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RULE ADOPTIONS

Reporter

57 N.J.R. 2743(a)

**NJ - New Jersey Register PAW 2025 DECEMBER DECEMBER 15, 2025 RULE ADOPTIONS COMMUNITY AFFAIRS -- NEW
JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

Agency

COMMUNITY AFFAIRS > NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Administrative Code Citation

Readoption of Specially Adopted Proposed Amendments: N.J.A.C. 5:80-26.1, 26.2, 26.4, 26.5, 26.7, 26.8, 26.9, 26.10, 26.11, 26.13, 26.14, 26.15, 26.16, 26.17, 26.18, 26.19, 26.20, 26.21, and 26.25; and 5:80-26 Appendices A, B, C, E, G through O, and Q

Readoption of Specially Readopted New Rule with Recodification: N.J.A.C. 5:80-26.28 as 26.23

Adopted Repeals and New Rules: N.J.A.C. 5:80-26.6 and 26.12

Adopted Repeals: N.J.A.C. 5:80-26.21, 26.22, 26.23, 26.24, 26.26, and 26.27; and 5:80-26 Appendices D, F, and P

Adopted New Rules: N.J.A.C. 5:80 Appendices D-1, D-2, D-3, D-4, F-1, F-2, P-1, and P-2

Text

Housing Affordability Controls

Proposed: July 21, 2025, at 57 N.J.R. 1470(a).

Adopted: November 6, 2025, by the New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Filed: November 6, 2025, as R.2025 d.151, **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 55:27D-321.f and 55:14K-5.g.

Effective Date: November 6, 2025.

Expiration Date: May 30, 2031.

Pursuant to N.J.S.A. 52:27D-321.f, the New Jersey Housing and Mortgage Finance Agency (Agency), after consultation with the New Jersey Department of Community Affairs, promulgated specially adopted amendments, new rules, repeals, and recodifications to its Housing Affordability Controls rules at N.J.A.C. 5:80-26 (UHAC) to effectuate the provisions of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by legislation commonly known as A4, (P.L. 2024, c. 2). In accordance with section 27 of A4, the specially adopted rules became effective immediately upon filing with the Office of Administrative Law (OAL) on December 20, 2024, for a period not to exceed one year from the date of the filing (that is, until December 20, 2025). The Agency was directed by the Legislature to "thereafter amend, adopt, or readopt the regulations in accordance with the [New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA)]." Id.

On July 21, 2025, the Agency published, in the New Jersey Register, and otherwise provided public notice pursuant to the Administrative Procedure Act, a notice of the proposed readoption of the specially adopted rulemaking with additional repeals, new rules, and amendments to the UHAC (see 57 N.J.R. 1470(a)).

Summary of Public Comments and Agency Responses:

The Agency received comments in response to the notice of proposal, as follows. The Agency thanks each of the commenters for their comments. The numbers in parentheses following each comment identify the commenters, as listed below.

1. Shalom Landman, Project Director, NJ HAND, Inc.;
2. Ronald Brown, EMET Realty;
3. Cynthia Hoffman;
4. Elizabeth McManus, PP, AICP, LEED AP, Kyle + McManus Associates;
5. Michael Flippin, CMCA, AMS, PCAM, Integra Management Corp.;
6. Richard Guerrero;
7. Mary MacDonald, CMCA, Regency Management Group;
8. Judith Mavrakes;
9. Trevor Mulhall, Community Associations Institute-New Jersey (CAI-NJ);
10. Darlene A. Green, PP, AICP, Colliers Engineering & Design (submitted on behalf of Borough of Woodland Park, Township of East Hanover, Borough of Montvale, Township of Bridgewater, and Township of Mahwah);
11. Ellen Boylan, Summit, New Jersey;
12. Kate Kelly, Executive Director, Supportive Housing Association of New Jersey;
13. Steve Schoch, AIA, Principal, Thriven Design;
14. Christopher S. Tarr, Esq., Stevens & Lee;
15. Peter M. Flannery, Esq., Bisgaier Hoff, LLC;
16. Sharon M. Clark, Executive Director, Central Jersey Housing Resource Center Corp.;
17. Marc Leckington, Leckington Advisors, LLC, Vice-President, Affordable Housing Professionals of New Jersey;
18. Gail Pfister, MHL/AA, Robbinsville Township, New Jersey;
19. Fred Semrau, Esq. and Jonathan Testa, Esq., Dorsey & Semrau;
20. Sarah Carbone, Municipal Services Director, Community Grants, Planning & Housing;
21. Anonymous;
22. Jeffrey R. Surenian, Esq., Surenian, Edwards, Buzak & Nolan LLC (on behalf of Township of Mahwah);
23. Dorothy S. Hicks, RMC, MBA, Borough Administrator, Borough of Far Hills, New Jersey;
24. Amy Wilczynski, Mayor, Borough of Allendale, New Jersey;
25. Frank Piazza, Piazza & Associates, Inc.;
26. Michael Cerra, Executive Director, New Jersey State League of Municipalities;

27. Nicholas J. Kikis, Vice President, Legislative & Regulatory Affairs, New Jersey Apartment Association;

28. William Palatucci, Esq., McCarter & English;

29. Adam Gordon, Executive Director, Fair Share Housing Center;

30. Jonathan E. Drill, Esq., Stickel, Koenig, Sullivan & Drill, LLC;

31. Busola;

32. Jahmila Duncan;

33. Michele Scantlebury, President, Society Hill II, Newark; and

34. Jeff Kolakowski, Chief Executive Officer, New Jersey Builders Association.

1. COMMENT: The commenter expresses support for the new provision at N.J.A.C. 5:80-26.6(c) by which, prior to issuance of the initial certificate of occupancy (CO) for a restricted ownership unit developed by a nonprofit entity without Agency or State funding and upon each sale of such a unit during the period of restricted ownership, the purchaser must execute a recapture note and recapture mortgage lien in favor of the nonprofit entity. The commenter observes that the provision "is clearly an opportunity to enable nonprofits to have the means with which to develop additional affordable housing units[,]" but suggests that modifications be made in order for nonprofits to maximally benefit from the concept. (1)

RESPONSE: The Agency thanks the commenter for the expression of support and will address the expressed concerns and suggested modifications below.

2. COMMENT: At existing N.J.A.C. 5:80-26.6(f) and at proposed N.J.A.C. 5:80-26.6(h), the applicable municipality has a right to extend the unit's affordability restrictions and a right of first refusal. The commenter contends that these provisions negate the opportunity otherwise afforded to nonprofits pursuant to N.J.A.C. 5:80-26.6(c) because the nonprofit will be unable to recapture the funds it invested in the unit. The commenter opines that if the municipality exercises either of its options, the unit's allowable maximum price will no longer be affordable to a low- or moderate-income family after the extended period, [page=2744] and posits that a preferable resolution would be to let the controls expire and return the recapture funds to the nonprofit, allowing it to use those funds to develop new housing at a more affordable price. (1)

RESPONSE: The Agency supports the right of municipalities to invest in existing affordable housing units to unilaterally extend affordability controls, as such extensions serve as a critical mechanism in maintaining the State's stock of affordable units. The favoring of nonprofit organizations on recapture liens represents a significant step in recognizing nonprofits' contributions. The Agency recommends nonprofits address extension concerns with municipal officials. The Agency disagrees with the suggestion that affordability extensions result in unaffordable deed-restricted units. New N.J.A.C. 5:80-26.7(c) details the maximum resale price formula, stating "the maximum resale price is the original purchase price increased to reflect the cumulative annual percentage increases to the regional median income[.]" By definition, the maximum resale price is targeted to household income growth in the region and, thus, remains affordable.

3. COMMENT: In order to remedy the situation contemplated in Comment 2, the commenter recommends modifying N.J.A.C. 5:80-26.6(a), (f), and (h) to include a clause that would exclude units developed by nonprofit entities from the scope of the respective subsections. Specifically, the commenter suggests that, at N.J.A.C. 5:80-26.6(a) and (h), a clause be inserted stating, "with the exception of a unit developed by a nonprofit entity," and at N.J.A.C. 5:80-26.6(f), a clause be inserted stating, "with the exception of a unit that was developed by a nonprofit entity." (1)

RESPONSE: The Agency notes that the commenter's reference to N.J.A.C. 5:80-26.6(f) appears to be to that subsection as it was in effect following the December 20, 2024 special adoption; subsection (f), as referenced by the commenter, was not proposed for readoption in the current rulemaking. As stated in the Response to Comment 2 and for the reasons expressed therein, the Agency is supportive of allowing municipalities to extend affordability controls. The UHAC rules are intended to carry out the intent of the Legislature in enacting the Fair Housing Act (FHA), including A4. The Agency, therefore, declines the commenter's invitation to carve out exceptions to such opportunities for units developed by nonprofits.

4. COMMENT: The commenter objects to the wording at new N.J.A.C. 5:80-26.6(c), which states that the recapture note and recapture mortgage lien required to be executed and delivered to the administrative agent by the purchaser are to be "in favor of the nonprofit if the unit was developed by a nonprofit entity without Agency or State funding," contending that the subsection should be rewritten to allow a nonprofit developer to participate proportionally with the Agency and/or State in the recovery of any recapture lien amount where those entities have jointly contributed to the development of the unit. (1)

RESPONSE: The Agency notes that the commenter's reference to N.J.A.C. 5:80-26.6(c) appears to be to that subsection as it was in effect following the December 20, 2024 special adoption; the provision referenced by the commenter has been recodified at N.J.A.C. 5:80-26.6(d)1i in the current rulemaking. As stated in the Response to Comment 2 and for the reasons expressed therein, the Agency is supportive of allowing municipalities to extend affordability controls. The UHAC rules are intended to carry out the intent of the Legislature in enacting the FHA, including A4. The Agency, therefore, declines the commenter's invitation to carve out exceptions to such opportunities for units developed by nonprofits. (The Agency notes that the commenter's reference to N.J.A.C. 5:80-26.6(f) appears to be to that subsection as it was in effect following the December 20, 2024 special adoption; that subsection, as referenced by the commenter, was not proposed for readoption in the current rulemaking.)

5. COMMENT: The commenter states that real estate development is subject to volatility, especially with respect to construction costs and interest rates, both construction loan rates and permanent financing rates. However, when developers-especially nonprofit developers-plan affordable homeownership projects, they are expected to project future costs of construction based on current interest rates and construction costs, which is problematic, given that those factors do not remain constant. This "risk and uncertainty" has resulted in "more pushback and lawsuits in order to kick the municipality's and developers' obligations down the road rather than to actually produce meaningful numbers of affordable housing in a timely manner."

The commenter proposes changes to the rules to "result in drastically increasing financial feasibility, minimizing financial uncertainty and risk, and therefore [increasing] municipal and builder cooperation," by "making the requirements for for-sale restricted ownership units more flexible in order to shrink the gap between the extremely high construction cost per unit and the maximum sales price." The commenter offers specific modifications as follows:

1. At N.J.A.C. 5:80-26.4(d), delete the second sentence ("Each affordable development must achieve an affordability average of no more than 55 percent for restricted ownership units.") and the introductory clause to the succeeding sentence ("In achieving this affordability average"), so the subsection will read (according to the commenter) as follows: "The maximum sale price of restricted ownership units within each affordable development must be affordable to households earning no more than 70 percent of regional median income. Moderate-income ownership units must be available for at least three different prices for each bedroom count, and low-income ownership units must be available for at least two different prices for each bedroom count."

2. At N.J.A.C. 5:80-26.4(g)1 through 5, replace "50 percent" with "25 percent" in each paragraph.

3. At N.J.A.C. 5:80-26.7(b): (i) Provide that the initial purchase price for all restricted ownership units be calculated so that the mortgage interest portion of the prospective carrying costs is based on the past "several" (assumed to be five) year average of the FreddieMac 30-year fixed rate, rather than the proposed static FreddieMac interest rate in effect at the planning stage; (ii) remove the cost of private mortgage insurance (PMI) as an element in calculating the prospective carrying costs of restricted ownership units since, based on the commenter's information and experience, PMI is rarely paid on the sale of such units; and (iii) increase the affordability standard for restricted ownership units from 28 percent to 35 percent of eligible household monthly income, rather than the proposed increase to 33 percent of eligible household monthly income. (1)

RESPONSE: In response to the commenter's suggestions 1 and 2, the Agency notes that A4, at N.J.S.A. 52:27D-321.f, requires that the Agency maintain the existing affordability average and bedroom distributions when updating the UHAC. The requirement that 50 percent of each bedroom type be very-low-income or low-income existed in previous versions of the UHAC, as did the affordability average, which may not exceed 52 percent of area median income.

In response to the commenter's suggestion 3, the average interest rate at the time of sale will be the most accurate estimate of the affordable homebuyer's mortgage rate. Additionally, these rules regulate ownership units restricted to low- and moderate-income homebuyers and, therefore, realistically factor in a five-percent downpayment, meaning that private mortgage insurance will be required. Finally, the Agency has

increased the percentage of monthly income that an ownership household may spend on housing costs in the current proposal, which was published in the New Jersey Register at 57 N.J.R. 1470(a). Pursuant to N.J.A.C. 5:80-26.7(b), the Agency proposes capping total housing costs for ownership units at 35 percent of eligible monthly income, an increase from 33 percent set forth in the previously issued rules.

6. COMMENT: The commenter, "[o]n behalf of homeless service providers, affordable housing developers, nonprofit organizations, and advocates across New Jersey," opines that certain proposed UHAC provisions, although "well-intentioned," impede housing solutions for the homeless and extremely low-income persons. The commenter points specifically to "[r]igid unit size requirements, bedroom mix quotas, and income tier blending" as limitations on funding for alternative housing options, such as microunits, single room occupancy units (SROs), tiny homes, and modular housing, stating that there are 1,066 HUD Project-Based Section 8 SRO and microunit units in the State facing the loss of low-income housing tax credit (LIHTC) or other funding because they do not comply with UHAC minimum size and unit-mix requirements. The commenter also references 1,290 licensed rooming and boarding facilities serving 26,819 persons in the State, the loss of funding which would result in uprooting vulnerable residents and placing "enormous strain" on shelters and emergency housing resources. (2)

[page=2745] RESPONSE: The purpose of the proposed rulemaking is to carry out the intent of the Legislature in enacting the FHA, including A4. The statute, as presently constituted, does not address the goals of, or the concerns expressed by, the commenter; specifically, the FHA does not include any reference to SROs, microunits, or rooming/boarding houses, nor does it address residency for the homeless or extremely-low-income persons. The Agency, therefore, declines the commenter's well-intentioned suggestion.

7. COMMENT: The commenter submits that the provision at "N.J.A.C. 5:80-26.4(b)2" stating that "[t]he minimum net habitable floor area of a one-bedroom unit shall be 550 square feet" should be removed or the minimum square footage reduced, as it blocks smaller microunits, SROs, and tiny homes. (2)

RESPONSE: Initially, the Agency notes that neither existing nor proposed N.J.A.C. 5:80-26.4(b), nor any other current or proposed provision of the UHAC, includes the language quoted in the comment. The commenter appears to be referencing a prior version of N.J.A.C. 5:80-26.4(b)2 that was replaced by the December 20, 2024 filing, which was published in the February 18, 2025 New Jersey Register (see 57 N.J.R. 389(a)). However, the Agency welcomes the opportunity to address the commenter's concerns. The rules specifically state, at N.J.A.C. 5:80-26.5(a), that the occupancy standards are not applicable to existing affordable units. The SRO program administered by HUD is no longer an active program and, therefore, is not creating any new units. Additionally, transitional units, several HUD-sponsored units, and low-income housing tax credit (LIHTC) units are exempt from the UHAC rules, except that newly created LIHTC units must comply with the affirmative marketing requirements at N.J.A.C. 5:80-26.16. Also, the rules do not prohibit the creation of microunits or SROs, but only determine that the creation of permanent deed-restricted affordable microunits or SROs are not eligible for credit toward a municipality's affordable housing obligation. The adopted rules provide that affordable units must meet the minimum square footage required for the number of inhabitants and for each bedroom, as set forth in the applicable municipal code or the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever is greater (see N.J.A.C. 5:80-26.5(b)1i).

8. COMMENT: The commenter proposes allowing 100 percent low-income or deeply affordable projects when such projects are paired with HUD subsidies. They suggest inserting a provision to exempt the income mix requirements at N.J.A.C. 5:80-26.3 from developments funded with Project-Based Section 8 or HOME Investment Partnerships Program funds, or Rental Assistance Demonstration (RAD) programs serving formerly homeless or special needs populations or developments funded pursuant to Federal affordability contracts. (2)

RESPONSE: The Agency does not believe the suggested provision is necessary, as the rules do not prohibit the creation of 100-percent low-income affordable developments; the rules provide only a maximum, not a minimum, affordability average. Additionally, the rules do not require that every development include very-low-income units; thus, a development can be in compliance with the affordability average requirements with all units priced as low-income units.

9. COMMENT: The commenter advocates for flexibility in the bedroom mix and phasing standards for supportive housing and transitional housing for homeless persons, suggesting the potential waiver of unit mix and integration phasing requirements for such units. (2)

RESPONSE: Based on its own analysis and feedback from supportive housing advocates, the Agency is satisfied that the distribution of supportive housing units throughout a development is appropriate. Supportive housing units are exempt from the bedroom-mix requirements. See N.J.A.C. 5:80-26.4(e) and (f). The UHAC rules do not govern transitional housing units.

10. COMMENT: The commenter advocates adding definitions of "SROs" and "microunits" to specifically account for such models. (2)

RESPONSE: The Agency is satisfied with the rules' approach to accounting for various housing models. The UHAC rules are intended to carry out the intent of the Legislature in enacting the FHA, including A4, which does not provide for SROs or "microunits." The Agency, therefore, declines to make the commenter's suggestion.

11. COMMENT: The commenter, "a long[-]time resident of [New Jersey], living in a town home community," quotes with approval, a passage discussing the purported "significant impact" of the UHAC rules on community associations in the State. The passage provides specifically that the rules "would cap fees on affordable units, restrict the use of special assessments, and require associations to calculate affordability caps for individual owners, among other burdensome requirements ..." as well as "mandate square footage-based assessments and allow municipalities to extend affordability controls without association consent, potentially increasing financial strain on market-rate owners for decades to come." Citing an obligation of community boards to manage the affairs of their communities by treating all residents "equally with respect," the commenter directs "the State of [New Jersey]" to cease involving itself in the affairs of existing communities and to respect the binding nature of existing documents governing such affairs. (3)

RESPONSE: The Agency acknowledges the concerns expressed by the commenter and is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

12. COMMENT: The commenter questions whether, as a senior citizen residing in a townhome community containing affordable housing units, their homeowner association fees will be capped. (3)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

13. COMMENT: The commenter quotes N.J.A.C. 5:80-26.5(a)3iii, which provides that "[r]estricted units may be of different housing product types than market-rate units, provided that developments containing market-rate duplexes, townhomes, and/or single-family homes offer restricted housing options that also include duplexes, townhomes, and/or single-family homes[.]" The commenter queries whether an inclusionary development would be compliant if the market-rate units are conventional townhouses and the affordable units are stacked townhouses. (4)

RESPONSE: An inclusionary development in which the market-rate units are offered only as conventional townhouses and the affordable units are offered only as stacked townhouses would not be consistent with N.J.A.C. 5:80-26.5(a)3iii, as there must be a restricted option available for each market-rate housing type. The proper ratio for restricted to market-rate building types within the plan is subject to the determinations of stakeholders in the planning processes, as long as there are restricted units for each type. Pursuant to N.J.A.C. 5:80-26.5(a)3v, penthouses and higher priced end unit townhouses may be exempted from this final requirement.

14. COMMENT: The commenter states that both N.J.A.C. 5:80-26.4(l) and 26.5(a)5 provide that "waivers for or alteration of bedroom distribution, income distribution, design requirements (windows in bedrooms, etc.) and phasing may be granted by the Division [of Local Planning Services] if the change would not create a material deviation in the municipal housing plan or by the [Dispute Resolution] Program or [c]ounty[-]level [[h]ousing [j]udge if a material deviation from the housing plan would be created." (4)

RESPONSE: The Agency disagrees in part with the commenter's summary. The Agency notes that by the time of the February 2025 notice of proposal, the Dispute Resolution Program (Program) was removed from proposed involvement in the waiver/alteration approval process; therefore, pursuant to either N.J.A.C. 5:80-26.4(l) or 26.5(a)5, a proposed waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge, not from the Program, regardless of whether the subject municipality participates in the Program or not.

15. COMMENT: The commenter asks what factors the Division will rely on in making a decision to grant or deny a waiver or alteration as contemplated at Comment 14 and what information will be relied upon. (4)

RESPONSE: The Division is responsible for developing and administering the waiver process. The Agency defers to the expertise of the Division.

[page=2746] 16. COMMENT: With respect to a request for relief as contemplated at Comment 14, the commenter asks whether the developer or the municipality will submit the request. (4)

RESPONSE: That decision is to be made by the developer and/or the municipality, unless otherwise specified by the Division in its rules governing the waiver process. The Agency does not take a position on the decision.

17. COMMENT: The commenter asks what role the municipality plays in the decision making (presumably with respect to a request for relief as contemplated at Comment 14) and whether the municipality will weigh in on whether the proposed change or alteration would result in a material deviation from the municipal housing element and fair share plan. (4)

RESPONSE: The Division is responsible for developing and administering the waiver process. The Agency cannot know the "role" of the municipality in any given proceeding before, and governed by, another department or branch of government.

18. COMMENT: The commenter asks if a waiver is granted by the Division, does the municipality not have to "make up" for the "noncompliant units," The commenter presents, as an example, the approval of a project without any three-bedroom units and queries whether the municipality will have to compensate for the lack of such units in the project by imposing additional bedroom-count requirements on another developer or "otherwise," opining that it would be "unreasonable" for the Division to grant such a waiver without input from the municipality or over the objection of the municipality if the municipality must otherwise provide for those units. (4)

RESPONSE: The Division is responsible for developing and administering the waiver process. The Agency cannot know the result of any given proceeding before, and governed by, another department or branch of government.

19. COMMENT: The commenter opines that the UHAC rules are "contradictory, overburdensome and vague in some areas" and unconstitutional pursuant to both the State and Federal Constitution. (5)

RESPONSE: The commenter is vague and does not refer to any specific provision of the UHAC. The Agency does not find that the rules, or any provision thereof, are as characterized by the commenter.

20. COMMENT: The commenter asserts--without reference to a specific rule but presumably directed to proposed amendments at N.J.A.C. 5:80-26.7(e)--that the rules "will have a major impact on the middle class by shifting the financial burden from Affordable Unit Owners to those who own Market Rate [Units]." The commenter claims that community associations are already being impacted by increases in insurance premiums, reserve contributions, and contracted services and, among other things, claims that market-rate unit owners are already frustrated by the need to subsidize affordable units, contributing to greater "discourse" [sic: discord?] among communities. (5)

RESPONSE: The Agency acknowledges the concerns expressed by the commenter and is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

21. COMMENT: The commenters express concern over unspecified rules that would: (1) require condominium associations to calculate and enforce affordability caps for individual unit owners; (2) mandate an assessment structure based on unit size as measured by square footage; and (3) allow municipalities to unilaterally extend affordability controls. The commenter cites to potential "financial and administrative burdens on condominium associations and their homeowners," specifically, the limiting of unit resale values, thereby depressing investment and the financial equity of current owners; the "unfair[]" shifting of maintenance and reserve funding responsibilities among unit owners; and the undermining of basic governance rights by ceding the term of affordability controls to municipalities. (6 and 7)

RESPONSE: The Agency acknowledges the concerns expressed by the commenters and is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. The Agency supports the right of municipalities to invest in existing affordable units and thereby unilaterally extend affordability controls, as doing so serves to help maintain the State's stock of affordable housing units. The UHAC rules as in effect since 2004 have allowed municipalities to unilaterally extend affordability controls by following certain procedures. See 36 N.J.R. 5713(a) (response to comment regarding the operation of control period provisions of then-codified N.J.A.C. 5:80-26.5).

22. COMMENT: The State currently has no agency to monitor or follow up on the compliance of existing affordable housing units and their occupants. Such an agency is needed to minimize exploitation of such units. (7)

RESPONSE: The comment does not relate to any identifiable provision of the rulemaking, and is, therefore, beyond the scope of the rulemaking.

23. COMMENT: Many of the affordable housing units in the State are owned by private individuals or organizations that should be able to pay their fair share. With regard to condominiums, the burden of supporting the upkeep of a project should not fall more heavily on the market-rate unit owners, especially where the affordable units are owned by entities that are not low-income families. The costs of operating a condominium association are based on the number of units and residents in the association and these numbers have already been factored into the association's governing documents. Therefore, the rulemaking that would require associations to "calculate affordability caps for individual owners" should be removed as that calculation has already been done in the existing governing documents; it is "absolutely impractical and unreasonable to expect an established condo[mini]um association to do [that]." (7)

RESPONSE: As noted in the responses to previous comments, the Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

24. COMMENT: The "middle class" (presumably market-rate unit owners) cannot sustain the burden of maintenance fees imposed by A4 and the UHAC rules, thereby resulting in condominium associations with affordable units lacking the funds needed to operate, which will, in turn, cause those associations to go bankrupt, resulting in the State having to "step in" and, ultimately, all residents of the State being financially responsible to "bail out the failed [a]ssociations." (7)

RESPONSE: The commenter does not relate to any identifiable provision of the rulemaking. As noted in the responses to previous comments, the Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

25. COMMENT: With regard to homeowner association (HOA) communities, all homeowners should pay the same HOA fee to resolve "the issue that services [are] not equally provided to all owners in a community." Deviation from that stricture "will create a gap in funds that will deteriorate all homes, not just affordable housing." (8)

RESPONSE: As noted in the responses to previous comments, the Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

26. COMMENT: The (unspecified) rules reflect "an assumption that the market rate homeowners can cover the funding gap ... The proposed 30 [percent] of remaining income after taxes and mortgage payments would add a minimum of \$ 150 - \$ 200 to already market rates of \$ 350 per month across the community-and require a reduction of line items in the budget to make ends meet." (8)

RESPONSE: The commenter's statement is premised on a hypothetical situation to which the Agency cannot respond. The Agency points out that, as noted in the responses to previous comments, the Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the [page=2747] common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

27. COMMENT: The commenting entity, a nonprofit organization dedicated to protecting and advancing the interests of New Jersey common-interest communities (CICs), expresses concern that the UHAC rules will have a "drastic impact on the 'missing middle'" in the State "and, in turn, will substantially worsen the affordability issue in New Jersey." The rules will force "middle income" owners and residents of CIC units "to significantly subsidize the affordable unit owners to a wildly disproportionate degree," although all unit owners receive the same benefits and protections. This will result in the negative repercussions of a share of middle-income CIC unit owners no longer being able to afford their units, forcing a decrease in market values as lower-income households are confronted with an inability to obtain mortgages adequate to pay the current market value of middle-income housing, which, in turn, will deprive existing middle-income housing owners of expected generational equity. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

28. COMMENT: Adoption of the amendments proposed at N.J.A.C. 5:80-26.7(e) will cause significant financial damage to CICs and will create safety hazards. The "only way" to comply with the requirements that there be no distinction between assessments to market-rate unit owners and affordable unit owners and that the payment of affordable unit owners be capped would limit an association's capacity to raise the funds necessary to operate without passing shortfalls on to the market-rate owners. Among other "adverse and devastating consequences," an inability of CICs to pay insurance premiums and to fund needed capital repairs and improvements will result in safety issues. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

29. COMMENT: The rules exceed the Agency's authority as granted pursuant to A4 (N.J.S.A. 52:27D-321.f) and by the Agency's enabling statute (N.J.S.A. 55:14K-5.g). The commenter contends that N.J.S.A. 52:27D-321.f does not authorize the Agency to make certain changes and that the Agency has, in violation of that provision, made changes that are not "consistent with the controls as in effect immediately prior to the effective date of P.L.2024, c.2 [A4]." Also, the changes are not authorized pursuant to N.J.S.A. 55:14K-5.g, which deals with a different statutory scheme. (9)

RESPONSE: The Agency notes that it is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

30. COMMENT: The rule violates the New Jersey Condominium Act, specifically N.J.S.A. 46:88-17, which provides that, in addition to charging common expenses to unit owners according to their respective interests in the common elements of a condominium, common expenses may be charged "in such other proportions as may be provided in the master deed or by-laws." Proposed N.J.A.C. 5:80-26.7(e) is contrary to that provision in that it mandates that condominium and HOA fees be based on the common interest percentage of unit owners, contrary to the statutory allowance to New Jersey CICs to implement "various methodologies that are suitable to the property in question." (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

31. COMMENT: Prohibiting associations from specially assessing affordable unit owners is unfair, inequitable, and violative of the Condominium Act. The new text at N.J.A.C. 5:80-26.7(e), which provides "[i]f renovations or charges related to a special assessment do not impact or benefit affordable units, affordable unit owners may not be subject to the special assessment charge," is unclear; at the least, clarity is needed as to what constitutes an "impact" or "benefit" on affordable units. The commenter presents the case that all expenditures by an association that are validly authorized by the master deed or declaration impact and benefit all CIC unit owners. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

32. COMMENT: Proposed N.J.A.C. 5:80-26.7(e) violates the Contract Clauses of both the United States and New Jersey Constitutions, U.S. Constitution Article I, § 10, clause 1; New Jersey Const. Article IV, § 7, ¶ 3, as it applies to existing CICs in that it would overrule provisions of the master deeds or declarations governing those communities. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

33. COMMENT: Proposed N.J.A.C. 5:80-26.7(e) violates the prohibition on special legislation relating to taxation of Article IV, § 7, ¶ 9 and the taxation pursuant to general laws and by uniform rules mandate of Article VIII, § 1 of the New Jersey Constitution. The proposed rule is unlawful in that it would require only owners of market-rate units in CICs, not the public at large, to subsidize the cost of affordable housing. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

34. COMMENT: If proposed N.J.A.C. 5:80-26.7(e) is not an unlawful tax, it violates the Fifth Amendment to the United States Constitution and Article I, ¶ 20 of the New Jersey Constitution in that it constitutes an unlawful taking of the personal property (money) of the owners of market-rate units to pay the legal obligations of affordable unit owners in those circumstances where the proportional share of common expenses of a CIC, as set forth in the association's master deed or declaration would cause affordable unit owners to pay common expenses that exceed the 28- or 33-percent of income limitation applicable when the affordable unit owners were approved to purchase their units. The recitals clause of A4 establishes that the Act was intended to address not only a public issue, but also the constitutional issue of providing housing for all citizens of the State, as enunciated in Mount Laurel I and its progeny; "[a]ny attempt by the government to transfer a portion of its constitutional obligation to a subset of the New Jersey citizenry must be avoided as creating yet another governmental violation of the U.S. and N.J. Constitutions." (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

35. COMMENT: Proposed N.J.A.C. 5:80-26.7(e) will create tensions between market-rate and affordable unit owners, which will undermine the necessary "spirit of collaboration" and create an "us vs. them" atmosphere. (9)

RESPONSE: The Agency is not adopting the proposed amendment at N.J.A.C. 5:80-26.7(e).

36. COMMENT: CICs and their management companies are not equipped to perform the calculations that would be mandated pursuant to N.J.A.C. 5:80-26.7(e), as they lack the experience to do so and would likely be met by resistance from affordable-unit owners required to submit sensitive financial information on an annual basis. The proposed administrative burden will increase common expenses for CIC associations. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage [page=2748] of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

37. COMMENT: Proposed N.J.A.C. 5:80-26.7(e) is contradictory and vague. It is contradictory in that it retains the existing provision that association fees and assessments not be distinguished between market-rate and affordable unit owners, but proposes amendments that would make it "impossible" for such fees to be indistinguishable. It is vague in that it: (i) does not specify whether it would apply to existing associations with current master deeds and declarations or would have prospective effect only; (ii) does not specify what constitutes an "impact or benefit to affordable owners"; and (iii) insufficiently addresses whether it supersedes contrary provisions of existing master deeds and declarations. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and homeowner association fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable.

38. COMMENT: If required pursuant to proposed N.J.A.C. 5:80-26.7(e), it would be unlikely or impossible for existing association master deeds and declarations to be amended. Most CICs require a supermajority of all unit owners to approve amendments to governing documents and many require the approval of mortgage holders within the association; if required by the proposed rule, it is unlikely that approval would be obtained. (9)

RESPONSE: The Agency is not adopting the amendments proposed at N.J.A.C. 5:80-26.7(e), which would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no

longer affordable.

39. COMMENT: The Economic Impact statement of the notice of proposal does not consider or analyze the cost to municipalities to pay the "equity share amount" to affordable unit owners if and when a municipality seeks to extend affordability controls. Further, this statement does not consider that municipalities with certain types of 95/5 units do not currently have to pay anything to extend affordability controls, but, pursuant to the proposed rules, would have to pay the "equity share amount." "The rule as written is misleading and neglects to discuss the increased costs to municipalities to extend control periods." (10)

RESPONSE: The Agency expresses disagreement that the Economic Impact statement fails to address the cost of the equity share to the municipality. The statement highlights that extension of affordability controls with compensation allows municipalities to not only earn Round Four credits, but to also earn bonus credits, at a much lower cost than would be required to create an entirely new unit or to convert a market-rate unit to an affordable unit.

40. COMMENT: N.J.A.C. 5:80-26.1 provides that "[u]nless expressly stated otherwise herein, this subchapter [N.J.A.C. 5:80-26] applies to all restricted units described in the foregoing sentence, regardless of the date on which the units were created[.]" New rules and regulations cannot be retroactively applied to previously built or approved affordable units; therefore, the provision must be amended to restrict its application to "new affordable housing units created after the effective date of the regulations." (10)

RESPONSE: The Agency notes that prior round units are not subject to certain rule changes due to an innate inability to comply with the changes. For example, prior round units are exempted from the affordability average and bedroom distribution requirements at N.J.A.C. 5:80-26.4. The adopted rules are, however, to be applied to the administration of all affordable housing units, including existing units, unless specifically exempted by the rules.

41. COMMENT: The new definitions of "equity share" and "price differential" proposed at N.J.A.C. 5:80-26.2 should be deleted. Municipalities cannot be expected to reserve for the potentially varying amounts of equity share amounts required to be paid to extend affordability controls on restricted units. Furthermore, that municipal taxpayers might have to fund "windfalls for affordable homeowners who have reaped the benefit of reduced taxes and lower HOA fees" is "troubling" and raises issues of equity. To the extent these "windfall payments" to extend affordability controls--with no requirement that the payments be used to maintain or update the housing units--would result in municipalities being financially unable to extend restrictions or deplete municipal funds that might otherwise be used to invest in affordable housing, it is questionable whether the payments will actually result in extended controls on affordable units or in additional units being added to the municipality's housing stock: "[i]nstead, these ... payments appear to serve a narrow group of homeowners who seek a payout on the backs of taxpayers." (10)

RESPONSE: Pursuant to the previous UHAC, a municipality would only be able to recapture the "recapture amount," defined as the difference between the maximum restricted sale price at purchase and the unrestricted market value at purchase. This provision applied even if the affordable owner only lived in the unit for a short time. The equity share provision actually increases the amount of sale proceeds recaptured by the municipality. Pursuant to the equity share model, the municipality is entitled to a share of sale proceeds ranging from 70 percent to 95 percent of the difference between the maximum resale price at the time of exit sale and the contract price at exit sale. The precise share is determined by the length of tenure of the affordable owner. In addition, municipalities were and still are able to extend affordability controls even if the deed-restricted control period expires. The new rules, incorporating the definitions referenced by the commenter, only require that a percentage of the appreciation of the unit be provided to the affordable unit owner in exchange for the extension of controls.

In summary, the equity share formula improves the division of proceeds from the sale of restricted ownership units to market-rate buyers for both municipalities and unit owners.

42. COMMENT: N.J.A.C. 5:80-26.4(c) mandates that each municipality adopt an ordinance regarding rental affordability requirements, but no form of ordinance is provided in the appendices. To promote consistency, a template should be included as an appendix item. (10)

RESPONSE: The Agency declines to provide a template in the current rules or appendices, but will consider providing one in a future manual summarizing UHAC, if deemed necessary.

43. COMMENT: N.J.A.C. 5:80-26.4(f) regulates bedroom distribution requirements for, among other types of housing, supportive housing, but the rules do not include a definition of "supportive housing." It is uncertain if the term includes group homes. (10)

RESPONSE: The Agency notes that the FHA, at N.J.S.A. 52:27D-311.k(1), references an established definition for "permanent supportive housing" at N.J.S.A. 34:1B-21.24, upon which the Agency will rely. Creating a new definition is beyond the scope of the UHAC rules.

44. COMMENT: N.J.A.C. 5:80-26.4(l) provides that all restricted units in a municipality must satisfy N.J.A.C. 5:80-26.4(e), (f), and (g). As proposed, subsections (e), (f), and (g) apply to "each affordable development." Units created through a market-to-affordable program, an accessory apartment program, or an extension of controls program are not an "affordable development." Therefore, subsections (e), (f), and (g) do not apply to restricted units created through those programs; consequently, subsection (l), as proposed, cannot apply to all restricted units in a municipality and must be revised. (10)

RESPONSE: The Agency disagrees with the premise of the commenter that units created through a market-to-affordable program, an accessory apartment program, or an extension of controls program are not "affordable developments." Such units are subject to N.J.A.C. 5:80-26.4(b)1, which provides that affordability averages and bedroom distributions for "small developments," defined as affordable developments with four or fewer restricted units, "may be calculated based on the aggregate of all the restricted units within small developments within the municipality." Thus, all "developments" with four or fewer restricted units (including as few as one unit) may be aggregated at the municipal level to determine compliance with the provisions at subsections (e), (f), and (g) and, consequently, are subject to subsection (l).

45. COMMENT: N.J.A.C. 5:80-26.4(l) provides that the bedroom distribution and income standards at N.J.A.C. 5:80-26.4(e), (f), and (g) must be considered in the aggregate. Income distribution cannot be considered in the aggregate for the Prior Round or the Third Round as [page=2749] very-low-income unit requirements were not effective until July 17, 2008. P.L. 2008, c. 46. (10)

RESPONSE: The provisions at N.J.A.C. 5:80-26, including N.J.A.C. 5:80-26.4(e), (f), and (g), do not apply to prior round units. See N.J.A.C. 5:80-26.4(a).

46. COMMENT: The number of restricted units actually constructed in a municipality may vary over the course of a 10-year affordable housing round from that prescribed in the municipality's housing element and fair share plan (HEFSP), which will skew aggregate calculations. The first sentence at N.J.A.C. 5:80-26.4(l) should be deleted or substantially revised as it does not specify what would happen under such a situation. (10)

RESPONSE: The Agency understands that municipalities' HEFSPs are designed to create a realistic opportunity for development, but may not be implemented exactly as planned due to a variety of factors. With that in mind, N.J.A.C. 5:80-26.4(l) provides the income and bedroom distribution guidance that municipalities must include when designing their HEFSPs and planning the developments therein.

47. COMMENT: It is unclear who can apply for a waiver from the requirements at N.J.A.C. 5:80-26.5(a)5. Developers should not be permitted to apply for waivers unless supported by the municipality. (10)

RESPONSE: The Division is responsible for developing and administering the waiver process. The Agency cannot know the procedure in any given proceeding before, and governed by, another department or branch of government.

48. COMMENT: N.J.A.C. 5:80-26.6 cannot be applied retroactively to affordable units, the controls on which were previously extended pursuant to the affordable housing regulations, at N.J.A.C. 5:93-9.9 and/or 5:97-6.14, that were in effect at the time of the extension. N.J.A.C. 5:80-26.6 must be rewritten to apply only to the extension of controls that occur after the effective date of the new UHAC rules. (10)

RESPONSE: The Agency agrees with the commenter. Upon adoption, the rules will apply to newly constructed units and to existing units for which extensions of affordability controls occur after the effective date of the rulemaking. See N.J.A.C. 5:80-26.6(h)1iii.

49. COMMENT: N.J.A.C. 5:80-26.6, "impose[s] new and supplementary financial and procedural obstacles on municipalities which make it extremely difficult and unworkable to preserve existing affordable sale units in a consistent and fair manner" and, "[i]n many instances," contradicts A4. (10)

RESPONSE: The Agency acknowledges that N.J.A.C. 5:80-26.6, as amended, sets forth financial and procedural provisions to promote the preservation of affordable ownership units, but disputes that it imposes any "obstacles" that obstruct the preservation of existing units. The Agency declines to respond further regarding the comment as no specific provisions are cited therein.

50. COMMENT: N.J.A.C. 5:80-26.6(c) implies that a municipality cannot extend the affordability controls on a restricted ownership unit until it receives notice of an intent by the owner to make an exit sale; this contradicts N.J.A.C. 5:80-26.6(h)4, "which states a municipality can elect to extend the controls." (10)

RESPONSE: The Agency disagrees with the commenter. N.J.A.C. 5:80-26.6(c) provides that a restricted ownership unit remains subject to affordability controls after the end of the control period until the owner gives notice of their intent to make an exit sale. The municipality is not required to take any action to extend controls on the unit until such time. Once the owner expresses an intent to sell after the control period has expired, the municipality can decide, pursuant to N.J.A.C. 5:80-26.6(h), to extend affordability controls by offering an equity share payment or allow the exit sale to occur. If the municipality wishes to be proactive, it can extend the deed restriction by offering the unit owner the equity share payment in exchange for an extended control period that, when combined with the total duration of previous affordability controls, does not exceed 60 years. The Agency does not perceive a conflict between N.J.A.C. 5:80-26.6(c) and (h)4.

