

**TOWNSHIP OF HOLMDEL  
COUNTY OF MONMOUTH  
ORDINANCE #2020-07**

**AFFORDABLE HOUSING ORDINANCE**

**AN ORDINANCE OF THE TOWNSHIP OF HOLMDEL AMENDING THE GENERAL CODE OF THE TOWNSHIP OF HOLMDEL DELETING CHAPTER XIV, SECTIONS 14-1 THROUGH 14-29A AND REPLACING IT ENTIRELY WITH A NEW SECTION ENTITLED “AFFORDABLE HOUSING,” TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORABILITY CONTROLS REGARDING COMPLIANCE WITH THE TOWNSHIP’S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the Township of Holmdel (“Township”) filed a Mt. Laurel declaratory judgment action in the Superior Court of New Jersey, Law-Division bearing the caption In the Matter of the Township of Application of the Township of Holmdel, Docket No. MON-L-2523-15 following the New Jersey Supreme Court’s decision in Mt. Laurel IV; and

**WHEREAS**, the Township entered into a First Amended Settlement Agreement with Fair Share Housing Center (“FSHC”) on or about January 11, 2019 (the “Settlement Agreement”) establishing the Township’s Third Round affordable housing obligation for the period 1999-2025 and the compliance mechanisms by which the Township will meet its constitutional obligation to provide for its fair share of affordable housing; and

**WHEREAS**, the Court conducted a Fairness Hearing on April 4, 2019 and entered an order on May 1, 2019 approving the Settlement Agreement by and between the Township and Fair Share Housing Center finding on a preliminary basis that the Settlement Agreement is fair to low and moderate-income households; and

**WHEREAS**, the Township entered into an Amendment to the First Amended Settlement Agreement with Fair Share Housing Center on December 20, 2020 and the Court conducted a Fairness Hearing on January 30, 2020 approving the Amendment to the First Amended Settlement Agreement which required, in part the Township to adopt an updated Township-wide affordable housing ordinance incorporating the Uniform Housing Affordability Controls and applicable COAH regulations into the Township code; and

**WHEREAS**, the Township Committee finds it is in the best interest of the Township to comply with the Court’s Order and implement the terms and conditions of the Settlement Agreement which includes the adoption of a Township-wide affordable housing ordinance.

**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Holmdel, County of Monmouth, State of New Jersey, that Chapter 14, Article 14-1 through 14-29 are hereby repealed in their entirety and replaced with the following:

## **Chapter XXIV Affordable Housing**

### **14-1 Affordable Housing**

#### **Purpose.**

1. This Section is intended to assure that very-low, low-, and moderate-income units ("affordable units") are created with controls on affordability and that very-low, low-, and moderate-income households shall occupy these units. This Section shall apply except where inconsistent with applicable law.
2. The Township of Holmdel Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. (hereinafter "Fair Share Plan"). The Fair Share Plan was endorsed by the Township Committee. The Fair Share Plan describes how the Township of Holmdel shall address its fair share of very-low, low-, and moderate-income housing as documented in the Fair Share Plan itself, the First Amended Settlement Agreement entered into between the Township and Fair Share Housing Center ("FSHC") on or about January 11, 2019 as approved by the Court after conducting a Fairness Hearing on May 1, 2019 as modified through the Amendment to the First Amended Settlement Agreement executed by the Township on December 10, 2019 and approved at a Fairness Hearing before the Court on January 30, 2020 (the First Amended Settlement Agreement and the Amendment First Amended Settlement Agreement shall be collectively referred to as the "FSHC Settlement Agreement").

#### **14-1.1 Monitoring and Reporting Requirements.**

The Township of Holmdel shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan:

- a. Beginning on July 1, 2020, and on every anniversary of that date through July 1, 2025, the Township shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- b. Beginning on July 1, 2020, and on every anniversary of that date through July 1, 2025, the Township shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- c. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its

implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

- d. By July 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low-income housing obligations.

#### **14-2 Definitions.**

The following terms when used in this Ordinance shall have the meanings given in this Section:

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity designated by the Township to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-14).

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-14.15.

“Affordability average” means the average percentage of median income at which new restricted units in an affordable housing development are affordable to very low-, low- and moderate-income households.

“Affordable” means, a sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-14.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-14.12, as may be amended and supplemented.

“Affordable housing development” means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township’s fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

“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.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

“Assisted living residence” means a facility that is licensed by the New Jersey Department of Health and Senior Services 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 and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a very low-income, low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

“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 use or change in the use 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 N.J.S.A. 40:55D-1, et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

“Market-rate units” means housing not restricted to very low-, low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses 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.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“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. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-14.1 et. seq, as amended and supplemented, but does

not include a market-rate unit financed under the Urban Homeownership Recovery Program or Market Oriented Neighborhood Investment Program.

“FSHC Settlement Agreement” means the First Amended Settlement Agreement dated January 11, 2019 and the Amendment to the First Amended Settlement Agreement between the Township of Holmdel and Fair Share Housing Center approved by the Township Committee of the Township of Holmdel on December 10, 2020, in IMO Township of Holmdel, Docket No. MON-L-2523-15.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-14.1, et seq.

