

COMMUNITY AFFAIRS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Controls

Proposed 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

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

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

Proposed 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

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

Authorized By: New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Authority: N.J.S.A. 52:27D-321.f and 55:14K-5.g.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-086.

Submit written comments by September 19, 2025, to:

Jim Peasco, Senior Legal Research Analyst

New Jersey Housing and Mortgage Finance Agency

637 South Clinton Avenue

PO Box 18550

Trenton, New Jersey 08650-2085

Email: jpeasco@njhmfa.gov

Pursuant to section 27.f at P.L. 2024, c. 2 (N.J.S.A. 52:27D-321.f), the New Jersey Housing and Mortgage Finance Agency (“Agency” or “NJHMFA”), upon consultation with the New Jersey Department of Community Affairs (DCA), promulgated special amendments and special new rules (2024 special adoption) to the Agency’s Housing Affordability Controls rules at N.J.A.C. 5:80-26 (UHAC regulations). The 2024 special adoption was effective upon filing with the Office of Administrative Law on December 20, 2024, N.J.S.A. 52:27D-321.f, and was published in the New Jersey Register on February 18, 2025, at 57 N.J.R. 389(a). As mandated at N.J.S.A. 52:27D-321.f, NJHMFA is hereby proposing to readopt the 2024 special adoption with additional amendments, repeals, and new rules to the UHAC regulations to effectuate the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (FHA), including the 2024 amendments thereto, and the Constitutional mandate for New Jersey municipalities to provide for their fair share of housing for low- and moderate-income individuals and families as expressed by the New Jersey Supreme Court in its *Mount Laurel* decisions.

As was the 2024 special adoption, the proposed new amendments are intended to align the UHAC regulations with the requirements mandated at P.L. 2024, c.2; create greater clarity for

municipalities and affordable housing practitioners in implementing those statutory requirements; update affirmative marketing requirements in accordance with modern housing search practices; and align certification calculations and processes with other extant affordable housing programs.

As the Agency filed this notice of readoption of specially adopted new rules and amendments prior to December 20, 2025, the expiration date of the specially adopted new rules and amendments (adopted at 57 N.J.R. 389(a)) is extended 180 days to June 18, 2026, pursuant to N.J.S.A. 52:14B-5.1.c. This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, as a 60-day comment period is being provided.

The agency proposal follows:

Summary

General

Throughout the above-cited provisions of the UHAC regulations, the Agency proposes certain technical amendments to correct capitalization, improve punctuation and sentence structure, and maintain or attain consistency among referenced terms. Unless these proposed technical amendments will impact the content of the rules, they are pointed out only generally in the summary of proposed amendments provided below and are referenced generically as amendments “to improve syntax.”

In the special adoption, the Agency added new N.J.A.C. 5:80-26.3, necessitating the recodification of the remainder of Subchapter 3; the Agency also added new N.J.A.C. 5:80-26.28. In this rulemaking, the Agency proposes repealing N.J.A.C. 5:80-26.22, 26.23, 26.24, 26.26, and 26.27, necessitating the recodification of N.J.A.C. 5:80-26 25 and 26.28 as 26.22 and 26.23, respectively.

Subchapter 26 – Heading

The Agency proposes to amend the heading of Subchapter 26 from “Housing Affordability Controls” to “Uniform Housing Affordability Controls (UHAC),” as the rules are commonly known and referred to by the full title “Uniform Housing Affordability Controls” and/or by the acronym “UHAC.”

N.J.A.C. 5:80-26.1 Purpose and Applicability

In the 2024 special adoption, the Agency made an amendment at N.J.A.C. 5:80-26.1 to improve syntax and to delete active references to the Council on Affordable Housing (COAH), which was formally abolished pursuant to P.L. 2024, c.2. Amendments were also adopted to specify, update, and more accurately identify the sources of credit for certain restricted units. Additionally, sentences were added to mandate that newly constructed low-income housing tax credit (LIHTC) units that receive credit pursuant to the FHA comply with the affirmative marketing requirements of the UHAC regulations at N.J.A.C. 5:80-26.16 and to note that transitional housing units that receive credit are governed by the rules of their sponsoring programs.

The Agency proposes to amend N.J.A.C. 5:80-26.1 to confirm that affordable LIHTC units, in addition to being required to comply with the affirmative marketing requirements of the chapter, are governed by New Jersey’s Qualified Allocation Plan, codified at N.J.A.C. 5:80-33.

N.J.A.C. 5:80-26.2 Definitions

In the 2024 special adoption, the Agency deleted the definition of “Balanced Housing” and incorporated it into the newly created definition for the “Affordable Housing Trust Fund.” The

Agency deleted the definitions for “high poverty census tract” and “median income” and made minor changes to other existing definitions, improving clarity and citing relevant statutes.

In the 2024 special adoption, the Agency added 18 definitions: “Affordable Housing Trust Fund,” “CHOICE,” “Continuum of Care,” “county-level housing judge,” “Dispute Resolution Program,” “household income,” “housing region,” “multifamily development,” “municipal housing liaison,” “New Jersey Housing Resource Center,” “nonprofit,” “price differential,” “regional median income,” “single-family development,” “very-low-income household,” “very-low-income unit,” “Veteran,” and “Veterans’ preference.” These additions were necessary in light of the amendments to the FHA, new statutes enacted since the 2004 UHAC update, changes to State-administered programs since the 2004 UHAC update, and the transfer of certain COAH responsibilities.

The Agency proposes removing the definitions of “multifamily development” and “single-family development.” The Agency proposes adding the following seven definitions: “compliance certification,” “equity share amount,” “exit sale,” “fair share plan,” “housing element,” “Municipal Housing Trust Fund,” and “prior round unit.” The Agency proposes the addition of a definition for “prior round unit” to address the concerns that existing or planned units should be exempt from some of the new UHAC regulations. The new “prior round” definition simplifies and condenses many provisions concerning applicability located throughout the UHAC. Unbuilt units as of March 20, 2024 (the enactment of Bill A4) are not prior round units unless they are sited and created in accordance with a prior round plan adopted by the deadline to adopt implementing ordinances and resolutions for the Fourth Round.

The Agency proposes amending the term “95/5 units” to be “95/5 restriction” and clarifying the definition to reflect that the 95/5 split is a type of restriction, rather than a type of unit. The

Agency proposes minor revisions to the definitions of “administrative agent,” clarifying that individuals, not just entities, can be administrative agents, and updating the relevant citations, “veterans’ preference,” clarifying that it applies to rental units only, “random selection process,” removing the implied requirement that income certification must precede random selection and prohibiting explicitly first-come, first-serve selection, and “price differential,” specifying that the contract price of the exit sale should be used. The Agency proposes minor wording changes to the definitions of “assisted living residence,” “COAH,” and “Dispute Resolution Program.” The Agency proposes relocating the definition of “Agency” to its proper place, alphabetically.

N.J.A.C. 5:80-26.3 Regional Income Limits

In the 2024 special adoption, the Agency added new N.J.A.C. 5:80-26.3 to describe the process for calculating the regional income limits that are fundamental for determining affordability and eligibility.

The Agency based this section on the substantive COAH regulations for the Second Round (N.J.A.C. 5:93) and the Third Round (N.J.A.C. 5:97). Thus, the section codified the existing practices followed by COAH

The Agency proposes no new changes in this rulemaking.

N.J.A.C. 5:80-26.4 Affordability Average; Bedroom Distribution

In the 2024 special adoption, the Agency made a number of amendments for clarity and consistency with statutory changes. The Agency inserted the provision from P.L. 2008, c.46 (A500) and A4 mandating that 13 percent of all restricted units in a municipality be affordable to very-low-income households.

The Agency expanded the language of this section to account for the practical challenges of compliance, most acutely impacting smaller developments. The language in the 2004 version of UHAC unintentionally created imbalances between low-income units and moderate-income units, making it difficult to achieve the specified affordability averages. For extremely small developments, compliance with the previous language was mathematically impossible.

The Agency required that very-low-income units be distributed as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count. This requirement was considered the best way to achieve the goal of uniform distribution without being overly prescriptive, as very-low-income units are such a small proportion of the overall count that they make calculations and rounding unwieldy.

The Agency allowed rounding up or down in expressly delineated instances, so as to maintain the overall income and bedroom distributions while removing imbalances. For extra security, the Agency clarified that the rounding would not affect the calculation of bonus credits for large-family units.

The Agency added supportive housing to this section, clarifying that supportive housing units follow the bedroom distributions of age-restricted units, but the rents/prices of non-age-restricted units.

The Agency added a provision explaining that, solely for the purposes of determining income and bedroom distributions, single-family developments, defined as affordable developments with four restricted units or fewer, in the municipality would be considered in the aggregate. This addition allows for holistic planning, instead of a multitude of imbalanced small developments.

The Agency required that large age-restricted or supportive housing developments with 20 or more restricted units have two-bedroom or three-bedroom units compose at least five percent of the restricted units. This requirement prevents the possibility, permissible pursuant to the 2004 version of UHAC, of every age-restricted unit in the municipality being one-bedroom.

To ensure that very-low- and low-income units are available to all population types, the Agency required that the 50-50 low-/moderate-income split be independently satisfied by supportive housing, age-restricted, and family units within the same development, as well as by the development as a whole.

To increase flexibility, the Agency allowed developments to seek waivers from the income and bedroom distributions from the Division of Local Planning Services (LPS) within the Department of Community Affairs (DCA) or, if the municipal housing element and fair share plan would be affected, the Dispute Resolution Program or a county-level housing judge. However, Bill A4 maintains that the municipality still has to satisfy the income and bedroom distributions in the aggregate.

The Agency incorporated language defining affordability for each bedroom count that was previously in the section, “occupancy standards,” but is more appropriately placed in this section.

In this rulemaking, the Agency proposes further technical updates and clarifications. The Agency proposes referencing Bill A4’s requirement that half of very-low-income units be made available to families with children; clarifying that the rental affordability requirements of UHAC shall be adopted by municipal ordinance, but are effective regardless of whether the municipal ordinance is passed; specifying that bedrooms are counted as units if they are within group homes

and similar living arrangements; and clarifying that prior round units are subject to the version of the subcode in the 2004 UHAC.

The Agency proposes replacing “single-family development” with “small development” in the text at N.J.A.C. 5:80-26.4(a)1, defining “small development,” and removing all instances of “scattered site.” These changes are the corresponding changes from moving “multifamily development” and “single-family development” out of the definition section and into the only section where they are applicable.

The Agency proposes changing the maximum number of units priced at 70 percent of regional median income from “one plus the number of very-low-income units in excess of 13 percent of the restricted units” to “the number of very-low-income units.” This change avoids the need to determine the number of “excess” very-low-income units, which interacts peculiarly with the rounding system.

The Agency proposes adding language clarifying that nothing in this subcode should be interpreted to preclude municipalities from requiring that 13 percent of restricted units in each development be very-low-income units.

The Agency proposes specifying that very-low-income units must be reserved for very-low-income households. At new paragraph (b)2, the Agency proposes to elucidate that bedrooms can be counted as individual units in group homes and other similar arrangements to promote the provision of housing for very-low-income households. The Agency proposes amendments to subsection (d) to remove an implied requirement of at least three moderate-income units for each bedroom count being present within the project. The Agency proposes a correction to the cross-reference at subsection (h). The Agency proposes revising subsection (k) for clarity and to specify

that the Urban Homeownership Recovery Program (UHORP), Choices in Homeownership Incentives for Everyone Program (CHOICE), Market Oriented Neighborhood Investment Program (MONI), and assisted living units are not necessarily exempt from subsection (j). Finally, the Agency proposes an additional requirement at subsection (l) that any waivers granted by the Division must be published on a public webpage within 30 days of approval; additionally, the Agency proposes the removal of the Dispute Resolution Program from the waiver/approval process, so that any modification that would result in material deviation from a municipal housing element and fair share plan requires approval from a county-level housing judge.

N.J.A.C. 5:80-26.5 Occupancy Standards

In the 2024 special adoption, the Agency relocated the provisions relating to affordability to N.J.A.C. 5:80-26.4, a more appropriate location for them. The Agency created a new subsection (a), specifying that units created or approved prior to the effective date of the specially adopted regulations are not subject to the building occupancy standards listing therein.

The Agency required all affordable units to include a window in each bedroom, meet minimum size requirements, have adequate heating and cooling, and be built to the same standards as market-rate units of the same unit-type. In mixed income rental developments, the Agency required affordable units to be dispersed within the development, prohibiting units from being clustered in undesirable locations, and required that affordable households be granted access to communal amenities. The Agency specified that for-sale market units may differ from for-sale affordable units and may be clustered, as long as the affordable units are not located in undesirable areas. Equal access to communal amenities still applies. Specially adopted subsection (b) provides phasing requirements, mirroring those established by COAH.

In the 2024 special adoption, the Agency amended the goals of the placement standards, so that administrative agents are instructed to provide a person for each bedroom (excluding senior units), provide at least one bedroom for every two adults, and accommodate the household's requested bedroom arrangement for children. Unlike the building standards at subsection (a), these placement standards apply to all new and existing units.

Through this rulemaking, the Agency proposes combining subsections (a) and (b) of the specially adopted UHAC regulations for clarity. The proposed provisions at subsection (a) specify building occupancy standards for individual units and different types of development and specify the applicability of these standards. The Agency proposes updating subsection (a), defining applicability, to incorporate the term "prior round unit" and clarify which units are subject to the building occupancy standards. The Agency proposes adjusting the unit size minimums for 100 percent affordable developments to be the same as the Neighborhood Preservation Balanced Housing Rules (N.J.A.C. 5:43) and adjusting the minimum unit size for mixed-income developments to be no less than 90 percent of Balanced Housing rules.

The Agency proposes clarifying the intention of the rules by replacing "the same building standards" with "the same building materials and architectural design elements," and adding duplexes to the list of housing types.

The Agency proposes adjusting the phasing requirements so that no more than 25 percent plus one of the market-rate units may be completed prior to the completion of 10 percent of the restricted units. In the 2024 special adoption, the Agency required that 25 percent of restricted units be completed at this point and that at least one restricted unit be completed prior to the completion of 10 percent of market units. The Agency proposes the prohibition of waiving the final phasing requirement.

Finally, through this rulemaking, the Agency proposes recodifying subsection (c) as (b). The Agency proposes removing the default presumption that occupants under the age of 18 be assigned separate bedrooms unless the household requested otherwise, replacing it with the household's requested arrangement; provided that no more than two people inhabit each bedroom.

N.J.A.C. 5:80-26.6 Control Periods for Ownership Units

Through the 2024 special adoption, the Agency updated the deed restricted affordability period minimums to comply with the provisions of Bill A4. The Agency also clarified the end of the deed restricted affordability period and further affirmed the municipality's right to extend affordability controls.

The Agency added language to ensure that the failure to record deeds or notes does not negate the restrictions imposed by UHAC on restricted units.

Pursuant to subsection (g), the Agency specified that the municipality may use trust funds to extend controls, as is required for bonus credits pursuant to the amendments made at Bill A4.

Pursuant to subsection (h), the Agency detailed the process through which municipalities may exercise the right of first refusal, which includes a 180-day notice period, the issuance of a new deed restriction upon extension, and compensation in the form of either purchasing the unit for the maximum restricted sales price or no less than \$20,000.

Through this rulemaking, the Agency proposes a comprehensive revision to the section regulating affordability controls on ownership units by repealing and replacing this section.

The Agency proposes wording changes to distinguish between "affordability controls" and "control period" to emphasize that the end of the control period does not instantly terminate

affordability controls. The Agency also proposes replacing “minimum control period” with “minimum duration” to remove potential confusion and emphasize that the minimum duration dictates the length of the control period, but is not in itself a control period.

The purpose of subsection (a) remains the same pursuant to the proposed revisions for the permanent rules, which is to specify the minimum duration of the control period. The Agency proposes eliminating the exemption language, adding the control period language directly from P.L. 2024, c. 2, and clarifying that existing units are governed by the contracts and regulations in place at the time of creation.

The Agency proposes amending subsection (b), so that it dictates only the start of the control period, which begins when the first household takes title or on the effective date of the extension of deed restrictions.

The Agency proposes new subsection (c) to clarify when the control period ends and the general procedures to be followed at the end of the control period, namely either releasing the unit or exercising the right of first refusal.

New subsection (d) is based on the 2004 version of N.J.A.C. 5:80-26.5(c). Pursuant to subsection (d), the Agency proposes changing the sale and recapture amounts to reflect a new equity share approach. The equity share approach revises the calculation of the amount to be paid to the individual and the municipality at the time of exit sale after the end of the deed restricted control period. Through this approach, the owner’s proceeds from the exit sale equal the sum of the maximum restricted sale price (MRSP) plus the product of the difference between the MRSP and the exit sale contract price multiplied by one percent for each year owned (for example, years owned divided by 100).