51. COMMENT: N.J.A.C. 5:80-26.6(h)4 provides that a municipality "cannot elect to extend the affordability controls more than one year and no later than 180 days before the effective date of the extension." These "minimum and maximum timelines ... make it more difficult for [municipalities] to extend controls and/or ... preclude the extension of a control if a municipality fails to act within the 185-day window[,]" which violates the public policy favoring the continuation of affordability controls. The minimum and maximum timelines should, therefore, be deleted from the rule. (10)

RESPONSE: The Agency does not believe the timeframe will significantly impact municipalities in extending controls on existing affordable homeownership units and that it serves the countervailing purpose of providing homeowners with a realistic opportunity to determine how they wish to proceed regarding the sale or retention of their units.

52. COMMENT: N.J.A.C. 5:80-26.6(h)5 refers to a municipality's receipt of an "owner's intent to make an exit sale," which forces the municipality to either pay the owner the equity share amount or lose the ability to extend controls on the unit. However, the owner's notice of intent may be only a bluff to receive a "windfall payment" (the equity share amount). If the owner submits notice of intent to make an exit sale in response to a municipality's seeking to extend affordability controls, the owner should be required to sell the unit within one year from submittal of the notice of intent. (10)

RESPONSE: The commenter appears to be based on a misunderstanding of the exit sale process. Affordable unit owners can express their intent to make an exit sale only after the minimum affordability period has lapsed and the deed-restricted control period has ended. Upon receiving notice of an owner's intent to exit, the municipality has three options. First, it can allow the owner to sell the unit for the fair-market price. From this sale, the owner will retain the maximum restricted sale price, plus one percent of the difference between the maximum restricted sale price and the fair market value for each year of ownership (the equity share), with the municipality retaining the remaining proceeds from the sale. Second, the municipality may extend the affordability controls by executing a new deed-restricted control period and by paying the owner the equity share. After paying the equity share and executing a new deed restriction, the unit will remain affordable for another number of years that, in combination with the original affordability controls, results in at least 60 years of affordability. Once an equity share has been paid by the municipality, the owner can only sell the unit to an affordable homebuyer for no more than the maximum restricted sale price. Third, the municipality can purchase the unit for the maximum restricted sale price, plus the equity share amount, extend the affordability controls, and sell the unit at an affordable price to an affordable household who will be bound by the terms of the newly issued deed restriction.

53. COMMENT: N.J.A.C. 5:80-26.6(h)6i should be clarified as it does not indicate that the payment provided for therein by a municipality to the owner of a restricted unit of an amount no less than the equity share amount is in exchange for the extended deed restriction. (10)

RESPONSE: The Agency believes the rule is clear. N.J.A.C. 5:80-26.6(h)i evidences that the payment is in consideration for extension of the existing deed restriction.

54. COMMENT: Many existing 95/5 repayment mortgages and/or affordable housing agreements are worded so that no payment to the owner is required "when the deed [restriction] is extended." The specially adopted rules require a \$ 10,000 or \$ 20,000 payment per unit to extend the restriction and the proposed rules require an indeterminate equity share amount, "which makes it impossible for a municipality to budget for the payment of potential extensions." Thus, "[t]his subsection" should not apply to 95/5 repayment mortgages and affordable housing agreements or, as an alternative, a fixed amount should be set as the payment required to extend affordability controls. The objective of the UHAC rules

should be to serve the interests of all low- and moderate-income households; this objective is defeated when an "unknown windfall payment (that is, equity share amount) benefits a single individual owner[.]" (10)

RESPONSE: Initially, the scope of the commenter's statement is unclear. While the reference to "[t]his subsection" implies that it is directed to the entirety of N.J.A.C. 5:80-26.6(h), it is included in a component of the comment captioned "5:80-26.6(h)6.i [sic]" giving the impression it is limited to that subparagraph.

Further, the commenter's statement appears to be based on a misunderstanding of the rules. N.J.A.C. 5:80-26.6(h) deals exclusively with the ability of municipalities to unilaterally extend affordability controls. Any existing deed restrictions dictate the procedures to be [page=2750] followed for extensions or exit sales, with the understanding that extensions for Round Four housing credits must be made using deed-restrictions written in accordance with the rules and procedures of these adopted rules. Therefore, payment of the equity share is only a condition of the extension of deed restrictions executed after the effective date of this rulemaking. Thus, equity share payments will not be required for at least 30 years. Municipalities, however, may provide compensation to owners for the extensions of deed restrictions currently in effect, so long as the terms of extension, including compensation, are adopted through ordinance and applied uniformly to all affordable owners. The Agency encourages municipalities to adopt, by ordinance, uniform standards to balance and avoid inconsistencies/inequities in the implementation of affordability extensions going forward.

55. COMMENT: N.J.A.C. 5:80-26.6(i), "[a]s written," is "confusing and highly problematic for many reasons." When an affordable unit owner wishes to sell their unit, they notify the administrative agent and municipal housing liaison of such intent and the municipality then has 60 days in which to elect to extend the affordability controls. However, if the owner elects to sell in 2027 and the controls expire in 2030, the municipality cannot extend the controls based on the timeframe set forth at N.J.A.C. 5:80-26.6(h)4. It should, therefore, be made clear that subsection (i) is exempt from the minimum and maximum timeframes at paragraph (h)4.

Additionally, N.J.A.C. 5:80-26.6(i) provides that if the restricted unit owner "does not sell the unit within one year of the date of the delivery of the notice of intent to sell, the option to extend controls on the unit will be restored and the owner must submit a new notice of intent to sell ..." If the municipality elected to extend the controls and the owner decided not to sell the unit within the one-year timeframe, the option to extend would not need to be "restored" as it was already effectuated. The wording of the phrase should be revised as it is subject to an inference that a municipality's right to extend controls "can be taken away." (10)

RESPONSE: N.J.A.C. 5:80-26.6(i) only applies to exit sales, that is, to sales that would result in the release of a unit from affordability controls. If the controls were to expire in 2030, an owner would not be allowed to express their intent to sell their home and exit affordability controls until that time. A sale in 2027 would, therefore, be from one affordable household to another affordable household. If, after the control period expired in 2030, the owner expressed their intent to sell the home at market value and exit affordability, the municipality would still retain the right to extend affordability controls unilaterally. Nothing in the rules suggests that "a municipality's right to extend the controls can be taken away." The Agency has deleted the language at N.J.A.C. 5:80-26.6(m) to resolve any misunderstanding about the municipality's ability to extend controls.

56. COMMENT: N.J.A.C. 5:80-26.6(l) permits a judgment of foreclosure to extinguish affordability controls on restricted ownership units. This is inconsistent with the Fair Housing Act and the Mount Laurel doctrine and undermines the State's "protected class of affordable households[,]" as well as reducing the stock of affordable housing units. The commenter contrasts N.J.A.C. 5:80-26.6(l) with N.J.A.C. 5:80-26.12(f)3, which indicates a judgment of foreclosure does not extinguish the deed restriction for a rental unit, and asserts that such varying treatment "appears to be arbitrary." (10)

RESPONSE: Upon adoption, the Agency is changing N.J.A.C. 5:80-26.6(l) to provide that foreclosure does not extinguish affordability controls on restricted ownership units. In doing so, the Agency understands that this resolution will result in some residents being forced to remain in their deed-restricted homes longer than necessary. The Agency is, for now, acceding to the position favored by many affordable housing practitioners and the commenters; the Agency will continue to consider an optimal resolution of the foreclosure issue with its Federal partners and other industry participants and, if such issues continue, will consider future changes to the UHAC rules.

57. COMMENT: N.J.A.C. 5:80-26.6(m) provides that "[a]ll extensions of affordability controls ... must be made according to the requirements of this section[.]" The wording should be clarified to denote that it applies only to extensions of controls implemented after the effective date of the rules. (10)

RESPONSE: The Agency does not believe a change to the text at N.J.A.C. 5:80-26.6(m) is necessary. Rules are to be given a commonsense reading; it is apparent that extensions that have already been implemented are not subject to the requirements of rules that were not then-effective. The Agency recognizes that existing deed restrictions are binding.

58. COMMENT: At N.J.A.C. 5:80-26.12(d), the phrase "pursuant to the existing rules" is unclear and should be clarified. (10)

RESPONSE: The phrase "existing rules" refers to the rules in effect at the time of the creation or extension of the applicable restricted rental unit. The Agency does not believe that the provision is unclear.

59. COMMENT: (This comment intentionally left blank.)

60. COMMENT: The proposed UHAC rules, including N.J.A.C. 5:80-26.12(g)2, include references to a "municipal ordinance" to be enacted to authorize an action or an election. The appendices should include a sample or template of such ordinances, as had been done by the Council on Affordable Housing (COAH). (10)

RESPONSE: The Agency declines to adopt templates, but will consider including them in a future manual, if deemed necessary and helpful. The Agency believes that municipalities are generally capable of preparing ordinances that comply with the rules.

61. COMMENT: The mandate at N.J.A.C. 5:80-26.12(h)2 for a municipal ordinance that authorizes a municipality's election to extend the affordability controls on restricted rental units should be eliminated as it is "unnecessary and conflict[s] with extension affordable rental deed restrictions." "Historically, affordable rental deeds have contained language that clearly states whether the affordability controls can be extended." If the requirement is retained, a sample or draft ordinance should be included in the rules. (10)

RESPONSE: The Agency disagrees with a main tenet of the commenter. Historically, municipalities were required by the Round Three UHAC rules at N.J.A.C. 5:80-26.11(g) to pass an ordinance releasing affordable rental units from affordability controls; however, these prior rules did not address extensions of such controls. In practice, municipalities have used municipal actions, including resolutions, to extend affordability controls. The process set forth at N.J.A.C. 5:80-26.12(h)2 ensures that municipalities issue new deed restrictions by ordinance, which codifies the legally binding and long-term nature of a new control period and also promotes communication with affordable rental unit owners. The Agency does not believe that the inclusion of additional samples or templates would add materially to the rules, but will consider including a sample ordinance in a future manual, if deemed necessary or helpful. The Agency believes that municipalities are generally capable of preparing ordinances that comply with the rules.

62. COMMENT: N.J.A.C. 5:80-26.12(j) provides that the owner of a 100 percent affordable rental development may elect to extinguish the existing deed restriction and extend the affordability controls on all restricted rental units in the development, provided certain conditions are met. Notification of the elections should be required to be provided to the municipality. (10)

RESPONSE: N.J.A.C. 5:80-26.12(j) is derived from A4, N.J.S.A. 52:27D-321.f, which provides that 100 percent affordable rental properties have the right to extinguish deed restrictions provided a refinancing and/or rehabilitation for preservation purposes is commenced, and a new deed restriction of at least 30 additional years is provided. As these developments are 100 percent affordable and statutorily required to be deed restricted, the Agency does not deem it necessary that the municipality be notified of the election; such notice is required only when owners of for-sale or rental units seek permanent release of the units from affordability controls.

63. COMMENT: Group homes and supportive housing units should be excluded from the requirement at N.J.A.C. 5:80-26.15 that municipalities designate or approve an administrative agent to administer all affordable housing programs and/or units within the municipality's fair share plan since such types of housing "do not have administrative agents as their residents are sourced from the DDD [Division of Developmental Disabilities] waitlist and/or other State databases." (10)

RESPONSE: The Agency disagrees with the premise of the commenter. Pursuant to N.J.A.C. 5:80-26.15, each municipality is required to have an administrative agent for all restricted units. While group homes and similar types of housing are not subject to all functions of administrative agents, some such functions-for example, issuance of deed restrictions and maintaining records of affordable units-are within [page=2751] the scope of administrative agent duties and should be performed by them. See also N.J.A.C. 5:99-6.2(a)4 (municipal housing liaison to ensure that an administrative agent is assigned to administer sales, rentals, resales, and re-rentals of all deed-restricted affordable units in the municipality at all times).

64. COMMENT: N.J.A.C. 5:80-26.19(c)8 requires that affirmative marketing plans, as required pursuant to N.J.A.C. 5:80-26.16, be posted on the websites of applicable municipalities. Historically, COAH provided a template of an affirmative marketing plan for consideration and use by municipalities. HMFA should follow this practice and issue an affirmative marketing template. (10)

RESPONSE: The Agency will consider providing the requested template in a future manual, but, with respect to requests for both a template and model ordinance, believes that the rules are sufficiently clear so as to enable a municipality to create a compliant affirmative marketing program.

65. COMMENT: Article 2 of Appendix E, Mandatory Deed Restriction for Rental Projects, states: "The Affordable Units are intended to count for ____ credits against the ____ round of affordable housing obligations for the Municipality, pursuant to the municipal housing element and fair share plan." This sentence is unnecessary and inappropriate in a deed restriction; it should be deleted therefrom, as the content should be in a municipality's housing element and fair share plan. Furthermore, this provision in a deed restriction stifles a municipality's potential future rearrangement or reallocation of credits. (10)

RESPONSE: The Agency disagrees with the commenter's suggestion that the language cited is inappropriate. The rule is intended to enhance transparency in the affordable housing process by making the public record clear as to the parties' intent concerning the use of the subject project to account for the municipality's anticipated fair share credits.

66. COMMENT: Appendix P-2, Notice of Intent to Construct/Rehabilitate Affordable Deed-Restricted Rental Units, provides that a deed restriction be recorded prior to the issuance of a certificate of occupancy (CO). However, Article 3 of Appendix E, the form of deed restriction for rental properties, indicates the control period commences on the date of issuance of the CO for a rental unit, and Article 4 of Appendix E sets forth the control period. There is, thus, a "timing discrepancy" in that the date of issuance of the CO for a unit will not be known when the deed restriction (which must be recorded prior to issuance of the CO) is required to be filed. This discrepancy must be addressed. (10 and 17)

RESPONSE: N.J.A.C. 5:80-26.12(b) provides that the affordability control period for restricted rental units commences on the first date that a unit is issued a CO. As noted in the summary of changes to N.J.A.C. 5:80-26.12 in the July 21, 2025 notice of proposal, the Agency changed the start of the control period from the date of first occupancy to the date that a CO is issued because the date of first occupancy is "in practice ... very difficult to track." N.J.A.C. 5:80-26 Appendix P-2 is a preliminary instrument that is to be recorded prior to the issuance of any building permits pursuant to N.J.A.C. 5:80-26.12(e) and, following construction and the issuance of a CO, is to be replaced with a permanent deed restriction.

67. COMMENT: Concern is expressed that units in assisted living facilities that "are reserved for wealthy individuals" are credited toward the affordable housing obligations of certain municipalities. Pursuant to N.J.S.A. 26:2H-12.16(1)(b), 10 percent of all units in assisted living facilities must be set aside for Medicaid-eligible (that is, low-income) individuals, such units being counted as affordable; however, those units are not available to presently Medicaid-eligible individuals, but only to individuals who have the funds needed to themselves pay the substantial costs of the units for specified periods of time (from two to five years), only after which, and exhaustion of the individual's funds, will the individual be truly low-income and Medicaid will kick in. The rules should be amended to make clear that assisted living units may be considered as affordable housing only if the facility complies with the UHAC rules, including those relating to affirmative marketing to low- and moderate-income households and to administrative agent oversight. (11)

RESPONSE: The Agency appreciates the commenter's input. However, the commenter's statement does not pertain to any provision of the rules subject to this rulemaking. The Agency points out that, as amended, N.J.A.C. 5:80-26.13(a) mandates that the combined cost of rent, food, and services for assisted living units may not exceed 80 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4. The Agency believes that the rules apply and affordable housing credits are only awarded to units that comply with UHAC requirements.

68. COMMENT: With regard to group homes funded by the Department of Human Services' Divisions of Mental Health and Addiction Services (DMHAS) and Developmental Disabilities (DDD), the funding source must control tenant selection and these homes cannot be marketed to the general public. The UHAC rules appear to mandate they be "advertised more broadly." A waiver process is recommended to remedy this situation. (12)

RESPONSE: The Agency believes the concern expressed by the commenter has been addressed. Both the specially adopted and final adopted UHAC rules provide, at N.J.A.C. 5:80-26.16(a), that "supportive housing units must comply with the affirmative marketing requirements of their

respective sponsoring programs, where applicable." The administrator of a supportive housing unit is not required to violate the rules of its sponsoring program to comply with UHAC. The Agency does not, therefore, deem a waiver process to be necessary.

69. COMMENT: "UHAC" requires marketing on the Agency "housing website" (presumably the Housing Resource Center) for projects targeted to specific special needs populations, such as those funded through the National Housing Trust Fund, even when those funding sources maintain their own waiting lists of prospective tenants. This results in inquiries from individuals who are not eligible for the specific units, thereby "creat[ing] unnecessary confusion and administrative burden." A waiver process is recommended to remedy this situation. (12)

RESPONSE: The Agency believes the concern expressed by the commenter has been addressed. Both the specially adopted and final adopted UHAC rules provide, at N.J.A.C. 5:80-26.16(a), that "supportive housing units must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable." The administrator of a supportive housing unit is not required to violate the rules of its sponsoring program to comply with UHAC. In addition, N.J.A.C. 5:80-26.17(k), as adopted, requires that supportive housing units follow the selection requirements of their sponsoring programs, where applicable. The Agency does not, therefore, deem a waiver process to be necessary.

70. COMMENT: N.J.A.C. 5:80-26.4(f) provides that, unless otherwise approved, restricted units in each affordable development that are age-restricted (senior) or supportive housing must be structured such that, at a minimum, the number of bedrooms equals the number of restricted units. This applies to developments of any size, not just large developments. This creates a problem for projects that are best served by the creation of studio (or efficiency) units, which are considered to have no bedrooms. These projects are particularly apt for certain populations, such as the homeless, youth aging out of foster care, and criminal justice re-entry. The commenter proposes a waiver of the one-to-one standard for dedicated supportive housing units, whether they compose a unitary project or are comingled within a larger integrated project. (13)

RESPONSE: The Agency acknowledges the utility of studio units for certain programs targeted to supportive housing populations and, upon adoption, is making the necessary modification at N.J.A.C. 5:80-26.4(f) to allow for greater flexibility by allowing the sponsoring program to determine the bedroom distribution, where applicable, provided that at least five percent of units in developments with 20 or more units are two-bedroom units.

71. COMMENT: The requirement at N.J.A.C. 5:80-26.4(f) that in affordable developments with 20 or more units that are age-restricted or supportive housing at least five percent of the restricted units must be two-bedroom units is an "unfounded and expensive requirement for many such projects." It should not be a requirement, as the sponsors of these projects are in the best position to know if there is a need for such two-bedroom units. (13)

RESPONSE: The requirement that five percent of supportive and age-restricted housing units be created as two-bedroom units only applies to developments with 20 or more units. In such developments, the Agency disagrees that the requirement to provide one two-bedroom unit for every [page=2752] 19 efficiency/one-bedroom units is overly burdensome. Some supportive and age-restricted households require additional medical equipment and/or live-in caretakers. The two-bedroom-unit requirement guarantees there are some new affordable housing opportunities available to these households.

72. COMMENT: While the provision of the rules at N.J.A.C. 5:80-26.4(e) is laudable for "permitting flexibility, by allowing for 'rounding up or down to the nearest integer'" for bedroom counts, the language and example are "very difficult to understand and apply." The commenter included a table that applies the "rounding up or down concept" to the rules' bedroom distributions for small (up to 10 units) developments. (14)

RESPONSE: The Agency appreciates the feedback and the commenter's efforts in preparing the table. The Agency has published a calculator that can be applied to simulate different scenarios and which includes formulae that allow practitioners to work through small developments. The calculator is available online at <https://www.nj.gov/dca/hmfa/about/uhac/>.

73. COMMENT: The minimum 90 percent unit- and bedroom-size requirement for inclusionary affordable units at N.J.A.C. 5:80-26.5(a)2viii is "grossly unfair to small developers." The average size of affordable units and bedrooms should mirror the average of the sizes of the market units of the same bedroom type in the specific project. Developers of new inclusionary housing projects have found that the unit- and bedroom-sizing requirements have, for economic reasons, negatively impacted their willingness to proceed with inclusionary housing projects. (14)

RESPONSE: The Agency does not view the proposition that developers will be less willing to build affordable units as being sufficient to warrant a further reduction in the size minimums. Pursuant to the adopted rules, studio or efficiency units, for example, are permitted to be as small as

495 square feet, and the Agency believes that any further size reduction would not be appropriate. Moreover, developers of inclusionary housing projects receive multiple financial incentives, including planning, zoning, and tax benefits, that exist to compensate for the provision of affordable housing units as part of the larger inclusionary project. These concessions exist to offset the costs associated with the creation and operation of affordable housing, without which many of these predominately market projects would not have been approved as designed.

74. COMMENT: "The (unspecified) forms attached as exhibits contain an embarrassing number and degree of errors, typographical and substantive[,] which should be cleaned up. (14)

RESPONSE: The commenter's statement does not pertain to any specific provision of the rules subject to this rulemaking. Therefore, the Agency cannot respond to the commenter.

75. COMMENT: It is unclear how the contribution amounts at N.J.A.C. 5:80-26.12(f)4 that are set as minimum amounts to be paid by municipalities to exercise rights of first refusal to extend affordability control periods for restricted rental units have been calculated. Additionally, although denominated as minimum amounts, it is unlikely municipalities will offer more than the amounts set forth in the rule. Owners are entitled to just compensation for extensions of affordability restrictions; it is recommended that the language be revised to require municipalities to pay fair market value for extensions of affordability controls on rental units. (15)

RESPONSE: The Agency notes that the rule, at N.J.A.C. 5:80-26.12(f)4, cited by the commenter was recodified at N.J.A.C. 5:80-26.12(h)7 through this rulemaking. The commenter is directed to the Response to Comment 76 in response to this comment.

76. COMMENT: Owners are entitled to just compensation for extensions of affordability restrictions on rental units; the contribution amounts set forth at N.J.A.C. 5:80-26.12(h)7 do not provide adequate compensation to account for, among other costs incurred by owners, property taxes, utilities, maintenance, and financing, which costs will vary among developments. The commenter recommends that the rule be revised to require municipalities to pay fair market value for any extensions of affordability controls on rental units. (15)

RESPONSE: The Agency recognizes the importance of maintaining the State's stock of affordable housing, the financial restrictions faced by municipalities, and the need for reinvestment in affordable rental units to ensure that they not only remain affordable, but also safe and comfortable for habitation. The minimum contribution amounts set forth at N.J.A.C. 5:80-26.12(h)7 reflect these important, but often competing, goals. The Agency additionally notes that municipalities amend their zoning ordinances and permit building types and density they would not otherwise be allowed in order to fulfill their constitutional obligation to provide affordable housing. Developers benefit from these adjustments, as they are allowed to build within desirable locations and housing markets they may otherwise be unable to access. In exchange for this access, which is a direct result of the Mount Laurel doctrine, building owners also have a responsibility to maintain and reinvest in affordable housing units; the minimum contribution amounts provided for in the rules reflect this shared responsibility to fulfill municipalities' Mount Laurel obligations.

77. COMMENT: The commenter expresses concern that the maximum allowable annual percentage rental increase on affordable rental units, which, pursuant to N.J.A.C. 5:80-26.13(b), is limited to the lesser of the percentage increase in the applicable Consumer Price Index (CPI) or five percent, may not be adequate to cover annual increases in property taxes, utility costs, and other owner costs. These costs will vary from municipality to municipality and among service providers. The commenter recommends providing relief from the five percent cap if the owner of an affordable unit(s) can establish, to the satisfaction of the Agency, that cost increases not within the owner's control have increased by more than five percent. (15)

RESPONSE: The Agency declines to create a process for relief from hypothetical excess cost increases. Unlike 100 percent affordable housing developments, inclusionary developments have the ability to internally subsidize rent increases. It would be inconsistent with the Mount Laurel doctrine to pass the burden of annual cost increases on to the State's lowest income earners, whose wage growth historically lags behind that of higher-income households. An objective of affordable housing is to ensure stability through maintained affordability.

78. COMMENT: Clarification is sought as to the \$ 300,000 asset limit. (16)

RESPONSE: The calculation of asset limits is aligned with the approach outlined at 24 CFR 5.603(b), "Net Family Assets." N.J.A.C. 5:80-26.17(b)3 specifically identifies the assets that may be excluded from the asset limit calculation. Additionally, a \$ 300,000 limit is not fixed, but is adjusted annually based on the United States Census Bureau's publication of the "State-Level Wealth, Asset Ownership & Debt of Households Tables."

79. COMMENT: The Agency should issue a "complete and final manual outlining all rules, procedures, and implementing guidelines[,]" which manual should be written in clear language and easily accessible to practitioners. (16)

RESPONSE: The Agency appreciates the commenter's suggestion. However, the commenter's statement does not pertain to any specific provision of the rules subject to this rulemaking. The Agency will consider preparing and making available a manual in the future, if deemed necessary and helpful.

80. COMMENT: The commenter requests clarification on the effect foreclosure has on the status of affordable housing units, specifically asking: (1) will affordable units retain their affordable status and deed restrictions after foreclosure; (2) is the answer to the preceding question dependent on whether the unit is from Round 4 or another Round; and (3) how are post-foreclosure resales handled pursuant to the UHAC rules. (16)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l) providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit. Thus, affordable units do retain their status as such following foreclosure, regardless of the Round of affordable housing obligations in which the unit was created.

81. COMMENT: The "proposed language" provides for the designation of an experienced staff person or other approved entity to counsel low- and moderate-income applicants on certain designated subjects. The commenter asks for clarity as to: (1) when the counseling must occur (suggesting a specified number of days prior to lease signing, contract signing, or income certification); (2) if, during counseling, it is [page=2753] apparent that "the household's budget reflects a negative or unsustainable financial picture," will the household be allowed to proceed and will it receive a certificate or proof of counseling; and (3) whether a certificate or proof of counseling is required for households who undergo counseling. (16)

RESPONSE: The Agency is not changing the counseling requirements as included in the 2004 version of the UHAC rules; the requirements, as adopted, are as set forth at N.J.A.C. 5:80-26.16(f)6. The Agency cannot address every hypothetical future scenario or event that may occur, but notes that it expects the process and requirements will be administered in a manner consistent with existing practice.

82. COMMENT: The commenter seeks greater clarity on the application of HOA fees and other charges to affordable units, specifically asking: (1) how and when reduced HOA fees are applied for existing affordable-unit tenants; (2) how and when market-rate fees that have been applied to affordable housing-unit tenants in their leases are corrected or reduced; and (3) if there is a process by which affordable-unit tenants can request reimbursement or amendment of their leases if they have been overcharged on their current leases. (16)

RESPONSE: The commenter does not indicate any specific provision of the UHAC rules to which it is addressed. The Agency cannot address every hypothetical future scenario or event that may occur, but notes that N.J.A.C. 5:80-26.13(c)2 provides that prior round units leased before December 20, 2024, may retain existing fee structures that are compliant with prior rules until the later of December 20, 2025, the end of the occupant's current lease term, or the date the current occupant vacates the unit.

83. COMMENT: It is recommended that all of the appendices "be completed with example content and detailed guidance (internal emphasis omitted)," including specifically: (1) when each is to be used; (2) who is responsible for completing and submitting each; and (3) sample entries or use cases. (16)

RESPONSE: The Agency declines to provide the additional material recommended by the commenter at this time, and it believes that the existing appendices are sufficiently detailed and descriptive. The Agency will consider issuing additional guidance documentation as it determines necessary.

84. COMMENT: Section 6 at N.J.A.C. 5:80-26 Appendix I includes incorrect references to the regulatory provisions setting forth the duties and responsibilities of administrative agents. (17)

RESPONSE: The Agency finds that the references to the rules (N.J.A.C. 5:80-26.15, 26.17, and 26.19) at Section 6 of Appendix I are accurate in that they set forth the duties and responsibilities of administrative agents.

85. COMMENT: Section 6 at N.J.A.C. 5:80-26 Appendix I states that the Housing Affordability Service (HAS) "shall perform all of the duties and responsibilities of an administrative agent as set forth [in the UHAC rules]." The commenter asserts that, in practice, HAS does not provide all

such duties and responsibilities, but "only a narrow subset of services," leaving developers to perform many of the core functions of administrative agents. N.J.A.C. 5:80-26 Appendix I should, therefore, be amended to "clearly delineate" those functions to be performed by HAS and those that are relegated to developers. N.J.A.C. 5:80-26 Appendix I should also include a provision requiring mandatory training for developers' staff who will be responsible for functions they are to perform. (17)

RESPONSE: The language at N.J.A.C. 5:80-26 Appendix I is a template agreement between HAS and the municipality. The parties to any individual agreement may adjust the particular text to more clearly address the concern cited by the commenter.

86. COMMENT: Brokerage fees should be removed from the calculation of "price differential" as defined at N.J.A.C. 5:80-26.2. Brokerage fees have never been a component of fee calculations. (17)

RESPONSE: The Agency agrees with the commenter and is deleting brokerage fees from the calculation upon adoption.

87. COMMENT: At the definition of "prior round unit" at N.J.A.C. 5:80-26.2, the commenter requests deletion of the following language regarding housing units created after the enactment of A4: "its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance." The commenter notes that A4 instructs municipalities to rely on COAH's prior regulations, which, among other things, "require towns ... to grant variances when necessary." It is inconceivable that general inclusionary zoning adopted years ago will not have to be "tweaked" through amendment or variance to allow for proposed affordable housing developments. (17)

RESPONSE: The Agency does not agree that A4 instructs towns to rely on prior regulations. If it had, the statute would not have mandated that the Agency update the UHAC rules immediately, with permission to bypass the full Administrative Procedure Act process for a limited time. With regard to variances, the Agency takes the view that previously approved zoning was premised on that zoning, allowing those projects subject thereto to begin building. The UHAC rules allow these projects to progress unimpeded under the same planning and zoning schemes. Subsequent substantial changes undertaken through this rulemaking will have clearly taken place within the Fourth Round and the units should be treated accordingly.

88. COMMENT: The definition of "random selection process" at N.J.A.C. 5:80-26.2 should be revised to clarify that if a randomized waiting list is exhausted, the administrative agent may accept applicants in the order applications were received since the last randomized list was prepared. (17)

RESPONSE: N.J.S.A. 52:27D-321.6 details the process for subsequent vacancies and waitlist application opportunities. The Agency does not believe that a further revision at N.J.A.C. 5:80-26.2 requiring the insertion of additional criteria is needed for random selection, nor can the rules fairly account for every possible situation which may occur. Further, the rules anticipate certain time frames that may not justify reliance on older lists.

89. COMMENT: Definitions should be included for "supportive housing unit" and "supportive housing household." (17)

RESPONSE: The Agency notes that the FHA, at N.J.S.A. 52:27D-311.k(1), references an established definition for "permanent supportive housing" at N.J.S.A. 34:1B-21.24, upon which the Agency will rely. Creating a new definition is beyond the scope of the UHAC rules.

90. COMMENT: With regard to the calculation of affordability averages and bedroom distributions for small developments (that is, affordable developments with four or fewer restricted units) at N.J.A.C. 5:80-26.4(b)1, the commenter asserts that it will be "extremely challenging" for administrative agents to determine for unrelated inclusionary units; they suggest that the provision be applicable only to "municipality sponsored" small projects to afford greater control to the municipality in meeting the requirements. (17)

RESPONSE: Pursuant to the FHA, A4, and the UHAC rules, municipalities are to be actively involved in monitoring the affordable units within their jurisdictions. The requirements at N.J.A.C. 5:80-26.49(b)1 are intended and expected to facilitate coordination and reporting. Pursuant to the 2004 UHAC rules, it was financially infeasible for small developments to comply with the bedroom and income distribution requirements. Rather than create new, additional rules for small developments, which may create adverse incentives, the rule allows small developments to meet the requirements in the aggregate. Municipalities are to report information concerning their Mount Laurel units pursuant to A4.

91. COMMENT: The commenter asserts that the new UHAC rules should include, at N.J.A.C. 5:80-26.4, the "old pricing rules" to ensure projects are priced correctly. If the "old rules" are completely removed from the new UHAC rules, it will be difficult for administrative agents to locate them. (17)

RESPONSE: The Agency will be publishing a calculator, which will include the "old" pricing formulas. The Agency also notes that prior rule proposals and adoptions are available through various private and public legal media, including previous editions of the New Jersey Register.

92. COMMENT: The commenter expresses concern that the "rounding rules" at N.J.A.C. 5:80-26.4(e) will result in a shortage of low/very-low-income three-bedroom units and suggests an alternate categorization of projects (that is, those with nine or fewer units and those with 10 or more units), with separate rules for each, as a remedy. (17)

RESPONSE: The Agency does not support the commenter's suggestion. Having a different set of rules for developments with nine or [page=2754] fewer units will likely create adverse incentives, potentially encouraging only small developments. The rounding approach helps municipalities ensure the municipal-wide affordability requirements are being met. Under the earlier rules, it was financially infeasible for small developments to comply with the bedroom- and income-distribution requirements. Rather than create new, additional rules for small developments, the Agency allows small developments to meet these requirements in the aggregate. Municipalities are to report information concerning their Mount Laurel units pursuant to A4.

93. COMMENT: The commenter suggests rejecting the proposed change at N.J.A.C. 5:80-26.4(c)2 that would permit one moderate-income unit (that is, a unit affordable to a household earning up to 70 percent of area medium income) for every very-low-income unit. Instead, the rule should allow one moderate-income unit for each very-low-income unit only after very-low-income units compose 13 percent of all restricted units. (17)

RESPONSE: The Agency believes the commenter's concern is addressed by the rule as adopted, which provides, in relevant part, that "municipalities may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments **where very-low-income units compose at least 13 percent of the restricted units**. In such developments, **the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units**." (Emphasis added.)

94. COMMENT: With reference to the pricing structure required to achieve the affordability average at N.J.A.C. 5:80-26.4(d), the commenter asserts that it is not always possible to have five different pricing tiers and suggests adding the qualifying language, "to the extent possible." (17)

RESPONSE: The Agency declines the commenter's suggestion. The requirements at N.J.A.C. 5:80-26.4(d) are consistent with the UHAC rules in effect since 2004.

95. COMMENT: The commenter suggests deleting N.J.A.C. 5:80-26.4(j)4, which provides that for age-restricted units and assisted living residences, a three-bedroom unit must be affordable to a two-and-one-half person household, as age-restricted developments are no longer required to have three-bedroom units. (17)

RESPONSE: The Agency accepts the commenter's suggestion. The paragraph is being deleted upon adoption.

96. COMMENT: The organizational structure of the rules, with information on 95/5 units "at the end" (presumably referring to the provisions at N.J.A.C. 5:80-26.21 through 26.27) makes it hard to decipher. The commenter recommends, at a minimum, relocating the 95/5 section "to control period for ownership units" (presumably somewhere at N.J.A.C. 5:80-26.6). (17)

RESPONSE: The Agency views it as being important to address explicitly the 95/5 restricted units and determined that locating those provisions at N.J.A.C. 5:80-26.21 through 26.22 is optimal as it sets them off from other provisions. The Agency notes that prior iterations of the UHAC rules did not integrate provisions regarding the 95/5 restricted unit rules with other ownership rules, so that structure has been maintained for consistency.

97. COMMENT: The commenter asserts, generally, that the rules at N.J.A.C. 5:80-26.6 should make it clear that municipal funds will need to be invested to extend affordability controls on restricted ownership units. (17)

RESPONSE: The Agency believes the commenter's concern is adequately addressed by the adopted rules, which make it evident that municipal funds will need to be invested for extensions of affordability controls. In particular, N.J.A.C. 5:80-26.6(h)6 states that, in order to extend such controls, a municipality must either pay the owner of the restricted unit the equity share amount or purchase the unit at a price not less than the total of the maximum restricted sale price and the equity share amount.

98. COMMENT: The commenter requests clarification as to the starting date of an extension of a control period, stating that "[t]he current language is not clear and may be misinterpreted as the day ... the extension was executed but instead" [sic]. (17)

RESPONSE: For ease of implementation, the new control period would begin the day the existing control period ends. However, execution of the document extending the controls may be executed within the timeframes set forth at N.J.A.C. 5:80-26.6(h)4 and 26.12(h)4.

99. COMMENT: At N.J.A.C. 5:80-26.6(d), the commenter recommends language changes to simplify determination of the recapture amount, which the commenter claims is required when a restricted ownership unit is sold and when the control period on the unit ends. The commenter advocates using the market price at the time of the initial sale, applying thereto the annual CPI increase for rentals at each resale to estimate market value at those times, and adding "at market rate" to all references to "equalized assessed value." (17)

RESPONSE: The market price estimate is only required at the initial sale for the recapture note and at either extension or final sale to determine the equity share amount; it is not required at the time of each resale. Additionally, the Agency disfavors relying on the CPI to estimate the updated market value of a unit as, historically speaking, real property values have increased more substantially than prices, which justifies having the equity share component tied to the market value of the home.

100. COMMENT: At N.J.A.C. 5:80-26.6(e), the commenter recommends that N.J.A.C. 5:80-26 Appendix P-1 be used only for projects without a master deed where there is no restrictive covenant. Alternatively, the master deed must be recorded before issuance of the building permit. (17)

RESPONSE: The purpose of N.J.A.C. 5:80-26 Appendix P-1 is to ensure that the required affordability controls appear in the chain of title of the development without regard to any failure to record the restrictions for individual units or lots. The Appendix P-1 requirement is also intended to promote uniformity in the application of the rules to projects with and without master deeds, and in the case of projects with a master deed, to avoid the necessity of parsing a project's governing documents to determine what, if any, restrictions are included. Further, it is noted that the Agency does not regulate the timing or issuance of permits or certificates of occupancy.

101. COMMENT: At N.J.A.C. 5:80-26.6(e), the commenter points out that a CO cannot be issued later than the deed restriction because the deed restriction is finalized only when the first owner purchases the housing unit and that cannot occur unless a CO has been issued. The commenter recommends the following order of events should be set: (1) restrictive covenant (master deed) or Appendix P-1 form (no master deed) recorded; (2) building permit; (3) CO; (4) recordation of deed restriction when affordable homeowner purchases home; and (5) if applicable, Appendix P-1 form extinguished.(17)

RESPONSE: The Agency agrees that the form at N.J.A.C. 5:80-26 Appendix P-1 should be recorded prior to other applicable documents. However, the Agency does not regulate the timing or the issuance of permits or COs.

102. COMMENT: The UHAC rules should clearly state that property taxes on affordable ownership units may not increase to those applicable to market-rate units if the homeowner remains in the housing unit after the expiration of the control period and affordability controls have not been extended. This will have the effects of: (1) preventing municipalities from raising property taxes on affordable homeowners; (2) causing the removal of affordable homeowners who cannot afford to pay market-rate taxes; and (3) preventing municipalities from raising taxes on affordable units to market rate after affordability controls have expired and then been extended by the municipality after the affordable homeowner notifies the municipality of their intent to make an exit sale. (17)

RESPONSE: Although the Agency is supportive of below-market-rate property taxes for owners of affordable housing units, it has no authority to regulate property taxes.

103. COMMENT: The commenter requests clarification on the timing of the affordability control-extension and control-release processes for for-sale units, including asking specifically if the extension process, set forth in the comment to the commenter's understanding, applies to units where the control period has already expired. (17)

RESPONSE: The Agency agrees with the commenter that the language at N.J.A.C. 5:80-26.6(h)1, as it relates to the extension of controls on units to which the control period has already expired is unclear and is, therefore, revising the text of the rule upon adoption to specifically include such units.

[page=2755] 104. COMMENT: The commenter requests "an accommodation" for units the controls on which expired during the period the specially adopted rules were in effect "when it was impossible to meet these notice deadlines because controls have expired or are about to expire" and suggests adding a provision to the UHAC rules to the effect that a municipality has one year from the date of adoption of the rules to notify owners with expired controls and to extend the controls. (17)

RESPONSE: The Agency is, upon adoption, changing N.J.A.C. 5:80-26.6(h)1 by changing the phrase "will end" to "ends" to allow for the extension of controls on any unit whose control period ends during the current Round of housing obligations, even if the control period has already ended. The Agency declines to provide the requested "accommodation" and questions whether such an "accommodation" would be consistent with A4 and/or the specially adopted UHAC rules.

105. COMMENT: The commenter asserts that a worksheet is needed to facilitate use of the pricing calculator. (17)

RESPONSE: The Agency will consider the commenter's request for possible future action, including the issuance of guidance, if deemed necessary and helpful. The Agency has provided resources to aid in the adoption of the new pricing calculation, including an instructional video, on its website. These resources can be found at the following link: <https://www.nj.gov/dca/hmfa/about/uhac/>.

