

## **COMMUNITY AFFAIRS**

### **NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

#### **HOUSING AFFORDABILITY CONTROLS**

**Special Adopted Amendments: N.J.A.C. 5:80-26.1, 26.2, 26.4 through 26.27, and**

**Appendices A through Q**

**Special Adopted New Rules: N.J.A.C. 5:80-26.3 and 26.28**

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

Authority: N.J.S.A. 55:14K-5g.

Effective date: December 19, 2024

**Take notice** that the New Jersey Housing and Mortgage Finance Agency (Agency), upon consultation with the New Jersey Department of Community Affairs, has adopted amendments to the Housing Affordability Control rules at N.J.A.C. 5:80-26.1, 26.2, 26.4 through 26.27 and at Appendices A through Q, and has adopted new rules at N.J.A.C. 5:80-26.3 and 26.28 to codify statutory requirements enacted pursuant to P.L. 2024, c.2. The amendments and new rules are intended to adjust the rules in concert with the requirements mandated by P.L. 2024, c.2; create greater clarity for municipalities and affordable housing practitioners in implementing the new 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.

These specially adopted amendments and new rules shall be effective from the date of filing on December 19, 2024 until December 19, 2025, or such earlier date at which time the Agency amends, adopts, or readopts the rules pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

**Full text** of the special adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 26. HOUSING AFFORDABILITY CONTROLS

### 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 that low- and moderate-income units created under 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 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; that received credit from the former Council on Affordable Housing**); [that receive] **or received** funding from the [Division] **Department** under 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 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 (**LIHTC**) under Section 42 of the Internal Revenue Code, units that [receive] **received** Balanced Housing funds under the Agency’s Home Express program, or units receiving [assistance] **funding from HUD** under 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 under the Act must be affirmatively marketed by the developer/owner of those units in accordance with N.J.A.C. 5:80-26.16. 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.

“Administrative agent” means the 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] 5:80-26.15.**

“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] 5:80-26.7** 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] 5:80-26.13.**

...

“Affordable Housing Trust Fund” or “AHTF” means that non-lapsing, revolving trust fund established in DCA pursuant to **N.J.S.A. 52:27D-320 and N.J.A.C. 5:43** to be the

**repository of all State funds appropriated for affordable housing purposes. All references to the “Neighborhood Preservation Nonlapsing Revolving Fund” and “Balanced Housing” mean the AHTF.**

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. [55:14K-1 et seq.] **55:14K-1 through 44**) 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.

“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 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] **by the Act [(N.J.S.A. 52:27D-301 et seq.)] and that was abolished effective March 20, 2024 by section 3 of P.L. 2024, c.2 (N.J.S.A. 52:27D-304.1).**

**“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 of 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” [means] mean the State of New Jersey Department of Community Affairs.**

**“Dispute Resolution Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of 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.

...

[“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 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 N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.**



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

**“95/5 unit” means 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.**

**“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 of the unit minus reasonable real estate broker fees, determined as of the date of a proposed contract of sale for the unit.**

“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.**

“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 [residence] **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 units in relevant projects, as provided for at N.J.S.A. 52:27D-311j.**

### **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] **5:80-26.4** 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) 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.**

**(b) For the purposes of determining affordability averages and bedroom distributions, unless stated otherwise, non-integer values calculated pursuant to this subsection are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to (e)3, (e)4, (e)5, (g)2, (g)3, or (g)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, (e)4, (e)5, (g)2, (g)3, or (g)5 below.**

[(d)] (c) Municipalities shall establish by ordinance that:

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

2. [the] **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 **very-low-income** households [earning no more than 35 percent of median income].

[(e)] **(d)** The maximum [sales] **sale** 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 prices for each bedroom [type] **count**, and low-income ownership units must be available for at least two different prices for each bedroom [type] **count**.

[(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 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:**

- 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-311k(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 [sales] **sale** 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 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 [two person household or to two one-person households] **three-person household;**

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;

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 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 regulations.**

**(l) The requirements of (e), (f), and (g) above must be satisfied by all restricted units in the municipality, considered in the aggregate. The individual requirements of (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. 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 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 at this subchapter (“UHAC regulations”) that were in effect prior to the effective date of the amendments promulgated pursuant to P.L. 2024, c.2.**

**(b) 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 (for example, plumbing, insulation, siding) as market-rate units of the same unit type (for example, flat, 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, townhome) as market-rate units within the same building; and**

**viii. Restricted units 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 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, subsection (b)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, 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 townhomes or single-family homes offer restricted housing options that also include townhomes 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, that:**

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

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

**v. 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 of 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 of (b)1 through 4 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. 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) 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 arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and**

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

[5:80-26.5] **5:80-26.6** 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** [until] 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] **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] **5:80-26.21** 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 commence] **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 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** 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 upon 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 [form] **forms** prescribed [in] **at** subchapter 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 [form of] **forms prescribed at** 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] **at** subchapter Appendices A, D, E, F, G, H, I, J, K, L, M, N, O, P and 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 in this subsection (d) and each purchaser of a 95/5 unit is deemed to have executed a note and mortgage as prescribed herein, 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 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 (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 [unit] **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** 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] **5:80-26.7** 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, **or CHOICE** [shall be] **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 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 an appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.

(c) The initial purchase price of a restricted ownership unit financed under 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

N.J.A.C. 5:80-26.4] pursuant to N.J.A.C. 5:80-26.5; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.

[(d)] (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 [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.

[(e)] (d) 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. **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.** [Notwithstanding the foregoing sentence, condominium units] **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 these regulations 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)] (e) 95/5 units are subject to the option and price restriction rules set forth [in] at N.J.A.C. [5:80-26.20] **5:80-26.21** through [26.26] **26.27**.

[5:80-26.7] **5:80-26.8** Buyer income eligibility for ownership units

(a) **Very-low-income ownership units are reserved for households with a household income less than or equal to 30 percent of regional median income.** Low-income ownership units [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.** 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 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] **5:80-26.9** Limitations on indebtedness secured by ownership [unit] **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)] **5:80-26.7(c)**.

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

(a) The [owners] **owner** of **an** ownership [units] **unit** may apply to the administrative agent to increase the maximum sales 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. [In no event shall] **However**, the maximum [sales] **sale 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, wall-to-wall carpeting) [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 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 the maximum sale price, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(c)1.**

[5:80-26.10] **5:80-26.11** Maintenance of restricted ownership units

**[A] Upon the first transfer of title that follows the expiration of the applicable minimum control period provided pursuant to N.J.A.C. 5:80-26.6(a), 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)].**

[5:80-26.11] **5:80-26.12** 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 [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] **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] **commences** on the first date that [a certified household occupies] a unit **is issued a certificate of occupancy** and [shall terminate] **terminates** only at **the end of the control period specified in the deed restriction or at** such time that the municipality [opts to release] **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 exceed] **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** 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 these regulations will not terminate the deed restriction, but, rather, the deed restriction will be read to include the provision of these regulations 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 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 these regulations because of a failure to record the deed restriction. If a development is sold by a developer prior to recording the deed restrictions, 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] **remains** 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], [execute] **executes** a release, in the form set forth [in] **at** 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 in (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 pursuant to N.J.S.A. 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; or**

**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] **5:80-26.13** 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 N.J.A.C. 5:80-26.4] **pursuant to N.J.A.C. 5:80-26.5**; provided, however, that the rent [shall be] **is** subject to the affordability average requirement [of N.J.A.C. 5:80-26.3] **at 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, 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)] **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, 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 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. No additional fees, **operating costs**, or charges may be added to the approved rent (except[,] in the case of units in [an] assisted living [residence] **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, and on-site parking or parking deck fees. 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 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.**

(d) A written lease is required for all restricted rental units, except for units in [an] assisted living [residence] **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.

