the Administrative Agent's responsibility to ensure that Recapture Mortgages are cancelled at the conclusion of the control period when the Recapture Mortgage is satisfied. If the Recapture Mortgage is being cancelled due to a sale of the property during the control period, then the Administrative Agent may wish to cancel the original Recapture Mortgage only after the Recapture Mortgage with the new Owner has been recorded.

Ensure unit has Continuing Certificate of Occupancy at final transfer. To help ensure a healthy and safe living environment for all families, an Administrative Agent is responsible for obtaining an inspection or a certified statement from the local Building Inspector at the first sale after the expiration of the minimum affordability control period.

Serve as the custodian of all legal documents. An Administrative Agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a control period, an Administrative Agent must maintain a file containing its affordability control documents. This includes, but is not limited to, the recorded Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes and Disclosure Statement (Appendix J).

Serve as point of contact on all matters relating to affordability controls. It is recommended that the Administrative Agent develop a system to be notified by lenders when a unit is at risk of foreclosure. In the event of a foreclosure, the Administrative Agent should work with the foreclosing institution to ensure that the affordability controls are maintained. The Administrative Agent should seek the counsel of the municipality's attorney on legal matters that threaten the durability of the affordability controls.

Provide annual activity reports to Municipal Housing Liaison for use in the annual COAH monitoring report. An Administrative Agent is responsible for collecting the reporting data on each unit in the Administrative Agent's portfolio.

Maintain and distribute information on HUD-approved Housing Counseling Programs.

Responsibilities of the Municipal Attorney

The Municipal Attorney assists the municipality with developing, administering, and enforcing affordability controls, including but not limited to:

- Assisting the Municipal Housing Liaison with the review of the affordable housing provisions of any Master Deed and Public Offering for consistency with COAH and UHAC regulations, before they are recorded and submitted to DCA for approval.
- Providing all reasonable and necessary assistance in support of the Administrative Agent's efforts to ensure compliance with the housing affordability controls, including reviewing legal documents and legal actions required on foreclosures and violations.

Responsibilities of Developers

When a new affordable unit or series of units is in the planning process, the developer of affordable housing should contact the Municipal Housing Liaison, who shall coordinate a meeting with the Administrative Agent, where applicable, and the developer, affordable housing sponsor or owner.

The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the Operating Manual – including copies of all COAH-related local ordinances -- that have already been adopted by the municipality.

If provided for by ordinance and made a condition of the approval of the planning board or zoning board of adjustment, the developer may be responsible for the costs of advertising affordable units.

The Administrative Agent will secure from the developer written acknowledgement that a restricted unit cannot be offered or in any other way committed to any person other than a household duly certified by the Administrative Agent.

Responsibilities of Landlords and Property Managers

Landlords and property managers must place a notice in all rental properties annually informing residents of the rent increase for the year and the contact information for the Administrative Agent.

Responsibilities of Owners of Rental Developments

Open and direct communication between the Owners of rental developments, the Municipal Housing Liaison and the Administrative Agent is essential to ongoing administration of affordability controls. Although the Administrative Agent is required to serve as the primary point of contact with households, the Owner must provide the Municipal Housing Liaison and Administrative Agent with information on vacancies. Owners of rental developments are also responsible for working with the Administrative Agent.

Responsibilities of the Owner of an Affordable Unit

Owners should read annual mailings from the Administrative Agent, and cooperate with any and all requests for information from either the Municipal Housing Liaison or the Administrative Agent.

The Owner may sell the unit only to a household that has been approved in advance and in writing by the Administrative Agent. No sale of the unit shall be lawful unless approved in advance and in writing by the Administrative Agent. No sale shall be for a consideration greater than the maximum resale price, as determined by the Administrative Agent.

When an Owner wishes to sell an affordable unit, it is the Owner's responsibility to notify the Administrative Agent and to execute a "Notice of Intent to Sell". If a potential, certified Buyer makes an offer of the maximum resale price of an affordable unit, then the Owner is obligated to enter into a sales contract with that Buyer for the sale of that unit or withdraw the "Notice of Intent to Sell".

An Owner may not rent out the Owner's unit to any other person, not even to members of the Owner's family.

The Owner shall at all times maintain the unit as his or her principal place of residence, defined as residing at the unit at least 260 days out of each calendar year.

An Owner shall make no improvements to the unit that would affect its bedroom configuration or to increase the maximum permitted resale price, except for improvements approved in advance and in writing by the Administrative Agent.

The Owner shall pay all taxes and public assessments and assessments by the condominium association levied upon or assessed against the unit, or any part thereof, when they become due and before penalties accrue.

The Owner shall pay all charges of any utility authority when they become due and before penalties accrue.

