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BOROUGH OF MONTVALE, TOWNSHIP OF DENVILLE, BOROUGH OF FLORHAM PARK, BOROUGH OF HILLSDALE, TOWNSHIP OF MANNINGTON, TOWNSHIP OF MILLBURN, TOWNSHIP OF MONTVILLE, BOROUGH OF OLD TAPPAN, BOROUGH OF TOTOWA, BOROUGH OF ALLENDALE, BOROUGH OF WESTWOOD, TOWNSHIP OF HANOVER, TOWNSHIP OF WYCKOFF, BOROUGH OF WHARTON, BOROUGH OF MENDHAM, BOROUGH OF ORADELL, BOROUGH OF CLOSTER, TOWNSHIP OF WEST AMWELL, TOWNSHIP OF WASHINGTON, BOROUGH OF NORWOOD, TOWNSHIP OF PARSIPPANY-TROY HILLS, BOROUGH OF FRANKLIN LAKES, TOWNSHIP OF CEDAR GROVE, TOWNSHIP OF EAST HANOVER, TOWNSHIP OF HOLMDEL, TOWNSHIP OF WALL, TOWNSHIP OF LITTLE FALLS, and MICHAEL GHASSALI,

Plaintiffs,

vs.

STATE OF NEW JERSEY, AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM, and GLENN A. GRANT, in his official capacity as ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS, and HOUSING AND MORTGAGE FINANCE AGENCY,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.: MER-L-1778-24

Civil Action

**FIFTH AMENDED AND VERIFIED
COMPLAINT**

vs.

FAIR SHARE HOUSING CENTER,

Defendant/Intervenor.

Plaintiffs (hereafter the "Plaintiffs") hereby state by way of Fifth Amended Complaint, as follows:

BACKGROUND

1. This lawsuit seeks judicial relief addressing substantive and procedural issues with P.L. 2024, c. 2 (the "Law"), which the Legislature adopted earlier this year, imposing affordable housing obligations upon New Jersey municipalities for the 2025-2034 "Fourth Round" period and for each successive decade into perpetuity. A true copy of the Law is attached as **Exhibit A**.

2. The Legislature stated that it adopted the Law to "implement the Mount Laurel doctrine." By espousing this position, the Legislature essentially claimed that it was obligated by the courts to impose the Law's terms, including new affordable housing mandates upon the Plaintiffs, allowing it to shirk political accountability for the same.

3. However, it is the province of the courts – and not the Legislature – to interpret the New Jersey Constitution and determine what is required by the Mount Laurel doctrine, which is based upon a judicial interpretation of the General Welfare Clause.

4. The Plaintiffs contend that the Law imposes affordable housing obligations inconsistent with what was ever intended or mandated by our courts under the Mount Laurel doctrine, and therefore the Law exceeds the requirements of the General Welfare Clause.

5. To this end, today's circumstances are vastly different from the factual record that was presented to our Supreme Court in 1983 when the landmark Mount Laurel II decision and remedy was entered, resulting in the Fair Housing Act.

6. Among other things, the Law's formulaic imposition of affordable housing obligations upon municipalities into perpetuity contradicts the Mount Laurel II Court's assurances that its remedy – which was designed four decades ago and is now largely enshrined into perpetuity through the Law – would not result in "[d]evelopment merely for development's sake," "require bad planning," "require suburban spread," or "require rural municipalities to encourage large scale housing developments."

7. The Law specifically creates a classification between non-urban aid municipalities and urban aid municipalities, which requires the former to assume the entire prospective need obligation under the Law, even though the latter are responsible today for 50% of the State's population growth and trigger a corresponding amount in supposed housing need.

8. The Plaintiffs seek a declaratory judgment that the terms of the Law exceed what is required by the General Welfare Clause of the New Jersey Constitution.

9. Such a determination would refute the Legislature's claim that the terms of the Law implement the Mount Laurel doctrine and inform it that the Law may be revised without violating the New Jersey Constitution.

10. Moreover, such a determination would allow the Plaintiffs to pursue an action to invalidate the Law before the Council on Local Mandates, as it imposes unfunded local mandates upon the Plaintiffs in violation of the New Jersey Constitution.

11. The Plaintiffs further seek invalidation of the Law pursuant to judicial review.

12. The Law also contains a structure that violates the New Jersey Constitution.

13. The Plaintiffs are required to determine their affordable housing obligations imposed by the Law, through a binding resolution that is filed with and then adjudicated by the Affordable Housing Dispute Resolution Program (the "Program"). The Administrative Director of the Courts ("ADC," as further defined herein) has numerous powers relating to the Program, including appointing all of its members, none of which was ever envisioned for this position under our Constitution.

14. The Law unconstitutionally moves affordable housing determinations from the executive branch under the Council on Affordable Housing ("COAH," as further defined herein) to the judiciary, without it being established within a court. The Constitution only allows the judicial power to be vested in the Supreme Court, Superior Court, and "other courts" established by law – not a so-called Program. The Program therefore violates the judicial article and the separation of powers protections contained in the New Jersey Constitution.

15. The appointment structure of the Program violates the Constitution for two reasons. First, the Law directs the ADC to appoint Superior Court judges to the Program, which unconstitutionally interferes with the Chief Justice's sole and plenary power to appoint Superior Court judges to assignments. Second, the Law allows the ADC to appoint so-called "experts" if Superior Court judges are unavailable, which violates the constitutional requirement for courts with jurisdiction over multiple municipalities to be nominated by the Governor with the advice and consent of the Senate. Taken to its logical end, the Law allows the Plaintiffs' affordable

housing obligations to be determined by a slate of so-called "experts" that were never vetted by the elected branches whatsoever.

16. Even if the Program's appointment structure is accepted from a constitutional standpoint, the ADC's appointment of retired judges violated the plain language of the Law. The Law provides that the ADC shall appoint "current or *retired and on recall* judges of the Superior Court . . . as members . . . within 60 days following the effective date" (emphasis added). The ADC completed appointments pursuant to this provision, but five of the seven retired judges appointed by the ADC were not on recall, and thus do not qualify under the Law.

17. The Law requires both the ADC and the Program to take numerous steps that unconstitutionally interfere with the Supreme Court's plenary control over administration of the judiciary, as well as its jurisdiction over practice and procedure subject to law.

18. The ADC has promulgated purported regulations pursuant to the Law that are ultra vires and deprived the Plaintiffs of any due process.

19. The Housing and Mortgage Finance Agency ("HMFA") has promulgated regulations pursuant to the Law without complying with the Law's required compliance with the APA or affording any due process.

20. For these reasons, the Plaintiffs seek numerous declaratory judgments regarding the substantive and procedural deficiencies in the Law, warranting its invalidation.

PARTIES

21. Plaintiff Borough of Montvale is a municipal corporation of the State of New Jersey with principal offices at 12 Depiero Drive, Montvale, New Jersey 07645.

22. Plaintiff Township of Denville is a municipal corporation of the State of New Jersey with principal offices at 1 Saint Mary's Place, Denville, NJ 07834.

23. Plaintiff Borough of Florham Park is a municipal corporation of the State of New Jersey with principal offices at 111 Ridgedale Avenue, Florham Park, New Jersey 07932.

24. Plaintiff Borough of Hillsdale is a municipal corporation of the State of New Jersey with principal offices at 380 Hillsdale Avenue, Hillsdale, New Jersey 07642.

25. Plaintiff Township of Mannington is a municipal corporation of the State of New Jersey with principal offices at 491 Route 45, Mannington, New Jersey 08079.

26. Plaintiff Township of Millburn is a municipal corporation of the State of New Jersey with principal offices at 375 Millburn Avenue, Millburn, New Jersey 07041.

27. Plaintiff Borough of Montville is a municipal corporation of the State of New Jersey with principal offices at 195 Changebridge Road, Montville, New Jersey 07045.

28. Plaintiff Borough of Old Tappan is a municipal corporation of the State of New Jersey with principal offices at 227 Old Tappan Road, Old Tappan, New Jersey 07675.

29. Plaintiff Borough of Totowa is a municipal corporation of the State of New Jersey with principal offices at 537 Totowa Road, Totowa, New Jersey, 07512.

30. Plaintiff Borough of Allendale is a municipal corporation of the State of New Jersey with principal offices at 500 W Crescent Avenue, Allendale, New Jersey 07401.

31. Plaintiff Borough of Westwood is a municipal corporation of the State of New Jersey with principal offices at 101 Washington Avenue, Westwood, New Jersey 07675.

32. Plaintiff Township of Hanover is a municipal corporation of the State of New Jersey with principal offices at 1000 Route 10, Whippany, New Jersey 07981.

33. Plaintiff Township of Wyckoff is a municipal corporation of the State of New Jersey with principal offices at 340 Franklin Avenue, Wyckoff, New Jersey 07481.

34. Plaintiff Borough of Wharton is a municipal corporation of the State of New Jersey with principal offices at 10 Robert Street, Wharton, New Jersey 07885.

35. Plaintiff Borough of Mendham is a municipal corporation of the State of New Jersey with principal offices at 2 West Main Street, Mendham, New Jersey 07945.

36. Plaintiff Borough of Oradell is a municipal corporation of the State of New Jersey with principal offices at 355 Kinderkamack Road, Oradell, New Jersey 07649.

37. Plaintiff Borough of Closter is a municipal corporation of the State of New Jersey with principal offices at 295 Closter Dock Road, Closter, New Jersey 07624.

38. Plaintiff Township of West Amwell is a municipal corporation of the State of New Jersey with principal offices at 150 Rocktown Lambertville Road, Lambertville, New Jersey 08530.

39. Plaintiff Township of Washington is a municipal corporation of the State of New Jersey with principal offices at 350 Hudson Avenue, Washington, New Jersey 07676.

40. Plaintiff Borough of Norwood is a municipal corporation of the State of New Jersey with principal offices at 455 Broadway, Norwood, New Jersey 07648.

41. Plaintiff Township of Parsippany-Troy Hills is a municipal corporation of the State of New Jersey with principal offices at 1001 Parsippany Boulevard, Parsippany, New Jersey 07054.

42. Plaintiff Borough of Franklin Lakes is a municipal corporation of the State of New Jersey with principal offices at 480 DeKorte Drive, Franklin Lakes, New Jersey 07417.

43. Plaintiff Township of Cedar Grove is a municipal corporation of the State of New Jersey with principal offices at 525 Pompton Avenue, Cedar Grove, NJ 07009.

44. Plaintiff Township of East Hanover is a municipal corporation of the State of New Jersey with principal offices at 411 Ridgedale Avenue, East Hanover, NJ 07936.

45. Plaintiff Township of Holmdel is a municipal corporation of the State of New Jersey with principal offices at 4 Crawfords Corner Road, Holmdel, NJ 07733.

46. Plaintiff Township of Wall is a municipal corporation of the State of New Jersey with principal offices at 2700 Allaire Road, Wall, NJ 07719.

47. Plaintiff Township of Little Falls is a municipal corporation of the State of New Jersey with principal offices at 226 Main Street, Little Falls, NJ 07424.

48. Plaintiff Michael Ghassali is an individual with an address of 20 Serrell Drive, Montvale, New Jersey 07645. He is a resident, citizen, and taxpayer in the State of New Jersey.

He resides in and is the elected Mayor of the Borough of Montvale, which is classified as a non-urban aid municipality under the Law.

49. Defendant State of New Jersey has an address of c/o Matthew J. Platkin, Attorney General of New Jersey, Office of the Attorney General, Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625.

50. Defendant Affordable Housing Dispute Resolution Program is a body politic established pursuant to the Law. It maintains a principal address of Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625.

51. Defendant Glenn A. Grant is the Acting Administrative Director of the Courts, whose position is established pursuant to Article VI, Section 7, Paragraph 1 of the New Jersey Constitution. Defendant Grant maintains a principal address of Richard J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625.

52. Defendant Housing and Mortgage Finance Agency is a body politic with regulatory authority pursuant to the Law. It maintains a principal address of 637 South Clinton Avenue, Trenton, NJ 08611.

53. Because the Defendants are all state entities with offices in Mercer County, venue is proper under Rule 4:3-2.

FACTS COMMON TO SUBSTANTIVE CLAIMS

54. As our Supreme Court has explained, its Mount Laurel decisions interpreted the General Welfare Clause of the New Jersey Constitution to recognize a constitutional obligation

that municipalities, "in the exercise of their delegated power to zone, 'afford[] a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing.'" In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 584 (2013) (alterations in original) (quoting S. Burlington Cty. NAACP v. Twp. of Mount Laurel, 92 N.J. 158, 205 (1983) ("Mount Laurel II").

55. In the seminal 1983 Mount Laurel II decision, our Supreme Court "fashion[ed]" an "extraordinarily detailed remedy" that was "designed to curb exclusionary zoning practices and to foster development of affordable housing for low- and moderate-income individuals" at that time. Id. at 584.

56. In direct response, the Legislature adopted the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-302 et seq., which "codified the core constitutional holding undergirding the Mount Laurel obligation and included particularized means by which municipalities could satisfy their obligation, mirroring the judicially crafted remedy." Ibid. (citations omitted).

57. Three decades later, in 2013, our Court held that its "remedy, imposed thirty years ago, should not now be viewed as a constitutional straightjacket to legislative innovation," id. at 586, further writing as follows:

Having had three decades of experience with the current affordable housing remedy, we cannot say that there may not be other remedies that may be successful at producing significant numbers of low- and moderate-income housing—remedies that are consistent with statewide planning principles, present space availability, and economic conditions. New Jersey in 2013, quite simply, is not the same New Jersey that it was in 1983. Changed circumstances may merit reassessing how to approach the provision of affordable housing in this state. Assumptions used in devising a remedy in 1983 do not necessarily have the same validity today. That assessment, however, is best made by the policymakers of the Legislature who

can evaluate the social science and public policy data presented to this Court. Indeed, at oral argument, the many parties to this litigation were questioned as to whether their arguments were better suited for legislative hearings on the subject.

That said, our response to the overarching question previously identified is that **the constitutional obligation and the judicial remedy ordered by this Court in Mount Laurel II, and in place today through the FHA, are distinct and severable.** The exceptional circumstances leading this Court to create a judicial remedy thirty years ago, which required a specific approach to the identification and fulfillment of present and prospective need for affordable housing in accordance with housing regions in our state, should not foreclose efforts to assess whether alternative approaches are better suited to modern planning, development, and economic conditions in the Garden State. The policymaking branches may arrive at another approach to fulfill the constitutional obligation to promote ample affordable housing to address the needs of the people of this state and, at the same time, deter exclusionary zoning practices. We hold that our remedy, imposed thirty years ago, should not now be viewed as a constitutional straightjacket to legislative innovation.

[Id. at 585-86 (emphasis added)].

58. Our Supreme Court further wrote that while "detering exclusionary municipal zoning practices and concomitantly encouraging development of affordable housing in housing regions where it is needed were the goals of the obligation recognized under the General Welfare Clause of the New Jersey Constitution," at the same time "[h]ow to respond to the constitutional obligation imposed on municipalities in the exercise of their delegated power to zone is a separate question, and one that might be adequately addressed in different ways tailored to today's circumstances." Id. at 610.

59. Accordingly, the Court concluded: "We therefore recognize, and hold, that the constitutional obligation identified in Mount Laurel I and refined and made applicable to all municipalities in Mount Laurel II is distinct from the judicial remedy that this Court embraced."

Ibid.

60. The Court also noted the following dicta from Mount Laurel II (the "Mount Laurel II Precepts):

- (a) "Development merely for development's sake is not the constitutional goal."
- (b) The Constitution "does not require bad planning."
- (c) The Constitution "does not require suburban spread."
- (d) The Constitution "does not require rural municipalities to encourage large scale housing developments."

Ibid. (citing Mount Laurel II, 92 N.J. at 238).

61. The Court indicated that the Constitution may permit the builder's remedy to have a less prominent status than as presently exists. Id. at 610-11.

62. The Court specifically explained that the Mount Laurel II remedy's "utilization of a pre-fixed allocation of municipal obligations based on forecasted projected growth has been criticized for the crudeness inherent whenever one presumes to anticipate development cycles," and that alternative approaches may be constitutionally viable. Id. at 611.

63. The Court then concluded that the "Mount Laurel II" judicial remedy was "fashioned based on a record created thirty years ago" and therefore "should not be viewed as the only one that presently can secure satisfaction of the constitutional obligation to curb exclusionary zoning and promote the development of affordable housing in the housing regions of this state." Id. at 612.

64. Despite the Court's invitation, the Legislature adopted the Law, which parallels the same approach that has been followed over three decades under the FHA, administered through

COAH and then the courts, without accounting for changes to the State over the past three decades and today's circumstances.

65. Today's circumstances are vastly different from 1983, and the Mount Laurel II judicial remedy – as reiterated through the Law – lacks continued vitality.

66. The Law imposes new affirmative obligations upon Plaintiffs that exceed any remedy ever imposed under the Mount Laurel doctrine.

67. The Law imposes new affirmative obligations that are inconsistent with the Mount Laurel doctrine, including contradicting the Mount Laurel II Precepts, with the following as some examples:

(a) The Law continues to exempt urban aid municipalities from prospective need obligations and requires other municipalities within the region – such as the Plaintiff Plaintiffs – to address such need. This exemption, which was first established as part of the Mount Laurel II remedy and reflected the conditions at that time, lacks the same vitality thirty years later.

(b) The Law codifies that municipalities must continue to "afford a realistic opportunity" for a specified number of low to moderate affordable housing units. Law at § 2(h). In accordance with the Mount Laurel II remedy, to date, municipalities have satisfied many affordable housing obligations through the use of mandatory set-asides. However, with the use of mandatory set-asides, municipalities must allow for multiples of the number of sanctioned housing units to satisfy same. In other words, if a municipality is required to allow 100 affordable housing units, using a 20% mandatory set aside program, the municipality must allow 500 total units. After three decades of affordable housing obligations, the affirmative obligations contained in the Law for the Fourth Round and into perpetuity violate the Mount Laurel II Precepts including that the obligations would not create suburban spread.

(c) The Law does not complete any statistical analysis of population growth over the next ten years for the calculation of prospective need, and it instead imposes a crude calculation using the population growth from the previous ten-year period. Our Supreme Court has acknowledged the potential deficiencies in this approach, which began as part of the Mount Laurel II remedy. This approach contained in the Law is arbitrary and inaccurate and results in affirmative obligations upon the Plaintiffs in excess of the Mount Laurel doctrine's requirements.

(d) In "Mount Laurel I", the Court held that if a municipal ordinance is facially invalid under the General Welfare clause, there is then a burden shifting to the municipality to

establish its "valid superseding reasons for its action and non-action." S. Burlington County NAACP v. Mt. Laurel, 67 N.J. 151, 185 (1975). Now, under the Law, the municipalities are bound to a formula that is fixed in statute, and the Program lacks discretion to afford a particular municipality with relief that may be warranted for particular circumstances.

(e) The Law requires municipalities that receive a vacant land adjustment to "identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so." Law at § 23. This obligation for municipalities to engage in redevelopment to address affordable housing exceeds and contradicts the Mount Laurel doctrine, which is based upon the development of unused suburban lands.

68. The Law contains various classifications, including exempting all urban aid municipalities from the imposition of prospective need, while requiring all remaining non-urban aid municipalities in each region to assume that burden.

69. The Plaintiffs have obtained a report from E-Consult Solutions, Inc., titled "Trends in Household Change and the Urban Aid Exemption, 1970-2020" (the "Memorandum"). A true copy of the Memorandum is attached as **Exhibit E**.

70. The Memorandum is co-authored by Dr. Peter Angelides, who previously qualified as an expert in the so-called Mount Laurel "Numbers Trial" before the Hon. Mary C. Jacobson, A.J.S.C. in 2018.

71. In the 1980s, when the urban aid exemption was first established, many exempt municipalities were in decline as evinced by large losses in population and households that began in the mid-twentieth century and carried through to the 1990s.

72. Today, nearly 40 years later, while some of the underlying conditions that affected many of these exempt municipalities persist, several exempt municipalities are growing, overall, and exempt municipalities now comprise half of the state's growth in households.

73. Specifically, in the 1970s, New Jersey experienced 102% of its change in households in non-urban aid municipalities and -2% in non-urban aid municipalities.

74. In the 2010s (which is the decade used for Fourth Round calculations under the Law), the State experienced 50% of its change in households in non-urban aid municipalities and 50% in non-urban aid municipalities.

75. In the 1990s, the Low-Income Housing Tax Credit ("LIHTC") program funded the development of 2,710 units in urban aid municipalities (comprising 3% of the prospective need) and 4,602 units in non-urban aid municipalities (comprising 4% of the prospective need).

76. During the 2010s, the LIHTC program funded the development of 6,635 units in urban aid municipalities (comprising 8% of the prospective need) and 8,188 units in non-urban aid municipalities (comprising 10% of the prospective need).

77. The economic conditions that supported the establishment of an urban aid exception in 1983 no longer exist.

78. When the Mount Laurel doctrine and remedy were established, the urban aid municipalities were experiencing population declines, and the State's entire net population growth was contained in the non-urban aid municipalities. It followed that the urban aid municipalities lacked the same economic ability to produce affordable housing units as non-urban aid municipalities, leading to the urban aid exemption in 1983.

79. Four decades later, the State's population growth is exactly even (50%/50%) between the urban aid and non-urban aid municipalities.

80. There is an upward trajectory in the number of LIHTC housing units developed in the urban aid municipalities, all as part of a trend that outpaces the growth in such units developed in non-urban aid municipalities.

81. The population and LIHTC data establish that the urban aid municipalities no longer possess economic conditions that prevent them from developing affordable housing units and there is no longer any justification for them to be exempt from a prospective need housing obligation.

82. Urban aid municipalities are developing a significant number of affordable housing units that are not being counted in the fair share formula under the Law.

83. This results in a statistical over-imposition of fair share upon the non-urban aid municipalities – including the Plaintiff Municipalities.

84. Over the past decade, 6,635 LIHTC affordable housing units were developed in urban-aid municipalities, along with 8,118 LIHTC affordable housing units in non-urban aid municipalities.

85. This means that 45% of the State's LIHTC affordable housing development occurred in urban aid municipalities over the past decade available to review.

86. The fixed number of LIHTC units is underinclusive of the total number of affordable housing units that have been developed in urban aid municipalities, as many affordable housing units are created outside of the LIHTC program, so the amount of affordable housing development in the urban aid municipalities and in the aggregate is higher.

87. The Law requires that prospective need be calculated as 40% of the region's population growth between the past two censuses, which has been calculated at 84,697 units.

88. This calculation includes the significant population growth that is being experienced today in the urban-aid municipalities.

89. The calculated prospective need is then spread among the non-urban aid municipalities only to allocate them each their supposed "fair share," while each of the urban aid municipalities are exempt and do not count towards same.

90. Under the Law, neither the overall calculated prospective need – nor each non-urban aid municipality's obligation – is adjusted in any way for the significant development of affordable housing that is occurring in the urban aid municipalities.

91. The result is that the non-urban aid municipalities are being subjected to a "fair share" prospective need calculation that is an overestimation because it does not account for affordable housing development that is occurring and contributing towards satisfying the need in the region.

92. Over the past decade, 8% of the prospective need was satisfied through LIHTC development in urban aid municipalities.

93. This means that the LIHTC calculation alone bears out that the Law's formula overestimates each non-urban aid municipality's fair share by 8%.

94. The actual overestimation is higher, as that percentage does not take into account
a) the overall trend of an increase in affordable housing development in the urban aid

municipalities that is likely to continue in the Fourth Round, as well as b) the non-LIHTC affordable housing development occurring in the urban aid municipalities. In sum, the prospective need calculation being imposed upon the non-urban aid municipalities is not a "fair share" at all.

95. The Law's calculation of prospective need also does not account for the number of housing units that the New Jersey economy is able to build in a particular period of time.

96. During the 2010 decade that underlies the Law's prospective need calculation of 84,967 units, approximately 140,000 new residential certificates of occupancy were issued for all types of housing during this period.

97. The Law's calculation of prospective need therefore represents approximately 61% of all housing types produced in the preceding decade.

98. It is not economically feasible for New Jersey to develop 61% of its new housing stock as affordable housing.

99. If the Law's prospective need is to be satisfied using a set-aside model, which is necessary in the absence of subsidization, a typical 20% set-aside would mean the required construction of 425,000 housing units in the next ten-year period.

100. The Law's prospective need affordable housing obligations are not "realistic," which is the legal standard that underpins the Mount Laurel doctrine.

101. By calculating a prospective need that is entirely unrealistic and untethered to the economic realities, the Law allows developers to target municipalities of their choosing where

they will earn the highest rate of return, resulting in disparate impacts to less wealthy municipalities that may seek and benefit from the proposed development that the Law fosters.

102. Under the Law, the Legislature "declares" that the Fair Housing Act – as amended by the Law – "is intended to implement the Mount Laurel doctrine." Law at § 2(p).

103. By making this statement in the Law, the Legislature deflects political responsibility upon the courts for its imposition of affordable housing mandates upon the Plaintiffs.

104. Despite the Legislature's declaration in the Law, it is the judiciary that "has the obligation and the ultimate responsibility to interpret the meaning of the Constitution." N.J. Republican State Comm. v. Murphy, 243 N.J. 574, 591 (2020).

105. The Legislature lacks the constitutional role to determine if its actions are required by the Mount Laurel doctrine, which has arisen from our Supreme Court's interpretation of the General Welfare Clause of the New Jersey Constitution.

106. Under the New Jersey Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., a person "whose rights, status, or other relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." N.J.S.A. 2A:16-53.

107. The Plaintiffs' rights, status, and other relations relative to the Fourth Round affordable housing mandates are all affected by the Law.

108. The Plaintiffs are directly and negatively impacted by the Law, as it imposes affirmative obligations upon them to which they object, including but not limited to affirmatively

requiring their governing bodies to take actions relative to the Fourth Round affordable housing mandates through the Program.