106. COMMENT: N.J.A.C. 5:80-26.6(i) provides that the owner of a restricted ownership unit must notify the administrative agent and municipal housing liaison of an intent to sell their unit at least 60 days prior to entering into an agreement for an exit sale. The commenter requests that notification to only one of the entities be required and, since the administrative agent is responsible for an annual mailing to homeowners (pursuant to N.J.A.C. 5:80-26.19(d)4), notification should be required to be made only to the administrative agent. (17)

RESPONSE: Municipal housing liaisons are responsible for keeping track of and reporting on a municipality's stock of affordable housing. A4 clearly establishes that the municipal housing liaison should play a central role in, and have the ultimate responsibility for, ensuring compliance with the Mount Laurel doctrine. For this reason, the Agency views notification to both parties as essential and declines the commenter's request.

107. COMMENT: The reference to "fair market value" in the first sentence at N.J.A.C. 5:80-26.6(k) should be to "market-assessed value." (17)

RESPONSE: The Agency does not believe there is any meaningful distinction between "fair market value" and "market-assessed value" and, therefore, does not find that a change in wording is warranted.

108. COMMENT: The commenter opposes the extinguishment of affordability controls on restricted ownership units as proposed at N.J.A.C. 5:80-26.6(l), noting that controls currently survive foreclosure and that "many [affordable] units" have thereby been saved. Additionally, administrative agents maintain lists of mortgage lenders that finance units with controls that have survived foreclosure. (17)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit. In doing so, the Agency understands that this resolution will result in some residents being forced to remain in their deed-restricted homes longer than necessary. The Agency is, for now, acceding to the position favored by many affordable housing practitioners and commenters; the Agency will continue to consider an optimal resolution of the foreclosure issue with its Federal partners and other industry participants and, if such issues continue, will consider future changes to the UHAC rules.

109. COMMENT: N.J.A.C. 5:80-26.6(l) provides that a municipality may, within 60 days following notice of foreclosure, purchase a restricted unit "at an amount not to exceed the maximum restricted sale price[.]" The commenter recommends eliminating the cap on the purchase price as late fees and taxes, HOA fees, and the remaining mortgage balance may exceed the affordable price. (17)

RESPONSE: The Agency does not view the factors cited by the commenter as meriting a change. Should there be liens on the property, the amount of funds required to satisfy those liens should be deducted from the owner's proceeds from the sale of the unit to the municipality.

110. COMMENT: As there are often multiple funders of a unit, applicable deed restrictions must allow any of the funding sources to save the unit upon a potential foreclosure and "[t]he appropriate mortgage and mortgage note appendices should accommodate multiple entities." (17)

RESPONSE: The rules, as adopted, do not prevent interested parties from "saving the unit" upon a foreclosure. Nor do they prevent other funders from adopting their own forms. In any event, upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

111. COMMENT: The 60 days provided at N.J.A.C. 5:80-26.6(l) within which a municipality or favored non-municipal entity may purchase a restricted unit following notice of foreclosure is insufficient time within which to do so. (17)

RESPONSE: The Agency acknowledges the commenter's concern; however, it is, upon adoption, deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

112. COMMENT: The commenter states that since a sale to a municipality as contemplated at N.J.A.C. 5:80-26.6(l) will not occur before the foreclosure, all liens will not be extinguished, thereby increasing the cost of purchase to the municipality, which "will need to evict the current affordable homeowner." (17)

RESPONSE: N.J.A.C. 5:80-26.6(l) does not require any specific course of action. If the municipality purchases the home, it will be between the municipality and the homeowner to determine the best path forward. The Agency notes that it is, upon adoption, deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

113. COMMENT: The commenter expresses appreciation that the new rules do not preclude municipalities from passing their own ordinances providing for affordability controls to survive foreclosure, but expresses concern that this allowance would be difficult to implement in practice as it would create confusion among banks, which are attuned to a uniform Statewide policy, and at Sheriffs' sales, where participants are "trained" to be aware of the continuance of affordability controls.

RESPONSE: The Agency acknowledges the commenter's concern regarding allowing municipalities to pass individual ordinances providing for affordability controls to survive foreclosure. The Agency notes that it is, upon adoption, deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

114. The commenter presents a scenario whereby "[b]uyers" intentionally let their units go to foreclosure and reap a windfall from potential excess funds derived from the subsequent Sheriff's sale, "leav[ing] the municipality with nothing." (17)

RESPONSE: The Agency deems the deleterious effects of foreclosure on a household's financial well-being to be a sufficient deterrent to the scenario presented by the commenter. The Agency notes that it is, upon adoption, deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit, which should address the concern expressed by the commenter.

115. COMMENT: If the provision at N.J.A.C. 5:80-26.6(l) for foreclosure to extinguish affordability controls is adopted, it should be limited to "primary mortgages." As written, the extinguishment would be applicable to any foreclosure, including for tax liens and unpaid HOA fees. (17)

RESPONSE: The Agency agrees with the commenter that foreclosures based on secondary indebtedness, such as delinquent property taxes and association fees, should not extinguish affordability controls. The Agency notes that it is, upon adoption, deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit, which should address the concern expressed by the commenter.

116. COMMENT: The commenter references N.J.A.C. 5:80-26.7(c), the first two sentences of which provide as follows "The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price is the original purchase price increased to reflect the cumulative annual percentage [page=2756] increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3." The commenter observes that the resale price for a restricted ownership unit is calculated based on the price paid for the unit by the current owner, not the original price paid when the unit was first deed-restricted (that is, the "initial purchase price"). (17)

RESPONSE: The Agency appreciates the commenter's observation and is making the appropriate correction at N.J.A.C. 5:80-26.7(c) upon adoption, to change "original purchase price" to "most recent non-exempt purchase price."

117. COMMENT: N.J.A.C. 5:80-26.7(c) provides that an "increase for capital improvements may not result in the final maximum resale price exceeding whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to [N.J.A.C 5:80-26.7(b)]." The commenter asserts that a worksheet is needed to assist with the calculation of the initial purchase price if the unit were offered for purchase for the first time, claiming that that calculation can only be done using the initial pricing calculator, "which will generate many error messages, which should not be encouraged." (17)

RESPONSE: The Agency acknowledges the inherent difficulty in making the calculation, especially given that affordable homeownership units are, as are all homes, susceptible to falling into disrepair. In order to price the unit as new, administrative agents would enter the information used to set initial prices into the calculator. The Agency does not believe a separate worksheet is needed.

118. COMMENT: The commenter asserts that additional "[d]etails" should be added, presumably to the rule regarding the maximum resale price of an affordable homeownership unit at N.J.A.C. 5:80-26.7(c), including that the affordability average must be the same and that the affordability percentage must be verified by the deed restriction, and, if not available, the increase is not allowed. (17)

RESPONSE: The Agency does not agree that additional details are needed; the rule, as adopted, provides adequate direction.

119. COMMENT: The commenter expresses concern that the approval "and calculation" of capital improvements, as provided at N.J.A.C. 5:80-26.7(c), will be subjective, "resulting in unequal treatment and confusion." The commenter presented a potential situation based on possible future events that may make it difficult for an administrative agent to provide appropriate counsel. (17)

RESPONSE: The Agency believes the capital improvement provision of the rule is sound. The commenter's hypothetical, conditional, future scenario does not warrant any change to the rule as proposed.

120. COMMENT: The commenter foresees that administrative agents will find it more difficult and expensive to municipalities and/or homeowners, to advise affordable unit homeowners as to the maximum resale price of their homes pursuant to the "formula" proposed at N.J.A.C. 5:80-26.7(c). (17)

RESPONSE: The Agency believes the process set forth at N.J.A.C. 5:80-26.7(c) for the determination of maximum resale price is straightforward and not unduly burdensome to administrative agents, in whose abilities and dedication the Agency reposes great confidence.

121. COMMENT: The commenter advocates removing the provision at N.J.A.C. 5:80-26.7(d) that allows an administrative agent to approve a resale price less than the last recorded purchase price where such lower price is warranted by factors, such as home disrepair or housing market decline, asserting that the situation would arise from market conditions not under the direction or approval of the administrative agent. As written, it appears the administrative agent "can mandate a lower price[.]" (17)

RESPONSE: The Agency disagrees with the commenter. The rule does not suggest that the administrative agent is determining or "mandat[ing]" the price, but rather that they will allow a sale for a lower price where market conditions warrant a sales price lower than the maximum resale price. The Agency included this language in response to input to the effect that affordable homeowners often erroneously assume that the maximum restricted sales price is the price they will receive.

122. COMMENT: The commenter objects to proposed amendments at N.J.A.C. 5:80-26.7(e) mandating that, where affordability controls are extended by the municipality or by agreement between the municipality and the affordable unit homeowner on units in a condominium or HOA subject to a municipal ordinance adopted before December 20, 2004, the existing fee structure be maintained. The commenter observes that the original condominium or HOA documents may require the fee structure to be changed and there may be compelling reasons to do so. (17)

RESPONSE: The Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e) that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. The Agency points out that high condominium/HOA fees do significantly impact affordable unit residents; if issues with such fees continue, the Agency will consider future changes to the UHAC rules or request changes to the Planned Real Estate Development (PRED) rules.

123. COMMENT: The commenter objects to the proposed amendment at N.J.A.C. 5:80-26.7(e) that would prohibit, where affordability controls are extended by the municipality or by agreement between the municipality and the affordable unit homeowner on units in a condominium or

HOA subject to a municipal ordinance adopted before December 20, 2004, any increase to condominium, HOA, or amenity fees that would cause an affordable unit to cease to be affordable to the unit owner. The applicable association must be able to set its budget based on the amount needed to run the community; a cap on fees to affordable unit owners would result in a prohibited inequality between fees charged to those homeowners and the greater fees charged to market-rate unit owners. (17)

RESPONSE: The Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e) that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. The Agency points out that high condominium/HOA fees do significantly impact affordable unit residents; if issues with such fees continue, the Agency will consider future changes to the UHAC rules or request changes to the Planned Real Estate Development (PRED) rules.

124. COMMENT: Municipalities should be encouraged to establish affordability assistance programs to aid affordable homeowners in meeting unanticipated housing expenses. (17)

RESPONSE: The commenter's request does not pertain to any provision of the rules subject to this rulemaking.

125. COMMENT: The commenter requests "the formula" for recalculating the maximum sale price based on a change in the number of bathrooms, as provided for at proposed N.J.A.C. 5:80-26.10(a) or, alternatively, delete the provision. (17)

RESPONSE: The Agency declines to provide a "formula" for the recalculation or to delete the provision referenced by the commenter. The Agency presented only syntactical changes at N.J.A.C. 5:80-26.10(a) to the rule provision as it has been in effect for the past 20 years and expects administrative agents to continue the process that has been used during that time. The Agency observes that real estate valuation is an art, not a science, and that not every event that would likely cause a change in value can always be finely honed or reduced to a mathematical formula; as trained and certified professionals, administrative agents are expected and trusted to use their best efforts, including resort to any available resources, to arrive at reasonable results.

126. COMMENT: Referencing N.J.A.C. 5:80-26.10(c), the commenter suggests that a worksheet be provided to administrative agents to assist with the uniform application of the rules and the calculation of 10-year, straight-line depreciation. (17)

RESPONSE: The Agency does not believe an unspecified worksheet is needed to either explain the "uniform application of the rules" concept or calculation of the common 10-year, straight-line depreciation convention (for which there are numerous, readily available sources to explicate).

127. COMMENT: The commenter requests "[m]ore guidance" on the distinction between "cosmetic" and "non-cosmetic" improvements or replacements. (17)

RESPONSE: The Agency will not attempt to detail every element that factors into the difference between cosmetic and non-cosmetic upgrades. In general, and pursuant to the vernacular meanings of the terms, updates that change or improve only the look or style, without added benefit to the safety, efficiency, or long-term utility of the home, are in the former category, while those that make the unit structurally safer, more energy-efficient, or increase the lifespan of the home are in the latter.

[page=2757] 128. COMMENT: The commenter suggests adding, at N.J.A.C. 5:80-26.12(c)2, that a tenant can only be asked to certify their income annually and that the certification must be completed by the administrative agent. (17)

RESPONSE: By way of clarification, the Agency notes that N.J.A.C. 5:80-26.12(c)2 applies when affordability controls on specific units end after a development has been released from the deed-restricted affordability period. This means that, following the end of the deed-restricted affordability period, an owner would have to request that administrative agents recertify the affordable tenants. Otherwise, the units remain affordable until the affordable household moves out of the unit. The Agency deems the commenter's suggested addition to be unnecessary, as the rules are consistent with the existing approach.

129. COMMENT: The commenter states that a form of the certification required of the preparer of the deed restriction at N.J.A.C. 5:80-26.12(d)5ii is needed. (17)

RESPONSE: The Agency does not agree that a form certification is needed. The rule concisely provides the content of the required certification.

130. COMMENT: N.J.A.C. 5:80-26 Appendix E is not applicable to inclusionary units. (17)

RESPONSE: N.J.A.C. 5:80-26 Appendix E may be used for inclusionary units, where appropriate.

131. COMMENT: "Every reference to deed restriction should indicate if it is the full or preliminary deed restriction." This will avoid confusion. (17)

RESPONSE: The Agency does not agree that the suggested additions are necessary throughout the UHAC rules to avoid confusion. Such deed restrictions are typically recorded chronologically. Accordingly, it should be readily apparent which is which.

132. COMMENT: The commenter recommends including a signature line for the administrative agent at N.J.A.C. 5:80-26 Appendix P-2. (17)

RESPONSE: The Agency declines the commenter's recommendation. The addition of a signature line for the administrative agent would be unnecessary for the purpose of ensuring that the documents are valid and properly recorded.

133. COMMENT: At N.J.A.C. 5:80-26.12(e), if there are separate full deed restrictions for phases, the deed restriction for each phase should reference N.J.A.C. 5:80-26 Appendix P-2 and indicate to which it is applicable. (17)

RESPONSE: The commenter's suggestion is well-taken. However, the Agency does not believe that a change in the rules is warranted to clarify this point.

134. COMMENT: The form deed restrictions (apparently referring to those at N.J.A.C. 5:80-26 Appendices) should include the date of issuance of the CO for each unit. (17)

RESPONSE: It is anticipated that in some cases, certain documents may be recorded prior to the issuance of the CO. Further, the date of the CO is readily available as a matter of public record.

135. COMMENT: The commenter recommends adding "if available" to the email requirement as a means of notification at N.J.A.C. 5:80-26.12(h)4 and (l). (17)

RESPONSE: The Agency does not believe adding the phrase "if available" to the email notification requirement is necessary and may create confusion in that it may be read as an optional, rather than a required, means of notification.

136. COMMENT: At N.J.A.C. 5:80-26.12(i), tenants should be given at least one year's notice, rather than the maximum 180-day notice provided for in the rule, of any intent by the owner of a restricted rental unit to extinguish affordability controls in order to allow tenants adequate time to prepare for a possible substantial rental increase. (17)

RESPONSE: The commenter's assertion that rents will increase to market-rate pricing for affordable unit tenants after the end of the deed-restricted control period or even after the extinguishment of controls appears to be a misunderstanding. Units remain affordable until the household vacates them. The Agency believes the maximum 180-day notice requirement is adequate.

137. COMMENT: At N.J.A.C. 5:80-26.12(i), notification to only one, not both, of the administrative agent and municipal housing liaison should be required.

RESPONSE: The Agency disagrees with the commenter. The municipality has an interest in knowing if units are being released from controls and should be directly notified.

138. COMMENT: The commenter asks for clarification as to whether, at N.J.A.C. 5:80-26.12(i), an owner of a restricted rental unit can provide notice to extinguish affordability controls after the end of the control period. (17)

RESPONSE: The owner of a development with affordable rental units may notify the municipality of its intent to extinguish affordability controls at the end of the deed-restricted control period. With that said, the municipality possesses the authority to reject the owner's intent to extinguish controls and, instead, may extend the affordability controls by issuing a new deed restriction pursuant to N.J.A.C. 5:80-26.12(h).

139. COMMENT: Referencing the maximum \$ 30.00 per month pet fee at N.J.A.C. 5:80-26.13(c)1, the commenter asks for clarification as to whether landlords must allow pets for affordable-unit tenants if they do so for market-rate tenants, even though they may be precluded from charging affordable unit tenants the full pet fee. (17)

RESPONSE: Pets, where allowed, must be allowed for both market-rate and affordable tenants, as the UHAC rules clearly establish that both classes of tenants are to have the same access to the benefits of living in a community, which includes pet ownership.

140. COMMENT: Language should be added at N.J.A.C. 5:80-26.13(c)1 to permit the pet fee to be increased annually at the same rate as the permitted annual rent increase. (17)

RESPONSE: The Agency declines to add additional language to the rule. The pet fee should remain fixed once the lease is signed.

141. COMMENT: The commenter recommends that the provision at N.J.A.C. 5:80-26.13(e) requiring that affordable tenants be provided, at the time of lease-up, the utility chart that was used to determine the utility allowance, contending that that chart will be out-of-date and will cause confusion to tenants. (17)

RESPONSE: The Agency declines the recommendation to eliminate the utility chart requirement. Utility charts have historically been provided at lease-up and are important in explaining to tenants what they are being charged for; it is the concept, rather than the precise amount, that is paramount to educating tenants. If amounts change from those provided in the chart, tenants may contact their administrative agents to get a sense of how the allowances have changed.

142. COMMENT: N.J.A.C. 5:80-26.13(e)3 provides one of three standards to which an allowance for utilities must be consistent, which is applicable for units that receive ENERGY STAR certification. The commenter contends that units without ENERGY STAR certification may have other energy saving features and should, therefore, also have "th[e] ability to submit an energy consumption model." (17)

RESPONSE: ENERGY STAR certification provides a uniform standard. Without a uniform standard, administrative agents would have to make decisions about which "other energy saving features," either on their own or in combination, would make a development eligible for an alternative energy consumption model. Making such determinations is beyond the scope of administrative agent responsibilities, and there is no way to ensure that these determinations will be made in a consistent manner. The Agency may consider providing additional certifications if they have proven to be effective.

143. COMMENT: With reference to N.J.A.C. 5:80-26.13(e)3, the commenter states that "[a]dministrative agents are not energy experts and cannot approve an energy consumption model." The commenter suggests alternate language to reflect the limited role of administrative agents. (17)

RESPONSE: The commenter appears to be misreading N.J.A.C. 5:80-26.13(e)3. Pursuant to the rule, administrative agents are not responsible for approving energy consumption models. Rather, developers must provide proof to the administrative agents of calculation of the utility allowance according to an energy consumption model prepared by an energy consultant registered with the New Jersey Board of Public Utilities. Administrative agents would only be approving the allowance upon receiving proof of certification and proof that the consultant has an active registration; they would not themselves be doing the technical work involved in approving consumption models. The Agency is satisfied that the text of the rule, as proposed, is accurate in stating the role of administrative agents.

[page=2758] 144. COMMENT: With regard to the affirmative marketing provisions of the UHAC rules, the commenter suggests that the affirmative marketing plan requirement set forth at N.J.A.C. 5:80-26.16(d)12 be changed from "[a] description of the random selection process that will be used to select occupants ... and the expected date of the random selection" to "[a] description of the random selection process that will be used to select occupants ... and the deadline to apply to be included in the random selection." (17)

RESPONSE: The Agency does not believe that a change to the language at paragraph (d)12 is warranted. The expected date of the selection is critical to applicants and the establishment of deadlines to apply is inherent in the rule as proposed.

145. COMMENT: The commenter offers a "[g]eneral comment" that all references to an affirmative marketing plan should delineate whether the plan being referenced is the municipal affirmative marketing plan or the development's affirmative marketing plan, as both are named the same. (17)

RESPONSE: The Agency acknowledges the ambiguity and is clarifying the language at N.J.A.C. 5:80-26.16 upon adoption to distinguish between the affirmative marketing plan and the affirmative marketing process. The former is the municipally adopted plan of strategies from which the administrative agent will choose. The affirmative marketing process or program is the actual undertaking of affirmative marketing activities, which should be reported to the municipality any time an affirmative marketing process takes place.

146. COMMENT: At N.J.A.C. 5:80-26.16(i), the commenter suggests adding the phrase "or take applications over the phone" to augment the means by which applications for affordable housing may be submitted, in order to prevent the receipt of illegible applications. (17)

RESPONSE: The Agency declines the suggested change. In the interest of accurate recordkeeping and to ensure the validity of information received, the Agency requires that applications be filled out by the applicant or the applicant's authorized representative either online, by mail, or in-person.

147. COMMENT: At N.J.A.C. 5:80-26.16(e)4, the commenter suggests defining "housing search website" to include any online site where an applicant may look for housing, such as administrative agent websites. (17)

RESPONSE: The Agency declines to add the suggested definition, as the commenter's concern does not require a change to the rules. As long as a website is principally used to advertise housing, it is a housing search website.

148. COMMENT: The commenter suggests that the New Jersey Housing Resource Center "be redesigned to have the functionality of a market-rate housing search site AND also notify applicants when a new listing is added to an area that they are interested in." (17)

RESPONSE: The commenter does not pertain to any provision of the rules subject to this rulemaking.

149. COMMENT: The commenter states that the phrase "referred to and accepted" is "too broad" as used in the introductory clause of the following sentence at N.J.A.C. 5:80-26.17(b): "If the household has been referred to and accepted the restricted ownership unit under construction, the certification is valid until such time as the unit is ready for occupancy and a valid contract for sale of the unit is executed, or until such time as the household withdraws its acceptance of the restricted unit and no occupancy has occurred." They assert that the phrase could be construed by private developers in a manner not intended by the Agency. If the intent is to accommodate sweat equity programs, the commenter recommends inserting the specific phrase "sweat equity" between "restricted" and "ownership unit" in the sentence to clarify that intent. (17)

RESPONSE: The Agency declines to make the suggested addition. The text, as written, adequately addresses the various programs that create housing for low- and moderate-income households. To restrict the impact of a rule to one specific program contradicts the purpose of promulgating uniform controls.

150. COMMENT: The commenter opposes the amendment at N.J.A.C. 5:80-26.17(b)1 that updated the means by which an administrative agent is to determine household income to be in accordance with the procedure for calculating annual income prescribed at 24 CFR 5.609, as it was in effect on December 20, 2024, and as described in Chapter 5 of HUD Handbook 4350.3. The commenter claims the change "has created significant challenges[,] including: (1) providing "[o]utdated [g]uidance," (2) "eliminat[ing] access to the most current HUD trainings and policies," and (3) creating "[r]egulatory [c]onflict" by "[l]ocking UHAC to a static 2024 version [of income calculation, thereby] prevent[ing] alignment with ... [F]ederal changes and creat[ing] compliance difficulties." The commenter, therefore, recommends reversion to the 2004 UHAC income certification methodology, as it "is well-understood, supported by existing training resources, and avoids the complications of freezing [the State's] process to a static [F]ederal regulation that is actively being overhauled." (17)

RESPONSE: The Agency declines to revert back to the 2004 UHAC provisions for the procedure to determine household income. The current version, as set forth and amended at N.J.A.C. 5:80-26.17(b)1, is deemed to be straightforward, comprehensible, and aligned with HUD methodology.

151. COMMENT: The commenter takes issue with the provision at N.J.A.C. 5:80-26.17(i) mandating that an administrative agent accept household income determinations made within the previous 180 days by another qualified administrative agent. The commenter asserts that if the intent of the provision is to prevent applicants from having to simultaneously submit multiple applications to multiple administrative agents, a preferable solution would be to prohibit administrative agents "from requiring full applications with supporting documents and income certification to join a waiting list and be included in a random selection." (17)

RESPONSE: The commenter has likely misunderstood the rationale underlying the referenced rule text, which is to relieve applicants from having to provide multiple income certifications for different units or projects in possibly diverse locales to different administrative agents. The Agency rejects the commenter's apparent position that an applicant does not have to qualify as income-eligible until after being placed on a waiting list and/or included in a random selection; rather, it is more efficient to qualify applicants before those events occur and the rule, as written, facilitates that process for both applicants and administrative agents.

152. COMMENT: The commenter recommends that, "[i]n order to prevent [a]dministrative [a]gents from misinterpreting this rule," the provision at N.J.A.C. 5:80-26.17(g), requiring an administrative agent to accept self-certification from any member of an applicant household who claims to be a victim of domestic violence should either be moved "to the asset limit section" or changes should be made to the text. (17)

RESPONSE: The Agency believes the text at N.J.A.C. 5:80-26.17(g), as written, is easily understandable and not susceptible to misinterpretation by administrative agents or other readers. The commenter's alternative suggested revisions are not deemed to be warranted.

153. COMMENT: The commenter suggests that a provision be added to the UHAC rules mandating that there be an agreement between the municipality and developer where there is to be a veterans' preference as contemplated at N.J.A.C. 5:80-26.17(k)2i. (17)

RESPONSE: The Agency declines to add the provision suggested by the commenter to the rules, as it is deemed to be unnecessary. N.J.A.C. 5:80-26.17(k)2i references N.J.S.A. 52:27D-311.j, which requires the agreement the commenter is concerned with.

154. COMMENT: Referencing N.J.A.C. 5:80-26.17(l), which provides that "[d]evelopers and property managers may not require or solicit a parent, guardian, or any other third-party person or entity to act as a guarantor for a unit that has been offered to an eligible household," the commenter proclaims that affordable applicants should be treated the same as market-rate applicants; if the latter are afforded the option of a guarantor, so should the former. (17)

RESPONSE: N.J.A.C. 5:80-26.17(l) does not prohibit affordable tenants from having guarantors; it merely prohibits the requirement or solicitation of a guarantor for affordable unit applicants and tenants. The Agency, therefore, declines the commenter's suggestion.

155. COMMENT: The commenter suggests eliminating the requirements at N.J.A.C. 5:80-26.19(e)2iv and vii that administrative agents be provided with, respectively, "[a] list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years," and "[a] list of all public [page=2759] funding sources and copies of grant or loan agreements for those sources[.]" The commenter opines that administrative agents "will not review it." (17)

RESPONSE: The Agency assumes that administrative agents will do what is required of them to best perform their duties, which may include review of the referenced documents, and, therefore, declines to eliminate the requirement.

156. COMMENT: Referencing N.J.A.C. 5:80-26.21 and 26.22, the commenter observes that "it would be easier to follow these sections if they were included [sic] the control period section on ownership units." (17)

RESPONSE: The Agency view it as important to address explicitly the 95/5-restricted units and determined that the cited locations are optimal. The previous rules did not integrate the 95/5-restricted unit rules with the other ownership rules, so this structure was maintained for consistency.

157. COMMENT: The commenter argues against the equity share provisions of the UHAC rules, proclaiming that affordable unit homeowners pay lower taxes and reduced mortgage costs, in addition to benefitting from increases to the maximum resale price. They suggest these provisions could "open the door" to a class action lawsuit from municipalities for lost tax revenue. (18)

RESPONSE: The Agency appreciates the commenter's input and perspective. The Agency, however, views the equity share provision as being mutually beneficial to both the host municipality and the homeowner. Pursuant to the prior rules, the municipality would only be able to recapture the "recapture amount," defined as the difference between the maximum restricted sale price at the time of purchase of the unit and the unrestricted market value at such time. The equity share provision actually increases the amount of sale proceeds to be recaptured by the municipality. On the other hand, municipalities were, and still are, able to extend affordability controls even if the deed-restricted control period has expired. The adopted new rules only require that a percentage of appreciation in unit value be provided to homeowners in exchange for the

extension of controls. The equity share formula, thus, improves the division of proceeds from the sale of restricted ownership units to market-rate buyers for both municipalities and homeowners.

158. COMMENT: The commenter does not understand the rationale for releasing affordability controls upon foreclosure of a unit, as proposed at N.J.A.C. 5:80-26.6(l), asserting that foreclosing lenders should instead "be working with the municipality to market the foreclosed property." The commenter asserts that administrative agents usually have a pool of affordable applicants to whom the unit could be resold. (18)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

159. COMMENT: The commenters advocate for the right of municipalities to unilaterally extend affordability controls beyond existing periods of control, expressing their concern that "the 2004 [sic: 2024] Rules and Proposed Amendments are inconsistent with respect to the municipal right to exercise the option to extend controls, or at least do not reflect it with sufficient clarity." They propose, and provide in their comment, a substantial rewrite of N.J.A.C. 5:80-26.6(h) through 26.6(k)2 in furtherance of their position that "[e]ach municipalities' [sic] rights to extend the affordability controls on the existing restricted ownership units within a municipality must be restored and strengthened[.]" They contend that changes are needed to ensure that the stock of affordable housing is preserved, citing the context of Mount Laurel I, which took place in the midst of a housing shortage and Federal spending cuts. They also cite COAH's reference to housing as a "precious resource" and COAH's assertion that municipalities have the right to determine the most appropriate means of promoting an adequate supply of housing. The commenters conclude that "[t]he continued preservation of the [S]tate's existing affordable housing stock through the extension of affordability controls is the one true and predic[t]able mechanism upon which municipalities may rely to ensure [the retention of] actual affordable housing units[.]" (19 and 30)

RESPONSE: The Agency appreciates the commenters' input and passionate advocacy and views the adopted UHAC rules as being consistent with the concept of housing as a "precious resource." The adopted rules affirm municipalities' right to extend affordability controls and ensure that those units receive reinvestment, so that they are usable for another generation of affordable households. The adopted rules confirm that such units are not only affordable, but that they are also adequate in terms of size and safety and are administered according to new and existing legislation.

160. COMMENT: The "limited authority" of an administrative agent pursuant to N.J.A.C. 5:80-26.6(k)3 "does not provide an adequate or consistent mechanism for determining fair market value. The [rule] lacks procedural safeguards, does not establish uniform valuation standards, and improperly delegates valuation disputes to non-judicial actors without expertise in real property valuation or independence." The commenters posit that valuation disputes regarding equity share, recapture, or exit sale amounts should be vested in the tax courts or county boards of taxation. (19 and 30)

RESPONSE: The Agency does not agree with the commenters' assertions. Administrative agents need not make valuation determinations on their own; they may, among other options and resources, request an appraisal or consult the equalized assessed property value in making such determinations. The Agency believes administrative agents, aided by outside resources when necessary, are eminently capable of making valuation determinations. Further, the enabling statutes do not authorize the Agency to confer jurisdiction upon either the tax courts or the county boards of taxation.

161. COMMENT: Proposed N.J.A.C. 5:80-26.6(l) would allow foreclosure judgments to extinguish affordability controls. This is improper, inconsistent with the Fair Housing Act (FHA) and the Mount Laurel doctrine, and serves to benefit foreclosing entities at the expense of municipalities and to the detriment of low- and moderate-income households. Foreclosures, including especially those by HOAs, are already a problem and are causing the early extinguishment of some municipalities' "hard-won" affordability controls. (19 and 30)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

162. COMMENT: The language at N.J.A.C. 5:80-26.6(m) is confusing. It provides that all extensions of affordability controls must comply with N.J.A.C. 5:80-26.6 to receive credit pursuant to the FHA. This language might apply to all units with extended control periods commencing prior to December 20, 2024, which extensions cannot be held to compliance with the yet-to-be adopted rules; to hold otherwise would result in the potential nullification of all extensions that were not part of an approved Third Round plan. (19 and 30)

RESPONSE: The Agency recognizes that existing deed restrictions are binding and that extensions authorized prior to the effective date of the adopted UHAC rules were executed within a different regulatory framework. The rules are intended to, and should, except where stated otherwise, be applied prospectively, as many units are subject to legally binding agreements that are not superseded by the adopted UHAC rules, therefore, the compliance date at subsection (m) will be updated from December 20, 2024, to the effective date of this rulemaking.

163. COMMENT: Existing N.J.A.C. 5:80-26.12(f) and proposed N.J.A.C. 5:80-26.12(h) are inconsistent with, and contradict, the FHA, N.J.S.A. 52:27D-311.k(7), A4, and N.J.S.A. 52:27D-321.f. N.J.A.C. 5:80-26.12(h)6 imposes, as a condition for the extension of affordability controls on restricted rental units that, if permitted by the relevant statute, the municipality grant or extend an agreement for the payment in lieu of taxes (PILOT agreement) pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., or the Agency tax exemption provision at N.J.S.A. 55:14K-37.b. The commenters assert that nothing in A4 requires municipalities to do this in order to extend affordability controls. (19 and 30)

RESPONSE: The UHAC rules, including those provisions referenced by the commenters, do not contradict the FHA. A4 amended section 11 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-311.k), to provide as follows: "This subsection shall not be construed to limit the ability of a municipality to receive a unit of credit for a low- or moderate-income housing unit that is subject to affordability controls that are scheduled to expire, but are extended pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321), to the extent that this affordability control extension would otherwise generate this credit." A4 also amended section 21 at P.L. 1985, c. 222 (N.J.S.A. [page=2760] 52:27D-321.f), to provide as follows: "The Agency, in consultation with the department, shall establish requirements and controls to ensure the maintenance of housing assisted under P.L. 1985, c.222 (C.52:27D-301 et al.) as affordable to low- and moderate-income households for a period of not less than 40 years for newly created rental units[.]" The Agency views the maintenance of affordable housing as requiring not only the issuance of new deed restrictions on affordable units, but also investment to ensure that the units remain safe and habitable. In addition, the FHA requires that funds be contributed for bonus credits, which requirement is mirrored in the rules governing the extension of affordability controls on rental units.

164. COMMENT: N.J.A.C. 5:80-26.12(f)4 of the specially adopted rules requires specified minimum financial contributions by municipalities in order to extend affordability control periods for restricted rental units. This requirement is not authorized by the FHA, N.J.S.A. 52:27D-311k(7), and A4; rather, such minimum financial contributions are authorized by the FHA and A4 only to secure bonus credits. The commenters note that this requirement appears to have been eliminated by adopted N.J.A.C. 5:80-26.12(h)7. (19 and 30)

RESPONSE: The Agency confirms that the minimum financial contribution requirements set forth at N.J.A.C. 5:80-26.12(h)7 are applicable only when a municipality is seeking bonus credits.

165. COMMENT: Establishment of the minimum financial contribution requirements by municipalities at N.J.A.C. 5:80-26.12(h)7 fails to take into account that landlords of inclusionary rental developments are already being subsidized by density bonuses granted by the host municipalities. As a result, landlords receive increased rents from the more densely concentrated market-rate tenants. This consideration should be factored into N.J.A.C. 5:80-26.12(h)7 by excluding from its provisions inclusionary rental projects meeting certain proposed standards relating to receipt of a density bonus. (19 and 30)

RESPONSE: The Agency declines to make a modification at N.J.A.C. 5:80-26.12(h)7, as proposed. The referenced incentives are premised around the original affordability period and after decades of utilization, residential buildings are often in need of reinvestment. If the properties are rent restricted, then the costs for continued use as affordable often cannot be covered by those rents. Municipalities that contribute to the continued operation of their existing properties as affordable benefit from avoiding the loss of affordable units at a rate substantially lower than the cost to build new replacement affordable units. The Agency is satisfied that the minimum-financial-contribution requirement, as written, substantially contributes to the preservation of low- and moderate-income rental housing units in the State.

166. COMMENT: The commenters suggest language to be added at N.J.A.C. 5:80-26, Appendices A, B, C, D-3, and E, to state that the municipality reserves the right to extend the control period for at least 30 years, which right is to be exercised no earlier than 180 days prior to the expiration date of the existing control period. (19 and 30)

RESPONSE: The suggested language is included in the rules as adopted. The Agency does not believe that additional language at the appendices is required.

167. COMMENT: The commentor suggests eliminating the requirement that municipalities send notices to homeowners by certified mail (for example, at N.J.A.C. 5:80-26.6(h)4 and 5 and 26.12(h)5), arguing that certified mail is inefficient, as most residents are not home during delivery hours and mail requiring a signature often goes undelivered, defeating the purpose of notification. The commentor proposes allowing regular mail and email as acceptable alternatives. (20)

RESPONSE: While a number of additions include the requirement to send notice through certified mail, this practice was in the rules prior to any recent updates. Certified mail helps to protect all parties as it increases the likelihood that owners actually see the notice and it prevents them from claiming they were never notified.

168. COMMENT: Referencing prior versions of UHAC without including the relevant text or citations creates confusion, as section numbers have changed across versions. The Agency should add hyperlinks or quote the prior regulatory language verbatim for clarity. (20)

RESPONSE: Rules no longer in effect can be found by conducting a search on the website of the Office of Administrative Law (OAL) for prior versions of the New Jersey Register, which are also available for direct viewing at the sites indicated. The Agency does not view it as necessary or beneficial to include the text of all cited material in the rules themselves, as this would greatly expand the content of the rules. The rules have been proposed and are being adopted in compliance with statutory and APA rulemaking requirements.

169. COMMENT: Affordability controls should survive foreclosure to prevent loss of affordable units. Retaining controls does not impede financing and would better preserve affordable housing stock. If controls must be extinguished, municipalities should be allowed to extend controls at the first post-foreclosure conveyance by executing a new deed restriction for a total term of 60 years. (20)

RESPONSE: The Agency appreciates the commenter's insight. Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

170. COMMENT: Referencing N.J.A.C. 5:80-26.11, the commenter requests confirmation that a Continuing Certificate of Occupancy (CCO) is not required to extend unit controls. The commenter suggests that, if the units don't pass inspection and the municipality has to provide rehabilitation funds, this amount be subtracted from the equity share. Additionally, if a property has outstanding taxes and/or HOA fees, the cost of paying off these balances should be subtracted from the equity share. (20)

RESPONSE: Pursuant to N.J.A.C. 5:80-26.11, owners only have to obtain a CCO if the administrative agent requests one. The previous version of the rules required that the owner provides a CCO upon selling the unit after the end of the control period. However, the Agency has made this optional in the current version of the rules to introduce greater flexibility and because of the additional time that it may add to the process.

171. COMMENT: The 60-day period for municipal action following a notice of foreclosure provided for at N.J.A.C. 5:80-26.6(l) is insufficient for a municipality to obtain approvals and funding to purchase a unit. Instead, municipalities should be permitted to file a letter of intent within 60 days and complete the transaction thereafter. (20)

RESPONSE: The Agency understands that this timeframe is insufficient to intervene on a foreclosure. Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

172. COMMENT: The development requirements for supportive housing and age-restricted housing should be separated, as supportive housing populations primarily require studio and one-bedroom units, while age-restricted developments can utilize larger units. One hundred percent supportive housing projects of more than 20 units should not be required to have two-bedroom units. Research suggests that supportive housing residents are increasingly successful in maintaining housing stability when living in settings that are not shared, while age-restricted housing units can successfully utilize two- and three-bedroom units. (20)

RESPONSE: The Agency recognizes that age-restricted and supportive housing communities may have different needs. The Agency has adjusted the language at N.J.A.C. 5:80-26.4(f), governing the bedroom distribution of supportive and age-restricted housing units, so that supportive housing developments may structure their bedroom distributions in accordance with the guidance provided by their sponsoring programs. However, the Agency declines to remove the two-bedroom-unit requirement. The requirement that five percent of supportive and age-restricted housing units be created as two-bedroom units only applies to developments with 20 or more units. Some supportive and age-restricted households require additional medical equipment and/or live-in caretakers. The two-bedroom-unit requirement guarantees that there are some

(that is, one out of each 20) new affordable housing opportunities available to these households. The Agency is satisfied that the rules for adoption provide sufficient flexibility to accommodate the needs of supportive housing populations of varying needs.

173. COMMENT: Proposed N.J.A.C. 5:80-26.7(e) requires that condominium or HOA fees and special assessments for affordable units be based on the common-interest percentage and prohibit any increase that would cause an owner's housing costs to exceed affordability limits. Prohibiting increases above affordability thresholds would be impractical, as association expenses rise with inflation and essential capital repairs [page=2761] must still be funded. The rule suggests that if an increase would exceed the allowable housing cost, the affordable homeowner would not be required to pay the higher amount. This approach would leave essential expenses unpaid. The cost of maintaining common elements is comparable to necessary repairs within the owner's unit. (20)

RESPONSE: The Agency appreciates the commenter's feedback and, upon adoption, is eliminating the proposed change at N.J.A.C. 5:80-26.7(e). The Agency supports and encourages the expansion of affordable ownership assistance programs by municipalities. The Agency points out that high condominium/HOA fees do significantly impact affordable unit residents; if issues with such fees continue, the Agency will consider future changes to the UHAC rules.

174. COMMENT: Municipalities should be encouraged to establish affordability-assistance programs to assist income-eligible homeowners in meeting unanticipated housing expenses, such as appliance replacements or HOA special assessments. (20)

RESPONSE: The comment does not pertain to any provision of the rules subject to this rulemaking.

175. COMMENT: The commenter requests confirmation that the proposed amendment at N.J.A.C. 5:80-26.13(c)1 for a \$ 30.00 per month pet fee is per household, not per pet. Additional clarification is needed regarding whether the different treatment of affordable and market-rate renters in regard to the pet fee means that market rate renters should be allowed to have pets, but affordable renters should not as they may not be required to pay the full pet fee. (20)

RESPONSE: The \$ 30.00 per month pet fee is per household. Both market-rate and affordable tenants are equally entitled to have pets. The difference in pet fees, should pets be permitted, is consistent with the below-market rent charged to affordable tenants. Affordable tenants would generally be less able to afford annual increases in pet fees, hence, the stabilization thereof reflected in the rule.