The remaining proceeds from the sale are returned to the municipality.

The Agency proposes revisions to the recapture note so that the amount to be recorded on the recapture note at the time of initial sale, and at each restricted sale, is equal to the difference between the restricted sale price and fair market value. This value is to be recalculated at the time of exit sale. Therefore, the initial price differential does not need to be calculated at each restricted sale. It only needs to be recorded in the recapture note at each restricted sale.

The Agency proposes changing subsection (d) to reflect the Appendices' language in paragraph (d)1 and to solely focus on the recapture note and recapture lien, including language from the 2004 version of UHAC (former N.J.A.C. 5:80-26.6(c) and (c)1). The Agency also proposes changing the language so that only those improvements made by the current owner are deducted from the recapture amount paid to the municipality at exit sale. Finally, the Agency proposes a change giving municipalities the option to allow, by ordinance, for a lesser recapture amount to be paid to the municipality by the affordable seller at the time of exit sale.

New subsection (e) combines subsections (d) and (e) from the 2004 version of UHAC. This subsection references the relevant documents in the chapter appendices. For non-95/5-restricted units, the relevant appendices are N.J.A.C. 5:80-26 Appendices A, C, D-1, D-2, D-4, L, M, N, O, and Q. For 95/5-restricted units, the relevant appendices are N.J.A.C. 5:80-26 Appendices B, C, G, and H. For newly-constructed units, the relevant appendix is N.J.A.C. 5:80-26 Appendix P-1. The Agency proposes eliminating the provision that requires deed restrictions to survive foreclosure. This was removed to align New Jersey's practices with FHA rules for lending and the rest of the country's operating procedures. The Agency proposes changes to subsection (e) mandating that, prior to the issuance of any building permits, a preliminary restrictive instrument be signed by the developer and municipality acknowledging the restrictions on the units. The

preliminary restrictive instrument also must include essential information about the project (location, number of units, and anticipated timeline). The Agency proposes requiring the recording of the full deed restriction prior to the issuance of the certificate of occupancy.

The Agency proposes relocating new language added in the 2024 special adoption from subsection (e) to (f), establishing rights and procedures should there be improper recordkeeping, and removing the reference to 95/5 units.

The spirit of subsection (g) remains the same across both versions, providing municipalities with the discretion to release deed-restricted units from controls if the minimum affordability duration has elapsed. The Agency proposes revised language specifying that minimum control periods must be met, municipalities must deposit any funds into their municipal housing trust funds, all recapture liens must still be in full force and effect, and any election must be made through municipal ordinance.

The Agency proposes replacing subsection (h), as fees are governed by DCA's Fair Housing Act Rules at N.J.A.C. 5:99, with language detailing the process municipalities must follow to extend affordability controls, aligning it with the premise of subsection (g) in the 2004 version of UHAC. The Agency proposes amendments to this subsection establishing municipalities' unilateral right to extend restrictions. Pursuant to this rulemaking, a municipality can only extend controls if the deed restriction expires in the current round or within one year of the next round. The municipality must issue a new deed restriction in line with the minimum period specified at subsection (a). If the municipality is reacting to the owner providing notice of their intent to sell, the municipality has 60 days to exercise its right of first refusal. If the municipality is taking a proactive position, it must provide notice to the owner at least six months, but no more than one year, in advance of its intent to extend affordability controls. During this time, it may

obtain an appraisal to determine a reasonable fair market value. To fully exercise its right of first refusal, the municipality must compensate the owner. If the owner chooses to stay, the owner must be compensated one percent of the difference between the maximum restricted sale price and the fair market value for each year owned (the “equity share amount”). If the owner chooses to leave, the municipality may purchase the unit from the owner for the maximum restricted sale price plus the equity share amount.

Pursuant to subsection (i), the Agency proposes a process through which owners will express their intent to sell. The owner must provide notice to the municipality of their intent to sell 60 days prior to entering an agreement to sell the unit. During those 60 days, the municipality may exercise its right of first refusal or release the unit. If the owner does not sell within a year of providing notice, they must restart the notice process.

Pursuant to subsection (j), the Agency proposes to change the rules to allow a non-municipal entity favored on the lien (that is, that funded the unit) to purchase the unit if the municipality does not exercise its right of first refusal. In such case, the purchaser must maintain it as affordable and convey it to a qualified household.

Pursuant to subsection (k), the Agency proposes a requirement that any amount used to determine the price differential, equity share, or recapture amount be representative of the fair market value of the restricted unit. The administrative agent is tasked with ensuring the proposed price is reasonable within 20 days of the contract of sale. The municipality must determine a fair market value based on an equalized share or an appraisal and may not authorize an equity share payment that is unrelated to the fair market value of the unit. The owner may write to the administrative agent if they disagree with the price and may appeal the administrative agent’s decision pursuant to N.J.A.C. 5:80-26.20.

Pursuant to subsection (l), the Agency proposes the process through which a municipality or non-municipal entity favored on the mortgage note can purchase a restricted unit in foreclosure. The entities can purchase the unit for the restricted price or less and must issue a new deed restriction to ensure the minimum duration is met.

Pursuant to subsection (m), the Agency proposes changing the rules to specify that, in order to receive credits through the FHA, any extension of controls on existing units must be on the terms of the permanent UHAC regulations, effective on the date of the extension.

Pursuant to subsection (n), the Agency proposes a revised, but substantively unchanged, version of subsection (i) from the 2004 version of UHAC.

N.J.A.C. 5:80-26.7 Price Restrictions for Ownership Units

In the 2024 special adoption, the Agency updated references to reflect new names, reduced redundancy by referencing N.J.A.C. 5:80-26.4, the section detailing affordability averages, rather than repeating the standards, and moved affordability language to the affordability averages section. The Agency revised subsection (e) to focus on the condominium and homeowner association fees, with the adjusted language requiring that fees be based on the common interest percentage and prohibiting increases in fees that would make a unit no longer affordable.

Through this rulemaking, the Agency proposes adding a second adjustment in the calculation of the maximum resale price. Pursuant to the proposed change, approved capital improvements may raise the price of the home to be greater than the maximum resale price, so long as the resale price does not result in a resale price higher than the price calculated for the unit as if it were the initial sale. If, for example, the maximum resale price formula and the initial sale

price formula generated the same price, the approved capital improvements would have no impact on the sale price. All improvements are subject to 10-year straight-line depreciation.

The Agency proposes a clarification at subsection (d) to note that the price could be lower than the purchase price when the reduced price is caused by disrepair or market decline.

The Agency proposes an increase in the allowable monthly carrying costs from 28 percent of monthly income to 33 percent of monthly income, which is consistent with the current practice in the single-family mortgage market. The Agency added, parallel to the aforementioned new provision at N.J.A.C. 5:80-26.6, a provision that excludes capital improvements paid for by the entity favored on the recapture note and recapture lien from any increase to the maximum resale price. This addition also addresses the “double benefit” scenario.

To address the problem of artificially low homeowner association/condominium association fees, the Agency proposes to require that the fees used in determining the sale price be “realistic.”

The Agency also removed the mention of UHORP, MONI, and CHOICE from subsection (b) pertaining to the initial sale price, as new units are no longer being created through these programs.

Finally, the Agency proposes removing the reference to 95/5 units as the new rules aim to consolidate all deed-restricted units under the same framework, rather than perpetuating a dual system of deed-restricted ownership units.

N.J.A.C. 5:80-26.8 Buyer Income Eligibility for Ownership Units

For the 2024 special adoption, the Agency incorporated very-low-income households and adjusted the housing cost cap to 35 percent of household income, up from 33 percent.

For this rulemaking, the Agency proposes clarifying that, if a unit is conveyed to a household at a higher income level due to a lack of eligible applicants, the unit must be priced at its original affordability level, whether that was low-income or very-low-income, at resale.

The Agency proposes adding an extended marketing requirement of 30 days for very-low-income units that are being sold to low-income buyers due to a lack of eligible households. This proposal stemmed from a concern that municipalities could earn the Bill A4 bonus credit for very-low-income units despite filling those units with low-income buyers after only a token effort to find very-low-income buyers. The Agency also proposes requiring the calculation of “realistic” homeowner association/condominium association fees, mirroring the change at N.J.A.C. 5:80-26.7 above.

N.J.A.C. 5:80-26.9 Limitations on Indebtedness Secured by Ownership Unit; Subordination

The Agency made minimal revisions at N.J.A.C. 5:80-26.9 in the 2024 special adoption. No additional changes are proposed through this rulemaking.

N.J.A.C. 5:80-26.10 Capital Improvements to Ownership Units

In the 2024 special adoption, the Agency revised subsection (a), so that only the purchases made since the last non-exempt sale (for example, by the purchaser or their heir) count toward an increased resale price and added subsection (c), which allows for the administrative agent to reduce the recapture amount by the amount spent by the current owner for non-cosmetic improvements, such as a roof or new appliances.

Through this rulemaking, in line with the revisions at N.J.A.C. 5:80-26.7, the Agency proposes clarifying that the capital improvements listed at subsection (a) can cause the maximum sale price to be recalculated, and that subsection (a) encompasses only those capital improvements that add bedrooms or bathrooms. Conversely, the capital improvements listed in subsection (c) can cause the maximum sale price to be adjusted.

The Agency proposes subjecting capital improvements to a 10-year straight-line depreciation schedule. The Agency proposes replacing the outdated reference to “wall-to-wall carpeting” with “flooring.” Finally, the Agency proposes the clarification that capital expenditures paid for by the entity favored on the recapture note and recapture lien are not factored into calculating recapture amounts or resale prices, reiterating the additions at N.J.A.C. 5:80-26.6 and 26.7.

N.J.A.C. 5:80-26.11 Maintenance of Restricted Ownership Units

The Agency made no substantial changes through the 2024 special adoption, only reorganizing the sentence.

Through this rulemaking, the Agency proposes updating the “applicable minimum control period” to the “deed-restricted control period.” The Agency proposes providing the administrative agent flexibility in requesting a Continuing Certificate of Occupancy upon the first transfer of title after expiration.

N.J.A.C. 5:80-26.12 Control Periods for Rental Units

Through the 2024 special adoption, the changes were primarily focused on incorporating statutory changes and aligning the rules with changes made in other sections. The Agency removed the affordability controls governing high-poverty census tracts and Neighborhood Revitalization

Projects and included the new minimum control period dictated pursuant to Bill A4, which is 40 years for rentals. The Agency changed the start of the control period from the date of first occupancy, which in practice is very difficult to track, to the date that a certificate of occupancy is issued or the effective date of affordability extension. The latter aligns with the new approach to treating affordability extension as a new control period, rather than a continuation of the existing one. The Agency amended several provisions to address the problem of missing/incorrect deed restrictions. Namely, the revisions affirmed that UHAC dictates the controls on restricted rental units even if the deed restriction conflicts with the rules and that a deed restriction being missing/incorrect does not terminate or negate affordability. The Agency authorized the administrative agent to file the deed restriction (billing the owner) if the owner does not file it.

Through this rulemaking, this section is being substantially revised for clarity and to address long-standing issues with affordable rental units, by repealing the section and proposing to replace it.

The Agency proposes language that distinguishes between “affordability controls” and “control period” to emphasize that the end of the control period does not instantly terminate affordability controls and replacing “minimum control period” with “minimum duration” to remove potential confusion and emphasize that the minimum duration is not a control period. To this end, the Agency seeks to clarify that control periods end on the date listed in the deed restriction, or after the minimum duration, if the deed restriction does not say.

The Agency proposes additional changes to the minimum control periods at subsection (a). The Agency updated the language to further clarify which minimum control periods are applicable to which units based upon the date of creation/extension. These updates mirror those made at

N.J.A.C. 5:80-26.6(a). The spirit of subsection (a) remains the same as in previous versions of the UAHC, in that it defines the control period for rental units.

Subsection (b) continues the commencement of affordability controls, although the Agency proposes revisions to narrow the focus of the provision.

The Agency proposes revisions at subsection (c). These revisions tighten the scope of subsection (c) to solely focus on the end of the deed restricted affordability period, borrowing some language from subsection (b) as it was written in 2004 and the 2024 special adoption .

Similarly, the Agency proposes edits to subsection (d), so that it reflects the spirit of subsection (c), as written in 2004 and the 2024 special adoption. This subsection includes the additional language from the 2024 special adoption governing the execution and filing of deed restrictions and establishes that the UHAC regulations supersede any deed restriction language that contradicts or is contrary to UAHC.

The Agency proposes revisions at subsection (e), establishing that a failure to record a deed restriction does not excuse developers from the requirements of UHAC. This language was relocated from subsection (c) of the 2024 special adoption. The Agency proposes the addition of a “preliminary instrument” requirement similar to the one added at N.J.A.C. 5:80-26.6. The only difference is that the requirement for ownership units applies only to building permits for new construction, while the requirement for rental units applies to building permits for new construction, as well as rehabilitation. Full deed restrictions are required prior to the issuance of a certificate of occupancy.

The Agency proposes revisions at subsection (f), namely, including the language relocated from subsection (d) of the 2004 UHAC and the 2024 special adoption specifying that affordability

controls persist despite the property being subleased, sold, transferred, or foreclosed. The Agency also proposes new language clarifying that affordability controls persist, so long as an eligible household inhabits the restricted unit in line with subsection (c).

The Agency proposes revisions at subsection (g), providing the process for municipalities to release restricted units prior to the end of the deed restricted affordability period. These revisions reflect the spirit and language of subsection (e), as written in 2004 and the 2024 special adoption. The Agency proposes adding language to require that such a release be made only after the minimum deed restricted affordability period has elapsed and only if releasing the unit is consistent with the municipality's housing element and fair share plan.

The Agency proposes revisions at subsection (h), which include and expand on the language at subsection (f), as written in the 2024 special adoption. As proposed, this subsection details the process for extending affordability controls. The Agency establishes that municipalities have the sole discretion to extend controls provided that they comply with the requirements at proposed subsection (h). To extend affordability, the municipality must provide 180 days' notice to the owner, grant a payment in lieu of taxes (PILOT) if allowed by statute, and, if seeking the Bill A4 bonus credit for preservation, invest municipal affordable housing trust fund dollars in the preservation (\$12,000 for each unit with a PILOT, \$17,500 for each unit without a PILOT, or any other amount of at least \$10,000 if approved by the DCA, as part of the compliance certification, or as part of the housing element and fair share plan). This new process maintains the municipality's ability to preserve affordable units, but sets clearer expectations for all parties, encourages municipalities to more actively manage their affordable housing inventories, reduces the risk that affordable units will be neglected, and ensures that some investment will go into aging housing units. It also sets a standard that must be used by projects seeking the preservation bonus

credit from N.J.S.A. 52:27D-311.k.7, which requires municipal investment, but does not specify an amount.

The Agency proposes new language at subsection (i) that sets forth the process for development for owners should they want to extinguish affordability controls. This process includes providing notice to the municipality and allowing the municipality 180 days to exercise its right to extend restrictions.

The Agency proposes new subsection (j) to outline the options available at the end of the minimum deed restricted affordability period for 100 percent affordable developments. This includes adding the language from Bill A4 allowing for controls to be extinguished prior to the 30th year, if the development is participating in a State-sponsored rehabilitation program.

The Agency proposes new subsection (k) to establish that all extensions of affordability controls on rental units must comply with the new rules to receive credit, in line with the language at N.J.A.C. 5:80-26.6.

The Agency proposes new subsection (l) to outline the process should the municipality choose to release units in a rental development. The Agency incorporated some of the language from subsection (e), as codified in 2004 and the 2024 special adoption.

N.J.A.C. 5:80-26.13 Restrictions on Rents

In the 2024 special adoption, the Agency codified existing practice by replacing language referring to COAH with the exact formula for determining annual rent increases, that is, by pegging them to the Consumer Price Index (CPI). However, while COAH capped annual rent increases at nine percent, the cap was lowered to five percent.

The Agency also added a provision clarifying that phased projects are not required to use the same initial rent for all phases, which the existing language implied was the case. This could result in a new rental unit using the rent limit from one or two years prior.

The Agency added provisions to prevent owners from categorizing mandatory expenses as optional fees, thus circumventing affordability requirements. The Agency achieved this by stating that operating costs are part of the rent calculation and that operating costs include certificate of occupancy fees, move-in fees, and move-out fees. In conjunction, the Agency clarified that truly optional fees are not included in the affordability calculation, but that affordable tenants cannot be charged more than market-rate tenants for the same items. The Agency capped pet fees at \$30.00 per month and prohibited one-time fees pertaining to pets, such as pet cleaning fees.