109. Under 42 U.S.C. § 1983 et seq., a party that is found to have been deprived of his or her civil rights under the federal constitution and laws is entitled to recover reasonable attorney's fees. 42 U.S.C. § 1988(b).

110. Under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), "[a]ny person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State[,]" may bring an action for injunctive or other appropriate relief and the prevailing party may receive attorneys' fees. N.J.S.A. 10:6-2(f)

COUNT ONE
DECLARATORY JUDGMENT/JUDICIAL REVIEW
MOUNT LAUREL DOCTRINE

111. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

112. The Plaintiffs require a declaratory judgment from our courts on whether the terms contained in the Law are in fact required by the Mount Laurel doctrine as the Legislature claims.

113. This declaratory judgment will inform the Plaintiffs, the Legislature, and the people of New Jersey whether the Law is required by or exceeds the requirements of the General Welfare Clause.

114. In the absence of a declaratory judgment from our courts, the Legislature may continue to take unbridled action in the affordable housing space under the guise of implementing

the Mount Laurel doctrine, with the Plaintiffs and the people of New Jersey lacking knowledge on whether the Legislature's mandates contained in the Law are in fact required by the General Welfare Clause as the Legislature claims.

115. To the extent the Law exceeds the requirements of the General Welfare Clause, it was adopted by the Legislature under the false pretense that the subject provisions implemented the Mount Laurel doctrine when they did not.

116. The courts must therefore provide a declaratory judgment to determine if the Law is consonant with the Mount Laurel constitutional injury it purports to address.

117. The courts must further provide judicial review to determine if the Law is consonant with the Mount Laurel constitutional injury it purports to address.

118. For example, U.S. Supreme Court has established the “congruence and proportionality” test to review the validity of Congress’ constitutional remedial actions under the Fourteenth Amendment enforcement clause. See *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997).

119. The Law’s classifications and terms are neither congruent nor proportional to the Mount Laurel injury that it purports to address.

WHEREFORE, the Plaintiffs seek a declaratory judgment that the Law exceeds the requirements of the General Welfare Clause of the New Jersey Constitution, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT TWO
DECLARATORY JUDGMENT
UNFUNDED LOCAL MANDATE

120. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

121. The Law imposes numerous direct costs upon the Plaintiffs, including but not limited to the following:

(a) The need to hire attorneys, planners, and other professionals to assess and calculate the affordable housing obligation prescribed by the Law.

(b) The need to hire attorneys, planners, and other professionals to pursue an application and adjudication through the Program.

(c) The need to hire attorneys, planners, and other professionals to address and satisfy redevelopment obligations that are imposed upon municipalities that receive vacant land adjustments.

(d) The need to hire attorneys, planners, and other professionals to implement affordable housing development required by the Law.

(e) The need to subsize affordable housing development that is mandated by the Law, including but not limited to land and project costs.

122. As provided in Article VII, Section 2, Paragraph 5 of the New Jersey Constitution, the voters adopted a constitutional amendment that prohibits state laws or regulations constituting "unfunded mandate[s] upon . . . municipalities" and establishes the Council on Local Mandates ("COLM") vested with the power of invalidating laws constituting unfunded local mandates.

123. The constitutional amendment contains an exception for laws "which implement the provisions of this Constitution." N.J. CONST. art. VII, § 2, ¶ 5(c)(5).

124. In In re Tp. of Medford, COLM Decision 8-08, the COLM heard a claim that past amendments to the FHA and ensuing regulations promulgated by COAH constituted unfunded mandates. A true copy of this decision is attached as **Exhibit B**.

125. The petitioner municipality, Medford, argued it could not satisfy its affordable housing obligations without completing municipally-sponsored 100% affordable housing projects at municipal cost, thus constituting an unfunded local mandate. Id. (slip op. at 1-3).

126. The COLM majority dismissed Medford's claim, holding as follows: "The Council cannot pass judgment on what is constitutionally 'necessary,' a responsibility of the judiciary. . . . Whether the challenged provisions appropriately advance their intended goal is a question to be resolved by the Courts, not this Council." Id. (slip op. at 7-8).

127. A concurring member of the COLM voted to dismiss the case finding that participation in the COAH process was optional for municipalities. Id. (slip op. at 11).

128. Because the COLM is unable to pass judgment on what is constitutionally "necessary" and leaves that to the courts, the Plaintiffs require a judicial determination from the courts on whether the provisions of the Law are constitutionally necessary under the General Welfare Clause.

129. In the event the provisions of the Law are not constitutionally necessary, the Plaintiffs have standing under our Constitution to seek invalidation of the Law before the COLM.

130. The Law provides that municipalities "shall" participate in the Program, *see e.g.* Law at § 3(f)(1)(b), and therefore it does not make participation optional, as the concurring member of COLM found to be the case with COAH under the FHA.

WHEREFORE, the Plaintiffs seek a declaratory judgment that the Law exceeds what is "necessary" to implement the Constitution for purposes of Article VII, Section 2, Paragraph 5 of the same, requiring invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT THREE
DECLARATORY JUDGMENT
JUDICIAL REVIEW – FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

131. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

132. The Law, through its terms and classifications, fails judicial review under an equal protection analysis under the Fourteenth Amendment to the United States Constitution, even if a rational basis review is applied.

WHEREFORE, the Plaintiffs seek a declaratory judgment that the Law fails judicial review, requiring invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT FOUR
DECLARATORY JUDGMENT
JUDICIAL REVIEW – GENERAL WELFARE CLAUSE

133. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

134. The Law, through its terms and classifications, fails judicial review under an equal protection analysis under the General Welfare Clause to the New Jersey Constitution.

135. The Law, through its terms and classifications, fails judicial review under an analysis under the General Welfare Clause to determine if the Law implements the Mount Laurel doctrine as the Law purports.

WHEREFORE, the Plaintiffs seek a declaratory judgment that the Law fails judicial review, requiring invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT FIVE
DECLARATORY JUDGMENT
JUDICIAL REVIEW – SPECIAL LEGISLATION AND ZONING

136. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

137. The Law, through its terms and classifications, violates judicial review afforded by the New Jersey Constitution's prohibition against special legislation, N.J. CONST. art. IV, § 7, ¶ 7.

138. The Law, through its terms and classifications, violates judicial review afforded by the New Jersey Constitution's requirement that the Legislature through "*general laws . . .* may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use." N.J. CONST. art. IV, § 6, ¶ 2 (emphasis added).

WHEREFORE, the Plaintiffs seek a declaratory judgment that the Law fails judicial review, requiring invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

FACTS COMMON TO PROCEDURAL CLAIMS

139. Under the FHA, the Legislature established the Council on Affordable Housing [("COAH")] to have "primary jurisdiction for the administration of housing obligations with sound regional planning considerations in this State." N.J.S.A. 52:27D-304 (1985) (repealed).

140. COAH was established in, but not of, the Department of Community Affairs. N.J.S.A. 52:27D-305(a) (1985) (repealed). As such, COAH was contained within the Executive Branch.

141. COAH was comprised of twelve members, four of whom were "elected officials representing the interests of local government," and all of whom were appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 52:27D-305(a) (1985) (repealed).

142. Earlier this year, the Law was signed by the Governor and made effective on March 20, 2024.

143. The Law repealed COAH and instead established the so-called Affordable Housing Dispute Resolution Program (the "Program").

144. The Law does not specify the branch of state government under which the Program exists.

145. However, the Law makes reference to filings with the Program being made to a "court." Law at § 2(o).

146. The Law provides that the ADC shall appoint all of the members of the Program, Law at § 5(a), and it further vests the ADC with significant authority relating to the Program.

147. The Law requires the Plaintiffs to file with the Program a "determination of present and prospective fair share obligation" "[f]or the fourth round of affordable housing obligations." Law at § 3(f)(1)(b).

148. The Program then has jurisdiction to establish procedures and adjudicate challenges to disputes to a determination by any of the Plaintiffs. Law at § 3(f).

149. Under the New Jersey Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., a person "whose rights, status, or other relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." N.J.S.A. 2A:16-53.

150. The Law provides for the Plaintiffs having their rights and obligations determined by the Program.

151. Accordingly, the Plaintiffs have standing to seek a judicial determination regarding the constitutional and legal infirmities with the ADC and Program's authority under the Law.

COUNT SIX
DECLARATORY JUDGMENT
VIOLATION OF SEPARATION OF POWERS/JUDICIAL ARTICLE

152. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

153. Article III of the New Jersey Constitution is titled, "Distribution of Powers of Government," and it provides:

The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any

of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

154. This constitutional provision affirms the "separation of powers doctrine," which is "premised on the theory that government works best when each branch of government acts independently and within its designated sphere, and does not attempt to gain dominance over another branch. Each branch of government operates within a greater framework of checks and balances that is intended to preserve our system of ordered liberty." In re P.L. 2001, 186 N.J. 368, 378 (2006).

155. The separation of powers protects the people by having powers distributed among co-equal branches of government subject to checks and balances.

156. Under the New Jersey Constitution, the executive branch is entrusted with the "executive power" of the State. N.J. CONST. art. V, § 1, ¶ 1.

157. In addition, "[a]ll executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments" N.J. CONST. art. V, § 4, ¶ 1.

158. Moreover, "[e]ach principal department shall be under the supervision of the Governor." N.J. CONST. art. V, § 4, ¶ 2.

159. The Governor is the head of the executive branch and is the only statewide elected official (other than the Lieutenant Governor) under our Constitution.

160. The New Jersey Constitution "vest[s]" the "judicial power" in the Supreme Court, Superior Court, and "other courts of limited jurisdiction" that may be established by law. N.J. CONST. art. VI, § 1.

161. Under the FHA, the Legislature established COAH within the Executive Branch, in but not of the Department of Community Affairs.

162. In contrast, the Law does not expressly vest the Program in any of the three branches of government, as required by Article III of the New Jersey Constitution.

163. Because the Program is not allocated by law to one of the executive branch's twenty principal departments, it cannot be an executive branch function.

164. Given that the Program is entirely appointed by the ADC, and that the Law references filings with the Program being made with a "court," it follows that the Program is established in the judicial branch.

165. As such, the Law transfers functions previously existing in the executive branch pursuant to COAH to the judicial branch under the Program.

166. On December 19, 2023, the New Jersey Judiciary's Director of Professional and Governmental Services Deirdre M. Naughton, Esq. purportedly sent a memorandum to the Assembly Housing Committee, a purported copy of which is attached hereto as **Exhibit C**. The memorandum addressed Bill A-4, which was later amended and became the Law. Among other things, the memorandum raised separation of powers concerns by vesting the judiciary with powers previously belonging to COAH:

The legislation seeks to reassign many of the administrative functions previously delegated to the Council on Affordable Housing (COAH) to the Judiciary. The bill would require the Judiciary to create rules and procedures and to appoint "special masters" to determine affordable housing obligations. Those functions, however, are administrative in nature and appropriate for the Executive Branch. Our State courts hear cases and controversies – they cannot function as an administrative body.

The current language would require the Judiciary to "create law," i.e., make a determination regarding how affordable housing need is determined. This requirement not only presents constitutional issues, but is inappropriate because the Judiciary would later be called to decide whether such "law" is constitutional and legally sound. The Judiciary cannot act in both conflicting roles.

167. To the extent the Program exists within the judicial branch, it possesses various powers under the Law that are inconsistent with the separation of powers, including that a party may "file a request for information from the program regarding the progress of development at any inclusionary development site in the housing element and fair share plan of a municipality, or at any alternative site proposed by the municipality," to which the Program "may respond to a request independently or in coordination with the [Department of Community Affairs,]" an executive branch principal department. Law at § 13(c)(2).

168. The Legislature failed to establish the Program as an "other court[]" of limited jurisdiction" as necessary for the Program to be vested with the powers afforded to the judicial branch under the judicial article of the New Jersey Constitution.

169. The Plaintiffs are harmed by having their rights and obligations adjudicated by the Program, a body that is improperly established and violates separation of powers principles.

170. The Plaintiffs are harmed by the Law vesting numerous powers within the judicial branch, which is unelected and not intended under the Constitution to exercise executive powers.

171. The Plaintiffs are harmed by the Law vesting numerous powers within the judicial branch as part of the so-called Program and outside of a court, which is the sole structure in which the judicial power may be vested.

WHEREFORE, Plaintiffs demand a declaratory judgment determining that the Law violates the separation of powers and judicial articles of the New Jersey Constitution, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT SEVEN
DECLARATORY JUDGMENT
INVALID APPOINTMENT PROCESS

172. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

173. Under the Law, the ADC shall appoint all members of the Program. Law at § 5(a).

174. To this end, the Law provides that the ADC "shall update the assignment of designated Mount Laurel judges to indicate which current or retired and on recall judges of the Superior Court shall serve as members, within 60 days following the effective date of [the Law]." Ibid.

175. The Law provides that the ADC "may appoint other qualified experts as members if sufficient current and retired judges are unavailable." Ibid.

176. The Law provides that the ADC "shall take into consideration in making such appointments experience in the employment of alternative dispute resolution methods and in relevant subject matter." Ibid.

177. Under the New Jersey Constitution, the "judicial power shall be vested in a Supreme Court, a Superior Court, and other courts of limited jurisdiction. The other courts and their jurisdiction may from time to time be established, altered or abolished by law." N.J. CONST. art. VI, § 1.

178. The Chief Justice has the sole and plenary power to "assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears." N.J. CONST. art. VI, § 7, ¶ 2.

179. With respect to "other courts," when such an "inferior court" has "jurisdiction extending to more than one municipality," the Constitution requires that the judges be nominated by the Governor with the advice and consent of the Senate. N.J. CONST. art. VI, § 6, ¶ 1.

180. Under the Law, the Program has jurisdiction extending to more than one municipality.

181. In order for the Program to exercise powers pursuant to the judicial article, it must be "vested" as an "other court[] of limited jurisdiction" under the New Jersey Constitution, which the Law does not provide for.

182. Even if the Program is considered to be a lawfully established "other court[]," the Law unconstitutionally establishes the Program with an appointment structure that does not provide for its membership being nominated by the Governor with the advice and consent of the Senate.

183. The Law also unconstitutionally infringes upon the Chief Justice's sole and plenary power to assign Superior Court judges by providing the ADC with authority to appoint Superior Court judges to the Program.

184. The Law unconstitutionally vests an appointing power in the ADC, who was never intended under the Constitution to have the power to appoint members to commissions or courts such as the Program.

185. The Law unconstitutionally permits so-called "other qualified experts" to be appointed by the ADC and to be members of the Program, completely outside of the advice and consent process, contrary to the judicial article.

186. The Plaintiffs will be harmed by having their rights and obligations under the Law determined by a Program that operates outside of the constitutional appointment process prescribed for the judiciary.

WHEREFORE, Plaintiffs demand a declaratory judgment determining that the appointment structure of the Program as set forth in the Law is unconstitutional, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT EIGHT
DECLARATORY JUDGMENT
INVALID APPOINTMENT OF RETIRED JUDGES NOT ON RECALL

187. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

188. The Law provides that the ADC shall "update the assignment of designated Mount Laurel judges to indicate which current or **retired and on recall** judges of the Superior Court shall serve as members, within 60 days following the effective date of [the Law]." Law at § 5(a) (emphasis added).

189. On or about May 17, 2024, the ADC "appointed the following retired judges to serve on the Affordable Housing Dispute Resolution Program ("Program"): Hon. Thomas C. Miller (chair); Hon. Ronald E. Bookbinder; Hon. Thomas F. Brogan; Hon. Stephan C. Hansbury; Hon. Mary C. Jacobson; Hon. Julio L. Mendez; Hon. Paulette M. Sapp-Peterson." This was memorialized in a Notice to the Bar, a true copy of which is attached hereto as **Exhibit D**.

190. Judges that are "retired and on recall" attain such status pursuant to the Judicial Retirement Systems Act, N.J.S.A. 43:6A-1 et seq.

191. N.J.S.A. 43:6A-13 provides that "[s]ubject to rules of the Supreme Court, any . . . judge of the Superior Court . . . who has retired on pension or retirement allowance may, with his consent, be recalled by the Supreme Court for temporary service within the judicial system other than the Supreme Court."

192. Judge Hansbury was appointed by the Supreme Court for recall service through March 10, 2025, pursuant to a February 27, 2023 order of the Supreme Court.

193. Judge Sapp-Peterson was appointed by the Supreme Court for recall service through July 6, 2025, pursuant to a July 6, 2023 order of the Supreme Court.

194. Judge Ronald Bookbinder was appointed by the Supreme Court for recall service through June 30, 2025, pursuant to an April 4, 2023 order of the Supreme Court.

195. However, the four remaining retired judges do not appear to have been appointed to recall service by our Supreme Court at the time of their appointment by the ADC to the Program.

196. The ADC's initial appointment of retired judges not on recall to the Program violates the Law as they did not qualify under same.

197. The Plaintiffs will be harmed by having their rights and obligations adjudicated by members of the Program that were not appointed in accordance with the Law.

WHEREFORE, the Plaintiffs demand a declaratory judgment determining that the ADC's purported appointments to the ADC violate the Law, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT NINE
DECLARATORY JUDGMENT
ULTRA VIRES AND UNCONSTITUTIONAL RULEMAKING BY ADC

198. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

199. On December 18, 2024, the ADC issued a purported “Notice to the Bar and Public” that incorporated and appended Directive #14-24 dated December 13, 2024 (the “Directive”). A true copy is attached as **Exhibit F**.

200. Under the Directive, the ADC “promulgates procedures and guidelines implementing the [Law].” Directive at 1.

201. The Law at § 3(f)(1)(c) provides that “For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal determination to be consolidated.”

202. The Directive at Section II(C) provides that “[w]here appropriate and in the discretion of the chairperson, cases may be consolidated for handling based on similar facts or legal issues and a determination that consolidation would support expeditious or efficient case disposition.”

203. The Directive at Section II(C) is ultra vires as the ADC promulgates regulations where the Program has the statutory authority to do so.

204. The Directive at Section II(C) is ultra vires as it provides for consolidations based upon a standard that is inconsistent with the statute and could allow for the consolidation of challenges among multiple municipalities, while the statute only provides for consolidation as to a particular municipal determination.

205. The Law at § 5(g) provides that the ADC “shall promulgate, maintain, and apply a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, and may establish additional, more restrictive ethical standards in order to meet the specific needs of the program, and of county level housing judges.”

206. The Directive at Section IV provides that “Program members who are retired judges serving on recall are subject to the Code of Judicial Conduct and the Rules of Professional

Conduct[,]” while “Program members who are retired judges not serving on recall are subject to the Rules of Professional Conduct.”

207. The Directive at Section IV is ultra vires insofar as it allows the Program’s members who are “retired judges not serving on recall” to be governed by the Rules of Professional Conduct, which are not modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, or any more restrictive ethical standard thereto.

208. Through this Directive, and with a majority of the Program’s members being retired and not on recall judges, the Plaintiffs stand to be deprived of their statutory right to have their affordable housing obligations adjudicated by an individual that is subject to the Code of Judicial Conduct as a floor for their ethical obligations.

209. There are material differences between the Code of Judicial Conduct and the Rules of Professional Responsibility.

210. The Law at § 3(f)(2)(a) requires municipalities to “adopt a housing element and fair share plan as provided for by the “Fair Housing Act,” P.L.1985, c. 222 (C.52:27D–301 et al.), and propose drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation established in paragraph (1) of this subsection on or before June 30, 2025.”

211. The Law in this section does not contain any statutory authority for the ADC to promulgate regulations. In contrast, the Law’s preceding section provides that “The Administrative Director of the Courts shall establish procedures for the program to consider a challenge and

resolve a dispute initiated by an interested party pursuant to subparagraph (b) of this paragraph,” which governs fair share calculations. Law at § 3(f)(1)(c) (citing Law § 3(f)(1)(b)).

212. The Directive appends a document titled “Required Elements of Housing Element and Fair Share Plan” (the “Required Elements”). It states as follows:

A. The Housing Element and Fair Share Plan (HEFSP) will need to be prepared to reflect all of the terms of the applicable settlement agreement and to meet all of the statutory requirements for such documents **as well as the following**:

1. One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.

2. The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.

3. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom

distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

Once the HEFSP has been prepared, **it must be reviewed by Fair Share Housing Center** and the Program's Special Adjudicator **for compliance with** the terms of the executed settlement agreement, the Fair Housing Act (FHA) and **Uniform Housing Affordability Controls (UHAC) regulations**. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

B. The HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

1. All zoning amendments (or redevelopment plans, if applicable).
2. An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).
3. The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
4. An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
5. An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
6. An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to

expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.

7. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.

8. Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.

9. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

C. Consistent with N.J.A.C. 5: 93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:

1. The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved.

2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.

[(Emphasis added)].

213. The Required Elements are ultra vires as the Law does not afford the ADC with any statutory authority to promulgate regulations relative to the review of housing elements and fair share plans by the Program.

214. The Required Elements are ultra vires as it imposes requirements upon the municipalities beyond the statute's requirements by its express text.

215. The Required Elements are ultra vires as they require documents to be submitted beyond the "drafts of the appropriate zoning and other ordinances and resolutions" that are all that is required by the Law.

216. The Required Elements are ultra vires as they require a preemptive review by "Fair Share Housing Center," a non-profit corporation of the State of New Jersey that is not enumerated in the Law in any respect.

217. The New Jersey Constitution's General Welfare Clause has been interpreted to afford procedural due process protections ("Procedural Due Process"), as outlined hereafter.

218. In Holmdel Builders Ass'n v. Holmdel, 121 N.J. 550 (1990), our Supreme Court recognized that "[a]dministrative rulemaking serves the interests of fairness and due process. Administrative agencies should inform the public and, through rules, 'articulate the standards and principles that govern their discretionary decision in as much detail as possible.' Rulemaking is also important to assure the faithful effectuation of the legislative mandate." Id. at 578 (internal citations omitted).

219. Our Courts have further held that mechanically, the due process protections to be afforded during the rulemaking process are notice to the public and an opportunity for the public to comment, as well as an articulation of the basis, standards, and principles informing the exercise of an agency's discretion. Grimes v. New Jersey Dept. of Corrections, 452 N.J. Super. 396, 407 (App. Div. 2017).

220. Our Courts have held that rulemaking carries a constitutional dimension.

221. In re Dept. of Insurance Order Nos. A89-119 & A90-125, 129 N.J. 365, 382 (1992), our Supreme Court recognized that even in instances where full compliance with a statutory regime such as the Administrative Procedure Act may not be required, “some process” is required, further cementing procedural due process protections in the exercise of an agency’s rulemaking power.

222. The Law did not afford the Plaintiffs with any process, such as notice and comment, which would have allowed them to raise the foregoing issues without needing to do so through the instant litigation.

223. The ADC’s purported rulemaking violates Plaintiffs’ Procedural Due Process rights.

WHEREFORE, Plaintiffs demand a declaratory judgment determining that the ADC’s promulgated Directive is ultra vires and/or promulgated in violation of due process rights, requiring invalidation of the Directive, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT TEN
DECLARATORY JUDGMENT
UNCONSTITUTIONAL DELEGATION TO ADC/PROGRAM

224. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

225. Under the New Jersey Constitution, the Chief Justice of the Supreme Court "shall be the administrative head of all the courts in the State." N.J. CONST. art. VI, § 7, ¶ 1.

226. In turn, the New Jersey Constitution provides that the Chief Justice "shall appoint an Administrative Director to serve at his pleasure." Ibid.

227. The Legislature codified this constitutional position at N.J.S.A. 2A:12-1 et seq., and it is generally referred to as the Administrative Director of the Courts ("ADC").

228. Among other things, in N.J.S.A. 2A:12-3, the Legislature prescribed that the ADC shall, "subject to the direction of the [C]hief [J]ustice," perform the following functions:

(a) Examine the administrative methods, systems and activities of the judges, clerks, stenographic reporters and employees of the courts and their offices and make recommendations to the chief justice with respect thereto.

(b) Examine the state of the dockets of the courts, secure information as to their needs for assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken.

(c) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the courts and make recommendations with respect thereto.

(d) File requests for appropriations or permission to spend, as request officer for the supreme and superior courts and, as approval officer, approve and sign all encumbrance requests and statements of indebtedness on behalf of said courts.

(e) Make necessary arrangements for accommodations for the use of the supreme and superior courts and the clerks thereof and for the purchase, exchange, transfer and distribution of equipment and supplies for said courts and clerks.

(f) Investigate and collect statistical data and make reports relating to the expenditures of public moneys, state, county and municipal, for the maintenance of the courts and the offices connected therewith.

(g) Examine, from time to time, the operation of the courts, investigate complaints with respect thereto, and formulate and submit to the chief justice recommendations for the improvement thereof.

(h) Act as secretary of the judicial conference held pursuant to supreme court rules.

(i) Attend to such other matters as may be assigned by the chief justice.

229. Unlike the performance of these ministerial duties, the Law requires the ADC to perform numerous policymaking and rulemaking tasks, including as follows:

(a) The ADC "shall establish procedures for the program to consider a challenge and resolve a dispute initiated by an interested party" Law at § 3(f)(1)(c).

(b) The ADC "shall establish procedures for any further appellate review of such determinations, and may establish an expedited process for consolidated review of any such challenged by the Supreme Court, provided that any party seeking appellate review shall not change the deadlines established for municipal filing of a housing element and fair share plan, and implementing ordinances." Ibid.

(c) The ADC "shall develop procedures to enable a county level housing judge to resolve this dispute over the issuance of compliance certification through a summary proceeding in Superior Court following the year in which a new round begins." Law at § 3(f)(2)(d).

(d) The ADC "may assign additional responsibilities to the program for resolving disputes arising out of or related to the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D–301 et al.)." Law at § 5(e).

(e) The ADC "shall establish procedures for the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D–301 et al.), for circumstances in which the program is unable to address the dispute within the time limitations established pursuant to section 3 of P.L.2024, c. 2 (C.52:27D–304.1)." Law at § 5(f).