176. COMMENT: Multiple provisions throughout the proposed rules require advance notifications among municipalities, owners, and administrative agents. Upon adoption, a blanket grace or buffer period should be established for all time-sensitive provisions. This will allow all parties to develop programs and make the necessary preparations to implement the new changes. (20)

RESPONSE: The Agency declines the commenter's request for inclusion of a blanket "grace/buffer period" as unnecessary. The rules provide flexibility in their implementation, where appropriate. For example, the Agency offered a comprehensive definition for prior round units so that projects ready to begin construction are not obstructed by the new rules. In addition, the proposed rules provide a flexible timeline for existing developments to implement the new rules on non-rental fees.

177. COMMENT: N.J.A.C. 5:80-26.5(a) refers to "[p]rior round units whose siting and creation are consistent with a prior round development or zoning designation that received COAH or court approval on or before June 30, 2025[.]" The commentor requests clarification of the term "siting and creation," asserting that if units are not yet built, but were approved on or before June 30, 2025, they do meet the definition of "created." If this is not true, further clarification is necessary. A common interpretation of the term "created" is when the control period starts, which, in this case, would not be correct. (20)

RESPONSE: N.J.A.C. 5:80-26.5(a) does not require that the units be built, but rather that the approved project's zoning and siting are consistent with previously adopted (that is, Round Three) zoning. In other words, units may be built according to earlier UHAC rules if they are ready to be constructed. The revised rules are not intended to stop developers from breaking ground on projects that are ready to be started.

178. COMMENT: N.J.A.C. 5:80-26.16(d) lists the required contents of digital advertisements for affordable housing opportunities. Feedback from newspaper publishers indicated that the maximum size of digital advertisements, particularly those appearing in app-based versions of newspapers such as the Asbury Park Press, makes it impossible or impractical to include all of the required items due to limited screen space on mobile devices. Digital advertisements have the advantage of allowing direct links to online preliminary applications or webpages with more detailed information. The required content for digital advertisements should be reduced to include only the most essential information, including:

the project name and municipality; range of prices or rents; unit sizes by number of bedrooms (but not square footage); type and number of affordable units; total number of affordable units (without income-level breakdowns); a statement that units are income restricted with a link to income limits; a link to online applications; expected lease-up or closing dates; a description of the random selection process and the deadline to apply; and application fees, if any. The following items may be removed due to space limitations and redundancy with information available online: the project address; square footage of units; accessibility features; maximum income limits; population preferences; information on how to apply by phone or paper; the date of the random selection; business hours for obtaining paper applications; contact phone numbers and email addresses; and the name of the sales or rental agent. (20)

RESPONSE: The Agency does not believe that the word limits on digital advertisements merit a change in the rules. Advertisements in a digital newspaper ad that links to another webpage including all of the required information will be sufficient to meet the requirements of the section.

179. COMMENT: The adoption of the amendments proposed at N.J.A.C. 5:80-26.6, which require affirmative municipal action and a payment to extend affordability controls, will result in the loss of affordable housing units. The elimination of the municipal option to maintain affordability by taking no action, combined with the introduction of an equity payment as a condition of extension, will make it financially infeasible for many municipalities to preserve units, particularly low-income units. The Agency should return to the language of the 2004 UHAC, through which units remained affordable for at least 30 years and until the municipality chose to release controls. If not, then the cost to extend should be a known amount, not contingent on the length of ownership, which varies. (21)

180. COMMENT: The amendments proposed at N.J.A.C. 5:80-26.6 relating to the equity-share requirement are inconsistent with the purpose of the Mount Laurel doctrine. The program is a housing initiative, not a wealth-building program, and the law does not require a payment for the extension of affordability controls. The equity-share provision should be eliminated as the benefit of affordable homeownership lies in housing stability and opportunity, not in capturing resale equity that would reduce the number of affordable units. (21)

RESPONSE TO COMMENTS 179 AND 180: The Agency appreciates the commenter's perspective. However, the Agency views the equity share arrangement as mutually beneficial for the municipality and the homeowner. Pursuant to the earlier rules, the municipality would only be able to recapture the "recapture amount," defined as the difference between the maximum restricted sale price at purchase and the unrestricted market value at purchase. The equity-share provision actually increases the amount of sale proceeds recaptured by the municipality. On the other hand, municipalities were, and still are, able to extend affordability controls even if the deed-restricted control period expired. The new rules only require that a percentage of appreciation be provided to owners in exchange for the extension of controls. The equity-share formula improves the division of proceeds from the sale of restricted ownership units to market-rate buyers for both municipalities and owners. The Agency also notes that homeownership units are designed to advance dual purposes--creation of long-term affordable housing and promoting opportunity, which includes equity building for homeowners--and, thus, disagrees with the commenter's premise.

181. COMMENT: The amendments proposed at N.J.A.C. 5:80-26.6(l), which remove the provision allowing affordability controls to survive foreclosure, are short-sighted and unnecessary, and driven by the Agency's desire to issue FHA mortgages. Lenders have historically issued mortgages on deed-restricted units and eliminating the foreclosure protection will lead to the loss of affordable housing units. (21)

RESPONSE: The Agency disagrees with the statements made by the commenter. While lenders have, indeed, acted as lenders on deed-restricted units, they have not historically done so at a scale commensurate with the market need nor are they guaranteed to continue doing so in a different lending environment. Therefore, the purpose for this rulemaking, as noted elsewhere, was to ensure that affordable unit homebuyers could access the same lending products they would be most likely to utilize if they were purchasing a non-deed-restricted unit, namely FHA mortgages, from which they are currently barred. However, the Agency is, for now, [page=2762] acceding to the position favored by many affordable housing practitioners and commenters and, upon adoption, is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit. The Agency will continue to consider an optimal resolution of the foreclosure issue with its Federal partners and other industry participants and, if such issues continue, will consider future changes to the UHAC rules.

182. COMMENT: The amendments proposed at N.J.A.C. 5:80-26.7(c), which permit the cost of capital improvements to affect the maximum resale price of restricted ownership units, will cause a large burden to administrative agents. This change will increase the workload and costs of administrative agents and may cause municipalities to exceed the administrative-fee cap. It will be incredibly difficult to amass "small projects" all at once, and that burden will fall on the administrative agent, which will cause confusion and the potential for mistakes to be made. (21)

RESPONSE: The Agency appreciates the feedback, but does not agree with the commenter. Administrative agents are trained and certified professionals and the Agency has provided, and will continue to provide, video tutorials to help administrative agents work with the new calculators and calculations.

183. COMMENT: The commenter asserts that the change to align income-qualification standards with those of HUD is problematic in the current political environment, especially as it relates to immigration status. (21)

RESPONSE: The rules, upon adoption, comply with A4. The Agency is unable to promulgate rules that anticipate prospective changes in Federal regulations.

184. COMMENT: The overall amendments disregard decades of administrative experience and exceed the statutory authority granted to the Agency. The Agency is permitted to amend existing controls only if the changes remain consistent with those previously in effect, including, but not limited to, any requirements concerning bedroom distributions, affordability averages, and affirmative marketing. While there are certain areas of the rules that need to be improved upon, many of the proposed changes are not warranted. (21)

RESPONSE: The commenter asserts a legal position unrelated to any particular provision in the rules. The rules, as adopted, are consistent with the FHA, including A4, and intended to effectuate the intent of the Legislature.

185. COMMENT: Proposed N.J.A.C. 5:80-26.6 improperly requires municipalities to pay an "equity share" to extend affordability controls, which would disturb settled expectations established pursuant to prior COAH and Agency rules and force municipalities to divert limited Municipal Housing Trust Fund resources away from new affordable housing production. Municipalities prepared and filed Fourth Round housing elements and fair share plans by the June 30, 2025, statutory deadline based on the "Emergency Regulations" [sic] then in effect, which required fixed payments of \$ 10,000 for 95/5 units and \$ 20,000 for all other ownership units. Replacing this flat-rate system with an open-ended equity-share formula could dramatically increase costs and would unfairly apply retroactively to municipalities that relied on the prior rules. The Agency's own responses to earlier proposed amendments to the UHAC regulations emphasized the importance of honoring the "settled expectations" of municipalities that had planned and budgeted in reliance on existing regulations. The same principle should apply here, as municipalities acted in good faith based on the Emergency Rules [sic] then in effect and should not be penalized by the adoption of a new formula after compliance plans were filed. (22, 23, and 24)

RESPONSE: The Agency notes that the commenters' nomenclature is incorrect as there have been no "emergency" UHAC rules or regulations, but responds as though the commenters refer to the special adoption currently in effect. Any existing deed restrictions dictate the procedures to be followed for extensions or exit sales, with the understanding that extensions for Round Four housing credits must be made using deed restrictions written in accordance with the rules and procedures of these adopted rules. Therefore, payment of the equity share is only a condition for the extension of deed restrictions executed after the effective date of these rules, honoring the "settled expectations" of municipalities and homeowners. Thus, equity share payments will not be required for at least 30 years. Municipalities, however, may provide compensation to owners for the extensions of deed restrictions currently in effect, as long as the terms of extension, including compensation, are adopted by ordinance and applied uniformly to all affordable unit owners.

186. COMMENT: The amendments proposed at N.J.A.C. 5:80-26.6(l) to extinguish affordability controls upon foreclosure would reverse longstanding policy established by COAH and the Agency in Round Three. Earlier versions of UHAC explicitly preserved affordability controls after foreclosure; eliminating this protection would return to the discredited Round One practice that resulted in the loss of affordable units. In Round One, COAH's 1986 regulations allowed foreclosures to extinguish deed restrictions, but this policy was later corrected in Round Three, when UHAC was adopted to ensure that affordability controls would remain in effect despite foreclosure. In response to a comment from the 2004 version of the rules, the Agency recognized that allowing foreclosure to extinguish controls reduced the supply of low- and moderate-income units. (22, 23, and 24)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit. The Agency is, for now, acceding to the position favored by many affordable housing practitioners and commenters; the Agency will continue to consider an optimal resolution of the foreclosure issue with its Federal partners and other industry participants and, if such issues continue, will consider future changes to the UHAC rules.

187. COMMENT: The 60-day period afforded to municipalities to exercise a right to purchase an affordable unit following notice of foreclosure is unworkable and impractical. (22, 23, and 24)

RESPONSE: The Agency understands that this timeframe is insufficient to intervene on a foreclosure. Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

188. COMMENT: The rules should be amended to limit eligibility for affordable housing to citizens of the State, or, at a minimum, to United States citizens, on the basis that the Mount Laurel doctrine was intended to provide housing opportunities for the citizens of this State. (22, 23, and 24)

RESPONSE: The rules, as adopted, are consistent with the FHA, including A4, and are intended to execute the intent of the Legislature.

189. COMMENT: N.J.A.C. 5:80-26.1 should be revised to clarify that the new requirements will not disturb credits for extensions of affordability controls that municipalities have already received or implemented. Applying the equity-share requirement retroactively to completed or court-approved extensions would undermine the finality of compliance judgments and disrupt prior settlements. (22, 23, and 24)

RESPONSE: The adopted UHAC rules are to be applied prospectively to units constructed and extensions of affordability controls after the effective date of the rules.

190. COMMENT: Municipalities that prepared housing element and fair share plans by the June 30, 2025, statutory deadline should be allowed to extend deed restrictions at the fixed costs provided under the "Emergency Regulations" [sic], rather than being subject to the new equity-share formula. Language should be added to clarify that municipalities that formulated and adopted plans based on the specially adopted rules will not be subject to the equity share requirement in the new rules. (22, 23, and 24)

RESPONSE: The Agency notes that it has promulgated specially adopted, not "emergency," UHAC rules or regulations. The rules, as adopted, are consistent with the FHA, including A4, and intended to effectuate the intent of the Legislature.

The Agency otherwise agrees with the commenter. It would be difficult for municipalities to predict the final rules as they would be adopted. The municipalities were able to rely on the rules that were in effect at the time, meaning the specially adopted rules, if they adopted their fair share plans in 2025.

191. COMMENT: N.J.A.C. 5:80-26.6 should be amended to prevent municipalities from being required to pay an equity share to households that no longer qualify as low- or moderate-income at the end of the control period. Extending controls should not result in a windfall to higher-income households that have already benefited from decades of reduced [page=2763] housing costs; the funds should instead be used to benefit current low- and moderate-income households. (22, 23, and 24)

RESPONSE: The Agency declines the commenters' suggestion. The rules have never required recertification for extension and the Agency does not see the benefit to mandating an additional process that is administratively burdensome to all parties.

192. COMMENT: A general waiver provision should be added to allow the Agency to waive or modify regulations when necessary to advance the goals of the FHA. Unforeseen circumstances will arise once the rules are implemented and a flexible waiver standard would allow the Agency to adjust policies without undermining the affordable housing program's objectives. The Agency should create a broad waiver standard so the Agency has the power to make adjustments if required. As with N.J.A.C. 26-5.5 [sic: 5:80-26.5(a)5], waivers that are approved can be published on a public webpage within 30 days of approval. (22, 23, and 24)

RESPONSE: The Agency rejects the commenters' suggestion on a number of grounds. First, the purpose of Uniform Housing Affordability Controls is to provide uniformity in the creation and administration of affordable housing. Second, the rules are written to allow for flexibility. For example, the rules offer different occupancy standards for types of developments and different bedroom distribution requirements based on housing populations. Finally, the rules allow for waivers in some circumstances, where permitted by the authorizing legislation. See, for example, N.J.A.C. 5:80-26.5(a)5.

193. COMMENT: The strict integration requirement for inclusionary developments should be modified to allow clustering of affordable rental units where appropriate. Requiring full integration in every instance makes it difficult to negotiate workable projects where the market calls for a mix

of market-rate for-sale units and rental affordable units, especially for smaller-scale projects. The integration requirement limits flexibility for both developers and municipalities by restricting negotiation options, which, in turn, discourages collaboration and reduces the overall production of affordable housing. (22, 23, and 24)

RESPONSE: The Agency will not amend the occupancy standards for the final adoption. The rules at N.J.A.C. 5:80-26.5(a)3i through viii, applicable to developments containing for-sale units including those that include rental units, have additional flexibility in terms of clustering and integration. In such developments, developers and municipalities are granted greater flexibility in the type and location of affordable units. Affordable units may be clustered in such developments, but they may not be segregated in less desirable locations and should be integrated throughout the larger development. Restricted units may be of different types than market-rate units. However, there needs to be some restricted units offered for each type of the market-rate units offered, including townhomes and single-family homes. The proper ratio for restricted to market-rate building types within the plan is subject to the determinations of stakeholders in the planning processes, as long as there are restricted units for each type. Penthouses and higher priced end units may be exempted from this final requirement.

194. COMMENT: N.J.A.C. 5:80-26.6 is unclear regarding a municipality's right to extend affordability controls and appears to contradict legislation and legal precedent. The rules should clearly and explicitly support a municipality's right to extend affordability controls and confirm that an owner of a deed-restricted unit may not override that authority. (26)

RESPONSE: The Agency disagrees with the commenter's position that the rules are unclear on this issue. At N.J.A.C. 5:80-26.6(h), the rules state that municipalities may, in their sole discretion, extend affordability controls. This clearly affirms that owners of deed restricted units may not override the municipality's right to extend controls. To the Agency's knowledge, neither legislation nor legal precedent suggests that municipalities are exempt from investing in the units. In addition, neither suggests that inaction is an acceptable or desirable way to maintain affordability. Control periods end after a minimum of 30 years, at which point, municipalities must extend controls. After 30 years, units require reinvestment, if not substantial rehabilitation. The rules, as adopted, address the need to reinvest in affordable units, especially since extensions do provide housing credits toward municipalities' future obligations.

195. COMMENT: The FHA, as amended, recognizes that municipalities may extend expiring affordability controls as a means of maintaining affordable housing and provides that such extensions are eligible for credit toward Fourth Round obligations. This provision reinforces the long-standing authority of municipalities, first established through COAH's rules and subsequent UHAC versions, to extend controls to preserve existing affordable-housing stock. (26)

RESPONSE: The Agency does not dispute the commenter's assertion. However, the FHA also requires that extensions be executed according to the rules of this subchapter and it explicitly encourages investment in extensions by offering bonus credits for unit preservation investment. The rules as adopted help to reduce the burden on municipalities when extending both rental unit controls and ownership unit controls by outlining clear and fair guidance for what counts as "funding towards the costs necessary for this preservation." N.J.S.A. 52:27D-311.k(7).

196. COMMENT: The commenter asserts that "95/5 units" are pre-2001 units and that these units can be removed without impacting a municipality's ability to extend affordability controls. The 95/5 designation relates only to the apportionment and distribution of proceeds from non-exempt sales and does not affect a municipality's right to extend or maintain controls pursuant to the FHA and UHAC. The Agency can phase out 95/5 regulations without the need for any changes relating to the municipalities' right to extend affordability or release the units from affordability controls. (26)

RESPONSE: The Agency appreciates the commenter's feedback. The Agency's current updates are intended to bring all ownership units within a uniform deed restriction; this involves extending 95/5-restricted units into the adopted rules, so that all ownership units are following the same model. This creates greater consistency and predictability for owners, municipalities, and administrative agents. Municipalities still retain their unilateral ability to extend affordability controls.

197. COMMENT: The language at N.J.A.C. 5:80-26.6(h)4, 5, and 6 is ambiguous and inconsistent and appears to take away a municipality's right to extend affordability controls as it does not address what occurs if an owner rejects the equity share payment. Municipalities must retain the right to extend affordability controls, regardless of whether an owner accepts or declines the equity payment. This omission creates ambiguity and undermines the municipality's authority pursuant to the FHA. (26)

RESPONSE: The rules state, unequivocally, that municipalities will have, in their sole discretion, the right to extend affordability controls. By signing the deed restriction, the owner has bound themselves to these rules. The homeowner cannot reject the extension, as long as the extension followed the rules set forth at N.J.A.C. 5:80-26.6(h).

198. COMMENT: The proposed rule language at N.J.A.C. 5:80-26.6(i) is confusing and problematic because it suggests that if an owner fails to sell within one year, the municipality's "option to extend controls on the unit will be restored." This wording implies that the municipality's right to extend affordability controls was lost or suspended, when municipalities have always retained this authority. The rule should be revised to remove any reference to the right being "restored" and to clearly state that the municipality's authority to extend affordability controls is continuous and ongoing. (26)

RESPONSE: The Agency acknowledges that this language's phrasing may cause confusion and has changed it upon adoption, so that it no longer makes reference to "restoring" the option to extend. The text, as adopted, provides that if a homeowner notices an intent to sell at market rate (that is, an exit sale) after the end of the deed-restricted control period and they fail to follow through with the sale within a year, then the owner loses the ability to engage in an exit sale without providing a new notice to the municipality. This provision should not be construed to suggest that the municipality may not block the sale of the home after an owner provides an intent to sell at the end of the deed-restricted control period. The municipality has, within its sole discretion, the ability to extend affordability controls pursuant to N.J.A.C. 5:80-26.6(h). However, the rules require that the municipality respond to the notice provided by the seller within 60 days, if it chooses to extend. Pursuant to N.J.A.C. 5:80-26.6(i), even if the municipality did not choose to extend within 60 days after receiving notice of an intent to sell the unit, the homeowner has to provide a new notice to the municipality if it has been a full year since the [page=2764] initial notice. At this point, the municipality can respond by attempting to block the sale or by allowing the unit to exit from affordability.

199. COMMENT: The commenter objects to the provision at N.J.A.C. 5:80-26.6(l) that allows a foreclosure judgment to extinguish affordability controls, asserting that it is inconsistent with the FHA and the Mount Laurel doctrine and would be detrimental to the State's affordable-housing supply. Municipalities already experience difficulty receiving timely notice of foreclosure and this problem would be compounded if foreclosure was permitted to terminate affordability controls. The rule should be revised to ensure that affordability controls survive foreclosure proceedings so that affordable units are preserved. (26)

RESPONSE: The Agency appreciates the commenter's feedback. Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

200. COMMENT: The language regarding the effective date of the new rules as stated at N.J.A.C. 5:80-26.6(m) is confusing and could be interpreted to apply retroactively, which would potentially nullify extensions executed under prior UHAC provisions. This interpretation would create uncertainty for municipalities that have already acted to extend controls. The Agency should revise the subsection to clarify that the new requirements apply prospectively only. (26)

RESPONSE: N.J.A.C. 5:80-26.6(m) states that extensions need to be made pursuant to the new rules. There is nothing in the language to suggest that this would apply retroactively. The Agency, therefore, does not view further clarification to be necessary.

201. COMMENT: Institutional homeownership is on the rise and this trend is the strongest argument for maintaining affordable ownership units. The State is facing significant fiscal constraints, which will make it difficult to produce new affordable housing in the near term. Preserving and extending the controls on existing affordable ownership units is, therefore, practical and necessary for maintaining the State's affordable-housing stock. (26)

RESPONSE: The Agency appreciates the commenter's feedback. However, the commenter does not pertain to any provision of the rules subject to this rulemaking.

202. COMMENT: The commenter opposes the establishment of a minimum municipal contribution requirement for the extension of rental-unit affordability controls. Costs and funding needs differ widely across municipalities and regions; imposing a uniform minimum fails to account for these differences. The commenter recommends that the rules allow flexibility for municipalities to determine contribution levels based on local conditions, rather than a fixed Statewide amount. (26)

RESPONSE: The Agency recognizes that costs differ across the State, which is why the rules governing the extension/preservation of affordable rental units set forth per-unit minimums. The Agency has received feedback from other commenters that the proposed amounts are insufficient

to meaningfully contribute to the preservation of units. There is no one-size-fits-all method for extensions. Therefore, the rules provide minimums rather than prescriptive investment amounts. The actual amounts should result from negotiations between municipalities and owners.

203. COMMENT: In light of the housing crisis in the State, every effort should be made to maintain the stock of affordable housing by clearly and explicitly affirming municipalities' right to extend affordability controls. The rules must preserve and reinforce the long-standing right of municipalities to extend controls beyond the initial control period, consistent with COAH's 1989 regulations and subsequent UHAC provisions. (26)

RESPONSE: The Agency agrees with the commenter. The UHAC rules, as proposed, create a uniform mechanism for doing so.

204. COMMENT: The commentor requests clarification regarding the applicability of the proposed UHAC rules to existing, prior round projects. Additional guidance is sought in identifying those provisions deemed to be "administrative" (that is, relating to administration, advertising, and income-certification) and would, therefore, be applicable to First, Second, and Third Round projects, and those provisions that concern "unalterable aspects" and would, therefore, apply only to Fourth and future Round projects. (27)

RESPONSE: Prior round units are only exempt from the new rules where explicitly stated, that is, from rules that existing developments could not reasonably be expected to comply with, such as occupancy standards and bedroom distributions. The rules also exempt prior round units from the updated affordability controls, as these units are already subject to legal agreements that the rule updates do not supersede.

205. COMMENT: The commentor requests confirmation that the rules governing expiration of affordability controls will be governed by the regulatory framework in effect at the time the original agreement was executed with the municipality. Without this clarification, there is a risk of legal uncertainty and unintended consequences resulting from retroactive implementation. The commenter requests affirmation that the new provisions governing expiration of controls will apply prospectively and that existing agreements will remain binding. (27)

RESPONSE: The Agency recognizes that existing deed restrictions are binding and that extensions authorized prior to the effective date of these rules were executed within a different regulatory environment. The rules are to be prospectively applied, as many units are subject to legally binding agreements that are not superseded by these rules. See, for example, N.J.A.C. 5:80-26.6(m).

206. COMMENT: The commentor appreciates the Agency's recognition that certain fees may be charged to all residents, including those residing in inclusionary units. The commentor asserts that landlords must retain the ability to recover costs associated with sought-after enhanced amenities and programming, such as fitness and wellness activities, rental of sports equipment, social events, secure storage facilities, and childcare services, and encourages the Agency to provide clear guidance affirming that reasonable fees for optional amenities, including pet ownership, parking, and pools, be assessed equitably among all residents. Pursuant to the Fair Housing Act and the New Jersey Law Against Discrimination, tenants may have service or assistance animals needed due to a disability without paying a fee; however, property owners are permitted to impose fees necessary to regulate and mitigate the cost of pet upkeep and maintenance. The commenter requests additional language--apparently, although not specified in the comment, at N.J.A.C. 5:80-26.13(c)1--to provide greater flexibility and allowance for uniformity of fee structures between residents residing in market-rate and affordable units. (27)

RESPONSE: N.J.A.C. 5:80-26.13(c)1 provides that truly optional fees, not required or included for market-rate renters, may be charged to affordable renters. The allowable pet fee of \$ 30.00 per month is a reasonable pet rent in the current market. The difference in pet fees is consistent with the below-market rent charged to affordable tenants. The Agency declines to insert additional language to the rule as it is satisfied the text, as adopted, satisfactorily addresses the issue.

207. COMMENT: The commenter expresses concern with the proposed rules governing the siting of affordable units within inclusionary developments. While voicing support for the Agency's goals of promoting integration and avoiding the concentration of affordable units in isolated or inferior portions of a development, the commenter opines that, as proposed, the rule is too broad and would require that inclusionary units be of the same type, noting that the requirement makes more sense where the affordable and market-rate units are situated within the same building and that typical practice is to disperse, rather than concentrate, affordable housing within an apartment building. The commenter, however, advocates for a more flexible approach for "campus-style construction"--which includes a mix of single-family homes, townhouses, and multifamily buildings--to allow developers to meet affordability requirements while also responding to market demand for larger housing formats. The commenter, therefore, encourages the Agency to consider adjustments or clarifications to preserve flexibility, particularly where site design and financing structures support equitable outcomes without undermining integration goals. (27)

RESPONSE: The Agency declines to amend the occupancy standards upon adoption. The rules at N.J.A.C. 5:80-26.5(a)3i through viii, which are applicable to developments containing for-sale units, including those that contain rental units, have adequate flexibility in terms of clustering and integration. In such developments, developers and municipalities are granted greater flexibility as to the type and location of affordable units. Affordable units may be clustered in those developments, but they may [page=2765] not be placed in less desirable locations and should be integrated throughout the larger development. Restricted units may be of different types than market-rate units. However, there needs to be some restricted units offered for each type of the market-rate units offered, including townhomes and single-family homes. The optimal ratio of restricted to market-rate building types within the plan is subject to the determinations of stakeholders in the planning processes, as long as there are restricted units for each type.

208. COMMENT: The commenter expresses concern that the required minimum investment levels are trivial and will be insufficient to recapitalize 30- to 40-year-old housing developments and ensure not only that affordability is maintained, but also provide sufficient funds to upgrade units and preserve quality affordable housing for residents. The commenter asserts that COAH's market-to-affordable program presented a fairer framework for converting existing housing stock into deed-restricted affordable housing and is favorable to the proposed rule's "one-sided approach," pursuant to which municipalities can receive bonus credits while committing minimal funding; to the commenter, this "creates little incentive[]" for fair negotiations for the appropriate amount of funding needed to ensure that these projects remain sound for another cycle." (27)

RESPONSE: The Agency recognizes that costs differ across the State, which is why the rules governing the extension/preservation of affordable rental units detail per-unit minimums, which, pursuant to N.J.A.C. 5:80-26.12(h)7 may be adjusted annually in accordance with the maximum annual rent increase amount, rather than prescriptive investment amounts. The Agency has received feedback from other commenters that confirms the reality of cost differentials and indicates that the investment minimums may, in actuality, be overly burdensome to municipalities in some areas. The actual amounts should result from negotiations between the parties.

209. COMMENT: The commenter expresses concern regarding the extension of affordability controls at N.J.A.C. 5:80-26.12, stating: "By extending affordability terms from 30 years to 40 or 45 years, the rules make it nearly impossible to align affordability restrictions with PILOT agreements and loans." (28)

RESPONSE: The new affordability periods were established pursuant to the recent revisions to the FHA (the A4 legislation). The Agency does not dictate the affordability periods. A4 mandates that, "[a]s part of updating the Uniform Housing Affordability Controls, the [A]gency shall set rules establishing that, for the purpose of newly created low- and moderate-income rental units, a 40-year minimum deed restriction shall be required. For the purpose of for-sale units, a 30-year minimum deed restriction shall be required. For the purpose of housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction shall be required, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years." N.J.S.A. 52:27D-313.3.b.

210. COMMENT: The commenter opposes the three-bedroom-unit requirement at N.J.A.C. 5:80-26.4, as applied to high-rise, high-density buildings, stating that such a requirement "ignores decades of experience with failed HUD projects from the 1960s and 1970s." They observe that low-density housing is more suitable for families and conclude that "[b]y forcing this model, the proposed rule recreates a failed approach to affordable housing and raises construction costs." (28)

RESPONSE: The Agency emphasizes that the UHAC rules neither establish any density requirements nor require that developments include three-bedroom market-rate units. Developments built, in part, to fulfill Mount Laurel obligations must include some income-restricted units that can accommodate families, but this requirement only impacts the restricted units. Market-rate units can be all one-bedroom units if market conditions so dictate.

211. COMMENT: The requirement at N.J.A.C. 5:80-26.4 that the market-rate unit mix match the affordable unit mix "undercuts the viability of mixed-income housing." The commenter writes in opposition to the forced three-bedroom market-rate unit requirement, stating that it "not only limits [developers'] ability to balance costs but also destroys the economic rationale for including market-rate units alongside affordable ones[,]" concluding that developers should be free to choose their market-rate mix of units. (28)

RESPONSE: There is no provision in the UHAC rules that requires the market-rate unit distribution to match the affordable unit distribution. Developers could create all one-bedroom market-rate units if that's what the market demands. The UHAC rules only determine the distribution of

restricted units.

212. COMMENT: The commenter proposes limiting the definition of "prior round unit" at N.J.A.C. 5:80-26.2 and/or at the bedroom/income distribution section at N.J.A.C. 5:80-26.4(a) and the occupancy standards section at N.J.A.C. 5:80-26.5(a) in order to "distinguish between units subject to specific terms in [an existing] agreement versus those in which zoning is in place but there is not even a developer designated or a site plan proposed yet." (29)

RESPONSE: The Agency declines the commenter's suggestion. The overwhelming feedback has been in favor of expanding the pool of eligible projects, rather than reducing it, as the Agency believes would be the case if the suggestion were to be implemented. The Agency finds the current rulemaking as a workable middle-ground in furthering its priority of ensuring that affordable housing units are built and municipalities meet their obligations. The Agency finds that making it more difficult to construct planned units would be to the detriment of low- and moderate-income households and would harm municipalities that have taken affirmative action to build more affordable units.

213. COMMENT: The commenter supports continuing the very-low-income requirements across developments at N.J.A.C. 5:80-26.4(c) "or, in the alternative ... clarify[ing] that the requirements [at] N.J.A.C. 5:80-26.4(c) do not supersede the 13 [percent] very-low-income requirement in municipal ordinances." The commenter, however, expresses a concern that the rule, as proposed, could lead to higher moderate-income rents "in practically all developments," as it could be read to allow a higher-rent unit to offset any very-low-income unit, rather than, as intended, only each very-low-income unit above the 13 percent threshold. Such a result "is unnecessary and increases costs on moderate-income renters." (29)

RESPONSE: The commenter's concern has been addressed upon adoption. N.J.A.C. 5:80-26.4(c) is changed to provide, in relevant part, that "the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent of the restricted units." This amendment clarifies that after the 13-percent threshold is met, for each additional very-low-income unit created, a 70-percent of AMI unit may be created. (29)

214. COMMENT: The commenter recommends that the Agency make waiver applications publicly available to "waive affordability averages, occupancy standards, and/or phasing requirements," as provided for at N.J.A.C. 5:80-26.4(l) and 26.5(a)5. (29)

RESPONSE: The Division of Local Planning Services within the Department of Community Affairs is responsible for specifying the waiver process. The Agency defers to the Division's expertise in determining the waiver process, including what information should be made public and when.

215. COMMENT: The commenter notes that the notice of proposal Summary states that "[t]he Agency proposes the prohibition of waiving the final phasing requirement" at the discussion of N.J.A.C. 5:80-26.5, but that this does not appear to have been codified in the rules. (29)

RESPONSE: The Agency disagrees with the commenter. The prohibition is codified at N.J.A.C. 5:80-26.5(a)5, which excepts the final phasing provision at N.J.A.C. 5:80-26.5(a)4iv from waiver eligibility.

216. COMMENT: The commenter recommends the Agency revise the text at N.J.A.C. 5:80-26.12(c) and (f)4 to clarify that affordability controls remain extant until a municipality affirmatively declines to extend controls. The commenter suggests adding text stating that controls remain in place until the municipality affirmatively declines to extend them after expiration of the minimum control period or does not timely respond to an owner's notice of intent within 180 days of receipt thereof. (29)

RESPONSE: N.J.A.C. 5:80-26.12(i) provides that the owner of an affordable rental unit must provide notice of intent for affordability controls to be extinguished and that the controls remain in effect throughout the 180-day notice period. If the municipality affirmatively declines to extend controls or fails to respond within the 180-day notice [page=2766] period of its election to extend controls, the controls will expire. In addition, N.J.A.C. 5:80-26.12(h) affirms that the municipality, "in its sole discretion," may extend controls. The implication of granting "sole discretion" to municipalities is that owners may not reject an extension, as long as the municipality extends controls pursuant to the rules at N.J.A.C. 5:80-26.12(h). In addition, the Agency is, upon adoption, amending N.J.A.C. 5:80-26.12(h)1 by changing the phrase "has not already ended, but will end" to "ends" to affirm that, if the control period on a rental development ends or ended during the current Round, the affordability controls persist. This remains the case until the owner provides notice of intent to extinguish the controls, the municipality takes affirmative action to extend the controls, or the current Round ends.

217. COMMENT: The commenter recommends new text at N.J.A.C. 5:80-26.1 to expand the reach of the income distribution requirements at N.J.A.C. 5:80-26.4 to include newly constructed low-income housing tax credit units. (29)

RESPONSE: The Agency declines the commenter's suggestion. The New Jersey Low-Income Housing Tax Credit Qualified Allocation Plan (QAP), codified at N.J.A.C. 5:80-33, governs the income distribution requirements for units created with low-income housing tax credits (LIHTC). Therefore, the QAP, rather than UHAC, provides the appropriate rules for the governance of income distribution requirements for LIHTC developments.

218. COMMENT: The commenter expresses support for the rule at N.J.A.C. 5:80-26.4(b)1 to aggregate restricted units in small developments within a municipality for the calculation of affordability averages and bedroom distributions. (29)

RESPONSE: The Agency thanks the commenter for the expression of support.

219. COMMENT: The commenter expresses support for the clarifying language at N.J.A.C. 5:80-26.4(b)2 regarding the counting of bedrooms as individual units if within group homes or other similar types of housing arrangements. (29)

RESPONSE: The Agency thanks the commenter for the expression of support.

220. COMMENT: The commentor supports N.J.A.C. 5:80-26.5(b)4, which prohibits placing a single person in a multi-bedroom unit and suggests adding a requirement that administrative agents report violations to the Division. (29)

RESPONSE: The Agency thanks the commenter for the expression of support and recommends, but will not require, that administrative agents report infractions.

221. COMMENT: The Agency should reconsider the provision at N.J.A.C. 5:80-26.6(l), allowing affordability controls to be extinguished in the event of a foreclosure. (29)

RESPONSE: Upon adoption, the Agency is deleting the language proposed at N.J.A.C. 5:80-26.6(l), providing that foreclosure extinguishes deed-restricted affordability controls on the foreclosed unit.

222. COMMENT: The commenter opposes the proposed change to price restrictions on ownership units at N.J.A.C. 5:80-26.7(b), as the changes would make needed for-sale units unaffordable. The commenter asserts that "[b]asing this increase on data indicating that families are increasingly cost burdened in the private housing market is incongruous with affordable housing goals," which include making housing more affordable for lower-income households. (29)

RESPONSE: The Agency agrees that there must be a sufficient range between the pricing of units and the maximum percentage of income that a qualified household can spend on housing costs. The Agency has, upon adoption, reduced the initial pricing of ownership units to be equal to 30 percent of income for the relevant income level. The maximum percentage of income a qualified household can spend on housing has been maintained at 35 percent at N.J.A.C. 5:80-26.8(b), which is consistent with the extant five percent difference.

223. COMMENT: The commenter expresses support for the additions of the modifying word "realistic" as applied to condominium and HOA fees at N.J.A.C. 5:80-26.7(b) and the text at N.J.A.C. 5:80-26.7(e) to prevent increased condominium and HOA fees from exceeding affordability restrictions. (29)

RESPONSE: The Agency thanks the commenter for the expression of support.

224. COMMENT: The commenter supports N.J.A.C. 5:80-26.12(e), ensuring that a full deed-restriction must be recorded before a certificate of occupancy is issued. (29)

RESPONSE: The Agency thanks the commenter for the expression of support.

225. COMMENT: The commenter supports the requirement at N.J.A.C. 5:80-26.12(i) that notice be given to tenant of the owners' intent that affordability controls be extinguished at the end of the minimum control period. (29)

RESPONSE: The Agency thanks the commenter for the expression of support.

226. COMMENT: The commenter supports N.J.A.C. 5:80-26.13(a), which caps costs associated with assisted living services. The commenter also proposes that Medicaid beds be made available to qualified residents immediately, rather than charge private payment rates until personal funds are exhausted. (29)

RESPONSE: The Agency thanks the commenter for the expression of support. The Agency adds that issuing rules governing the availability of Medicaid beds is beyond the scope of the UHAC rules. The Agency does not have authority to require how Medicaid beds are administered. The rules can only speak to which units are able to receive credit toward municipalities' affordable housing obligations.

227. COMMENT: The commenter recommends the Agency change N.J.A.C. 5:80-26.13(c) to limit the use and reported abuse of application fees, proposing that such fees be restricted to one per household per development and not be charged again unless the applicant's income certification has lapsed. (29)

RESPONSE: The Agency declines the commenter's recommendation. Pursuant to N.J.A.C. 5:80-26.13(c)1, application fees are limited to no more than five percent of the monthly rent of the unit. Additionally, the rules do include revisions intended to limit superfluous or otherwise improper fees.

228. COMMENT: N.J.A.C 5:80-26.16(a) should specify that group homes are not always required to follow UHAC's affirmative marketing requirements, but may, in some instances, follow the requirements of their individual funding programs. (29)

RESPONSE: The Agency agrees with the commenter. Upon adoption, language is being added at N.J.A.C. 5:80-26.16(a) to specify that group homes are included within the category of supportive housing units that may adhere to the marketing rules of their sponsoring programs, where applicable.

229. COMMENT: The commenter recommends the continued requirement of radio and television broadcasting as a component of affirmative marketing plans at N.J.A.C. 5:80-26.16(f)2 and 9 as low- and moderate-income households, particularly older persons, still rely on those media. (29)

RESPONSE: The Agency declines the recommendation. While radio and television advertising are still allowed pursuant to the rules, they are not deemed to be required, as they tend to be more costly than other mediums. The Agency is not aware of any evidence demonstrating that the more costly mediums are more effective than those specified in the rules.

230. COMMENT: The commenter supports the requirement at N.J.A.C. 5:80-26.16(f)7 requiring advertisements for digital and social media platforms to adhere to special requirements, but expresses concern that such advertisements may be targeted in a manner that defeats the objective of regionwide affirmative marketing. The commenter proposes revised language at N.J.A.C. 5:80-26.16(f)6 to counter such targeting. (29)

RESPONSE: The Agency does not believe it necessary to adopt the commenter's proposed revision. The rules do not require that these be paid advertisements. The posts may just be disseminated by those who view it on the administrative agents' social pages. If a paid social media strategy is pursued, the administrative agent should ensure that targeting is focused on those least likely to apply and should provide any details relating to targeting.

231. COMMENT: The commenter advocates implementing a requirement at N.J.A.C. 5:80-26.17(g) that administrative agents, through confirmation with the municipal housing liaison, exhaust local [page=2767] affordability assistance programs prior to deeming a household ineligible. (29)

RESPONSE: The Agency declines to require that administrative agents search for housing assistance resources to help supplement the incomes of households deemed to be ineligible. To do so would place a significant burden on administrative agents and would likely also delay filling units with households who are able to afford the monthly payments.

232. COMMENT: The commenter advocates for the retention of deleted text regarding a preference for displaced affordable households, specifically, the following provision at N.J.A.C. 5:80-26.17(k)2iv: "With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement." The commenter

asserts that this provision is consistent with many State and Federal policies and should be retained unless there is an explanation as to how these policies would otherwise be handled. (29)

RESPONSE: The Agency agrees with the commenter's position. Given that there is uncertainty as to whether this consideration is adequately addressed in the current rules of other State actors, the Agency is, upon adoption, restoring the provision recited by the commenter.

233. COMMENT: The commenter proposes that N.J.A.C. 5:80-26.17(n) be amended to allow qualified applicants at least 10, rather than the proposed five, business days to accept or reject an administrative agent's offer upon being referred to an available unit. (29)

RESPONSE: The Agency declines to further extend the timeframe for applicant responses. In seeking to balance fairness to an individual selected household and to households still waiting to be selected, the Agency landed on five business days as a fair window within which to respond. The Agency notes that a minimum 10-business-day window may cause undue delay in getting units filled.