[5:80-26.13] **5:80-26.14** Tenant income eligibility

(a) Low-income rental units [shall be] **are** reserved for households with [a gross] household [income] **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 [income] **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] **N.J.A.C. 5:80-26.17**; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. – 3. (No change.)

4. The household documents the existence of assets[,] with which the household proposes to supplement the rent payments; or

5. The household documents proposed third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.

(c) The applicant shall file documentation sufficient to establish the existence of **any of the** circumstances [in] **at** (b) above with the administrative agent, who shall counsel the household on budgeting.

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

[(a)] 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 responsibilities [of the administrative agent are the following:] **identified at N.J.A.C. 5:99-7.2**. **Pursuant to N.J.A.C. 5:99, the administrative agent shall have the authority to discharge and release any or all instruments, as set forth at the appendices of this subchapter, 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] **5:80-26.16** 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 (**except for "housing for older persons" as defined at N.J.S.A. 10:5.1 et seq. and age-restricted units as permitted by 42 U.S.C. § 3601 et seq.**), [or] 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 at N.J.A.C. 5:80-26.16.**

(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] **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.

(e) The affirmative marketing plan [shall provide] **must contain** the following information:

1. (No change.)
2. The number of units, including the number of [sales] **sale** 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.**

(f) 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 plan must include the following:**

1. [The names of specific newspapers of general circulation within the housing region] **Available units, waitlist opportunities, and lottery applications, as applicable, to be posted to the New Jersey Housing Resource Center;**

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

3. 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. (No change.)

5. 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. 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. The names of specific social media websites and platforms where advertisements will be posted or linked;**

**8. The locations of public transit stops in the housing region where flyers will be posted; and**

[6.] **9. 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 above, the Division may approve a plan that substitutes an equal number of those means.**

(g) 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 housing 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 newspaper;**

**4. Advertise the units on at least one housing search website; 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 above.**

(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 re-**

**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 [size] **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 application] **hard copies of applications** for [a] **the housing [unit] units;** [and]

**14. Contact information, including an email address and phone number that are regularly monitored by the administrative agent; and**

[8.] **15.** (No change in text.).

(i) Applications for affordable housing [shall] **or notices of such, if offered online, must** be available in [several] **multiple** locations, including, at a minimum, the county [administrative] **administration** building and/or 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.**

(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.] **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] **5:80-26.17** 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 Appendix 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 executed within that time period. In [this] **such** event, [certifications shall be] **the certification is** valid until such time as the contract for sale or lease is ruled invalid 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, 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..](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] **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] **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[.];**

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 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; 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).**

[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.]

(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>**, 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.**

[(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 determinations made within the previous 180 days by another administrative agent or by the Department or the Agency.**

[(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.**

**[(l)] (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.**

**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:**

**i. Whether the household is seeking for-sale units, rental units, or both;**

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

- iii. The household income level;**
  
- 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. Any of the occupancy preferences allowed pursuant to (k)3 below.**

**3. A municipality may elect to adopt any or all of the four occupancy preferences at i, ii, 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) 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 units in a particular project for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311(j);**

**ii. A preference for very-low-, low-, and moderate-income households that reside or work in the housing region;**

**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 5-50. 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.**



**(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] **5:80-26.18** 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, 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] **5:80-26.19** 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 the Municipal Housing Liaison designated and approved pursuant to N.J.A.C. 5:99**, shall retain the ultimate responsibility for ensuring effective compliance with 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 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.] **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 to 321.6, including, if necessary, levying fines through the process outlined at N.J.A.C. 5:99-5.6(c)4;**

**6. Maintain a list of all affordable units within its jurisdiction, including the date of deed restriction expiration, income limits, and the administrative agent for each unit;**

**7. Report the information at (c)6 above to the Division each year; and**

**8. Publish on the municipality's website the affordable housing operating manual required pursuant to N.J.A.C. 5:99, 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 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 Appendix 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] **Working with the Municipal Housing Liaison 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 to 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 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 N.J.A.C. 5:80-26.9(a)] **at N.J.A.C. 5:80-26.10(a)** and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for 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 mean] **means**:

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

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

7. Establishing a rent-to-equity program, to be implemented in situations where an affordable **unit** owner has unlawfully rented [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 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, 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.**

**(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 has not complied with these regulations, it shall report this activity to the Division. If a developer or landlord or property manager has been found to have intentionally violated**

**any terms of these regulations, including by keeping a unit vacant, the developer or property manager shall be fined up to the amount required to construct a comparable affordable unit of the same size and the deed restriction 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 housing judge.**

[5:80-26.19] **5:80-26.20** 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] **5:80-26.21** Option to buy 95/5 units

(a) Each 95/5 unit [shall be] **is** subject to an option permitting purchase of the unit at the maximum allowable restricted [sales] **sale** 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] **and approved** [qualified non-profit entity] **nonprofit entities** as defined [in] **at section 2 of this [chapter] subchapter**.

(b) The owner of a 95/5 unit 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 [sales] **sale price** or any mutually agreed upon [sales] **sale price** that does not exceed the maximum allowable restricted [sales] **sale 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 [sales] **sale price** is not exercised by one of the above entities by a written offer to purchase the housing unit within 90 days of receipt of **notice of the intent to sell**, the owner may proceed to sell the housing unit pursuant to [N.J.A.C. 5:93-9.8] **N.J.A.C. 5:80-26.25**. 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 [sales] **sale price** [shall] **must** be exercised by certified mail **and by email** and [shall] **will** be deemed **to have been** exercised upon [mailing] **transmission of the email**.

[5:80-26.21] **5:80-26.22** 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 [sales] **sale** price or rent, provided the unit is controlled by a deed restriction in accordance with Appendix A **hereto** 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 [sales] **sale 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] **at section 2 of this subchapter**; 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 of 21(a) and 21(b) above 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] **5:80-26.23** 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 [sales] **sale 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 Non-profit] **5:80-26.24 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 [sales] **sale 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 Appendix B. The [term] **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] **5:80-26.25** Seller option on 95/5 units

(a) An eligible seller of a 95/5 unit 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** 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.

(b) Subject to [N.J.A.C. 5:93-9.9] **N.J.A.C. 5:80-26.1 et seq.**, the seller may [elect to]:

1. Sell to a certified household at a price not to exceed the maximum permitted [sales] **sale** price in accordance with existing [COAH] rules, 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 Appendix B, for a period of at least 30 years; or

2. Exercise the repayment option and sell to any purchaser at market price, [providing] **provided** that 95 percent of the price differential is paid to the administrative agent, as an [instrument] **instrumentality** of the municipality, at closing.

(c) If the sale will be 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 Appendix B.