The Owner shall not permit any lien, except those approved by the Administrative Agent, to attach and remain on the property for more than 60 days.

The Owner must have approval of the Administrative Agent if they wish to refinance their mortgage or take out a home equity loan and, consequently, will be seeking a subordination of their mortgage.

In the event that any first mortgagee or other creditor of an Owner of a low- and moderate-income unit exercises its contractual or legal remedies available in the event of default or nonpayment by the Owner of a low- and moderate-income unit, the Owner shall notify the Administrative Agent in writing within 10 days of such exercise by the first mortgagee or creditor and no later than 10 days after service of any summons and complaint.

An Owner shall notify the Administrative Agent within 10 days, in writing, of any default in the performance by the Owner of any obligation under either the master deed of the condominium association, including the failure to pay any lawful and proper assessment by the condominium association, or any mortgage or other lien against the low- and moderate-income unit, for which default is not cured within 60 days of the date upon which the default first occurs.

AFFIRMATIVE MARKETING

Overview of the Requirements of an Affirmative Marketing Plan

All affordable units are required to be affirmatively marketed using the Township of Hardyston's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

The Township of Hardyston's Affirmative Marketing Plan can be found in Appendix E.

Every Affirmative Marketing Plan and any revisions thereto must be adopted by resolution of the governing body, referenced by ordinance and approved by COAH. A form to help municipalities set up an Affirmative Marketing Plan is available on COAH's website for Administrative Agents. It is recommended to include the approved Affirmative Marketing Plan in the Appendix rather than in the text of the Operating Manual so that if any revision is required to the Affirmative Marketing Plan, the manual will not need to be revised, only the insertion in the Appendix.

Every Affirmative Marketing Plan must include all of the following:

- Publication of at least one advertisement in a newspaper of general circulation within the housing region; and
- Broadcast of at least one advertisement by radio or television throughout the housing region.
- At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious and civic organizations.
- Publish information for all affordable housing units in the municipality on the New Jersey Housing Resource Center at www.njhousing.gov
- All costs of advertising affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Township of Hardyston as required by ordinance and stipulated as a condition of planning board or zoning board approval.

For each affordable housing opportunity within the municipality, the Affirmative Marketing Plan must include the following information:

- The address of the project and development name, if any
- The number of units, including number of sale/rental units
- The price ranges of the sale units/rental units
- The name and contact information of the Municipal Housing Liaison, Administrative Agent, property manager or landlord
- A description of the Random Selection method that will be used to select applicants for affordable housing.
- Disclosure of required application fees, if any.

Advertisements must contain the following information for each affordable housing opportunity:

- The location of and directions to the units
- A range of prices for the housing units
- The bedroom size(s) of the units
- The maximum income permitted to qualify for the housing units
- The locations of applications for the housing units
- The business hours when interested households may obtain an application for a housing unit
- Application fees, if any
- Last date applications will be accepted
- Contact number of the Municipal Housing Liaison, Administrative Agent, or property manager, landlord
- A statement concerning the availability of credit, budget and/or homeownership counseling services
- A Statement concerning regional preference
- Statement “Visit www.njhousing.gov for more affordable housing opportunities”

Regional Preference

The Township of Hardyston has by ordinance provided that households that live or work in COAH Housing Region 1 comprised of the following counties Bergen, Hudson, Passaic, and Sussex shall be selected for an affordable housing unit before households from outside this region. Units that remain unoccupied after households who live or work in the region are exhausted, may be offered to the households outside the region.

Implementation of the Affirmative Marketing Plan

The Operating Manual must identify who will market the affordable units, the municipality or the Administrative Agent, and how frequently they will be marketed, depending on such factors as whether there will be advertising to create and maintain a central list of applicants or advertising shall be conducted for each project, or some combination thereof.

It is strongly recommended that detailed records on all marketing initiatives be maintained.

The affirmative marketing process for affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the municipality shall undertake all of the strategies outlined in the Township of Hardyston Affirmative Marketing Plan, unless an agreement is reached with the developer/affordable housing sponsor to conduct the advertising for the availability of affordable units. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold/rented. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

An applicant pool will be maintained by the municipality for re-sales/re-rentals; separate lists will be maintained for rental properties and for-sale properties.

When a re-rental/re-sale affordable unit becomes available, the applicants will be selected from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above.

The selection of applicants from the applicant pool is described in more detail in this manual under Random Selection & Applicant Pool(s).