(f) The ADC "shall promulgate, maintain, and apply a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, and may establish additional, more restrictive ethical standards in order to meet the specific needs of the program, and of county level housing judges." Law at § 5(g).

230. The Law further requires the Program to perform numerous rulemaking tasks, including as follows:

(a) The Program shall "shall establish procedures to summarily dismiss any objection or challenge that does not meet these minimum standards." Law at § 3(f)(1)(c).

(b) The Program "may incorporate any existing or newly established court mediation or alternative dispute resolution process to assist the program in resolving disputes and facilitating communication among municipalities and interested parties." Law at § 5(c).

231. As outlined supra, the ADC has issued regulations purportedly pursuant to this statutory authority that are ultra vires and demonstrate the incongruity of the ADC acting in the affordable housing space with the constitutional role.

232. The New Jersey Constitution provides that "[t]he Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts." N.J. CONST. art. VI, § 2, ¶ 3.

233. The Law unconstitutionally provides the ADC and Program with power over rulemaking, which is vested in the Supreme Court.

234. The Law unconstitutionally delegates to the ADC and Program discretion over practice and procedure, which is vested in the Supreme Court subject to the law.

235. The Law unconstitutionally vests the ADC with powers that are inconsistent with the constitutional intent for this unelected, appointed position that serves at the pleasure of the Chief Justice.

236. The Plaintiffs will be harmed by having rulemaking for the administration, practice, and procedure of affordable housing determinations made by parties other than our Supreme Court as provided by the Constitution.

237. The ADC has engaged in rulemaking, the terms of which facially exceed the scope of the constitutional position.

WHEREFORE, Plaintiffs demand a declaratory judgment determining that the Law violates the Supreme Court's constitutional role concerning rules, practice, and procedure under the New Jersey Constitution, invalidation of the Law, injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

COUNT ELEVEN
DECLARATORY JUDGMENT
UNCONSTITUTIONAL AND ILLEGAL RULEMAKING BY HMFA

238. The Plaintiffs repeat and reallege each of the foregoing allegations and makes the same a part hereof as if set forth at length.

239. The Law contains provisions at N.J.S.A. 52:27D-313.3(b) and N.J.S.A. 52:27D-321(f) that required the HMFA to promulgate regulations by December 20, 2024.

240. The Legislature's required promulgation of HMFA rules by December 20, 2024 afforded each New Jersey municipality with approximately one-month to consider the regulations before determining whether to submit to the jurisdiction of the Program by the January 31, 2025 deadline.

241. On December 19, 2024, HMFA issued rulemaking that purports to be valid from the "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 [APA]." A true copy of the rulemaking is attached as **Exhibit G**.

242. Said rulemaking was completed without adhering to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. ("APA"), including notice and comment.

243. HMFA submitted a certification of Jonathan Sternesky, DPA, who is their Director of Policy and External Affairs dated January 8, 2024 to the Appellate Division. A true copy is attached as **Exhibit H**.

244. The certification claims that HMFA was required to “swiftly adopt temporary regulations” by December 20, 2024.

245. HMFA nevertheless certifies that they “reached out to stakeholders to solicit their feedback about their experiences and lessons learned in following and administering the prior UHAC and how the mandatory changes prescribed in the Act would impact their ability to follow and implement the rules.”

246. HMFA states these included “discussions about how UHAC would have to be amended to effectuate the substantive requirements of the Act.”

247. HMFA makes reference to four virtual events with organizations including “housing advocacy organizations” on May 23, 2024, May 30, 2024, June 14, 2024, and July 29, 2024, followed by “a dozen follow up meetings with numerous governmental and external stakeholders” from October 25, 2024 to December 3, 2024.

248. By having the opportunity to engage in this iterative process with purported stakeholders over a greater than six (6) month period, it is clear that there was no emergency that temporally prohibited HMFA from engaging in notice and comment.

249. HMFA’s choice to engage with purported stakeholders, while not engaging with parties such as Plaintiffs who are actually regulated by the regulations under review through notice and comment, further demonstrates the lack of process.

250. N.J.S.A. 52:27D-313.3(b) is titled in relevant part “Uniform Housing Affordability Controls[] update” and required the HMFA to adopt the regulations in accordance with the APA.

251. In contrast, N.J.S.A. 52:27D-321(f) is titled in relevant part “controls for maintenance of housing” and contains an exception allowing HMFA to promulgate regulations without adhering to the APA.

252. A proper statutory interpretation reconciling N.J.S.A. 52:27D-313.3(b) and N.J.S.A. 52:27D-321(f) concludes that HMFA’s overall rule adoption is governed by N.J.S.A. 52:27D-313.3(b) and required compliance with the APA.

253. The Plaintiffs have challenged the validity of the rules before the Superior Court, Appellate Division in Docket No. A-1247-24.

254. The Plaintiffs sought a stay of the provisions of the Law from the Superior Court, Appellate Division, including specifically the January 31, 2025 deadline before the Program, because it would be required to rely upon the HMFA’s illegal rulemaking in making a determination to do so.

255. On January 10, 2025, the Superior Court, Appellate Division issued an Order on Emergent Motion, a true copy of which is attached as **Exhibit I**. In relevant part, the Appellate Division held that it lacked jurisdiction to consider the Plaintiffs’ requested relief from the Law itself, as well as any claim that the Law’s exemption of rulemaking from the APA violates Procedural Due Process. As such, the Law Division has jurisdiction over these claims.

256. The Plaintiffs seek equitable relief from the Law's January 31, 2025 deadline, compliance with the Law, and potential loss of Fourth Round immunity, until such time as the HMFA promulgates rules in accordance with the APA.

257. The Plaintiffs seek a declaratory judgment that the Law's exemption of HMFA's regulations from any APA compliance violates Procedural Due Process.

WHEREFORE, Plaintiffs demand a declaratory judgment determining that the HMFA's promulgated regulations were illegally promulgated without notice and comment and/or the Law's exemption of any APA process violated due process, requiring injunctive relief barring enforcement of the Law, reasonable attorneys' fees, and such other relief as this Court may deem proper and just.

KING, MOENCH & COLLINS, LLP
Attorneys for Plaintiffs



By: Michael L. Collins, Esq.

Dated: January 13, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Michael L. Collins, Esq. is hereby designated as trial counsel in this matter.

Rule 4:5-1 Certification

I certify that the matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding. I know of no other parties that should be made part of this lawsuit. I recognize my continuing obligation to file and serve on all parties and the Court any amended certification, if there is a change in the facts stated in the original certification.

KING, MOENCH & COLLINS, LLP
Attorneys for Plaintiffs



By: Michael L. Collins, Esq.

Dated: January 13, 2025

Rule 1:38-7 Certification

I certify that any of the Defendant(s) confidential identifiers have been redacted from the documents submitted to the Court and will be redacted from any documents submitted in the future, in accordance with Rule 1:38-7(b).

KING, MOENCH & COLLINS, LLP
Attorneys for Plaintiffs



By: Michael L. Collins, Esq.


Dated: January 13, 2025

VERIFICATION

I, Joseph Voytus, Esq. hereby certify that the foregoing statements made in the Fifth Amended Complaint are true and accurate to the best of my knowledge, based upon information available to me at this time. I am aware that if any of the statements made by me herein are willfully false, I am subject to punishment.

Dated: _____

1/13/2025



Joseph Voytus, Esq.

EXHIBIT A

CHAPTER 2

AN ACT concerning affordable housing, including administration and municipal obligations, amending, supplementing, and repealing various parts of the statutory law, and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to read as follows:

C.52:27D-302 Findings.

2. The Legislature finds that:

- a. The New Jersey Supreme Court, through its rulings in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983), has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low- and moderate-income families.

- b. In the second Mount Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action."

- c. The interest of all citizens, including low- and moderate-income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.

- d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low- and moderate-income housing to replace the federal housing subsidy programs which have been almost completely eliminated.

- e. The State can maximize the number of low- and moderate-income units provided in New Jersey by allowing its municipalities to adopt appropriate phasing schedules for meeting their fair share, so long as the municipalities permit a timely achievement of an appropriate fair share of the regional need for low- and moderate-income housing as required by the Mount Laurel I and II opinions and other relevant court decisions.

- f. The State can also maximize the number of low- and moderate-income units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State. Because the Legislature has determined, pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in harmony with the Mount Laurel doctrine to permit the transfer of the fair share obligations among municipalities within a housing region, it is necessary and appropriate to create a new program to create new affordable housing and to foster the rehabilitation of existing, but substandard, housing.

- g. Since the urban areas are vitally important to the State, construction, conversion, and rehabilitation of housing in our urban centers should be encouraged. However, the provision of housing in urban areas must be balanced with the need to provide housing throughout the State for the free mobility of citizens.

- h. The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a realistic opportunity for a variety and

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choice of housing including low- and moderate-cost housing, to meet the needs of people desiring to live there. While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low- and moderate-income housing.

i. (Deleted by amendment, P.L.2024, c.2)

j. The Legislature finds that the use of regional contribution agreements, which permits municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should no longer be utilized as a mechanism for the creation of affordable housing.

k. The Legislature finds that the role of the Council on Affordable Housing, as intended in the original enactment of the "Fair Housing Act," has not developed in practice as was intended in the legislation.

l. The council's inability to function ultimately led the Supreme Court in 2015 to order the temporary dissolution of the requirement that administrative remedies be exhausted prior to resolving affordable housing disputes before the court and allowed the courts to resume their role as the forum of first resort for evaluating municipal compliance with Mount Laurel obligations pursuant to guidelines laid out by the Supreme Court's order.

m. The Legislature finds that the council's inability to function led to a "gap period" that frustrated the intent of the Legislature and compliance with constitutional and statutory obligations and that it is necessary to establish definitive deadlines for municipal action and any challenges to those actions to avoid such a "gap period" from being repeated in the future.

n. The Legislature finds that although the court-led system that has developed since 2015 has resulted in a significant number of settlement agreements and increased production of affordable housing, the system could operate more expeditiously to produce affordable housing, and at a lower cost to all parties, if appropriate standards are established by the Legislature to be applied throughout the State, including more clarity on calculation on fair share affordable housing obligations using transparent and established data sources to eliminate the lengthy and costly processes of determining those obligations that have characterized both the Council on Affordable Housing and court-led system.

o. The Legislature determines that, considering the unique history of the "Fair Housing Act," the Council on Affordable Housing shall be abolished and that, pursuant to the formulas and process established pursuant to sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), a municipality shall be authorized to seek approval of its fair share affordable housing obligation, adopted pursuant to binding resolution and then filed with the court, with the guidance of calculations published by the Department of Community Affairs, but that advocates for the low- and moderate-income households of the State shall be provided with an opportunity to contest the municipal determination.

p. The Legislature declares that the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine, and that municipalities in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) are also in compliance with the Mount Laurel doctrine.

q. The Legislature finds that the population of persons aged 65 years and older in the State has grown from approximately 13 percent in 1990, to 17 percent in 2021, and that such growth, in conjunction with expected future growth, makes it appropriate for the Legislature to allow up to 30 percent of the units towards a municipality's prospective affordable housing obligation to be satisfied through the creation of age-restricted housing.

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r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) were enacted concurrently to address the ruling of the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983) and associated land use planning concerns.

s. The Legislature, in amending and supplementing the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to facilitate comprehensive planning in alignment with smart growth principles and the State Development and Redevelopment Plan.

t. The Legislature declares that the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), are made with the intention of furthering consistency with the State Development and Redevelopment Plan.

2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to read as follows:

C.52:27D-304 Definitions.

4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), abolished pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. "Housing region" means a geographic area established pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

c. "Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

d. "Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

e. (Deleted by amendment, P.L.2024, c.2)

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low- and moderate-income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

h. "Development" means any development for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

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

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

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

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

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

n. "Accessory dwelling unit" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

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

p. "Commissioner" means the Commissioner of Community Affairs.

q. "Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a "judgment of compliance" or "judgment of repose." The term "compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

r. "County-level housing judge" means a judge appointed pursuant to section 5 of P.L.2024, c.2 (C.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 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

s. "Deficient housing unit" means housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities.

t. "Department" means the Department of Community Affairs.

u. "Exclusionary zoning litigation" means litigation to challenge the fair share plan, housing element, or ordinances or resolutions implementing the fair share plan or housing element of a municipality based on alleged noncompliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

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v. "Fair share plan" means the plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

w. "Highlands-conforming municipality" means a municipality that has adopted a land development ordinance implementing the municipality's plan conformance petition and which land development ordinance has been certified by the Highlands Water Protection and Planning Council as consistent with the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.), the Highlands regional master plan, and the municipality's plan conformance approval. The term "land development ordinance" shall be inclusive of any amendment to the municipality's land development ordinances that is adopted to further the municipality's petition of plan conformance.

x. "Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which shall contain the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1).

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

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

aa. "Transitional housing" means temporary housing that:

includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements;

provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing;

is licensed by the department; and

allows households to remain for a minimum of six months.

C.52:27D-304.1 Council on Affordable Housing abolished; report to Governor, Legislature, municipalities.

3. a. The Council on Affordable Housing, established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), is abolished. Each municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in sections 6

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and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and may take into consideration the calculations in the report published by the department in accordance with this section.

b. Following the expiration of the third round of affordable housing obligations on July 1, 2025, a municipality shall have immunity from exclusionary zoning litigation if the municipality complies with the deadlines established in P.L.2024, c.2 (C.52:27D-304.1 et al.) for both determining present and prospective obligations and for adopting a housing element and fair share plan to meet those obligations.

(1) Immunity from exclusionary zoning litigation shall not limit the ability of an interested party to challenge a municipality for failure to comply with the terms of its compliance certification. However, a municipality's actions to comply with the terms of its compliance certification shall retain a presumption of validity if challenged for an alleged failure described in this paragraph.

(2) Immunity from exclusionary zoning litigation shall not limit the ability of an interested party to bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. However, the decisions of the program shall retain a presumption of validity if challenged for an alleged violation described in this paragraph.

c. Prior to the beginning of each new 10-year round of housing obligations beginning with the fourth round on July 1, 2025, the Department of Community Affairs shall conduct a calculation of regional need and municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3).

d. For the fourth round of affordable housing obligations, the department shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024. To assist in this calculation, the Highlands Water Protection and Planning Council shall provide a list of Highlands-conforming municipalities to the department no less than five business days following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The department shall provide the report to each municipality in the State at the same time that it submits the report to the Governor and Legislature and shall also publish such report on the department's Internet website. For the fifth round, and each subsequent new round of housing obligations, the department shall prepare and submit a report to each municipality in the State, the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on these calculations on or before August 1 of the year prior to the start of the new round and shall also publish such report on the department's Internet website. For each 10-year round of housing obligations, a municipality may take into consideration the calculations in the report prepared by the department pursuant to this subsection in determining its present and prospective obligations.

e. Nothing in the provisions of subsections c., d., or f. of this section shall be interpreted to render any calculation in a report by the department published pursuant to this section binding on any municipality or other entity, nor to render any failure by the department to timely conduct the calculations or publish a report required by this section to alter the deadlines or process set forth in this section. The ultimate determination of a municipality's present and prospective need shall be through the process as set forth below.

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f. (1) (a) With consideration of the calculations contained in the relevant report published by the department pursuant to this section, for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality's determination and bind the municipality to adopt a housing element and fair share plan pursuant to paragraph (2) of this subsection based on this determination as may be adjusted by the program as set forth in this subsection.

(b) For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the program no later than 48 hours following adoption. The resolution, along with the date of filing with the program, shall be published on the program's publicly accessible Internet website. The municipality shall also publish the resolution on its publicly accessible Internet website, if the municipality maintains one. If the municipality does not meet this deadline, it shall lose immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. A determination of the municipality's present and prospective obligation may be established before a county-level housing judge as part of any resulting declaratory judgment action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended by P.L.2024, c.2 (C.52:27D-304.1 et al.), or through exclusionary zoning litigation. If the municipality meets this January 31 deadline, then the municipality's determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality's obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025. The municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), in any challenge initiated through the program. An interested party may file a challenge with the program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality's determination of its present and prospective obligation does not comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). For the fifth round, and each subsequent new round of housing obligations, the deadlines established in this subparagraph shall be on the last day of January, the last day of February, and the first day of March, respectively, of the year of the start of each new round.

(c) The Administrative Director of the Courts shall establish procedures for the program to consider a challenge and resolve a dispute initiated by an interested party pursuant to subparagraph (b) of this paragraph. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's calculation of its obligation is compliant with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). Any challenge must state with particularity how the municipal calculation fails to comply with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and include the challenger's own calculation of the fair share obligations in compliance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). The program shall establish procedures to summarily dismiss any objection or challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal determination to be consolidated. The program's approach to resolving a dispute may include: (i) a finding that

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the municipality's determination of its present and prospective need obligation did not facially comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and thus the municipality's immunity shall be revoked; (ii) an adjustment of the municipality's determination of its present and prospective need obligation to comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) without revoking immunity; or (iii) a rejection of a challenge and affirm the municipality's determination. The decision shall be provided to the municipality and all parties that have filed challenges no later than March 31 of the year when the current round is expiring and the new round is beginning and concurrently posted on the program's Internet website. The Administrative Director of the Courts shall establish procedures for any further appellate review of such determinations and may establish an expedited process for consolidated review of any such challenges by the Supreme Court, provided that any party seeking appellate review shall not change the deadlines established for municipal filing of a housing element and fair share plan, and implementing ordinances.

(2) (a) A municipality shall adopt a housing element and fair share plan as provided for by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation established in paragraph (1) of this subsection on or before June 30, 2025. After adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions, the municipality shall within 48 hours of adoption or by June 30, 2025, whichever is sooner, file the same with the program as part of the action initiated pursuant to subparagraph (b) of paragraph (1) of this subsection through the program's Internet website. Any municipality that does not do so by June 30, 2025, shall not retain immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and shall be subject to review through the declaratory judgment process as established in paragraph (3) of this subsection. As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's prospective need obligation. In addressing prior round obligations, the municipality shall retain any sites that, in furtherance of the prior round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the housing element and fair share plan are required to be submitted, and shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity, which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources. The municipality shall only plan to replace any sites planned for development as provided by a prior court approval, settlement agreement, or approval by the council, with alternative development plans, if it is determined that the previously planned sites no longer present a realistic opportunity, and the sites in the alternative development plan

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provide at least an equivalent number of affordable units and are otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a municipality proposes to replace a site for which a complete application seeking subdivision or site plan approval has not been filed prior to the date by which the housing element and fair share plan is required to be submitted, there shall be a rebuttable presumption in any challenge filed to the municipality's plan that any site for which a zoning designation was adopted creating a realistic opportunity for the development of a site prior to July 1, 2020, or July 1 of every 10th year thereafter, as applicable, may be replaced with one or more alternative sites that provide a realistic opportunity for at least the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the extent a municipality has credits, including bonus credits, from units created during a prior round that are otherwise permitted to be allocated toward the municipality's unfulfilled prior round obligation or present or prospective need obligation in an upcoming round, the municipality shall be entitled to rely on the rules, including rules for bonus credits, applicable for the round during which those credits were accumulated. If a municipality has credits in excess of its prior round obligations, and such excess credits represent housing that will continue to be deed-restricted and affordable through the current round, the municipality may include such housing, and applicable bonus credits, towards addressing the municipality's new calculation of prospective need. Consistent with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the total number of bonus credits shall in no circumstance exceed 25 percent of the municipality's prospective obligation in any round. The municipality may in its plan lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligation that requires the municipality to provide a realistic opportunity for more than 1,000 housing units, after the application of any excess credits, or to prevent a prospective need obligation that exceeds 20 percent of the total number of households in a municipality according to the most recent federal decennial census, not including any prior round obligation. If a municipality is subject to both a 1,000 unit cap or 20 percent cap, it may apply whichever cap results in a lower prospective need obligation. For the fifth round, and for each subsequent new round of housing obligations, the deadlines in this paragraph shall be June 30 for the adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation, of the year of the start of the new round.

(b) Following the filing, in an action, of an adopted housing element and fair share plan pursuant to subparagraph (a) of this paragraph, an interested party may file a response on or before August 31, 2025 alleging that the municipality's fair share plan and housing element are not in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such allegation shall not include a claim that a site on real property proposed by the interested party is a better site than a site in the plan, but rather shall be based on whether the housing element and fair share plan as proposed is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's housing element and fair share plan is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. Any interested party that files a challenge shall specify with particularity which sites or elements of the municipal fair share plan do not comply with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, and the basis for alleging such non-compliance. The program shall establish procedures to summarily dismiss any objection or

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challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal housing element and fair share plan to be consolidated. If a municipality's fair share plan and housing element is not challenged on or before August 31, 2025, then the program shall apply an objective standard to conduct a limited review of the fair share plan and housing element for consistency and to determine whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. The program shall issue a compliance certification unless these objective standards are not met. The program shall facilitate communication between the municipality and any interested parties for a challenge and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Upon resolution of a challenge, the program shall issue compliance certification, conditioned on the municipality's commitment, as necessary, to revise its fair share plan and housing element in accordance with the resolution of the challenge. The program may also terminate immunity if it finds that the municipality is not determined to come into constitutional compliance at any point in the process. If by December 31, 2025 the municipality and any interested party that filed a response have resolved the issues raised in the response through agreement or withdrawal of the filing, then the program shall review the fair share plan and housing element for consistency and to determine whether it is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and issue a compliance certification unless these objective standards are not met. For the fifth round, and each subsequent new round of housing obligations, the deadline established in this subparagraph for an interested party to file a challenge shall be August 31, and for the municipality to revise its housing element and fair share plan in response, shall be December 31 of the year of the beginning of the new round.

(c) For the fourth round of affordable housing obligations, the implementing ordinances and resolutions, proposed pursuant to subparagraph (a) of this paragraph, and incorporating any changes from the program, shall be adopted on or before March 15, 2026. For the fifth round, and each subsequent new round of housing obligations, the deadline established in this subparagraph for the implementing ordinances and resolutions shall be on March 15 of the year following the beginning of the new round. After adoption of the implementing ordinances and resolutions by the municipality, the municipality shall immediately file the ordinances and resolutions with the program through the program's Internet website. Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation.

(d) The program may permit a municipality that still has a remaining dispute by interested parties to retain immunity from exclusionary zoning litigation into the year following the year in which a new round begins if the program, or county-level housing judge, determines that the municipality has been unable to resolve the issues disputed despite being determined to come into constitutional compliance. The Administrative Director of the Courts shall develop procedures to enable a county-level housing judge to resolve this dispute over the issuance of compliance certification through a summary proceeding in Superior Court following the year in which the new round begins. A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage. The pendency of such a dispute shall not stay the deadline for adoption of implementing ordinances and resolutions pursuant to this

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paragraph. The implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification may adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments to reflect the resolution of the dispute.

(e) Once a municipality has received a compliance certification or otherwise has had its fair share obligation and housing element and fair share plan finally determined via judgment of repose or other judgment, the municipality shall make the municipality's fair share plan and housing element, as well as any subsequently adopted implementing ordinances and resolutions, or amendments thereto, available to the department and the program for publication on the department's and program's respective Internet websites.

(3) (a) If a municipality fails to materially adhere to any of the deadlines established in paragraphs (1) or (2) of this subsection due to circumstances beyond the control of the municipality, including, but not limited to, an inability to meet a deadline due to an extreme weather event, then the program, or the county level housing judge, in accordance with court rules, may permit a municipality to have a grace period to come into compliance with the timeline, the length of which, and effect of which on later deadlines, shall be determined on a case-by-case basis.

(b) A municipality that has not adopted and published a binding resolution pursuant to paragraph (1) of this subsection or that has not adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection may seek compliance certification by filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), provided that any exclusionary zoning litigation filed by a plaintiff against such a municipality prior to such time may proceed notwithstanding such filing. In a municipality that has adopted and published a binding resolution pursuant to paragraph (1) of this subsection and has adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection, a court shall not consider exclusionary zoning litigation during the timeframe after the timely submission of a binding resolution or fair share plan and housing element of a municipality, or both, and before a challenge is submitted, or during the timeframe of a challenge that is pending resolution with the program pursuant to this subsection. A court may consider exclusionary zoning litigation after such timeframe upon a finding that the municipality: (i) is determined to be constitutionally noncompliant with its responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in the program in bad faith; (ii) has failed to meet the deadlines established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.); or (iii) has, after receiving compliance certification, failed to comply with the terms of that certification by not actually allowing for the development of the affordable housing as provided for in its fair share plan and housing element through actions or omissions, or both, of a municipality or its subordinate boards.

(c) All parties shall bear their own fees and costs in proceedings before the program.

(d) A determination by the program as to the present and prospective need obligation or as to issuance of compliance certification pursuant to this section shall be considered a final decision, subject to appellate review pursuant to the procedures set forth in subparagraph (c) of paragraph (1) of subsection f. of this section.

(e) A municipality shall not be deemed out of compliance with the deadlines of P.L.2024, c.2 (C.52:27D-304.1 et al.), or lose immunity from exclusionary zoning litigation, due to a

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failure by the program to promptly maintain and update its Internet website or other operational failure of the program.

g. A compliance certification, issued pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.), shall be accompanied by a written report that shall set forth the basis of the issuance of the certification and shall be in a format to be developed and approved by the Administrative Director of the Courts.

4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to read as follows:

C.52:27D-313 Petition for substantive certification.

13. a. If a municipality has adopted a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), but has failed to satisfy the June 30 deadline established pursuant to paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), for any round of affordable housing obligations, the municipality may request and be provided with a grace period pursuant to paragraph (3) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), if authorized by the program or county-level housing judge, as determined by the rules of court. If a municipality that has not satisfied this June 30 deadline is not provided with a grace period, the municipality may institute an action for declaratory judgment granting it repose in the Superior Court for the 10-year period constituting the current round of fair share obligations. The municipality shall publish notice of its filing of a declaratory judgment action in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances by submitting such information to the program to be published on the Internet website of the program in accordance with section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. (Deleted by amendment, P.L.2024, c.2)

c. (1) A municipality or other interested party may file an action through the program seeking a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site in the housing element and fair share plan that has not received preliminary site plan approval prior to the midpoint of the 10-year round. If such an action is initiated by a municipality, the municipality may propose one or more alternative sites with an accompanying development plan or plans that provide a realistic opportunity for the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if the facts demonstrate that the municipality or its subordinate boards have prevented the site from receiving site plan approval, then the program shall reject the municipality's challenge.