(d) The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed [sales] **sale** price bears a reasonable relationship to the

housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent shall not approve any contract of sale where there is a determination that the [sales] **sale** price does not bear a reasonable relationship to fair market value. The administrative agent shall make **such** a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

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

(f) 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) The administrative agent shall deposit all repayment proceeds in a 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** approves a spending plan. [(see N.J.A.C. 5:93-5.1(c))] **See N.J.S.A. 52:27D-329.2.**

[5:80-26.25] **5:80-26.26** 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 \$10,000.00 per unit from the municipal affordable housing trust fund to support the preservation of the units.**

(c) (No change.)

[5:80-26.26] **5:80-26.27** 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 Severability**

**If any sentence, paragraph, section, or other component of this subchapter, or the application thereof to any person or circumstance is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any of the foregoing components loses its force and effect, such judgment or action will apply only to the specific component under consideration and will not affect, impair, or void the remaining provisions of this subchapter.**

APPENDIX A

MANDATORY DEED FORM FOR OWNERSHIP UNITS

Deed

To State Regulated Property

With Covenants Restricting Conveyance

And Mortgage Debt

THIS DEED is made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between

\_\_\_\_\_ (Grantor) and

\_\_\_\_\_ (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the receipt of which is hereby 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] **“Property”**).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described more specifically as Block No. \_\_\_\_, Lot No. \_\_\_\_, and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that **the** Grantor has taken no action to encumber the Property. **The Grantor further acknowledges and agrees that the restrictions, conditions, and requirements of the within deed shall be covenants running with the land and shall remain binding upon the Grantor and upon all successors in interest.**

Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in **the** New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1 *et seq*, the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the "Control Period", as [that term is defined in] **determined in accordance with** the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

A. The Property may be conveyed only to a household who has been approved in advance and in writing by [the Housing Affordability Service of] the New Jersey Department of Community Affairs, or other



administrative agent appointed under [the Regulations] N.J.A.C. 5:99-6 (hereinafter, collectively, the “Administrative Agent”).

- B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than 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 other 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 such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percentum (95%) of the applicable MRP.
- D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.
- E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except 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 shall lease the rental unit only to income-certified [low-income] **very-low-, low-, or moderate-income** households approved 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 configuration, and in any event, 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.

Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth [in N.J.A.C. 5:80-26.18] **at 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 shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
  
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under [Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code] **N.J.A.C. 5:80-26.1 *et seq.***, and specific performance.

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) to bind the corporation with respect to all matters dealt with herein.

\_\_\_\_\_

Signed, sealed and \_\_\_\_\_ [seal]

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" shall 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 \_\_\_\_\_, 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 (hereinafter the "Corporation").
2. \_\_\_\_\_, the officer who signed this Deed is the (*title*) \_\_\_\_\_ of the Corporation (hereinafter 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 is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. 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*

---

*Officer's signature: Sign above, and print stamp or type name below*

#### APPENDIX B

#### MANDATORY DEED FORM FOR OWNERSHIP 95/5 UNITS

Deed

To State Regulated Property

With Covenants Restricting Conveyance  
And Mortgage Debt—With 95/5 Recapture

THIS DEED is made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between  
\_\_\_\_\_  
\_\_\_\_\_ (Grantor) and  
\_\_\_\_\_  
\_\_\_\_\_ (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the receipt of which is hereby 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, that is located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described more specifically as Block No. \_\_\_\_ Lot No. \_\_\_\_, and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_

Article 3. Grantor's Covenant

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property. **The Grantor further acknowledges and agrees that the restrictions, conditions, and requirements of the within deed shall be covenants running with the land and shall remain binding upon the Grantor and upon all successors in interest.**

#### Article 4. Affordable Housing Covenants

Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in **the** New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the “Regulations”). Consistent with the Regulations, the following covenants (the “Covenants”) shall run with the land for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the “Control Period”, as [that term is defined in] **determined according to** the Regulations, and terminating upon the expiration of the Control Period as provided in the Regulations.

- A. The Property may be conveyed only to a household who has been approved in advance and in writing by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed under [the Regulations] **N.J.A.C. 5:99-6** (hereinafter, collectively, the Administrative Agent”).
- B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than 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 other 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 such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percentum (95%) of the applicable MRP.

- D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.
- E. Except as set forth in F, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except 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 shall lease the rental unit only to income-certified [low-income] **very-low-, low-, or moderate-income** households approved 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 configuration, and in any event, 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.

#### Article 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability



Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth [in N.J.A.C. 5:80-26.18] at **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 shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
  
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under [Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code] **N.J.A.C. 5:80-26.1 *et seq.***, and specific performance.

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 New Jersey [Council On Affordable Housing] Department of Community Affairs, Office of Local Planning Services** by certified mail of any intent to sell the property 90 days prior to entering into an agreement for the first non-exempt sale of the Property after the conclusion of the Control Period, as set forth in [Section 5:93-9.8(b)2 of the Substantive Rules of the New Jersey Council On Affordable Housing] **the Uniform Housing Affordability Control rules at N.J.A.C. 5:80-26.6**, as in effect at the time the Property was first restricted as part of the Affordable Housing Program.

- B. Upon the first such non-exempt sale of the Property Ninety-Five Percentum (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sales price that would be applicable were the Control Period still in effect, shall be paid at closing to the New Jersey Department of Community Affairs, acting as receiving agent for the local municipality.
- C. Such non-exempt sale is subject to the options provided for [in Sections 5:80-26.20] at N.J.A.C. 5:80-26.21 (Option to buy 95/5 units), [5:80-26.21] 5:80-26.22 (Municipal option on 95/5 units), [5:80-26.22] 5:80-26.23 (State option on 95/5 units), [5:80-26.23] 5:80-26.24 (Non-profit option on 95/5 units), [5:80-26.24] 5:80-26.25 (Seller option on 95/5 units),[5:80-26.25] 5:80-26.26 (Municipal rejection of repayment option on 95/5 units), and [5:80-26.26] 5:80-26.27 (Continued application of options to create, rehabilitate or maintain 95/5 units) [of the Uniform Housing Affordability Control Rules, found in Title 5, Chapter 80, Subchapter 26, of the New Jersey Administrative Code]. **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 foregoing requirements and 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) to bind the corporation with respect to all matters dealt with herein.

\_\_\_\_\_  
Signed, sealed and de- \_\_\_\_\_ [seal]

livered 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" shall 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 \_\_\_\_\_, 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 (hereinafter the "Corporation").
2. \_\_\_\_\_, the officer who signed this Deed is the (*title*) \_\_\_\_\_ of the Corporation (hereinafter 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 is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. 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*

---

*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 adjusted accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.***

## APPENDIX C

### RESTRICTIVE COVENANT REQUIRED

BY [SECTION 5:80-26.5(d)] **N.J.A.C. 5:80-26.6(d)**

Declaration of Covenants, Conditions

And Restrictions

Implementing Affordable Housing Controls

On State Regulated Property

Fair Housing Act Required Covenants

Restricting Use, Conveyance

And Mortgage Debt

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, [200] **20**\_\_, by \_\_\_\_\_, a \_\_\_\_ (State of domicile) \_\_\_\_\_ (corporation, limited partnership or other entity), having its principle address at \_\_\_\_\_ (hereinafter referred to as “Developer”).