Developer, Affordable Housing Sponsor, Landlord, Property Manager

In the event that, the developer, affordable housing sponsor, landlord or property manager is responsible for advertising the affordable housing in accordance with the municipality's adopted Affirmative Marketing Plan they shall be required prior to publication or broadcast, to submit to the Municipal Housing Liaison for approval draft

copies of all marketing materials. Proof of publication must be submitted, including a copy of the final advertisements with a copy of the paid bill. Public Service Announcements shall be submitted by the municipality.

Question: *How often should we advertise?*

Answer: Administrative Agents responsible for new developments, or newly hired Administrative Agents, must advertise initially to create an applicant pool. For new developments, advertising should begin four months prior to the anticipated occupancy of the units. Advertising should continue monthly until all units are sold or rented. Once all vacant units are filled with eligible households, the Administrative Agent can either close the applicant pool or keep it open. If the applicant pool has sufficient eligible households for approximately two years worth of turnover, COAH recommends that the applicant pool be closed and applications no longer be accepted. In this case, advertising does not need to be conducted until four months before the applicant pool is to be reopened. If the Administrative Agent wishes to keep the applicant pool open, they must conduct some form of advertising on a monthly basis. However, all the components of the Affirmative Marketing Plan do not need to be implemented every month. One strategy can be implemented each month on a rotating basis. The section on Random Selection provides more information on random selection and applicant pool maintenance to help determine how often advertising should be conducted.

Question: *My county doesn't have a library. How do I comply with the application availability rule?*

Answer: Only 11 of New Jersey's 21 counties have a county library (a list is included on COAH's website for Administrative Agents). If one or more of the counties in a housing region do not have county libraries, applications must be made available at the county administration building.

Question: *Our affordable housing development is very small. It is unnecessary for us to conduct monthly marketing initiatives and the number of applicants in our existing pool already exceeds the two-year rule of thumb. Is there any way for us to maintain compliance without conducting monthly outreach initiatives?*

Answer: COAH suggests that you attempt to partner with other municipalities in your housing region to help defray time and cost or close the applicant pool and do not accept applications until the applicant pool contains fewer applicants and affirmative marketing is implemented.

Question: *We have moderate-income units available, but not low-income units. Can we keep only the moderate portion of the applicant pool open?*

Answer: Yes. In fact, if you regularly have a type of unit that is hard to fill, you may tailor marketing initiatives to fill that type of unit. However, households that submit applications and are not interested or eligible for the targeted unit type must be notified that they will not be placed in the applicant pool until it is reopened for their unit type.

Question: *Are all developments required to conduct affirmative marketing, or just those with a certain number of units, for example, more than five units?*

Answer: All affordable units governed by UHAC are required to be affirmatively marketed. If it is burdensome for a small development to conduct its own affirmative marketing, the municipality and Administrative Agent(s) should consider conducting the affirmative marketing for all the units within the municipality at the municipal level, not at the development level. An alternative is to contract with an Administrative Agent who will do the affirmative marketing for your units as well as other units they manage.

RANDOM SELECTION & APPLICANT POOL(S)

Initial Randomization

Applicants are selected at random after applicants are pre-qualified based on preliminary income-eligibility, regardless of household size or desired number of bedrooms. The process is as follows:

After advertising is implemented, applications are accepted for 30 - 60 days as specified on the application and in the advertising materials.

To help analyze the impact and success of various marketing initiatives, the Administrative Agent will ask the applicants where they learned of the housing opportunity.

The Administrative Agent will pre-qualify applicants as soon as applications are received. The applicant will be notified in writing of eligibility or non-eligibility in advance of the lottery. Ineligible applicants will be given an opportunity to correct and/or update income and household information prior to the lottery.

At the end of the advertising period, only preliminary income-eligible applications are selected one-by-one through a lottery (unless fewer applications are received than the number of available units, then all eligible households will be placed in a unit).

Households are informed of the date, time and location of the lottery and invited to attend.

A municipal representative should also be invited to attend the lottery.

An applicant pool is created by listing applicants in the order selected.

Eligible households are matched to available units based upon the number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit).

If there are sufficient names remaining in the pool to fill future resales, the applicant pool shall be closed.

Two years of turnover is a recommended standard.

When the applicant pool is close to being depleted, the Administrative Agent will re-open the pool and conduct a new random selection process after fulfilling the affirmative marketing requirements. The new applicant pool will be added to the remaining list of applicants.

MATCHING HOUSEHOLDS TO AVAILABLE UNITS

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 implement the following policies:

- Provide an occupant for each bedroom in a unit;
- Provide children of different sex with separate bedrooms;
- Prevent more than two persons from occupying a single bedroom;
- Require that all the bedrooms be used as bedrooms; and
- Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

The Administrative Agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor.

A household can be eligible for more than one unit category, and should be placed in the applicant pool for all categories for which it is eligible.