(2) Any party may file a request for information from the program regarding the progress of development at any inclusionary development site in the housing element and fair share plan of a municipality or at any alternative site proposed by the municipality. The program may respond to a request independently or in coordination with the department.

C.52:27D-313.2 "Affordable Housing Dispute Resolution Program" established.

5. a. There is established an Affordable Housing Dispute Resolution Program that shall have the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number of members, of at least three and no more than seven members who shall lead the administration of the program. The Administrative Director of the Courts shall update the assignment of designated Mount Laurel judges to indicate which current or retired and on-recall judges of the Superior Court shall

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serve as members, within 60 days following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The Administrative Director of the Courts may appoint other qualified experts as members if sufficient current and retired judges are unavailable. The Administrative Director of the Courts shall take into consideration in making such appointments experience in the employment of alternative dispute resolution methods and in relevant subject matter.

b. The Administrative Director of the Courts shall designate a member to serve as chair. The Administrative Director of the Courts shall make new appointments as needs arise for new appointments.

c. The program, in its discretion and in accordance with Rules of Court, may consult or employ the services of one or more special masters or staff to assist it in rendering determinations, resolving disputes, and facilitating communication as required by subparagraph (b) of paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1). In addition, the program may incorporate any existing or newly established court mediation or alternative dispute resolution process to assist the program in resolving disputes and facilitating communication among municipalities and interested parties.

d. The Administrative Director of the Courts shall establish a filing system via an Internet website in which the public is able to access, without cost, filings made pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) and such other related filings as the Administrative Director of the Courts may include on the filing system.

e. The Administrative Director of the Courts may assign additional responsibilities to the program for resolving disputes arising out of or related to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

f. The Administrative Director of the Courts shall establish procedures for the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for circumstances in which the program is unable to address the dispute within the time limitations established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1). As a part of the procedures established pursuant to this section, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the Chief Justice of the Supreme Court shall designate a Superior Court judge who sits within the vicinage, or a retired judge who, during the judge's tenure as a judge, served within the vicinage, to serve as county-level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their designated county or counties, with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise with respect to ongoing compliance or noncompliance with obligations created by fair share plans, housing elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage.

g. The Administrative Director of the Courts shall promulgate, maintain, and apply a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, and may establish additional, more restrictive ethical standards in order to meet the specific needs of the program and of county-level housing judges.

C.52:27D-304.2 Municipal present need, 10-year round, determination of affordable housing obligations.

6. a. Municipal present need for each 10-year round of affordable housing obligations shall be determined by estimating the deficient housing units occupied by low- and moderate-income households in the region, following a methodology similar to the methodology used to determine third round municipal present need, through the use of most recent datasets made

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available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

b. For the purpose of determining regional need for the 10-year round of low- and moderate-income housing obligations, running from July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

- (1) The regions of the State shall be comprised as follows:
 - (a) Region 1 shall consist of the counties of Bergen, Hudson, Passaic, and Sussex;
 - (b) Region 2 shall consist of the counties of Essex, Morris, Union, and Warren;
 - (c) Region 3 shall consist of the counties of Hunterdon, Middlesex, and Somerset;
 - (d) Region 4 shall consist of the counties of Mercer, Monmouth, and Ocean;
 - (e) Region 5 shall consist of the counties of Burlington, Camden, and Gloucester; and
 - (f) Region 6 shall consist of the counties of Atlantic, Cape May, Cumberland, and Salem.

(2) Regional prospective need for a 10-year round of low- and moderate-income housing obligations shall be determined through the calculation provided in this subsection. Projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero.

C.52:27D-304.3 Present, prospective fair share obligation, low- and moderate-income housing, methodologies.

7. a. The present and prospective fair share obligation for low- and moderate-income housing for each municipality in the State shall be determined as described in this section. In addition, the March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton shall be referenced as to datasets and methodologies that are not explicitly addressed by this section. These determinations of municipal present and prospective need shall be based on a determination of the present and prospective regional need for low- and moderate-income housing, established pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). These calculations of municipal present and prospective need shall use necessary datasets that are updated to the greatest extent practicable.

b. A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

c. A municipality's prospective fair share obligation of the regional prospective need for the upcoming 10-year round shall be determined in accordance with this subsection:

(1) If a municipality is a qualified urban aid municipality, the municipality shall be exempt from responsibility for any fair share prospective need obligation for the upcoming 10-year round. For the purposes of this section, a municipality is a qualified urban aid municipality if the municipality, as of July 1 of the year prior to the beginning of a new round, is designated

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by the department, pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid and the municipality meets at least one of the following criteria:

(a) The ratio of substandard existing deficient housing units currently occupied by low- and moderate-income households within the municipality, compared to all existing housing in the municipality, is greater than the equivalent ratio in the region;

(b) The municipality has a population density greater than 10,000 persons per square mile of land area; or

(c) The municipality has a population density of more than 6,000, but less than 10,000 persons per square mile of land area, and less than five percent vacant parcels not used as farmland, as measured by the average of:

(i) The number of vacant land parcels in the municipality as a percentage of the total number of parcels in the municipality; and

(ii) The valuation of vacant land in the municipality as a percentage of total valuations in the municipality.

(2) A municipality's equalized nonresidential valuation factor shall be determined. To determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor.

(3) A municipality's income capacity factor shall be determined. This factor shall be determined by calculating the average of the following measures:

(a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and

(b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality.

(4) A municipality's land capacity factor shall be determined. This factor shall be determined by estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the "land use / land cover data" most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located, as designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

(a) Planning Area 1 (Metropolitan) shall have a weighting factor of 1.0;

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- (b) Planning Area 2 (Suburban) shall have a weighting factor of 1.0;
 - (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;
 - (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;
 - (e) Planning Area 5 (Environmentally Sensitive) shall have a weighting factor of 0.0;
 - (f) Centers in Planning Areas 1 and 2 shall have a weighting factor of 1.0;
 - (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting factor of 0.5;
 - (h) Pinelands Regional Growth Area shall have a weighting factor of 0.5;
 - (i) Pinelands Town shall have a weighting factor of 0.5;
 - (j) All other Pinelands shall have a weighting factor of 0.0;
 - (k) Meadowlands shall have a weighting factor of 1.0;
 - (l) Meadowlands Center shall have a weighting factor of 1.0;
 - (m) Highlands Preservation Area shall have a weighting factor of 0.0;
 - (n) Highlands Planning Area Existing Community Zone and Highlands Designated Center in a Highlands-conforming municipality, as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0;
 - (o) Highlands Planning Area, State-designated sewer service area, Highlands municipality that is not a Highlands-conforming municipality as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0; and
 - (p) All other Highlands Planning Areas shall have a weighting factor of 0.0.
- (5) The equalized nonresidential valuation factor, income capacity factor, and land capacity factor, determined in paragraphs (2), (3), and (4) of this subsection, shall be averaged to yield the municipality's average allocation factor for distributing gross regional prospective need to the municipality. The regional prospective need shall then be multiplied by the municipality's average allocation factor to determine the municipality's gross prospective need for the 10-year round.

8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give a notice of intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in advance of such action as provided in this section, to the residential mortgage debtor, and, if the mortgage is secured by a residence for which a restriction on affordability was recorded in the county in which the property is located, the clerk of the municipality in which the subject property is located, the municipal housing liaison, if one has been appointed by the municipality. For the purposes of this section, "restriction on affordability" means any conditions recorded with a mortgage or a deed which would limit the sale of such property to income qualified households pursuant to the rules adopted to effectuate the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, provided to the Department of Community Affairs in accordance with subsection a.

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of section 2 of P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

(1) the particular obligation or real estate security interest;

(2) the nature of the default claimed;

(3) the right of the debtor to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57);

(4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;

(5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;

(6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of P.L.1995, c.244 (C.2A:50-57), but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;

(8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

(9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;

(10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance and, if the property is subject to restrictions on affordability, the address and phone number of the municipal affordable housing liaison and of the New Jersey Housing and Mortgage Finance Agency. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner;

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default;

(12) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection, the debtor has the option to participate in the Foreclosure Mediation Program following the filing of a mortgage foreclosure complaint by initiating mediation pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64 (C.2A:50-77). Notice of the option to participate in the Foreclosure Mediation Program shall adhere to the requirements of section 3 of

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P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or guidelines adopted by the Supreme Court;

(13) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program;

(14) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver; and

(15) that the lender is either licensed in accordance with the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from licensure under the act in accordance with applicable law.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section and subsection a. of section 2 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

g. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.

h. If the property which is the subject of the notice of intention to foreclose has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver.

9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as follows:

C.5:18-2 Grants to assist low-income families.

2. The New Jersey Council on Physical Fitness and Sports, established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is authorized to provide grants to assist low-income families in purchasing the protective eyewear. As used in this section, a "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

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10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to read as follows:

C.13:20-23 Regional master plan considered in allocation of prospective fair housing share.

25. a. The regional master plan shall be taken into account as part of the determination of obligations pursuant to the method in section 7 of P.L.2024, c.2 (C.52:27D-304.3) regarding the allocation of the prospective fair share of the housing need under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for any fair share period subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) if a municipality is in the Highlands Region.

b. Nothing in P.L.2004, c.120 (C.13:20-1 et al.) shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to August 10, 2004.

11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read as follows:

C.17:11C-55 Inapplicability of act.

5. The requirements of this act shall not apply to:

a. Depository institutions; but subsidiaries and service corporations of these institutions shall not be exempt. A depository institution may register with the department for the purpose of sponsoring individuals, licensed as mortgage loan originators subject to subparagraph (b) of paragraph (1) of subsection c. of section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such registered entity obtains and maintains bond coverage for mortgage loan originators consistent with section 13 of P.L.2009, c.53 (C.17:11C-63). A depository institution registered with the department in accordance with this subsection a. shall otherwise remain exempt from the licensing requirements of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. A registered mortgage loan originator that is registered under the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

c. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

d. A person licensed as a real estate broker or salesperson pursuant to R.S.45:15-1 et seq., and not engaged in the business of a residential mortgage lender or residential mortgage broker. Any person holding a license under this act as a residential mortgage lender or broker shall be exempt from the licensing and other requirements of R.S.45:15-1 et seq. in the performance of those functions authorized by this act.

e. Any employer, other than a residential mortgage lender, who provides residential mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest.

f. The State of New Jersey or a municipality, or any agency or instrumentality thereof, which, in accordance with a housing element that has previously received substantive certification from the Council on Affordable Housing, or a judgment of repose or other court approval, pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or

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advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated.

g. Any individual who offers or negotiates terms of a residential mortgage loan:

- (1) with or on behalf of an immediate family member; or
- (2) secured by a dwelling that serves as the individual's residence.

h. Any person who, during a calendar year takes three or fewer residential mortgage loan applications or offers or negotiates the terms of three or fewer residential mortgage loans or makes three or fewer residential mortgage loans related to manufactured housing structures which are:

- (1) titled by the New Jersey Motor Vehicle Commission;
- (2) located in a mobile home park as defined in subsection e. of section 3 of P.L.1983, c.400 (C.54:4-1.4); and
- (3) exempt from taxation as real property pursuant to subsection b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

i. A bona fide not for profit entity and any individuals directly employed by that entity, so long as the entity maintains its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and otherwise meets the definition of "bona fide not for profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically determined by the department in accordance with rules established by the commissioner.

12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to read as follows:

C.39:4-10.2 Violations, warnings, fines; "Bicycle and Skating Safety Fund."

2. a. A person who violates a requirement of this act shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be fined a maximum of \$25 for the person's first offense and a maximum of \$100 for a subsequent offense if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct. Penalties provided in this section for a failure to wear a helmet may be waived if an offender or his parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred.

b. All money collected as fines under subsection a. of this section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-10.6) shall be deposited in a nonlapsing revolving fund to be known as the "Bicycle and Skating Safety Fund." Interest earned on money deposited in the fund shall accrue to the fund. Money in the fund shall be utilized by the director to provide educational programs devoted to bicycle, roller skating and skateboarding safety. If the director determines that sufficient money is available in the fund, he also may use, in a manner prescribed by rule and regulation, the money to assist low-income families in purchasing approved bicycle helmets. For the purposes of this subsection, "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to read as follows:

C.40:55D-8.2 Findings, declarations relative to Statewide non-residential development fees.

33. The Legislature finds and declares:

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a. The collection of development fees from builders of residential and non-residential properties has been authorized by the court through the powers established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). Due to the Legislature's determination that the role of the Council on Affordable Housing has not developed in practice as intended, the Legislature further determines that authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, given the department's existing roles related to local government finance and the funding and financing of affordable housing throughout the State.

b. New Jersey's land resources are becoming more scarce, while its redevelopment needs are increasing. In order to balance the needs of developing and redeveloping communities, a reasonable method of providing for the housing needs of low-, moderate-, and middle-income households, without mandating the inclusion of housing in every non-residential project, must be established.

c. A Statewide non-residential development fee program, which permits municipalities that have obtained or are in the process of seeking compliance certification to retain these fees for use in the municipality will provide a fair and balanced funding method to address the State's affordable housing needs, while providing an incentive to all municipalities to obtain compliance certification.

d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), organizations are directed to invest in the Casino Reinvestment Development Authority to ensure that the development of housing for families of low and moderate income shall be provided. The Casino Reinvestment Development Authority shall work to effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301 et al.).

e. (Deleted by amendment P.L.2024, c.2)

f. The negative impact of a State policy that over-relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality and halts non-residential and residential development, and these ill effects directly increase the overall costs of housing, and could impede the constitutional obligation to provide for a realistic opportunity for housing for families at all income levels.

14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to read as follows:

C.40:55D-8.3 Definitions relative to Statewide non-residential development fees.

34. As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

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

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated,

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as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

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

"Non-residential development" means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.).

"Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

"Relating to the provision of housing" shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

"Spending plan" means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low- and moderate-income individuals.

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

15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to read as follows:

C.40:55D-8.4 Fee imposed on construction resulting in non-residential development; exemptions.

35. a. Beginning on the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting in non-residential development, as follows:

(1) A fee equal to two and one-half percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or

(2) A fee equal to two and one-half percent of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes.

b. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years

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from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:

- (1) parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;
- (2) any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;
- (3) non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
- (4) projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);
- (5) projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and
- (6) projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.

A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development whichever is later.

For purposes of this subsection, "recreational facilities and community center" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity; and "senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.

If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

c. (1) Unless authorized to pay directly to the municipality in which the non-residential construction is occurring in accordance with paragraph (2) of this subsection, developers shall pay non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with subsection g. of this section in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality.

(2) The department shall maintain on its Internet website a list of each municipality that is authorized to use the development fees collected pursuant to this section and that has a confirmed status of compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

(3) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that

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have been collected and expended since the inception of the municipal authorization to collect and retain said fees.

(4) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that have been collected and expended previous year.

d. The payment of non-residential development fees required pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

e. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to a non-residential development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development in accordance with the regulations adopted by the Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential development fee pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the developer of the amount of the non-residential development fee. Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property. Failure of the municipality to comply with the timeframes or procedures set forth in this subsection may subject it to penalties to be imposed by the commissioner; any penalties so imposed shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

A developer of a mixed-use development shall be required to pay the Statewide non-residential development fee relating to the non-residential development component of a mixed-use development subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

Non-residential construction which is connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed under this section to the extent of the increase in equalized assessed valuation in accordance with regulations to be promulgated by the Director of the Division of Taxation, Department of the Treasury.

f. Any municipality that is not in compliance with the requirements established pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of the commissioner adopted thereto, may be subject to forfeiture of any or all

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funds remaining within its municipal development trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

g. The Treasurer shall credit to the "Urban Housing Assistance Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7) annually from the receipts of the fees authorized to be imposed pursuant to this section an amount equal to \$20 million; all receipts in excess of this amount shall be deposited into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.

The Treasurer shall adopt such regulations as necessary to effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to read as follows:

C.40:55D-8.5 Regulations.

36. a. The commissioner shall promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the prompt and effective implementation of the provisions and purposes of section 8 of P.L.2008, c.46 (C.52:27D-329.2), including, but not limited to, provisions for the payment of any necessary administrative costs related to the assessment of properties and collection of any development fees by a municipality.

b. The commissioner shall adopt and promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et al.), including but not limited to, regulations necessary for the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund and spending plan.

17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to read as follows:

C.40:55D-8.7 Certain local ordinances void.

38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.), including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the department, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low- and moderate-income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a development fee which is not prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

b. No affordable housing obligation shall be imposed concerning a mixed-use development that would result in an affordable housing obligation greater than that which would have been imposed if the residential portion of the mixed-use development had been developed independently of the non-residential portion of the mixed-use development.

c. Whenever the developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low- and moderate-income households, the non-residential development fee authorized pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)

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shall be satisfied through the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

18. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to read as follows:

C.40:55D-8.8 Applicability of section.

39. The provisions of this section shall apply only to those developments for which a fee was imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), known as the "Statewide Non-residential Development Fee Act."

a. A developer of a property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50) prior to July 17, 2008 and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and monies paid on or after that date.

b. A developer of a non-residential project that, prior to July 17, 2008, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and moneys paid on or after that date.

c. If moneys are required to be returned under subsection a., b. or d. of this section, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity to whom the funds were paid shall promptly review all requests for returns, and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

d. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to the return of those moneys paid, provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2009, c.90 do not permit the imposition of a fee upon the developer of that non-residential property.

e. (Deleted by amendment, P.L.2024, c.2)

f. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010 but prior to the effective date of P.L.2011, c.122, shall be entitled to the return of those monies paid, provided that said monies have not already been expended by the municipality on affordable housing projects, and provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit the imposition of a fee upon the developer of that non-residential property. If moneys are eligible to be returned under this subsection, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2011, c.122. The entity to whom the funds were paid shall promptly review all requests for returns, to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

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19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to read as follows:

C.40:55D-40.3 Site Improvement Advisory Board.

3. a. There is established in, but not of, the department a Site Improvement Advisory Board, to devise statewide site improvement standards pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4). The board shall consist of the commissioner or the commissioner's designee, who shall be a non-voting member of the board, the Director of the Division of Codes and Standards in the Department of Community Affairs, who shall be a voting member of the board, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, or the executive director's designee, who shall be a voting member of the board, and nine other voting members, to be appointed by the commissioner. The other members shall include two professional planners, one of whom serves as a planner for a governmental entity or whose professional experience is predominantly in the public sector and who has worked in the public sector for at least the previous five years and the other of whom serves as a planner in private practice and has particular expertise in private residential development and has been involved in private sector planning for at least the previous five years, and one representative each from:

- (1) The New Jersey Society of Professional Engineers;
- (2) The New Jersey Society of Municipal Engineers;
- (3) The New Jersey Association of County Engineers;
- (4) The New Jersey Federation of Planning Officials;
- (5) (Deleted by amendment, P.L.2024, c.2);
- (6) The New Jersey Builders' Association;
- (7) The New Jersey Institute of Technology;
- (8) The New Jersey State League of Municipalities.

b. Among the members to be appointed by the commissioner who are first appointed, four shall be appointed for terms of two years each, four shall be appointed for terms of three years each, and two shall be appointed for terms of four years each. Thereafter, each appointee shall serve for a term of four years. Vacancies in the membership shall be filled in the same manner as original appointments are made, for the unexpired term. The board shall select a chair from among its members. Members may be removed by the commissioner for cause.

c. Board members shall serve without compensation, but may be entitled to reimbursement, from moneys appropriated or otherwise made available for the purposes of this act, for expenses incurred in the performance of their duties.

20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read as follows:

C.40A:12A-3 Definitions.

3. As used in P.L.1992, c.79 (C.40A:12A-1 et seq.):

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality, county, redevelopment entity, or housing authority pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.).

"Comparable, affordable replacement housing" means newly-constructed or substantially rehabilitated housing to be offered to a household being displaced as a result of a redevelopment project, that is affordable to that household based on its income under the guidelines established by the New Jersey Housing and Mortgage Finance Agency for maximum affordable sales prices or maximum fair market rents, and that is comparable to the household's dwelling in the redevelopment area with respect to the size and amenities of the

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dwelling unit, the quality of the neighborhood, and the level of public services and facilities offered by the municipality in which the redevelopment area is located.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Electric vehicle charging station" means an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.

"Governing body" means the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality.

"Housing authority" means a housing authority created or continued pursuant to this act.

"Housing project" means a project, or distinct portion of a project, which is designed and intended to provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

"Parking authority" means a public corporation created pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.), and authorized to exercise redevelopment powers within the municipality.

"Persons of low and moderate income" means persons or families who are, in the case of State assisted projects or programs, so defined by the New Jersey Housing and Mortgage Finance Agency, or in the case of federally assisted projects or programs, defined as of "low and very low income" by the United States Department of Housing and Urban Development.

"Public body" means the State or any county, municipality, school district, authority or other political subdivision of the State.

"Public electric vehicle charging station" means an electric vehicle charging station located at a publicly available parking space.

"Public housing" means any housing for persons of low and moderate income owned by a municipality, county, the State or the federal government, or any agency or instrumentality thereof.

"Public hydrogen fueling station" means publicly available equipment to store and dispense hydrogen fuel to vehicles according to industry codes and standards.

"Publicly assisted housing" means privately owned housing which receives public assistance or subsidy, which may be grants or loans for construction, reconstruction, conservation, or rehabilitation of the housing, or receives operational or maintenance subsidies either directly or through rental subsidies to tenants, from a federal, State or local government agency or instrumentality.

"Publicly available parking space" means a parking space that is available to, and accessible by, the public and may include on-street parking spaces and parking spaces in surface lots or parking garages, but shall not include: a parking space that is part of, or associated with, a

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private residence; or a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, residents of a common interest development, or residents of an adjacent building.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by such liens.

"Redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan.

"Redevelopment agency" means a redevelopment agency created pursuant to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or established heretofore pursuant to the "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et al.), repealed by this act, which has been permitted in accordance with the provisions of P.L.1992, c.79 (C.40A:12A-1 et seq.) to continue to exercise its redevelopment functions and powers.

"Redevelopment area" or "area in need of redevelopment" means an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6) or determined heretofore to be a "blighted area" pursuant to P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both determinations as made pursuant to the authority of Article VIII, Section III, paragraph 1 of the Constitution. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.

"Redevelopment entity" means a municipality or an entity authorized by the governing body of a municipality pursuant to subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to implement redevelopment plans and carry out redevelopment projects in an area in need of redevelopment, or in an area in need of rehabilitation, or in both.

"Redevelopment plan" means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or an area in need of rehabilitation, which plan shall be sufficiently complete to indicate its relationship to definite municipal objectives as to appropriate land uses, public transportation and utilities, recreational and municipal facilities, and other public improvements; and to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both.

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health,

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recreational, educational, and welfare facilities, and zero-emission vehicle fueling and charging infrastructure.

"Rehabilitation" means an undertaking, by means of extensive repair, reconstruction or renovation of existing structures, with or without the introduction of new construction or the enlargement of existing structures, in any area that has been determined to be in need of rehabilitation or redevelopment, to eliminate substandard structural or housing conditions and arrest the deterioration of that area.

"Rehabilitation area" or "area in need of rehabilitation" means any area determined to be in need of rehabilitation pursuant to section 14 of P.L.1992, c.79 (C.40A:12A-14).

"Zero-emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, including but not limited to, battery electric-powered vehicles and hydrogen fuel cell vehicles.

"Zero-emission vehicle fueling and charging infrastructure" means infrastructure to charge or fuel zero-emission vehicles, including but not limited to, public electric vehicle charging stations and public hydrogen fueling stations.

21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to read as follows:

C.40A:12A-16 Powers of municipality, county, housing authority.

16. a. In order to carry out the housing purposes of this act, a municipality, county, or housing authority may exercise the following powers, in addition to those set forth in section 22 of P.L.1992, c.79 (C.40A:12A-22):

(1) Plan, construct, own, and operate housing projects; maintain, reconstruct, improve, alter, or repair any housing project or any part thereof; and for these purposes, receive and accept from the State or federal government, or any other source, funds or other financial assistance;

(2) Lease or rent any dwelling house, accommodations, lands, buildings, structures or facilities embraced in any housing project; and pursuant to the provisions of this act, establish and revise the rents and charges therefor;

(3) Acquire property pursuant to subsection i. of section 22 of P.L.1992, c.79 (C.40A:12A-22);

(4) Acquire, by condemnation, any land or building which is necessary for the housing project, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

(5) Issue bonds in accordance with the provisions of section 29 of P.L.1992, c.79 (C.40A:12A-29);

(6) Cooperate with any other municipality, private, county, State or federal entity to provide funds to the municipality or other governmental entity and to homeowners, tenant associations, nonprofit or private developers to acquire, construct, rehabilitate or operate publicly assisted housing, and to provide rent subsidies for persons of low and moderate income, including the elderly, pursuant to applicable State or federal programs;

(7) Encourage the use of demand side subsidy programs such as certificates and vouchers for low-income families and promote the use of project based certificates which provide subsidies for units in newly constructed and substantially rehabilitated structures, and of tenant based certificates which subsidize rent in existing units;

(8) Cooperate with any State or federal entity to secure mortgage assistance for any person of low or moderate income;

(9) Provide technical assistance and support to nonprofit organizations and private developers interested in constructing low- and moderate-income housing;

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(10) If it owns and operates public housing units, provide to the tenants public safety services, including protection against substance use disorder, and social services, including counseling and financial management, in cooperation with other agencies;

(11) Provide emergency shelters, transitional housing and supporting services to homeless families and individuals.

b. All housing projects, programs and actions undertaken pursuant to this act shall accord with the housing element of the master plan of the municipality within which undertaken, and with any fair share housing plan of the municipality, adopted pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to read as follows:

C.52:27D-310 Essential components of municipality's housing element.

10. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing, and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);

f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;

g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);

h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for

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redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to read as follows:

C.52:27D-310.1 Computing municipal adjustment, exclusions.

1. Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so. When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the municipality, in filing a housing element and fair share plan pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall exclude from designating, and the process set forth pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) and section 13 of P.L.1985, c.222 (C.52:27D-313) shall confirm was correctly excluded, as vacant land:

(a) any land that is owned by a local government entity that as of January 1, 1997, has adopted, prior to the institution of a lawsuit seeking a builder's remedy or prior to the filing of a petition for substantive certification of a housing element and fair share plan, a resolution authorizing an execution of agreement that the land be utilized for a public purpose other than housing;

(b) any land listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space and which is owned, leased, licensed, or in any manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education, or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license, or operational control of such land;

(c) any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units based on appropriate standards pertaining to housing density;

(d) historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the date of filing a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or initiation of an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313);

(e) agricultural lands when the development rights to these lands have been purchased or restricted by covenant;

(f) sites designated for active recreation that are designated for recreational purposes in the municipal master plan; and

(g) environmentally sensitive lands where development is prohibited by any State or federal agency, including, but not limited to, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the

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Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities.

No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.

24. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows:

C.52:27D-311 Provision of fair share by municipality.

11. a. In adopting its housing element, the municipality may provide for its fair share of low- and moderate-income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low- and moderate-income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low- and moderate-income housing within the municipality, as well as such other appropriate techniques as have been established through applicable precedent and may be employed by the municipality:

(1) Rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share in accordance with the provisions of subsection h. of this section;

(2) Determination of the total residential zoning necessary to assure that the municipality's fair share is achieved;

(3) Determination of measures that the municipality will take to assure that low- and moderate-income units remain affordable to low- and moderate-income households for an appropriate period of not less than the period required by the regulations adopted by the Department of Community Affairs pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321);

(4) A plan for infrastructure expansion and rehabilitation and conversion or redevelopment of unused or underutilized real property, including existing structures, if necessary to assure the achievement of the municipality's fair share of low- and moderate-income housing;

(5) Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low- and moderate-income housing;

(6) Tax abatements for purposes of providing low- and moderate-income housing;

(7) Utilization of funds obtained from any State or federal subsidy toward the construction of low- and moderate-income housing;

(8) Utilization of municipally generated funds toward the construction of low- and moderate-income housing; and

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property, excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low- and moderate-income housing.

c. (Deleted by amendment, P.L.2008, c.46)

d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low- and moderate-income housing.

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e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, for the mentally ill, or for persons with head injuries, as those terms are defined in section 2 of P.L.1977, c.448 (C.30:11B-2), or in transitional housing, which will be affordable to persons of low- and moderate-income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited towards the fulfillment of the municipality's fair share of low- and moderate-income housing. A municipality shall not credit transitional housing units towards more than 10 percent of the municipality's fair share obligation.

f. It having been determined by the Legislature that the provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is a public purpose, a municipality or municipalities may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low- and moderate-income persons, providing that any private advantage is incidental.

g. A municipality that has received approval of its housing element and fair share plan for the current round, and that has actually effected the construction of the affordable housing units it is obligated to provide, may amend its affordable housing element or zoning ordinances without losing immunity from exclusionary zoning litigation.

h. Whenever affordable housing units are proposed to be provided through an inclusionary development, a municipality shall provide, through its zoning powers, incentives to the developer, which shall include increased densities and reduced costs.

i. A municipality and a developer may request a modification of a compliance certification involving reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development, if any such application demonstrates how any shortfall in meeting the municipal fair share obligation will then be addressed. Such a request may be granted only if the municipality and developer have demonstrated that the project has been impacted by market conditions beyond their reasonable control.

j. A municipality may enter into an agreement with a developer or residential development owner to provide a preference for affordable housing to low- and moderate-income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. Following the initial 120-day marketing period, previously qualified applicants and future qualified applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, shall be placed on a special waiting list as well as the general waiting list. The veterans on the special waiting list shall be given preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage. Any agreement to provide affordable housing preferences for veterans pursuant to this subsection shall not affect a municipality's ability to receive credit for the unit.

k. In the fourth round, and in subsequent rounds of affordable housing obligations, a municipality shall be able to receive one credit against its affordable housing obligation for each unit of low- or moderate-income housing and shall not receive bonus credit for any

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particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided pursuant to this section or other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A municipality shall not receive more than one type of bonus credit for any unit and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation in the fourth round or any subsequent round through the use of bonus credits. This subsection shall not be construed to limit the ability of a municipality to receive a unit of credit for a low- or moderate-income housing unit that is subject to affordability controls that are scheduled to expire, but are extended pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321), to the extent that this affordability control extension would otherwise generate this credit. As a part of a fair share plan and housing element adopted pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), a municipality shall:

(1) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24);

(2) receive one unit of credit and one-half bonus credit for each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer;

(3) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius, or one-mile radius for projects located in a Garden State Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. For the purpose of this subparagraph, the distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property;

(4) receive one unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations;

(5) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution. This bonus credit shall be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements. A municipality shall receive the bonus credit pursuant to this paragraph for each unit with at least three bedrooms that are above the minimum number required for the bedroom distribution determined pursuant to the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency;

(6) receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space;

(7) receive one unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation;

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(8) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost;

(9) receive one unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). In accordance with section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not be required to provide that a specific percentage of the units in any specific project be reserved as very low-income housing in order to obtain this bonus credit, and the 13 percent level, for the purpose of bonus credits, shall be calculated against the full prospective need obligation provided pursuant to the fair share plan; and

(10) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

l. A municipality may not satisfy more than 30 percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing. A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children. All units referred to in this section shall otherwise be in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).

m. All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.

n. P.L.2024, c.2 (C.52:27D-304.1 et al.) shall not be construed to require a municipality to fund infrastructure improvements for affordable housing projects beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification. A municipality may fund infrastructure improvements for affordable housing projects, through the adoption of a development agreement with the applicant, beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification.

25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to read as follows:

C.52:27D-311b Assurance of adaptability requirements; council measures.

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6. A municipality may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a municipal fair share plan unless the unit complies with the requirements set forth thereunder. If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), any party representing the interests of households with disabilities may seek a modification to the approval of the municipal fair share plan to require the municipality to amend its fair share plan within 90 days of such a finding, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of such a finding, the municipality shall lose immunity to exclusionary zoning litigation for the portion of its obligation that is found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.).

26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to read as follows:

C.52:27D-320 "New Jersey Affordable Housing Trust Fund."

20. There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes, including, but not limited to, the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the Statewide non-residential development fees collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from municipal development trust funds, or other monies as may be dedicated, earmarked, or appropriated by the Legislature for the purposes of the fund. All references in any law, order, rule, regulation, contract, loan, document, or otherwise to the "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." The department shall be permitted to utilize annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

a. Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements have obtained compliance certification pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide

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non-residential development fees, a priority for funding shall be established for projects in municipalities that have received compliance certification.

Programs and projects in any municipality shall be funded only after receipt by the commissioner of a written statement in support of the program or project from the municipal governing body.

b. The commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms, and conditions of each grant or loan.

c. For any period which the commissioner may approve, the commissioner may assist affordable housing programs that are located in municipalities that have a pending request for compliance certification; provided that the affordable housing program will meet all or part of a municipal low- and moderate-income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low- and moderate-income housing need as determined pursuant to the low- and moderate-income household growth over the prior 10 years, as calculated pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

(1) Rehabilitation of substandard housing units occupied or to be occupied by low- and moderate-income households;

(2) Creation of accessory dwelling units to be occupied by low- and moderate-income households;

(3) Conversion of non-residential space to residential purposes; provided a substantial percentage of the resulting housing units are to be occupied by low- and moderate-income households;

(4) Acquisition of real property, demolition and removal of buildings, or construction of new housing that will be occupied by low- and moderate-income households, or any combination thereof;

(5) Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans, and permits; engineering, architectural, and other technical services; costs of land acquisition and any buildings thereon; and costs of site preparation, demolition, and infrastructure development for projects undertaken pursuant to an approved regional contribution agreement;

(6) Assistance to a local housing authority, nonprofit or limited dividend housing corporation, or association or a qualified entity acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for rehabilitation or restoration of housing units which it administers which: (a) are unusable or in a serious state of disrepair; (b) can be restored in an economically feasible and sound manner; and (c) can be retained in a safe, decent, and sanitary manner, upon completion of rehabilitation or restoration; and

(7) Other housing programs for low- and moderate-income housing, including, without limitation, (a) infrastructure projects directly facilitating the construction of low- and moderate-income housing not to exceed a reasonable percentage of the construction costs of the low- and moderate-income housing to be provided and (b) alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas of the premises in which they are located in order to make them accessible to persons with disabilities.

e. Any grant or loan agreement entered into pursuant to this section shall incorporate contractual guarantees and procedures by which the division shall ensure that any unit of housing provided for low- and moderate-income households shall continue to be occupied by low- and moderate-income households for a period that conforms to the requirements of

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subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321) following the award of the loan or grant, except that the division may approve a guarantee for a period of less duration where necessary to ensure project feasibility.

f. Notwithstanding the provisions of any other law, rule, or regulation to the contrary, in making grants or loans under this section, the department shall not require that tenants be certified as low or moderate income or that contractual guarantees or deed restrictions be in place to ensure continued low- and moderate-income occupancy as a condition of providing housing assistance from any program administered by the department, when that assistance is provided for a project of moderate rehabilitation if the project: (1) contains 30 or fewer rental units; and (2) is located in a census tract in which the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three-person household by the department in accordance with the latest federal decennial census. A list of eligible census tracts shall be maintained by the department and shall be adjusted upon publication of median income figures by census tract after each federal decennial census.

g. In addition to other grants or loans awarded pursuant to this section, and without regard to any limitations on such grants or loans for any other purposes herein imposed, the commissioner shall annually allocate such amounts as may be necessary in the commissioner's discretion, and in accordance with section 3 of P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants under the program created pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.). Such rental assistance grants shall be deemed necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in order to meet the housing needs of certain low-income households who may not be eligible to occupy other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

h. The department and the State Treasurer shall submit the "New Jersey Affordable Housing Trust Fund" for an audit annually by the State Auditor or State Comptroller, at the discretion of the Treasurer. In addition, the department shall prepare an annual report for each fiscal year, and submit it by November 30th of each year to the Governor and the Legislature, and the Joint Committee on Housing Affordability, or its successor, and post the information to its Internet website, of all activity of the fund, including details of the grants and loans by number of units, number and income ranges of recipients of grants or loans, location of the housing renovated or constructed using monies from the fund, the number of units upon which affordability controls were placed, and the length of those controls. The report also shall include details pertaining to those monies allocated from the fund for use by the State rental assistance program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

i. The commissioner may award or grant the amount of any appropriation deposited in the "New Jersey Affordable Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to municipalities pursuant to the provisions of section 39 of P.L.2009, c.90 (C.40:55D-8.8).

27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to read as follows:

C.52:27D-321 Affordable housing assistance.

21. The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low- and moderate-income housing.

a. Of the bond authority allocated to it under section 24 of P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less

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than 25 percent to be used in conjunction with housing to be constructed or rehabilitated with assistance under P.L.1985, c.222 (C.52:27D-301 et al.).

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have obtained compliance certification, or which have been subject to a builder's remedy. During any period which the agency may approve, the agency may assist affordable housing programs that have a pending request for compliance certification; provided the affordable housing program will meet all or in part a municipal low- and moderate-income housing obligation.

c. Assistance provided pursuant to this section may take the form of grants or awards to municipalities, prospective home purchasers, housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.), or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing low- and moderate-income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for low- and moderate-income housing, including infrastructure projects directly facilitating the construction of low- and moderate-income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan.

f. The agency, in consultation with the department, shall establish requirements and controls to ensure the maintenance of housing assisted under P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to low- and moderate-income households for a period of not less than 40 years for newly created rental units, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100

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percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing. The agency may update or amend any controls previously adopted by the agency, in consultation with the Council on Affordable Housing, prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), provided that the requirements and controls shall, at a minimum, be consistent with the controls as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), including, but not limited to, any requirements concerning bedroom distributions, affordability averages, and affirmative marketing. The controls may include, among others, requirements for recapture of assistance provided pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or otherwise which promotes the provision or maintenance of low- and moderate-income housing, the agency may waive restrictions on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor. The agency shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). All parties may continue to rely on regulations previously adopted by the agency pursuant to the authority provided by this section as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) until new rules and regulations are adopted by the agency. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation with department, may adopt, immediately, upon filing with the Office of Administrative Law, said regulations, which shall be effective for a period not to exceed one year from the date of the filing. The agency shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

g. The agency may establish affordable housing programs through the use or establishment of subsidiary corporations or development corporations as provided in P.L.1983, c.530 (C.55:14K-1 et seq.). The subsidiary corporations or development corporations shall be eligible to receive funds provided under P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted purpose.

h. The agency shall provide assistance, through its bonding powers or in any other manner within its powers, to the grant and loan program established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

i. (1) The department shall promulgate processes and standards for the certification of administrative agents and municipal housing liaisons in the State, as well as standards for measuring performance of and enforcing compliance by administrative agents and municipal housing liaisons in implementing the affordable housing requirements and controls established pursuant to subsection f. of this section.

(2) Administrative agents shall be responsible for implementing the requirements and controls set by the regulations promulgated pursuant to subsection f. of this section. The department may bring via summary proceeding any findings of violation of the responsibilities set forth in this section before a county-level housing judge to docket the violation and issue corrective orders and levy fines.

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(3) Municipal housing liaisons shall be responsible for monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the requirements and controls set by regulation under subsection f. of this section.

(4) Municipal housing liaisons, the department, and interested parties may bring a challenge before a county-level housing judge to determine whether properties subject to the regulations set forth by this section are out of compliance with the regulations. A finding of deliberate noncompliance may result in the department removing the administrative agent's certification.

(5) A county-level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations under the compliance certification established by section 3 of P.L.2024, c.2 (C.52:27D-304.1).

(6) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the department may adopt, immediately, upon filing with the Office of Administrative Law, regulations to implement the provisions of this subsection, which shall be effective for a period not to exceed one year from the date of the filing. The department shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended to read as follows:

C.52:27D-321.1 Allocation of low-income tax credits.

19. Notwithstanding any rules of the New Jersey Housing and Mortgage Finance Agency to the contrary, the allocation of low-income tax credits shall be made by the agency to the full extent such credits are permitted to be allocated under federal law, including allocations of four percent or nine percent federal low-income tax credits and including allocations allowable for partial credits. The affordable portion of any mixed income or mixed-use development that is part of a fair share housing plan that has obtained compliance certification, including a court-approved judgment of repose or compliance, including, but not limited to, a development that has received a density bonus, shall be permitted to receive allocations of low-income tax credits, provided that the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units, and the affordable units are developed contemporaneously with the commercial or market rate residential units.

29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to read as follows:

C.52:27D-329.1 Coordination, review of housing elements.

7. Housing elements and fair share plans adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) shall ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality's prospective need obligation will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units made available for families with children. The 13 percent shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality's prospective need obligation. Nothing in this section shall require that a specific percentage of the units in any specific project be reserved as very low-income housing; provided, however, that a municipality shall not receive

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bonus credits for the provision of housing units reserved for occupancy by very low-income households unless the 13 percent target has been exceeded within that municipality, and that the agency shall update the regulations adopted pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321) to replace any requirements for very low-income housing inconsistent with the percentages and definitions established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) with the percentage and definition specified in this section.

30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to read as follows:

C.52:27D-329.2 Authorization of municipality to impose, collect development fees.

8. a. (1) A municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. Review of that spending plan for consistency with applicable law and the municipality's housing element and fair share plan shall be part of the process specified in section 3 of P.L.2024, c.2 (C.52:27D-304.1). The department shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) regarding the establishment, administration, reporting, and enforcement of the expenditure of affordable housing development fees by municipalities, which shall include establishing an expedited process for approving spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification and procedures for monitoring the collection and expenditure of trust funds. The department shall develop and publish on the department's Internet website a detailed summary of the municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. As part of the regulations adopted pursuant to this section and section 10 of P.L.2008, c.46 (C.52:27D-

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329.4), the department shall adopt reporting requirements applicable to municipal affordable housing trust funds to facilitate fulfillment of the department's obligations pursuant to this section. Municipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department. The department shall have jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the department may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

b. A municipality shall deposit all fees collected, whether or not such collections were derived from fees imposed upon non-residential or residential construction into a trust fund dedicated to those purposes as required under this section, and such additional purposes as may be approved by the department.

c. (1) A municipality, other than a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), may only spend development fees for an activity approved by the department to address the municipal fair share obligation or approved as part of compliance certification.

(2) Municipal development trust funds shall not be expended unless the municipality has immunity from exclusionary zoning litigation at the time of the expenditure, or said municipality has previously collected such funds while under the protection of presumptive validity or immunity from exclusionary zoning litigation and in accordance with an approved spending plan. However, municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction, regardless of whether this approval occurs prior to or subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). Municipal development fee trust funds shall not be expended:

(a) to reimburse municipalities for activities which occurred prior to the authorization of a municipality to collect development fees; or

(b) (i) on administrative costs, attorney fees or court costs to obtain a judgment of repose; (ii) to contest a determination of the municipality's fair share obligation; or (iii) on costs of any challenger in connection to a challenge to the municipality's obligation, housing element, or fair share plan.

(3) A municipality shall set aside a portion of its development fee trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with rules of the department.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, common maintenance expenses for units located in condominiums, rental assistance, and any other program authorized by the department.

(b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low-income units in a municipal fair share plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall not entitle a municipality to bonus credits except as may otherwise be allowed by applicable precedent.

(4) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or

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any program or activity for which the municipality expends development fee proceeds, in accordance with rules of the department.

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program.

d. The department shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees shall be committed for expenditure within four years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this section shall be required by the council to transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund.

e. Notwithstanding any provision of this section, or regulations of the department, a municipality shall not collect a development fee from a developer whenever that developer is providing for the construction of affordable units, either on-site or elsewhere within the municipality.

This section shall not apply to the collection of a Statewide development fee imposed upon non-residential development pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through 40:55D-8.7) by the State Treasurer, when such collection is not authorized to be retained by a municipality.

31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to read as follows:

C.52:27D-329.4 Maintenance, publication of up-to-date municipal status report.

10. a. The department shall maintain on its Internet website, and also publish on an annual basis, an up-to-date municipal status report based on its collection and publication of information concerning the number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

b. (1) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), each municipality shall provide the department with the information necessary to comply with this section.

(2) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, each municipality shall provide the department with the information necessary to comply with this section.

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c. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the provisions of this section, including rules and regulations to ensure that municipalities and developers report any information as may be necessary for the department to fulfill its obligations pursuant to this section.

32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended to read as follows:

C.52:27D-329.9 Developments, certain, in certain regional planning entities.

18. a. Notwithstanding any rules to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be required to be reserved for occupancy by low- or moderate-income households at least 20 percent of the residential units constructed with affordability controls as required pursuant to the rules and regulations of the agency.

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 percent of the residential units constructed for occupancy by low- or moderate-income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the agency.

c. (Deleted by amendment, P.L.2024, c.2)

d. Notwithstanding the provisions of subsection b. of this section, or any other law or regulation to the contrary, for purposes of mixed-use projects or qualified residential projects in which a business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low- or moderate-income households. For a mixed-use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low- or moderate-income households in accordance with the terms and conditions of such approval.

33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to read as follows:

C.55:14K-56 Definitions.

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

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"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low- or moderate-income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Local enforcement authority" means any officer or agency of local government responsible for the implementation or enforcement of land-use and building regulations established by or pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Program" means the Affordable Home Ownership Opportunities Program created by this act.

"Qualified nonprofit organization" means any corporation or association of persons organized under Title 15A of the New Jersey Statutes, having for its principal purpose, or as a purpose ancillary to its principal purpose, the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), being within the description of section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been determined by the agency to be a bona fide organization not under the effective control of any for-profit organization or governmental entity, and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of this act.

"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes, or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to read as follows:

C.55:14K-60 Eligibility for loans.

7. A project of new construction or substantial rehabilitation by a nonprofit organization shall be eligible for a loan under this act if (1) the homes to be constructed or substantially rehabilitated under the project are located within an identifiable neighborhood in which median family income does not exceed the current standard of "moderate income" pursuant to the contemporaneous standards established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the homes to be constructed or substantially rehabilitated under the

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project are sufficient in number and located on the same or contiguous parcels of land or within such proximity to each other as to render the cost per unit of housing practicable for acquisition by lower-income purchasers; and (3) each home constructed or substantially rehabilitated within the project will conform to all requirements of the State Uniform Construction Code, except as to the waiver of any fee or other requirement pursuant to subsection b. of section 9 of this act.

35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to read as follows:

C.55:14K-74 Definitions relative to cooperative housing for certain purchasers.

3. As used in this act:

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project undertaken by a qualified housing sponsor to create housing for shared occupancy by seniors or persons with disability of low or moderate income, whether for home ownership or rental, which meets the standards of eligibility for loans under the program created by section 4 of P.L.1998, c.128 (C.55:14K-75).

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project who fulfills the definition of a senior or person with disability pursuant to this section, is of low or moderate income and to whom a loan may be made under the program pursuant to section 4 of P.L.1998, c.128 (C.55:14K-75).

"Fund" means the Senior and Disabled Cooperative Housing Incentive Fund established by section 6 of P.L.1998, c.128 (C.55:14K-77).

"Housing region" means a housing region as defined in subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Person with disability" means any person who is 18 years of age or older and who fulfills the definition of having a "disability" pursuant to section 3 of the "Americans with Disabilities Act of 1990," 42 U.S.C. s.12102).

"Program" means the New Jersey Senior and Disabled Cooperative Housing Finance Incentive Program created by P.L.1998, c.128 (C.55:14K-72 et seq.).

"Qualified housing sponsor" means any corporation or association of persons organized under the New Jersey Statutes, or any other corporation having for one of its purposes the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-72 et seq.).

"Retrofitting" means renovating or remodeling an existing residential or non-residential structure to allow for cooperative living.

"Senior" means an individual who is 55 years of age or older.

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"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

C.52:27D-313.3 Adoption of transitional rules, regulations, implementation, affordable housing, timeline; Uniform Housing Affordability Controls, update.

36. a. (1) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Community Affairs shall, in consultation with the Administrative Director of the Courts and the Executive Director of the New Jersey Housing and Mortgage Finance Agency, adopt, immediately upon filing with the Office of Administrative Law, no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), such transitional rules and regulations as necessary for the implementation of P.L.2024, c.2 (C.52:27D-304.1 et al.), including for: (a) the identification of any vestigial duties of the Council on Affordable Housing and the transfer of those duties within the Department of Community Affairs to the extent that those duties are not otherwise assumed, pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.), by municipalities or the Affordable Housing Dispute Resolution Program; and (b) the establishment of policies regarding the cost of the assessments and fees of planned real estate developments, as defined in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-income housing units.

(2) The department, in consultation with the agency, shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The Executive Director of the New Jersey Housing and Mortgage Finance Agency, in consultation with the department, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), rules and regulations to update the Uniform Housing Affordability Controls as required pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the Uniform Housing Affordability Controls, the agency shall set rules establishing that, for the purpose of newly created low- and moderate-income rental units, a 40-year minimum deed restriction shall be required. For the purpose of for-sale units, a 30-year minimum deed restriction shall be required. For the purpose of housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction shall be required, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100 percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing.

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37. The following sections are repealed:

Section 5 of P.L.1985 c.222 (C.52:27D-305);
Section 6 of P.L.1985, c.222 (C.52:27D-306);
Section 7 of P.L.1985, c.222 (C.52:27D-307);
Section 1 of P.L.1991, c.479 (C.52:27D-307.1);
Section 2 of P.L.1991, c.479 (C.52:27D-307.2);
Section 3 of P.L.1991, c.479 (C.52:27D-307.3);
Section 4 of P.L.1991, c.479 (C.52:27D-307.4);
Section 5 of P.L.1991, c.479 (C.52:27D-307.5);
Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
Section 8 of P.L.1985, c.222 (C.52:27D-308);
Section 9 of P.L.1985, c.222 (C.52:27D-309);
Section 40 of P.L.2009, c.90 (C.52:27D-311.3);
Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
Section 14 of P.L.1985, c.222 (C.52:27D-314);
Section 15 of P.L.1985, c.222 (C.52:27D-315);
Section 16 of P.L.1985, c.222 (C.52:27D-316);
Section 17 of P.L.1985, c.222 (C.52:27D-317);
Section 18 of P.L.1985, c.222 (C.52:27D-318);
Section 19 of P.L.1985 c.222 (C.52:27D-319);
Section 22 of P.L.1985, c.222 (C.52:27D-322);
Section 26 of P.L.1985, c.222 (C.52:27D-326);
Section 28 of P.L.1985, c.222 (C.52:27D-328); and
Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

38. a. There is appropriated to the Affordable Housing Dispute Resolution Program, established pursuant to subsection a. of section 5 of P.L.2024, c.2 (C.52:27D-313.2), from the General Fund \$12,000,000 for the purposes of carrying out its responsibilities for the fourth round of affordable housing obligations, as established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).

b. There is appropriated to the Department of Community Affairs, from the General Fund, \$4,000,000 for the purposes of carrying out responsibilities allocated to it pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.).

39. This act shall take effect immediately and shall apply to each new round of affordable housing obligations that begins following enactment.

Approved March 20, 2024.