“Very low-income household” means a household with a total gross annual household income equal to or less than 30 percent of the regional median household income by household size.

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

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

**14-3 Applicability.**

- a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Holmdel pursuant to the Township’s most recently adopted Housing Element and Fair Share Plan and the Settlement Agreement.
- b. This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units, and also including projects funded with Low Income Housing Tax Credits.

**14-4 Alternative Living Arrangements.**

- a. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
  1. Affirmative marketing (N.J.A.C. 5:80-14.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
  2. Affordability average and bedroom distribution (N.J.A.C. 5:80-14.3).
- b. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

- c. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

**14-5 Phasing Schedule for Inclusionary Zoning.**

In inclusionary developments, the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

Maximum Percentage of Market-Rate Units Completed (COs Issued)	Minimum Percentage of Low- and Moderate-Income Units Completed (COs Issued)
25	0
25+1	10
50	50
75	75
90	100

**14-6 New Construction.**

- a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13 percent of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.
  2. At least 25 percent of the obligation shall be met through rental units, including at least half in rental units available to families.
  3. A maximum of 25 percent of the Township's obligation may be met with age restricted units. At least half of all affordable units in the Township's Plan shall be available to families.
  4. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units including that 13% shall be very-low income.
  5. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - (b) At least 30 percent of all low- and moderate-income units shall be two-bedroom units;
  - (c) At least 20 percent of all low- and moderate-income units shall be three-bedroom units; and
  - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very low-, low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- b. Accessibility Requirements:
- 1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and the following:
  - 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
    - (a) An adaptable toilet and bathing facility on the first floor; and
    - (b) An adaptable kitchen on the first floor; and
    - (c) An interior accessible route of travel on the first floor; and
    - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
    - (e) If not all of the foregoing requirements in 2(a) through 2(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2(a) through 2(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
    - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-31 1a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Holmdel Township has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - i. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will

reside in the dwelling unit, an accessible entrance shall be installed.

- ii. To this end, the builder of restricted units shall deposit funds within the Township of Holmdel Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
- iii. The funds deposited under paragraph (f)ii above shall be used by the Township of Holmdel for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- iv. The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Township of Holmdel for the conversion of adaptable to accessible entrances.
- v. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

(g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

### 3. Design:

- (a) In inclusionary developments, to the extent possible, very low-, low- and moderate-income units shall be integrated with the market units.
- (b) In inclusionary developments, very low-, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

### 4. Maximum Rents and Sales Prices:

- (a) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using the calculation set forth below. Income limits for all affordable units that are created in the Township for which income limits are not already established

through a federal program exempted from the UHAC pursuant to N.J.A.C. 5:80-14.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by the Department of Housing and Urban Development (“HUD”) as follows:

- i. Regional income limits shall be established for the region within which the Township is located based on the median income by household size, which shall be established by a regional weighted average of uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within a housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township’s housing region. This quotient represents the original weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- ii. The income limits are the result of applying the percentages set forth in paragraph (i) above to HUD’s determination of median income for the fiscal year 2019 and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- iii. The Regional Asset Limit used in determining an applicant’s eligibility for affordable housing pursuant to N.J.A.C. 5:80-14.16(b)(3) shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (i) above over the previous year’s income limits and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- iv. The resale prices of owner-occupied very low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

- v. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
- (b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
- (c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.
- (d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (e) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one- and one-half-person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;

- ii. A one-bedroom unit shall be affordable to a one- and one-half-person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
  - iv. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost 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 the appropriate size household as determined under N.J.A.C. 5:80-14.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-14.3, as may be amended and supplemented.
- (g) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-14.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-14.3, as may be amended and supplemented.
  - (h) The price of owner-occupied very low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
  - (i) The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rent increases for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

**14-7 Utilities.**

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

**14-8 Occupancy Standards.**

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- a. Provide an occupant for each bedroom;

- b. Provide children of different sexes with separate bedrooms;
- c. Provide separate bedrooms for parents and children; and
- d. Prevent more than two persons from occupying a single bedroom.

**14-9 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

- a. Control periods for newly constructed restricted ownership units shall be in accordance with N.J.A.C. 5:80-14.5, except as said settlement agreement may be further amended and supplemented, and each newly constructed restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Holmdel Township takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-14.1.
- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- d. At the time of the initial sale of the unit, the initial 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 restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit
- e. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-14.5(a), as may be amended and supplemented.

**14-10 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-14.6, as may be amended and supplemented, including:

- a. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

- c. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by very low-, low- and moderate-income purchasers and those paid by market purchasers.
- d. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of approved capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 14-1.13.

**14-11 Buyer Income Eligibility.**

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-14.7, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- b. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- d. 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 particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

**14-12 Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to

exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-14.6(b).

**14-13 Capital Improvements to Ownership Units.**

- a. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be 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 the signing of 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, which shall be 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 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 the time of or as a condition of resale.