WHEREAS, Developer is the owner of \_\_\_\_\_ units, more fully described on Schedule A attached hereto and made a part hereof (hereinafter referred to as the “Affordable Units”) which are situated within \_\_\_\_\_ a (condominium or residential development) \_\_\_ consisting of a total of \_\_\_ dwelling units located in the Municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey; and

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c. 222) (hereinafter the “Act”) **or other applicable law** 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 [insure] **ensure** that such designated housing remains affordable to **very-low**, [low and moderate income] **low-, and moderate-income** households;

WHEREAS, pursuant to the Act, the Affordable Units described in Exhibit A attached to this Agreement have been designated as **very-low**, [low and moderate income] **low-, and moderate-income** housing as defined by the Act; and

WHEREAS, the purpose of this Declaration is to [insure] **ensure** that the described Affordable Units remain affordable to **very-low**, [low] **low-**, and moderate-income eligible households for that period of time described in Section \_\_\_\_ of this Declaration.

NOW, THEREFORE, it is the intent of this Declaration to [insure] **ensure** that the affordability controls are recorded on each of the affordable units so as to bind the owners of the Affordable Units [of] **to** the covenants, conditions, and restrictions **with** which they shall be required to comply and to notify all future purchasers of the affordable units that the housing unit is encumbered with affordability controls.

#### Article 1. Affordable Housing Covenants

**Developer acknowledges and agrees that the restrictions, conditions, and requirements of the within Restrictive Covenant shall be covenants running with the land and shall remain binding on the Developer and all successors in interest.**

The sale and use of each Affordable Unit subject to this Declaration is governed by regulations governing controls on affordability, which are found in **the** New Jersey Administrative Code at [Title 5, chapter 93, subchapter 9 (N.J.A.C. 5:93-9.1, *et seq.*), and] chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1[,] *et seq.*) (the “Regulations”). Consistent with the Regulations, the following covenants (the “Covenants”) shall run with the land, for each respective Affordable Unit, for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the “Control Period”, as [that term is defined in] **determined according to** the Regulations, and terminating upon the expiration **or lawful termination** of the Control Period as provided in the Regulations.

- A. The Affordable Unit may be conveyed only to a household who has been approved in advance and in writing by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed under [the Regulations] **N.J.A.C. 5:99-6** (hereinafter, collectively, the “Administrative Agent”).
  
- B. No sale of the Affordable Unit shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than 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 other debt (collectively, “Debt”) secured by the Affordable Unit, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percentum (95%) of the applicable MRP.
  
- D. The owner of the Affordable Unit shall at all times maintain the Affordable Unit as his or her principal place of residence.
  
- E. Except as set forth in F, below, at no time shall the owner of the Affordable Unit lease or rent the Affordable 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. If the Affordable Unit is a two-family home, the owner shall lease the rental unit only to income-certified **very-low**, [low-income] **low-**, or **moderate-income** households approved 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 Affordable Unit that would affect its bedroom configuration, and in any event, no improvement made to the Affordable Unit will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

## Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. [5:80-26] **5:80-26.1 et seq.**, and the obligation for the provision of **very-low-**, [low] **low-**, and moderate-income housing. Accordingly, and as set forth [in N.J.A.C. 5:80-26.18] **at 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 shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
  
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those

provided under [Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code] **N.J.A.C. 5:80-26.1 et seq.**, and specific performance.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized partners and proper officers, respectively, this \_\_\_\_ day of [December 2002] \_\_\_\_\_, **20**\_\_\_\_ .

ATTEST: \_\_\_\_\_

(DEVELOPER)

By: \_\_\_\_\_

*Note: Affix appropriately executed corporate jurat. 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 D

MANDATORY DEED FORM FOR OWNERSHIP UNITS  
SUBJECT TO RESTRICTIVE COVENANT  
REQUIRED BY [SECTION 5:80-26.5(d)] **N.J.A.C. 5:80-26.6(d)**

Deed

To State Regulated Property

Subject to Restrictive Covenant Limiting Conveyance

And Mortgage Debt

THIS DEED is made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between

\_\_\_\_\_ (Grantor) and

\_\_\_\_\_ (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_), the receipt of which is hereby 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] **“Property”**).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described more specifically as Block No. \_\_\_\_ Lot No. \_\_\_\_, and known by the street address:

Article 3. Grantor’s [Covenant] **Covenants**

The Grantor hereby covenants and affirms that Grantor has taken no action to encumber the Property. **The Grantor further acknowledges and agrees that the restrictions, conditions, and requirements of the**

**within Deed shall be covenants running with the land and shall remain binding on the Grantor and all successors in interest.**

Article 4. Affordable Housing Covenants and Remedies

Sale and use of the Property is governed by the *Declaration Of Covenants, Conditions And Restrictions Implementing Affordable Housing Controls On State Regulated Property* that was filed against the Property and recorded on \_\_\_\_\_, 20\_\_ in Deed Book \_\_\_ at pages \_\_\_ through \_\_\_, in the offices of the Clerk, County of \_\_\_\_\_ (the ["Restrictions"] "**Restrictions**"), and is subject to all remedies set forth in the 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) to 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]

\_\_\_\_\_ [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" shall 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 \_\_\_\_\_, 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 (hereinafter the "Corporation").
2. \_\_\_\_\_, the officer who signed this Deed is the (*title*) \_\_\_\_\_ of the Corporation (hereinafter 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 is the corporate seal of the Corporation. The Corporate Officer affixed the seal to this Deed. 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*

---

*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 adjusted accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.***

## APPENDIX E

### MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

#### **Affordable Housing** Deed Restriction

To State Regulated Multi-Family Rental Property

With Covenants Restricting Rentals,

Conveyance and Improvements

And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (the “Owner”), a <State of Formation/Incorporation> <Type of Entity>, having offices at the street address \_\_\_\_\_, the developer of a residential rental project that shall be known as \_\_\_\_\_ (the “Project”), located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, New Jersey, [and between the [Administrative Agent] (“Administrative Agent”), and \_\_\_\_\_ a New Jersey [Corporation/Partnership/Limited Partnership]having offices at \_\_\_\_\_ the developer/sponsor (the “Owner”) of a residential low-or moderate-income rental project subsidized by the State Of New Jersey (the “State”) in cooperation with the Administrative Agent, under the [Name of Program] (the “Project”)] is granted in favor of \_\_\_\_\_ (the “Municipality”), a body corporate and politic of the State of New Jersey:

WITNESSETH

Article 1. Consideration

In consideration of the [subsidies] **benefits** received by **the Owner from the Municipality and/or as a condition of the 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 on the land** [and improvements] 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, that is located **at the street address** \_\_\_\_\_ in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described [more specifically] **on Exhibit A annexed hereto and designated** as Block No. \_\_\_\_, Lot No. \_\_\_\_[,]. [and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_ ]

There shall be \_\_\_\_ total housing units in the Project. Among those housing units, \_\_\_\_ shall be affordable housing units, of which \_\_\_\_ shall 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 Controls (as defined in Section 3.A below); \_\_\_\_ low-income units affordable to households making 50 percent or less of median income in the housing region, as defined in the Uniform Controls; and \_\_\_\_ moderate-income units affordable to households making 80 percent or less of median income in the housing region, as defined in the Uniform Controls (the “Affordable Units”). Of the \_\_\_\_ Affordable Units, \_\_\_\_ shall be efficiency units, \_\_\_\_ shall be one-bedroom units, \_\_\_\_ shall be two-bedroom units, \_\_\_\_ shall be three-bedroom units, and \_\_\_\_ shall be units with four or more bedrooms. The Affordable Units <shall / shall not> be age-restricted, and \_\_\_\_ of the Affordable Units shall 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 agrees to provide a preference for up to 50 percent of the Affordable Units in the Project 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).