EXHIBIT B

**IN THE MATTER OF A COMPLAINT FILED BY THE
TOWNSHIP OF MEDFORD**

Council on Local Mandates

Argued March 18, 2009

Decided March 18, 2009

Written Opinion issued June 1, 2009

Syllabus

(This syllabus was prepared for the benefit of the reader and is not part of the opinion of the Council. The syllabus does not purport to summarize all portions of the opinion.)

Medford Township filed a Complaint with the Council alleging that recent legislation (L. 2008, c. 46) amending the Fair Housing Act (FHA) and regulations promulgated by the New Jersey Council on Affordable Housing (COAH) impose unfunded mandates on local entities. Medford's contention is that it cannot satisfy its FHA and COAH obligations except with municipally sponsored, 100 percent affordable, supportive or special needs housing and that the newly-imposed statutory and regulatory obligations to provide municipal funding or bonding for such developments should be declared unfunded mandates within the meaning of N.J. Const. art. VIII, § 2, ¶ 5(a) and N.J.S.A. 52:13H-2.

After directing the Attorney General to file an answer on behalf of the State and COAH as Respondents, the Council advised the parties that the Complaint appeared to present two independently dispositive issues: (1) whether the challenged provisions are exempt from Council action because they "implement the provisions of [the New Jersey] Constitution," see N.J. Const. art. VIII, § 2, ¶ 5(c)(5), and (2) whether they "impose direct unfunded mandates rather than speculative obligations." The Council ordered the parties to move simultaneously for summary judgment on those two issues.

After full briefing, the cross-motions for summary judgment were argued before the Council on March 18, 2009. Following a brief recess, the Council Chair announced that the Council determined that the challenged provisions are exempted from Council action because they "implement" provisions of the New Jersey Constitution. This opinion explains and memorializes that decision.

HELD: The Council unanimously grants summary judgment in favor of Respondents.

The FHA was enacted, and COAH was created, at the urging of the New Jersey Supreme Court for the express purpose of fulfilling the State constitutional requirement, set forth in the

“Mount Laurel” decisions, Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975) and 92 N.J. 158 (1983), that municipal land use regulations provide a reasonable opportunity for low and moderate income housing. The FHA and COAH amendments challenged here impose specific substantive requirements that bear directly on that constitutional mandate.

The Council rejects Medford’s argument that the challenged provisions do not “implement” the Constitution because they have not been shown to be “necessary” to satisfy the Mount Laurel command. Article VIII, section 2, paragraph 5(c)(5) of the New Jersey Constitution does not state or suggest any such limitation. Nor is there is any sound reason to imply one. The judiciary, not the Council, is responsible for determining what is constitutionally “necessary.” Moreover, the Council should not presume to narrow the discretion entrusted to the legislative and executive branches to fashion remedies for constitutional problems.

The Council also rejects Medford’s argument that the challenged amendments do not “implement” the Constitution because they create “unfunded mandates” in violation of the FHA finding that municipalities are “not mandated to expend their own resources to provide low and moderate income housing.” N.J.S.A. 52:27D-302(h). The amendments were adopted to implement Mount Laurel; even if they impose the mandates claimed by Medford, the Council is without authority to nullify them. Whether the amendments are constitutional and whether they appropriately advance their intended goal are questions for the Courts, not the Council.

The Council thus does not address Medford’s claim that the challenged provisions impose “unfunded mandates.” The Council grants the motion of the State and COAH for summary judgment, denies the motion of Medford for summary judgment, and dismisses the Complaint.

Council Members **Leanna Brown**, **Timothy Q. Karcher**, **Ryan J. Peene**, **Sylvia B. Pressler**, **Jack Tarditi**, and **Janet L. Whitman** join in the majority opinion.

Council Chair **Victor R. McDonald, III**, issues a separate opinion, concurring in the result, finding that the challenged FHA and COAH provisions are not legislative or regulatory mandates, for municipal participation in COAH is optional.

Council Member **Rita E. Papaleo** did not participate.

Richard W. Hunt argued the cause for Claimant Medford Township (*Parker McKay P.A.*, attorneys; Mr. Hunt, on the briefs).

George N. Cohen, Deputy Attorney General, argued the cause for Respondents State of New Jersey and New Jersey Council on Affordable Housing (Anne Milgram, Attorney General

of New Jersey, attorney; Nancy Kaplen, Assistant Attorney General, of counsel; Mr. Cohen, on the briefs).

Kevin D. Walsh argued the cause for amicus curiae Fair Share Housing Center (Adam M. Gordon and Mr. Walsh, on the briefs).

Michael R. Butler argued the cause for amicus curiae New Jersey State League of Municipalities (*Mason, Griffin & Pierson, P.C.*, attorneys; Edwin W. Schmierer, of counsel; Joseph P. Blaney and Mr. Butler, on the brief).

Ronald K. Chen, Public Advocate of New Jersey, argued the cause for amicus curiae New Jersey Department of the Public Advocate (Mr. Chen, on the brief).

Christopher J. Norman, Township Solicitor, argued the cause for amicus curiae Mount Laurel Township (*Norman Kingsbury & Norman, LLC*, attorneys; Mr. Norman, on the brief).

OPINION

I

On August 15, 2008, Medford Township (Burlington County) filed a Complaint with the Council on Local Mandates seeking a declaration that certain recent legislation (L. 2008, c. 46) amending the Fair Housing Act (FHA), N.J.S.A. 52:27D-301 et seq., and rules promulgated by the New Jersey Council on Affordable Housing (COAH) impose unfunded mandates on local entities. Upon COAH's adoption of revised rules effective October 20, 2008, Medford filed a second Complaint which supersedes the first. That Complaint challenges the following statutes and regulations:

N.J.S.A. 52:27D-329.1 (L. 2008, c. 46, effective July 17, 2008), an amendment to the FHA directing COAH "to ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low income households" as defined by N.J.S.A. 52:27D-304 and providing that "a municipality shall not receive bonus credits for the provision of housing units reserved for occupancy by very low

income households unless the 13 percent target has been exceeded within that municipality.”

N.J.A.C. 5:97-6.7(d) (40 N.J.R. 3374(a), 5965(a), effective October 20, 2008), a COAH regulation regarding municipally sponsored and 100 percent affordable developments, requiring that the “minimum documentation” for approval of such projects include “[d]etailed information demonstrating that the municipality or developer has adequate funding capabilities” and directing that, if an application for outside funding is pending, “a stable alternative source such as municipal bonding shall be provided in the event the funding request is not approved.”

N.J.A.C. 5:97-6.10(e) (40 N.J.R. 3374(a), 5965(a), effective October 20, 2008), a COAH regulation regarding supportive and special needs housing, requiring that the “minimum documentation” to be submitted by a municipality for approval of such projects include “[a] municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.”

N.J.S.A. 40:55D-8.4 and -8.7(a) (L. 2008, c. 46, sections 35 and 38, effective July 17, 2008), an amendment to the Municipal Land Use Law imposing a fee for certain non-residential construction of two and one-half percent of the equalized assessed value of the land and improvements, in the case of all new non-residential construction (or of the increase in equalized assessed value, in the case of additions to existing structures), which fee is payable either to the municipality or to the State Treasurer and credited to the Urban Housing Assistance Fund or the New Jersey Affordable Housing Trust Fund established under the FHA.

Medford’s Complaint alleges, in sum, that the municipality cannot satisfy its FHA and COAH obligations except with municipally sponsored, 100 percent affordable, supportive or special needs housing and that the newly-imposed obligations to provide municipal funds or bonding for

such developments accordingly should be declared to be unfunded mandates within the meaning of N.J. Const. art. VIII, § 2, ¶ 5(a) and N.J.S.A. 52:13H-2.¹

In keeping with its notice requirements, on December 17, 2008, the Council advised the appropriate State officials of the filing of the consolidated Complaint and directed the Attorney General to file an answer on behalf of the State and COAH as Respondents. At the same time, the Council advised the parties that, based on its preliminary review of the Complaint, two independently dispositive issues appeared to be presented: (1) whether the challenged statutes and regulations “are exempt from Council action because they „implement the provisions of [the New Jersey] Constitution” and are within the jurisdiction of the Courts, rather than this Council” (see N.J. Const. art. VIII, § 2, ¶ 5(c)(5)); and (2) whether the challenged provisions “impose direct unfunded mandates rather than speculative obligations.” The Council directed the parties to move simultaneously for summary judgment on those two issues and fixed a schedule for the filing of briefs. Leave to appear as amici curiae was granted to the Fair Share Housing Center, the New Jersey State League of Municipalities, the Public Advocate and Mount Laurel Township.

With full briefing by all participants, the cross-motions for summary judgment were argued before the Council on March 18, 2009. Following a brief recess, the Council Chair announced that the Council determined that the challenged statutes and regulations are exempted by N.J. Const. art. VIII, § 2, ¶ 5(c)(5) from Council action because they “implement the provisions of [the New Jersey] Constitution.” This opinion explains and memorializes that decision.

¹ Medford, along with a number of other municipalities, is currently pursuing an Appellate Division proceeding in which it advances a wide variety of challenges to the COAH regulations. See In re Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, Docket Nos. A-5382-07T3 and A-5423-07T3.

II

In Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), the New Jersey Supreme Court announced the State constitutional requirement that municipal land use regulations provide a reasonable opportunity for low and moderate income housing. Eight years later, in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), the Court sought to “strengthen” and “clarify” that ruling but, noting the “social and economic controversy (and its political consequences)” it had spawned, urged that enforcement of the Mount Laurel doctrine “is better left to the Legislature,” because “achieving a political consensus . . . might lead to significant legislation enforcing the constitutional mandate better than we can.” Id. at 212.

The Legislature accepted that invitation and enacted the FHA in 1985. In its introductory findings, the Act recites the Mount Laurel holdings and the Court’s stated preference for legislative action in the field, and finds that “[t]he interest of all citizens . . . would be best served by a comprehensive planning and implementation response to this constitutional obligation.” N.J.S.A. 52:27D-302. The following section of the Act, “Legislative declarations and intention,” declares that “the statutory scheme set forth in this act . . . satisfies the constitutional obligation enunciated by the Supreme Court.” N.J.S.A. 52:27D-303. The FHA then establishes COAH (N.J.S.A. 52:27D-305) and gives COAH duties to determine housing regions, to estimate present and prospective need for low and moderate income housing, and to adopt “criteria and guidelines” for determining present and prospective municipal fair shares of the housing need in a given region. N.J.S.A. 52:27D-307.

The legislative history and language thus are explicit and unambiguous: the aim of the FHA and the role of COAH are to effectuate the Mount Laurel constitutional obligation. See In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 21 (App. Div. 2007) (“The FHA created COAH to provide an administrative mechanism for implementing the Mount Laurel doctrine”). The FHA and COAH amendments at issue here are clearly designed to advance that end, for they impose specific substantive requirements bearing directly on the provision of reasonable opportunities for low and moderate income housing. Compare, e.g., In re Monmouth-Ocean Educational Services Commission et al., decided August 20, 2004, Opinion at 14-15 (holding that the State failed to make “a specific, precise, fact-based showing” that a legislative mandate for radon testing in public schools “furthered an element of a [constitutionally-required] thorough and efficient education”). The unavoidable conclusion, then, is that the challenged provisions “implement the provisions of [the New Jersey] Constitution” and thus are exempted from action by this Council. N.J. Const. art. VIII, § 2, ¶ 5(c)(5).²

The Council rejects Medford’s argument that the challenged statutory and regulatory provisions cannot be said to “implement” Mount Laurel in the absence of a showing that they are “necessary” to satisfy the constitutional command. The language of the paragraph 5(c)(5) exemption does not include or suggest any such limitation; to the contrary, it exempts from Council action all statutes and regulations that “implement” the New Jersey Constitution, not just those that are themselves constitutionally necessary. Moreover, there is no sound reason for the Council to imply such a limitation. The Council cannot pass judgment on what is

² As detailed above, N.J.S.A. 40:55D-8.4, one of the statutes challenged by Medford, amends the Municipal Land Use Law. The record does not demonstrate that the amendment implements the Mount Laurel doctrine. But Medford does not argue that, standing alone, the amendment imposes any “mandate” on the municipality; it urges only that the non-residential construction fees imposed by the amendment are insufficient to fund the “mandates” assertedly imposed by the FHA and COAH amendments.

constitutionally “necessary,” a responsibility of the judiciary. Nor should the Council presume to narrow the discretion traditionally entrusted to the legislative and executive branches to fashion remedies for constitutional problems. See, e.g., Van Dalen v. Washington Tp., 120 N.J. 234, 246 (1990) (declaring COAH to be “entitled to a reasonable degree of latitude, consistent with the legislative purpose”).

Similarly unpersuasive is Medford’s argument that the challenged statutory and regulatory provisions do not “implement” Mount Laurel because they impose “unfunded mandates” in violation of the FHA provision that “nothing in [the Act] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.” N.J.S.A. 52:27D-311(d); see also N.J.S.A. 52:27D-302(h) (municipalities “are encouraged but not mandated to expend their own resources to help provide low and moderate income housing”). The challenged provisions represent the efforts of both the Legislature and COAH to satisfy the constitutional requirements. The constitutional and statutory exemption from Council action accorded to such efforts deprives the Council of the authority to nullify them even if they were to constitute “unfunded mandates.” Whether the challenged provisions appropriately advance their intended goal is a question to be resolved by the Courts, not this Council. See, e.g., In re Adoption of N.J.A.C. 5:9.4 and 5:95, supra, 390 N.J. Super. at 10-11 (addressing claims that COAH regulations were “contrary to, and ill-designed to respond to, the constitutional mandate to provide affordable housing to the residents of this State”).

III

Having determined that the statutory and regulatory amendments challenged by Medford implement the New Jersey Constitution and thus are exempted from Council action by

N.J. Const. art. VIII, § 2, ¶ 5(c)(5) and N.J.S.A. 52:13H-3(e), the Council does not address the claim that the amendments impose “unfunded mandates.” The Council unanimously grants the motion of the Respondents State of New Jersey and the New Jersey Council on Affordable Housing for summary judgment, denies the motion of Claimant Medford Township for summary judgment, and dismisses the Complaint.

So ordered.

Concurring Opinion

Victor R. McDonald, III, concurring.

Article VIII, section 2, paragraph 5 of the New Jersey Constitution grants the Council on Local Mandates the exclusive authority to determine whether or not “a law enacted on and after January 17, 1996, and with respect to any rule or regulation issued pursuant to a law originally adopted after July 1, 1996” is an unfunded State mandate. This language allows the Council to review only mandates emanating from the legislative and executive branches of State government.

In Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), the New Jersey Supreme Court announced the State constitutional requirement that municipal land use regulations must provide a reasonable opportunity for low and moderate income housing. This is clearly a mandate from the judiciary, whose decisions are beyond the constitutional authority of the Council to review.

While the Council is precluded from nullifying judicial mandates, it is not precluded from determining whether statutes, rules or regulations in fact implement a mandate or decision of the judiciary. See In re Highland Park Board of Education and Borough of Highland Park, decisions

issued on August 5, 1999 (“Highland Park I”) and May 11, 2000 (“Highland Park II”), for discussion of the Thorough and Efficient Clause of the Constitution and the Council’s authority to rule on statutes and regulations affecting education issues.

The Council thereafter thrice ruled on challenges to statutes and regulations affecting education. See In re Highland Park Board of Education and Borough of Highland Park, decided January 31, 2003, ruling that a regulation creating regional charter schools was not an unfunded mandate based on insufficient proofs of additional direct expenditures; In re Monmouth-Ocean Educational Services Commission et al. (“Monmouth-Ocean”), decided August 20, 2004, nullifying a statute mandating radon testing in public school classrooms; and In re Special Services School Districts of Burlington, Atlantic, Cape May and Bergen Counties (“Special Services School Districts”), decided July 26, 2007, nullifying a Department of Education regulation reducing the maximum age span in elementary school special education classes. The teaching of those cases is that the mere assertion that a statute, regulation, or rule implements a judicial mandate does not itself exempt that statute, rule or regulation from the Council’s jurisdiction.

In this case, Medford asserts that the municipality cannot satisfy its Fair Housing Act (FHA) and Council on Affordable Housing (COAH) obligations except with municipally sponsored, 100 percent affordable, supportive or special needs housing. Medford argues that the newly-imposed obligations to provide municipal funds or bonding for such developments accordingly should be declared to be unfunded mandates, *i.e.*, laws, rules, or regulations that “do[] not authorize resources, other than the property tax, to offset the additional direct expenditures required for [their] implementation.” N.J. Const. art. VIII, § 2, ¶ 5.

In each of the five rulings in which the Council has invalidated a statute, rule or regulation, clear and convincing evidence was presented that counties, municipalities or boards of education would incur expenditures in order to implement the challenged provisions. Proof was also presented to the Council that compliance with the statute, rule or regulation under challenge was not optional.

In Highland Park II, supra, the Council struck down an unambiguous directive from the Department of Education that boards of education increase funding for charter schools.

In Monmouth-Ocean, supra, the Council struck down a statute that indisputably would have cost boards of education substantial sums in order to test classrooms for radon.

In In re Counties of Morris, Warren, Monmouth, and Middlesex, decided September 26, 2006, the Council struck down an order of the Department of Transportation that counties and municipalities pick up dead deer, a service previously provided by and paid for the State, without being compensated for their costs.

In Special Services School Districts, supra, the Council struck down the regulation reducing the maximum age span in elementary school special education classes upon overwhelming and irrefutable evidence of the costs it would have imposed on property taxpayers.

Finally, in our most recent case, In re Mayors of Shiloh Borough and the Borough of Rocky Hill et al., decided October 22, 2008, the Council struck down provisions of the Fiscal Year 2009 Appropriations Act that would have required 89 rural municipalities to assume portions of the cost of State Police services, the amounts of which were expressly calculated and acknowledged by the State.

In the present case, in marked contrast to the earlier cases, Medford has presented no evidence of a legislative or regulatory mandate, much less an unfunded mandate. Neither Medford nor its amici can point to any provision of either the FHA or the COAH regulations that requires a municipality to participate in the COAH process. Indeed, the State and its amici have demonstrated that there are several alternatives available to Medford to comply with the Supreme Court mandate to provide a reasonable opportunity for low and moderate income housing. The fact that over 44% of New Jersey's municipalities have elected to not participate in COAH fatally undermines Medford's assertion that the FHA or the COAH regulations are unfunded mandates as defined by N.J. Const. art. VIII, § 2, ¶ 5. Simply stated, where there is choice, there is no mandate.

It is for these reasons that I join with my colleagues in granting the motion of the Respondents State of New Jersey and the New Jersey Council on Affordable Housing for summary judgment, denying the motion of Claimant Medford Township for summary judgment, and dismissing the Complaint.

* * * * *

The majority opinion was adopted by the Council and issued on June 1, 2009. Council Members Leanna Brown, Timothy Q. Karcher, Ryan J. Peene, Sylvia B. Pressler, Jack Tarditi, and Janet L. Whitman join in the majority opinion. Council Chair Victor R. McDonald, III, concurring in the result, issued the separate opinion. Council Member Rita E. Papaleo did not participate.

EXHIBIT C



Administrative Office of the Courts

GLENN A. GRANT

Administrative Director of the Courts

DEIRDRE M. NAUGHTON, ESQ.

Director, Professional & Governmental Services

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MEMORANDUM

TO: Members of the Assembly Housing Committee

FROM: Deirdre M. Naughton, Director
Andrea Johnson, Legislative Liaison
Pamela Gellert, Legislative Liaison

DATE: December 19, 2023

RE: **A4 -- concerns affordable housing, including administration and municipal obligations, amending, supplementing, and repealing various parts of the statutory law, and making an appropriation.**

The Judiciary submits the following comments regarding A4 and appreciates the opportunity to address this important legislation. While the Judiciary strongly agrees with and has advocated for the need for legislation to address the administration and determination of affordable housing obligations in New Jersey, the bill in its current form presents multiple areas of concern, including:

- The legislation seeks to reassign many of the administrative functions previously delegated to the Council on Affordable Housing (COAH) to the Judiciary. The bill would require the Judiciary to create rules and procedures and to appoint “special masters” to determine affordable housing obligations. Those functions, however, are administrative in nature and appropriate for the Executive Branch. Our State courts hear cases and controversies – they cannot function as an administrative body.
- The current language would require the Judiciary to “create law,” i.e., make a determination regarding how affordable housing need is determined. This requirement not only presents constitutional issues, but is inappropriate because the Judiciary would later be called to decide whether such “law” is constitutional and legally sound. The Judiciary cannot act in both conflicting roles.
- To the extent that the bill proposal seeks to rely on the 2018 unreported decision of Judge Jacobsen as the means by which to calculate affordable housing obligations, the specifics of that unreported decision should be reviewed for current applicability, specified in detail, and not merely referenced by name.
- The bill creates a “county level housing judge.” As each Vicinage already has a judge assigned to Mount Laurel cases, the creation of a county level judge is not necessary.



- The legislation does not define “interested party.” To ensure that all appropriate, interested parties have an opportunity to be heard in cases involving affordable housing matters, a definition of “interested party” should be included.
- A4 provides for an immediate effective date, which would not be possible for the Judiciary to comply with under its current construct.

The Judiciary looks forward to working with the sponsors and stakeholders moving forward and appreciates the opportunity to collaborate. Thank you.



EXHIBIT D

NOTICE TO THE BAR

AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM -- APPOINTMENT OF MEMBERS

As provided by L. 2024, c. 2, the Administrative Director of the Courts has appointed the following retired judges to serve on the Affordable Housing Dispute Resolution Program (“Program”):

Hon. Thomas C. Miller (chair)

Hon. Ronald E. Bookbinder

Hon. Thomas F. Brogan

Hon. Stephan C. Hansbury


Hon. Mary C. Jacobson

Hon. Julio L. Mendez

Hon. Paulette M. Sapp-Peterson

Additional information about the Program will be distributed by notice and posted on the Judiciary’s public website njcourts.gov.

Questions about the Program may be directed to the Civil Practice Division in the Administrative Office of the Courts at (609) 815-2900 x54900 or by email to CivilWebSites.Mailbox@njcourts.gov.



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 17, 2024

EXHIBIT E

Memorandum

To: Borough of Montvale, New Jersey
From: Econsult Solutions, Inc.
Date: October 29, 2024
RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
Authors: Peter Angelides, Ph.D., AICP – President; David Stanek, Ph.D. – Vice President

1 Introduction

ESI was asked to synthesize data on household growth trends and affordable housing production in New Jersey's urban aid and non-urban aid municipalities from 1970 to 2020. The goal was to evaluate changes in the number of households and the distribution of affordable housing units, particularly in the context of the state's fair share housing obligations and the impact of the urban aid exemption. This analysis aims to inform discussions on the relevance of the exemption policy given the significant shifts in demographic and housing patterns over the past five decades.

1.1 Sources

The analysis uses two primary data sources:

1. **U.S. Decennial Census Data (1970, 1980, 1990, 2000, 2010, and 2020):** Household data from the U.S. Census Bureau's decennial censuses for the years mentioned.¹ This data provides insights into the trends of household growth and decline across both exempt and non-exempt municipalities in New Jersey over a 50-year period.
2. **Low-Income Housing Tax Credit (LIHTC) Program Data from NJHMFA:** Information on newly constructed affordable housing units from the New Jersey Housing and Mortgage Finance Agency (NJHMFA). The data cover affordable housing units built under the LIHTC program between 1990 and 2019. This allows for an assessment of affordable housing production in both exempt and non-exempt municipalities.

By combining these data sources, the analysis offers an evaluation of how household dynamics and affordable housing development have evolved in New Jersey's municipalities, particularly in relation to the urban aid exemption and fair share housing requirements.

¹ Steven Manson, Jonathan Schroeder, David Van Riper, Katherine Knowles, Tracy Kugler, Finn Roberts, and Steven Ruggles. IPUMS National Historical Geographic Information System: Version 18.0. 1970 Census: Count 1 - 100% Data, 1980 Census: STF 1 - 100% Data, 1990 Census: STF 1 - 100% Data, 2000 Census: SF 1a - 100% Data, 2010 Census: SF 1a - P&H Tables, 2020 Census: DHC - P&H Tables. Minneapolis, MN: IPUMS. 2023.
<http://doi.org/10.18128/D050.V18.0>

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020

Date: October 29, 2024

2 Urban Aid Exemptions

Under the fair share methodology that was first adopted in 1983 and has since been maintained, existing urban aid municipalities that meet specific criteria are exempt from the obligation to provide affordable housing to meet the prospective affordable housing need of the state. In the 2024 Fourth Round calculations, 47 municipalities are exempt.² The remaining 517 municipalities are assigned a fair share obligation.

Throughout this memo, two sets of exempt municipalities are considered:

- The first set are those exempt under the current Fourth Round calculations, which are referred to as 2024 exempt municipalities throughout.³ The remaining municipalities that are required to contribute to the fair share housing requirement are referred to as 2024 non-exempt municipalities. These 2024 exempt municipalities are used to estimate exempt households between 1990 and 2020.
- The second set of exempt municipalities are the 31 municipalities that qualified as urban aid municipalities pursuant to Chapter 64 of Public Law 1971 as of 1978.⁴ The list from 1978 was the closest contemporaneous list of urban aid municipalities available to the Legislature when they drafted the Fair Housing Act. These municipalities are referred to as 1978 urban aid municipalities throughout. The information below treats all of these 1978 municipalities as if they were exempt under the Fair Housing Act. These municipalities are used to estimate exempt households between 1970 and 1990.⁵

3 Prospective Need Requirements

Under the 2024 legislation on affordable housing and earlier affordable housing legislation, the prospective need for affordable housing is calculated across six regions in the state.⁶ The prospective need of low- and moderate-income for each region is determined by finding the change in households between the most recent U.S. Decennial Census and the second most recent U.S. Decennial Census. If

² These exempt municipalities change over time. For example, there were 31 urban aid municipalities in 1978 and 42 in 1983, both dates prior to the establishment of the Fair Housing Act of 1985. More recently, there were 44 “qualifying” urban aid municipalities that were exempt in 2015.