Through this rulemaking, the Agency proposes prohibiting the cost of assisted living facilitating from surpassing 80 percent of monthly income, which includes the combined total of rent, food, and services. The Agency proposes updating cross-references and reiterating that rent increases require proper notice.

Pursuant to subsection (c) the Agency proposes removing the requirement that municipal housing liaisons (MHL) approve routine, annual rent increases. However, if developers seek to increase initial rents for separate project phases, they still need MHL approval. The Agency proposes further specifying operating costs to include any mandatory cable, internet, or utility fees and revised parking fees, so that developments may charge parking fees for one vehicle if the development has fewer than one and a half off-street parking spaces per unit. The Agency proposes allowing pet fees (which are fixed at initial lease-up) to be adjusted for inflation.

Pursuant to new paragraph (c)2, the Agency proposes to allow flexibility in implementing the new fee restrictions for rentals already in service. The new fee restrictions must be implemented at the later of December 20, 2025, the end of the current occupant's lease term, or the end of the current occupant's tenure in the unit.

The Agency proposes a clarifying change at subsection (e) stating that the DCA's most recent utilities chart must be provided at the time of lease-up, rather than being part of the lease. This change prevents potential confusion as to what the tenant actually owes. The Agency also proposes the addition of two acceptable alternatives to DCA's utility standards. The first alternative, any alternate utility allowance approved by DCA or the Agency, applies only to units constructed with State funding. The second alternative, a utility allowance calculated according to an energy consumption model, requires that the unit be ENERGY STAR-certified, that the consumption model be provided by an energy consultant with an active registration with the Board of Public Utilities (BPU), and that the administrative agent approve of the model.

N.J.A.C. 5:80-26.14 Tenant Income Eligibility

In the 2024 special adoption, the Agency added very-low-income households and very-low-income units to this section. No changes are proposed through this rulemaking.

N.J.A.C. 5:80-26.15 Administrative Agent

In the 2024 special adoption, the Agency deleted the bulk of this section, as the administrative agent standards are being incorporated into the DCA's rules at N.J.A.C. 5:99-7.

Through this rulemaking, the Agency proposes the addition of language from, and references to, N.J.A.C. 5:99, governing administrative agents. The Agency also proposes additional language referencing the forms at the appendices to this chapter.

N.J.A.C. 5:80-26.16 Affirmative Marketing

The Agency, in the 2024 special adoption, incorporated statutory changes since the last UHAC revision, including Bill A4, the Housing Resource Center law, and the Fair Chance in Housing Act. The Agency clarified that supportive housing units should be marketed according to the requirements of their respective sponsoring programs. The Agency revised the responsibilities of the administrative agent and added the responsibilities of MHL as dictated pursuant to Bill A4.

The Agency expanded the list of parameters that must be included in affirmative marketing materials to include unit size, population type (that is, family, age-restricted, supportive), specific income limits, accessibility features, maximum income, populations given preference in the random selection, locations of applications, expected dates of completion, and expected dates of random selection. Similarly, the Agency adjusted the list of marketing strategies that must be considered in the affirmative marketing plan to address modern technology and housing search strategies. This adjustment includes utilizing the Housing Resource Center (HRC), the local continuum of care (for units reserved for the homeless), and digital and non-digital means. To balance things out, the Agency removed radio and television from the list of mandatory strategies.

The Agency clarified that affirmative marketing may begin before construction commences. Further adjustments to the marketing timeframes included clarifying how long applications have to be accepted for, when lotteries could take place, and whether a lottery can be conducted while continuing to accept applications.

The Agency clarified that affirmative marketing continues until all units being brought to market at that time are sold (for ownership) or until enough applications from eligible households have been received to fill all of the units plus two years of future re-rentals (for rental).

Through this rulemaking, the section is being reorganized for clarity, with substantial changes. Pursuant to subsection (b), the Agency proposes clarifying that administrative agents should maintain an applicant list for each development. The Agency proposes clarifying that administrative agents are not required to create a plan for each development, but are required to document the activities undertaken for each development. The Agency proposes reinstating the requirement that the affirmative marketing plan and advertising include the name of the sales agent and/or rental manager.

The Agency proposes specifying that the regional newspaper, pursuant to paragraph (f)3, may be either digital or print. However, if the newspaper is digital, the Agency proposes the requirement that at least two non-digital strategies must be selected from paragraphs (e)1 through 8. The Agency proposes adding radio and television back to the marketing plan, as optional marketing activities rather than mandatory activities. The Agency proposes the clarification that advertisements must be posted on a housing search website, in addition to the HRC.

Pursuant to subsection (g), the Agency proposes revising the affirmative marketing guidelines for rental units so that non-paid marketing strategies must continue until applications are no longer being accepted, but paid marketing activities for rentals may cease once enough applications have been received to fill the rental units three times. The Agency proposes updating the affirmative marketing guidelines for for-sale units, so that non-paid marketing must continue until all units are sold, but paid marketing may cease once enough applications have been received to fill the for-sale units three times.

The Agency proposes specifying, at subsection (h), that the random selection may not occur prior to 60 days after the initial HRC advertisement, such that applications may be continually accepted, and added English-speaking ability to the list of characteristics that should not affect the

reach of marketing. The Agency proposes removing the provision prohibiting a lottery from being conducted while applications are still being accepted.

N.J.A.C. 5:80-26.17 Household Certification and Referral

Through the 2024 special adoption, the Agency aligned the income certification process as closely as possible with the United States Department of Housing and Urban Development's (HUD) process, which was revised following the Housing Opportunity Through Modernization Act (HOTMA), H.R. 3700, Pub. L. 114-201, 130 Stat. 782 (July 29, 2016), and is outlined at 24 CFR 5.609. The reasons for this change include the greater availability of training for HUD's process, the greater specificity of HUD's regulations, and the administrative streamlining that would result.

The Agency required that administrative agents give applicants at least 10 days to produce documentation necessary for income certification, to prevent hasty rejections. The Agency also required that administrative agents inform applicants of their eligibility within five business days of determination and include reason(s) for denial, if any.

The Agency replaced the existing asset limit, which applied only to primary residences without mortgages, with a net asset limit based on the median home equity held by New Jersey homeowners. Additionally, the Agency adapted HUD's separate test for ownership of a primary residence by folding it into the asset test, so that a residence that qualifies for an exception pursuant to HUD's residence test would be excluded from the asset calculation pursuant to the UHAC. The list of exclusions also incorporates the existing exception for cost-burdened homeowners. The new asset test is less arbitrary and not as easy to subvert, but still makes exceptions (following HUD)

for things such as retirement accounts, such that it should not exclude otherwise qualified applicants.

The Agency exempted full-time students under the age of 26 and registered apprenticeship program participants under the age of 26 from needing to provide income documentation.

The Agency provided the administrative agents with the ability to accept household income determinations (not program eligibility determinations) from the last 12 months made for Temporary Assistance for Needy Families (TANF); Medicaid; Supplemental Nutrition Assistance Program (SNAP); Earned Income Tax Credit (EITC); Women, Infants, and Children (WIC); Supplemental Security Income (SSI); public housing, Section 8, or Low-Income Housing Tax Credits (LIHTC), or from the last 180 days made by other administrative agents. This change should reduce burdens on applicants and administrative agents by reducing redundant income determinations. Additionally, the Agency required that administrative agents accept timely income determinations made by the Agency's Housing Affordability Service (HAS) or DCA.

The Agency outlined the acceptable forms of random selection, and what factors could be considered in stratifying/prioritizing applicants. This includes three occupancy preferences, of which two are imported from COAH (regional households and New Jersey households) and one is statutory (veterans). The skeleton of this subsection was taken from the "Understanding UHAC" manual.

The Agency emphasized that developers and property managers are bound by Federal fair housing laws and by the New Jersey Law Against Discrimination, required that administrative agents and MHLs report any discrimination complaints to the Department of Law and Public Safety, and required compliance with the Fair Chance in Housing Act.

The Agency required that applicants be provided at least five business days to accept or reject a referral to an available unit.

Finally, the Agency removed provisions regarding the reporting of project information, as they were better situated in the Enforcement section, and renamed the section accordingly.

Through this rulemaking, the Agency proposes the addition of language referencing the subchapter appendices. The Agency proposes adding household referral and acceptance, in the case of an ownership unit under construction, to the list of events that extend the validity of an income certification. This change will reduce the administrative burden on sweat equity programs and prevent the painful scenario of a certified household going through the sweat equity program only to be deemed income-ineligible.

The Agency proposes replacing “95/5 unit” with “95/5-restricted unit” and fixing a typographical error.

The Agency proposes changing the cross-references for the definition of domestic violence from the Federal definition to the broader State definition. Accordingly, the Agency proposes the addition of confidentiality language derived from the Federal confidentiality standard, rather than referencing the Federal standard. The Agency proposes relocating the language, allowing administrative agents to accept self-certification from victims of domestic violence from subsection (j) to subsection (g).

The Agency proposes permanently fixing the relevant HUD regulations at subsection (d) to those in place as of December 20, 2024.

The Agency proposes allowing administrative agents discretion to accept income determinations made by other administrative agents that have completed DCA’s new training

program for administrative agents, rather than requiring acceptance. However, the Agency proposes requiring the acceptance of income determinations made by the DCA or the Agency, adding a small carveout for compelling circumstances that render the old income determination inapplicable (for example, change in household composition).

The Agency proposes condensing the provisions at subsection (k), pertaining to the random selection process, to be less prescriptive. Rather than limiting the random selection process to two possible forms, the Agency now lists the factors that may be considered in filtering and/or ranking the applicant pool and requires that affirmative marketing identify which factors will be used and how they will be used. With regard to the factors that may be considered, they are the same factors as prior to this rulemaking, except that the occupancy standards at N.J.A.C. 5:80-26.5(b) have been added, and the language that attempted to add a preference for tenants displaced by rehabilitation or preservation has been deleted for being confusing and unnecessary. The Agency proposes the clarification, reflecting statute, that the veterans' preference is available for rental units only.

The Agency proposes requiring administrative agents to include applicants that are borderline cases in the random selection. Specifically, applications with “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,” should be part of the random selection.

Finally, the Agency proposes prohibiting developers or property owners from requiring cosigners for affordable units and requiring that administrative agents report potential conflicts of interest to the MHL, namely the referral of family or friends to affordable units.

N.J.A.C. 5:80-26.18 Procedures for Changing Administrative Agents

As with the section pertaining to administrative agents, the bulk of this section was deleted, as it is being incorporated into DCA's rules at N.J.A.C. 5:99.7.

The Agency proposes removing the provision stating that DCA or HAS will serve as the default administrative agent, resulting in the remainder of N.J.A.C. 5:80-26.18 stating that the procedures for changing administrative agents are governed by DCA's Fair Housing Act rules at N.J.A.C. 5:99-7.4.

N.J.A.C. 5:80-26.19 Enforcement

For the 2024 special adoption, subsection (a) was amended to focus on the role of the MHL, which is a statutorily mandated position assigned to oversee all affordable housing-related activities at the municipal level, including the administrative agent; to ensure compliance with the FHA; and to ensure compliance with all relevant rules. The Agency revised subsection (c) to specify that the MHL is charged with the municipality's enforcement responsibilities and added procedures to cover the responsibilities should one of the roles not be filled. Consistent with the reporting requirements required pursuant to Bill A4, this subsection notes the responsibility to maintain a list of all affordable units in the municipality and to report this information to DCA. Finally, the Agency required MHLs to publish affirmative marketing plans, the affordable housing operating manual, and administrative agent information on the municipality's website.

Administrative agent responsibilities are still listed at subsection (d), which now includes cross-references to the relevant statutes and rules. All other responsibilities have remained substantively the same.

The Agency proposed new subsection (e) to incorporate the language from N.J.A.C. 5:80-26.16 as codified in the 2004 version of UHAC. The Agency added the requirement that owners

mail an annual notice of maximum allowable rents to their affordable renters. Previously, the owners only had to post this somewhere in the building.

The Agency proposed new subsection (f) reiterating MHL responsibilities and stating that the administrative agent and the MHL, together, must ensure that units are filled and must hold developers accountable if units are left vacant. New subsections (g) and (h) were relocated directly from subsections (e) and (f) of the 2004 version of UHAC.

Through this rulemaking, the Agency proposes reorganizing subsection (a) and making minor technical, grammatical, and cross-reference updates.

The Agency proposes removing the municipality's/MHL's responsibility to contract with administrative agents for developments without their own administrative agents and to charge developers associated fees, which had been newly added through the 2024 special adoption. The Agency proposes adding back the provision allowing the municipality to retain or designate legal counsel, which had been removed through the 2024 special adoption.

The Agency proposes a revision allowing developers/property managers/landlords a 30-day cure period if found noncompliant and softening the language around fines to make them optional, rather than required. In addition, the Agency proposes requiring the rent notices in paragraph (e)1 to include a reminder that residents must reside in the unit at least 260 days per year and requiring that the forms provided with the copy of the State-approved plan pursuant to subparagraph (e)2xvi must also include the full build-out budget.

N.J.A.C. 5:80-26.20 Appeals

For the 2024 special adoption, the appeals section remained largely intact, except that the relationship structure between the administration agent and MHL created by Bill A4 is

incorporated. Appeals to administrative agents' decisions will now go through the MHLs. Their decisions may be appealed to the Department of Law and Public Safety. No further changes are being proposed through this rulemaking.

N.J.A.C. 5:80-26.21 95/5 restrictions

Through the 2024 special adoption, the Agency made only minor grammatical and technical changes, including updating the heading from "Option to buy 95/5 units" to "95/5 restrictions."

Through this rulemaking, in this section and throughout the subchapter, the Agency proposes to replace the term "95/5 unit" with "95/5 restriction" or "95/5-restricted unit," as applicable, to convey that the 95/5 restriction is separate from the unit itself.

The Agency proposes steps to wind down and eventually eliminate the 95/5 program, without infringing on existing municipal rights. The Agency proposes accomplishing this change by requiring new deed restrictions pursuant to the terms at N.J.A.C. 5:80-26.6 for any extension of affordability controls on a 95/5-restricted unit. For 95/5-restricted units without an identified control period, the Agency proposes July 1, 2035 (the start of the Fifth Round) as the date of expiration to give municipalities 10 years to determine what to do with their 95/5-restricted housing stock.

The Agency proposes requiring that extensions be done pursuant to the new terms of UHAC "to receive credit under the Act [FHA]." To summarize, the Agency proposes adding "to receive credit pursuant to the Act" at three places: the extension requirements for ownership units (N.J.A.C. 5:80-26.6), the extension requirements for rental units (N.J.A.C. 5:80-26.12), and the extension requirements for 95/5-restricted units (N.J.A.C. 5:80-26.21).

Should any entity wish to exercise its right of first refusal, the Agency proposes amending the notice receipt date at subsection (d) to be three days following the earlier of the date of email transmission or the postmark date on the certified mail.

As existing N.J.A.C. 5:80-26.22, 26.23, and 26.24 all concern extensions after the end of the control period, which is now covered at N.J.A.C. 5:80-26.6, the Agency proposes to repeal N.J.A.C. 5:80-26.22, 26.23, and 26.24, pertaining to, respectively, municipal, State, and nonprofit options to buy 95/5-restricted units.

N.J.A.C. 5:80-26.22 Seller Option on 95/5-Restricted Units

Through the 2024 special adoption, this section included only minor technical changes.

Through this rulemaking, in addition to recodifying the section based on the proposed repeals, the Agency proposes to retain this section, but give municipalities discretion to require, by ordinance, a different recapture amount, not to exceed 95 percent of the price differential. This way, a municipality can still insist on the full 95/5 recapture payment, but is not bound to require it if they choose otherwise.

The Agency proposes that any change in amount must be done through ordinance, rather than resolution, ensuring uniformity throughout UHAC. The Agency proposes requiring that municipal reductions be uniform, to prevent municipalities from picking and choosing which owners of 95/5-restricted units would benefit from the reduced recapture amounts. The Agency also proposes clarifying that the recapture amount is paid to the Municipal Housing Trust Fund through the administrative agent. Previously, there was no reference to the Municipal Housing Trust Fund. The Agency proposes changing the approval by DCA or the Dispute Resolution Program to approval by DCA or a county-level housing judge.

The Agency proposes to repeal existing N.J.A.C. 5:80-26.26 and 26.27, as they function to extend the 95/5 program in perpetuity, with N.J.A.C. 5:80-26.25(a) being particularly concerning as it states no limits on the length that a 95/5 restriction could be extended.