234. COMMENT: The commenter supports the complaint review process for residents and applicants experiencing discrimination by property managers at N.J.A.C. 5:80-26.17(l) and recommends additional language to further strengthen the provision. (29)

RESPONSE: The Agency agrees with the intention behind this recommendation, but declines to mandate the suggested language in the rule, as landlords are already required to provide the "Truth in Renting" handbook to tenants. Administrative agents and municipal housing liaisons may provide the documents referenced by the commenter to tenants; however, the rules do not require them to do so as municipal housing liaisons don't frequently interact with households, and administrative agents are primarily responsible for selecting and certifying households.

235. COMMENT: The commenter supports the Agency's "moving away from the 95/5 model" and suggests including a requirement at N.J.A.C. 5:80-26.21 that municipal housing liaisons and/or administrative agents notify existing owners of 95/5 units by letter of the change in law and new requirements. (29)

RESPONSE: The Agency declines to include such a notice in the UHAC rules. It is anticipated that owners purchasing 95/5 units will become aware of the applicable UHAC rules as they will be included in the documents the purchasers receive upon purchase. Upon the signing of a new deed restriction, the administrative agent will explain the updated ownership model to owner households, which will govern the unit beginning on the effective date of the extension. Additionally, the promulgation of the current UHAC rules has been subject to extensive publicity and litigation.

236. COMMENT: The commenter suggests changes at N.J.A.C. 5:80-26 Appendix E Article 6 to clarify that affordability controls continue in place until a municipality has affirmatively declined to extend such controls. (29)

RESPONSE: The Agency declines to make the changes suggested by the commenter. The Agency believes that the commenter's concern is adequately addressed by the adopted text at Appendix E.

237. COMMENT: The commenter states that they are "against this proposed legislation [sic]," claiming that their "community ... would be severely impacted financially if this goes through." (31)

RESPONSE: The commenter does not pertain to any identifiable provision of the rules subject to this rulemaking.

238. COMMENT: The commenter, a member of the board of a common interest community in Newark, alludes to financial difficulties being faced by the community due to many homeowners being delinquent in common interest fees and the difficulty in collecting those fees. Referencing "proposed rules" that are unspecified by the commenter, but apparently include particularly N.J.A.C. 5:80-26.7(e), as "capping fees for affordable units," the commenter expresses their concern that such rules will exacerbate the situation by shifting more of the burden of paying for common expenses to market-rate unit owners. (31)

RESPONSE: Based on feedback from numerous commenters, including this commenter, the Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e) that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. In doing so, the Agency acknowledges the challenging circumstances faced by community associations and the additional financial and administrative burdens that the proposed changes would likely

cause. The Agency points out that high condominium/HOA fees do significantly impact affordable unit residents; if issues with such fees continue, the Agency will consider future changes to the UHAC rules.

239. COMMENT: The commenter states that "the proposed restrictions on special assessments, limiting them to only those benefiting affordable units, along with the requirement to calculate these assessments based on the original income levels of residents," would create administrative difficulties and unfairly burden market-rate unit owners. (31)

RESPONSE: The Agency disagrees with the premise of the commenter. The proposed amendments at N.J.A.C. 5:80-26.7(e) do not limit special assessments to only those benefiting affordable units; that is a misreading of the proposed amendments.

240. COMMENT: The commenter expresses general "concerns" about the "proposed [UHAC] rules," stating that they "will have a detrimental and debilitating affect [sic]" on their community in Newark. (32)

RESPONSE: The commenter does not pertain to any identifiable provision of the rules subject to this rulemaking, and therefore, is beyond the scope of this rulemaking.

241. COMMENT: The commenter, a member of the board of an association in Newark, objects to "plac[ing] the burden for the upkeep of an association solely on the units deemed affordable," stating generally that "the proposal will add a burden to the affordable units and the future budgets." (33)

RESPONSE: The commenter does not pertain to any identifiable provision of the rules subject to this rulemaking, and therefore, is beyond the scope of this rulemaking.

242. COMMENT: The commenter finds that, in general, the "robust expansion" of the occupancy rules at N.J.A.C. 5:80-26.5 is "problematic" and will result in fewer affordable units being made available to qualified households. They prefer a return to rules implemented by COAH that guided Third Round projects, without the necessity of implementing the currently proposed "more stringent occupancy standards," some of which exceed those standards adopted pursuant to the Uniform Construction Code. They recommend greater flexibility in the rules to allow for the creation of a wider diversity of housing types and fear the possible misinterpretation or misapplication of the rules or the intentional misuse thereof by "municipal bodies," which could increase project costs, reduce the number or units in or density of projects, and ultimately result in projects being economically infeasible. (34)

RESPONSE: The Agency proposed changes to the occupancy standards precisely to promote the availability of housing options for very-low, low-, and moderate-income households and believes the adopted rules will further that salutary goal. The Agency is committed to providing standards and declines to grant undefined flexibility, which may result in occupancy standards not being adhered to. Finally, the Agency finds the commenter's reasoning to be flawed in that greater flexibility would be likely to facilitate, rather than curtail, the avoidance of the standards by municipal bodies, as envisioned by the commenter.

243. COMMENT: The commenter requests that language be included at N.J.A.C. 5:80-26.5(a) to provide that any housing element and fair [page=2768] share plan (HEFSP) approved by the Affordable Housing Dispute Resolution Program or county-level housing judge be deemed compliant with the rules dispute any inconsistency therewith or, alternatively, that any inconsistency with the rules included in an HEFSP be considered a valid waiver. (34)

RESPONSE: The Agency is not authorized to make this determination. The rules now include a prior round unit definition, which specifies those units that are subject to the updated occupancy and bedroom distribution rules. All other aspects of the rules should apply to all units.

244. COMMENT: The commenter recommends replacing the word "building" with "project" at N.J.A.C. 5:80-26.5(a)2vii, to allow for greater flexibility in design with respect to project types. (34)

RESPONSE: The Agency declines to make the requested change. The rules already allow for more flexible integration in mixed for-sale and rental developments where it is appropriate. For rental-only developments, there must be integration of affordable and market-rate units. Segregating units and tenants based on income-levels would not be consistent with the state of the law.

245. COMMENT: At N.J.A.C. 5:80-26.5(a)2viii, the commenter requests that the limitation on unit and bedroom sizes be amended to allow for no less than 80 percent of the minimum sizes prescribed by the Neighborhood Preservation Housing rules, rather than, as provided in the proposed rule, no less than 90 percent thereof. (34)

RESPONSE: The Agency declines to make the requested change. Pursuant to the proposed rules, developers are able to create, for example, an efficiency unit as small as 495 square feet. The Agency has aligned unit sizes with other affordable housing programs in the State, as set forth at N.J.A.C. 5:43, and has even provided flexibility for developers that will be building market-rate units that are smaller in size by allowing units to be 90 percent of the size established by the Balanced Housing Rules.

246. COMMENT: The commenter requests that for mixed-rental and for-sale projects, the rules should be clarified to confirm that the occupancy standards at N.J.A.C. 5:80-26.5(a)2 that are applicable to the affordable rental units only apply to the rental component of a project and that the occupancy standards at N.J.A.C. 5:80-26.5(a)3 that are applicable to the affordable for-sale units only apply to the for-sale component of the project. (34)

RESPONSE: The Agency declines the commenter's recommendation, as it believes the rules at N.J.A.C. 5:80-26.5(a)2 and 3 are clear and unambiguous in prescribing those units to which they are applicable.

247. COMMENT: While expressing a preference for increased flexibility in the occupancy standards as promulgated in the rules, the commenter expresses appreciation for the opportunity to seek relief from the requirements by a waiver from the Division of Local Planning Services in DCA, as provided at N.J.A.C. 5:80-26.5(a)5, rather than having to apply to a judicial forum. The commenter, however, expresses a lack of confidence in the ability of the "regulated community" to assess "the potential efficacy of the relief that would be provided at the Division without information on the process and standards by which waiver applications will be considered" and, therefore, proposes that the Division be "urged" to develop an agenda to meet this concern. (34)

RESPONSE: The Agency defers to the Division's expertise in determining what constitutes a material deviation and how best to process waiver applications.

248. COMMENT: Referencing N.J.A.C. 5:80-26.7(e), which provides that condominium and HOA fees and special assessments to affordable unit homeowners are to be based on the common interest percentage and full build-out budget, the commenter expresses no concern with its application prospectively, but requests "additional clarity" with respect to its applicability to existing associations. They note that existing associations have recorded master deeds/declarations that are not susceptible to amendment, so as to comply with the requirements and, therefore, propose that the rule apply only prospectively to associations where the master deed/declaration are recorded only after the effective date of the provision. (34)

RESPONSE: Based on feedback from numerous commenters, the Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e) that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. In doing so, the Agency acknowledges the challenging circumstances faced by community associations and the additional financial and administrative burdens that the proposed changes would likely cause. The Agency points out that high condominium/HOA fees do significantly impact affordable unit residents; if issues with such fees continue, the Agency will consider future changes to the UHAC rules or request changes to the Planned Real Estate Development (PRED) rules.

249. COMMENT: The commenter requests clarification as to the application at N.J.A.C. 5:80-26.7(e) of a "full build-out budget" to "expandable projects" (that is, projects with the capacity for internal and/or external expansion), opining that associations should not be required to present a budget based on a full build-out that may, for various reasons, never occur or be substantially delayed in its fulfillment. (34)

RESPONSE: The Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e), including those related to a full build-out budget, that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. This renders the commenter's concern moot.

250. COMMENT: The commenter, in general, raises numerous issues and questions regarding the language and application of the proposed amendments at N.J.A.C. 5:80-26.7(e), recommending that the referenced portion of the proposed rule be deleted upon adoption and be subject to further discussion among stakeholders. (34)

RESPONSE: Based on feedback from numerous commenters, the Agency is not adopting the proposed amendments at N.J.A.C. 5:80-26.7(e) that would have provided that condominium and HOA fees be based on the common interest percentage of homeowners and would have prohibited increases in fees that would make a unit no longer affordable. This renders the commenter's concern moot.

251. COMMENT: N.J.A.C. 5:80-26.12(d) should clarify that a deed restriction document separate from the deed of conveyance should be executed and recorded. (34)

RESPONSE: Deed restrictions, such as those noted at N.J.A.C. 5:80-26 Appendix P-1 and in the master deed, would typically appear in the chain of title and in the documents received by the buyer upon purchase of an affordable unit.

252. COMMENT: The provision at N.J.A.C. 5:80-26.12(d)5ii requiring a certification by the preparer of a deed restriction that the deed restriction complies with all requirements of the UHAC rules and includes the language at N.J.A.C. 5:80-26 Appendix E is "unnecessary, unduly burdensome[,] and cost generative." (34)

RESPONSE: This requirement of the certification is intended to ensure that the documents correctly reflect the terms of affordability controls. Such deeds are typically reviewed at multiple levels, including by title companies, in-house professionals, regulators, the administrative agent, and by the developer's counsel. Accordingly, there should be no significant increase in the burden or cost for the preparer, counsel, administrative agent, or title company to certify that they have correctly prepared the documents.

253. COMMENT: The requirement to record a preliminary instrument at N.J.A.C. 5:80-26.12(e) is "unnecessary, unduly burdensome[,] and cost generative and should be eliminated." The requirement provides no protection to low- and moderate-income home buyers, and will increase legal fees and costs, which will be passed on through higher housing costs, including to "middle[-]income home buyers" of non-deed-restricted units who are already subsidizing affordable units. (34)

RESPONSE: The Agency declines to eliminate the provision identified by the commenter. The purpose of the requirement for the preparation and recordation of the form at N.J.A.C. 5:80-26 Appendix P-1 is to ensure that the required affordability controls appear in the chain of title of the development without regard to any subsequent failure to record the restrictions for each individual unit. Application to each project is expected to ensure uniform application of the rules and to avoid the necessity to parse each master deed in order to determine that the affordability controls are in place for each unit. The recordation of a single, relatively simple document ensuring that all applicable restrictions appear in the chain of title cannot be fairly described as unduly burdensome in the context of a housing project.

[page=2769] 254. COMMENT: Referencing N.J.A.C. 5:80-26.12(h)7, the commenter advises that the text should be revised to provide that municipalities or the State should pay "adequate compensation" to unit owners for the extension of affordability controls, regardless of whether bonus credits are being sought. They express their belief that sufficient compensation, based on a construct that would provide for the replacement of major systems at the time of extension, be paid to ensure the units "remain in a safe and habitable condition." (34)

RESPONSE: The Agency recognizes the importance of maintaining the State's stock of affordability housing, the financial restrictions faced by municipalities, and the need for reinvestment in affordable units to ensure they not only remain affordable, but also remain safe to inhabit. The minimum amounts included in the rules reflect these important, but often competing, goals. Additionally, municipalities amend their zoning ordinances to permit building types and building density they otherwise would not allow in order to fulfill their constitutional obligation to provide affordable housing. Developers benefit from these adjustments, as they build within desirable housing markets they would otherwise be unable to access. In exchange for this access, which results from the FHA and the Mount Laurel doctrine, building owners also have a responsibility to maintain and reinvest in affordable housing units. The minimum amounts set forth in the rule reflect this shared responsibility to fulfill the Mount Laurel doctrine.

255. COMMENT: The 180-day timeframe provided at N.J.A.C. 5:80-26.12(i) for municipalities to extend affordability controls following receipt of an owner's notice of intent to extinguish such controls is "unworkable and unreasonable" as the making and implementation of those decisions require a much longer time horizon. (34)

RESPONSE: The Agency acknowledges that "[d]ecisions regarding disposition, financing[,] and capital improvement" can be an arduous, time-extensive process. The rules at N.J.A.C. 5:80-26.12(i) establish the process of providing notice to the municipality of an owner's intent to release units from affordability controls; following such notice, the municipality may intervene to extend the controls. The rule is not intended to and does not prohibit or limit owners and municipalities from proactively planning and engaging in negotiations to extend controls in advance of the

prescribed timelines. The execution of the extension, however, must take place within the time limits dictated at N.J.A.C. 5:80-26.12(h). The rules at N.J.A.C. 5:80-26.12(i) serve two purposes: (1) they give the municipalities adequate time to exercise their right to extend controls, pursuant to the rules at N.J.A.C. 5:80-26.12(h); and (2) they provide owners with a mechanism to initiate negotiations. With that said, the Agency is, upon adoption, increasing the time for municipal action to one year at subsection (i) in response to the concerns expressed by the commenter.

256. COMMENT: Referencing N.J.A.C. 5:80-26.13(b), the commenter expresses concern with the limitation on annual rent increases on affordable units as dictated by the percentage increase in the Consumer Price Index-U (CPI-U), capped at five percent. They point to external factors that are not reflected in the CPI-U, but that may cause costs to increase above the increase thereof and/or the five-percent cap. The commenter posits that unit owners should be afforded a means to seek relief in those situations. (34)

RESPONSE: The Agency declines to create a process by which to seek relief from the rent increase restrictions at N.J.A.C. 5:80-26.13(b). Unlike 100 percent affordable housing developments, inclusionary developments possess the ability to internally subsidize rent increases. It is inconsistent with the Mount Laurel doctrine to pass the full burden of annual costs to the State's low wage earners, whose wage growth historically lags wage growth among higher-income households. The purpose of affordable housing is to ensure stability through maintained affordability.

257. COMMENT: Referencing N.J.A.C. 5:80-26.15, the commenter recommends the imposition of a cap on the annual fee paid to administrative agents and providing that they may be hired directly by owners/developers of affordable units. (34)

RESPONSE: The Agency declines to cap or otherwise prescribe the fees to be paid to administrative agents, as it has not been given the authority to do so. Rather, that determination should result from negotiations between the parties.

258. COMMENT: The commenter recommends revisions to Article 5. Remedies for Breach of Affordable Housing Covenants, at unspecified locations, but which the Agency assumes to include some or all of N.J.A.C. 5:80-26 Appendices A, B, C, D-1, D-4, and E, to comply with Fannie Mae requirements. They provide a suggested rewrite of some such unspecified provision. (34)

RESPONSE: The Agency finds it difficult to know exactly which provision(s) of UHAC the commenter is referring to, but notes that their proposed text is substantially similar to that at, among other appendices, N.J.A.C. 5:80-26 Appendix A. The Agency, therefore, declines to adopt the commenter's recommendation.

259. COMMENT: N.J.A.C. 5:80-26.6(e) requires that conveyances of most restricted ownership units are made by deeds and restrictive covenants in the forms prescribed at certain of N.J.A.C. 5:80-26 appendices. The commenter notes that the "prior version" of the rule provided for such documents to be "substantially" in the forms set forth in the appendices and directs that the term "substantially" should be added to the current rule. They offer that a variation of the forms may be necessary for reasons specific to a given development, but, without the requested semantic revision, variations may not be permitted as the rule permits no flexibility. (34)

RESPONSE: One of the fundamental purposes of the UHAC rules is to promote a uniform system of housing affordability controls. The Agency determines that an objective standard is preferable to a variable one that could lead to errors or misunderstandings. Accordingly, the Agency declines the commenter's request.

260. COMMENT: The commenter asserts that new N.J.A.C. 5:80-26 Appendix P-1 is an "unnecessary and costly administrative burden." As the document must be executed by the municipality, delays will be incurred in the discharge of individual units from the blanket coverage of all affordable units likely to be encumbered by the document. At a minimum, municipalities should be required to designate a municipal representative to execute such discharges, so that a municipal resolution need not be adopted for each individual unit discharge. (34)

RESPONSE: The Agency declines to eliminate N.J.A.C. 5:80-26 Appendix P-1. The purpose of the requirement for the preparation and recordation of the form is to ensure that the required affordability controls appear in the chain of title of a development without regard to any subsequent failure to record the restrictions for each individual unit. Application to each project is expected to ensure uniform application of the rules and to avoid the necessity to parse each master deed in order to determine that the affordability controls are in place for each unit. The recordation of a single, relatively simple document ensuring that all applicable restrictions appear in the chain of title cannot be fairly described as unduly burdensome in the context of the development of a housing project.

261. COMMENT: The commenter asks a series of general questions regarding the timing as to use of the N.J.A.C. 5:80-26 appendices forms. (34)

RESPONSE: The commenter does not specify which of the N.J.A.C. 5:80-26 appendices they are referring to, making it difficult to respond to their broad questions. In general, the proposed UHAC rules are intended to be prospective except where otherwise specified.

262. COMMENT: N.J.A.C. 5:80-26 Appendix A Article 4 should clarify the start date of the deed to avoid confusion. (34)

RESPONSE: The form at N.J.A.C. 5:80-26 Appendix A appears to adequately identify the effective date of the controls. The control period typically commences on the date of the first purchaser's deed -- a date that would be known to the parties. The Agency believes that providing a blank space for the entry of this information may lead to inadvertent miscalculations.

263. COMMENT: The following sentence at N.J.A.C. 5:80-26 Appendix A Article 4C should be deleted: "At no time shall the Administrative Agent approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP." The commenter opines that a deed is not the proper instrument for regulating administrative agents. (34)

RESPONSE: The Agency declines the commenter's suggestion. The second sentence does not, as the commenter suggests, "regulat[e] the [page=2770] conduct" of the administrative agents. Rather, the sentence serves as notice to the purchaser of the extent of debt that the agent may approve.

264. COMMENT: N.J.A.C. 5:80-26 Appendix A Article 4F should be deleted if the property is not a two-family home, or, alternatively, a check box should be inserted indicating whether the property is a one- or two-family home, with the language at 4F being applicable only to two-family homes. (34)

RESPONSE: The text at Article 4F expressly indicates that the provision referenced by the commenter only applies if the premises are a two-family home.

265. COMMENT: N.J.A.C. 5:80-26 Appendix A Article B should clarify that the purchase money mortgage has priority in order to avoid conflicts with Fannie Mae/Freddie Mac. The commenter also requests clarification as to how acceleration of the mortgage can be a remedy where the party enforcing the restrictive covenant is not a party to the mortgage. The commenter states that this also conflicts with Fannie Mae/Freddie Mac requirements that the purchase money mortgage be a first lien with priority. (34)

RESPONSE: The commenter posits a hypothetical question concerning the appropriate parties to any potential foreclosure. The Agency notes that the language merely affords the parties whatever remedies to which they may be entitled at law or in equity.

266. COMMENT: N.J.A.C. 5:80-26 Appendix A Article 6B should state that the initial recapture amount will be adjusted at the time of sale pursuant to Article 6C and paid at closing. (34)

RESPONSE: The Agency does not believe that the commenter's proposed language adds materially to the terms of the deed, appearing at N.J.A.C. 5:80-26 Appendix A.

267. COMMENT: N.J.A.C. 5:80-26 Appendix A Article 6C should allow municipalities that have adopted an ordinance with a different calculation of the recapture amount to incorporate that calculation into the deed and not the UHAC calculation. (34)

RESPONSE: The Agency does not control the timing of ordinances enacted by the municipality or the figures the municipality might adopt. It would, therefore, not always be practical to require those figures to be specified in the deed.

268. COMMENT: The commenter states that many municipalities require the deed restriction for all affordable units in the community rather than in phases, which creates an issue with respect to internally expandable condominiums, in that units have not yet been created and added to the condominium as separate interests. Phased deed restrictions should, therefore, be specifically permitted at N.J.A.C. 5:80-26 Appendix C or, alternatively, the restrictive covenant can identify all units to be included in the condominium and include language noting the yet-to-be-created units and providing that upon recording the amendment to the master deed creating those units, they will be encumbered by and subject to the restrictive covenant. (34)

RESPONSE: N.J.A.C. 5:80-26 Appendix C may be used in phased developments and may include units not yet built.

269. COMMENT: N.J.A.C. 5:80-26 Appendix E Article 3B should remove the requirement for a deed restriction to be appended to any conveyance deed as it will increase costs and is a waste of resources. The commenter notes that property owners should not have to obtain consent from the administrative agent to sell their property. If the new owner fails to comply with the requirements of the deed restriction, the municipality may take necessary action. Requiring the approval of a conveyance may also result in developers being unlawfully compelled to provide consideration in exchange for approval. The commenter suggests that the words "for the municipality" be removed for clarity. (34)

RESPONSE: The language cited by the commenter is carried over from prior rules. Further, the commenter's proposed changes do not materially advance the purpose of the requirements stated at N.J.A.C. 5:80-26 Appendix E, which is to ensure that all parties are aware of the affordable housing restrictions in place. The Agency does agree that removing the term "for the municipality" would clarify the relationship with administrative agents not retained by the municipality and is making the suggested deletion upon adoption.

270. COMMENT: The commenter suggests removing N.J.A.C. 5:80-26 Appendix E Article 5B, stating that the municipal remedies, such as foreclosure, forfeiture, and acceleration, are "impractical, unnecessary, contrary to law[,] and problematic for lenders." (34)

RESPONSE: The language cited by the commenter is carried over from prior rules. Further, the Agency does not agree with the commenter's legal analysis with respect to the provision cited. Article 5B merely provides the municipality with such rights and remedies as are permitted by law and in equity.

271. COMMENT: At N.J.A.C. 5:80-26 Appendix N Article 1A, the language should be revised to state that the municipal lien is subordinate to the purchase money mortgage, regardless of the order of recordation. (34)

RESPONSE: The language cited by the commenter is carried over from prior rules. Further, the priorities of various documents based upon the order of recordation are largely governed by statute and are not clearly subject to Agency regulation. The rules do not account for every possibility for human error in recording.

272. COMMENT: At N.J.A.C. 5:80-26 Appendix N Article 2, the calculation of the recapture amount should be included in the deed if a municipality has adopted an ordinance providing for such alternate calculation. (34)

RESPONSE: The Agency declines the suggested change. The Agency does not control the timing or content of ordinances enacted by the municipality, nor the figures the municipality might adopt. Further, the note may not have been executed with actual notice of the ordinance adopted. It would, therefore, not always be practical to require those figures to be specified in the note or deed.

273. COMMENT: The commenter states that N.J.A.C. 5:80-26 Appendix O Article 10 is the same as at Article 1 of the Recapture Note and, thus, the commenter's concern is the same. (34)

RESPONSE: The language cited by the commenter is carried over from prior rules. Further, the priorities of various documents based upon the order of recordation are largely governed by statute and are not subject to Agency regulation.

274. COMMENT: The last paragraph at N.J.A.C. 5:80-26 Appendix P-1 should allow the municipality to sign the discharge when presented with the restrictive covenant signed by the developer, along with the transmittal to the county. (34)

RESPONSE: The language cited by the commenter does not prohibit the municipality from signing a discharge at any particular time. Rather, it permits the municipality to ensure that required documentation has been or will be recorded properly as a condition precedent to discharge.

Federal Standards Statement

The readopted special amendments, new rules, and recodifications do not exceed any known standards or requirements imposed by Federal law beyond what is already required. The only area where requirements are being applied to a Federal program is the application of UHAC affirmative marketing requirements to Low-Income Housing Tax Credit (LIHTC) units. However, the adjustments are minimal in comparison to that which LIHTC units are already required to do pursuant to State law and New Jersey's Qualified Allocation Plan (QAP). Accordingly, a Federal standards analysis is not required.

Full text of the readopted special amendments, new rules, and recodifications follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUCHAPTER 26. UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC)

5:80-26.1 Purpose and applicability

This subchapter is designed to implement the New Jersey Fair Housing Act (Act), N.J.S.A. 52:27D-301 et seq., by ensuring that low- and moderate-income units created pursuant to the Act are occupied by low- and moderate-income households for an appropriate period of time. This subchapter provides rules for the establishment and administration of affordability controls on restricted units that receive credit pursuant to the Act (including, but not limited to, units in municipalities that have received a compliance certification or are in the process of seeking compliance certification, as that term is defined at N.J.S.A. 52:27D-304; [page=2771] that have a court-approved settlement agreement and/or judgment of compliance and repose; that have been or are the subject of exclusionary zoning litigation, including, but not limited to, builder's remedy litigation; or that received credit from the former Council on Affordable Housing); or received funding from the Department pursuant to the Affordable Housing Trust Fund (AHTF), previously known as the Neighborhood Preservation Balanced Housing Program; or the Department's Federal HOME Investment Partnerships program, 24 CFR Part 92; that received funding from the Agency through its UHORP, MONI, or CHOICE programs; or with respect to which a municipality or developer contracts with the Agency, HAS, or other experienced administrative agent approved by DCA for the administration of affordability controls pursuant to the Act. Unless expressly stated otherwise herein, this subchapter applies to all restricted units described in the foregoing sentence, regardless of the date on which the units were created; provided, however, that the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code, units that received Balanced Housing funds pursuant to the Agency's Home Express program, or units receiving funding from HUD pursuant to the Federal HOME Investment Partnerships program, 24 CFR Part 92; the National Housing Trust Fund program, 24 CFR Part 93; the HUD Section 202 Supportive Housing for the Elderly program, 24 CFR Part 891; the HUD Section 811 Supportive Housing for Persons with Disabilities program, 24 CFR Part 891; the HUD HOPE VI program; or the Federal Home Loan Bank Affordable Housing Program, 12 CFR Part 1291. However, newly constructed LIHTC units that receive credit pursuant to the Act must be affirmatively marketed by the developer/owner of those units in accordance with N.J.A.C. 5:80-26.16. Otherwise, LIHTC units are governed by New Jersey's Qualified Allocation Plan, codified at N.J.A.C. 5:80-33. Transitional housing units are governed by the rules of their sponsoring programs, such as the Recovery Housing Program, authorized by section 8071 of the SUPPORT for Patients and Communities Act, Pub.L. 115-271, § 8071, 132 Stat. 3894 (2018).

5:80-26.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

"Administrative agent" means the individual or entity responsible for administering the affordability controls of this subchapter with respect to specific restricted units, as designated pursuant to N.J.S.A. 52:27D-321, N.J.A.C. 5:80-26.15 and 5:99-7.

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

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

. . .

"Affordable Housing Trust Fund" or "AHTF" means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the "Neighborhood Preservation Nonlapsing Revolving Fund" and "Balanced Housing" mean the AHTF.

"Age-restricted unit" means a housing unit designed to meet the needs of, and intended exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income

eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 through 44) and in, but not of, DCA.

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

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

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

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

"Compliance certification" means the certification issued to a municipality by the Dispute Resolution Program or by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order for repose." The term "compliance certification" includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

"Continuum of Care" or "CoC" means one of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

"County-level housing judge" means a judge appointed pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

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

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

"Division" means the Division of Local Planning Services in DCA.

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

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

"Fair share plan" means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

. . .

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

"Housing element" means the portion of a municipality's master plan required by the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act, consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which sets forth the municipal [page=2772] present and prospective obligation for affordable housing, determined pursuant to N.J.S.A. 52:27D-304.1.f.

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

. . .

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

. . .

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

. . .

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

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

"Municipal Housing Trust Fund" means a separate, interest-bearing, account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and as governed at N.J.A.C. 5:99-2.

"New Jersey Housing Resource Center" or "Housing Resource Center" means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

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

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

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

"Price differential" means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit * [minus reasonable real estate broker fees]*, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as

if it were not subject to UHAC, *[minus reasonable real estate broker fees,]* determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

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

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

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

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

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

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

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

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

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

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

5:80-26.3 Regional income limits

(a) Administrative agents shall use the regional income limits for the purpose of pricing affordable units and determining income eligibility of households.

(b) Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is:

1. For each county in the housing region, multiply HUD's determination of the county's "median family income" for a family of four by the Decennial Census's estimated number of households within the county;

2. Add the resulting products for each county within the housing region, then divide the sum by the summed total estimated number of households in the housing region. Round the resulting quotient up to the nearest multiple of 100 to obtain the regional median income for a household of four; and

3. To compute the regional median income for other household sizes, multiply the regional weighted average by the percentage adjustment factors used by HUD in the Section 8 program, then round each percentage-adjusted regional weighted average up to the nearest multiple of 100.

(c) To calculate the regional income limits, multiply the relevant percentage by the regional median income for the relevant household size. For example, the regional income limit for a four-person low-income [page=2773] household is equal to 50 percent of the regional median income for a four-person household, while the regional income limit for a one-person very-low-income household is equal to 30 percent of the regional median income for a one-person household.

(d) Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

5:80-26.4 Affordability average; bedroom distribution

(a) The provisions of this section do not apply to prior round units. Instead, prior round units are subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the prior round units are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, are subject to the provisions at N.J.A.C. 5:80-26.3 that were in effect prior to December 20, 2024 (the effective date of the specially adopted amendments, as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)).

(b) For the purposes of determining affordability averages and bedroom distributions:

1. Affordability averages and bedroom distributions for small developments, defined as any affordable development with four or fewer restricted units, may be calculated based on the aggregate of all the restricted units within small developments within the municipality. This aggregation affects only the calculations of affordability and bedroom counts for small developments and is not to be construed to require that the restricted units be developed or administered as one affordable development;

2. Bedrooms may be counted as individual units if they are within restricted units that are group homes, other arrangements in which households live in distinct bedrooms and may share kitchen and plumbing facilities, central heat, and common areas, or provider-managed housing; and

3. Unless stated otherwise, non-integer values calculated pursuant to this section are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to (e)3, 4, or 5, or (g)2, 3, or 5 below may be rounded down or up to the nearest whole number in either direction. For example, 33.1901 will typically be rounded up to 34, but may be rounded down to 33 or up to 34 if calculated pursuant to (e)3, 4, or 5, or (g)2, 3, or 5 below.

(c) Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following rental affordability requirements, which municipalities shall also establish by ordinance that:

1. The average rent for all restricted units within each affordable development is affordable to households earning no more than 52 percent of median income;

2. The maximum rent for all restricted units within each affordable development is affordable to households earning no more than 60 percent of regional median income; however, municipalities may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units. In such developments, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units ***in excess of 13 percent of the restricted units***; and

3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom count for very-low-income, low-income, and moderate-income units, provided that at least 13 percent of all restricted units within each municipality are affordable to and reserved for very-low-income households, with at least half of such units made available for very-low-income families with children. Nothing in this subsection precludes a municipality from requiring affordable developments to have at least 13 percent of restricted units be affordable to and reserved for very-low-income households.

(d) The maximum sale price of restricted ownership units within each affordable development must be affordable to households earning no more than 70 percent of regional median income. Each affordable development must achieve an affordability average of no more than 55 percent for restricted ownership units. In achieving this affordability average, units must be available for at least three different moderate-income prices within each bedroom count with moderate-income ownership units, and for at least two different low-income prices within each bedroom count with low-income ownership units.

(e) Unless otherwise approved pursuant to (l) below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:

1. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
2. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
3. No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
4. At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
5. At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
6. The remainder of the restricted units, if any, are allocated at the discretion of the developer in accordance with the municipality's housing element and fair share plan.

(f) Unless otherwise approved pursuant to (l) below, in each affordable development, restricted units that are age-restricted or supportive housing *, **except those supportive housing units whose sponsoring program determines the unit arrangement,*** must be structured, such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least five percent of those restricted units.

(g) Unless otherwise approved pursuant to (l) below, in each affordable development, the following income distribution requirements must be independently satisfied by the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing, as well as by all of the restricted units in the development, considered in the aggregate:

1. At least 50 percent of all restricted units are low-income or very-low-income units;
2. At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
3. At least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
4. At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
5. At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
6. Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-

low-income units should be two-bedroom units.

(h) For the purposes of determining bonus credits pursuant to N.J.S.A. 52:27D-311.k(5), the minimum number of three-bedroom units required pursuant to this subchapter is determined by taking 20 percent of the total number of family housing units in the municipal fair share plan and housing element, not by summing up the three-bedroom-unit requirements calculated for each affordable development.

(i) In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:

1. An efficiency unit is affordable to a one-person household;

[page=2774] 2. A one-bedroom unit is affordable to a one-and-one-half-person household;

3. A two-bedroom unit is affordable to a three-person household;

4. A three-bedroom unit is affordable to a four-and-one-half-person household; and

5. A four-bedroom unit is affordable to a six-person household.

(j) For age-restricted units and assisted living facilities, the following standards apply:

1. An efficiency unit is affordable to a one-person household;

2. A one-bedroom unit is affordable to a one-and-one-half-person household; ***and***

3. A two-bedroom unit **is** affordable to a two-person household or to two one-person households*[*; and]* ***.***

[4. A three-bedroom unit is affordable to a two-and-one-half-person household.]

(k) The provisions of this section, except for (j) above, do not apply to affordable developments financed pursuant to UHORP, MONI, or CHOICE or to assisted living residences, each of which must comply with applicable Agency rules.

(l) The requirements at (e), (f), and (g) above must be satisfied by all restricted units in the municipality, considered in the aggregate. The individual requirements at (e), (f), and (g) above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Waivers approved by the Division must be published on a public webpage within 30 days of approval. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge.

5:80-26.5 Occupancy standards

(a) Prior round units whose siting and creation are consistent with a prior round development or zoning designation that received COAH or court approval on or before June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner, are not subject to the requirements detailed in this subsection. Rather, those prior round units remain subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the prior round units are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, remain subject to N.J.A.C. 5:80-26.3(f) as it was in effect prior to December 20, 2024. Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following occupancy standards:

1. For any 100-percent affordable development comprising one or more restricted units:

i. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;

ii. Each bedroom in each restricted unit must have at least one window; and

iii. Restricted units must include adequate air conditioning and heating;

2. For developments comprising market-rate rental units and restricted rental units:

i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes;

ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations;

iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services;

iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;

v. Restricted units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the same type of cooling and heating sources as market-rate units of the same unit type;

vi. Each bedroom in each restricted unit must have at least one window;

vii. Restricted units must be of the same unit type as market-rate units within the same building; and

viii. Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;

3. For developments containing for-sale units, including those with a mix of rental and for-sale units, (a)2 above shall govern the rental units, while for-sale units shall adhere to the following:

i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes;

ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations;

iii. Restricted units may be of different housing product types than market-rate units, provided that developments containing market-rate duplexes, townhomes, and/or single-family homes offer restricted housing options that also include duplexes, townhomes, and/or single-family homes;

iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;

v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s);

vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;

vii. Each bedroom in each restricted unit must have at least one window; and

viii. Restricted units must include adequate air conditioning and heating;

4. If the affordable development is constructed in phases, than:

i. No more than 25 percent of the market-rate units plus one, may be completed prior to the completion of 10 percent of the restricted units;

ii. No more than 50 percent of the market-rate units may be completed prior to the completion of 50 percent of the restricted units;

iii. No more than 75 percent of the market-rate units may be completed prior to the completion of 75 percent of the restricted units; and

iv. No more than 90 percent of the market-rate units may be completed prior to the completion of all of the restricted units.

5. The individual requirements at (a)1, 2, 3, and 4 above, except for (a)4iv above, may be waived or altered with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Waivers approved by the Division must be published on a public webpage within 30 days of approval. Any waiver or alteration that would result in a material deviation from the municipal housing element or fair share plan must receive written approval from a county-level housing judge.

(b) In referring certified households to specific restricted units, the administrative agent shall strive, to the extent feasible and without causing an undue delay in occupying the unit, to:

[page=2775] 1. Ensure each bedroom is occupied by at least one person, except for age-restricted units;

2. Provide a bedroom for every two adult occupants;

3. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and

4. Avoid placing a one-person household into a unit with more than one bedroom.

5:80-26.6 Control periods for ownership units

(a) Each restricted ownership unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:

1. Thirty years for any ownership unit created on or after December 20, 2024;

2. Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability;

3. Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024; and

4. Governed by the form of UHAC in effect as of December 20, 2004, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.

(b) The control period for a restricted ownership unit commences on the date that the initial certified household takes title to the unit or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.

(c) The control period for a restricted ownership unit continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:

1. If the municipality exercises the right to extend the affordability controls on the unit pursuant to (h) below, no exit sale occurs and a new control period commences; or
2. If the municipality does not exercise the right to extend the affordability controls on the unit pursuant to (h) below, the affordability controls terminate following the exit sale.

(d) For each restricted ownership unit, at initial sale, the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price of the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the non-restricted, fair market value of the unit, based on either an appraisal or the unit's equalized assessed value. Following this determination, the initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser and the purchaser's heirs, successors, and assigns to repay a recapture amount at the time of the exit sale.

1. The recapture note and recapture lien must:

- i. Be in favor of the Agency, if the unit was financed through UHORP, MONI, or CHOICE, in favor of the State if State funds other than UHORP, MONI, or CHOICE contributed to the financing of the unit, in favor of the nonprofit if the unit was developed by a qualified nonprofit entity without Agency or State funding, and, in all other cases, in favor of the municipality in which the unit is located;
- ii. Be in the applicable forms prescribed at N.J.A.C. 5:80-26 Appendices D-2, L, M, N, O, and Q, incorporated herein by reference;
- iii. In addition to the preliminary recapture amount calculated at initial sale, include the restricted price and the non-restricted, fair market value of the unit at the time of initial sale; and
- iv. Provide that the actual recapture amount will be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount.

2. The recapture lien must provide that:

- i. The recapture amount be reduced by the cumulative dollar value of capital improvements made after the last non-exempt sale during the control period for improvements and/or upgrades to the unit, as may be approved by the administrative agent, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien;
- ii. The lien will remain a lien on the property until it is satisfied and the administrative agent files a discharge; and
- iii. A municipality that exercises the option to purchase the restricted ownership unit pursuant to (h)6ii below is not required to satisfy the recapture lien.

(e) For each restricted ownership unit not governed by a 95/5 restriction, all conveyances must be made by deeds and restrictive covenants in the forms prescribed at N.J.A.C. 5:80-26 Appendices A, C, D-1, D-2, D-4, L, M, N, O, and Q, incorporated herein by reference, as applicable. For each restricted ownership unit governed by a 95/5 restriction, all conveyances during the 95/5 control period must be made by deeds and restrictive covenants in the forms prescribed at N.J.A.C. 5:80-26 Appendices B, C, G, and H, incorporated herein by reference. Prior to the issuance of any building permit for the new construction of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-1, incorporated herein by reference, that specifies, at a minimum, the total number of ownership units to be constructed, the number of restricted ownership units to be constructed, the anticipated numbers of restricted ownership units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of the full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished.

(f) In furtherance of the State's vested interest in maintaining affordable housing, all conveyances of restricted ownership units are deemed to have been made by deeds and restrictive covenants as prescribed at (e) above, regardless of whether such required instruments have actually

been prepared or executed. DCA, the Agency, and/or any municipality or party may enforce the restrictions that would have been included in such instrument(s), as if such instrument(s) had, in fact, been prepared and duly executed. A sale or transfer of ownership made, other than in conformity with the requirements of this subchapter is not an authorized non-exempt sale; thus, all requirements, restrictions, and liens associated with the unit being sold or transferred remain in effect until full satisfaction thereof and compliance with this subchapter.