More specifically, the Affordable Units, designated by unit number, bedroom count, income restriction, target population, and type and number of credits sought, are listed below and shown on Exhibit B annexed hereto:

Unit Number	Bedroom Count	Affordability Type	Target Population (Families/ Seniors/ Supportive Housing/ Veterans)	Bonus Credit Type (if any)	Number of Credits

Article 3. Affordable Housing Covenants

The following covenants (the “Covenants”) shall run with the land for the period of time **specified in Article 4** (the “Control Period”), determined separately with respect [for] **to** each [dwelling unit] **Affordable Unit**, commencing [upon the earlier of the date hereof or the date on which the first certified household occupies the unit] **on the date of the initial Certificate of Occupancy of each Affordable Unit**, and [shall and expire] **expiring** as determined under the Uniform Controls, as defined below.

- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found [in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*] **at N.J.A.C. 5:80-26.1 et seq.** (the “Uniform Controls”).
- B. The [Property] **Affordable Units** shall 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 shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to [these Deed Restrictions] **this Deed Restriction**, deeds of conveyance must have [these Deed Restrictions] **this Deed Restriction** appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the **administrative agent appointed under N.J.A.C. 5:99-6 (hereinafter, collectively, the “Administrative Agent”)**.
- C. No improvements may be made to the Property that would affect the bedroom configuration of any of its [dwelling units] **Affordable Units** [and any improvements to the Property must be approved in advance and in writing by the Administrative Agent].
- D. The Owner shall notify the Administrative Agent and the [State] **Municipality** of any foreclosure actions filed with respect to the Property within five (5) business days [of] **after** service upon **the** Owner.
- E. The Owner shall notify the Administrative Agent and the [State] **Municipality** within three (3) business days [of] **after** the filing of any petition 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 shall be \_\_\_ years.

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 [4.] 5. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the [Administrative Agent] **Municipality**, to the State, and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of [low] **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 successor in interest of the Property, the [Administrative Agent] **Municipality** and the State shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the [Administrative Agent] **Municipality** shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under [Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code] **N.J.A.C. 5:80-26.1 et seq.**, and specific performance.

**Article 6. Binding Effect**

**This Deed Restriction shall run with the land until the end of the Control Period for each Affordable Unit and shall be binding upon Declarant’s successors and/or assigns. The Municipality and Administrative Agent shall take all actions necessary to issue a new Deed Restriction as specified in the Uniform Controls or to release and discharge this Deed Restriction with respect to each Affordable Unit upon the expiration of the Covenants with respect to such unit.**

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

[THE ADMINISTRATIVE AGENT]

BY:

\_\_\_\_\_

[XXXXXXXXXXXXXXXXX]

Title

[THE OWNER]

BY:

\_\_\_\_\_

[XXXXXXXXXXXXXX]

Title

APPROVED BY

THE STATE OF NEW JERSEY

BY \_\_\_\_\_

[XXXXXXXXXXXXXX]

Title

*ACKNOWLEDGEMENTS*

On this the \_\_\_\_ day [\_\_\_\_] of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ of the Department of Community Affairs of the State of New Jersey, who states that (s)he has signed said Agreement on behalf of said State 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 states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

NOTARY PUBLIC

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**FLOOR PLAN SHOWING AFFORDABLE UNITS**

APPENDIX F

FORM OF RELEASE (Quitclaim Deed)

FOR RESTRICTED UNITS

QUITCLAIM DEED

RELEASING OWNERSHIP UNIT FROM AFFORDABILITY CONTROLS

THIS DEED, made as of this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between The STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs, [PO Box 806] **101 South Broad Street**, Trenton, New Jersey[,] 08625[,] (the “GRANTOR”), and the \_\_\_\_\_, (the “GRANTEE”);

WHEREAS, on or about \_\_\_\_\_, an [Affordable Housing Agreement or Deed] [and a Repayment Mortgage (the “Mortgage”) together] containing Fair Housing Act deed restrictions (the

“RESTRICTIONS”) were executed by \_\_\_\_\_, and were subsequently recorded in the Registrar’s Office of the Clerk, County of \_\_\_\_\_, State of New Jersey, in, respectively, Deed Book \_\_\_ at pages \_\_\_ through \_\_\_, [and Mortgage Book \_\_\_ at pages \_\_\_ through \_\_\_,] in connection with the property identified below (the “PROPERTY”);

WHEREAS, under the terms of the Agreement and Mortgage, all Restrictions lapsed on \_\_\_\_\_.

NOW THEREFORE, and in consideration of \$1 in hand received and other good and valuable consideration,

The GRANTOR grants and forever releases to the GRANTEE, so that the lands described below may be conveyed free from the encumbrance of the RESTRICTIONS, any and all restrictions and claims of the GRANTOR, upon that certain real property, located in the Municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, more particularly described as:

Being known and designated as Lot No. \_\_\_, Block No. \_\_\_\_\_ in the Municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and more commonly known as \_\_\_\_\_, New Jersey \_\_\_\_\_

SUBJECT TO all easements, covenants and restrictions of record.

The GRANTOR has received full consideration from the GRANTEE.

The GRANTOR signs this Deed as of the date first above written.

Attest:

[Administrative Agent]



\_\_\_\_\_ by:  
\_\_\_\_\_

STATE OF NEW JERSEY )

) ss.:

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, who acknowledges and makes proof to my satisfaction that he/she is a duly authorized agent of the \_\_\_\_\_, the Grantor named within this document, and that the execution, as well as the making of this instrument has been duly authorized by said \_\_\_\_\_ as the voluntary act and deed of \_\_\_\_\_, sworn to and subscribed by him in my presence on this date.

\_\_\_\_\_  
A Notary Public/Attorney of the State of New Jersey

APPENDIX G

FORM OF NOTE FOR PAYMENT OF RECAPTURE

AMOUNT FOR A 95/5 UNIT

State of New Jersey

Department of Community Affairs

[Housing and Mortgage Finance Agency]

95/5 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 \_\_\_\_\_ (referred to as **the** “Owner”) promises to pay to THE STATE OF NEW JERSEY, acting by and through its Department of Community Affairs, which has its principal offices at 101 South Broad Street in the City of Trenton, County of Mercer, State of New Jersey (the [“STATE”] “**State**”), and which is acting as receiving agent for the [MUNICIPALITY], the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, 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” (the [“MORTGAGE”] “**Mortgage**”), dated \_\_\_\_\_, of the property described below (the [“PROPERTY”] “**Property**”). The Mortgage covers real estate owned by the Owner. 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 any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording

hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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, Ninety-Five Percentum (95%) of the difference between (i) the actual sale price and (ii) the regulated maximum sales price that would be applicable were the Control Period still in effect, as set forth in [Section 5:93-9.8(b)(2) of the Substantive Rules of the New Jersey Council On Affordable Housing] **the Uniform Housing Affordability Controls regulations 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 [in October of 1990,] shall be paid at closing to the State of New Jersey, acting as receiving agent for the local municipality.

#### Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of 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 State 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 under this Note. The Authority 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

**The** Owner acknowledges receipt of a true copy of the Mortgage and this Note at no charge.

Dated:

ATTEST:

By:

\_\_\_\_\_

Signature (Owner)

\_\_\_\_\_

Signature (Co-Owner)

STATE OF NEW JERSEY )

) ss.:

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her 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 H

FORM OF MORTGAGE SECURING PAYMENT OF  
RECAPTURE AMOUNT FOR A 95/5 UNIT

State of New Jersey

Department of Community Affairs

[Housing and Mortgage Finance Agency]

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, (the [“OWNER”] “**Owner**”) and THE STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs (the [“STATE”] “**State**”), in connection with the property described herein (the [“PROPERTY”] “**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 (the “Note”) dated \_\_\_\_\_. The Owner promises to pay to the State amounts due under the Repayment Mortgage 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 [Section 5:93-9.8(b)(2) of the Substantive Rules of the New Jersey Council On Affordable Housing] **the Uniform Housing Affordability Controls, 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 [Section 5:93-9.2 of] said Rules (the “Control Period”). The amount of any such payment shall be determined by calculating Ninety-Five Percentum (95%) of the difference between (a) the actual sale price and (b) the regulated maximum sales price ([Maximum Resale 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

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of New Jersey (hereinafter the “Property”), 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 under Uniform Housing Affordability Controls, which are found [in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80- 26.1, et seq)] **at N.J.A.C. 5:80-26.1 et seq.** The rights given to the [state] **State** are covenants running with the land. The rights, terms, and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in **the** Note and **this** Mortgage, the [state] **State** will prepare and deliver to the then current owner of record a quitclaim deed 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 attempts to convey an interest in the Property without giving prior written notice to the State;
2. The 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 given by law or set forth in this Mortgage.

#### Article 7. NOTICES

*ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT [BT] **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] **State** has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

#### Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The State 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 State, 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 which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same 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 both parties.

#### Article 13. SIGNATURES

By executing this Mortgage [on page 3, hereof], 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 [to the State].

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

\_\_\_\_\_

Signature (Owner)

\_\_\_\_\_

Signature (Co-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" shall include all such persons)* and who, being duly sworn by

me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) [and] that he/she has executed said 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 HOUSING  
AFFORDABILITY CONTROL SERVICES

*THIS AGREEMENT*, entered into as of this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF NEW JERSEY (the “State”), acting by and through its Commissioner of The Department of Community Affairs, who has offices at 101 South Broad Street in the City of Trenton, County of Mercer and State of New Jersey, (“Department”), and \_\_\_\_\_ a municipality and instrumentality of the State, acting by and through its \_\_\_\_\_, who has offices at \_\_\_\_\_ (the “Municipality”).

WITNESSETH

*WHEREAS*, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, *et seq.*[,] hereinafter the “Act”), **or other applicable law**, the Municipality is implementing a program to provide affordable housing units to [low] **very-low-, low-**, and moderate-income households desiring to live within the Municipality;

*WHEREAS*, at [Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code] **N.J.A.C. 5:80-26.1 et seq.**, the State has promulgated affordability controls in regulations designed to implement the Act, by [assuring] **ensuring** that [low] **low-** and moderate-income units that are created under the Act are occupied by [low] **very-low-, low-**, and moderate-income households for an appropriate period of time (the “Rules”);

*WHEREAS*, [Section 5:80-26.14 of the Rules] **N.J.A.C. 5:99.6** provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality, and provides further that a municipality may select the Department's Housing Affordability Service (“HAS”) to administer such controls; and

*WHEREAS*, the Municipality has selected HAS to be the administrative agent for the purposes of providing affordability control services for all affordable housing constructed and to be constructed within the Municipality,

*NOW THEREFORE*, the State and the Municipality hereby agree to the following terms and conditions:

#### Section 1. Term

This Agreement shall become effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and shall have a term of three (3) years, terminating at the close of State business on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to the termination and renewal provisions set forth in *Section 5*, below.

#### Section 2. Applicability and Supersession

This Agreement shall define and govern all terms between the parties with respect to affordability controls for affordable housing units provided under the Act[,] and shall supersede all prior agreements or documents related thereto.

### Section 3. Exclusions

This Agreement shall not apply to units funded under:

- a. The Federal Low-Income Housing Tax Credit program under 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 HUD 202 program, 24 C.F.R. Part 891;
- d. The HUD 811 program, 24 C.F.R. Part 890;
- e. The HUD HOPE VI program;
- f. Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60; or
- g. [Or] any other program excluded under the Rules.

### Section 4. Agency and Enforcement Delegation

The State and the Municipality acknowledge that under the Rules the State is acting hereunder primarily as an agent of the Municipality. Anything herein to the contrary notwithstanding, however, the Municipality hereby delegates to the State, and the State hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the Rules.

#### Section 5. Termination and Renewal

- a. The Agreement may be terminated by either party, by giving six (6) months advanced written notice to the other, to the address and in the form as set forth in *Section 15*, below, provided however, that no such termination may take effect unless and until an alternate administrative agent has been selected by the Municipality and approved by all required governmental authorities.
- b. Unless terminated, this Agreement shall automatically be renewed for two (2) successive terms of three (3) years each.

#### Section 6. Exclusivity of Agreement, Project Amendments

- a. For the term hereof, and without exception, this Agreement shall govern the provision of affordability control services for all projects located within the Municipality that fall under the jurisdiction of the Act.
- 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 the State, by the Municipality and by the project developer. All such Project Amendments shall be in the specific form set forth as *Exhibit A*, hereto.

- c. The annexing of a fully executed original of a Project Amendment to HAS' original of this Agreement shall be a condition precedent to the provision of any affordability control services to the related project.

#### Section 7. Responsibilities of The State

The State shall perform all of the duties and responsibilities of an administrative agent as are set forth **at N.J.A.C. 5:99-6 and** in the Rules, including those set forth [in Sections 5:80-26.14, 26.16 and 26.18 thereof] **at N.J.A.C. 5:80-26.17 and 26.19**, as such Rules may from time to time be amended.

#### Section 8. Responsibilities of The Municipality

The Municipality shall:

- a. Provide to the State the name, title and telephone number of the municipal official who shall be responsible for liaison with the State on all matters related to this Agreement;
- b. Use its best efforts to ensure that applicable local ordinances are not in conflict with either the Rules 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 the administrative agent of a change in billing address, payment delinquency of two billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units.



- d. Provide all reasonable and necessary assistance to the State in support of efforts to enforce provisions of the Act, the Rules, deed covenants, mortgages, court decisions, or other authorities governing the affordability control services to be provided under the Agreement.