N.J.A.C. 5:80-26.23 Severability

Through the 2024 special adoption, the Agency included this new section to ensure that the general structure of UHAC remains in place should any of the individual provisions be invalidated. No further changes are proposed through this rulemaking, beyond the recodification of the section, based on the proposed repeals.

N.J.A.C. 5:80-26 Appendices

The UHAC includes certain appendices that are to be, as applicable, completed, followed, and, in some instances, recorded to help effectuate the intent of the rules. The following is a summary of those appendices as they are being proposed for amendment, repeal, and replacement as new rules.

N.J.A.C. 5:80-26 Appendix A: Mandatory Deed Form for Ownership Units

This appendix provides a form of deed to convey title to affordable housing units, with restrictions on the resale and refinancing of such units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix A.

N.J.A.C. 5:80-26 Appendix B: Mandatory Deed Form for Ownership 95/5 Units

This appendix provides a form of deed to convey title to 95/5-restricted units, with restrictions on the resale and refinancing of such units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix B.

N.J.A.C. 5:80-26 Appendix C: Restrictive Covenant Required by N.J.A.C. 5:80-26.6(d)

This appendix sets forth certain covenants, conditions, and restrictions applicable to affordable housing units, which covenants, conditions, and restrictions must be adhered to. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix C.

N.J.A.C. 5:80-26 Appendix D: Mandatory Deed Form for Ownership Units Subject to Restrictive Covenant Limiting Conveyance and Mortgage Debt

The Agency proposes to repeal this appendix, which provides a form of deed to convey title to units subject to affordability covenants, conditions, and restrictions. The Agency proposes to repeal and replace N.J.A.C. 5:80-26 Appendix D with the following appendices:

N.J.A.C. 5:80-26 Appendix D-1: Mandatory Deed Form for Two-Family Affordable Homeownership Unit and Affordable Rental Unit

This appendix provides a form of deed specifically applicable to the conveyance of two-family affordable housing units, where one unit is to be owner-occupied and the other unit is to be rented to an eligible individual or family.

N.J.A.C. 5:80-26 Appendix D-2: Form of Recapture Mortgage Note for Two-Family Affordable Homeownership Unit and Affordable Rental Unit in Favor of the State

This appendix provides a form of recapture mortgage note in connection with the first non-exempt sale of two-family affordable housing units, where one unit is to be owner-occupied and the other unit is to be rented to an eligible individual or family.

N.J.A.C. 5:80-26 Appendix D-3: Form of Certificate for Applicants Certified to Two-Family Affordable Home Ownership Units and Affordable Rental Units

This appendix provides a certificate to be executed by purchasers of two-family affordable housing units, where one unit is to be owner-occupied and the other unit is to be rented to an eligible individual or family.

N.J.A.C. 5:80-26 Appendix D-4: Restrictive Covenant for Two-Family Affordable Homeownership Unit and Affordable Rental Unit

This appendix sets forth certain covenants, conditions, and restrictions applicable to two-family affordable housing units, where one unit is to be owner-occupied and the other unit is to be rented to an eligible individual or family, which covenants, conditions, and restrictions must be adhered to.

N.J.A.C. 5:80-26 Appendix E: Mandatory Deed Restriction for Rental Projects

This appendix sets forth a deed restriction applicable to multifamily rental properties, with covenants restricting rentals, conveyances, and improvements and requiring notices of foreclosure and bankruptcy. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix E.

N.J.A.C. 5:80-26 Appendix F: Form of Release (Quitclaim Deed) for Restricted Units

The Agency proposes to repeal this appendix, which provides a quitclaim deed releasing ownership units from affordability controls. The Agency proposes to replace N.J.A.C. 5:80-26 Appendix F with the following appendices, which the Agency believes set forth more appropriate instruments for the release of affordability controls for ownership and rental properties:

N.J.A.C. 5:80-26 Appendix F-1: Form of Release for Restricted Ownership Units

This appendix provides a release from affordability controls for affordable ownership units.

N.J.A.C. 5:80-26 Appendix F-2: Form of Release for Restricted Rental Units

This appendix provides a release from affordability controls for affordable rental units.

N.J.A.C. 5:80-26 Appendix G: Form of Note for Payment of Recapture Amount for 95/5 Restricted Unit

This appendix provides a form of repayment mortgage note in connection with the first non-exempt sale of a 95/5 restricted unit. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix G.

N.J.A.C. 5:80-26 Appendix H: Form of Mortgage Securing Payment of Recapture Amount for 95/5-Restricted Unit

This appendix provides a form of mortgage in connection with the first non-exempt sale of a 95/5 restricted unit. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix H.

N.J.A.C. 5:80-26 Appendix I: Form of Housing Affordability Service Agreement Contract for the Provision of UHAC Services

This appendix provides a contract between the Agency's Housing Affordability Service (HAS) and an applicable municipality for HAS to serve as administrative agent for affordable housing units in the municipality. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix I.

N.J.A.C. 5:80-26 Appendix J: Form of Certificate for Applicants Certified to Ownership Units

This appendix provides a certificate to be executed by applicants to purchase affordable housing units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix J.

N.J.A.C. 5:80-26 Appendix K: Form of Certificate for Applicants Certified to Rental Units

This appendix provides a certificate to be executed by applicants for affordable housing rental units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix K.

N.J.A.C. 5:80-26 Appendix L: Form of Recapture Mortgage Note in Favor of the State

This appendix provides a form of recapture mortgage note to the State in connection with the first non-exempt sale of affordable housing units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix L, including, in particular, specifying the means of calculating the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)1iv.

N.J.A.C. 5:80-26 Appendix M: Form of Mortgage Securing Payment of Recapture Note in Favor of the State

This appendix provides a form of recapture mortgage in connection with the first non-exempt sale of affordable housing units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix M, including, in particular, specifying the means of calculating the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)1iv.

N.J.A.C. 5:80-26 Appendix N: Form of Recapture Mortgage Note in Favor of Municipality

This appendix provides a form of recapture mortgage note to the applicable municipality in connection with the first non-exempt sale of affordable housing units. The Agency proposes

certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix N, including, in particular, specifying the means of calculating the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)1iv.

N.J.A.C. 5:80-26 Appendix O: Form of Mortgage Securing Payment of Recapture Note in Favor of Municipality

This appendix provides a form of recapture mortgage in connection with the first non-exempt sale of affordable housing units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix O, including, in particular, specifying the means of calculating the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)1iv.

N.J.A.C. 5:80-26 Appendix P: Form of Recapture Mortgage Note for UHORP and MONI Units

The Agency proposes to repeal and replace this appendix, as the UHORP and MONI programs are no longer part of the Agency's financing portfolios.

N.J.A.C. 5:80-26 Appendix P-1: Notice of Intent to Construct Affordable Deed-Restricted Ownership Units

The Agency proposes this new appendix to provide notice, pursuant to N.J.A.C. 5:80-26.6(e), of the proposed construction of, and pertinent information relating to, deed-restricted affordable housing ownership units.

N.J.A.C. 5:80-26 Appendix P-2: Notice of Intent to Construct/Rehabilitate Affordable Deed-Restricted Rental Units

The Agency proposes this new appendix to provide notice, pursuant to N.J.A.C. 5:80-26.6(e), of the proposed construction or rehabilitation of, and pertinent information relating to, deed-restricted affordable housing rental units.

N.J.A.C. 5:80-26 Appendix Q: Form of Mortgage Securing Payment of Recapture Note in Favor of the Agency

This appendix provides a form of recapture mortgage in connection with the first non-exempt sale of affordable housing units. The Agency proposes certain clarifying and updating changes at N.J.A.C. 5:80-26 Appendix Q, including, in particular, specifying the means of calculating the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)iv.

Social Impact

The proposed updates to the Uniform Housing Affordability controls are anticipated to have a positive social impact on the State. The proposed changes build upon and improve the existing system for administering affordable housing units. The Agency substantially revised N.J.A.C. 5:80-26.5 to ensure that affordable housing tenants have access to reasonably sized units and standard features, such as a bedroom window, and updated N.J.A.C. 5:80-26.7 and N.J.A.C. 5:80-26.13 to ensure that affordable households have equal access to communal amenities. These changes are intended to prevent affordable households from facing differential treatment going forward in furtherance of the Fair Housing Act. The changes do not alter the features that market rate units in inclusionary developments are able to have, as long as the affordable units are treated equitably. The Agency anticipates that the updates at N.J.A.C. 5:80-26.6 will also have a positive social impact. The changes will reward affordable owners who maintain and improve their homes over a long period of time with a greater share of the equity, while still keeping units affordable.

Affordable households will benefit from having a greater share in the ownership of the unit. Municipalities will benefit from the unit remaining inhabitable and not requiring major investment. Finally, the neighborhood benefits from a better kept housing unit.

Economic Impact

Different aspects of the rulemaking are expected to have differing economic impacts. The updates to N.J.A.C. 5:80-26.4 make small developments more feasible, allowing for a greater variety of projects that may, for example, fit within a town's small vacant lot. Updates at N.J.A.C. 5:80-26.5 may create additional expenses for developers who previously planned to build affordable units that were smaller in size, of lesser building quality, and clustered in undesirable locations, compared to the market-rate units in the same development. The economic impact of these updates was taken into consideration within the context of the purpose of this rulemaking, which is the furtherance of the Fair Housing Act.

The codification of the regional income limits at N.J.A.C. 5:80-26.3 will eliminate the costs associated with the process that developed following the end of COAH, namely needing courts to affirm documents produced by a non-governmental third-party. The adjustments to the affirmative marketing requirements at N.J.A.C. 5:80-26.16 will reduce the cost of advertising. Previously, advertising methods that were expensive and had a low return-on-investment, such as radio and television advertisements, were mandatory. These are now optional. The income certification process detailed at N.J.A.C. 5:80-26.17 now allows administrative agents to accept income certifications made for other programs and from other administrative agents. This change will likely reduce redundancy, thereby saving time and money.

Finally, changes to the homeownership rules at N.J.A.C. 5:80-26.6 and N.J.A.C. 5:80-26.21, and 22 are anticipated to have a net-positive economic impact. The new rules require municipalities seeking bonus credits to extend the affordability controls and provide compensation to the affordable owners as part of the extension. The compensation amount depends on the condition of the unit, incentivizing investment and regular maintenance of the unit. The municipal cost to receive the bonus credits for extensions, which is mandated at P.L. 2024, c. 2, to be outlined in UHAC, is substantially less than the cost of producing an entirely new unit.

Federal Standards Statement

The proposed amendments 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 under State law and New Jersey's Qualified Allocation Plan (QAP). Accordingly, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments are not expected to create or result in the loss of any jobs.

Agriculture Industry Impact

The proposed amendments are not expected to have any impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The 2024 special adoption was principally intended to clarify, simplify, and expedite the processes by which the Fair Housing Act is administered in accordance with the changes made at P.L. 2024, c. 2. Specifically, the 2024 special adoption was intended to provide further flexibility for municipalities and affordable housing practitioners in implementing the new statutory requirements, updating affirmative marketing requirements in accordance with modern housing search practices, and aligning certification calculations and processes with other extant affordable housing programs. Pursuant to the 2004 version of UHAC, it was virtually impossible for small developments to comply with the affordability average and bedroom distribution requirements (N.J.A.C. 5:80-26.4). The updates included in the 2024 special adoption, and in this rulemaking, provide small developments with greater flexibility by allowing these units to satisfy Bill A4's bedroom distribution and affordability average requirements in the aggregate (at the municipal level). The proposed permanent rules seek to retain these changes with further technical adjustments and clarifications.

Additionally, the Agency anticipates that the updates to household certification (N.J.A.C. 5:80-26.17) and affirmative marketing (N.J.A.C. 5:80-26.16) rules will increase regulatory flexibility for existing projects subject to UHAC. The affirmative marketing rules no longer mandate specific advertising types and provide a variety of options under categories for administrators to choose from to meet their affirmative marketing requirements. The household certification processes have been updated to be consistent with Housing Opportunity Through Modernization Act of 2016 (HOTMA) standards, increasing uniformity across programs for many administrative agents, and now allow for certifications to be accepted by other administrative agents within 180 days of certification.

The Agency finds that this rulemaking will not impose any material additional reporting, recordkeeping, or other compliance obligations that were not already explicitly or implicitly required by the changes at P.L. 2024, c. 2. For existing units subject to UHAC, the proposed rulemaking increases flexibility and consistency across programs for administrators.

Housing Affordability Impact Analysis

The Agency finds that the proposed amendments, both the 2024 special adoption and this rulemaking, are anticipated to positively impact housing affordability. The rules are intended to reduce uncertainty related to the administration of units created to satisfy affordable housing obligations pursuant to the Fair Housing Act and to facilitate adherence to the Fair Housing Act as amended at P.L. 2024, c. 2, which aim to increase the supply of affordable housing to very-low, low-, and moderate-income families.

The rules apply to units created to address a municipality's housing obligation. The Fourth Round of affordable housing obligations identifies a present need of 65,410 units and a prospective need of 84,698 units. As many as 150,108 units subject to Fourth Round rules could be impacted by the proposed rulemaking. However, the actual number of units will be substantially less for two reasons. First, the bonus credit provision at Bill A4 may reduce the actual number of units subject to Fourth Round rules by as much as 25 percent. Additionally, the UHAC rules do not apply to the following: 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. 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 pursuant to section 8071 of the SUPPORT for Patients and Communities Act, Pub.L. 115-271, § 8071, 132 Stat. 3894 (2018).

The Agency anticipates that the proposed rulemaking will have a positive impact on housing affordability, as the rules update the process for implementing the income limits, price and rent restrictions, and control periods for affordable units pursuant to Bill A4. The creation and regulation of new affordable housing units lowers the average cost of housing through the below-market cost of the units themselves and increases to the housing supply spurred by the new construction. Recent literature suggests that the construction of new market-rate units leads to decreases in rents in the area immediately surrounding the new units, although the decreases often were only a fraction of a percent.¹ Accordingly, the precise impact on housing costs in New Jersey is likely to vary both regionally and locally.

The Agency anticipates that the proposed rulemaking will have mixed impacts on the cost to construct and administer new affordable units. The updated occupancy standards require that units be constructed to the same standard as market-rate units, require that bedrooms include at

¹ Vicki Been, Ingrid Gould Ellen, and Katherine M. O'Regan, *Supply Skepticism Revisited* (November 10, 2023). NYU Law and Economics Research Paper No. 24-12, Housing Policy Debate, volume 35, issue 1, 2025[10.1080/10511482.2024.2418044], Available at SSRN: <https://ssrn.com/abstract=4629628> or <http://dx.doi.org/10.1080/10511482.2024.2418044>

least one window, and require that the size of the unit be no less than 90 percent of the square footage minimums required by the Neighborhood Preservation Balanced Housing Rules (N.J.A.C. 5:43). These requirements may impose additional costs if restricted units had previously been allowed to be constructed with lesser quality building materials, without windows, and with minimal space (that is, a one-bedroom unit less than 540 square feet). The Agency anticipates that few projects will be impacted, as most developments already meet or exceed these standards. The Agency anticipates that the updates to household certification (N.J.A.C. 5:80-26.17) and affirmative marketing (N.J.A.C. 5:80-26.16) rules will reduce costs. Household certification processes have been updated to be consistent with HOTMA standards, increasing uniformity across programs, and now allow for certifications to be accepted by other administrative agents within 180 days of certification, reducing redundancy and improving efficiency. The affirmative marketing rules no longer require newspaper and television advertisements, the two most costly types of advertising previously mandated in the 2004 version of UHAC. The Agency expects marketing costs to decrease significantly pursuant to the proposed rulemaking.

Units created to fulfill a municipality's affordable housing obligation from a prior round, or prior round units, are subject to the proposed rulemaking with regard to the administration of restricted units. Prior round units are exempt from the proposed changes to occupancy standards (N.J.A.C. 5:80-26.5), affordability averages and bedroom distributions (N.J.A.C. 5:80-26.4), and minimum control periods (N.J.A.C. 5:80-26.6(a) and 26.12(a)). The proposed rulemaking defines prior round units as: a 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 items (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. Prior round units will benefit from the decreased cost associated with the new household certification and affirmative marketing regulations. In addition, these units are not subject to the updated occupancy standards and, thus, will not incur any additional costs that may result from changing the plans.