(g) A municipality may, in its sole discretion, elect to release a restricted ownership unit from the affordability controls of this subchapter prior to any intended exit sale if:

1. The minimum duration described at (a) above has fully elapsed by the effective date of release;
2. The municipal election to release the restricted unit from the affordability controls of this subchapter is made pursuant to a municipal ordinance authorizing such elections;
3. The recapture lien required pursuant to (d) above remains in full force and effect; and
4. If the recapture lien is in favor of the municipality, the municipal housing element and fair share plan require that all proceeds from satisfaction of recapture liens on restricted ownership units be deposited into the municipal housing trust fund to be used to create new restricted units to replace units released from affordability controls within the municipality.

[page=2776] (h) A municipality may, in its sole discretion, elect to extend the affordability controls of this subchapter on a restricted ownership unit; provided that:

1. The unit's deed-restricted control period *[will]* end ***s***:
 - i. In the current round of housing obligations; or
 - ii. In the next round of housing obligations, if the municipal election to extend affordability controls is made no earlier than one year before the end of the current round of housing obligations;
2. The recapture lien *[required pursuant to (d) above]* remains in full force and effect;
3. A new deed restriction is issued that commences a new control period of at least the minimum duration specified at (a)2 above;
4. If the municipality has not received notice of any intent by the owner to make an exit sale, the municipality notifies the owner, by certified mail and, if known, by email, of its election to extend affordability controls no earlier than one year and no later than 180 days before the *[effective date of extension]* ***execution of a new deed restriction extending affordability controls***, during which time the owner shall have the opportunity to seek and provide notice of intent for an exit sale and/or obtain an appraisal of the value of their unit as if it were not subject to UHAC;
5. If the municipality has received notice of the owner's intent to make an exit sale, the municipality notifies the owner, by certified mail and, if known, by email, of its election to extend affordability controls no later than 60 days after receiving notice of the owner's intent; and
6. The municipality either:
 - i. Pays to the owner of the restricted unit an amount no less than the equity share amount; *[or]*
 - ii. Purchases the restricted unit at a price no less than the total of the maximum restricted sale price and the equity share amount, then conveys the unit to a very-low-, low-, or moderate-income purchaser at a price not to exceed the maximum restricted sale price*[.]* ***; or**
 - iii. **If the restricted unit is governed by a deed restriction executed prior to November 6, 2025, extends affordability controls pursuant to the terms of the governing deed restriction, provided that a new deed restriction is executed according to the requirements of this subchapter.***

(i) The owner of a restricted ownership unit must notify the administrative agent and municipal housing liaison, by mail, of any intent to sell the unit at least 60 days prior to entering into an agreement for an exit sale. Upon receipt of the owner's notice, the municipality has 60 days to elect to extend controls on the unit pursuant to (h) above. If the owner does not sell the unit within one year of the date of the delivery of the notice of intent to sell, *[the option to extend controls on the unit will be restored and]* the owner must submit a new notice of intent to sell at least 60 days before any future proposed date of sale.

(j) During the 60-day period following notice of an owner's intent to make an exit sale, any non-municipal entity favored on the recapture note and recapture mortgage lien pursuant to (d)1i above may give notice of intent to purchase the restricted ownership unit. If the municipality does not extend affordability controls on the unit, the non-municipal entity may purchase the unit and convey it to an eligible purchaser pursuant to (h)6ii above; provided that a new deed restriction is issued that commences a new control period of at least the minimum duration specified at (a)2 above.

(k) Any price differential, equity share amount, or recapture amount must be based on a price that bears a reasonable relationship to the housing unit's fair market value.

1. For all exit sales, the administrative agent shall examine the contract of sale to determine if the proposed sale price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent may not approve any exit sale if the administrative agent determines that the sale price does not bear a reasonable relationship to fair market value. The administrative agent must make such a determination within 20 days of receipt of the contract of sale and then calculate the price differential and recapture amount;

2. For all municipal extensions of affordability controls ***pursuant to (h)6i and ii above***, the price differential used to determine the equity share amount must be based on either an appraisal or the unit's equalized assessed value. The administrative agent shall determine if the price differential is based on a price that bears a reasonable relationship to the housing unit's fair market value. The municipality may not make or approve any payment of an equity share amount that is not reasonably related to the housing unit's fair market value; and

3. The administrative agent shall adopt an appeal procedure by which an owner may submit written documentation requesting the administrative agent to recalculate the price differential, equity share amount, and/or recapture amount if the owner believes an error has been made, or to reconsider a determination that a price does or does not bear a reasonable relationship to fair market value. A determination made as a result of such an appeal is a final determination of the administrative agent appealable pursuant to N.J.A.C. 5:80-26.20.

(l) The entry and enforcement of any judgment of foreclosure on a restricted ownership unit shall ***not*** extinguish ***the*** affordability controls * [; however, the municipality, as well as any non-municipal entity favored on the recapture note and recapture mortgage lien pursuant to (d)1i above, has 60 days following notice of foreclosure to purchase the unit at an amount not to exceed the maximum restricted sale price and convey the unit to an eligible purchaser, including the existing owner, at a price not to exceed the maximum restricted sale price; provided that a new deed restriction is issued with a control period that ends no earlier than the original control period end date effective before foreclosure. Priority for such purchase goes to the municipality, then, if the municipality does not purchase the unit, to the non-municipal entity]* ***set forth in this subchapter***.

(m) All extensions of affordability controls on restricted ownership units must be made according to the requirements of this section to receive credit pursuant to the Act. This requirement applies to extensions of affordability controls on any restricted ownership units currently governed by control periods that commenced prior to *[December 20, 2024]* ***November 6, 2025***, including all units governed by 95/5 restrictions.

(n) Upon termination of affordability controls on a restricted ownership unit, the administrative agent shall, within 60 days of termination, execute a release, substantially in the form set forth at N.J.A.C. 5:80-26 Appendix F-1, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit shall record the release instruments and promptly return the recorded originals to the administrative agent. The owner of a unit released from the affordability controls of this subchapter may sell the unit to any purchaser at the fair market price.

5:80-26.7 Price restrictions for ownership units

(a) The administrative agent shall set the initial purchase price for a restricted ownership unit. If the unit is receiving assistance pursuant to the AHTF, the price must be consistent with the AHTF grant agreement.

(b) The initial purchase price for all restricted ownership units is calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, do not exceed $\frac{33}{100}$ **30** percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.

(c) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price is the $\frac{100}{100}$ **most recent non-exempt** purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d); [page=2777] however, the increase for capital improvements may not result in the final maximum resale price exceeding whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to (b) above. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to (b) above. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.

(d) The administrative agent shall approve all resale prices, in writing, and in advance of the resale, to ensure compliance with the foregoing standards. The administrative agent may approve an actual resale price that is lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline, and shall not calculate a resale price lower than the last recorded purchase price unless they determine that the decreased price is a result of such reasons.

(e) The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. $\frac{100}{100}$ [Condominium or homeowner association fees and special assessments charged to affordable units shall be based on the common interest percentage and the full build-out budget. Affordable units in a condominium or homeowner association] **Notwithstanding the foregoing sentence, condominium units** subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance. $\frac{100}{100}$ [If the affordability controls on such units are extended by the municipality or by agreement between the municipality and the affordable homeowner, the existing fee structure will be maintained. Any increase to the homeowner association fee, condominium association fee, or amenity fee that would cause an owner of an affordable unit to exceed the housing costs specified in this subchapter is prohibited. If renovations or charges related to a special assessment do not impact or benefit affordable units, affordable unit owners may not be subject to the special assessment charge.]

5:80-26.8 Buyer income eligibility for ownership units

(a) Very-low-income ownership units are reserved for households with a household income less than or equal to 30 percent of regional median income. Low-income ownership units are reserved for households with a household income less than or equal to 50 percent of regional median income. Moderate-income ownership units are reserved for households with a household income less than 80 percent of regional median income. For example, a household earning 48 percent of regional median income may qualify for any low-income or moderate-income unit; however, a household earning 53 percent of regional median income would qualify for a moderate-income unit, but would not qualify for a low-income unit. Notwithstanding the foregoing, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a low-income unit and sold at a low-income price point such that on the next resale the unit will still be affordable to low-income households and able to be purchased by a low-income household. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the affirmative marketing requirements at N.J.A.C. 5:80-26.16, then advertised

as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

(b) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the unit (including principal, interest, taxes, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income. The administrative agent, however, may exercise its discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 35 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 through 35, including certification from a nonprofit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

5:80-26.9 Limitations on indebtedness secured by ownership units; subordination

(a) Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, and the owner may not incur any such indebtedness unless and until the administrative agent has determined and confirmed, 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 an ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.7(c).

5:80-26.10 Capital improvements to ownership units

(a) The owner of an ownership unit may apply to the administrative agent to recalculate the maximum sale price for the unit to reflect eligible capital improvements made since they purchased the unit. Eligible capital improvements are limited to those that make the unit suitable for a larger household, that is adding bedrooms and/or bathrooms. However, the maximum sale price of an improved housing unit may not exceed the limits of affordability for the larger household.

(b) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, or flooring) are included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, subject to 10-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning may not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

(c) Capital improvements, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d), approved, in writing, by the administrative agent for non-cosmetic replacement of existing items of property or non-cosmetic improvement to the property (for example, replacement of a [page=2778] leaky roof, installation of a solar energy system owned by the homeowner, installation of energy-efficient windows, or replacement of broken appliances with ENERGY STAR-labeled products) shall not cause the maximum sale price to be recalculated, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)2i and into calculating adjustments to the maximum sale price pursuant to N.J.A.C. 5:80-26.7(c). Capital improvements are subject to 10-year, straight-line depreciation.

5:80-26.11 Maintenance of restricted ownership units

Upon the first transfer of title that follows the expiration of the deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6, if requested by the administrative agent, the owner of a restricted ownership unit shall obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards.

5:80-26.12 Control periods for rental units

(a) Each restricted rental unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:

1. Forty years for any rental unit created on or after December 20, 2024;
2. Thirty years for any rental unit in a 100 percent affordable property that, on or after December 20, 2024, elects to extinguish its existing deed restriction to enter into a new deed restriction and commence refinancing and/or rehabilitation for the purpose of preservation;
3. Thirty years for any other rental unit that, on or after December 20, 2024, extends its affordability controls for a new term of affordability, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20, that in combination with the original term results in 60 years of affordability;
4. Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round rental unit that was issued its certificate of occupancy before December 20, 2024; and
5. Governed by the form of UHAC in effect as of December 20, 2004, for any prior round rental unit that was issued its certificate of occupancy between December 20, 2004 and December 20, 2024, and that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.

(b) The control period for the restricted rental unit(s) in a development commences on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension.

(c) The control period for the restricted rental unit(s) in a development continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, each restricted rental unit in the development remains subject to the affordability controls of this subchapter until:

1. The occupant household vacates the unit, at which point affordability controls terminate; or
2. The occupant household's household income is found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days.

(d) The deeds of all real property that include restricted rental units created or extended pursuant to the existing rules must contain deed-restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E. The deed restriction:

1. Is to be read in accordance with the requirements of this subchapter, such that any term that directly conflicts with or circumvents the requirements of this subchapter, regardless of intention, is unenforceable, of no legal effect, and contrary to the public policy of the State;
2. Is governed by the requirements of this subchapter regardless of the language ultimately utilized in the recorded deed restriction document;
3. Is severable, such that invalidation of any provision due to inconsistency with these regulations will not terminate the deed restriction, but, rather, will result in the deed restriction being read to include the provision of these regulations with which the original language was inconsistent;
4. Has priority over all mortgages on the property; and
5. Must be filed with the records office of the county in which the unit is located by the developer or owner of the restricted rental units, who then must, no later than 30 days after the commencement of the control period, provide to the administrative agent:

i. A copy of the filed deed restriction; and

ii. Certification by the preparer of the deed restriction that the deed restriction conforms with all requirements of this subchapter, and that the deed restriction language at N.J.A.C. 5:80-26 Appendix E, has been included therein.

(e) Failure to record a deed restriction does not, under any circumstances, excuse a property from the requirements of this subchapter. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-2, incorporated herein by reference that specifies, at a minimum, the total number of rental units to be constructed/rehabilitated, the number of restricted rental units to be constructed/rehabilitated, the anticipated numbers of restricted rental units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of a full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished. The full deed restriction must be recorded prior to receiving a certificate of occupancy.

(f) A restricted rental unit remains subject to the affordability controls of this subchapter despite the occurrence of any of the following events:

1. A sublease or assignment of the lease of the unit;

2. A sale or other voluntary transfer of ownership of the unit;

3. The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure; or

4. The end of the control period, until the occupant household vacates the unit pursuant to (c)1 above or is found to be income-ineligible pursuant to (c)2 above.

(g) A municipality may, in its sole discretion, elect to release any or all of the restricted rental units in a development from the affordability controls of this subchapter prior to the end of the deed-restricted control period if:

1. The minimum duration of the control period described at (a) above has fully elapsed by the effective date of release;

2. The municipal election to release the restricted unit(s) from the affordability controls of this subchapter is made pursuant to a municipal ordinance authorizing such elections; and

3. The release is not inconsistent with the municipal housing element and fair share plan.

(h) A municipality may, in its sole discretion, elect to extend the affordability controls of this subchapter on any or all of the restricted rental units in a development; provided that:

1. The deed-restricted control period *[has not already ended, but will]* end ***s***:

i. In the current round of housing obligations; or

ii. In the next round of housing obligations, if the municipal election to extend affordability controls is made no earlier than two years before the end of the current round of housing obligations;

2. The municipal election to extend the affordability controls is made pursuant to a municipal ordinance authorizing such elections;

3. A new deed restriction is issued, containing deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E that commences a new control period of at least the minimum duration specified at (a)3 above;

[page=2779] 4. If the municipality has not received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner of the development, by certified mail and by email, of its election to extend affordability controls no later than 180 days prior to the *[effective date of extension]* ***execution of a new deed restriction extending affordability controls***, except that the notice period may be shortened with consent of the owner;

5. If the municipality has received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner, by certified mail and by email, of its election to extend affordability controls no later than 180 days after receiving notice of the owner's intent;

6. If permitted by the relevant statute, the municipality grants or extends an agreement for payment in lieu of taxes pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., or pursuant to N.J.S.A. 55:14K-37.b; and

7. If seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(7), to support the preservation of the restricted rental units, the municipality contributes:

i. At least \$ 12,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if an agreement for payment in lieu of taxes has been granted or extended;

ii. At least \$ 17,500 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if no agreement for payment in lieu of taxes has been granted or extended; or

iii. Any other assistance not less than the equivalent of \$ 10,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)), if the assistance was approved pursuant to N.J.S.A. 52:27D-329.2(4) as part of the municipality's compliance certification or by DCA, and if the assistance is consistent with the municipality's housing element and fair share plan.

(i) The owner of a restricted rental unit must notify the administrative agent and municipal housing liaison, by certified mail and by email, as well as all current tenants, by plain language notice, of any intent for the affordability controls on the unit to be extinguished at the end of the control period no earlier than *[180 days]* ***one year*** before the end of the control period. Upon receipt of the owner's notice, the municipality has 180 days to extend controls on the unit pursuant to (h) above. Affordability controls shall remain in effect during the 180-day notice period, or, if the owner never provides notice, indefinitely, unless the municipality affirmatively declines to extend affordability controls.

(j) The owner of a 100 percent affordable rental development may elect to extinguish the existing deed restriction and extend the affordability controls of this subchapter on all of the restricted rental units in the development, provided that:

1. A refinancing and/or rehabilitation of the property is commenced;

2. A new deed restriction is issued, containing deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E that commences a new control period of at least the minimum duration specified at (a)2 above; and

3. Either of the following is true:

i. The current control period has been in effect for at least 30 years; or

ii. The property is participating in a State-administered preservation program that has allowed the refinancing and/or rehabilitation to commence prior to the 30th year of the deed restriction as necessary to preserve affordable housing.

(k) All extensions of affordability controls on restricted rental units must be made according to the requirements of this section to receive credit pursuant to the Act, including any restricted units that is currently governed by control periods that commenced prior to *[December 20, 2024.]* *** November 6, 2025***

(l) For restricted rental units, upon municipal release from the affordability controls of this subchapter pursuant to (g) above, or at the end of the control period, if no extension of affordability controls has occurred:

1. The administrative agent, within 60 days, shall execute a release, in the form set forth at N.J.A.C. 5:80-26 Appendix F-2, incorporated herein by reference, of all restriction instruments with respect to the unit(s), but providing that each released unit remains subject to the affordability controls of this subchapter until the occurrence of (c)1 or 2 above;
2. The owner of the unit(s) shall record the release instruments and return the recorded originals promptly to the administrative agent; and
3. Following the termination of affordability controls on the unit(s), the owner of the unit(s) may lease each unit to any tenant at any rent.

5:80-26.13 Restrictions on rents

(a) The administrative agent shall set the initial rent for a restricted rental unit. If the unit is receiving assistance pursuant to the AHTF, the initial rent must be consistent with the AHTF grant agreement. The initial rent must be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the rent is subject to the affordability average requirement at N.J.A.C. 5:80-26.4. For assisted living units, the combined cost of rent, food, and services may not exceed 80 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4.

(b) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

(c) Approved initial rents are fixed as of the start of the property's initial lease-up. Rent increases may not be implemented during lease-up. Each new, separately financed phase of a project may seek MHL approval to use the then-effective initial rents, provided that the lease-up of the phase will occur at least 12 months after the prior phase was placed in service. Rents may not be increased more than once a year or by more than one increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within one year of the last occupancy and prior to the next published increase amount.

1. No additional fees, operating costs, or charges may be added to the approved rent (except in the case of units in assisted living residences, for the customary charges for food and services) without the express written approval of the administrative agent. Operating costs for the purposes of this section include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household. Any fee structure that would remove or limit affordable renters' access to any amenities or services that are required or included for market-rate renters is prohibited. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rent of the applicable restricted unit and are payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit. Fees for truly optional, unit-specific, non-communal items that are charged to market-rate tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may be charged to affordable tenants, if applicable. Pet fees may not exceed [page=2780] \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited. Fees for other optional, unit-specific, non-communal items may not exceed the amounts charged to market-rate tenants.

2. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with (c)1 above, may continue until December 20, 2025, or until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

(d) A written lease is required for all restricted rental units, except for units in assisted living residences. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated in the lease. All lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.

(e) The lease must specify which tenant-paid utilities are included in the utility allowance. At the time of lease-up, tenants must be provided a copy of the utilities chart that was used to determine the utility allowance. The allowance for utilities must be consistent with one of the following:

1. The utility allowance approved by DCA for its Section 8 program;
2. For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency; or
3. For units that receive ENERGYSTAR certification, a utility allowance calculated according to an energy consumption model provided by an energy consultant with an active registration with the New Jersey Board of Public Utilities, subject to approval by the administrative agent.

5:80-26.14 Tenant income eligibility

(a) Low-income rental units are reserved for households with household incomes less than or equal to 50 percent of regional median income. Moderate-income rental units are reserved for households with household incomes less than or equal to 80 percent of regional median income. Very-low-income rental units are reserved for households with household incomes less than or equal to 30 percent of regional median income.

(b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household, or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- 1.-3. (No change.)
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 any of the circumstances at (b) above with the administrative agent, who shall counsel the household on budgeting.

5:80-26.15 Administrative agent

All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Dispute Resolution Program, and N.J.A.C. 5:99-7. The administrative agent shall administer and enforce the affordability controls set forth in this subchapter, which actions are reviewable by the Municipal Housing Liaison pursuant to N.J.S.A. 52:27D-321. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low-, low-, and moderate-income households. The administrative agent shall also fulfill the requirements and responsibilities identified at N.J.A.C. 5:99-7. Pursuant to N.J.A.C. 5:99-7.2, the administrative agent shall have the authority to discharge and release any or all instruments, as set forth at N.J.A.C. 5:80-26 appendices, filed of record to establish affordability controls.

5:80-26.16 Affirmative marketing

(a) The affirmative marketing *[plan]* ***process*** is a regional marketing strategy intended to reach those potentially eligible persons who are least likely to apply for affordable housing units. It is a continuing program that directs all marketing activities toward the housing region in

which the municipality is located throughout the control period. The affirmative marketing *[plan]* ***process*** is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50. Unless stated otherwise, supportive housing units ***, including group homes,*** must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable. The marketing of restricted units must be consistent with the affirmative marketing plan adopted by the municipality.

(b) The administrative agent is responsible for the affirmative marketing of affordable units, including accepting applications and maintaining a list of applicants for each affordable development. The administrative agent shall document and report the affirmative marketing plan for the municipality and the affirmative marketing activities undertaken for each of the units within their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section.

(c) In accordance with N.J.A.C. 5:99-7, municipalities may designate an experienced municipal staff person approved by the Division to be the administrative agent responsible for implementing the affirmative marketing plan. If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative agent(s) approved by the Division to administer the affirmative marketing plan(s). The municipality is ultimately responsible for the proper administration of the affirmative marketing program, including initial sales, rentals, resales, and re-rentals. The municipality shall also ensure that all affordable unit, applicant, sales records, and other relevant files are returned to the municipality for reporting purposes and to aid with future resales.

(d) The affirmative marketing plan and all advertisements for the affordable units, must contain the following information:

1. The name and location of the housing project;
2. An address sufficient to find directions to the housing units;
3. A range of prices or rent for the affordable housing units;
4. The sizes, as measured in number of bedrooms and square footage, of the affordable housing units;
5. The types (that is, family, age-restricted, or supportive) and number of affordable units available;
6. The number of units available to very-low-, low-, and moderate-income households within the pertinent eligible income ranges;
7. The accessibility features, if any, of the affordable housing units;
8. The maximum income permitted to qualify for the affordable housing units;
9. The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)2;
10. Where applications (paper and online) for the affordable housing units may be found;
11. The expected lease-up/closing date(s) for the affordable housing units;
12. A description of the random selection process that will be used to select occupants of affordable housing units and the expected date of the random selection;
13. The business hours when interested households may obtain paper applications for the affordable housing units;
- [page=2781] 14. Contact information, including an email address and phone number that are regularly monitored by the administrative agent;
15. The name of the sales agent and/or rental manager; and
16. Application fees, if any.

(e) The affirmative marketing plan must identify specific strategies and mediums that will be used to advertise available housing units in the region in accordance with the goals and purposes stated at (a) above. The plan must include the following:

1. The names of specific radio stations, and television stations, and potential paid targeted digital advertising opportunities to be used throughout the housing region;
2. The names of specific newspapers and other publications circulated within the housing region, such as neighborhood-oriented weekly newspapers, religious publications, and organizational newsletters;
3. (No change in text.)
4. The names of specific community and regional organizations that will aid in soliciting low- and moderate-income applicants. Such organizations may include nonprofit, religious, governmental, fraternal, civic, and other organizations;
5. The names of specific internet websites that operate as housing search websites and municipal and county websites where the affordable homes will be advertised;
6. The names of specific social media websites and platforms where advertisements will be posted or linked;
7. The locations of public transit stops in the housing region where flyers or other advertisements will be posted; and
8. Other advertising and outreach efforts to groups that are least likely to be reached. If the applicant demonstrates that other advertising and outreach efforts are substantially more effective in reaching the target population than any of the means enumerated at (e)1 through 7 above, the Division may approve a plan that substitutes an equal number of those means.

(f) In implementing the marketing program, the administrative agent shall:

1. Post a listing of the available affordable housing units to the New Jersey Housing Resource Center at least 60 days before the random selection process or within one day following the date the owner, developer, property manager, or other administrative entity provides information regarding the application process to prospective applicants or solicits any applications from potential applicants through any other means pursuant to N.J.S.A. 52:27D-321.6. It is the responsibility of the Municipal Housing Liaison, in coordination with the administrative agent(s), to ensure compliance with all provisions of N.J.S.A. 52:27D-321.3 through 321.6;
2. Within one business day of listing the affordable housing units on the New Jersey Housing Resource Center, notify the local Continuum of Care of any supportive housing rental units that are reserved for individuals and families that are homeless and of any permanent supportive housing rental units;
3. Publish at least one advertisement in a regional print or digital newspaper;
4. Advertise the units on at least one housing search website, in addition to the Housing Resource Center;
5. Undertake at least two additional regional marketing strategies using the sources listed at (e)1 through 8 above, with at least one non-digital strategy if the newspaper advertisement was in print, or with at least two non-digital strategies if the newspaper advertisement was digital; and
6. Designate an experienced staff person to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Alternatively, the administrative agent or municipality may contract with a HUD-certified housing counselor or an otherwise experienced entity approved by the Division to provide such counseling services.

(g) The affirmative marketing process must begin at least four months prior to expected occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities employed pursuant to (f) above must be employed at the start of the marketing program. For for-sale units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted,

except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of for-sale units, in which case, applications must be accepted for no less than 30 days.

(h) No random selection may be conducted prior to 60 days following the initial advertisement on the New Jersey Housing Resource Center.

(i) Applications for affordable housing or notices thereof, if offered online, must be available in multiple locations, including, if they exist, the county administration building and the county library for each county within the housing region; the municipal administration building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. The municipality shall post the application links and/or notices of affordable housing either directly on the home page of the municipality's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the municipality's official website. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

(j) If the municipality intends to require affordable housing developers to incur the cost of affirmative marketing and advertising for affordable units, the municipality must adopt such policy and make the requirement a condition of the project's planning and zoning board approvals.

(k) In carrying out the affirmative marketing process, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64.

5:80-26.17 Household certification and referral

(a) The administrative agent shall secure all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households of low- or moderate-income. No household may be referred to a restricted unit or receive a commitment with respect to a restricted unit unless that household has received a signed and dated certification, as set forth in this section, and has executed a certificate in the form set forth at N.J.A.C. 5:80-26 Appendices D-3, J, or K, as applicable.

(b) The administrative agent shall prepare a standard form of certification and shall sign and date one such certification for each household when certified. An initial certification is valid for no more than 180 days unless a valid contract for sale or lease is executed within that time period, or in the case of a restricted ownership unit under construction, if the household has been referred to and has accepted the unit. If a valid contract for sale or lease is executed, the certification is valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. If the household has been referred to and accepted the restricted ownership unit under construction, the certification is valid until such time as the unit is ready for occupancy and a valid contract for sale of the unit is executed, or until such time as the household withdraws its acceptance of the restricted unit and no occupancy has occurred. Certifications may be renewed, in writing, at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent. The administrative agent must provide applicant households a minimum of 10 business days from the date of initial request for information to produce documentation necessary for certification. The administrative agent shall transmit notice to each applicant household as to whether certification has been granted or denied, including the reason(s) for denying certification, if any, no later than five business days after determining the household's eligibility.

1. When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's annual income to the regional low- and moderate-income limits calculated pursuant to N.J.A.C. 5:80-26.3. For the purposes of this subchapter, the administrative agent shall determine household income in accordance with the procedure for calculating annual income at the time of initial occupancy and assistance, stipulated at 24 CFR 5.609, as it was in effect on December 20, 2024, and described in Chapter 5 of HUD [page=2782] Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, which is available at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgb/4350.3.

2. Household income is calculated by projecting current gross income over a 12-month period.

3. The administrative agent shall deny the certificate of eligibility if the applicant household meets income eligibility requirements but possesses net household assets valued at an amount greater than the net asset limit, defined as the estimated median home equity held by New Jersey homeowners as determined annually by the United States Census Bureau's Survey of Income and Program Participation and published by the Census Bureau in "State-Level Wealth, Asset Ownership & Debt of Households Tables" in the "Wealth and Asset Ownership Data Tables" series, available at <https://www.census.gov/topics/income-poverty/wealth/data/tables.html>. Administrative agents shall determine household net assets in accordance with the procedure for calculating "net family assets" stipulated at 24 CFR 5.603(b), as it may be updated from time to

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

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

(c) The administrative agent shall require each member of an applicant household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 participating in a registered apprenticeship program, to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income or who qualify for the full-time student or apprenticeship exemption must produce documentation as to their current status.

(d) Income verification documentation may include, but is not limited to, the acceptable forms of verification identified at Appendix 3 of HUD Handbook 4350.3 REV-1, available online at <https://www.hud.gov/sites/documents/43503a3hsggh.pdf>, for each and every member of a household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 in a registered apprenticeship program.

(e) (No change in text.)

(f) The administrative agent may deem ineligible an applicant who is unable to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide an opportunity for future savings.

(g) The administrative agent may deem ineligible an applicant who is unable to verify funds claimed as assets, household composition, or other facts represented in the application. However, for purposes of the exception to the homeownership restriction at (b)3v above, the administrative agent must accept self-certification from any member of an applicant household claiming to be a victim of domestic violence.

(h) The administrative agent shall deny a certificate of eligibility to an applicant who makes any willful or material misstatement of fact in seeking eligibility.

(i) The administrative agent shall screen households that apply for low- and moderate-income housing for preliminary income eligibility by comparing their total gross annual income to the regional low- and moderate-income limits calculated for that year. In lieu of calculating household income, the administrative agent, at their discretion, may accept a household income determination made within the previous 12 months to assess eligibility for the Temporary Assistance for Needy Families (TANF) block grant, Medicaid, the Supplemental Nutrition Assistance Program (SNAP) benefit, the Earned Income Tax Credit (EITC), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Supplemental Security Income, public housing, Section 8, or low-income housing tax credits (LIHTC). Additionally, the administrative agent shall accept household income determination made within the previous 180 days by another administrative agent who has successfully completed the Division's Education Program for administrative agents described at N.J.A.C. 5:99-9, as promulgated pursuant to N.J.S.A. 52:27D-321.i(1). The administrative agent must accept a household income determination made within the previous 180 days by the

Department or the Agency, unless they conclude that the previous determination is rendered inapplicable by a compelling circumstance, such as a change in household composition.

(j) The administrative agent must accept self-certification from any member of an applicant household claiming to be a victim of domestic violence for purposes of the exception to the homeownership restriction at (b)3v above.

1. Any applicant information submitted to an administrative agent, including the fact that an individual is a victim of domestic violence, must be maintained in strict confidence by the administrative agent; and

2. The administrative agent may not enter confidential information about a victim of domestic violence or their experience of domestic violence into any shared database or disclose any such information to any other entity or individual, except to the extent that the disclosure is requested or consented to, in writing, by the victimized individual in a time-limited release, required for use in an eviction proceeding, or otherwise required by applicable law.

(k) The administrative agent shall employ a random selection process when referring households to affordable units. *[With approval from the Division, supportive housing units may be exempted from the random selection process.]* ***Supportive housing units, including group homes, must comply with the selection processes of their respective sponsoring programs, where applicable.*** The administrative agent may elect to conduct the random selection prior to or after households are certified for eligibility. If conducting the random selection following household certification, the administrative agent shall notify all applicants of their eligibility or ineligibility in advance of the random selection.

1. Any or all of the following factors may be used to filter and/or rank the applicant pool in conducting the random selection. Such factors must be determined in advance of the random selection, and the affirmative marketing must disclose such factors and how they will be used. The administrative agent shall avoid excluding any applicant from the random selection on the basis of minor defects, ambiguities, and/or omissions in the application, including information indicating a household income that exceeds, but is plausibly close to the eligible limit for the unit(s) in question:

- i. Whether the household is seeking a for-sale unit, rental unit, or either;
- ii. The minimum number of bedrooms the household qualifies for;
- iii. Whether the household is seeking a very-low-income, low-income, or moderate-income unit;
- iv. The unit type applicable to the household (that is, family, age-restricted, or supportive);
- v. Whether the household is seeking an accessible unit;
- vi. For supportive housing applicants only, whether any member of the household belongs to the eligible population;
- vii. The occupancy standards at N.J.A.C. 5:80-26.5(b); and
- viii. Any of the occupancy preferences allowed pursuant to (k)2 below.

2. A municipality may elect to adopt any or all of the *[three]* ***four*** occupancy preferences at (k)2i, ii, *[and]* iii ***, and iv*** below. If it does so, the municipality shall adopt its desired occupancy preference(s) prior to the usage of the occupancy preference(s) by ordinance in any random [page=2783] selection process. All other occupancy preferences, including preferences for residents of the municipality, are prohibited:

i. A preference of up to 50 percent of the restricted rental units in a particular project for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j;

ii. A preference for very-low-, low-, and moderate-income households that reside or work in the housing region; *[and]*

iii. Subordinate to the regional preference, a preference for very-low-, low-, and moderate-income households that reside or work in New Jersey*[*] ***, and**

iv. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.*

(l) Developers and property management entities shall not discriminate against any person as prohibited by Federal Fair Housing laws or by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50. Developers and property managers may not require or solicit a parent, guardian, or any other third-party person or entity to act as a guarantor for a unit that has been offered to an eligible household. Administrative agents and municipal housing liaisons shall report property managers to the Division, which shall refer such matters to the Office of the Attorney General if they receive any complaints that developers or property managers are discriminating against applicants or residents.

(m) In certifying and referring households, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64. If an administrative agent randomly selects, certifies, and refers a family member or friend to an available unit, the administrative agent must disclose this relationship to the MHL.

(n) Upon being referred to an available unit, an applicant must be provided with a minimum of five business days to accept or reject the administrative agent's offer.

5:80-26.18 Procedures for changing administrative agents

In order to ensure an orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the procedures for changing administrative agents as outlined at N.J.A.C. 5:99-7.4 must be followed.

5:80-26.19 Enforcement

(a) The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as they relate to the creation, preservation, and administration of affordable housing programs, affordable units, and reporting. Pursuant to N.J.A.C. 5:99-6.2, such oversight activities include ensuring that administrative agents execute the practices, procedures, and standards set forth in this subchapter.

(b) The administrative agent's enforcement responsibility for implementing such practices and procedures may not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything in this subchapter to the contrary notwithstanding, the Agency and DCA each may, in its discretion, contract with for-profit and nonprofit organizations to carry out delegated administrative agent functions, provided, however, that in any such case the Agency or DCA shall maintain primary responsibility for the delegated functions.

(c) As part of a municipality's ongoing compliance with the Act, the municipality, through the municipal housing liaison, shall:

1. Provide to the administrative agent the name, title, email address, and telephone number of the municipal housing liaison who will be responsible for oversight of the administrative agent on all matters related to this subchapter;
2. If necessary, retain or otherwise designate legal counsel for the purposes of representing any municipal entity acting as administrative agent and of enforcing the controls set forth in this subchapter;
3. (No change in text.)
4. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The municipality and MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a foreclosure action, foreclosure judgment, or deed in lieu of foreclosure as to all affordable units;
5. Work with the administrative agent to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines through the process outlined at N.J.A.C. 5:99-5.6(c)4;

6. Maintain a list of all affordable units within its jurisdiction, including the date of deed restriction expiration, income limits, and the administrative agent for each unit;

7. Report the information at (c)6 above to the Division each year; and

8. Publish on the municipality's website the affordable housing operating manual(s) required pursuant to N.J.A.C. 5:99-7.2, the affirmative marketing plan required pursuant to N.J.A.C. 5:80-26.16, and contact information for the administrative agent for each project within the municipality's jurisdiction with an affordable housing component for which affirmative marketing is required.

(d) In addition to those listed at N.J.A.C. 5:99-7.2, administrative agent practices and procedures include, but are not limited to, the following:

1. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit be offered, or in any other way committed, to any person other than a household duly certified to the unit by the administrative agent;

2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificate set forth at N.J.A.C. 5:80-26 Appendix D-3, J, or K;

3. Working with the MHL to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines for noncompliance and requiring new lotteries;

4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the following requirements:

i. (No change.)

ii. That no sale of the unit will be lawful, unless approved in advance and in writing by the administrative agent, and that no sale may be for a consideration greater than the maximum permitted resale price, as determined by the administrative agent;

iii. That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt secured by the unit may be incurred except as approved in advance, in writing, by the administrative agent, and that at no time will the administrative agent approve any debt that would make the total of all such debt exceed 95 percent of the then-applicable maximum permitted resale price;

iv. That the owner of the unit shall at all times maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year;

v. That, except as set forth at (d)4viii below, at no time may the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance, in writing, by the administrative agent;

vi. That the maximum permitted rent chargeable to affordable tenants must be mailed to tenants in accordance with (e)1 below;

vii. Copies of all leases or lease renewal agreements for affordable rental units must be submitted annually to the administrative agent;

viii. If the affordable unit is a two-family home, that the owner may lease the rental unit only to certified households approved, in writing, by the administrative agent, may charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any prospective tenant; and

ix. That no improvements may be made to any unit that would affect its bedroom configuration, except as provided at N.J.A.C. 5:80-26.10(a) and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for [page=2784] improvements approved in advance, in writing, by the administrative agent;

5. Securing from municipalities lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back into or sell their unit;

6. Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the Department. For purposes of this subsection, unlawful rent payments means:

- i. All rent monies paid by a person who has not been duly certified in accordance with the provisions at N.J.A.C. 5:80-26.17;
- ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of their unit illegally;
- iii. (No change.)
- iv. Rent paid to an affordable unit owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as provided for at N.J.A.C. 5:80-26.8(a); and

7. Establishing a rent-to-equity program, to be implemented in situations where an affordable unit owner has unlawfully rented their unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such a rent-to-equity program, the tenant, including the immediate family of the tenant, shall be given an opportunity to purchase the unit from the affordable unit owner, and the affordable unit owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to the tenant as down payment money paid to the affordable unit owner. Anything in this subchapter to the contrary, notwithstanding, any person offered a unit under such a rent-to-equity program must first be certified as eligible pursuant to N.J.A.C. 5:80-26.17.

(e) The owner of a development containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

- 1. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued; and
- 2. Promptly provide to the administrative agent, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority, as well as upon receipt of the certificate of occupancy:
 - i. The total number of units in the project and the number of affordable units, broken down by bedroom count, identifying which are very-low-income, low-income, and moderate-income units, and including street addresses of affordable units;
 - ii. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof;
 - iii. A project map identifying the location of affordable units and market-rate units;
 - iv. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;
 - v. A projected construction schedule;
 - vi. Proposed pricing for all units, including any purchaser options and add-on items;
 - vii. A list of all public funding sources and copies of grant or loan agreements for those sources;
 - viii. Condominium or homeowner association fees and any other applicable fees;
 - ix. Estimated real property taxes for for-sale units;
 - x. Sewer, water, trash disposal, and any other utility assessments;
 - xi. Flood insurance requirement, if applicable;

xii. A description of all HVAC systems;

xiii. The location of any common areas and elevators;

xiv. A proposed form of lease for any rental units;

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

xvi. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

(f) It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.

(g) Banks and other lending institutions are prohibited from issuing any loan secured by owner-occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.

(h) The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.

5:80-26.20 Appeals

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

5:80-26.21 95/5 restrictions

(a) Each existing unit governed by a 95/5 restriction shall be governed according to its deed restriction for the duration of the control period identified in the deed restriction or the municipal resolution extending affordability controls, or, if no control period is identified, until the start of the Fifth Round on July 1, 2035. Following the expiration or release of the 95/5 deed restriction, any extension of affordability controls on the unit must be carried out in accordance with the procedures and instruments outlined at N.J.A.C. 5:80-26.6(h) to receive credit pursuant to the Act.

(b) The owner of a unit governed by a 95/5 restriction shall notify the administrative agent and municipal housing liaison by certified mail and by email of any intent to sell the unit 90 days prior to entering into an agreement for the first authorized non-exempt sale after controls have been in effect on the housing unit for the period specified at N.J.A.C. 5:80-26.6.

(c) Upon receipt of a notice specified at (b) above, the option to buy the unit at the maximum allowable restricted sale price or any mutually agreed upon sale price that does not exceed the maximum allowable restricted sale price will be available for 90 days. The administrative agent shall notify the municipal housing liaison and the Division that the unit is for sale. The municipality shall have the right of first refusal to

purchase the unit. If the municipality exercises this option, it may enter into a contract of sale for the unit. If the municipality does not exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90-day period may purchase the unit. If the option to purchase the unit at the maximum allowable restricted [page=2785] sale price is not exercised by one of the above entities by a written offer to purchase the housing unit within 90 days of receipt of notice of the intent to sell, the owner may proceed to sell the housing unit pursuant to N.J.A.C. 5:80-26.22. If the owner does not sell the unit within one year of the date of the delivery of the notice of intent to sell, the option to buy the unit will be restored and the owner will be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sale price must be exercised by certified mail and, if known, by email and will be deemed to have been exercised three days following the earlier of the postmark of the certified mail or the transmission of the email.

5:80-26.22 Seller option on 95/5-restricted units

(a) An eligible seller of a unit governed by a 95/5 restriction that has been controlled for the period established in the governing deed restriction who has provided the requisite notice of an intent to sell may proceed with the sale if no eligible entity exercises its option to purchase within 90 days. The seller may sell the unit to a certified household at an affordable price or to any purchaser at market price.

(b) Subject to this subchapter, the seller may:

1. Sell to a certified household at a price not to exceed the maximum permitted sale price in accordance with N.J.A.C. 5:80-26.7; provided that the unit is regulated by the deed restriction and lien in accordance with N.J.A.C. 5:80-26.6. The administrative agent shall certify the income qualifications of the purchaser and shall ensure that the housing unit is regulated by the deed restriction and lien in accordance with N.J.A.C. 5:80-26.6; or

2. Exercise the repayment option and sell to any purchaser at market price, provided that 95 percent of the price differential, or another amount determined by an ordinance of the municipal governing body, not to exceed 95 percent of the price differential, is paid to the Municipal Affordable Housing Trust Fund, through the administrative agent, as an instrumentality of the municipality, at closing. Any alternative amount or formula for calculating the alternative amount determined by such ordinance must be uniformly available to all sellers exercising the repayment option within the municipality.