Section 9. Notices

All notices and other written communications between the State and the Municipality shall be to the addresses and personnel specified below:

if to the State:

New Jersey Department of Community Affairs

[DHCR—]Housing Affordability Service

[PO Box 806] **101 South Broad Street**

Trenton, NJ 08625-0806

if to the Municipality:

....

....

....

Attn: .....

#### Section 10. 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 shall not constitute a consent to waiver of or excuse for any other different or subsequent breach of the same [of] **or** other provision, nor as a result shall either [part] **party** relinquish any rights which it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the waiving party.

#### Section 11. 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 12. Priority of Documents

Should a conflict or inconsistency exist between the terms of this Agreement and *Exhibits A*[,] and *B*, incorporated herein by reference, said conflict or inconsistency shall be resolved by giving precedence to the Agreement and Exhibits in the following order:

1. Agreement (Including *Exhibit A*)

2. *Exhibit B* (State Conditions)

Section 13. Merger and Amendment

This written Agreement, together with its Exhibits, constitutes the sole agreement between the parties with respect to the matters covered therein, and no other written or oral communication exists which shall bind the parties with respect thereto, [provide] **provided**, however, that this Agreement may be modified by written amendments clearly identified as such and signed by both the State and the Municipality.

Section 14. Partial Invalidation of Agreement

Should any provision of this Agreement be deemed or held to be invalid, ineffective or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the State and the Municipality have executed this Agreement in triplicate as of the date first above written.

THE STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS

BY: \_\_\_\_\_

[XXXXXXXXXXXXX]

Title

THE MUNICIPALITY OF \_\_\_\_\_

BY: \_\_\_\_\_

[XXXXXXXXXXXXXX]

Title

*ACKNOWLEDGEMENTS*

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, to me known and known to me to be the \_\_\_\_\_ of the Department of Community Affairs of the State of New Jersey, who states that (s)he has signed said Agreement on behalf of said State 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 states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein.

---

NOTARY PUBLIC

APPENDIX J

FORM OF CERTIFICATE FOR APPLICANTS  
CERTIFIED TO OWNERSHIP UNIT, REQUIRED  
BY [SECTION 5:80-26.18(c)2] **N.J.A.C. 5:80-19(d)2**

CERTIFICATE FOR APPLICANT

CERTIFIED TO AN OWNERSHIP UNIT SUBJECT TO

AFFORDABLE HOUSING RESTRICTIONS

My name is \_\_\_\_\_ and I am making this certificate in connection with my certification to purchase

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---

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 have to 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 \_\_\_\_\_.
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.

3. I cannot take out any loans of any kind secured by my house (a “mortgage loan”) unless my plans to get the loan are approved by \_\_\_\_\_ 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 that is not my fault, such as if my employer is temporarily sending me to a work place a great distance from my home, or if I am being called up for military service, I should call \_\_\_\_\_ and ask for a “temporary waiver” of this rule. It is up to \_\_\_\_\_ whether I get a temporary waiver.
  
5. If my home is a two-family home, I know that I am allowed to rent the rental apartment in my home only to a person or to a family who is part of the Affordable Housing Program, and who has been certified to rent my rental apartment in writing by \_\_\_\_\_.
  
6. Furthermore, I know that the rent I am allowed to charge a tenant is limited by law[,] and is announced each year by \_\_\_\_\_. I know that it is my responsibility to find out what is the maximum rent I am allowed to charge by calling \_\_\_\_\_.
  
7. I know that I am required to send copies of all leases with my tenants to \_\_\_\_\_.
  
8. I know that I am not allowed to make any improvements to my home unless they have been approved in writing by \_\_\_\_\_.
  
9. Finally, I know that if I break any of these rules I will be breaking the law, and that I will be subject to penalties provided by law, including 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 (i) that he/she is the Purchaser of the Affordable [home] **Home** that is identified as said Purchaser in the foregoing Certificate, and (ii) [and] that he/she has executed said Certificate with respect to the purchase of the property 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 [SECTION 5:80-26.18(c)2] **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 \_\_\_\_\_ and I am making this certificate in connection with my certification to rent the Affordable Housing unit located at

\_\_\_\_\_.

I am aware, as the renter of an Affordable [unit] **Unit**, that from this date until \_\_\_\_\_, 20\_\_ as long as I am renting the unit described above, my renting the apartment is subject to the requirements that are 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.
2. I know that I am required to live in my apartment, 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 supposed to pay to my landlord is limited by law, that it is announced each year by \_\_\_\_\_, and that I can call \_\_\_\_\_ at any time if I have any questions about what rent I am supposed to be paying.
4. I know that I am not allowed to make any improvements to my apartment unless they have been approved in writing by \_\_\_\_\_.

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 (i) that he/she is the Purchaser of the Affordable [home] **Home** that is identified as said Purchaser in the foregoing Certificate, and (ii) [and] that he/she has executed said Certificate with respect



to the purchase of the property 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 STATE, REQUIRED BY [SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

[State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

Recapture Mortgage Note

In Connection With Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period]

**STATE OF NEW JERSEY**

**DEPARTMENT OF COMMUNITY AFFAIRS**

**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 \_\_\_\_\_ (referred to as **the** “Owner”) promises to pay to THE STATE OF NEW JERSEY, acting by and through its Department of Community Affairs, which has its principal offices at 101 South Broad Street in the City of Trenton, County of Mercer, State of New Jersey (the [“STATE”] **”State”**), the amounts specified in this Note and promises to abide by the terms contained below.

Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, 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” (the [“MORTGAGE”] **“Mortgage”**), dated \_\_\_\_\_, of the property described below (the [“PROPERTY”] **“Property”**). The Mortgage covers real estate owned by the Owner. 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 any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 sum of \$ \_\_\_\_\_ to the State of New Jersey, acting by and through its Department of Community Affairs. The obligation evidenced by this note shall not accrue interest.

#### Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of 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 State 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 under this Note. The State 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 (Co-Owner)

STATE OF NEW JERSEY     )  
  )     ss.:

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her 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 [SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

[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]

**STATE OF NEW JERSEY**

**DEPARTMENT OF COMMUNITY AFFAIRS**

**AFFORDABLE HOUSING PROGRAM**

**REPAYMENT MORTGAGE**

**TO SECURE PAYMENT OF AMOUNTS DUE**

**UPON FIRST NON-EXEMPT SALE**

**AFTER EXPIRATION OF CONTROL PERIOD**

THIS MORTGAGE, made on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, (the [“OWNER”] “**Owner**”) and THE STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs (the [“STATE”] “**State**”), in connection with the property described herein (the [“PROPERTY”] “**Property**”);

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the "Note") dated \_\_\_\_\_. The Owner promises to pay to the State amounts due under the Repayment Mortgage 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, as [provided under the rules of the New Jersey Housing and Mortgage Finance Agency] set forth [in] **at** N.J.A.C. 5:80-26.1 et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of New Jersey (hereinafter the "Property"), 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 under **the** Uniform Housing Affordability Controls, which are found [in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80- 26.1, *et seq*)] **at N.J.A.C. 5:80-26.1 et seq.** The rights given to the [state] **State** are covenants running with the land. The rights, terms, and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs 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 quitclaim deed 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 attempts to convey an interest in the Property without giving prior written notice to the State;
2. The 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 given by law or 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] **State** has delayed in exercising that authority[,], or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

#### Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The State 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 State, 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 which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 shall execute a note and mortgage in the form of the Note and this Mortgage, and the same 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 both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80-26.1 et seq.