Smart Growth Development Impact Analysis

The Agency finds that the 2024 special adoption rules and this rulemaking would impose no significant impact on smart growth development or housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan, because these rules are solely intended to focus on the affordability controls of units created pursuant to the Fair Housing Act. While many municipalities may choose to incorporate their affordable housing development plans as part of or in furtherance of their smart growth goals,

these rules are not part of the site selection process and instead focus on what the affordability controls need to have once those decisions have been made.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Agency finds that the 2024 special adoption rules and this rulemaking will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the proposed readoption of specially adopted amendments and new rules with amendments, repeals, new rules and recodifications follows (specially adopted additions indicated in boldface **thus**; specially adopted deletions indicated in brackets [thus]; additions through this rulemaking indicated in italicized boldface ***thus***; deletions through this rulemaking indicated in cursive brackets {thus}):

SUBCHAPTER 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 [assuring] **ensuring** that low- and moderate-income units created [under] **pursuant to** the [Fair Housing] 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 [COAH] credit {under} ***pursuant to*** the [Fair Housing] 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; 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); [that receive] **or received** funding from the [Division under] **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 [receive] **received** funding from the Agency [under] **through** its UHORP, [and] 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[, the Agency, or COAH] for the administration of affordability controls pursuant to the [Fair Housing] Act. Unless expressly stated otherwise herein, this subchapter [shall apply] **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 [under] **(LIHTC) pursuant to** Section 42 of the Internal Revenue Code, units that [receive] **received** Balanced Housing funds [under] **pursuant to** the Agency's Home Express program, or units receiving [assistance under] **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 Hearing 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, {and} N.J.A.C. 5:80-[26.14]**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] **low- and** moderate-income households. [For example, if the rents for the five restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of median income, respectively, the average affordability for those units would be 50 percent of median income.]

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth [in] **at** N.J.A.C. 5:80-[26.6]**26.7** and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth [in] **at** N.J.A.C. 5:80-[26.12]**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.

{“Agency” means the New Jersey Housing and Mortgage Finance Agency established [by] **pursuant to** P.L. 1983, [c.530] **c. 530** (N.J.S.A. 55:14K-1 [et seq.] **through 44**) and in, but not of, [the] DCA.}

“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 et seq.] **3601 through 3619**, except that due to death, a [remaining] **surviving** spouse of less than 55 years of age [shall be] **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 [assure] **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.

[“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43.]

“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, [the] DCA[, established under the New Jersey Fair Housing] **pursuant to the Act** [(N.J.S.A. 52:27D-301 et seq.)] **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[s] 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 [Housing] **Local Planning Services** in [the] 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.

...

[“High-poverty census tract” means a census tract with a census-determined average poverty rate equal to or greater than 25 percent, as determined by the United States Census Bureau.]

“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 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 [total gross annual] household income equal to 50 percent or less of the **regional** median income.

...

[“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.]

“Moderate-income household” means a household with a [total gross annual] household income in excess of 50 percent but less than **or equal to** 80 percent of the **regional** median income.

...

“MONI” means the [Agency’s] **no-longer-active** Market Oriented Neighborhood Investment Program, as it [may be] **was** authorized [from time to time] by the Agency.

{“**Multifamily development**” means a housing development with five or more dwelling units.}

“**Municipal housing liaison**” or “**MHL**” means an appointed municipal employee who is, pursuant to {processes and standards to be promulgated by the Department in accordance with N.J.S.A. 52:27D-321.i(1)} *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 {unit} 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 [husband and wife] 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 {fair market value} 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 [households] **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; [(for example, by lottery)] **or another purpose allowed pursuant to N.J.A.C. 5:80-~~{26.17(k)3}~~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 [an] 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 [under] **pursuant to UHORP, [or] MONI, or CHOICE**.

{“**Single-family development**” means a housing development with one to four dwelling units that does not meet the definition of “project” as defined in the Hotel and Multiple Dwelling Unit Law (N.J.S.A. 55:13A-1 through 13A-31).}

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it [may be] was authorized [from time to time] 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 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-[26.3]**26.4** Affordability average; bedroom distribution

[(a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.

(b) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

1. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low-and moderate-income units;
2. At least 30 percent of all low-and moderate-income units are two bedroom units;
3. At least 20 percent of all low-and moderate-income units are three bedroom units; and
4. The remainder, if any, may be allocated at the discretion of the developer.

(c) Age-restricted low-and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low-and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.]

(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)).

~~{(a)}~~ **(b) For the purposes of determining affordability averages and bedroom distributions,**
all restricted units within any single-family development in a municipality are treated as one
scattered-site affordable development. This treatment affects only the calculations of

affordability and bedroom counts for single-family developments, is not to be construed to require that the restricted units be developed or administered as one scattered-site affordable development, and does not affect multifamily developments.}:

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

{(b)} 3. {For the purposes of determining affordability averages and bedroom distributions, unless} Unless stated otherwise, non-integer values calculated pursuant to this {subsection} 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.

[(d)] (c) {Municipalities} 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 [the]:

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 [affordable] all restricted units within each affordable development [shall be] is affordable to households earning no more than 60 percent of regional median income[. The municipal ordinance shall require that the average]; however, municipalities may permit a maximum rent [for low-and moderate-income units be] affordable to households earning no more than [52] 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 {one plus} 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 [type] count for [both] very-low-income, low-income, and moderate-income units, provided that at least [10] 13 percent of all [low-and moderate-income] restricted units [shall be] within each municipality are affordable to and reserved for very-low-income households [earning no more than 35 percent of median income], 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.

[(e)] **(d)** The maximum sale[s] price of restricted ownership units within each affordable development [shall] **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, {moderate-income ownership} units must be available for at least three different ***moderate-income*** prices {for} ***within*** each bedroom [type] **count with *moderate-income ownership units***, and {low-income ownership units must be available} for at least two different ***low-income*** prices {for} ***within*** each bedroom [type] **count with *low-income ownership units***.

[(f)] Municipal ordinances regulating owner-occupied and rental units shall require that affordable units utilize the same type of heating source as market units within the affordable development.

(g) The provisions of this section shall not apply to affordable developments financed under UHORP or MONI or to assisted living residences, which shall comply with applicable Agency regulations.]

(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 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 {and three-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 {all of the restricted units in the development as well as by, considered in isolation,} 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.

[5:80-26.4 Occupancy standards]

[(a)] **(i)** In determining the initial rents and initial sale[s] prices for compliance with the affordability average requirements for restricted units other than **age-restricted units and** assisted living facilities, the following standards [shall be used] **apply**:

1. [A studio shall be] **An efficiency unit is** affordable to a [one person] **one-person** household;
2. A [one bedroom] **one-bedroom** unit [shall be] **is** affordable to a [one and one-half person] **one-and-one-half-person** household;
3. A [two bedroom] **two-bedroom** unit [shall be] **is** affordable to a [three person] **three-person** household[s];
4. A [three bedroom] **three-bedroom** unit [shall be] **is** affordable to a [four and one-half person] **four-and-one-half-person** household; and
5. A [four bedroom] **four-bedroom** unit [shall be] **is** affordable to a [six person] **six-person** household.

[(b)] **(j)** For **age-restricted units and** assisted living facilities, the following standards [shall be used] **apply**:

1. [A studio shall be] **An efficiency unit is** affordable to a [one person] **one-person** household;
2. A one-bedroom unit [shall be] **is** affordable to a [one and one-half-person] **one-and-one-half-person** household; [and]
3. A two-bedroom unit [shall be] **is** affordable to a [two person] **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 {the Dispute Resolution Program or, if the municipality does not participate in the Dispute Resolution Program, from} a county-level housing judge.

5:80-26.5 Occupancy standards

{(a) Any unit that, prior to December 20, 2024 (the effective date of the amendments to this subchapter, as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)), 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, shall be subject to the regulations of this subchapter (UHAC regulations) that were in effect prior to December 20, 2024 (the effective date of the amendments promulgated pursuant to P.L. 2024, c. 2).}

{(b)} (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 applicable municipal code or}* the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4*{, whichever is greater}*;

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 *{standards}* *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 {(for example, flat or townhome)} as market-rate units within the same building; and

viii. Restricted units *and bedrooms* must be {of at least the same size as the most common market-rate unit(s) of the same type and bedroom count within the same development, but

under no circumstances shall any restricted unit or bedroom be} *no* less than 90 percent of the minimum size prescribed by the {applicable municipal code or} Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4{, whichever prescribes the greater minimum size};

3. For developments containing for-sale units, including those with a mix of rental and for-sale units, {(b)2} (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, {or} *and/or* single-family homes offer restricted housing options that also include *duplexes*, townhomes, {or} *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 {applicable municipal code or the} Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4 {, whichever provides the greater minimum square footages};

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 10 percent of the market-rate units may be completed prior to the completion of at least one restricted unit;}

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

{iii.} 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;

{iv.} 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

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

{vi. If the phasing schedule at (b)4i through v above is not feasible due to the nature of the development, that the restricted units are completed prior to the completion of the market-rate units; and}

5. The individual requirements at {(b)1} (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 {the Dispute Resolution Program or, if the municipality does not participate in the Dispute Resolution Program, from} a county-level housing judge.

{(c)} (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, [the administrative agent shall strive] to:

- [1. Provide an occupant for each unit bedroom;
- 2. Provide children of different sex with separate bedrooms; and
- 3. Prevent more than two persons from occupying a single bedroom.]

- 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. {Provide a bedroom for every occupant under the age of 18, unless the household requests a different arrangement, which} *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.

(Agency Note: The text of recodified N.J.A.C. 5:80-26.6 below is proposed for repeal through this rulemaking. The changes shown were adopted through the notice of special adoption and are open for comment; however, the Agency is proposing to replace this entire section.)

{5:80-[26.5]} **26.6** Control periods for ownership units

(a) Each restricted ownership unit [shall] **must** remain subject to the requirements of this subchapter until **the end of the control period specified in the deed restriction unless** the municipality in which the unit is located elects to [release] **extend** the [unit] **unit's restriction** [from such requirements pursuant to action taken] in compliance with [(g)] **(h)** below. [Prior to such a municipal election, a] **A** restricted ownership unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

[1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;]

[2.] **1.** Any unit that, prior to December 20, [2004] **2024 (the effective date of the amendments to this subchapter as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1))**, 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, [shall] **will** have its control period governed by [said] **such** grant of substantive certification, judgment, [or] grant agreement, or contract; [and]

[3.] **2.** 95/5 units are subject to the option and price restriction rules set forth at N.J.A.C. 5:80- [26.20]**26.21** through [26.26] **26.27**; and

3. Units for which affordability controls have been extended pursuant to (h) below are subject to a minimum period of extension of 30 years, except that the extension period may be limited to 20 years if the original and extended terms of affordability controls, in combination, are at least 60 years.

(b) The affordability control period for a restricted ownership unit [shall] commences on the date the initial certified household takes title to the unit and [shall terminate only at such time as the municipality opts to release the unit from the requirements of this subchapter in accordance with (g) below, or at such other time as is applicable under (a) above] **terminates at the first non-exempt sale after the end of the deed-restricted affordability period, if, and only if, the municipality does not exercise the right of first refusal to extend the control period in accordance with (h) below, and if and only if, the seller has provided the municipality with at least 60 days' notice of the seller's intention to make the first non-exempt sale.**

(c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value. At the time of the sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors, and assigns) to repay,

upon the first non-exempt sale after the unit's release from the requirements of this subchapter, an amount equal to the difference between the unit's non-restricted fair market value, **as determined previously by the administrative agent**, and its restricted price. The recapture note [shall] **must** be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien [shall] **must** be in favor of the Agency if the unit was financed [under] **pursuant to UHORP, [or] MONI, or CHOICE**, in favor of the State if State funds other than UHORP, [or] MONI, **or CHOICE** contributed to the financing of the unit, **in favor of the nonprofit if the unit was developed by a nonprofit entity without Agency or State funding**, and, in all other cases, in favor of the municipality in which the unit is located. The recapture note and recapture mortgage lien [shall] **must** be in the form prescribed [in subchapter] **at N.J.A.C. 5:80-26** Appendices L, M, N, O, P, and Q, incorporated herein by reference, as applicable.

1. The recapture lien [shall] **must** also provide that the recapture amount [shall] be reduced by the cumulative dollar value of capital expenditures by all owners during the control period for improvements and/or upgrades to the unit, as **may be** approved by the administrative agent.

2. Municipalities that exercise the option to purchase restricted ownership units pursuant to (f) below [shall] **are** not [be] required to satisfy the recapture lien.

3. Upon termination of the affordability control period pursuant to (g) below, and satisfaction of the recapture [of the] **mortgage** lien, the unit may be sold at fair market value and the proceeds retained by the seller. **However, the recapture mortgage lien will remain a lien on the property until it is satisfied and the administrative agent files a discharge.**

(d) All conveyances of restricted ownership units [shall] **must** be made by deeds and restrictive covenants substantially in the forms prescribed [in subchapter] **at N.J.A.C. 5:80-26** Appendices

A, B, C, D, L, M, N, O, P, and Q, incorporated herein by reference, as applicable. Each purchaser of a 95/5 unit, in addition, shall execute a note and mortgage in the forms [of] **prescribed at N.J.A.C. 5:80-26** Appendices G and H, incorporated herein by reference.

(e) The affordability controls set forth in this subchapter and incorporated in instruments in the forms presented [in subchapter] **at N.J.A.C. 5:80-26** Appendices A[,], **and** D[, E, F, G, H, I, J, K, L, M, N, O, P and] **through** Q, incorporated herein by reference, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units. **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 (d) above and each purchaser of a 95/5 unit is deemed to have executed a note and mortgage as prescribed in this subchapter, 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 contained 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 shall remain in effect until full satisfaction thereof and compliance with this subchapter.**

(f) [At the time of] **When** the first non-exempt sale [following a 30-year interval from] **occurs 30 or more years after** the date [of the issuance of] the initial certificate of occupancy **was issued**, a municipality [shall have] **may exercise** the right of first refusal to purchase a restricted ownership unit at the maximum restricted price, with the exceptions noted [under] **at** (a) above, provided that:

1. The municipality enters into a contract to purchase the unit within 60 days [of notification] **after the owner notifies the municipality of their** intent to sell [by the owner of] the restricted unit; and

2. The recapture lien described [in] **at** (c) above remains in full force and effect. [(g)] Any municipality may elect to release a restricted ownership from the requirements of this subchapter at a time to be set forth in the municipal ordinance. [required under (g)3 below, but after the expiration of the applicable minimum control period specified under (a) above, provided that:

1. The recapture lien described in (c) above remains in full force and effect;

2. If the lien required under (c) above is in favor of the municipality, the municipality has a COAH-approved spending plan pursuant to N.J.A.C. 5:94-6.5(e) requiring that all proceeds from the satisfaction of a recapture lien on a restricted ownership unit be used to create one new affordable unit for every unit released from affordability controls within the municipality; and

3. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality.]

[(h)] **(g)** A municipality may use [development fees] **municipal affordable housing trust funds** to purchase and/or rehabilitate [a] restricted ownership units.

(h) Each restricted ownership unit will be released from affordability restrictions upon the date of the first non-exempt sale after the end of the deed-restricted affordability period unless the municipality exercises the right of first refusal to extend the affordability control

period for the restricted ownership unit. To exercise the right of first refusal, the municipality must:

1. Notify the owner, in writing, of its intent to extend the affordability controls no later than 180 days prior to the end of the deed-restricted affordability control period;

2. Issue a new deed restriction extending the control period for not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, then not less than 20 years; and

3. Either:

i. Purchase the restricted unit pursuant to (f) above and convey it to a very-low-, low-, or moderate-income purchaser at a price not to exceed the maximum allowable restricted sale price; or

ii. Compensate the homeowner no less than \$20,000 from the municipal affordable housing trust fund to support the preservation of the unit.

(i) In those instances in which control periods expire pursuant to this section, the administrative agent shall, within 60 days of the expiration of the control period, execute a release, substantially in **the** form set forth [in] **at N.J.A.C. 5:80-26** Appendix F [to this subchapter], incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted ownership unit established in this section, the owner of the unit [shall be entitled to] **may** sell it to any purchaser at the fair market price.}

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.

(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:

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, 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.

(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, 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 extinguish 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.

(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, 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-[26.6]26.7 Price restrictions for ownership units

(a) The **administrative agent shall set the** initial purchase price for a restricted ownership unit [shall be approved by the administrative agent and, if the]. **If the** unit is receiving assistance [under] **pursuant to** the [Balanced Housing Program] **AHTF**, [shall] **the price must** be consistent with the [Balanced Housing] **AHTF** grant agreement.

(b) The initial purchase price for all restricted ownership units{, except those financed [under] **pursuant to** UHORP, [or] MONI [shall be], **or CHOICE**} 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 [Federal Reserve H.15] **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 {28} **33** percent of the eligible monthly income of an appropriate household size as determined [under] **pursuant to** N.J.A.C. 5:80-26.4; provided, however, that the price {shall be} **is** subject to the affordability average requirement [of] **at** N.J.A.C. 5:80-{26.3}**26.4**.