(c) The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sale price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent shall not approve any contract of sale where there is a determination that the sale price does not bear a reasonable relationship to fair market value. The administrative agent shall make such a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(d) The administrative agent shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative agent to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sale price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal is a final determination of the administrative agent appealable pursuant to N.J.A.C. 5:80-26.20.

(e) The repayment will occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(f) The administrative agent shall deposit all repayment proceeds into the Municipal Housing Trust Fund, which may be used as specified at N.J.S.A. 52:27D-329.2. Money deposited in housing trust funds may not be expended until the municipality submits and the Division or the county-level housing judge approves a spending plan. See N.J.A.C. 5:99-2 and N.J.S.A. 52:27D-329.2.

5:80-26.23 Severability

If any sentence, paragraph, section, or other component of this subchapter, or the application thereof to any person or circumstance is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any of the foregoing components loses its force and effect, such

judgment or action will apply only to the specific component under consideration and will not affect, impair, or void the remaining provisions of this subchapter.

APPENDIX A

MANDATORY DEED FORM FOR OWNERSHIP UNITS

Deed

To State Regulated Property

With Covenants Restricting Conveyance

and Mortgage Debt

THIS DEED ("Deed") is made as of the ____ day of _____, 20____ by and between _____ (Grantor) and _____ (Grantee).

WITNESSETH:

Article 1. Consideration and Conveyance

In consideration for payment to the Grantor by the Grantee of _____ Dollars (\$_____), the receipt of which is acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2 hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, situated in the municipality of _____, _____ County, New Jersey (the "Municipality"), and described more specifically as Block No. ____, Lot No. ____, and known by the street address:_____.

_____. The Property is a restricted ownership unit, as that term is defined at section 2 of the Uniform Housing Affordability Controls regulations, which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"). The restricted ownership unit is a <very-low-income / low-income /moderate-income> unit as defined in the UHAC Regulations; is a(n) <efficiency /one-bedroom /two-bedroom /three-bedroom /____-bedroom> unit; <is /is not> age-restricted; and <is /is not> a supportive-housing unit. The Property <includes /does not include> a restricted rental unit in addition to the restricted ownership unit, which rental unit, if included, is a ____-bedroom unit with an income restriction of ____ percent of median income in the applicable housing region, and has a targeted population of <families /senior citizens/supportive-housing-needs persons>.

Article 3. Grantor's and Grantee's Covenants

The Grantor hereby covenants and affirms that the Grantor has taken no action to encumber the Property. The Grantor and the Grantee acknowledge and agree that the restrictions, conditions, and requirements of this Deed are covenants running with the land and shall remain binding upon the Grantor, the Grantee, and upon all successors to any of their interests.

Article 4. Affordable Housing Covenants

Sale and use of the Property are governed by the affordability controls of the UHAC Regulations, pursuant to which the following covenants (the "Covenants") run with the land for the period of time commencing upon the earlier of (a) the date of this Deed or (b) any prior commencement of the "Control Period," as determined in accordance with the UHAC Regulations, and terminating upon the expiration of the Control Period as provided in the UHAC Regulations. The Control Period for the Property is ____ years, as determined pursuant to P.L. 2024, c. 2.

A. The Property may be conveyed only to a household who has been approved in advance and, in writing, by the administrative agent for the Municipality duly appointed pursuant to the UHAC Regulations (the "Administrative Agent").

[page=2786] B. No sale of the Property is lawful unless approved in advance and, in writing, by the Administrative Agent, and the Property may not be sold for a consideration greater than the maximum permitted price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent pursuant to the UHAC Regulations.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt (collectively, "Debt") secured by the Property may be incurred except as approved in advance and, in writing, by the Administrative Agent. At no time shall the Administrative Agent approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times during the Control Period maintain the Property as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year.

E. At no time shall the owner of the Property lease or rent the Property to any person or persons, except as set forth in F below or on a short-term hardship basis as approved in advance and, in writing, by the Administrative Agent.

F. If the Property is a two-family home, the owner may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; may charge rent no greater than the maximum permitted rent as determined by the Administrative Agent pursuant to the UHAC Regulations; and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom count or configuration unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of any of the Covenants will cause irreparable harm to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the UHAC Regulations, and by the constitutional obligation for the provision of housing for low- and moderate-income individuals and families. Accordingly, and in accordance with N.J.A.C. 5:80-26.19:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent, the Municipality, and the State of New Jersey (the "State") shall have all remedies provided at law or in equity, including, but not limited to, the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Grantee or any successor in interest or other owner of the Property, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

Article 6. Notice of Resale and Recapture Covenant

A. The owner of the Property is required to notify the Administrative Agent and the municipal housing liaison, by mail, of any intent to sell the Property at least 60 days prior to entering into an agreement for the first non-exempt sale of the Property after the termination of the Control Period, as set forth in the UHAC Regulations.

B. Pursuant to the Recapture Mortgage Note (the "Note"), upon the first non-exempt sale of the Property after the termination of the Control Period, the recapture amount, currently equal to \$_____, which is the difference between \$_____, the restricted price of the Property at the time of initial sale, and \$_____, the non-restricted, fair market value of the Property at the time of initial sale, shall be

C. Pursuant to N.J.A.C. 5:80-26.6(d)iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, the Municipality may determine, by ordinance, another final recapture amount, which must be less than the price differential minus the equity share amount.

EXECUTION BY GRANTOR

Signed, sealed, and
delivered in the presence
of or attested by:

_____ [seal]

_____ [seal]

_____ [seal]

_____ [seal]

I am either (check one) _____ a Notary Public or _____ a _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the _____ day of _____, 20____, _____ appeared before me in person. *(If more than one person appears, the words "this person" include all persons named who appeared before the officer making this acknowledgement.)* I am satisfied that this person is the person named in and who signed this Deed.

Officer's signature: Sign above and print,
stamp, or type name below

1. The Witness is the _____ secretary of the corporation which is the Grantor described as such in this Deed (the "Corporation").

2. _____, the officer who signed this Deed, is the *(title)* _____ of the Corporation (the "Corporate Officer").

3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

[page=2787] 4. The Witness knows the corporate seal affixed to this Deed by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the transfer of title to the Property evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

Sworn and signed before me on the date above written:

Witness: Sign above and print or type name below

Corporate Officer's signature: Sign above and print, stamp, or type name below

Attach legal description of Property as Exhibit A

Note: If the Grantor is a limited liability company or partnership, the above jurat may be adjusted accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

APPENDIX B

MANDATORY DEED FORM FOR OWNERSHIP OF 95/5-RESTRICTED UNITS

Deed

To State Regulated Property

With Covenants Restricting Conveyance

and Mortgage Debt--With 95/5 Recapture

THIS DEED ("Deed") is made as of the _____ day of _____, 20____ by and between _____ (Grantor) and _____ (Grantee).

Article 1. Consideration and Conveyance

In consideration for payment to the Grantor by the Grantee of _____ Dollars (\$_____), the receipt of which is acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2 hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, situated in the municipality of _____, _____ County, New Jersey (the "Municipality"), and described more specifically as Block No. ____, Lot No. ____, and known by the street address:_____.

_____. The Property is a restricted ownership unit, as that term is defined at section 2 of the Uniform Housing Affordability Controls regulations, which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"). The restricted ownership unit is a <very-low-income / low-income / moderate-income> unit as defined in

the UHAC Regulations; is a(n) <efficiency /one-bedroom /two-bedroom /three-bedroom /____-bedroom> unit; <is /is not> age-restricted; and <is /is not> a supportive-housing unit. The Property <includes /does not include> a restricted rental unit in addition to the restricted ownership unit, which rental unit, if included, is a ____-bedroom unit with an income restriction of ____ percent of median income in the applicable housing region, and has a targeted population of <families /senior citizens / supportive-housing-needs persons>.

Article 3. Grantor's and Grantee's Covenants

The Grantor hereby covenants and affirms that the Grantor has taken no action to encumber the Property. The Grantor and the Grantee acknowledge and agree that the restrictions, conditions, and requirements of this Deed are covenants running with the land and remain binding upon the Grantor, the Grantee, and upon all successors to any of their interests.

Article 4. Affordable Housing Covenants

Sale and use of the Property are governed by the affordability controls of the UHAC Regulations, pursuant to which the following covenants (the "Covenants") run with the land for the period of time commencing upon the earlier of (a) the date of this Deed or (b) any prior commencement of the "Control Period," as determined in accordance with the UHAC Regulations, and terminating upon the expiration of the Control Period as provided in the UHAC Regulations. The Control Period for the Property is ____ years, as determined pursuant to P.L. 2024, c. 2.

A. The Property may be conveyed only to a household who has been approved in advance and, in writing, by the administrative agent for the Municipality duly appointed pursuant to the UHAC Regulations (the "Administrative Agent").

B. No sale of the Property is lawful unless approved in advance and, in writing, by the Administrative Agent, and the Property may not be sold for a consideration greater than the maximum permitted price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent pursuant to the UHAC Regulations.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt (collectively, "Debt") secured by the Property may be incurred except as approved in advance and, in writing, by the Administrative Agent. The Administrative Agent may not approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Property shall at all times during the Control Period maintain the Property as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year.

E. At no time shall the owner of the Property lease or rent the Property to any person or persons, except as set forth in F below or on a short-term hardship basis as approved in advance and, in writing, by the Administrative Agent.

F. If the Property is a two-family home, the owner may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; may charge rent no greater than the maximum permitted rent as determined by the Administrative Agent pursuant to the UHAC Regulations; and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom count or configuration unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of any of the Covenants will cause irreparable harm to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the UHAC Regulations, and by the constitutional obligation for the provision of housing for low- and moderate-income individuals and families. Accordingly, and in accordance with N.J.A.C. 5:80-26.19:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent, Municipality, and the State of New Jersey (the "State") shall have all remedies provided at law or in equity, including, but not limited to, the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Grantee or any successor in interest or other owner of the Property, the Administrative Agent, Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, [page=2788] forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

Article 6. Notice of Resale, Recapture Covenant, and 95/5 Purchase Options

A. The owner of the Property is required to notify the Administrative Agent and the municipal housing liaison, as defined at N.J.A.C. 5:80-26.2, by certified mail, return receipt requested, and by email of any intent to sell the Property at least 90 days prior to entering into an agreement for the first non-exempt sale of the Property after the termination of the Control Period, as set forth in the UHAC Regulations, as in effect at the time the Property was first restricted as part of the affordable housing program.

B. Upon the first non-exempt sale of the Property, Ninety-Five Percent (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sale price that would be applicable were the Control Period still in effect, or another amount less than the Ninety-Five-Percent difference, determined by an ordinance of the Municipality, shall be paid at closing to the Administrative Agent, as receiving agent for the applicable municipal affordable housing trust fund.

C. Such non-exempt sale is subject to the options provided for at N.J.A.C. 5:80-26.21 (95/5 restrictions) and 5:80-26.22 (Seller option on 95/5 restricted units). Failure of the owner or any subsequent owner to fully comply with all of the foregoing requirements will not result in a release or waiver of the requirements and/or restrictions.

EXECUTION BY GRANTOR

Signed by the Grantor on the date hereof. If the Grantor is a corporation, this Deed is signed by a corporate officer who has authority to (a) convey all interests of the corporation that are conveyed by this Deed, and (b) bind the corporation with respect to all matters dealt with herein.

Signed, sealed, and delivered _____ [seal]
in the presence of or attested
by:

_____ [seal]
_____ [seal]
_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

State of New Jersey, County of _____

am either (check one) _____ a Notary Public or _____ a _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the _____ day of _____, 20____, _____ appeared before me in person. *(If more than one person appears, the words "this person" include all persons named who appeared before the officer making this acknowledgement.)* I am satisfied that this person is the person named in and who signed this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to the Property evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

*Officer's signature: Sign above and print,
stamp, or type name below*

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. On this the _____ day of _____, 20____, _____ (the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation that is the Grantor described as such in this Deed (the "Corporation").
2. _____, the officer who signed this Deed, is the <title> _____ of the Corporation (the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal affixed to this Deed by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

Sworn and signed before me on the date above written:

Witness: Sign above and print or type name below

Corporate Officer's signature: Sign above and print, stamp, or type name below

Note: If the Grantor is a limited liability company or partnership, the above jurat may be revised accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

ATTACH LEGAL DESCRIPTION OF PROPERTY AS EXHIBIT A

APPENDIX C

RESTRICTIVE COVENANT REQUIRED

BY N.J.A.C. 5:80-26.6(e)

Declaration Of Covenants, Conditions

and Restrictions

Implementing Affordable Housing Controls

On State Regulated Property

Fair Housing Act Required Covenants

Restricting Use, Conveyance,

And Mortgage Debt

THIS DECLARATION is made this _____ day of _____, 20____, by _____, a _____ (State of domicile) _____ (corporation, limited partnership, or other entity), having its principal address at _____ ("Developer").

WHEREAS, Developer is the owner of _____ units, more fully described on Schedule A attached hereto and made a part hereof (the "Affordable Units" and, individually, an "Affordable Unit" or "Unit"), which are situated within _____, a _____ (residential development, condominium, or other type of project) consisting of a total of _____ dwelling units located in the Municipality of _____, _____ County, New Jersey; and

WHEREAS, municipalities within the State of New Jersey (the "State") are required by the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the "Act") to provide for their fair share of housing that is affordable to households with very-low-, low-, or moderate-incomes, in accordance with the provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such housing remains affordable to very-low-, low-, and moderate-income households for appropriate periods of time; and

[page=2789] WHEREAS, pursuant to the Act, the Affordable Units described in Exhibit A attached hereto have been designated as very-low-, low-, and/or moderate-income housing units as defined by the Act; and

WHEREAS, the anticipated completion date of construction of the Affordable Units is _____ (if applicable); and

WHEREAS, this Declaration is intended to ensure that the Affordable Units remain affordable to very-low-, low-, and moderate-income eligible households for that period of time described in this Declaration.

NOW, THEREFORE, this Declaration is executed and recorded to ensure that appropriate affordability controls are made of record on each of the Affordable Units so as to bind the owners thereof to the covenants, conditions, and restrictions with which they must comply and to notify all future purchasers of an Affordable Unit that the Unit is encumbered with affordability controls.

Article 1. Affordable Housing Covenants

Developer acknowledges and agrees that the restrictions, conditions, and requirements of this Restrictive Covenant are covenants running with the land and will remain binding on Developer and all successors in interest.

The sale and use of each Affordable Unit that is subject to this Declaration are governed by regulations establishing controls on affordability, which regulations are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"). Pursuant to the UHAC Regulations, the following covenants (the "Covenants") run with the land, for each respective Affordable Unit, for the period of time commencing upon the earlier of (a) the date of this Declaration or (b) any prior commencement of the "Control Period," as determined according to the UHAC Regulations, and terminating upon the expiration or other lawful termination of the Control Period as provided in the UHAC Regulations.

A. The Affordable Unit may be conveyed only to an individual or household who has been approved in advance and, in writing, by the Housing Affordability Service of the New Jersey Housing and Mortgage Finance Agency, or other administrative agent duly appointed pursuant to the UHAC Regulations (the "Administrative Agent").

B. No sale of the Affordable Unit is lawful unless approved in advance and, in writing, by the Administrative Agent, and no sale may be for a consideration greater than the maximum permitted price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt (collectively, "Debt") secured by the Affordable Unit may be incurred except as approved in advance and, in writing, by the Administrative Agent. The Administrative Agent may not approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Affordable Unit shall at all times during the Control Period maintain the Unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year.

E. At no time shall the owner of the Affordable Unit lease or rent the Unit to any person or persons, except as set forth in F below or on a short-term hardship basis as approved in advance and, in writing, by the Administrative Agent.

F. If the Affordable Unit is a two-family home, the owner may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; may charge rent no greater than the maximum permitted rent as determined by the Administrative Agent pursuant to the UHAC Regulations; and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Affordable Unit that would affect its bedroom count or configuration unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of any of the Covenants will cause irreparable harm to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the UHAC Regulations, and by the constitutional obligation for the provision of housing for very-low-, low-, and moderate-income individuals and families. Accordingly, and in accordance with N.J.A.C. 5:80-26.19:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Affordable Unit, the Administrative Agent, the Municipality, and the State of New Jersey (the "State") shall have all remedies provided at law or in equity, including, but not limited to, the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Grantee or any successor in interest or other owner of the Affordable Unit, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized partner(s) or officer(s) this ____ day of _____, 20____.

(DEVELOPER)

By: _____

Corporate Officer's signature

Sign above and print, stamp, or type

name

State of New Jersey, County of _____

I am either (check one) ___ a Notary Public or _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. On this the ____ day of _____, 20____, _____ (the "Witness") appeared before me in person. The Witness was duly sworn by me and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation that is the Grantor described as such in this document (the "Corporation").
2. _____, the officer who signed this document, is the <title> _____ of the Corporation (the "Corporate Officer").
3. The making, signing, sealing, and delivery of this document have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal affixed to this document by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this document as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this proof to attest to the truth of these facts.

Sworn and signed before me on the date above written:

Witness: Sign above and print or type name below

Note: If the Grantor is a limited liability company or partnership, the above jurat may be revised accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

[page=2790]

EXHIBIT A

Description of Affordable Units

APPENDIX D-1

MANDATORY DEED FORM FOR TWO-FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Service

637 South Clinton Avenue

P.O. Box 18550

Trenton, NJ 08650-2085

Deed To State Regulated Property

With Covenants Restricting Conveyance and Mortgage Debt

Two-Family Affordable Homeownership Unit and Affordable Rental Unit

This DEED is made on the _____ day of _____, 20__ by and between _____ ("Grantor"), whose address is _____, and _____ ("Grantee"), whose address is about to be _____.

Article 1. Consideration and Conveyance

In consideration for payment to the Grantor by the Grantee of _____ Dollars (\$_____), the receipt of which is acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described

in Article 2 hereof (the "Property").

Article 2. Description of Property

The Property is a two-family residence designed to house one low- or moderate-income owner-occupant household (the "ownership unit") and one low- or moderate-income renter household (the "rental unit"). The restrictive covenants set forth in Article 4 below apply to both the ownership unit and the rental unit in a single structure. This Deed establishes affordability controls for the use and resale of the Property and for the lease of the rental unit.

The Property consists of all of the land, and improvements thereon, located in the municipality of _____ (the "Municipality"), _____ County, New Jersey (the "State"), and is described more specifically as Block No. _____, Lot No. _____, and known by the street address: _____, being the same premises conveyed to the Grantor herein by Deed dated _____ from _____ and recorded on _____ in Deed Book _____. page _____ in the office of the Clerk or Register of _____, County, New Jersey.

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that the Grantor has taken no action to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6) and means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Article 4. Affordable Housing Covenants

Sale and use of the Property are governed by the Uniform Housing Affordability Controls regulations ("UHAC Regulations"), which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq., and any amendments, changes, or supplements thereto. Consistent with the UHAC Regulations, the following covenants (the "Covenants") run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) any prior commencement of the "Control Period," as that term is defined in the UHAC Regulations, and terminating upon the expiration of the Control Period as provided therein. Each restricted ownership unit must remain subject to the Control Period requirements at N.J.A.C. 5:80-26.6.

A. The Property may be conveyed only to a household that has been approved in advance and, in writing, by the Housing Affordability Service of the New Jersey Housing and Mortgage Finance Agency ("Agency") or other administrative agent duly appointed pursuant to the UHAC Regulations (the "Administrative Agent").

B. No sale of the Property is lawful, unless approved in advance and, in writing, by the Administrative Agent, and no sale of the Property may be for a consideration greater than the maximum permitted price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt (collectively, "Debt") secured by the Property may be incurred, except as approved in advance and, in writing, by the Administrative Agent. At no time may the Administrative Agent approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. Except as otherwise set forth in E below, the Grantee or any successor owner of the Property shall at all times maintain the ownership unit of the Property as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year.

E. The Grantee or any successor owner of the Property may not lease the ownership unit to any person or persons other than on a short-term hardship basis as may be approved in advance and, in writing, by the Administrative Agent. The rental unit of the Property may be leased only in accordance with F below.

F. The Grantee or any successor owner may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent; and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to the Property that would affect its bedroom count or configuration, unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the public in light of the public policies set forth in the New Jersey Fair Housing Act, the UHAC Regulations, and the constitutional obligation for the provision of housing for low- and moderate-income individuals and families. Accordingly, and in accordance with N.J.A.C. 5:80-26.19:

A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Grantee or any successor in interest or other owner of the Property, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

Article 6. Additional Provisions Applicable to Two-Family Units

A. The following definitions are applicable to this Article 6:

"Adjusted Rent" means the Base Rent for the rental unit adjusted by the Index.

"Base Rent" means the charge for an affordable housing rental unit at the time the unit is first restricted, which charge has been calculated to include a credit for those utility costs paid by the tenant using a utility cost [page=2791] schedule approved for statewide use by the U.S. Department of Housing and Urban Development (HUD), or its successor.

"Index" means the measured percentage of change in the median income for a household of four by geographic region using the applicable income guidelines.

"Renter" means a household that has been certified to rent an affordable housing unit, subject to signing a lease and the payment of any required security deposit.

B. The following affordability restrictions are applicable to the rental unit for a period of _____ years from the commencement date determined pursuant to Article 4, Affordable Housing Covenants.

1. The Grantee or any successor owner of the rental unit shall not lease the rental unit for an Adjusted Rent that is greater than the established Base Rent plus the allowable percentage of increase as determined by HUD or other applicable agency. Adjusted Rents are effective as of the lease anniversary date and remain in effect for at least a one-year period.

2. The Grantee or any successor owner of the rental unit shall not lease the rental unit other than to a Renter who has been certified to the unit utilizing the income verification procedures established by DCA, the Agency, or the Division of Local Planning Services ("DLPS") in DCA to determine qualified very-low-, low-, and moderate-income-eligible households.

3. The Grantee or any successor owner of the rental unit shall not sell the unit other than in accordance with and subject to any rules and regulations duly promulgated by DCA, DLPS, and the Agency in order to ensure that the rental unit remains affordable to and occupied by very-low, low-, or moderate-income households for the duration of the Control Period established pursuant to N.J.A.C. 5:80-26.6.

C. The Covenants set forth herein run with the land and remain in effect for the duration of the Control Period established pursuant to N.J.A.C. 5:80-26.6, regardless of any sale or other conveyance of the Property. The continuance of the Covenants may, however, be extended by the Municipality in accordance with N.J.A.C. 5:80-26.6(h).

D. All provisions of the Fair Housing Act and the UHAC Regulations are applicable to the ownership unit and the rental unit, whether or not so expressed in this Deed.

EXECUTION BY GRANTOR

Signed by the Grantor on the date hereof. If the Grantor is a corporation, this Deed is signed by a corporate officer who has authority to (a) convey all interests of the corporation that are conveyed by this Deed, and (b) bind the corporation with respect to all matters dealt with herein.

_____ < seal >

ADD AUTHORIZED SIGNER'S NAME AND TITLE

_____ < seal >

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a(n) _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. I sign this acknowledgement below to certify that it was executed before me. On this the ____ day of _____, 20____, _____ appeared before me in person. *(If more than one person appears, the words "this person" include all persons named who appeared before the officer making this acknowledgement.)* I am satisfied that this person is the person named in and who signed this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

*Officer's signature: Sign above and print, stamp, or
type name below*

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a(n) _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. On this the ____ day of _____, 20____, _____ (the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation that is the Grantor described as such in this Deed (the "Corporation").
2. _____, the officer who signed this Deed is the <title> _____ of the Corporation (the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal affixed to this Deed by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

Sworn and signed before me on the date above written:

Witness: Sign above and print or type name below

Officer's signature: Sign above and print, stamp, or type name below

Note: If the Grantor is a limited liability company or partnership, the above jurat may be revised accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

APPENDIX D-2

FORM OF RECAPTURE MORTGAGE NOTE FOR TWO-FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT IN FAVOR OF STATE, REQUIRED BY N.J.A.C. 5:80-26.6(d)

New Jersey Housing and Mortgage Finance Agency

Housing Affordability Service

637 South Clinton Avenue

P.O. Box 18550

Trenton, NJ 08650-2085

Recapture Mortgage Note

In Connection with Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

Two-Family Affordable Homeownership Unit and Affordable Rental Unit

THIS NOTE is dated as of _____, 20____. For value received, _____ (the "Owner"), with an address of _____, promises to pay to the State of New Jersey (the "State"), acting by and through the Housing Affordability Service ("HAS") in the New Jersey Housing and Mortgage Finance Agency ("Agency"), which has its principal office at 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085, the amounts specified in this Note and promises to abide by the terms and conditions below.

Article 1. REPAYMENT MORTGAGE

[page=2792] As security for the payment of amounts due under this Note and the performance of all promises set forth herein, the Owner is giving the State a "Repayment Mortgage to Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period" dated _____ (the "Mortgage"), which Mortgage encumbers the property described below (the "Property"). The Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such

obligation that, when added to all other obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price (MRP) that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor, or assignee of the Owner then selling the Property, shall pay the sum of _____ Dollars (\$_____) < insert amount determined pursuant to N.J.A.C. 5:80-26. 6(d)> to HAS. The obligation evidenced by this Note will not accrue interest.

Article 3. PROPERTY DESCRIPTION

The Property is a two-family residence designed to house one very-low-, low-, or moderate-income owner-occupant household (the "ownership unit") and one very-low-, low-, or moderate-income renter household (the "rental unit").

The Property consists of all of the land, and improvements thereon, located in the municipality of _____ (the "Municipality"), _____ County, New Jersey, and is described more specifically as Block No. _____, Lot No. _____, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the State or HAS to do any of the following before enforcing any of their rights under this Note:

1. To demand payment of amounts due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms and conditions hereof. The State or HAS may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms and conditions of this Note by signing below.

ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:

By: _____

Signature (Owner)

By: _____

Signature (Owner)

[illegible]

On this the ____ day of _____, 20__ before me came _____, who acknowledged and made proof to my satisfaction that they are the Owner named within this Note, and that they executed this Note for the purposes set forth herein.

Sworn to and subscribed before me this the ____ day of _____, 20__.

A Notary Public/Attorney of the State of New Jersey

APPENDIX D-3

FORM OF CERTIFICATE FOR APPLICANTS CERTIFIED TO TWO-FAMILY AFFORDABLE HOUSING HOME-OWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT REQUIRED BY N.J.A.C. 5:80-26.19(d)2

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

HOUSING AFFORDABILITY SERVICE

637 South Clinton Avenue

P.O. Box 18550

Trenton, NJ 08650-2085

AFFORDABLE HOUSING RESTRICTIONS

My name is _____, and I make this certificate ("Certificate") in connection with my application to purchase the below-identified two-family residence (the "Property"), which is designed to house one very-low-, low-, or moderate-income owner-occupant household (the "ownership unit") and one very-low-, low-, or moderate-income renter household (the "rental unit"). The Property is being provided pursuant to the New Jersey affordable housing program. The Property consists of all of the land, and improvements thereon, located in the municipality of _____ (the "Municipality"), _____ County, New Jersey (the "State"), and is described more specifically as Block No. _____, Lot No. _____, and known by the street address: _____.

I am aware, as the purchaser of an Affordable Home, that from the date of this Certificate until the expiration date, which will be determined by the Municipality, I have to follow the rules and requirements set forth below:

1. I shall not rent the Affordable Housing rental unit for an Adjusted Rent that is greater than the established Base Rent plus the allowable percentage of increase. Adjusted Rents are effective as of the lease anniversary date and remain in effect for at least a one-year period.
2. I shall not rent the Affordable Housing rental unit other than to a Renter who has been certified utilizing the income verification procedures established by the New Jersey Department of Community Affairs ("DCA") or the New Jersey Housing and Mortgage Finance Agency (the "Agency") to determine qualified very-low-, low-, and moderate-income-eligible households.
3. I may sell the Property only in accordance with and subject to any rules and regulations duly promulgated by DCA or the Agency to ensure that the Property remains affordable to and occupied by qualified very-low-, low-, and moderate-income-eligible households throughout the duration of the restrictive covenants.
4. I can only sell the Property to a person or a family who is part of the affordable housing program, and who has been certified, like I have been, in writing, by the administrative agent.
5. The price for which I can sell my house is limited by law, and may be much less than the sale prices of other homes similar to mine, but which are not part of the affordable housing program.

6. I cannot take out any loans of any kind secured by my house (a "mortgage loan") unless my plan to get the loan is approved in advance and, in writing, by HAS. The total amount of mortgage loans I am allowed to have is limited by law.

7. I know that I am required to live in my house, and that I cannot rent it out to any other person, not even to members of my family. If I have a temporary need to move away that is not of my doing, such as if my employer is temporarily sending me to a workplace a great distance from my home or if I am being called for military service, I will call HAS at 609-278-7400 and ask for a "temporary waiver" of this rule. It is up to HAS as to whether or not I get a temporary waiver. I may not move out of the Property unless and until a temporary waiver is approved and signed by HAS.

8. I know that the rent I am allowed to charge a tenant is limited by law, and is published each year by the Agency. I know that it is my responsibility to find out the maximum rent I am allowed to charge by visiting the Agency website and/or by calling HAS at 609-278-7400 or by email.

[page=2793] 9. I know that I am required to provide copies of all leases with my tenants to HAS.

10. I know that I am not allowed to make any improvements to my home unless approved in advance and, in writing, by HAS.

11. I know that if I break or fail to follow any of these rules, I will be breaking the law and that I will be subject to penalties provided by law.

ATTEST:

Owner signature and date

Owner signature and date

BE IT REMEMBERED, that on this the ____ day of _____, 20____, _____, the signer of this Certificate, appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Purchaser of the Property that is identified in the foregoing Certificate, and (ii) they have executed the Certificate with respect to the purchase of the Property described in the Certificate and for the purposes set forth therein.

NOTARY PUBLIC

APPENDIX D-4

RESTRICTIVE COVENANT FOR TWO-FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT, REQUIRED BY N.J.A.C. 5:80-26.6(e)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Service

637 South Clinton Avenue

P.O. Box 18550

Trenton, NJ 08650-2085

Declaration Of Covenants, Conditions, and Restrictions

Implementing Affordable Housing Controls on State Regulated Property

Fair Housing Act Required Covenants Restricting Use, Conveyance, and Mortgage Debt

TWO FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT FOR NEW UNITS

THIS DECLARATION is made this ____ day of _____, 20____ by _____, a <State of domicile> _____ (corporation, limited partnership, or other entity), having its principal address at _____ ("Developer").

WHEREAS, Developer is the owner of _____ for sale and _____ rental units, which are situated within _____, a <condominium or other form of residential development> consisting of a total of _____ dwelling units more fully described on Exhibit A attached hereto and made a part hereof (the "Affordable Units"), which is located in the municipality of _____, _____ County, New Jersey (the "Municipality"), being also known as Lot(s) No. _____, Block No. _____ on the tax map of the Municipality; and

WHEREAS, municipalities within the State of New Jersey (the "State") are required by the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the "Act"), to provide for their fair share of housing that is affordable to households with very-low, low, and moderate incomes in accordance with the provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to very-low, low-, and moderate-income households for specified periods of time; and

WHEREAS, the affordable units described in Exhibit A attached to this Declaration (the "Affordable Units" or "Units") have been designated as very-low-, low-, and moderate-income housing as defined by the Act; and

WHEREAS, this Declaration is intended to ensure that the Affordable Units remain affordable to eligible very-low-, low-, and moderate-income households for that period of time described in Article 1.I of this Declaration.

NOW, THEREFORE, this Declaration is executed and recorded to ensure that affordability controls are recorded on each of the Affordable Units so as to bind the owners thereof to the covenants, conditions, and restrictions to which they must comply and to notify all future purchasers of Affordable Units that the Units are encumbered with affordability controls.

Article 1. Affordable Housing Covenants

The sale and use of each Affordable Unit subject to this Declaration are governed by Uniform Housing Affordability Controls regulations, which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"). Consistent with the UHAC Regulations, the following covenants (the "Covenants") run with the land, for each respective Affordable Unit, for the period of time commencing on the earlier of (a) the date hereof or (b) any prior commencement of the "Control Period," as that term is defined in the UHAC Regulations, and terminating upon the expiration of the Control Period as provided in the UHAC Regulations.

A. An Affordable Unit may be conveyed only to a household who has been approved in advance and, in writing, by the Housing Affordability Service ("HAS") of the New Jersey Housing and Mortgage Finance Agency (the "Agency"), or other administrative agent appointed pursuant to the UHAC Regulations (the "Administrative Agent").

B. No sale of an Affordable Unit is lawful unless approved in advance and, in writing, by the Administrative Agent, and no sale may be for a consideration greater than the maximum permitted price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent.

C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt (collectively, "Debt") secured by an Affordable Unit may be incurred except as approved in advance and, in writing, by the Administrative Agent. The Administrative Agent may not approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of an Affordable Unit shall at all times maintain the ownership unit as their principal place of residence, which is defined as living in the Unit at least 260 days out of each calendar year.

E. The owner of an Affordable Unit may not lease or rent the ownership unit to any person or persons, except on a short-term hardship basis as approved in advance and, in writing, by the Administrative Agent.

F. The owner of an Affordable Unit may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent; and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.

G. No improvements may be made to an Affordable Unit that would affect its bedroom count or configuration unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

I. Each restricted unit remains subject to the Control Period requirements at N.J.A.C. 5:80-26.6 until such time as the municipality in which the unit is located releases the unit from such requirements or the unit is otherwise effectively released pursuant to N.J.A.C. 5:80-26.6(h). Prior to such a release, the restricted unit remains subject to such requirements for at least the period(s) of time provided at N.J.A.C. 5:80-26.6(a).

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the public in light of the public policies set forth in the New Jersey Fair Housing Act, [page=2794] N.J.S.A. 52:27D-301 et seq. (the "Act"), the UHAC Regulations, and the constitutional obligation for the provision of very-low-, low-, and moderate-income housing. Accordingly, and in accordance with N.J.A.C. 5:80-26.19:

A. In the event of a threatened breach of any of the above Covenants, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the above Covenants, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

Article 3. Additional Provisions Applicable to Two-Family Units

A. Description of Property: Each two-family unit is a residence designed to house one very-low-, low-, or moderate-income owner-occupant household (the "ownership unit") and one very-low-, low-, or moderate-income renter household (the "rental unit"). This Deed establishes affordability controls for the resale of the Property and for the rental of the rental unit. The Property consists of a ____-bedroom ownership unit and a ____-bedroom rental unit. The address of the rental unit is _____.

B. The following definitions are applicable to this Article 3:

"Adjusted Rent" means the Base Rent for the rental unit adjusted by the Index.

"Base Rent" means the charge for an affordable housing rental unit at the time the unit is first restricted, which charge has been calculated to include a credit for those utility costs paid by the tenant using a utility cost schedule approved for statewide use by the U.S. Department of Housing and Urban Development (HUD), or its successor.

"Index" means the measured percentage of change in the median income for a household of four by geographic region using the applicable income guidelines

"Renter" means a household that has been certified to rent an affordable housing unit, subject to signing a lease and the payment of any required security deposit.

1. The following affordability restrictions are applicable for the rental unit for a period of _____ years from the date set forth in Article 1 hereof, Affordable Housing Covenants.
 2. The owner of an Affordable Housing rental unit shall not lease the rental unit for an Adjusted Rent that is greater than the established Base Rent plus the allowable percentage of increase as determined by HUD. Adjusted Rents are effective as of the lease anniversary date and remain in effect for at least a one-year period.
 3. The Owner shall not lease the rental unit other than to a Renter who has been certified utilizing the income verification procedures established by DCA, the Agency, or the Division of Local Planning Services ("DLPS") in DCA to determine qualified very-low, low-, and moderate-income-eligible households.
 4. The Owner of the rental unit shall not sell the unit other than in accordance with and subject to the UHAC Regulations in order to ensure that the rental unit remains affordable to and occupied by very-low-, low-, and/or moderate-income households for the duration of the Control Period established pursuant to N.J.A.C. 5:80-26.6.
- C. The Covenants set forth herein with regard to the rental unit run with the land and remain in effect for the term of years described above, regardless of any sale or other conveyance of the Property. The continuance of the Covenants may, however, be extended by the Municipality in accordance with N.J.A.C. 5:80-26.6(h).
- D. All provisions of the Act and the UHAC Regulations are applicable to the ownership unit and to the rental unit, whether or not so expressed in this Deed.

Article 4. ACKNOWLEDGEMENT

Developer acknowledges receipt of a true copy of this Declaration of Covenants, Restrictions, and Conditions, at no charge.

IN WITNESS WHEREOF, Developer has executed this Declaration of Covenants, Restrictions, and Conditions for the purposes stated herein.

Authorized Signature of Developer

STATE OF NEW JERSEY)
COUNTY OF _____) SS.:
_____)

BE IT REMEMBERED, that on this the _____ day of _____, 20____ the subscriber _____ appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the <authorized signer for the Developer> named in the foregoing Declaration of Covenants, Restrictions, and Conditions and (ii) they executed the Declaration of Covenants, Restrictions, and Conditions with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ____ a Notary Public or ____ a _____, an officer authorized to take acknowledgements and proofs in the State of New Jersey. On this the ____ day of _____, 20____, _____ (the "Witness") appeared before me in person. The Witness was duly sworn by me, and under oath stated and proved to my satisfaction that:

1. The Witness is the _____ secretary of the corporation that is the Grantor described as such in this document (the "Corporation").

2. _____, the officer who signed this document, is the <title>_____ of the Corporation (the "Corporate Officer").

3. The making, signing, sealing, and delivery of this document have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal affixed to this document by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this document as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this document as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the interest in realty evidenced by this document, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

Sworn and signed before me on the date above written:

Witness: Sign above and print, stamp, or type name below

Officer's signature: Sign above, and print, stamp, or type name below

Note: If the Grantor is a limited liability company or partnership, the above jurat may be revised accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

Record and return to:

New Jersey Housing and Mortgage Finance Agency

637 South Clinton Avenue

P.O. Box 18550

Trenton, New Jersey 08650-2085

Attention: Housing Affordability Service

[page=2795]

APPENDIX E

MANDATORY DEED RESTRICTION

FOR RENTAL PROJECTS

Affordable Housing Deed Restriction

To State Regulated Multi-Family Rental Property

With Covenants Restricting Rentals,
Conveyance, and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the ____ day of _____, 20____, by

THIS DEED RESTRICTION, entered into as of this the ____ day of _____, 20____, by

_____ (the "Owner"), a <State of Formation/Incorporation> <Type of Entity>, having offices at _____, the developer of a residential rental project known or to be known as _____ (the "Project"), located in the municipality of _____, _____ County, New Jersey, is granted in favor of _____ (the "Municipality"), a body corporate and politic of the State of New Jersey:

WITNESSETH

Article 1. Consideration

In consideration and as a condition of the municipal approvals for the Project, the Owner hereby agrees to abide by the covenants, terms, and conditions set forth in this Deed Restriction with respect to the affordable units of the Project, which is to be developed on property described in Article 2 hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, located at the street address _____ in the Municipality, more fully described at Exhibit A annexed hereto and designated as Block No. ____, Lot No. ____.

There will be ____ total housing units in the Project. Among those housing units, ____ will be affordable housing units, of which ____ will be very-low-income units affordable to households making 30 percent or less of median income in the housing region, as defined in the Uniform Housing Affordability Controls, codified at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"); ____ low-income units affordable to households making 50 percent or less of median income in the housing region; and ____ moderate-income units affordable to households making 80 percent or less of median income in the housing region (collectively, the "Affordable Units"). Of the ____ Affordable Units, ____ will be efficiency units, ____ will be one-bedroom units, ____ will be two-bedroom units, ____ will be three-bedroom units, and ____ will be units with four or more bedrooms. The Affordable Units <will /will not> be age-restricted, and ____ of the Affordable Units will be supportive housing. The Affordable Units are intended to count for ____ credits against the _____ round of affordable housing obligations for the Municipality, pursuant to the municipal housing element and fair share plan.

[] If this box is checked, the Owner and the Municipality agree that a preference for up to 50 percent of the Affordable Units in the Project will be provided to very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311(j).

The Affordable Units, designated by unit number, bedroom count, income restriction, target population, and type and initial rental, are listed below and shown on Exhibit B annexed hereto:

| Unit Number | Bedroom Count | Affordability Type | Target Population (Families/ Seniors/ Supportive Housing/ Veterans) | Initial Net Monthly Rental Payment | Initial Rent Level Percentage of Income |
|-------------|---------------|--------------------|--|---------------------------------------|--|
| | | | | | |
| | | | | | |

| | | | | | |
|--|--|--|--|--|--|
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Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") run with the land for the period of time specified in Article 4 hereof (the "Control Period"), which is determined separately with respect to each Affordable Unit, commencing on the date of issuance of the initial Certificate of Occupancy for the Affordable Unit, and expiring as determined pursuant to the UHAC Regulations:

A. The sale and use of the Property are governed by the UHAC Regulations.

B. The Affordable Units may be used solely for the purpose of providing rental dwelling units for very-low-, low-, or moderate-income households, and no commitment for any such dwelling unit may be given or implied, without exception, to any person who has not been certified for that unit, in writing, by the administrative agent *[for the Municipality]* (the "Administrative Agent"). So long as any dwelling unit remains within its applicable Control Period, sale of the Property is expressly subject to this Deed Restriction; deeds of conveyance must have this Deed Restriction appended thereto; and no sale of the Property will be lawful unless approved in advance and, in writing, by the Administrative Agent.