³ New Jersey Department of Community Affairs, 2024. 2025-2035 Affordable Housing Calculations. Fourth Round Calculations Workbook. https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Workbook.xlsx

⁴ State of New Jersey, Department of Treasury, 1979. State Owned Lands in New Jersey, Phase I: Urban Aid Municipalities. rucore.libraries.rutgers.edu/rutgers-lib/56359/PDF/1/play/

⁵ A more precise accounting of the numbers below would use actual exempt municipalities for each decade between 1970 and 2020. However, the overall story remains the same as the list of urban aid municipalities since the 1970s has stayed relatively constant. Only four municipalities among the 1978 urban aid municipalities are not among the 2024 exempt municipalities. These four municipalities, Millville, Keansburg, Neptune, and Phillipsburg, comprised just 2 percent of the total households of the combined 1978 urban aid municipalities.

⁶ Region 1: Bergen, Hudson, Passaic and Sussex counties; Region 2: Essex, Morris, Union and Warren counties; Region 3: Hunterdon, Middlesex, and Somerset counties; Region 4: Mercer, Monmouth and Ocean counties; Region 5: Burlington, Camden, and Gloucester counties; Region 6: Atlantic, Cape May, Cumberland, and Salem counties. New Jersey Department of Community Affairs, 2024. 2025-2035 Affordable Housing Calculations. Fourth Round Calculations Workbook. https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Workbook.xlsx

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
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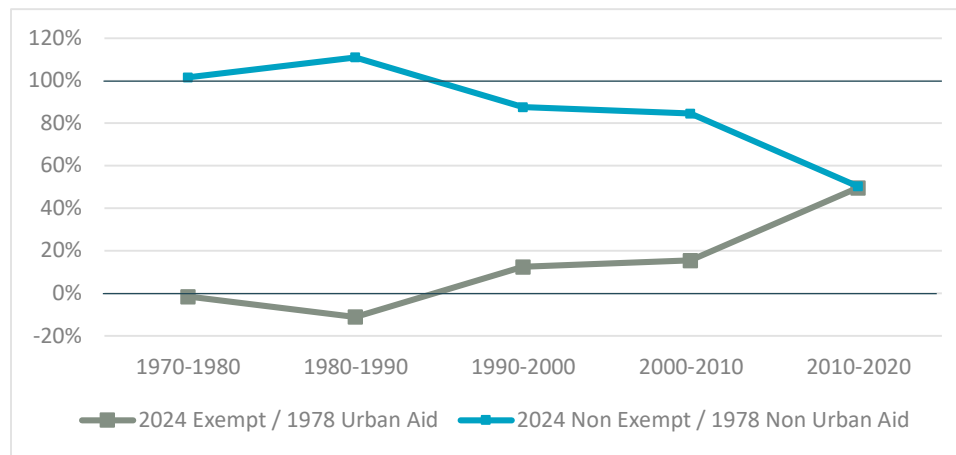
positive, this change in households is then divided by 2.5 to determine the region’s prospective need. If negative, this change in households is adjusted to zero. For the Fourth Round calculations, this prospective need is based on the 2010 and 2020 U.S. Decennial Censuses. The prospective need of past decades is calculated below using this same method.

Under the new fair housing legislation, the prospective need for affordable housing generated by exempt municipalities is redistributed among the non-exempt municipalities within the same region. This means that while exempt municipalities contribute to the overall housing need through their household growth, they are not responsible for fulfilling that need under the fair share obligations. Additionally, the construction of new affordable housing in exempt municipalities does not count toward the region's prospective need calculations. As described below, the proportion of statewide household growth in exempt municipalities has increased significantly relative to non-exempt municipalities in recent years.

4 Trends in Changes in the Number of Households, 1970-2020

In the 1980s, when the urban aid exemption was first established, many exempt municipalities were in decline as evidenced by large losses in population and households that began in the mid-twentieth century and carried through to the 1990s. Today, nearly 40 years later, while some of the underlying conditions that affected many of these exempt municipalities persist, several exempt municipalities are growing, overall, and exempt municipalities now comprise half of the state’s growth in households (see Figure 1).

Figure 1: Percent Share of Change in Households Statewide by 2024 Exemption / 1978 Urban Aid Status*, 1970-2020



*Percentages for 1970-1990 are based on the 31 Urban Aid municipalities in 1978. Percentages for 1990-2020 are based on the 2024 exempt municipalities in the Fourth Round Calculations workbook from NJ DCA.
 Source: State of New Jersey, Department of Treasury (1979); NJ DCA Fourth Round Calculations Workbook (2024); NHGIS; U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1); Calculations by ESI (2024); Calculations by ESI (2024).

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The following section presents data about trends in the growth and decline in the number of households in exempt and non-exempt municipalities in New Jersey between 1970 and 2020.

4.1 1970-1990 Household Change

In the 1970s and 1980s, New Jersey was quickly suburbanizing and urban areas were in decline. Between 1970 and 1980, New Jersey gained a net total of 343,465 households. 2024 non-urban aid municipalities gained 348,820 households (102 percent of the statewide net total), while the 1978 urban aid municipalities lost a net total of 5,355 households. The loss in households was concentrated in Region 1 (4,818 households lost), Region 2 (6,730 households lost) and Region 5 (4,361 households lost) (see Figure 2).

Losses in 1978 urban aid municipalities were more severe in the 1980s, and overall household growth slowed significantly across the state. Between 1980 and 1990, New Jersey gained a net total of 246,117 households, with 273,350 new households in 1978 non-urban aid municipalities and 27,233 households lost in 1978 urban aid municipalities. The loss in households was again concentrated in Region 1 (2,431 households lost), Region 2 (24,255 households lost), and Region 5 (1,578 households lost) (see Figure 3).

Figure 2: Change in Households by 1978 Urban Aid Municipalities, 1970-1990

Region	Urban Aid Status	1970-1980		1980-1990	
		Households	% of State Total	Households	% of State Total
1	Non-Urban Aid	46,622	14%	20,824	8%
	Urban Aid	(4,818)	-1%	(2,431)	-1%
2	Non-Urban Aid	38,976	11%	26,320	11%
	Urban Aid	(6,730)	-2%	(24,255)	-10%
3	Non-Urban Aid	58,411	17%	72,437	29%
	Urban Aid	1,076	0%	57	0%
4	Non-Urban Aid	100,330	29%	78,442	32%
	Urban Aid	6,845	2%	(37)	0%
5	Non-Urban Aid	74,004	22%	53,208	22%
	Urban Aid	(4,361)	-1%	(1,578)	-1%
6	Non-Urban Aid	30,477	9%	22,110	9%
	Urban Aid	2,633	1%	1,011	0%
Statewide	Non-Urban Aid	348,820	102%	273,341	111%
	Urban Aid	(5,355)	-2%	(27,233)	-11%
	Total	343,465	100%	246,108	100%

Source: State of New Jersey, Department of Treasury (1979); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1); Calculations by ESI (2024).

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4.2 1990-2020 Household Change

The declines in New Jersey's urban municipalities reversed in the 1990s. Between 1990 and 2000, 2024 exempt municipalities accounted for 33,652 new households and between 2000 and 2010, they accounted for 23,097 new households. The 1990-2000 and 2000-2010 decades of growth for 2024 exempt municipalities accounted for 12 and 15 percent of the state's growth respectively (see Figure 3).

By the 2010s, the 2024 exempt municipalities were driving a much larger share of the state's growth. Between 2010 and 2020, the 41 2024 exempt municipalities accounted for essentially half of the state's growth. Exempt municipalities grew by 105,145 new households as compared to the 106,597 in 2024 non-exempt municipalities.⁷ Forty percent of the state's households growth occurred in Region 1 (24 percent) and Region 2 (16 percent) 2024 exempt municipalities (see Figure 3).

Figure 3: Change in Households by 2024 Exempt Municipalities, 1990-2020

Region	Exemption Status	1990-2000		2000-2010		2010-2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Not Exempt	32,111	12%	12,242	8%	17,797	8%
	Exempt	26,595	10%	15,412	10%	51,561	24%
2	Not Exempt	34,425	13%	15,121	10%	18,209	9%
	Exempt	2,239	1%	492	0%	33,055	16%
3	Not Exempt	51,164	19%	25,113	17%	23,462	11%
	Exempt	2,228	1%	2,524	2%	5,547	3%
4	Not Exempt	64,637	24%	35,126	23%	24,426	12%
	Exempt	3,150	1%	2,678	2%	10,128	5%
5	Not Exempt	38,516	14%	30,264	20%	20,024	9%
	Exempt	(1,841)	-1%	473	0%	2,811	1%
6	Not Exempt	15,438	6%	8,752	6%	2,679	1%
	Exempt	1,281	0%	1,518	1%	2,043	1%
Statewide	Not Exempt	236,291	88%	126,618	85%	106,597	50%
	Exempt	33,652	12%	23,097	15%	105,145	50%
	Total	269,943	100%	149,715	100%	211,742	100%

Source: NJ DCA Fourth Round Calculations Workbooks (2024); NHGIS (2023), U.S. Decennial Census, 1990 (STF-1), 2000 (SF 1a), 2010 (SF 1a), 2020 (DHC). Calculations by ESI (2024)

5 Affordable Housing Production

The Low-Income Housing Tax Credit (LIHTC) is used to fund a large portion of affordable housing in New Jersey. It incentivizes private developers to build or rehabilitate affordable rental housing by providing them with tax credits. Between 1990 and 2019, according to data from the New Jersey Housing and

⁷ For comparison, between 2010 and 2020, the 1978 urban aid municipalities made up 40 percent of the state's household growth.

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Mortgage Financing Agency, there were 35,036 new affordable housing units built under the Low-Income Housing Tax Credit (LIHTC) program. Of these units, 16,162 were built in 2024 exempt municipalities, and 18,873 were built in 2024 non-exempt municipalities (See Figure 4).

Between 2010 and 2019, exempt municipalities utilized this program to build 6,635 affordable housing units as compared to 8,118 in non-exempt municipalities. These affordable units built in 2024 exempt municipalities comprise about 8 percent of the state’s prospective need (see Figure 5). These contributions to the state’s prospective need are not counted toward their region’s fair share housing obligations.⁸

Figure 4: Prospective Need and New Construction LIHTC Affordable Housing Units

	1990-2000	2000-2010	2010-2020	Total
Prospective Housing Need	107,977	59,886	84,698	-
LIHTC Affordable Units - Exempt	2,710	6,817	6,635	16,162
LIHTC Affordable Units - Non Exempt	4,602	6,154	8,118	18,874
LIHTC Affordable Units - Total	7,312	12,971	14,753	35,036

Source: ESI (2024), New Jersey Home Mortgage and Financing Agency (2024)

Figure 5: New Construction LIHTC Affordable Housing Units by Region as a Percentage of Regional Prospective Need

Region	1990-2000	2000-2010	2010-2020
1	3%	13%	4%
2	7%	32%	11%
3	3%	6%	5%
4	0%	3%	8%
5	1%	11%	11%
6	2%	24%	38%
Statewide	3%	11%	8%

Source: New Jersey Housing Mortgage and Finance Agency (2024); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC). Calculations by ESI (2024).

⁸ The exclusion of affordable housing units built in exempt municipalities from counting toward regional fair share obligations is grounded in the New Jersey Fair Housing Act and the administrative regulations established by COAH (N.J.A.C. 5:93 and N.J.A.C. 5:94). While defunct, the methodologies used under COAH underpin the current fair housing legislation.

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RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020

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Appendix Figure 1: 2024 Exempt and 1978 Urban Aid Municipalities

County	Municipality	2024 Exempt Urban Aid	1978 Urban Aid
Atlantic	Atlantic City	X	X
Atlantic	Pleasantville	X	
Bergen	Bergenfield	X	
Bergen	Cliffside Park	X	
Bergen	Garfield	X	
Bergen	Hackensack	X	
Bergen	Lodi	X	
Camden	Camden	X	X
Camden	Lindenwold	X	
Camden	Pennsauken	X	
Cumberland	Bridgeton	X	X
Cumberland	Millville		X
Cumberland	Vineland	X	X
Essex	Belleville	X	
Essex	Bloomfield	X	X
Essex	City of Orange	X	X
Essex	East Orange	X	X
Essex	Irvington	X	X
Essex	Montclair	X	X
Essex	Newark	X	X
Essex	Nutley	X	
Gloucester	Glassboro	X	
Gloucester	Woodbury	X	
Hudson	Bayonne	X	X
Hudson	Harrison	X	
Hudson	Hoboken	X	X
Hudson	Jersey City	X	X
Hudson	Kearny	X	
Hudson	North Bergen	X	X
Hudson	Union City	X	X
Hudson	Weehawken	X	
Hudson	West New York	X	X
Mercer	Trenton	X	X
Middlesex	Carteret	X	
Middlesex	New Brunswick	X	X
Middlesex	Perth Amboy	X	X
Middlesex	Woodbridge	X	
Monmouth	Asbury Park	X	X
Monmouth	Keansburg		X
Monmouth	Long Branch	X	X
Monmouth	Neptune City		X
Ocean	Lakewood	X	X
Passaic	Clifton	X	
Passaic	Passaic	X	X
Passaic	Paterson	X	X
Union	Elizabeth	X	X
Union	Hillside	X	
Union	Plainfield	X	X
Union	Rahway	X	X
Union	Roselle	X	
Warren	Phillipsburg		X

Source: NJ DCA Fourth Round Calculations Workbook (2024); State of New Jersey, Department of the Treasury (1979)

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
 Date: October 29, 2024

Appendix Figure 2a: Total Households by 2024 Exempt Urban Aid Municipalities, 1970-2020

Region	Exemption Status	1970		1980		1990		2000		2010		2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Not Exempt	312,909	14%	351,966	14%	372,556	13%	404,667	13%	416,909	13%	434,706	13%
	Exempt	344,238	16%	346,985	14%	344,788	12%	371,383	12%	386,795	12%	438,356	13%
	Total	657,147	30%	698,951	27%	717,344	26%	776,050	25%	803,704	25%	873,062	25%
2	Not Exempt	290,970	13%	327,589	13%	353,503	13%	387,928	13%	403,049	13%	421,258	12%
	Exempt	316,286	14%	311,913	12%	288,064	9%	290,303	9%	290,795	9%	323,850	9%
	Total	607,256	28%	639,502	25%	641,567	23%	678,231	22%	693,844	22%	745,108	22%
3	Not Exempt	173,202	8%	229,514	9%	298,093	11%	349,257	11%	374,370	12%	397,832	12%
	Exempt	59,902	3%	63,077	2%	66,992	2%	69,220	2%	71,744	2%	77,291	2%
	Total	233,104	11%	292,591	11%	365,085	13%	418,477	14%	446,114	14%	475,123	14%
4	Not Exempt	237,215	11%	338,422	13%	417,147	15%	481,784	16%	516,910	16%	541,336	16%
	Exempt	59,863	3%	65,831	3%	65,511	2%	68,661	2%	71,339	2%	81,467	2%
	Total	297,078	13%	404,253	16%	482,658	17%	550,445	18%	588,249	18%	622,803	18%
5	Not Exempt	217,850	10%	286,669	11%	338,009	12%	376,525	12%	406,789	13%	426,813	12%
	Exempt	55,034	2%	55,858	2%	56,148	2%	54,307	2%	54,780	2%	57,591	2%
	Total	272,884	12%	342,527	13%	394,157	14%	430,832	14%	461,569	14%	484,404	14%
6	Not Exempt	93,064	4%	125,298	5%	146,810	5%	162,248	5%	171,000	5%	173,679	5%
	Exempt	44,596	2%	45,472	2%	47,081	2%	48,362	2%	49,880	2%	51,923	2%
	Total	137,660	6%	170,770	7%	193,891	7%	210,610	7%	220,880	7%	225,602	7%
State	Not Exempt	1,325,210	60%	1,659,458	65%	1,926,118	69%	2,162,409	71%	2,289,027	71%	2,395,624	70%
	Exempt	879,919	40%	889,136	35%	868,584	31%	902,236	29%	925,333	29%	1,030,478	30%
	Total	2,205,129	100%	2,548,594	100%	2,794,702	100%	3,064,645	100%	3,214,360	100%	3,426,102	100%

Source: NJ DCA Fourth Round Calculations Workbook (2024); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
 Date: October 29, 2024

Appendix Figure 2b: Total Households by 1978 Urban Aid Municipalities, 1970-2020

Region	Urban Aid Status	1970		1980		1990		2000		2010		2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Non Urban Aid	410,490	19%	457,112	18%	477,936	17%	517,460	17%	529,099	16%	558,101	16%
	Urban Aid	246,657	11%	241,839	9%	239,408	9%	258,590	8%	274,605	9%	314,961	9%
	Total	657,147	30%	698,951	27%	717,344	26%	776,050	25%	803,704	25%	873,062	25%
2	Non Urban Aid	320,726	15%	359,702	14%	386,022	14%	421,180	14%	436,352	14%	456,928	13%
	Urban Aid	286,530	13%	279,800	11%	255,545	9%	257,051	8%	257,492	8%	288,180	8%
	Total	607,256	28%	639,502	25%	641,567	23%	678,231	22%	693,844	22%	745,108	22%
3	Non Urban Aid	207,319	9%	265,730	10%	338,167	12%	390,858	13%	416,576	13%	442,600	13%
	Urban Aid	25,785	1%	26,861	1%	26,918	1%	27,619	1%	29,538	1%	32,523	1%
	Total	233,104	11%	292,591	11%	365,085	13%	418,477	14%	446,114	14%	475,123	14%
4	Non Urban Aid	232,457	11%	332,787	13%	411,229	15%	475,691	16%	510,972	16%	535,419	16%
	Urban Aid	64,621	3%	71,466	3%	71,429	3%	74,754	2%	77,277	2%	87,384	3%
	Total	297,078	13%	404,253	16%	482,658	17%	550,445	18%	588,249	18%	622,803	18%
5	Non Urban Aid	240,319	11%	314,323	12%	367,531	13%	406,655	13%	437,094	14%	460,019	13%
	Urban Aid	32,565	1%	28,204	1%	26,626	1%	24,177	1%	24,475	1%	24,385	1%
	Total	272,884	12%	342,527	13%	394,157	14%	430,832	14%	461,569	14%	484,404	14%
6	Non Urban Aid	90,476	4%	120,953	5%	143,063	5%	158,607	5%	167,013	5%	170,161	5%
	Urban Aid	47,184	2%	49,817	2%	50,828	2%	52,003	2%	53,867	2%	55,441	2%
	Total	137,660	6%	170,770	7%	193,891	7%	210,610	7%	220,880	7%	225,602	7%
State	Non Urban Aid	1,501,787	68%	1,850,607	73%	2,123,948	76%	2,370,451	77%	2,497,106	78%	2,623,228	77%
	Urban Aid	703,342	32%	697,987	27%	670,754	24%	694,194	23%	717,254	22%	802,874	23%
	Total	2,205,129	100%	2,548,594	100%	2,794,702	100%	3,064,645	100%	3,214,360	100%	3,426,102	100%

Source: State of New Jersey, Department of Treasury (1979); NHGIS, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
 Date: October 29, 2024

Appendix Figure 3a: Change in Number of Households by 2024 Exempt Urban Aid Municipalities, 1970-2020

Region	Exemption Status	1970-1980		1980-1990		1990-2000		2000-2010		2010-2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Not Exempt	39,057	11%	20,590	8%	32,111	12%	12,242	8%	17,797	8%
	Exempt	2,747	1%	(2,197)	-1%	26,595	10%	15,412	10%	51,561	24%
	Total	41,804	12%	18,393	7%	58,706	22%	27,654	18%	69,358	33%
2	Not Exempt	36,619	11%	25,914	11%	34,425	13%	15,121	10%	18,209	9%
	Exempt	(4,373)	-1%	(23,849)	-10%	2,239	1%	492	0%	33,055	16%
	Total	32,246	9%	2,065	1%	36,664	14%	15,613	10%	51,264	24%
3	Not Exempt	56,312	16%	68,579	28%	51,164	19%	25,113	17%	23,462	11%
	Exempt	3,175	1%	3,915	2%	2,228	1%	2,524	2%	5,547	3%
	Total	59,487	17%	72,494	29%	53,392	20%	27,637	18%	29,009	14%
4	Not Exempt	101,207	29%	78,725	32%	64,637	24%	35,126	23%	24,426	12%
	Exempt	5,968	2%	(320)	0%	3,150	1%	2,678	2%	10,128	5%
	Total	107,175	31%	78,405	32%	67,787	25%	37,804	25%	34,554	16%
5	Not Exempt	68,819	20%	51,340	21%	38,516	14%	30,264	20%	20,024	9%
	Exempt	824	0%	290	0%	(1,841)	-1%	473	0%	2,811	1%
	Total	69,643	20%	51,630	21%	36,675	14%	30,737	21%	22,835	11%
6	Not Exempt	32,234	9%	21,512	9%	15,438	6%	8,752	6%	2,679	1%
	Exempt	876	0%	1,609	1%	1,281	0%	1,518	1%	2,043	1%
	Total	33,110	10%	23,121	9%	16,719	6%	10,270	7%	4,722	2%
State	Not Exempt	334,248	97%	266,660	108%	236,291	88%	126,618	85%	106,597	50%
	Exempt	9,217	3%	(20,552)	-8%	33,652	12%	23,097	15%	105,145	50%
	Total	343,465	100%	246,108	100%	269,943	100%	149,715	100%	211,742	100%

Source: NJ DCA Fourth Round Calculations Workbook (2024); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
 Date: October 29, 2024

Appendix Figure 3b: Change in Number of Households by 1978 Urban Aid Municipalities, 1970-2020

Region	Urban Aid Status	1970-1980		1980-1990		1990-2000		2000-2010		2010-2020	
		Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total	Households	% of State Total
1	Non Urban Aid	46,622	14%	20,824	8%	39,524	15%	11,639	8%	29,002	14%
	Urban Aid	(4,818)	-1%	(2,431)	-1%	19,182	7%	16,015	11%	40,356	19%
	Total	41,804	12%	18,393	7%	58,706	22%	27,654	18%	69,358	33%
2	Non Urban Aid	38,976	11%	26,320	11%	35,158	13%	15,172	10%	20,576	10%
	Urban Aid	(6,730)	-2%	(24,255)	-10%	1,506	1%	441	0%	30,688	14%
	Total	32,246	9%	2,065	1%	36,664	14%	15,613	10%	51,264	24%
3	Non Urban Aid	58,411	17%	72,437	29%	52,691	20%	25,718	17%	26,024	12%
	Urban Aid	1,076	0%	57	0%	701	0%	1,919	1%	2,985	1%
	Total	59,487	17%	72,494	29%	53,392	20%	27,637	18%	29,009	14%
4	Non Urban Aid	100,330	29%	78,442	32%	64,462	24%	35,281	24%	24,447	12%
	Urban Aid	6,845	2%	(37)	0%	3,325	1%	2,523	2%	10,107	5%
	Total	107,175	31%	78,405	32%	67,787	25%	37,804	25%	34,554	16%
5	Non Urban Aid	74,004	22%	53,208	22%	39,124	14%	30,439	20%	22,925	11%
	Urban Aid	(4,361)	-1%	(1,578)	-1%	(2,449)	-1%	298	0%	(90)	0%
	Total	69,643	20%	51,630	21%	36,675	14%	30,737	21%	22,835	11%
6	Non Urban Aid	30,477	9%	22,110	9%	15,544	6%	8,406	6%	3,148	1%
	Urban Aid	2,633	1%	1,011	0%	1,175	0%	1,864	1%	1,574	1%
	Total	33,110	10%	23,121	9%	16,719	6%	10,270	7%	4,722	2%
State	Non Urban Aid	348,820	102%	273,341	111%	246,503	91%	126,655	85%	126,122	60%
	Urban Aid	(5,355)	-2%	(27,233)	-11%	23,440	9%	23,060	15%	85,620	40%
	Total	343,465	100%	246,108	100%	269,943	100%	149,715	100%	211,742	100%

Source: State of New Jersey, Department of Treasury (1979); NHGIS (2023), U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); Calculations by ESI (2024).

RE: Trends in Household Change and the Urban Aid Exemption, 1970-2020
 Date: October 29, 2024

Appendix Figure 4: New Construction LIHTC Affordable Housing Unit Production by Percentage of Estimated Regional Prospective Need, 1990-2019

Region	Exemption Status	1990-1999		2000-2009		2010-2019	
		Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units	% of Region Prospective Need	Affordable Housing Units	% of Region Prospective Need
1	Not Exempt	774	3%	227	2%	586	2%
	Exempt	672	3%	1,489	13%	1,001	4%
	Total	1,446	6%	1,715	16%	1,587	6%
2	Not Exempt	614	4%	297	5%	386	2%
	Exempt	1,080	7%	2,025	32%	2,263	11%
	Total	1,694	12%	2,322	37%	2,649	13%
3	Not Exempt	580	3%	667	6%	1,816	16%
	Exempt	563	3%	618	6%	594	5%
	Total	1,143	5%	1,285	12%	2,410	21%
4	Not Exempt	920	3%	1,900	13%	2,657	19%
	Exempt	79	0%	400	3%	1,073	8%
	Total	999	4%	2,300	15%	3,730	27%
5	Not Exempt	1,217	8%	1,927	16%	1,949	21%
	Exempt	209	1%	1,310	11%	983	11%
	Total	1,426	10%	3,237	26%	2,932	32%
6	Not Exempt	496	7%	1,136	28%	724	38%
	Exempt	107	2%	976	24%	720.22	38%
	Total	603	9%	2,112	51%	1,444.22	76%
Statewide	Not Exempt	4,602	4%	6,154	10%	8,118	10%
	Exempt	2,710	3%	6,817	11%	6,635	8%
	Total	7,312	7%	12,971	22%	14,753	17%

Source: NJ DCA Fourth Round Calculations Workbook (2024); NHGIS; U.S. Decennial Census, 1970 (Count 1), 1980 (STF-1), 1990 (STF-1), 2000 (SF-1a), 2010 (SF-1a), 2020 (DHC); New Jersey Housing Mortgage and Financing Agency (2024). Calculations by ESI (2024).

EXHIBIT F

NOTICE TO THE BAR AND PUBLIC

AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM (L. 2024, c. 2) – (a) ADMINISTRATIVE DIRECTIVE #14-24; (b) RELAXATION OF RULE 2:2-3 REGARDING PROGRAM APPEALS; (c) JUDICIARY AFFORDABLE HOUSING WEBPAGE

Recent legislation created a new process for municipalities to come into constitutional compliance with their affordable housing obligations under the Fair Housing Act (FHA). The new law, L. 2024, c. 2, also established the Affordable Housing Dispute Resolution Program (“Program”) within the Judiciary for the purpose of resolving disputes associated with the FHA.

(a) Administrative Directive #14-24

As authorized by the law, the Administrative Director has established the procedures for the Program’s operation, as set forth in the attached Administrative Directive #14-24 (“Affordable Housing Dispute Resolution Program – Implementation of L. 2024, c. 2”). The Program procedures address initiating actions and challenges using the Judiciary’s electronic filing systems, criteria for assignment of a case to the Program, appointment of special adjudicators by Program members, settlement conferences and sessions, appeals, codes of conduct, and public access to filings.

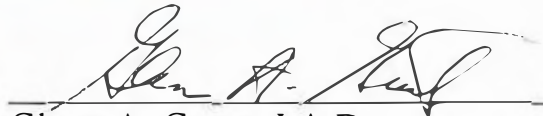
(b) Relaxation of Rule 2:2-3

The Supreme Court in the attached November 12, 2024 Order relaxed and supplemented Rule 2:2-3 (“Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court”) to provide that appeals arising out of litigation regarding affordable housing obligations and the Program shall be considered as appeals as of right.

(c) Webpage

The Judiciary has created an Affordable Housing webpage on its website (njcourts.gov), which will include case-related filings. The Affordable Housing webpage is located at [Affordable Housing Dispute Resolution Program | NJ Courts](https://www.njcourts.gov/courts/civil/affordable-housing) (<https://www.njcourts.gov/courts/civil/affordable-housing>).

Questions regarding the Program, Directive #14-24, or the November 12, 2024 rule relaxation order should be directed to the AOC's Civil Practice Division at CivilWebSites.Mailbox@njcourts.gov or (609) 815-2900 x54900.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", written over a horizontal line.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: December 18, 2024



Administrative Office of the Courts

GLENN A. GRANT, J.A.D.

Acting Administrative Director of the Courts

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njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

Directive #14-24Questions may be directed to
(609) 815-2900 ext. 54900**TO: Assignment Judges
Trial Court Administrators****FROM: Glenn A. Grant, J.A.D. Acting Administrative Director****SUBJECT: Civil - Affordable Housing Dispute Resolution Program –
Implementation of L. 2024, c. 2****DATE: December 13, 2024**

This Administrative Directive promulgates procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program (“Program”) created by L. 2024, c. 2. This law amended N.J.S.A. 52:27D-302, the Fair Housing Act (FHA), abolished the Council on Affordable Housing (COAH), and created a new process for municipalities to come into constitutional compliance with their affordable housing obligations. The new law established the Program within the Judiciary for the purpose of resolving disputes associated with the FHA. In furtherance of that end, the Administrative Director of the Courts is authorized to establish guidelines for the resolution of such matters, including the appointment of members, qualified experts, and staff.

I. Membership

The May 17, 2024 [Notice to the Bar](#) announced the Administrative Director’s appointment of members of the Affordable Housing Dispute Resolution Program, consisting of retired judges, including a chairperson. Any changes in the Program membership will similarly be announced by a notice to



Directive #14-24

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the bar posted on the Program's webpage on the Judiciary's website as well as in the notices section of the website.

II. Initiating an Action – Fair Share Obligations and Challenges

For pleadings and other case filings, attorneys must file through eCourts. Self-represented parties can file electronically through JEDS (Judiciary Electronic Document Submission), by mail, or in person.

A. Fair Share Obligations (Housing Need Numbers)

A municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint and Civil Case Information Statement (Civil CIS) in the county in which the municipality is located. Filers should select case type 816 (Affordable Housing) on the Civil CIS.

This declaratory judgment action must be filed within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner.

Copies of the municipal resolution must be included with the initial filing.

Actions that are not filed by the statutory deadline will not be considered by the Program.

B. Challenges to the Fair Share Obligation (Housing Need Numbers)

Interested parties must file any challenge to the municipality's calculation of its fair share obligation no later than February 28, 2025. The challenge shall be filed by way of an answer to the declaratory judgment action and must include the Civil CIS. Filers should select case type 816 (Affordable Housing) on the Civil CIS.

Challenges filed after the February 28, 2025 statutory deadline will not be considered by the Program and will be referred to the vicinage's designated Mt. Laurel judge for dismissal.

Directive #14-24

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C. Program Review of a Timely Challenge

Upon the filing of a timely challenge, the matter shall be referred to the Program to review for compliance with N.J.S.A. 52:27D-304.2 and 304.3. The challenge must state with particularity how the municipal calculation fails to comply with N.J.S.A. 52:27D-304.2 and 304.3. The challenge must also include the challenger's own calculation of the fair share obligations in compliance with N.J.S.A. 52:27D-304.2 and 304.3.

Challenges that do not meet the required statutory standards set forth in N.J.S.A. 52:27D-304.1(f)(1)(c) will be dismissed. A Program member will issue a recommendation for a dismissal order with a statement of reasons. The Program will not consider motions for reconsideration of its recommendations.

Where a challenge is recommended for dismissal by the Program, the case will be sent to the vicinage's designated Mt. Laurel judge for review and entry of an order on the fair share obligations in conformance with the FHA. The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a). Upon entry of an order on the fair share obligations, the municipality shall proceed to adopt its Housing Element and Fair Share Plan.

Appeals from the dismissal of a challenge and subsequent entry of an order by the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

D. Assignment to the Program

Challenges that the Program has deemed compliant with N.J.S.A. 52:27D-304.2 and 304.3 shall be assigned by the Program chairperson to a Program member for handling. Where appropriate and in the discretion of the chairperson, cases may be consolidated for handling based on similar facts or legal issues and a determination that consolidation would support expeditious or efficient case disposition. The chairperson in their discretion may assign additional Program members to a case based on complexity of the facts, legal issues, uniqueness or difficulty, or where cases have been consolidated for handling.

Directive #14-24

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E. Special Adjudicators

The Program shall appoint special adjudicators¹ as necessary to serve as qualified experts from a roster approved by the Administrative Director of the Courts.

Special adjudicators' responsibilities may include reviewing filings, reviewing expert reports, preparing written reports for the Program's review, and appearing at Program settlement conferences or sessions. Any written reports prepared by special adjudicators must be submitted to the Program member before the settlement conference.

F. Settlement Conference

Where a matter has been referred to the Program, the first event shall be a settlement conference before the assigned member(s). The settlement conference shall take place with the member(s), interested parties, and, in the discretion of the Program member(s), the special adjudicator. The settlement conference will presumptively be a remote proceeding but may be in person at the discretion of the assigned Program member(s). No verbatim record will be made of the settlement conference. This settlement conference must be a bona fide effort on the part of all to reach a settlement. All counsel must attend the settlement conference with an individual who has the authority to bind that party to the terms of a settlement. A good faith effort is required by all counsel and principals.

If a settlement agreement is reached, the terms shall be reduced to writing and the case shall be referred to the Mt. Laurel judge for review and entry of an order on fair share obligations.

If the case does not resolve at the settlement conference, it shall be scheduled for a session in the Program.

¹ By Notice to Bar dated April 5, 2024, the Supreme Court announced the adoption of the term "Special Adjudicator" and the elimination of the term "Special Master."

G. Sessions

A session shall take place with the member(s), interested parties, and the special adjudicator within 10 days (excluding Saturdays, Sundays, and legal holidays) after the settlement conference. Member(s) shall consider the pleadings and papers filed in the case and the arguments of counsel and interested parties who have filed challenges. No testimony will generally be taken during the session except in the discretion of the Program member(s).

At the conclusion of the session, the Program member(s) shall issue a decision within 10 days (excluding Saturdays, Sundays, and legal holidays), or by the statutory deadline of March 31, 2025, whichever is sooner. A decision shall be by a majority of the Program members participating in the session. A decision will specify the evidence upon which the Program member(s) relied and will include a statement of reasons.

Within 5 days (excluding Saturdays, Sundays, and legal holidays) after issuance of the Program's decision, the decision will be referred to the vicinage's Mt. Laurel judge for entry of an order accepting, rejecting, or accepting in part/rejecting in part the Program's decision and establishing the municipal fair share obligation. The Mt. Laurel judge will determine whether to take testimony to resolve any relevant factual dispute. The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a).

Appeals from the order of the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

III. Initiating an Action – Housing Element and Fair Share Plan and Challenges

For all case filings, attorneys must file through eCourts. Self-represented parties can file electronically through JEDS (Judiciary Electronic Document Submission), by mail, or in person.

A. Housing Element and Fair Share Plan

After the entry of an order determining present and prospective fair share obligations, the municipality must file with the Program its adopted housing element and fair share plan (which shall include the elements set forth in the Addendum attached to this Directive) within 48 hours after adoption or by June 30, 2025, whichever is sooner. Actions that do not meet the statutory deadline will not be considered by the Program. A municipality may apply prior to the expiration of the deadline to the vicinage's Mt. Laurel judge for a grace period pursuant to N.J.S.A. 52:27D-313.

B. Challenges to Housing Element and Fair Share Plan

Interested parties may file a challenge to the municipality's housing element and fair share plan by August 31, 2025.

Challenges filed after the August 31, 2025 statutory deadline will not be considered by the Program and will be referred to the vicinage's Mt. Laurel judge for dismissal, except where the municipality was granted an extension as set forth in paragraph A above. If a grace period extension has been granted, the challenge must be filed within 30 days (excluding Saturdays, Sundays, and legal holidays) from such extension.

C. Program Review of a Timely Challenge

Upon the filing of a timely challenge, the matter shall be referred to the Program to review whether the challenge specifies with particularity those sites or elements of the municipal fair share plan that are alleged to not comply with the FHA.

Challenges that do not meet the standards required by N.J.S.A. 52:27D-304.1(f)(2)(b) will be dismissed. A Program member will issue a recommendation for a dismissal order with a statement of reasons. The Program will not consider motions for reconsideration of its recommendations. Where a challenge is recommended for dismissal by the Program, the case will be sent to the vicinage's Mt. Laurel judge for review and entry of a certification of compliance and order with findings of fact and conclusions of law pursuant to Court Rule 1:7-4(a).

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Appeals from the dismissal of a challenge and subsequent entry of an order by the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

D. Assignment to the Program

Challenges that the Program has deemed to be compliant with N.J.S.A. 52:27D-304.1(f)(2)(b) shall be assigned to the member(s) who was previously assigned under Section II above, if practicable. Where appropriate and in the discretion of the Program Chairperson, cases may be consolidated for handling based on similar facts or legal issues where consolidation would support expeditious or efficient case disposition. The Chairperson in their discretion may assign additional members to a case based on complexity of the facts, legal issues, uniqueness or difficulty, or where cases have been consolidated for handling.

E. Settlement Conference

The first event when a matter has been referred to the Program shall be a settlement conference before member(s) assigned by the Program Chairperson or previously assigned member(s). The settlement conference shall take place with the member(s), interested parties, and, in the discretion of the Program member(s), the special adjudicator. The settlement conference will presumptively be a remote proceeding but may be in-person at the discretion of the assigned member(s). No verbatim record will be made of the settlement conference. This settlement conference must be a bona fide effort on the part of all to reach a settlement. All counsel must attend with an individual who has the authority to bind that party to the terms of a settlement. A good faith effort is required by all counsel and principals.

If a settlement agreement is reached, the terms shall be reduced to writing and the case referred to the Mt. Laurel judge for review and entry of certification of compliance.

If the case does not resolve at the settlement conference, it shall be scheduled for a session.

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F. Sessions

A session shall take place with the member(s), interested parties, and the special adjudicator within 10 days (excluding Saturdays, Sundays, and legal holidays) after the settlement conference. Member(s) shall consider the pleadings and papers filed in the case and the argument of counsel and interested parties who have filed challenges. No testimony will generally be taken during the session except in the discretion of the Program member(s).

At the conclusion of the session, the program member(s) shall issue a decision within 10 days (excluding Saturdays, Sundays, and legal holidays) after the session or by the statutory deadline of December 31, 2025, whichever is sooner. A decision shall be by a majority of the Program members participating in the session. The decision will specify the evidence upon which the Program member(s) relied and will include a statement of reasons.

Within 5 days (excluding Saturdays, Sundays, and legal holidays) after issuance of the Program's decision, the decision will be referred to the Mt. Laurel judge for entry of an order accepting, rejecting, or accepting/rejecting in part the Program's decision on the Housing Element and Fair Share Plan and Certificate of Compliance. The Mt. Laurel judge will determine whether to take testimony to resolve any relevant factual dispute(s). The order shall include findings of fact and conclusions of law pursuant to Rule 1:7-4(a).

Appeals from the order of the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

IV. Code of Ethics and Conflicts of Interest

A. Program Members

1. Program members who are retired judges serving on recall are subject to the Code of Judicial Conduct and the Rules of Professional Conduct.
2. Program members who are retired judges not serving on recall are subject to the Rules of Professional Conduct.

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B. Special Adjudicators

Special Adjudicators are subject to the American Institute of Certified Planners (AICP) Code of Ethics and Professional Conduct.

C. Conflicts of Interest

Conflicts of Interest as to any Program member or Special Adjudicator may be waived with the consent of all parties.

V. Public Access

The Judiciary has created an Affordable Housing webpage on its website (njcourts.gov) to provide public access without cost to filings made pursuant to the FHA. Case-related filings available on the website will include the following: Municipal Resolution of Determination of Present and Prospective Fair Share Obligation; Housing Element and Fair Share Plan; Implementing Ordinances and Resolution; and Compliance Certification Order, as well as other Program information. The Affordable Housing webpage on the Judiciary website is located at <https://www.njcourts.gov/courts/civil/affordable-housing>.

Other case-related filings can be accessed through the eCourts Civil case jackets. To register for eCourts, follow the instructions on the Judiciary website at <https://www.njcourts.gov/self-help/srl-civil-ecourts-access>.

Questions regarding this Directive may be directed to the Administrative Office of the Courts, Civil Practice Division, by phone at 609-815-2900, ext. 54900.

Attachment (Addendum)

cc: Chief Justice Stuart Rabner
Civil Presiding Judges
Mt. Laurel Judges
Program Members
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
Melissa A. Czartoryski, Chief, Civil Practice
Civil Division Managers

REQUIRED ELEMENTS OF HOUSING ELEMENT AND FAIR SHARE PLAN

- A. The Housing Element and Fair Share Plan (HEFSP) will need to be prepared to reflect all of the terms of the applicable settlement agreement and to meet all of the statutory requirements for such documents as well as the following:
1. One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.
 2. The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.
 3. The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending

expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.

4. The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.

B. The HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

1. All zoning amendments (or redevelopment plans, if applicable).
2. An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement

agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).

3. The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
4. An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
5. An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
6. An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.
7. A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.

8. Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
9. A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

C. Consistent with N.J.A.C. 5: 93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:

1. The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved.
2. Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.

SUPREME COURT OF NEW JERSEY

It is ORDERED that the provisions of Rule 2:2-3 (“Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court”) and any other Rules Governing the Courts of the State of New Jersey are relaxed and supplemented so as to provide that appeals arising out of litigation filed pursuant to L. 2024, c. 2, establishing a process for municipalities to come into constitutional compliance with their fourth and future rounds of affordable housing obligations and the Affordable Housing Dispute Resolution Program, shall be considered appealable as of right.

This rule relaxation shall be effective immediately and shall remain in effect through the conclusion of the Affordable Housing Dispute Resolution Program and any appeals resulting from that program.

For the Court,

A handwritten signature in blue ink, appearing to read "Sharon R. Casper", is written over a horizontal line.

Chief Justice

Dated: November 12, 2024

EXHIBIT G

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..**

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 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 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

_____ ,

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:

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.

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.

NOTARY PUBLIC

EXHIBIT H

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 106
Trenton, New Jersey 08625

By: Allyson Cofran (ID: 002602005)
Deputy Attorney General
(609) 376-2880
Attorney for State of New Jersey,
New Jersey Housing and Mortgage
Finance Agency

IN RE NEW JERSEY HOUSING
AND MORTGAGE FINANCE
AGENCY HOUSING
AFFORDABILITY CONTROLS,
SPECIAL ADOPTED
AMENDMENTS AND SPECIAL
ADOPTED NEW RULES

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-1247-24T2

CIVIL ACTION

CERTIFICATION OF JONATHAN
STERNESKY IN SUPPORT OF NEW
JERSEY HOUSING AND
MORTGAGE FINANCE AGENCY’S
OPPOSITION TO STAY

I, Jonathan Sternesky, and am of full age, hereby certify as follows:

1. I am the Director, Policy and External Affairs and I make this certification on behalf of Respondent New Jersey Housing and Mortgage Finance Agency (“NJNJHMFA”). I have personal knowledge of the following facts.

2. I submit this certification in support of NJHMFA’s opposition to the motion to stay in this appeal filed by the Appellants in this matter.

3. After the Governor signed L. 2024 c. 2 (the “Act”) into law, I and other NJHMFA staff were tasked with working with stakeholders to develop and promulgate temporary amendments to the Uniform Housing Affordability Controls (“UHAC”).

4. The Act directed NJHMFA to swiftly adopt the temporary regulations that would be necessary to implement the requirements of the new law by December 20, 2024, notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B to -31 (APA), to be followed by a formal re-adoption in accordance with the full requirements of the APA within one year of temporary rule adoption.

5. Although the Act did not require NJHMFA to adopt the temporary amendments in strict accordance with APA requirements, NJHMFA nonetheless reached out to stakeholders to solicit their feedback about their experiences and lessons learned in following and administering the prior UHAC and how the mandatory changes prescribed in the Act would impact their ability to follow and implement the rules.

6. The purpose of those meetings was to gather information about a myriad of subjects with particular attention to the: a) practical difficulties they witnessed in their efforts to comply with and administer the extant rules; b) navigating the uncertainty in the period during which there was no statutory authority to amending the now extant rules; c) how the extant rules had impacted

their ability to build, market, and certify individuals for affordable housing, and how the statutory changes would impact the aforementioned changes.

7. At those sessions, attendees gave a range of responses all informed by the different perspectives, interests and experiences of their respective constituents and organizations.

8. Those events included discussions about how UHAC would have to be amended to effectuate the substantive requirements of the Act. They also included changes that would be necessary to implement the requirements of the act, such as increasing flexibility in how the bedroom distributions are calculated, clarifying the procedural changes required by the statute, and making other technical adjustments to allow income calculations to mirror requirements from other State and federal programs to create consistency in the income calculations for single individuals or families.

9. Between May 23, 2024, and December 3, 2024, NJHMFA hosted numerous events in various formats and attended by different stakeholders which are summarized as follows:

- a) May 23, 2024: a virtual roundtable was held and attended by numerous municipal administrative agents, housing advocacy organizations, non-profit and for-profit developers, and trade organizations. During this roundtable meeting, NJHMFA received

a plethora of feedback regarding necessary changes to the UHAC regulations;

- b) May 30, 2024: a second virtual roundtable was held and attended by numerous municipal administrative agents, housing advocacy organizations, non-profit and for-profit developers, and trade organizations. During this roundtable meeting, NJHMFA again received a plethora of feedback regarding necessary changes to the UHAC regulations;
- c) June 14, 2024: a follow up virtual roundtable was held and attended by the eleven (11) of the twenty-four organizations that participated in the earlier two roundtable sessions;
- d) July 29, 2024: a virtual community listening event was held and attended by a variety of organizational representatives and individual tenants and homeowners. This session focused on speaking with community organizations and listening to members of the public who could provide NJNJHMFA with their experiences going through the processes governed by the UHAC in trying to find affordable housing to live in. Sixteen individuals, the majority of whom were from community organizations, attended.


10. Between October 25, 2024 and December 3, 2024, NJHMFA conducted outreach and more than a dozen follow up meetings with numerous governmental and external stakeholders to review various proposed revisions to UHAC and obtain feedback as to their consistency with points raised by various stakeholders during roundtables, at public events, and through written and oral communications shared from March 2024 through the temporary regulations' submission date. NJHMFA synthesized the feedback received from the round table events, as well as subsequent email and letter submissions from stakeholders into a draft of the temporary UHAC amendments. Pursuant to N.J.S.A. 52:27D-321(f), this draft was submitted to the Department of Community Affairs ("DCA") for review and consultations were held with DCA on October 7, 2024, October 15, 2024 and October 16, 2024.

11. NJHMFA maintained an attendees list that reflects each attendee at every round table held. NJHMFA also maintained a list of all who specifically provided written feedback to us via email.

12. NJHMFA is now preparing to adopt the final regulations that will replace the interim ones challenged in this action. As required by the Act, NJHMFA will adopt those final regulations in accordance with the formal requirements of the APA and Appellants and other members of the public will

have an opportunity to voice their opinions at that time. NJHMFA anticipates having a rule proposal available for public comment by first quarter of 2025.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 
Jonathan Sternesky, DPA
Director, Policy and External
Affairs

Dated: January 8, 2025

EXHIBIT I

ORDER ON EMERGENT MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: AM-000228-24T04
MOTION NO.: M-002428-24
BEFORE: PART D
JUDGE(S): MORRIS G. SMITH
CHRISTINE M. VANEK

BOROUGH OF MONTVALE,
TOWNSHIP OF DENVILLE,
BOROUGH
OF FLORHAM PARK, BOROUGH OF
HILLSDALE, TOWNSHIP OF
MANNINGTON,
TOWNSHIP OF MILLBURN,
TOWNSHIP OF MONTVILLE,
BOROUGH OF OLD
TAPPAN, BOROUGH OF TOTOWA,
BOROUGH OF ALLENDALE,
BOROUGH OF
WESTWOOD, TOWNSHIP OF
HANOVER, TOWNSHIP OF
WYCKOFF, BOROUGH
OF WHARTON, BOROUGH OF
MENDHAM, BOROUGH OF
ORADELL, BOROUGH
OF CLOSTER, TOWNSHIP OF WEST
AMWELL, TOWNSHIP OF
WASHINGTON,
BOROUGH OF NORWOOD,
TOWNSHIP OF PARSIPPANY-TROY
HILLS, BOROUGH
OF FRANKLIN LAKES, TOWNSHIP
OF CEDAR GROVE, TOWNSHIP OF
EAST
HANOVER, TOWNSHIP OF
HOLMDEL, AND TOWNSHIP OF
WALL
VS.
STATE OF NEW JERSEY,
AFFORDABLE HOUSING DISPUTE
RESOLUTION

PROGRAM, AND GLENN A. GRANT,
IN HIS OFFICIAL CAPACITY AS
ACTING
ADMINISTRATIVE DIRECTOR OF
THE COURTS,
AND
FAIR SHARE HOUSING CENTER

MOTION FILED: 01/06/2025 BY: BOROUGH OF MONTVALE
ANSWER(S) 01/08/2025 BY: FAIR SHARE HOUSING CENTER
FILED: 01/08/2025 STATE OF NEW JERSEY

SUBMITTED TO COURT: January 08, 2025

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 10th day of January, 2025, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL
AND STAY DENIED

SUPPLEMENTAL: We granted appellants leave to file an emergent motion appealing the trial court's denial of their motion for a stay, without entering a temporary stay pending our disposition of the motion. On January 6, 2025, appellants filed the emergent motion. The New Jersey Housing and Mortgage Finance Agency (HMFA) and the Fair Share Housing Center (FSHC) submitted opposition.

After carefully reviewing the parties' submissions and prevailing law, we discern no abuse of discretion in the Honorable Robert T. Lougy, A.J.S.C.'s order denying appellants' motion to stay certain amendments to the Fair Housing Act at N.J.S.A. 52:27D-304 to -304.3, -310 to -313, -321 to -321.6 (the Act) and the obligations of New Jersey municipalities to comply with the Act by the January 31, 2025 and Fourth Round deadlines, substantially for the reasons set forth in his comprehensive sixty-eight page decision. Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994) (in reviewing a trial court's decision to grant a preliminary injunction, an appellate court applies an abuse of discretion standard).

Appellants primarily assert a stay is necessary to avoid certain irreparable harm resulting from the Act's mandate that municipalities adopt binding resolutions to establish their affordable housing obligations by January 31, 2025. Harms alleged include the prospective loss of zoning authority and the prospect of having to defend against putative exclusionary zoning litigation without immunity, should they fail to comply with the deadlines in the Act. Appellants further argue the Act's accelerated deadlines impose undue pressure on municipalities and that the need to engage legal, planning, and engineering professionals to meet the Act's requirements places a substantial financial burden on municipal governments and their residents. Appellants posit that requiring their participation in what they allege is an unconstitutional process compounds their harm and undermines their legal rights and autonomy.

We discern no abuse of discretion in the trial court's denial of appellants' OTSC seeking a stay, finding they failed to establish: (i) irreparable harm by clear and convincing evidence; (ii) that their claims rested on settled law and have a reasonable probability of succeeding on the merits; (iii) that a balancing of the equities and hardships favors injunctive relief; and (iv) the public interest warrants a stay. See Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013); Crowe v. De Gioia, 90 N.J. 126, 132-33 (1982) (a party seeking a stay must demonstrate by clear and convincing evidence that (1) relief is necessary to prevent irreparable harm; (2) there is a reasonable probability of success on the merits that rests on settled law; and (3) the balance of the relative hardships favor that party); McNeil v. Legislative Apportionment Comm'n of N.J., 176 N.J. 484, (2003) (a court should consider the public interest in addition to the traditional Crowe factors).

FOR THE COURT:



MORRIS G. SMITH, J.A.D.

MER-L-001778-24 MERCER