{(c) The initial purchase price of a restricted ownership unit financed [under] **pursuant to** UHORP or MONI shall be 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 [Federal

Reserve H.15] **FreddieMac 30-Year Fixed-Rate Mortgage** rate of interest), taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, do not exceed 28 percent of the eligible monthly income of [a household whose income does not exceed 45 percent of median income, in the case of a low-income unit, or 72 percent of median income, in the case of a moderate-income unit, and that utilizes the] **an** appropriate household size as determined [under] **pursuant to N.J.A.C. 5:80-[26.4]26.5; 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 original 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); 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 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 [shall be consistent with the regional income limits most recently published by COAH and calculated pursuant to N.J.A.C. 5:94-7.2(b)] **may increase annually based on the percentage increase in the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. The actual resale price may be lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline. The maximum resale price may not be lower than the last recorded purchase price.**} The administrative agent shall approve all resale prices, in writing, and in advance of the resale, to [assure] **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 [of] **and declarations of covenants and restrictions for** affordable developments [shall provide no distinction] **may not distinguish** between [the] **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] low- and** moderate-income purchasers and those **to be paid by [market] market-rate** purchasers. [Notwithstanding the foregoing sentence, condominium units] **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 subject to a municipal ordinance adopted before [October 1, 2001] **December 20, 2004**, which **ordinance** provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection [shall have such fees and assessments governed by said ordinance] **are governed by the ordinance. 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.**

{(f) 95/5 units are subject to the option and price restriction rules set forth [in] **at N.J.A.C. 5:80-26.20]26.21 through [26.26] 26.27.**}

5:80-[26.7]**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 [shall be] **are** reserved for households with a [gross] household income less than or equal to 50 percent of **regional** median income. [Moderate income] **Moderate-income** ownership units [shall be] **are** reserved for households with a [gross] household income less than 80 percent of **regional** median income. For example, a household earning 48 percent of **regional** median income may [be placed in] **qualify for** any low-income **or moderate-income** unit; however, a household earning 53

percent [does] **of regional median income would qualify for a moderate-income unit, but would** not qualify for a low-income unit. [A household earning 67 percent of median may be placed in any moderate income housing unit. A household earning less than 50 percent of median may be placed in a moderate income housing unit.] Notwithstanding the foregoing, [however,] the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by [COAH or] the Division, [as applicable,] **units are reserved for low-income [prices are required] 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 [33] **35** percent of the household's eligible monthly income. The administrative agent, however, may exercise [the] **its** discretion to certify a [low-or] **low- or** moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the [33] **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 [et seq.] **through 35**, including certification from a [non-profit] **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-[26.8]**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 [shall] **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-[26.6(c)]**26.7(c)**.

5:80-[26.9]**26.10** Capital improvements to ownership units

(a) The owner[s] of **an** ownership unit[s] may apply to the administrative agent to {increase} *recalculate* the maximum sale{s} price for the unit [on the basis of] **to reflect eligible** capital improvements made since [the purchase of] **they purchased** the unit. Eligible capital improvements [shall be] **are limited to** those that [render] **make** the unit suitable for a larger household {or that add an additional bathroom}, *that is adding bedrooms and/or bathrooms*. [In no event shall] **However**, the maximum sale[s] price of an improved housing unit **may not** exceed the limits [for] **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** {wall-to-wall carpeting} *flooring*) [shall be] **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 [shall] **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 {expenditures} 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 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) {do not affect} 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(c)1}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-[26.10]26.11 Maintenance of restricted ownership units

[A] Upon the first transfer of title that follows the expiration of the {applicable minimum} deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6{(a)}, if requested by the administrative agent, the owner of a restricted ownership unit shall [be required to] obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards [upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a)].

(**Agency Note:** The text of recodified N.J.A.C. 5:80-26.12 below is proposed for repeal through this rulemaking. The changes shown were adopted through the notice of special adoption and are open for comment; however, the Agency is proposing to replace this entire section.)

{5:80-[26.11]} **26.12** Control periods for rental units

(a) Each restricted rental unit [shall] **must** remain subject to the requirements of this subchapter until the [municipality in which] **end of** the [unit is located elects to release] **control period specified in** the unit's [from such requirements pursuant to action taken in compliance with (e) below. Prior to such a municipal election, a] **deed restriction, unless the unit's restriction is extinguished in compliance with (e) below or extended in compliance with (f) below. A** restricted rental unit must remain subject to the requirements of this subchapter for a period of at least [30] **40** years; provided, however, that[:] **the control period of any**

[1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

2. Any unit included in a Neighborhood Rehabilitation Project pursuant to N.J.A.C. 5:43-4.4(b) shall remain subject to these affordability requirements for a period of at least 10 years; and

3. Any] unit that, prior to December 20, [2004] **2024, (the effective date of the amendments to this subchapter as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1))**, 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[, shall have its control period] **will be** governed by [said] **such** grant of substantive certification, judgment, [or] grant agreement, or contract.

1. Rental units created on or after January 1, 2025, and which are subject to affordability controls for low- and/or moderate-income families pursuant to this subchapter are subject to a deed restriction of not less than 40 years.

2. Any project composed entirely of rental units subject to the affordability controls of this section that does not participate in a State-administered preservation program may elect to extinguish the existing deed restriction beginning 30 years following the start of the deed restriction, regardless of original length, provided that the project enters into a new deed restriction of at least 30 years and that the project has applied for and obtained a refinancing and/or has commenced an approved rehabilitation for the purpose of preservation.

3. Any project composed entirely of rental units subject to the affordability controls of this section that participates in a State-administered preservation program may elect to extinguish the existing deed restriction prior to the 30th year, regardless of original length, provided that the project enters into a new deed restriction that, in combination with the original deed restriction, totals at least 60 years.

(b) The affordability control period for the restricted rental units in a development [shall] commence on the first date that [a certified household occupies] a unit **is issued a certificate of occupancy** and [shall] terminates only at **the end of the control period specified in the deed restriction or at** such time that the municipality [opts to] releases the unit from the requirements of this subchapter in accordance with (e) below[, except that]. **For any restricted rental units occupied at the end of the control period specified in the deed restriction or the time at which the municipality releases the unit from the requirements,** the affordability controls set forth in this subchapter [shall] remain in effect until the date on which [a] **the occupant household vacates**

the rental unit [shall become vacant], provided that the occupant household continues to earn a [gross annual] **household** income of less than 80 percent of the applicable **regional** median income. If, at that time, a rental household's income [is found to] exceeds 80 percent of the regional median income, the rental rate restriction [shall] **will** expire at the later of either the next scheduled lease renewal or **in** 60 days.

(c) Deeds of all real property that include restricted rental units [shall] **must** contain deed restriction language **that conforms with the requirements of this subchapter and is** substantially in the form set forth [in] **at N.J.A.C. 5:80-26** Appendix E [to this subchapter], incorporated herein by reference. **The requirements of this subchapter govern the terms of deed restrictions regardless of the language ultimately utilized in the recorded deed restriction document. No terms, whether intentional or unintentional, that circumvent the requirements of this subchapter may be enforced. All deed restrictions must be read in accordance with the requirements of this subchapter. Any terms that directly conflict with the requirements of this subchapter are of no legal effect, are contrary to the public policy of the State, and may be stricken only by an application to the Dispute Resolution Program or a county-level housing judge. Deed restrictions are severable, such that invalidation of any provision due to inconsistency with this subchapter will not terminate the deed restriction, but, rather, the deed restriction will be read to include the provision of this subchapter with which the original language was inconsistent.** The deed restriction [shall have] **has** priority over all mortgages on the property. The [deed restriction shall be filed by the] developer or seller **shall file the deed restriction** with the records office of the county in which the unit is located, and a copy of the filed document [shall] **must** be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy **for the unit**. The preparer of the

foregoing instrument shall certify to the administrative agent that the deed restriction language [in] at N.J.A.C. 5:80-26 Appendix E has been included therein. **If the recorded deed restriction is not provided to the administrative agent within 30 days of the receipt of the certificate of occupancy, the administrative agent shall at any time thereafter send notice to the developer or seller providing a 30-day cure period. If the deed restriction is not provided within the cure period, the administrative agent shall record the deed restriction with the records office of the county on notice to the developer or seller and may bill the seller for reasonable costs associated therewith. Under no circumstances may a developer or seller be excused from any requirements of this subchapter because of a failure to record the deed restriction. 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.**

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

1. (No change.)
2. A sale or other voluntary transfer of [the] ownership of the unit; [or]
3. The entry and enforcement of any judgment of foreclosure[.] **or grant of a deed in lieu of foreclosure; or**
4. **The release from affordability restrictions at the end of the affordability control period, until occupancy by the first new tenant subsequent to the release of controls.**

(e) [Any] **Unless affordability controls are extended pursuant to (f) below, any** municipality [may elect to] **shall** release any or all of the restricted rental units in a development from the requirements of this subchapter at a time to be set forth in the municipal ordinance required below, but **only** after the expiration of the minimum control period specified [under] **at** (a) above, provided that:

1. The municipal election to release the unit from the requirements of this subchapter is made pursuant to a municipal ordinance authorizing such elections [with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality]; and

2. The administrative agent [shall], within 60 days of the municipal election [shall], executes a release, in the form set forth [in] **at N.J.A.C. 5:80-26** Appendix F [to this subchapter], incorporated herein by reference, of all restriction instruments with respect to the unit(s). The owner of the restricted unit(s) is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted rental unit established in this section, the owner of the unit [shall be entitled to] **may** lease it to any tenant at the fair market rent.

(f) Restricted rental units will be released from affordability restrictions at the end of the affordability control period, subject to the limitations at (b) above, unless the municipality exercises the right of first refusal to extend the affordability control period for the restricted rental units. To exercise the right of first refusal, the municipality must:

1. No later than 180 days prior to the end of the affordability control period, elect to extend the affordability control period pursuant to a municipal ordinance authorizing such elections;

2. Issue a new deed restriction extending the control period for not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, then not less than 20 years;

3. If permitted by the relevant statute, grant or extend 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 55:14K-37(b); and

4. To support the preservation, contribute:

i. At least \$12,000 per restricted unit 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 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, 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.}

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:

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;

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, 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 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.

(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-[26.12]**26.13** Restrictions on rents

(a) The **administrative agent shall set the** initial rent for a restricted rental unit. [shall be approved by the administrative agent and, if] **If** the unit is receiving assistance [under the Balanced Housing Program, shall] **pursuant to the AHTF, the initial rent must** be consistent with the [Balanced Housing] **AHTF** grant agreement. The initial rent [shall] **must** be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined [under]

pursuant to N.J.A.C. 5:80-[26.4]{26.5}26.4; provided, however, that the rent [shall be] **is** subject to the affordability average requirement [of] **at N.J.A.C. 5:80-[26.3]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[, if such] **to an amount commensurate with the annual percentage increase [is consistent with the] 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 [most recently published by COAH, calculated] **determined pursuant to N.J.A.C. {5:94-[7.2(b),]26.3} 5:80-26.3.** **This rent increase may not exceed five percent in any one year** and [has been] **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 {subsection} 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.** *{Municipal Housing Liaison-adopted}* **Rent** increases may not be [increased when an announcement of a

COAH-adopted increase occurs] **implemented** during [initial] lease-up [activity]. **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[. Rents may not be increased] **or** by more than one [COAH-approved] {**MHL-approved**} increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within [a] **one** year of the last occupancy and prior to the next published [COAH-adopted] {**MHL-approved**} increase *amount*.

1. No additional fees, **operating costs**, or charges may be added to the approved rent (except[, in the case of units in [an] 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 {on-site parking or parking deck fees} 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 [rental] **rent** of the applicable restricted unit and [shall be] **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 \$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 [an] 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 [on] **in** the lease. All lease provisions [shall] **must** comply with applicable law. The landlord shall provide the administrative agent with sufficient information for [a] 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) [Those] **The lease must specify which** tenant-paid utilities [that] are included in the utility allowance [shall be so stated in] **{and include the [lease] most recent utilities chart at the time of lease-up approved by DCA for its Section 8 program.** The allowance for utilities [shall] **must** be consistent with the utility allowance approved by DCA for its Section 8 program}. *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] ENERGY STAR 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-[26.13]26.14 Tenant income eligibility

(a) Low-income rental units [shall be] **are** reserved for households with [a gross] household incomes less than or equal to 50 percent of **regional** median income. [Moderate income] **Moderate-income** rental units [shall be] **are** reserved for households with [a gross] 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-[26.16]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 [in] **at** (b) above with the administrative agent, who shall counsel the household on budgeting.

5:80-[26.14]**26.15** Administrative agent

[(a)] All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project 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 [shall be administered and enforced], which actions are reviewable by the [administrative agent] Municipal Housing Liaison pursuant to N.J.S.A. 52:27D-321. The primary responsibility of the administrative agent [shall be] is to ensure that the restricted units under administration are sold or rented, as applicable, only to [low-and] very-low-, low-, and moderate-income households. [Among] The administrative agent shall also fulfill the requirements and responsibilities [of the administrative agent are the following:] {promulgated by the Department in accordance with N.J.S.A. 52:27D-321.i(1) and} 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.

[1. Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the provisions of N.J.A.C. 5:80-26.15;

2. Soliciting, scheduling, conducting and following up on interviews with interested households;

3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low-or moderate-income unit;

4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

5. Creating and maintaining a referral list of eligible applicant households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;

6. Employing a random selection process when referring households for certification to affordable units;

7. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

9. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental;
10. Instituting and maintaining an effective means of communicating information to low-and moderate-income households regarding the availability of restricted units for resale or rental;
11. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
12. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems;
13. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;
14. Communicating with lenders regarding foreclosures;
15. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10;
16. Notifying the municipality of an owner's intent to sell a restricted unit;
17. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;
18. Providing annual reports to COAH as required; and

19. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

(b) The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in Appendices A, B, C, D and E of this subchapter, consistent with the provisions of N.J.A.C. 5:80-26.18; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80-26.16.

1. Such process shall require that an applicant household be notified in writing of the results of its application for certification within 20 days of the administrative agent's determination thereof.

2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in

accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

(c) Except in the case of restricted units receiving UHORP or MONI funding, the municipality in which restricted units are located shall select one or more administrative agents for those units. A municipality itself (through a designated municipal employee, department, board, agency or committee) may elect to serve as the administrative agent for some or all restricted units in the municipality, or the municipality may select HAS or an experienced private entity approved by the Division, the Agency or COAH to serve as administrative agent for some or all restricted units in the municipality. HAS may delegate a portion or portions of its administrative agent duties to third parties, by written contract, provided that in such case HAS shall retain oversight and monitoring responsibilities, including, but not limited to, authority over enforcement policy and actions and confidentiality of tenant/applicant data solicited for rent-up and certification purposes. When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division, if the restricted units are to receive funding under the Neighborhood Preservation Balanced Housing Program, or by COAH, if the restricted units are not to receive funding under the Neighborhood Preservation Balanced Housing Program but are to receive COAH credit. The foregoing approval by COAH or the Division is to be based on the private entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units. The Agency shall select the administrative agents for restricted units receiving UHORP or MONI funding.

(d) In all cases where a municipality has selected HAS as its administrative agent, HAS and the municipality shall enter into a contract for the provision of housing affordability control services substantially in the form set forth in Appendix I.

(e) When reviewing a private entity to determine whether it should be designated as administrative agent, a municipality shall obtain and review the following and submit it to the Division, the Agency or COAH, as applicable, for approval:

1. Documentation which demonstrates that the private entity's purposes include the provision of housing services and housing counseling and the promotion of the principles underlying the Federal Fair Housing laws and that the private entity has knowledge of and familiarity with the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) and its implementing rules;

2. Evidence of a history of successful management of restricted affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement;

3. Representations and warranties from the experienced private entity that, if the entity serves as administrative agent with respect to restricted units in which it has a pecuniary interest, the entity shall not allow the pecuniary interest to compromise in any way its administration of the controls set forth in this subchapter;

4. The draft contract between the municipality and the private entity serving as administrative agent;

5. Documentation of the private entity's capacity to undertake the duties of an administrative agent;

6. A statement of intent to attend continuing education opportunities on affordability controls and compliance monitoring when available; and

7. Such other relevant documents from a specific applicant as required by the municipality to justify approval as an administrative agent.

(f) The administrative agent shall have the authority to discharge and release any or all instruments, as set forth in the Appendices of this subchapter, filed of record to establish affordability controls.]