#### Article 13. SIGNATURES

By executing this Mortgage [on page 3, hereof], 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 [to the State].

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By:

\_\_\_\_\_

Signature of (Owner)

Signature (Co-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" shall include all such persons*) and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) [and] that he/she has executed said 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 [SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

State of New Jersey

Department of Community Affairs

[Housing and Mortgage Finance Agency]

[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 \_\_\_\_\_ (referred to as 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 contained below.

#### Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, 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” (the [“MORTGAGE”] “**Mortgage**”), dated \_\_\_\_\_, of the property described below (the [“PROPERTY”] “**Property**”). The Mortgage covers 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 any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 sum of \$ [add amount determined pursuant to N.J.A.C. [5:80-26.5(c)] **5:80-26.7**] to the Municipality. The obligation evidenced by this note shall not accrue interest.

### Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of 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 under this Note. 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 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 (Co-Owner)

STATE OF NEW JERSEY )

) ss.:

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her 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 O

FORM OF MORTGAGE SECURING PAYMENT OF  
RECAPTURE NOTE IN FAVOR OF THE MUNICIPALITY,  
REQUIRED BY [SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

State of New Jersey

Department of Community Affairs

[New Jersey Housing and Mortgage Finance Agency]

[name of municipality]

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period



THIS MORTGAGE, made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, (the [“OWNER”] “Owner”) and \_\_\_\_\_ (the “Municipality”), in connection with the property described herein (the [“PROPERTY”] “Property”);

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the “Note”) dated \_\_\_\_\_. The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

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 [rules of the New Jersey Housing and Mortgage Finance Agency set forth in] **Uniform Housing Affordability Control regulations at N.J.A.C. 5:80-26.1** et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of New Jersey (hereinafter the “Property”), described more specifically as Block No. \_\_\_\_ Lot No. \_\_\_\_, and known by the street address:

\_\_\_\_\_

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#### Article 4. RIGHTS GIVEN TO MUNICIPALITY

The Owner, by mortgaging the Property to the State, gives the Municipality those rights stated in this Mortgage, and all the rights the law gives to the Municipality under **the** Uniform Housing Affordability Controls, which are found [in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*)] **at N.J.A.C. 5:80-26.1 et seq.** The rights given to the Municipality are covenants running with the land. The rights, terms, and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. 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 quitclaim deed 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 attempts to convey an interest in the Property without giving prior written notice to the Municipality;
2. The 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. 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 or set forth in this Mortgage.

#### Article 7. NOTICES

*ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT [BT] 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 authority[,] or has agreed in an earlier instance not to exercise that right. The Municipality does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

#### Article 9. EACH PERSON LIABLE

[The] **This** Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents, and designees who succeed to their responsibilities. 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 any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 shall execute a note and mortgage in the form of the Note and this Mortgage, and the same 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 both parties and approved by the administrative agent appointed pursuant to N.J.A.C. 5:80-26.1 et seq.

Article 13. SIGNATURES

By executing this Mortgage [on page 3, hereof], 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 [to the State].

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By:

\_\_\_\_\_

Signature of (Owner)

\_\_\_\_\_

Signature (Co-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" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the

foregoing mortgage and (ii) [and] that he/she has executed said 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.

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NOTARY PUBLIC

APPENDIX P

FORM OF RECAPTURE MORTGAGE NOTE FOR  
UHORP AND MONI UNITS, REQUIRED BY  
[SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

State of New Jersey

Department of Community Affairs

Housing and Mortgage Finance Agency

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 \_\_\_\_\_ (referred to “Owner”) promises to pay to The New Jersey Housing and Mortgage Finance Agency, which has its principal offices at 637 South Clinton Avenue, Trenton, NJ 08650- 2085 (the “Agency”), the amounts specified in this Note and promises to abide by the terms contained below.

#### Article 1. REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Owner is giving the Agency a “Repayment Mortgage To Secure Payment of Amounts Due Upon First Non-Exempt Sale After Expiration of Control Period” (the [“MORTGAGE”] “**Mortgage**”), dated \_\_\_\_\_, of the property described below (the [“PROPERTY”] “**Property**”). The Mortgage covers real estate owned by the Owner. The Mortgage will not be subordinate, and will not be subordinated by the Agency, 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 which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 sum of \$[add amount determined

pursuant to N.J.A.C. [5:80-26.5(c)] **5:80-26.7**] to the Agency. The obligation evidenced by this note shall not accrue interest.

### Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of 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 Agency 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 under this Note. The Agency 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 (Co-Owner)

STATE OF NEW JERSEY )

) ss.:

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me came \_\_\_\_\_, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Note, and that she has executed said Note for the purposes set forth therein, sworn to and subscribed by her 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 Q

FORM OF MORTGAGE SECURING PAYMENT OF  
RECAPTURE NOTE IN FAVOR OF THE AGENCY,  
REQUIRED BY [SECTION 5:80-26.5(c)] **N.J.A.C. 5:80-26.6(c)**

State of New Jersey

Department of Community Affairs

New Jersey Housing and Mortgage Finance Agency

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ by and between \_\_\_\_\_, (the [“OWNER”] “**Owner**”) and the New Jersey Housing and Mortgage Finance Agency (the “Agency”), in connection with the property described herein (the [“PROPERTY”] “**Property**”);

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note (the “Note”) dated \_\_\_\_\_. The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

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 under the rules of the [New Jersey Housing and Mortgage Finance] Agency [set forth in] at N.J.A.C. 5:80-26.1 et seq.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_ in the County of \_\_\_\_\_, State of New Jersey (hereinafter the “Property”), 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 State, gives the Agency those rights stated in this Mortgage, and all the rights the law gives to the Agency under **the** Uniform Housing Affordability Controls, which are found [in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*)] **at N.J.A.C. 5:80-26.1 et seq.** The rights given to the Agency are covenants running with the land. The rights, terms, and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in **the** Note and **this** Mortgage, the Agency will prepare and deliver to the then current owner of record a quitclaim deed 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 attempts to convey an interest in the Property without giving prior written notice to the Agency;
2. The 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. 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 set forth in this Mortgage.

#### Article 7. NOTICES

*ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT [BT] 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] MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.*

#### Article 8. NO WAIVER BY AGENCY

The Agency may exercise any right under this Mortgage or under any law, even if the Agency has delayed in exercising that authority[, ] or has agreed in an earlier instance not to exercise that right. The Agency does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

#### Article 9. EACH PERSON LIABLE

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents, and designees who succeed to their responsibilities. The Agency 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 Agency, 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 which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall 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 shall execute a note and mortgage in the form of the Note and this Mortgage, and the same 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 both parties and approved by the administrative agent appointed pursuant to [N.J.A.C. 5:80-26.1 et seq.] **N.J.A.C. 5:99-6.**

Article 13. SIGNATURES

By executing this Mortgage [on page 3, hereof], 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 [to the State].

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By:

\_\_\_\_\_

Signature of (Owner)

Signature (Co-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" shall include all such persons)* and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) [and] that he/she has executed said 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.

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NOTARY PUBLIC