**14-14 Control Periods for Restricted Rental Units.**

- a. Control periods for newly constructed restricted rental units shall be in accordance with N.J.A.C. 5:80-14.11, except as modified by the terms of the settlement agreement between the Township of Holmdel and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented, and each newly constructed restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Holmdel Township takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-14.11, except as modified by the terms of the settlement agreement between the Township of Holmdel and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented.
- b. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the

term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

- c. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or
  - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

**14-15 Rent Restrictions for Rental Units; Leases.**

- a. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- c. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

**14-16 100% Affordable Projects.**

All 100% affordable projects, including projects funded through Low Income Housing Tax Credits, shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-14.1, et. seq. All such projects shall be required to have an initial thirty (30) year affordability control period plus a fifteen (15) year extended use period. At least 13 percent of all restricted units within each bedroom distribution shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development, which shall be at least 50 percent of all restricted rental units within each bedroom distribution.

**14-17 Tenant Income Eligibility.**

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-14.13, as may be amended and supplemented, and shall be determined as follows:

1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median household income by household size.
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median household income by household size.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median household income by household size.
- b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, 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. 5:80-14.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in a.1. through b.5. above with the Administrative Agent, who shall counsel the household on budgeting.

**14-18 Municipal Housing Liaison.**

- a. There is hereby created the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Holmdel Township, including the following responsibilities which may not be contracted out to the Administrative Agent:
  1. Serving as Holmdel Township's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

2. Monitoring the status of all restricted units in Holmdel Township's Fair Share Plan;
  3. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;
  4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
  5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- b. The Township of Holmdel shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Township's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Township's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Holmdel Township shall adopt a Resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee.
  - c. Subject to the approval of the Court, the Township of Holmdel shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Township in accordance with this Ordinance and UHAC. An Operating Manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the municipal housing liaison, and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

**14-19 Administrative Agent.**

An Administrative Agent may either be an independent entity serving under contract to and reporting to the municipality, or the municipality itself, through a designated municipal employee, department, board, agency or committee, pursuant to N.J.A.C. 5:80-14.14(c). The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Administrative Agent shall be qualified through a training program sponsored by the Affordable Housing Professionals of New Jersey before assuming the duties. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-14.14, 15, 16 and 18 thereof, which includes:

- a. Affirmative Marketing:

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Holmdel and the provisions of N.J.A.C. 5:80-14.15; and
2. Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

b. Household Certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;
2. 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;
3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-14.1 et seq.;
5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Holmdel when referring households for certification to affordable units; and
7. Notifying the following entities of the availability of affordable housing units in the Township of Holmdel: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, and Greater Long Branch Branches of the NAACP, and the Supportive Housing Association.

c. Affordability Controls:

1. 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;
2. 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;
3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Monmouth County Register of Deeds or Monmouth County Clerk's office after the termination of the affordability controls for each restricted unit;

4. Communicating with lenders regarding foreclosures; and
5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-14.10.

d. Resales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
2. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.

e. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
2. 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 depreciated cost of central air conditioning systems;
3. Notifying the municipality of an owner's intent to sell a restricted unit; and
4. Making determinations on requests by owners of restricted units for hardship waivers.

f. Enforcement:

1. Securing annually from the municipality a list 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 their unit or sell it;
2. 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;
3. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-14.18(d)4;

5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and

6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

g. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.

3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

**14-20 Affirmative Marketing Requirements.**

a. The Township of Holmdel shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-14.15, as may be amended and supplemented.

b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.

c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 4, comprised of Mercer, Monmouth and Ocean Counties.

d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of Holmdel shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

- e. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
- i. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Holmdel Township, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Monmouth County Branch of the NAACP, NAACP Asbury Park, NAACP Greater Freehold, NAACP Greater Red Bank, NAACP Greater Long Branch, NAACP Ocean County/Lakewood, Senior Citizens United Community Services (SCUCS), the Latino Action Network, STEPS (Solution to End Poverty Soon), Ocean, Inc., and the Supportive Housing Association.
- j. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**14-21 Enforcement of Affordable Housing Regulations.**

- a. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If

the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

- (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
- (b) In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Holmdel Affordable Housing Trust Fund of the gross amount of rent illegally collected;
- (c) In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

2. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.

- (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low-, low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very low-, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such

earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very low-, low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very low-, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the very low-, low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the very low-, low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

#### **14-22 Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

**BE IT FURTHER ORDAINED** this ordinance shall take effect upon final passage and publication according to law. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**BE IT FURTHER ORDAINED If** any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

### **LEGAL NOTICE**

The foregoing ordinance was introduced and passed on the first reading at a meeting of the Township Committee of the Township of Holmdel held on February 27, 2020 and will be considered for final passage and adoption at a meeting of said Township Committee to be held on July 28, 2020 at 7:30 PM, conducted on an electronic basis, pursuant to P.L. 2020, c. 11, login information will be provided at [www.holmdeltownship.com](http://www.holmdeltownship.com) and the public hearing will be conducted electronically while affording full public participation.

Gregory Buontempo, Mayor

Attest:

Wendy L Patrovich, RMC/CMR  
Township Clerk