5:80-[26.15]**26.16** Affirmative marketing

{(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age [or] **(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 5.50**, to housing units [which] **that** are being marketed by a developer or sponsor of affordable housing. **Unless stated otherwise, supportive housing units must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable.** The affirmative marketing plan is [also] intended to [target] **reach** those potentially eligible persons who are least likely to apply for affordable units in [that] **the plan** region **by attracting applications from eligible applicant-households in preparation for the random selection process.** It is a continuing program that directs all marketing activities toward the [COAH Housing Region] **housing region** in which the

municipality is located [and covers] **throughout** the [period of] deed restriction **period**. **Each developer or administrative agent shall document and report the affirmative marketing plan for the units under their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section.**

(b) The administrative agent shall [assure] **ensure** the affirmative marketing of affordable units. Municipalities may designate an experienced municipal staff person approved by [COAH] **the Division** to be the administrative agent responsible for implementing the affirmative marketing plan. The administrative agent shall attend an affirmative marketing training program approved by [COAH] **the Division**.

(c) If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative [agents] **agent(s)** approved by [COAH] **the Division** to administer the affirmative marketing plan(s). [Where a municipality contracts with another administrative agent to administer the affirmative marketing plan, the municipality shall appoint a housing officer who shall supervise the contracting administrative agent. In addition, where the contracting administrative agent is not responsible for the entire affirmative marketing plan, the municipality shall outline who or what municipal agent is responsible for the remaining portion of the affirmative marketing plan.] The municipality shall also ensure that all [original] **affordable-unit**, applicant, and sales records [of affordable units] are returned to the municipality for reporting purposes and to aid with future resales. The municipality [has the ultimate responsibility] **is ultimately responsible** for the proper administration of the affirmative marketing program, including initial sales, [and] rentals, [and] resales, and [rentals] **re-rentals**.

(d) In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person [approved by COAH] to provide counseling services to [low and moderate income] **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 may contract with an experienced [agency] **entity** approved by [COAH] **the Division** to provide such counseling services.}

(a) The affirmative marketing plan 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 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 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.

{(e)} (d) The affirmative marketing plan [shall provide] and all advertisements for the affordable units, must contain the following information:

- {1. The name and address of the project;*
- 2. The number of units, including the number of sale[s] and/or rental units;*
- 3. The [price of sales and/or rental units] **physical characteristics of affordable units, including the unit type (that is, family, age-restricted, or supportive), bedroom counts, total square footage, and accessibility features;***
- 4. The prices of for-sale units and/or the rental amounts of rental units;*
- 5. The expected date the affordable housing units will be available;*

[4.] **6.** (No change in text.)

[5.] **7.** A description of the random selection method that will be used to select occupants of affordable housing **units**; [and]

8. The population(s), if any, that will be given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k);

[6.] **9.** [Disclosure of required] **Required** application fees[.]; **and**

10. A phone number, email address, website address, and New Jersey Housing Resource Center information for the property.}

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;

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.

*{(f)} (e) The affirmative marketing plan [shall] **must** {describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall [consider the use of language translations] **account for language barriers.** [The plan shall] **In addition to the items specified at (e) above, the} 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 newspapers of general circulation within the housing region;]

{1. Available units, waitlist opportunities, and lottery applications, as applicable, to be posted to the New Jersey Housing Resource Center;}

{2.} 1. The names of {[/]specific radio *stations*, and television stations {broadcasting},} **and potential paid targeted digital advertising opportunities to be used** throughout the housing region;

{3.} 2. The names of **specific newspapers and** other publications circulated within the housing region, such as [neighborhood oriented] **neighborhood-oriented** weekly newspapers, religious publications, and organizational newsletters;

{4.} 3. (No change in text.)

{5.} 4. The names of specific community and regional organizations that will aid in soliciting [low and moderate income] **low- and moderate-income** applicants. Such organizations may include [non-profit] **nonprofit**, religious, governmental, fraternal, civic, and other organizations; [and]

{6.} 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;**

{7.} 6. **The names of specific social media websites and platforms where advertisements will be posted or linked;**

{8.} 7. **The locations of public transit stops in the housing region where flyers or other advertisements will be posted; and**

[6.] {9.} 8. Other advertising and outreach efforts to groups that are least likely to be reached [by commercial media efforts]. **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 **{(f)2 through 8} (e)1 through 7** above, the Division may approve a plan that substitutes an equal number of those means.

{(g)} (f) **{The affirmative marketing process for available affordable units [shall] must begin at least four months prior to expected occupancy and may begin before construction commences.}**

In implementing the marketing program, the administrative agent shall: [undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed under (f)1 above;

2. Broadcast of one advertisement by a radio or television station listed under (f)2 above; and]

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 {rental} supportive housing rental units {for individuals with special needs} 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; {and}*

[3.] 5. [At] Undertake at least [one] **two** additional regional marketing [strategy] **strategies**{, one digital and one non-digital,} using [one of] the sources listed [under (f)3 through 6] at {(f)2 through 9} (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.*

{(h) Such advertising and outreach [shall] **must** take place during the first week of the marketing program and [each month thereafter] **continue** until all of the units **being brought to market at that time** have been [leased or] sold **in the case of for-sale units** or until enough applications from eligible households have been received to fill all of the units plus two years of future rentals in the case of rental units. 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. No lottery may be conducted while applications are still being accepted. The advertisement [shall] **must** include at least the following:

1. (No change.)

2. [Directions] **An address sufficient to find directions** to the housing units;
3. (No change.)
4. The sizes, as measured in **number of bedrooms and square footage**, of the 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 units;**
- [5.] **8.** (No change in text.)
- 9. The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)3;**
- [6.] **10.** The [location] **location(s) of and links to** applications for the housing units;
- 11. The expected completion date(s) for the affordable housing units;**
- 12. The date of the lottery;**
- [7.] **13.** The business hours when interested households may obtain [an] **hard copies of** applications for [a] **the** housing units; [and]
- 14. Contact information, including an email address and phone number that are regularly monitored by the administrative agent; and**
- [8.] **15.** Application fees, if any.}

(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 [shall] **or notices {of such} thereof**, if offered online, **must** be available in [several] **multiple** locations, including, {at a minimum} **if they exist**, the county [administrative] **administration** building {and/or} **and** the county library for each county within the housing region; the municipal [administrative] **administration** building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. [Applications shall be mailed to prospective applicants upon request.] **{The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.}** 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 costs of advertising affordable units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board or zoning board approval and required by ordinance.]

(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-[26.16]**26.17** Household certification and referral[; related project information]

(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 [with appropriate low-or] **of low- or** moderate-income [levels]. No household may be referred to a restricted unit[,] or [may] 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 [in Appendices] **at N.J.A.C. 5:80-26 {Appendix} Appendices D-3, J, or K** [to this subchapter], 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 [shall be] **is** valid for no more than 180 days unless a valid contract for sale or lease {has been} **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. {In [this] such event} If a valid contract for sale or lease is executed, the* certification[s shall be] **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 [total gross] annual income to the regional [low- and] **low- and** moderate-income limits [then in effect, as adopted by COAH] **calculated pursuant to N.J.A.C. 5:80-26.3.** For the purposes of this subchapter, **the administrative agent shall determine household** income [includes, but is not limited to, wages, salaries, tips, commissions,

alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.] **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 {may be updated from time to time} was in effect on December 20, 2024, and described in Chapter 5 of HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, which is available at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3.**

2. [Except as otherwise specifically provided in this subchapter, the sources of income considered by the administrative agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval.] Household [annual gross] income [shall be] **is** calculated by projecting current gross income over a 12-month period.

3. [Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If] **The administrative agent shall deny the certificate of eligibility if the applicant household [owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH, a certificate of eligibility shall be denied by the administrative agent, unless the] 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 [and] ~~or~~ homeowner association fees, as applicable) exceed 38 percent of the household’s eligible monthly income[.];

[4. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner’s insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.

5. Income does not include benefits, payments, rebates or credits received under any of the following: Federal or State low-income energy assistance programs, food stamps, payments received for children placed in resource family care, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students. Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.]

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} 95/5-restricted unit;

v. Any member of the applicant household is a victim of domestic violence, {dating violence, sexual assault, or stalking, as defined at 24 CFR 5.2003} *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 [of] **as to their** current status.

(d) Income verification documentation may include, but is not limited to, the [following] **acceptable forms of verification identified at Appendix 3 of HUD Handbook 4350.3 REV-1, available online at {<https://www.hud.gov/sites/documents/4350a3HSGH.PDF>}** **<https://www.hud.gov/sites/documents/43503a3hsgh.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[:].**

[1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;

2. Copies of Federal and State income tax returns for each of the preceding three tax years;

3. A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually);

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;

5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and

6. Evidence or reports of income from directly held assets such as real estate or businesses.

(e) Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.]

[(f)] (e) (No change in text.)

[(g)] **(f)** [A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability] **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.**

[(h)] **(g)** [A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability] **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.***

[(i)] **(h)** [A certificate of eligibility shall be denied by the administrative agent as a result of] **The administrative agent shall deny a certificate of eligibility to an applicant who makes any willful [and] or material misstatement of fact [made by the applicant] in seeking eligibility.**

[(j)] **(i)** The administrative agent shall screen households that apply for [low-and] **low- and moderate-income housing for preliminary income eligibility[,]** by comparing their total gross annual income to the regional [low-and] **low- and moderate-income limits [adopted for that year by COAH] 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{s} made within the previous 180 days by another administrative agent {or} 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.

[(k) The following information shall promptly be provided to the administrative agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this subchapter, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority:

1. The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low-and which are moderate-income units, and including street addresses of restricted units;
2. Floor plans of all affordable units, including complete and accurate identification of uses and dimensions of all rooms;
3. A project map identifying the locations of affordable units and market units;
4. 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;
5. Projected construction schedule;
6. Proposed pricing for all units, including any purchaser options and add-on items;

7. A list of all public funding sources, and copies of grant or loan agreements for those sources;
8. Condominium fees or homeowner association and any other maintenance or other fees;
9. Estimated real property taxes for sale units;
10. Sewer, trash disposal and any other utility assessments;
11. Flood insurance requirement, if applicable;
12. A description of all HVAC systems;
13. Location of any common areas and elevators;
14. Proposed form of lease for any rental units;
15. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project; and
16. The State-approved Planned Real Estate Development public offering statement and/or master deed where available.]

{(j) The administrative agent shall accept self-certification from any member of an applicant household claiming to be a victim of domestic violence, dating violence, sexual assault, or stalking for purposes of the exception to the homeownership restriction at (b)3iii above. In such case, the administrative agent must comply with the confidentiality requirements and restrictions on requesting documentation pursuant to 24 CFR 5.2007.}

(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.

[(1)] (k) The administrative agent shall employ a random selection process when referring households [for certification] to affordable units. **With approval from the Division, supportive housing units may be exempted from the random selection process. 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. If conducting the random selection prior to household certification, the administrative agent shall select households from the entire applicant pool, without regard for income, household size, or other distinguishing factors.

2. 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 and may conduct either one random selection from the entire

applicant pool or separate random selections from each subgroup of the applicant pool. Each eligible household will be assigned to an applicable subgroup(s) as follows:}

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{s}, rental unit{s}, or {both} either;

ii. The *minimum* number of bedrooms the household qualifies for;

{iii. The household income level;}

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; {and}

vii. The occupancy standards at N.J.A.C. 5:80-26.5(b); and

{vii.} *viii. Any of the occupancy preferences allowed pursuant to {(k)3} (k)2 below.*

{3.} 2. A municipality may elect to adopt any or all of the {four} *three* occupancy preferences at {(k)3i} *(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 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)}~~*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 ~~{10:5-}~~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-[26.17]**26.18** Procedures for changing administrative agents

{(a)} 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 {following minimum requirements are necessary before or during the transition}
procedures for changing administrative agents as outlined at N.J.A.C. 5:99-7.4 must be followed.

{1. A letter advising of the change shall be sent to all low-and moderate-income homeowners in the case of ownership units, and all landlords or their agents in the case of rental developments;

2. In the case of ownership units, legal assignments to the name of the new administrative agent of all restriction instruments shall be prepared and recorded;

3. Hard copy files on each unit, to contain, at a minimum, the original deed restriction, repayment mortgage and mortgage note (if applicable), the application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship waiver, or other approvals granted by the former administrative agent and other miscellaneous correspondence, shall be physically transferred to the custody of the incoming or new administrative agent; and

4. The new administrative agent must be provided with:

i. A written methodology, such as the operating manual required in this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and rents;

ii. The base sales price or initial base rent for each unit;

iii. Identification for each unit as to whether categorized as low-income or moderate-income;

iv. A description of the number of bedrooms and physical layout of each unit;

v. Floor plans; and

vi. In the case of condominiums and units within a homeowner association, a copy of the master deed and public offering statement.

(b) **The Division or HAS, as applicable,** shall assume the duties of administrative agent by default with respect to any restricted units that are not effectively under the supervision of a competently performing administrative agent as determined by [COAH, in the case of units receiving COAH credit, or by DCA, in the case of units receiving Balanced Housing funding but not receiving COAH credit] **the Department.**}

5:80-[26.18]**26.19** Enforcement

{(a) By accepting State funds for affordable housing purposes, or by [submitting to the jurisdiction of COAH] **seeking or receiving a compliance certification**, a municipality shall be deemed to have delegated to its administrative agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this subchapter. [The municipality, however,] **However, the municipality, through its municipal housing liaison**, shall retain the ultimate responsibility for ensuring effective compliance with this subchapter.}

(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 [shall] **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 [their] **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) [The] **As part of a municipality's ongoing compliance with {P.L. 2024, c. 2} 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 official] **municipal housing liaison** who [shall] **will** be responsible for [liaison with] **oversight of** the administrative agent on all matters related to this subchapter;

{**2. Contract with an administrative agent, subject to approval of the governing body, for oversight of all affordable single-family properties that do not designate an administrative agent of their own. For the purposes of designation, the municipal housing liaison may charge a fee not to exceed a prorated amount of the cost to contract with the administrative agent to developers who do not contract with their own administrative agent. The prorated amount is based on the developers' share of affordable single-family units participating in the scattered-site pool assigned to the relevant administrative agent.**}

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;

[2.] **3.** (No change in text.)

[3. 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;]

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 [writ] **foreclosure action, foreclosure judgment, or deed in lieu** of foreclosure [on] **as to** all affordable units; [and]

[5. Provide all reasonable and necessary assistance in support of the administrative agent's efforts to ensure effective compliance with the controls set forth in this subchapter.]

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 {in accordance with N.J.S.A. 52:27D-321.6.e(2)} *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) {Administrative} *In addition to those listed at N.J.A.C. 5:99-7.2, administrative* agent practices and procedures [shall] include, but [shall] **are** not [necessarily be] 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 [can] be offered, or in any other way committed, to any person[,] other than a household duly certified to the unit by the administrative agent;

2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental [certificates] **certificate** set forth [in Appendices] **at N.J.A.C. 5:80-26 Appendix D-3, J, [and] or K;**

[3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent can be made;]

3. Working with the {Municipal Housing Liaison} 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. [Annual] **Sending annual** mailings to all owners of affordable dwelling units, reminding them of the following [notices and] requirements:

i. (No change.)

ii. That no sale of the unit [shall] **will** be lawful, unless approved in advance and in writing by the administrative agent, and that no sale [shall] **may** be for a consideration greater than [regulated] **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 [other] debt secured by the unit may be incurred except as approved in advance {and}, in writing, by the administrative agent, and that at no time will the administrative agent approve any debt[, if incurring the debt] **that** would make the total of all such debt exceed 95 percent of the [then applicable] **then-applicable** maximum permitted resale price;

iv. That the owner of the unit shall at all times maintain the unit as [his or her] **their** principal place of residence, which [shall be] **is** defined as residing [at] **in** the unit at least 260 days out of each calendar year;

v. That, except as set forth [in N.J.A.C. 5:80-26.18(c)4vii] **at {(d)4vii} (d)4viii below**, at no time [shall] **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 {and}, in writing, by the administrative agent;

vi. That the maximum permitted rent chargeable to affordable tenants [is as stated in the notice required to be posted] **must be mailed to tenants** in accordance with [N.J.A.C. 5:80-26.18(d)3, a copy of which shall be enclosed, and that copies of all leases for affordable rental units must be submitted annually to the administrative agent] **(e)1 below**;

vii. Copies of all leases or lease renewal agreements for affordable rental units must be submitted annually to the administrative agent;

[vii.] **viii.** If the affordable unit is a two-family home, that the owner [shall] **may** lease the rental unit only to certified households approved, in writing, by the administrative agent, [shall] **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 [proposed] **prospective** tenant; and

[viii.] **ix.** That no improvements may be made to any unit that would affect its bedroom configuration, except as provided [in subsection (a) of] **at N.J.A.C. 5:80-[26.9(a)]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 improvements approved in advance {and}, in writing, by the administrative agent;

5. Securing {annually} 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 [to] **into or sell** their unit [or sell it];

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 [DCA] **Department**. For purposes of this subsection, unlawful rent payments [shall] means:

i. All rent monies paid by a person who has not been duly certified in accordance with the provisions [of] **at** N.J.A.C. 5:80-[26.16]**26.17**;

ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of [his or her] **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 [is] provided for [under the provisions of] **at** N.J.A.C. 5:80-[26.7(a)]**26.8(a)**; and

7. Establishing a rent-to-equity program, to be implemented in situations where an affordable **unit** owner has unlawfully rented [out his or her] **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 [such] **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 [herein] **in this subchapter** to the contrary, notwithstanding, any person offered a unit under such a [rent to equity] **rent-to-equity** program must first be certified as eligible [under the provisions of N.J.A.C. 5:80-26.16] 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, {or} 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 {a}, after the 30-day cure period, the developer, {or} landlord, or property manager {has been found to have intentionally violated} remains in violation of* any terms of this subchapter, including by keeping a unit vacant, the developer, *landlord*, or property manager {shall} *may* be fined up to the amount required to construct a comparable affordable unit of the same size and the {deed restriction} *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.