C. No improvements may be made to the Property that would affect the bedroom configuration of any of the Affordable Units.

D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed by any individual or entity with respect to the Property within three (3) business days after service upon the Owner.

E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days after the filing of any petition for bankruptcy, for protection from creditors, or reorganization filed by or on behalf of the Owner.

Article 4. Control Period for Affordable Units

The Control Period for the Affordable Units is ____ years, commencing on the ____ day of _____, 20____.

[] If this box is checked, the Property consists entirely of Affordable Units subject to this Deed Restriction and, thus, the Owner may elect to extinguish this Deed Restriction prior to the 30th year if participating in a State-administered preservation program or beginning in the 30th year if not participating in a State-administered preservation program, in either case provided that the Project enters into a new deed restriction that, in combination with this Deed Restriction, totals at least 60 years.

[] If this box is checked, an existing Control Period on the Affordable Units is being extended, the original Control Period having commenced on the ____ day of _____, _____, with the original term of ____ years and the extended term of ____ years, in combination, totaling ____ years.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Municipality, to the State, and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the UHAC Regulations, and the constitutional obligation for the provision of very-low-, low-, and moderate-income housing.

A. In the event of a breach or threatened breach of any of the Covenants by the Owner, or any assigns or successors in interest of the Property, [page=2796] the Municipality and the State shall have all remedies provided at law or in equity, including the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Owner, or any assigns or successors in interest or other owner of the Property, the Municipality and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

Article 6. Binding Effect

1. The Witness is the _____ secretary of the corporation that is the Owner described as such in this document (the "Corporation").

3. _____, the officer who signed this document, is the <title>_____ of the Corporation (the "Corporate Officer").

3. The making, signing, sealing, and delivery of this document have been duly authorized by a proper resolution of the Board of Directors of the Corporation.

4. The Witness knows the corporate seal affixed to this document by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this document as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this document as attesting witness. The Witness signs this proof to attest to the truth of these facts.

Sworn and signed before me on the date above written:

Witness: Sign above and print, stamp, or type name below

Officer's signature: Sign above, and print, stamp, or type name below

Note: If the Grantor is a limited liability company or partnership, the above jurat may be revised accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.

On this the ____ day of _____, 20____ before me came _____, known to me to be _____ of _____, the municipality identified as such in the foregoing Agreement, who stated that they are duly authorized to execute this Agreement on behalf of the Municipality, and that they have so executed the Agreement for the purposes stated therein.

NOTARY PUBLIC

APPENDIX F-1

FORM OF RELEASE

FOR RESTRICTED OWNERSHIP UNITS

RELEASE OF OWNERSHIP UNIT FROM AFFORDABILITY CONTROLS

(to be recorded in Deed Book and/or Mortgage Book, as applicable)

THIS Release is made as of the _____ day of _____, 20____ by the STATE OF NEW JERSEY, acting by and through _____, as administrative agent for _____ (the "Releasor").

WHEREAS, on or about _____, an Affordable Housing Agreement (the "Agreement") or Deed (the "Deed") and a Repayment Mortgage (the "Mortgage"), including therein affordable housing controls (the "Affordability Controls"), was/were executed by _____, and was/were subsequently recorded in the Clerk or Register's Office of _____ County, New Jersey, in, respectively, Deed Book ____ at page ____ and Mortgage Book ____ at page ____ in connection with certain real property known and designated as Lot No. ____, Block No. ____, in the Municipality of _____, _____ County, New Jersey (the "Municipality"), and commonly known as _____, New Jersey _____ (the "Property"); and

WHEREAS, effective the _____ day of _____, 20____, the Affordability Controls on the Property, or on that portion of the Property known and designated as Lot No. ____, Block No. _____ in the Municipality of _____, _____ County, New Jersey, and commonly known as _____, New Jersey (the "Released Portion"), have terminated pursuant to the terms of the Agreement, Deed, and/or Mortgage, or

duration of the Control Period (the "Minimum Duration") as determined pursuant to N.J.A.C. 5:80-26.12(a) has elapsed or been terminated in the discretion of the Municipality pursuant to N.J.A.C. 5:80-26.12(g); and

WHEREAS, the End Date or the Minimum Duration for the Affordable Unit was _____, 20____, and, pursuant to N.J.A.C. 5:80-26.12(c), the Control Period for the Affordable Unit thereby ended effective as of that date; and

WHEREAS, pursuant to N.J.A.C. 5:80-26.12(c), following the end of the Control Period, the Affordable Unit remains subject to the Affordability Controls until the occurrence of either of the events set forth at N.J.A.C. 5:80-26.12(c)1 and 2;

NOW, THEREFORE, pursuant to N.J.A.C. 5:80-26.12(l)1, the Releasor hereby releases the Deed Restriction on the Affordable Unit; PROVIDED, HOWEVER, that the Affordability Controls set forth in the Deed Restriction remain in effect until the occurrence of either of the events set forth at N.J.A.C. 5:80-26.12(c)1 and 2.

Administrative Agent for

Dated: _____

(Print name above)

STATE OF NEW JERSEY)

) ss.:

COUNTY OF _____)

On this the ____ day of _____, 20____ before me came _____, who acknowledged and made proof to my satisfaction that they are the duly authorized administrative agent for the municipality of _____, the Releasor named above, and that the execution, as well as the making of this instrument has been duly authorized by the Municipality as its voluntary act and deed.

A Notary Public/Attorney of the State of New Jersey

APPENDIX G

FORM OF NOTE FOR PAYMENT OF RECAPTURE

AMOUNT FOR A 95/5-RESTRICTED UNIT

State of New Jersey

Department of Community Affairs

95/5 Repayment Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS NOTE, is dated as of _____.

For value received, _____ (the "Owner") promises to pay to _____, as administrative agent for the municipality of _____, _____ County, New Jersey, or such successor administrative

agent as may be duly appointed (the "Administrative Agent"), the amounts specified in this Note and promises to abide by the terms hereof.

Article 1. REPAYMENT MORTGAGE

As security for payment of the amounts due pursuant to this Note and the performance of all promises contained herein, the Owner is giving the State of New Jersey (the "State") a "Repayment Mortgage To Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period" dated _____ (the "Mortgage") on the property described below (the "Property"). The Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording of the Mortgage, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner shall pay Ninety-Five Percent (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sale price that would be applicable were the Control Period still in effect, as set forth in the Uniform Housing Affordability Controls regulations, codified at N.J.A.C. 5:80-26.1 et seq., as in effect at the time the Property was first restricted as part of the Affordable Housing Program, or another amount less than the Ninety-Five-Percent difference, determined by an ordinance of the Municipality, to the Administrative Agent at the closing of such sale.

Article 3. PROPERTY DESCRIPTION

[page=2798] All of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the Administrative Agent to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms of this Note. The Administrative Agent may enforce this Note against any one or more Owners or against all Owners together.

The Owner accepts and agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated: _____

ATTEST:

By: _____

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY)

)

ss.:

COUNTY OF _____)

On this the ____ day of _____, 20____ before me came _____, who acknowledged and made proof to my satisfaction that they are the Owner named within this Note, and that they have executed this Note for the purposes set forth therein.

Sworn to and subscribed before me on this the ____ day of _____, 20____.

A Notary Public/Attorney of the State of New Jersey

APPENDIX H

FORM OF MORTGAGE SECURING PAYMENT OF RECAPTURE AMOUNT FOR A 95/5-RESTRICTED UNIT

State of New Jersey

Department of Community Affairs

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE is made on this the ____ day of _____, 20____ by and between _____ (the "Owner") and the State of New Jersey, acting by and through _____ (the "State"), in connection with the property described herein (the "Property").

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, including, but not limited to, certification by the State for participation in the affordable housing program and for release by the State of prior recorded restriction documents, the Owner has signed a Repayment Mortgage Note dated _____ (the "Note"). The Owner promises to pay to the State all amounts due under the Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the State as security for the payment required to be paid upon the first non-exempt sale of the Property, which requirement is set forth in the Uniform Housing Affordability Controls regulations ("UHAC Regulations"), codified at N.J.A.C. 5:80-26.1 et seq., as in effect at the time the Property was first restricted under the affordable housing program, after the completion of the control period established pursuant to the UHAC Regulations (the "Control Period"). The maximum amount of any such payment is determined by calculating Ninety-Five

Percent (95%) of the difference between (a) the actual sale price and (b) the regulated maximum sale price ("Maximum Resale Price" or "MRP") that would be applicable on the date of such sale were the Control Period still in effect.

Article 3. PROPERTY DESCRIPTION

The Property consists of all of the land, and the improvements thereon, located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. _____, Lot No. _____, and known by the street address: _____.

Article 4. RIGHTS GIVEN TO STATE

The Owner, by mortgaging the Property to the State, gives the State those rights stated in this Mortgage, and all the rights the law gives to the State pursuant to the UHAC Regulations. The rights given to the State are covenants running with the land. The rights, terms, and restrictions in this Mortgage bind the Owner and all subsequent purchasers and owners of the Property, and the heirs, successors, and assigns of all of them. Upon performance of the promises contained in the Note and this Mortgage, the State will prepare and deliver to the then current owner of record a discharge of mortgage or other document of release.

Article 5. DEFAULT

The State may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner conveys or attempts to convey an interest in the Property without giving prior written notice to the State;
2. Ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency, or receivership proceedings are commenced by or against the Owner.

Article 6. STATE'S RIGHTS UPON DEFAULT

If the State declares that the Note and this Mortgage are in default, the State shall have all of the rights at law or in equity and/or as set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY STATE

The State may exercise any right under this Mortgage or under any law, even if the State has delayed in exercising that right, or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner to be in default by making payments or incurring expenses on behalf of the Owner with respect to the Property.

Article 9. EACH PERSON LIABLE

This Mortgage is legally binding upon each Owner individually and upon all their heirs, successors, and assigns. The State may enforce any of the provisions of the Note and of this Mortgage against any one or more individuals.

Article 10. SUBORDINATION

FORM OF HAS MUNICIPAL AGREEMENT

CONTRACT FOR THE PROVISION OF UNIFORM HOUSING

AFFORDABILITY CONTROL SERVICES

THIS AGREEMENT is made on the _____ day of _____, 20____, by and between the State of New Jersey (the "State"), acting by and through the Housing Affordability Service ("HAS") in the New Jersey Housing and Mortgage Finance Agency ("Agency") and _____, as administrative agent for the municipality of _____, _____ County, New Jersey (the "Municipality").

WITNESSETH

WHEREAS, pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq, (the "Act"), the Municipality is implementing or has implemented a program to provide affordable housing units to very-low-, low-, and moderate-income households desiring to live within the Municipality; and

WHEREAS, the Agency has promulgated housing affordability controls regulations, codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations"), to implement the Act by ensuring that low- and moderate-income housing units that are created under the Act are occupied by very-low-, low-, and moderate-income households for appropriate periods of time; and

WHEREAS, N.J.A.C. 5:80-26.15 provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality, and provides further that the municipality shall designate or approve such administrative agent; and

WHEREAS, the Municipality has designated HAS to be the administrative agent for the purposes of providing affordability control services for all affordable housing units within the Municipality,

NOW, THEREFORE, HAS and the Municipality hereby agree as follows:

Section 1. Term

This Agreement is effective as of the _____ day of _____, 20____, for a term of three (3) years, terminating at the close of business on the _____ day of _____, 20____, subject to the termination and renewal provisions set forth at Section 5 below.

Section 2. Applicability and Supersession

This Agreement defines and governs all terms between the parties with respect to affordability controls for affordable housing units provided pursuant to the Act and supersedes all prior agreements or documents related thereto. HAS and the Municipality acknowledge that pursuant to the UHAC Regulations, the State is acting hereunder primarily as an agent of the Municipality. Anything herein to the contrary notwithstanding, the Municipality hereby delegates to HAS, and HAS hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the UHAC Regulations.

Section 3. Exclusions

This Agreement does not apply to units funded under

- a. The Federal Low-Income Housing Tax Credit program established pursuant to Section 42 of the Internal Revenue Code;
- b. The Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4);
- c. The National Housing Trust Fund program, 24 C.F.R. Part 891;
- d. The HUD 202 program, 24 C.F.R. Part 891;
- e. The HUD 811 program, 24 C.F.R. Part 891;
- f. The HUD HOPE VI program;

g. The Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 1291; or

h. Any other program excluded pursuant to the Act or the UHAC Regulations.

Section 4. Termination and Renewal

a. This Agreement may be terminated by either party by giving sixty (60) days advanced written notice to the other party, to the address and in the form as set forth in Section 8, below; provided, however, that no such termination may take effect unless and until a successor administrative agent has been selected by the Municipality, approved by all required governmental authorities, and executed an agreement substantially in the form hereof with the Municipality.

b. Unless terminated, this Agreement shall automatically be renewed for two (2) successive terms of two (2) years each. The Municipality shall pay the Agency at the Agency's then current rate during such successive term(s).

Section 5. Exclusivity of Agreement; Project Amendments

a. For the term hereof, and without exception, this Agreement will govern the provision of affordability control services for all projects and units located within the Municipality that are within the jurisdiction of the Act and/or the UHAC Regulations.

b. Individual projects for which affordability control services are to be provided hereunder shall each be evidenced by a contract amendment ("Project Amendment") that has been executed by HAS, by the Municipality, and by the project developer. All such Project Amendments must be in the specific form set forth as Exhibit A hereto.

c. The annexation of a fully executed original of a Project Amendment to HAS' original of this Agreement is a condition precedent to the provision of any affordability control services to the related project.

Section 6. Responsibilities of HAS

HAS shall perform all of the duties and responsibilities of an administrative agent as set forth at N.J.A.C. 5:80-26.15 and elsewhere in the UHAC Regulations, including those set forth at N.J.A.C. 5:80-26.17 and 26.19, as such rules may from time to time be amended.

Section 7. Responsibilities of the Municipality

The Municipality shall:

a. Provide to HAS the name, title, email address, and telephone number of the municipal official or such other individual(s) who will be responsible for liaison with HAS on all matters related to this Agreement;

[page=2800] b. Use its best efforts to ensure that applicable local ordinances are not in conflict with the Act, the UHAC Regulations, or the provisions of this Agreement;

c. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The Municipality and MUA shall promptly notify HAS of a change in billing address, payment delinquency of two or more billing cycles, transfer of title, institution of a writ of foreclosure, or any other event of which they become aware that indicates any applicable unit is not being, or may in the future not be, used as housing for very-low-, low-, or moderate-income persons with respect to any affordable units.

d. Provide all reasonable and necessary assistance to HAS in support of efforts to enforce provisions of the Act, the UHAC Regulations, deed covenants, mortgages, court decisions, or other authorities governing the affordability control services to be provided pursuant to this Agreement.

Section 8. Notices

All notices and other written communications between HAS and the Municipality shall be to the addresses and personnel specified below:

if to HAS:

New Jersey Housing and Mortgage Finance Agency
Housing Affordability Service
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650-2085

if to the Municipality:

. . .

Attn:

Section 9. Non-Waiver of Conditions

The failure of either party to insist upon strict performance of any provision of this Agreement in any one or more instances does not constitute a consent to waiver of or acceptance of any other different or subsequent breach of the same or other provision, nor as a result thereof does either party relinquish any rights it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach accepted unless such waiver or consent is in writing and signed by an authorized individual acting on behalf of the consenting or waiving party

Section 10. Incorporation of Standard State Conditions

Exhibit B, the general provisions required to be included in this Agreement by the Office of the Attorney General, "_____", is hereby incorporated into and made a part of this Agreement.

Section 11. Priority of Documents

Should a conflict or inconsistency exist between the terms of this Agreement, including Exhibit A, and Exhibit B, incorporated herein by reference, the conflict or inconsistency shall be resolved by giving precedence to this Agreement, including Exhibit A.

Section 12. Merger and Amendment

This written Agreement, together with Exhibits A and B, constitutes the entire agreement between the parties with respect to the matters covered herein, and no other written or oral communication will bind the parties with respect thereto, provided, however, that this Agreement may be modified by written amendments clearly identified as such and signed by duly authorized representatives on behalf of both HAS and the Municipality.

Section 13. Partial Invalidation of Agreement

If any provision of this Agreement is determined or adjudged to be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions will remain in full force and effect.

IN WITNESS WHEREOF, HAS and the Municipality have executed this Agreement as of the date first above written.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

BY: _____

Title

THE MUNICIPALITY OF _____

BY: _____

Title

ACKNOWLEDGEMENTS

On this the ____ day of _____, 20____ before me came _____, to me known and known to me to be the _____ of the New Jersey Housing and Mortgage Finance Agency (the "Agency"), who stated that they signed this Agreement on behalf of the Agency for the purposes stated therein.

NOTARY PUBLIC

On this the ____ day of _____, 20____, before me came _____ known and known to me to be _____ of _____, the Municipality identified as such in the foregoing Agreement, who stated that they are duly authorized to execute this Agreement on behalf of the Municipality, and that they have so executed the Agreement for the purposes stated therein.

NOTARY PUBLIC

APPENDIX J

FORM OF CERTIFICATE FOR APPLICANTS

CERTIFIED TO OWNERSHIP UNIT, REQUIRED

BY N.J.A.C. 5:80-26.19(d)2

CERTIFICATE FOR APPLICANT

CERTIFIED TO AN OWNERSHIP UNIT SUBJECT TO

AFFORDABLE HOUSING RESTRICTIONS

My name is _____. I make this certificate in connection with my application to purchase

_____.

a home provided under the New Jersey affordable housing program.

I am aware, as the purchaser of an Affordable Home, that from this date until _____, 20____ I must follow the rules and requirements that are listed below:

1. I am allowed to sell my home only to a person or a family who is part of the affordable housing program, and who has been certified, like I have been, in writing, by the administrative agent for the municipality of _____ or a successor administrative agent (the "Administrative Agent"). The identity of and contact information for the current Administrative Agent are as follows: _____ . I am aware that the Administrative Agent may change during the time I own my home and, if that happens, my contacts will be with the new Administrative Agent.

2. The price for which I can sell my house is limited by law, and may be much less than the sale prices of other homes similar to mine, but which are not part of the affordable housing program. I am aware that the maximum resale price determined pursuant to N.J.A.C. 5:80-26.7 is a limit rather than a guarantee, and that the price for which I can sell my home may be lower than the maximum resale price due to the condition of

the home and/or the condition of the housing market. The maximum resale price will be determined using the price at which I am purchasing the home, \$_____, as a baseline.

3. I cannot take out any loans of any kind secured by my house (a "mortgage loan") unless the loan is approved by the Administrative Agent before I sign any loan papers. The total amount of mortgage loans I am allowed to have is limited by law.

4. I know that I am required to live in my house, and that I cannot rent it out to any other person, not even to members of my family. If I have a temporary need to move away for a valid reason, such as if my employer is temporarily sending me to work great distance from my home, or if I am being called up for military service, I should call the Administrative Agent and ask for a "temporary waiver" of this rule. It is up to the Administrative Agent whether or not I get a temporary waiver.

5. If my home is a two-family home, I know that I am allowed to rent the rental unit only to a person or family who is part of the affordable housing program, and who has been certified, in writing, by the Administrative Agent to rent my rental unit.

6. I know that the rent I am allowed to charge a tenant is limited by law and is determined each year by the Administrative Agent. I know that it is my responsibility to find out what is the maximum rent I am allowed to charge by contacting the Administrative Agent.

[page=2801] 7. I know that I am required to send copies of all leases with my tenants to the Administrative Agent.

8. I know that I am not allowed to make any improvements to my home unless they have been approved in advance and, in writing, by the Administrative Agent, and that I cannot increase the maximum resale price of my home based on improvements that were not approved by the Administrative Agent.

9. I know that if I break any of these rules or requirements, I will be subject to penalties provided by law, including, but not limited to, having to pay fines and possibly losing my home.

BE IT REMEMBERED, that on this the ____ day of _____, 20____ the signer of this Certificate _____ appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Purchaser of the Affordable Home that is identified in the foregoing Certificate, and (ii) they executed this Certificate with respect to the purchase of the Affordable Home described in the Certificate and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

APPENDIX K

FORM OF CERTIFICATE FOR APPLICANTS

CERTIFIED TO RENTAL UNIT, REQUIRED

BY N.J.A.C. 5:80-26.19(d)2

CERTIFICATE FOR APPLICANT

CERTIFIED TO A RENTAL UNIT SUBJECT TO

AFFORDABLE HOUSING RESTRICTIONS

My name is _____. I make this certificate in connection with my application to rent the Affordable Housing unit located at _____.

I am aware, as the renter of an Affordable Unit, that from this date until _____, 20____, as long as I am renting the unit described above, I am subject to the requirements listed below:

1. I am required to pay all rent set forth in my lease on time and in the manner provided for in my lease and to abide by all the terms and conditions of my lease.
2. I know that I am required to live in my unit, and that I cannot sublease it or rent it out to any other person, not even to members of my family.
3. I know that the maximum rent I am required to pay to my landlord is limited by law, that it is determined each year by the administrative agent for the municipality of _____ or a successor administrative agent (the "Administrative Agent"), and that I can contact the Administrative Agent at any time if I have any questions about what rent I am required to pay. I know that future rent amounts will be determined using the rent that I am initially paying, \$_____ per month, as a baseline, and that the rent increase may not exceed the amount pre-approved by the Administrative Agent.
4. I know that the rent that I am initially paying was calculated based on a utility allowance of \$_____ per month, for which I was provided a copy of the utilities chart used to determine the utility allowance, but that my actual monthly utility costs may differ from the utility allowance.
5. I know that I am not allowed to make any improvements to my unit unless they have been approved in advance and, in writing, by the Administrative Agent.

BE IT REMEMBERED, that on this the ____ day of _____, 20____, _____, the signer of this Certificate, appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the renter/tenant of the Affordable Unit that is identified in the foregoing Certificate, and (ii) they executed the Certificate with respect to the rental of the unit described in the Certificate and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

APPENDIX L

FORM OF RECAPTURE MORTGAGE NOTE IN FAVOR
OF THE STATE, REQUIRED BY N.J.A.C. 5:80-26.6(d)
STATE OF NEW JERSEY
RECAPTURE MORTGAGE NOTE
IN CONNECTION WITH PAYMENT OF AMOUNTS DUE
UPON FIRST NON-EXEMPT SALE
AFTER EXPIRATION OF CONTROL PERIOD

THIS NOTE is dated as of _____. For value received _____ (the "Owner") promises to pay to _____ (the "_____")
<insert name, address, and defined term of applicable payee>, the amounts specified in this Note and promises to abide by the terms and conditions set forth below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained herein, the Owner is giving _____ <insert defined term of applicable payee> a Repayment Mortgage to Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period dated _____ (the "Mortgage"), on the property described below (the "Property"). The Mortgage encumbers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by _____ <insert defined term of applicable payee>, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNERS PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor, or assignee of the Owner then selling the Property, shall pay the recapture amount, currently \$ _____ <insert amount determined pursuant to N.J.A.C. 5:80-26.6, which is the difference between \$ _____, the restricted price of the Property at the time of initial sale, and \$ _____, the non-restricted, fair market value of the Property at the time of initial sale,> to _____ <insert defined term of applicable payee>. Pursuant to N.J.A.C. 5:80-26.6(d)1iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, _____ <insert defined term of applicable payee> may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The obligation evidenced by this Note will not accrue interest and will be reduced by the cumulative dollar value of capital improvements made after the date hereof for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Property, excluding capital improvements paid for by _____ <insert defined term of applicable payee>.

The obligation evidenced by this Note will not accrue interest and will be reduced by the cumulative dollar value of capital expenditures made after the date hereof for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Property, excluding [page=2802] capital expenditures paid for by _____ <insert defined term of applicable payee>.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives their right to require _____ <insert defined term of applicable payee> to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms and conditions of this Note. _____ <insert defined term of applicable payee> may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms of this Note by signing below.

ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:

ATTEST:

By:

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY)
COUNTY OF _____) SS.:

On this the ____ day of _____, 20____ before me came _____, who acknowledged and made proof to my satisfaction that they are the Owner named in this Note, and that they executed this Note for the purposes set forth therein, sworn to and subscribed to in my presence on this date.

Sworn to and subscribed before me this the ____ day of _____, 20__.

A Notary Public/Attorney of the State of New Jersey

APPENDIX M

FORM OF MORTGAGE SECURING PAYMENT OF
RECAPTURE NOTE IN FAVOR OF THE STATE,
REQUIRED BY N.J.A.C. 5:80-26.6(d)
STATE OF NEW JERSEY
AFFORDABLE HOUSING PROGRAM
REPAYMENT MORTGAGE
TO SECURE PAYMENT OF AMOUNTS DUE
UPON FIRST NON-EXEMPT SALE
AFTER EXPIRATION OF CONTROL PERIOD

THIS MORTGAGE, made on this the _____ day of _____, 20____ by and between _____ (the "Owner") and _____ (the "_____") <insert name, address, and defined term of applicable mortgagee>, in connection with the property described below (the "Property").

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note dated _____ (the "Note"). The Owner promises to pay _____ <insert defined term of applicable mortgagee> the recapture amount due under the Note, currently \$ _____, which is the difference between the restricted price of the Property at the time of initial sale, \$ _____, and the non-restricted, fair market value of the Property at the time of initial sale, \$ _____, and to abide by all terms and conditions therein. Pursuant to N.J.A.C. 5:80-26.6(d)1iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, _____ <insert defined term of applicable mortgagee> may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The amount due under the Note will be reduced by the cumulative dollar value of capital improvements made after the date of the Note for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Property, excluding capital improvements paid for by _____ <insert defined term of applicable mortgagee>.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to _____ <insert defined term of applicable mortgagee> as security for the payment required to be paid upon the first non-exempt sale of the Property, as set forth at N.J.A.C. 5:80-26.6(d).

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address: _____.

Article 4. RIGHTS GIVEN TO _____ <insert defined term of applicable mortgagee>

The Owner, by mortgaging the Property to _____ <insert defined term of applicable mortgagee>, gives _____ <insert defined term of applicable mortgagee> those rights stated in this Mortgage, and all the rights given pursuant to the Uniform Housing Affordability Controls regulations ("UHAC Regulations"), which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. The rights given to _____ <insert defined term of applicable mortgagee> are covenants running with the land. The rights, terms, and restrictions in this Mortgage bind the Owner and all subsequent purchasers and owners of the Property, and their heirs, successors, and assigns. Upon performance of the promises contained in the Note and this Mortgage, _____ <insert defined term of applicable mortgagee> will prepare and deliver to the then current owner of record a discharge or other document of release.

Article 5. DEFAULT

_____ <insert defined term of applicable mortgagee> may declare the Owner in default of this Mortgage and the Note if:

1. The Owner conveys or attempts to convey an interest in the Property without giving prior written notice to _____ <insert defined term of applicable mortgagee>;
2. The ownership of the Property is changed for any reason other than through an exempt sale;
3. The Owner fails to make any payment required by the Note;

4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency, or receivership proceedings are commenced by or against the Owner.

[page=2803] Article 6. RIGHTS UPON DEFAULT

If _____ <insert defined term of applicable mortgagee> declares that the Note and this Mortgage are in default, _____ <insert defined term of applicable mortgagee> shall have all of the rights given by law or as set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY _____ <insert defined term of applicable mortgagee>

_____ <insert defined term of applicable mortgagee> may exercise any right under this Mortgage or under any law, even if _____ <insert defined term of applicable mortgagee> has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. _____ <insert defined term of applicable mortgagee> does not waive its right to declare the Owner to be in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

This Mortgage is legally binding upon each Owner individually and all their heirs, assigns, and successors in interest. _____ <insert defined term of applicable mortgagee> may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by _____ <insert defined term of applicable mortgagee>, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage will not be released with respect to any subsequent owner who acquires the Property through an exempt transfer unless the transferee executes a note and mortgage substantially in the form of the Note and this Mortgage and causes such mortgage to be duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by authorized representatives of both parties and approved by the administrative agent for the Property duly appointed pursuant to the UHAC Regulations.

Article 13. SIGNATURES

By executing this Mortgage, the Owner agrees to abide by all terms and conditions thereof.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: _____

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY)

COUNTY OF _____) ss.:

BE IT REMEMBERED, that on this the _____ day of _____, 20____, the subscriber _____ appeared personally before me *(If more than one person signed the foregoing Mortgage and appeared before me, the words "the subscriber" and "the Owner" include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Owner named in the Mortgage and (ii) they executed the Mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

APPENDIX N

FORM OF RECAPTURE MORTGAGE NOTE IN

FAVOR OF MUNICIPALITY, REQUIRED

BY N.J.A.C. 5:80-26.6(d)

State of New Jersey

Department of Community Affairs

<NAME OF MUNICIPALITY>

Recapture Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS NOTE is dated as of _____. For value received _____ (the "Owner") promises to pay to <NAME OF MUNICIPALITY>, which has its principal offices at <ADDRESS OF MUNICIPAL OFFICES> (the "Municipality"), the amounts specified in this Note and promises to abide by the terms and conditions set forth below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises set forth herein, the Owner is giving the Municipality a Repayment Mortgage to Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period dated _____ (the "Mortgage"), on the property described below (the "Property"). The Mortgage encumbers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the Maximum Resale Price that would be applicable were the Control Period still in effect, as those terms are defined in Article 2 of the Mortgage.

Article 2. OWNER'S PROMISE TO PAY AND OTHER TERMS

Upon the first non-exempt sale of the Property after the date of this Note, the Owner, or the heir, successor, or assignee of the Owner then selling the Property, shall pay the recapture amount, currently \$ _____ <insert amount determined pursuant to N.J.A.C. 5:80-26.6>, which is the difference between \$ _____, the restricted price of the Property at the time of initial sale, and \$ _____, the non-restricted, fair market value of the Property at the time of initial sale, to the Municipality. Pursuant to N.J.A.C. 5:80-26.6(d)1iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, by ordinance, the Municipality may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The obligation evidenced by this Note will not accrue interest and will be reduced by the cumulative dollar value of capital improvements made [page=2804] after the date of this Note for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Municipality, excluding capital improvements paid for by the Municipality.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address: _____.

Article 4. WAIVER OF FORMAL ACTS

The Owner waives its right to require the Municipality to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

Article 5. RESPONSIBILITY UNDER NOTE

All Owners signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms and conditions hereof. The Municipality may enforce this Note against any one or more of the Owners or against all Owners together.

The Owner agrees to the terms and conditions of this Note by signing below.

ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of the Mortgage and this Note, at no charge.

Dated:

ATTEST:

In consideration of value received, the Owner has signed a Recapture Mortgage Note dated _____ (the "Note"). The Owner promises to pay to the Municipality the recapture amount due under the Note, currently \$_____, which is the difference between \$_____, the restricted

price of the Property at the time of initial sale, and to abide by all terms and conditions therein. Pursuant to N.J.A.C. 5:80-26.6(d)1iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, by ordinance, the Municipality may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The amount due under the Note will be reduced by the cumulative dollar value of capital expenditures made after the date of the Note for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Municipality, excluding capital improvements paid for by the Municipality.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the Municipality as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided under the Uniform Housing Affordability Controls regulations, which are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the "UHAC Regulations").

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address:
_____.

Article 4. RIGHTS GIVEN TO MUNICIPALITY

The Owner, by mortgaging the Property to the Municipality, gives the Municipality those rights stated in this Mortgage, and all the rights given to the Municipality pursuant to the UHAC Regulations. The rights given to the Municipality are covenants running with the land. The rights, terms, and restrictions of this Mortgage bind the Owner and all subsequent purchasers and owners of the Property and their heirs, successors, and assigns. Upon performance of the promises contained in the Note and this Mortgage, the Municipality will prepare and deliver to the then current owner of record a discharge or other document of release.

Article 5. DEFAULT

The Municipality may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner conveys or attempts to convey an interest in the Property without giving prior written notice to the Municipality;
2. The ownership of the Property or any interest therein is changed for any reason other than through an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency, or receivership proceedings are commenced by or against the Owner.

Article 6. MUNICIPALITY'S RIGHTS UPON DEFAULT

If the Municipality declares that the Note and this Mortgage are in default, the Municipality shall have all of the rights given by law, in equity, or as set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

[page=2805] Article 8. NO WAIVER BY MUNICIPALITY

The Municipality may exercise any right under this Mortgage or under any law, even if the Municipality has delayed in exercising that right or has agreed in an earlier instance not to exercise the right. The Municipality does not waive its right to declare the Owner to be in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

This Mortgage is legally binding upon each Owner individually and all their heirs, successors, and assigns. The Municipality may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage will not be released with respect to any subsequent owner who acquires the Property through an exempt transfer unless the transferee executes and delivers to the Municipality a note and mortgage substantially in the form of the Note and this Mortgage, and the mortgage is duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by authorized representatives of both parties and approved by the administrative agent for the Municipality duly appointed pursuant to the UHAC Regulations.

Article 13. SIGNATURES

By executing this Mortgage, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: _____

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY)

)

ss.:

COUNTY OF _____)

BE IT REMEMBERED, that on this the _____ day of _____, 20____, the subscriber _____ appeared personally before me (*If more than one person signed the foregoing Mortgage and appeared before me, the words "the subscriber" and "the Owner" include all such persons*) and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Owner named in the foregoing Mortgage and (ii) they executed the Mortgage with respect to the Property and for the purposes set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

APPENDIX P-1

NOTICE OF INTENT TO CONSTRUCT AFFORDABLE DEED-RESTRICTED

OWNERSHIP UNITS

For State-Regulated Property

(Preliminary Instrument Required by N.J.A.C. 5:80-26.6(e))

TAKE NOTICE that as of _____, 20____, _____, a <State of Formation/Incorporation> <Type of Entity> (the "Owner" or "Developer"), having offices at _____, intends to construct _____ housing units at Block No. _____, Lot No. _____, at the street address _____, known or to be known as _____ (the "Project"), in the municipality of _____, New Jersey (the "Municipality"). Of the _____ housing units to be constructed, _____ will be income-restricted affordable housing units (the "Affordable Units") and, of the Affordable Units, _____ will be available for ownership by individuals or families whose incomes are 30 percent or less of area median income; _____ will be available for ownership by individuals or families whose incomes are 50 percent or less, but greater than 30 percent of area median income; and _____ will be available for ownership by individuals or families whose incomes are 80 percent or less, but greater than 50 percent of area median income. It is anticipated that construction of the Affordable Units will commence on _____, 20____, with an anticipated completion date of _____, 20____. The Project <will /will not> be constructed in phases, with a projected phasing schedule, if applicable, shown on Exhibit A annexed hereto.

Prior to the issuance by the Municipality of a certificate of occupancy for any of the Affordable Units, a deed restriction substantially in the form at Appendix _____ to the Uniform Housing Affordability Controls regulations, codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq., must be duly executed and recorded in the Clerk's/Register's Office of _____ County, New Jersey, at which time a discharge or other release of this Notice will be filed by the <Developer /Owner> and the Municipality in the Clerk's/Register's Office.

IN WITNESS WHEREOF, the <Owner /Developer> and the Municipality have executed this instrument as of _____, 20____.

Owner or Developer

By:

Title:

(Municipality)

By:

Title:

APPENDIX P-2

NOTICE OF INTENT TO CONSTRUCT/REHABILITATE AFFORDABLE DEED-RESTRICTED RENTAL UNITS

For State-Regulated Property

(Preliminary Instrument Required by N.J.A.C. 5:80-26.12(e))

TAKE NOTICE that as of _____, 20____, _____, a <State of Formation/Incorporation> <Type of Entity> (the "Owner" or "Developer"), having offices at _____, intends to <construct / rehabilitate> _____ housing units at Block No. _____, Lot No. _____, at the street address _____, known or to be known as _____ (the "Project"), in the municipality of _____, New Jersey (the "Municipality"). Of the _____ housing units to be <constructed /rehabilitated>, _____ will be income-restricted affordable housing units (the "Affordable Units") and, of the Affordable Units, _____ will be available for rental by individuals or families whose incomes are 30 percent or less of area median income; _____ [page=2806] will be available for rental by individuals or families whose incomes are 50 percent or less, but greater than 30 percent of area median income; and _____ will be available for rental by individuals or families whose incomes are 80 percent or less, but greater than 50 percent of area median income. It is anticipated that <construction /rehabilitation> of the Affordable Units will commence on _____, 20____, with an anticipated completion date of _____, 20____. The Project <will /will not> be constructed in phases, with a projected phasing schedule, if applicable, shown on Exhibit A annexed hereto.

Prior to the issuance by the Municipality of a certificate of occupancy for any of the Affordable Units, a deed restriction substantially in the form at Appendix _____ to the Uniform Housing Affordability Controls regulations, codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq., must be duly executed and recorded in the Clerk's/Register's Office of _____ County, New Jersey, at which time a discharge or other release of this Notice will be filed by the <Developer /Owner> and the Municipality in the Clerk's/Register's Office.

IN WITNESS WHEREOF, the <Owner /Developer> and the Municipality have executed this instrument as of _____, 20____.

Owner or Developer

By:

Title:

(Municipality)

By:

Title:

APPENDIX Q

FORM OF MORTGAGE SECURING PAYMENT OF
RECAPTURE NOTE IN FAVOR OF THE AGENCY,

REQUIRED BY N.J.A.C. 5:80-26.6(d)

State of New Jersey

Department of Community Affairs

New Jersey Housing and Mortgage Finance Agency

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the _____ day of _____, 20____ by and between _____ (the "Owner") and the New Jersey Housing and Mortgage Finance Agency (the "Agency"), in connection with the property described in Article 3 below (the "Property").

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Repayment Mortgage Note dated _____ (the "Note"). The Owner promises to pay to the Agency the recapture amount due under the Note, currently \$_____, which is the difference between \$_____, the restricted price of the Property at the time of initial sale, and \$_____, the non-restricted, fair market value of the Property at the time of initial sale, and to abide by all terms and conditions therein. Pursuant to N.J.A.C. 5:80-26.6(d)1iv, the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the "price differential") minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the "equity share amount"). At its sole discretion, the Agency may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The amount due under the Note will be reduced by the cumulative dollar value of capital improvements made after the date of the Note for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Property, excluding capital improvements paid for by the Agency.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the Agency as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided by the Uniform Housing Affordability Controls regulations (the "UHAC Regulations"), codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq.

Article 3. PROPERTY DESCRIPTION

The Property consists of all of the land and improvements thereon located in the municipality of _____, _____ County, New Jersey, described more specifically as Block No. ____, Lot No. ____, and known by the street address: _____.

Article 4. RIGHTS GIVEN TO AGENCY

The Owner, by mortgaging the Property to the Agency, gives the Agency those rights stated in this Mortgage and all the rights given to the Agency under the UHAC Regulations. The rights given to the Agency are covenants running with the land. The rights, terms, and restrictions in this Mortgage bind the Owner and all subsequent purchasers and owners of the Property, and their heirs, successors, and assigns. Upon

performance of all the promises set forth in the Note and this Mortgage, the Agency will prepare and deliver to the then current owner of record a discharge or other document of release.

Article 5. DEFAULT

The Agency may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner conveys or attempts to convey an interest in the Property without giving prior written notice to the Agency;
2. The ownership of the Property or any interest therein is changed for any reason other than through an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency, or receivership proceedings are commenced by or against the Owner.

Article 6. AGENCY'S RIGHTS UPON DEFAULT

If the Agency declares that the Note and this Mortgage are in default, the Agency shall have all of the rights given by law or in equity or as set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, PROVIDED IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY AGENCY

The Agency may exercise any right given by this Mortgage or any law, even if the Agency has delayed in exercising that right or has agreed in an earlier instance not to exercise the right. The Agency does not waive its right to declare the Owner to be in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

This Mortgage is legally binding upon each Owner individually and all their heirs, successors, and assigns. The Agency may enforce any of the provisions of the Note and this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the Agency, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to [page=2807] (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released with respect to any subsequent owner who acquires the Property through an exempt transfer unless the transferee executes and delivers to the Agency a note and mortgage substantially in the form of the Note and this Mortgage, and the mortgage has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by duly authorized representatives of both parties.

Article 13. SIGNATURES

By executing this Mortgage, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: _____

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY)
COUNTY OF _____) SS.:

BE IT REMEMBERED, that on this the _____ day of _____, 20_____ the subscriber _____ appeared personally before me *(If more than one person signed the foregoing Mortgage and appeared before me, the words "the subscriber" and "the Owner" include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Owner named in the foregoing Mortgage and (ii) they executed the Mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC

NEW JERSEY REGISTER

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