[(e)] (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 [shall be] **is** void as against public policy.

[(f)] (h) The Agency[, COAH] and the [DCA] **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} *county-level* housing judge.

5:80-[26.19]**26.20** Appeals

Appeals from all decisions of an administrative agent appointed pursuant to this subchapter [shall] **must** be filed, in writing, with the [Executive Director of the Agency] **municipal housing liaison for the jurisdiction**. [When acting in this capacity, the Executive Director may appoint one or more employees of the Agency, COAH and/or the Department of Community Affairs to assist him or her in rendering the final decision, whenever he or she, in his or her sole discretion, determines that committee participation would materially promote a fair and just disposition of the appeal.] **A decision by the municipal housing liaison may be appealed to the Division.** A written decision of the [Executive] **Division** Director upholding, modifying, or reversing an administrative agent's decision [shall be] **is** a final administrative action.

5:80-[26.20]**26.21** {Option to buy 95/5 units} **95/5 restrictions**

{(a) Each 95/5 unit [shall be] **is** subject to an option permitting purchase of the unit at the maximum allowable restricted sale[s] price at the time of the first **authorized** non-exempt sale after controls on affordability have been in effect on the unit for the period specified [in N.J.A.C. 5:93-9.2] **at N.J.A.C. 5:80-26.6**. The option to buy [shall be] **is** available to the municipality **in which the unit is located**, [the] DCA, the Agency, [or a qualified non-profit entity] **and approved nonprofit entities** [as defined in this chapter].}

(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 {unit} restriction** shall notify the administrative agent and [COAH] **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 [in N.J.A.C. 5:93-9.2] **at N.J.A.C. 5:80-26.6.**

(c) Upon receipt of [such] a notice **specified at (b) above**, the option to buy the unit at the maximum allowable restricted sale[s] price or any mutually agreed upon sale[s] price that does not exceed the maximum allowable restricted sale[s] price [shall] **will** be available for 90 days. The administrative agent shall notify the [municipality, the DCA, the Agency, and COAH] **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 [fails to] **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 [shall be entitled to] **may** purchase the unit. If the option to purchase the unit at the maximum allowable restricted sale[s] 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. [5:93-9.8] **5:80-~~26.25~~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 [shall] **will** be restored and the owner [shall] **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[s] price [shall] **must** be exercised by certified mail **and, if known, by email** and [shall] **will** be deemed **to have been** exercised {upon} [mailing] *three days following the earlier of the postmark of the certified mail or the transmission of the email.*

(Agency Note: The text of recodified N.J.A.C. 5:80-26.22, 26.23, and 26.24 below are proposed for repeal through this rulemaking. The changes shown were adopted through the notice of special adoption and are open for comment; however, the Agency is proposing to repeal these entire sections.)

{5:80-[26.21]}**26.22** Municipal option on 95/5 units

(a) Any municipality that elects to purchase a 95/5 unit [pursuant to N.J.A.C. 5:93-9.4] may:

1. Convey or rent the unit to a [low-or] **low- or** moderate-income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sale[s] price or rent, provided the unit is controlled by a deed restriction in accordance with **N.J.A.C. 5:80-26** Appendix A or an alternative form approved by [COAH] **the Division**; or

2. Convey the unit at fair market value subject to the provisions [of] **at** (b) and (c) below.

(b) Municipalities that purchase low-income 95/5 units shall maintain [them] **such units** as low-income housing units.

(c) Municipalities that [elect to] purchase 95/5 units and convey them at a fair market value shall:

1. Notify [COAH] **the Division and the Dispute Resolution Program** of any proposed sale and sale[s] price **at least** 90 days before closing;

2. Notify [COAH] **the Division and the Dispute Resolution Program** of the price differential [as defined in N.J.A.C. 5:93-1.3]; and

3. Deposit the price differential in an interest-bearing housing trust fund devoted solely to the creation, rehabilitation, or maintenance of [low-and] **low- and** moderate-income housing.

(d) Money deposited in housing trust funds may not be expended until the municipality submits and [COAH] **the Division or the Dispute Resolution Program** approves a spending plan in accordance with the applicable [COAH] rules **in effect** at [that] **the time of the proposed expenditure**. Money deposited in housing trust funds [shall be] **is** subject to the applicable [COAH] **Division** rules **in effect** at [that] **the time of deposit**.

(e) **Failure of a unit owner to comply with the notice requirements at N.J.A.C. 5:80-26.21(a) and (b) does not affect the rights and remedies available to the municipality, the Division, or the Agency, nor does the failure of the municipality, the Division, or the Agency to take any affirmative action with respect to such failure of a unit owner operate as a waiver of any such rights and remedies.**

5:80-[26.22]**26.23** State option on 95/5 units

(a) When [the] DCA or the Agency elects to purchase a 95/5 unit pursuant to [N.J.A.C. 5:93-9.4 and] this section, it may:

1. Convey or rent the 95/5 unit to a [low-or] **low- or** moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sale[s] price or rental **amount**; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation, or maintenance of [low-and] **low- and** moderate-income housing within the appropriate housing region.

5:80-[26.23]**26.24** [Non-profit] **Nonprofit** option on 95/5 units

(a) [Non-profit] **Nonprofit** entities may apply to [COAH] **the municipal housing liaison** at any time for the right to purchase 95/5 units subsequent to the period of controls on affordability, provided the unit remains controlled by a deed restriction approved [by COAH] **as part of the compliance certification**.

(b) [Non-profit] **Nonprofit** entities that have been designated by [COAH shall be] **the Division** **are** eligible to purchase [low-or] **low- or** moderate-income units [pursuant to N.J.A.C. 5:93-9.4] for the sole purpose of conveying or renting the housing unit to a [low-or] **low- or** moderate-income purchaser or tenant at a price or rent not to exceed the allowable restricted sale[s] price or rental **amount**. Low-income units [shall] **must** be made available to low-income purchasers or tenants and the housing unit [shall] **must** be regulated by the deed restriction and lien [adopted by COAH] **approved as part of the compliance certification**, appended to this subchapter as **N.J.A.C. 5:80-26** Appendix B. The terms of the controls on affordability [shall be] **are** the same as those required [by N.J.A.C. 5:93-9.2] **at N.J.A.C. 5:80-26.6.**}

5:80-[26.24]{**26.25**}26.22 Seller option on {95/5} **95/5-restricted** units

(a) An eligible seller of a **unit governed by a 95/5 {unit} restriction** that has been controlled for the period established [in N.J.A.C. 5:93-9.2] {**at N.J.A.C. 5:80-26.6**} **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 [as outlined in N.J.A.C. 5:80-26.19(c) and 26.22] 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 [N.J.A.C. 5:93-9.9] **this subchapter**, the seller may [elect to]:

1. Sell to a certified household at a price not to exceed the maximum permitted sale[s] price in accordance with {existing [COAH] rules,} ***N.J.A.C. 5:80-26.7***; provided that the unit is regulated by the deed restriction and lien [adopted by COAH] {**approved as part of a compliance certification**, appended to this subchapter as **N.J.A.C. 5:80-26** Appendix B, for a period of at least 30 years} ***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, [providing] **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 [instrument] **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)} If the sale [will be] **is** to a qualified [low-or] **low- or** moderate-income household, 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 required [by COAH, which has been] **as part of a compliance certification**, appended to this subchapter as **N.J.A.C. 5:80-26** Appendix B.}

{(d)} **(c)** The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sale[s] 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[s] 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.

{(e)} **(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[s] price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal [shall be] **is** a final determination of the administrative agent appealable [under] **pursuant to N.J.A.C. 5:80-[26.18]26.20.**

{(f)} **(e)** The repayment [shall] **will** occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

~~{(g)}~~ **(f)** The administrative agent shall deposit all repayment proceeds ~~{in a housing trust fund}~~ **into the Municipal Housing Trust Fund**, [(see N.J.A.C. 5:93-8.15) and] **which {funds}** may be used as [per N.J.A.C. 5:93-8.16] **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 [COAH] **the Division or the {Dispute Resolution Program}** *county-level housing judge* approves a spending plan. [(see N.J.A.C. 5:93-5.1(c))] **See N.J.A.C. 5:99-2 and N.J.S.A. 52:27D-329.2.**

(Agency Note: The text of recodified N.J.A.C. 5:80-26.26 and 26.27 below are proposed for repeal through this rulemaking. The changes shown were adopted through the notice of special adoption and are open for comment; however, the Agency is proposing to repeal these sections.)

~~{5:80-[26.25]}~~**26.26** Municipal rejection of repayment option on 95/5 units

(a) A municipality [shall have] **has** the right to determine that the most desirable means of promoting an adequate supply of [low-and] **low- and** moderate-income housing is to prohibit the exercise of the repayment option and maintain controls on [lower income] **lower-income** housing units sold within the municipality beyond the period required [by N.J.A.C. 5:93-9.2] **at N.J.A.C. 5:80-26.6**. Such determination [shall] **must** be made by resolution of the municipal governing body and [shall] **will** be effective upon filing with [COAH] **the Dispute Resolution Program**. The resolution [shall] **must** specify the time period for which the repayment option [shall] **is** not [be] applicable. During such period, no seller in the municipality may utilize the repayment option permitted [by N.J.A.C. 5:93-9.8] **at N.J.A.C. 5:80-26.25**.

(b) Municipalities that exercise the option outlined [in] **at** (a) above shall:

1. Provide public notice in a newspaper of general circulation; [and]
2. Notify the administrative agent and [COAH] **the Division** of its governing body's action[.];
3. **Extend the control period not less than 30 years or, if the original control period and extended control period, in combination, total at least 60 years, not less than 20 years; and**
4. **Take at least one of the following actions:**
 - i. **Purchase the affordable units; or**
 - ii. **Contribute at least \$10,000 per unit from the municipal affordable housing trust fund to support the preservation of the units.**

(c) (No change.)

5:80-[26.26]**26.27** Continued application of options to create, rehabilitate, or maintain 95/5 units

[When a housing unit has been maintained as a low-or moderate-income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the] **The** deed restriction governing [the] **95/5** housing units [shall] **must** allow municipalities, DCA, the Agency, [COAH, non-profit agencies] **nonprofit entities**, and sellers of [low-and] **low- and** moderate-income units to again exercise all the same options as provided in this subchapter **when a housing unit has been maintained as a low- or moderate-income unit after affordability controls have been in effect for the period specified at N.J.A.C. 5:80-26.6.**}

5:80-{26.28}/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.

(**Agency Note:** The text of N.J.A.C. 5:80-26 Appendices A, B, C, D-1, D-2, D-3, D-4, E, F-1, F-2, and G through O, P-1, P-2, and Q follow in their final form, as if adopted. Any text of the appendices indicated in boldface is intended to be so permanently. Any changes to the appendices through this rulemaking are described in the Summary above.)

APPENDIX A

MANDATORY DEED FORM FOR OWNERSHIP UNITS

Deed

To State Regulated Property

With Covenants Restricting Conveyance

and Mortgage Debt

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

_____ (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”).

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 paid at closing. The Municipality may designate the Administrative Agent as the recipient of such payment on behalf of the applicable municipal affordable housing trust fund.

C. 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 the 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.

D. Such non-exempt sale is subject to the conditions set forth at N.J.A.C. 5:80-26.6. 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 as of 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 in the presence of or attested by:

:

_____ [seal]

_____ [seal]

_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

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. 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____, _____ (hereinafter 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 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.

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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

**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, 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 in the presence of or attested by:

• • • • •

_____ [seal]

_____ [seal]

_____ [seal]

CERTIFICATE OF ACKNOWLEDGEMENT BY INDIVIDUAL

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. 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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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

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.

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-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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 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, 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.

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)**

<p>DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH <u>RESTRICTIONS ON RESALE</u> <u>AND REFINANCING</u></p>

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

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)

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 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.

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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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, 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)

) ss:

COUNTY OF _____)

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

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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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(s)	Initial Monthly	Net	Initial Level	Rent

			(Families/ Seniors/ Supportive Housing/ Veterans)	Rental Payment	Percentage of Income

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, 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

This Deed Restriction runs with the land until the end of the Control Period for each Affordable Unit and is binding upon the Owner and its/their successors and/or assigns. The Municipality and Administrative Agent shall take all actions necessary to issue a new Deed Restriction as specified in the UHAC Regulations or to release and discharge this Deed Restriction with respect to each Affordable Unit upon the expiration of the Covenants with respect to any such Unit.

IN WITNESS WHEREOF, the Administrative Agent and the Owner have executed this Deed Restriction as of the date first above written.

Administrative Agent

BY:

Title

Owner

BY:

Title

APPROVED BY

THE STATE OF NEW JERSEY

BY _____

Title

ACKNOWLEDGEMENTS

STATE OF NEW JERSEY)

) ss:

COUNTY OF _____)

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 Owner> named in the foregoing Deed Restriction and (ii) they

executed the Deed Restriction 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 Owner 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.

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

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

FLOOR PLAN SHOWING AFFORDABLE UNITS

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 have been terminated in the discretion of the Municipality after the minimum duration period of the Affordability Controls has elapsed, pursuant to N.J.A.C. 5:80-26.6(g);

NOW, THEREFORE, pursuant to N.J.A.C. 5:80-26.6(m), the Releasor hereby releases the Affordability Controls on the Property or, as applicable, on the Released Portion, effective as of _____ and, by this Release, the Affordability Controls on the Property or, as applicable, the Released Portion are hereby discharged of record.

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 “Municipality”), 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 F-2

FORM OF RELEASE

FOR RESTRICTED RENTAL UNITS

RELEASE OF RENTAL UNIT FROM AFFORDABILITY CONTROLS

(to be recorded in Deed Book)

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 deed restriction (the "Deed Restriction") was executed by _____, and was subsequently recorded in the Clerk or Register's Office of _____ County, New Jersey, in Deed 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 _____, Unit or Apartment Number _____ (the "Affordable Unit"); and

WHEREAS, the Deed Restriction contains certain affordable housing covenants (the "Covenants"), which Covenants run with the land for the period of time specified in the Deed Restriction (the "Control Period"); and

WHEREAS, the Covenants restrict use of the Affordable Unit (the "Affordability Controls") solely to providing rental housing for very-low-, low--, and/or moderate-income persons or households, as those terms are defined in section 2 of the Uniform Housing Affordability Controls regulations, N.J.A.C. 5:80-26.2, for the Control Period; and

WHEREAS, pursuant to N.J.A.C. 5:80-26.12(c), the Control Period for the Affordable Unit continues until the end date specified in the Deed Restriction (the “End Date”) or, if a specific End Date cannot be determined according to the terms of the Deed Restriction, until the minimum 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

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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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

This 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 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.

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 by 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:

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” shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that they are the Owner named in the foregoing Mortgage and (ii) that 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 I

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;

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.

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 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)

) 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 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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

**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.

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)

) 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 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 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:

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 in this Note, and that they executed the Note for the purposes set forth therein, sworn to and subscribed in my presence on this date.

Sworn to and subscribed before me on this the ____ day of _____, 20__.

A Notary Public/Attorney of the State of New Jersey

APPENDIX O

**FORM OF MORTGAGE SECURING PAYMENT OF
RECAPTURE 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]

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

THIS MORTGAGE, made on this the ____ day of _____, 20____ by and between _____
(the “Owner”) and _____ (the “Municipality”), 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 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.

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; _____ 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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH RESTRICTIONS ON RESALE
AND REFINANCING**

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 (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)

) 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 described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC