

TOWNSHIP OF LOWER COUNTY OF CAPE MAY STATE OF NEW JERSEY

ORDINANCE 2009-7

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF LOWER COUNTY OF CAPE MAY AND STATE OF NEW JERSEY

BE IT ORDAINED by the Mayor and Council of the Township of Lower, County of Cape May, and State of New Jersey as follows:

The purpose of this ordinance is to set forth regulations regarding the very low, low, and moderate income housing units in the Township consistent with the following provisions:

- A. Substantive Rules of the New Jersey Council on Affordable Housing (COAH), N.J.A.C. 5:96 and 5:97 et seq.
- B. Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq.
- C. C52:27D-329.1, "coordination and review of housing plan elements".
- D. Township's constitutional obligation to provide a fair share of affordable housing for very low, low and moderate income households.

This ordinance is also intended to:

- A. Provide assurances that very low, low, and moderate income units (the "affordable units") are created with controls on affordability over time and that very low, low, and moderate income households occupy these units. These regulations shall apply except where inconsistent with applicable law.
- B. Provide for collection of affordable housing fees on residential and non-residential development.
- C. To implement the "growth share" policies promulgated by COAH in its Round 3 Substantive Rules (N.J.A.C. 5:97-1 et seq.) in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households. A "growth share" approach to affordable housing production requires affordable housing to be produced in conjunction with market-rate residential growth and development within the Township of Lower.
- D. Provide for affirmative marketing controls in accordance with COAH's Round 3 Rules.

Deletions are shown with ~~strikethroughs~~ and additions are shown as underlined. Other changes are noted as applicable.

II

Article XII, "District Changes and Ordinance Amendments" is hereby amended to revise the Article and Subchapter numbering as follows:

ARTICLE ~~XII~~, XIII, District Changes and Ordinance Amendments

§ 400-88. § 400-110. Future amendments to chapter.

This chapter may be amended from time to time by the governing body after the appropriate referrals, notices, hearings and other requirements of law.

III

Article IV, "District Regulations" Subchapters §400-14 and §400-15, are hereby amended to add affordable housing units as a permitted use as follows:

§ 400-14. R-1 Single-Family Residential and R-2 Single-Family Residential.

- A. Principal permitted uses on the land and in the buildings.
 - (1)- (13) No Change.
 - (14) Affordable housing units in the R-2 District with public sewage facilities only subject to § 400-92, Affordable Housing Growth Share.
- B.-E. No Change

§ 400-15. R-3 Mainland Residential and R-4 Island Residential.

- A. Principal permitted uses on the land and in the buildings.
 - (1)- (5) No Change.
 - (6) Affordable housing units in the R-3 District with public sewage facilities only subject to § 400-92, Affordable Housing Growth Share.
- B.-G. No Change

IV

Article XXII, "Affordable Housing Regulations", Subchapters §400-88 through §400-109, is hereby added to Chapter 400 as follows:

ARTICLE XXII - AFFORDABLE HOUSING REGULATIONS

§ 400-88. Affordable Housing Requirements.

- A. This Article is intended to assure that very low, low, and moderate-income units ("affordable units") are created with controls on affordability over time and that very low, low, and moderate-income households shall occupy these units. This Article shall apply except where inconsistent with applicable law.
- B. The Lower Township 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. The Fair Share Plan has been endorsed by the Mayor and Council. The Fair Share Plan describes the ways Lower Township shall address its fair share for very low, low, and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- C. This Article implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, COAH Substantive Rules, as may be amended and supplemented.
- E. This Article provides for the collection of affordable housing fees on residential and non-residential development.

- F. This Article provides for affirmative marketing controls in accordance with COAH's Round 3 Rules, N.J.A.C. 5:97 et seq.

- D. Lower Township shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, COAH Procedural Rules, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Lower Town Hall, Municipal Clerk's Office, 2600 Bayshore Road, Villas, New Jersey, from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website at www.nj.gov/dca/affiliates/coah.

§ 400-89. Definitions.

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

Act

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

Adaptable

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

Administrative Agent

The entity responsible for the administration of affordable units in accordance with this Section, COAH Rules at N.J.A.C. 5:96, N.J.A.C. 5:97 and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.

Affirmative Marketing

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

Affordability Average

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

A sales price or rent level that is within the means of a very low, low, or moderate-income household as defined in N.J.A.C. 5:97-9 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. 5:80-26.6, 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. 5:80-26.12, as may be amended and supplemented.

Affordable Development

A housing development of which all or a portion consists of restricted units.

Affordable Housing Development

A development included in the Housing Element and Fair Share Plan, 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)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

Affordable Unit

A housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

Age-Restricted Unit

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 where 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 that 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.

Assisted Living Residence

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

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

The Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

DCA

The State of New Jersey Department of Community Affairs.

Deficient Housing Unit

A housing unit with health and safety code violations that require 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

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

Development

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.

H.M.F.A.

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

Inclusionary Development

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 reconstruction of a vacant residential structure.

Low-Income Household

A household with a total gross annual household income equal to 50 percent or less of the median household income.

Low-Income Unit

A restricted unit that is affordable to a low-income household.

Major System

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 or load bearing structural systems.

Market-Rate Units

Housing not restricted to very low, low, and moderate-income households that may sell or rent at any price.

Median Income

The median income by household size for the applicable housing region, as adopted annually by COAH.

Moderate-Income Household

A household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

Moderate-Income Unit

A restricted unit that is affordable to a moderate-income household.

Non-Exempt Sale

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

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

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 COAH's adopted Regional Income Limits published annually by COAH.

Rehabilitation

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

Rent

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

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

Very Low-Income Household

A household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

Very Low-Income Unit

A restricted unit that is affordable to a very low-income household.

Weatherization

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 the rehabilitation program.

§ 400-90. Affordable Housing Programs.

The Township of Lower has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

A. Market to Affordable Program.

- (1) A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to very low, low, and moderate-income households. Subject to the provisions of (2)(c) below, the market to affordable programs may produce very low, low, and moderate-income units.
- (2) The following provisions shall apply to market to affordable programs:
 - (a) At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
 - (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - (c) Lower Township will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit.
 - (d) The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
- (3) The units shall comply with N.J.A.C. 5:97-9 and UHAC (N.J.A.C. 5:80-26) with the following exceptions:
 - (a) Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));
 - (b) Very Low/Low/Moderate income split (C52:27D-329.1) and (N.J.A.C. 5:80-26.3(a)); and
 - (c) Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:
- (4) The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income and the maximum rent for a very low-income unit shall be affordable to households earning no more than 30 percent of the median household income; and
- (5) The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income and the maximum sales price for a very low-income unit shall be affordable to households earning no more than 30 percent of median income.

§ 400-91. Affordable Housing Development Fee.

A. Basic Requirements

- (1) The Township of Lower shall not impose development fees on any applicant pursuant to this Article until COAH or a Court has approved the Development Fee Ordinance pursuant to N.J.A.C. 5:96-5.1, except that residential fees may be collected pursuant to the previously approved fee ordinance until such time as this Article takes effect, and non-residential fees shall be collected in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.
- (2) The Township of Lower shall not spend development fees until COAH or a Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

B. Residential Development Fees

(1) Imposed Fees

- (a) Within the Township of Lower zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one half (1.5) percent of the equalized assessed value for residential development, provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six (6) percent of the equalized assessed value (EAV) for each additional unit above that permitted by right that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half (1.5) percent of the equalized assessed value on the first two units; and the specified higher percentage up to six (6) percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions, and exemptions for residential development

- (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (c) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

- (d) Nonprofit organizations which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Township Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- (e) Federal, state, county and local governments shall be exempted from paying a development fee.
- (f) The owner of a residential unit who rebuilds when the owner's existing dwelling unit was destroyed due to fire, flood or other natural disaster shall be exempt from paying a development fee.
- (g) A residential construction permit which involves construction costs of fifty thousand (\$50,000.00) dollars or less shall be exempt from paying a development fee.

C. Non-Residential Development Fees

- (1) Imposed fees
 - (a) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - (b) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly-improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- (2) Eligible exactions, ineligible exactions and exemptions for non-residential development
 - (a) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5) percent development fee, unless otherwise exempted below.
 - (b) The two and one-half (2.5) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (c) Non-residential developments shall be exempt from payment of non-residential development fees in accordance with the exemptions required pursuant to N.J.S.A. 40:55D-8.4.b., as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
 - (d) A developer of a non-residential development exempted from the non-residential development fee pursuant to N.J.S.A. 40:55D-8.4b. shall be subject to it at such time the basis for the exemption 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.

- (e) 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 Township of Lower as a lien against the real property of the owner.

D. Collection procedure

- (1) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the Lower Township Construction Official responsible for the issuance of a building permit
- (2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The Construction Official responsible for the issuance of a building permit shall notify the Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The Construction Official responsible for the issuance of a final certificate of occupancy notifies the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should the Township of Lower fail to determine or notify the developer of the amount of the 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 N.J.S.A. 40:55D-8.6b.
- (8) Fifty (50) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- (9) Appeal of development fees
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of Lower. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the

State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- (b) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Lower. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

E. Affordable Housing Trust Fund

- (1) There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Lower Township Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer-contributed funds to make ten percent (10%) of the affordable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally-operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with the Township of Lower's affordable housing program.
- (3) Within seven days from the opening of the Affordable Housing Trust Fund account, the Township of Lower shall provide COAH with written authorization, in the form of a three-party escrow agreement between the Township of Lower, the Township's banking institution, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- (4) All interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH or the Court.

F. Use of Funds

- (1) The expenditure of all funds shall conform to a Spending Plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Township of Lower's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved Spending Plan.

- (2) Funds shall not be expended to reimburse the Township of Lower for past housing activities.
- (3) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Township Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - (b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the Township Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 - (c) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (4) The Township of Lower 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, in accordance with N.J.A.C. 5:96-18.
- (5) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

G. Monitoring

The Township of Lower shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township of Lower's housing program, as well as to the expenditure of revenues and implementation of the plan approved by COAH or the Court. All monitoring reports shall be completed on forms designed by COAH.

H. Ongoing Collection of Fees

The ability of the Township of Lower to impose, collect and expend development fees shall expire with its Substantive Certification or Judgment of Compliance unless the Township of Lower has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned COAH for Substantive Certification, or brought a declaratory relief action in Court pursuant to N.J.S.A. 52:27D-313 and has received approval of its development fee ordinance by COAH or the Court. If the Township of Lower fails to renew its ability to impose and collect development fees prior to the expiration of its Substantive Certification or Judgment of Compliance, it 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 N.J.S.A. 52:27D-320. The Township of Lower shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its

Substantive Certification or Judgment of Compliance, nor shall the Township of Lower retroactively impose a development fee on such a development. The Township of Lower shall not expend development fees after the expiration of its Substantive Certification or its Judgment of Compliance from a Court.

§ 400-92. Affordable Housing Growth Share.

- A. Applicability
 - (1) This subsection of the Lower Township Development Regulations sets forth mechanisms by which developers shall provide for a fair share of affordable housing based on growth that is associated with development taking place within the Township of Lower.
 - (2) Residential Development. Except as exempted in subsection B all residential development that results in the construction of five or more new market-rate dwelling units in accordance with N.J.A.C. 5:97-1 et seq., shall be subject to the “growth share” provisions of subsection C.
- B. Exemptions. Residential developments that received preliminary or final approval from the Planning Board and/or Board of Adjustment, as applicable, prior to the effective date of Ordinance 2009-07 (July 6, 2009) are hereby exempt from the Round 3 growth share provisions of this Section.
- C. Residential Growth Share Provisions
 - (1) Residential development in the R-2 Single Family Residential and R-3 Mainland residential zones in the Township of Lower which result in the construction of five (5) or more new market-rate dwelling units shall be permitted a presumptive density increase of forty percent (40%) over the permitted density in the existing zoning with a presumptive maximum affordable housing set-aside of twenty percent (20%) of the total number of units in the development. For example:

Permitted Market Rate Units Under Existing Zoning	Additional Lots With Forty (40) Percent Density Increase (1)	Total Maximum Number of Lots (1)	Twenty (20) Percent Affordable Set-Aside Requirement Based on Total Maximum Number of Lots
4	None	4	Payment of affordable housing development fee in accordance with §400-91B(1)
5	2	7	1.4 (2)
10	4	14	2.8 (2)
25	10	35	7.0

Notes:

- (1) If the 40% density increase lot calculation or the total number of maximum lot calculation results in a fractional number - that number can be rounded up to the nearest whole number at 0.5 or greater and rounded down to the nearest whole number at 0.4 or less.
- (2) Fractional Affordable Share - See §400-92C.(4)

- (2) As an alternative to fulfilling the affordable housing requirement on-site set forth in §400-92 C.(1), developers of residential units required to construct an affordable housing unit may elect to construct an affordable housing unit elsewhere in Lower or purchase an existing residential unit elsewhere in Lower which shall comply with applicable COAH Rules at N.J.A.C. 5:97-1 et seq. Under this alternative if the required number of affordable lots is provided off-site those affordable lots are to be deducted from the total maximum number of lots after the 40% density increase is applied.
- (3) The maximum number of residential building lots with an affordable housing density bonus increase in accordance with §400-92 C.(1) shall first be computed on the basis of a lot yield plan of a standard subdivision in accordance with all provisions of Chapter 400 which includes delineated wetlands, wetlands buffers and floodplains. The number of conforming approvable lots in the conventional subdivision design shall then be counted and the development may be redesigned using the development regulations in §400-92 D.
- (4) For any inclusionary development of five (5) or more housing units which results in a fractional affordable share the developer shall make a payment in lieu of constructing the fractional affordable unit. The fractional share amount shall be established by multiplying the resulting fraction by the amount established in N.J.A.C. 5:97-6.4 (c) 3 for COAH Housing Region 6.
- (5) For all residential developments consisting of less than five (5) residential units in Lower the developer shall pay an affordable housing development fee in accordance with §400-91 B. (1).
- (6) All residential developments not subject to the provisions of (1) above or listed as an exemption in §400-91 B.(2) shall be subject to the provisions of development fees as set forth in §400-91, "Affordable Housing Development Fees."
- (7) Residential growth share provisions shall apply to the re-subdivision of land that in combination with a prior subdivision results in the creation of five or more lots. The cumulative number of lots created from the original tract of land shall be counted toward the growth share provisions upon any subsequent subdivision. The original tract of land shall be considered any tract or lot existing at the time of adopting this Section (§400-92) by Ordinance 2009-07, July 6, 2009.
- (8) Inclusionary zoning developments shall be required to build affordable housing units in accordance with the following schedule:

Percentage of Market Rate Units Completed (Including Bonus Units)	Minimum Percentage of Low and Moderate Income Units Completed
25	0
25 + 1 unit	10
50	50

75	75
90	100

- (9) In determining the actual residential growth share obligation, the following may be subtracted from the number of market-rate certificates of occupancy issued:
- (a) Units included in the exclusions permitted by N.J.A.C. 5:97-2.4(a)1 that have been issued certificates of occupancy;
 - (b) Certificates of occupancy issued for continuing care retirement communities, dormitories, and hotels and motels classified as R1 or R2 by the Uniform Construction Code (UCC).
 - (c) Certificates of occupancy issued for farm labor housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and classified as R2, R3, or R5 by the Uniform Construction Code (UCC); and
 - (d) Additional market-rate rental units in an inclusionary or mixed-use development where the affordable housing units are rental units that are addressing a municipality's growth share obligation.

D. General Provisions for Constructing Affordable Units in Inclusionary Developments

- (1) Affordable housing units being constructed on-site or off-site shall meet the requirements of the Lower affordable housing regulations in §400-93 through §400-108 and shall be in conformance with COAH's Third Round Rules at N.J.A.C. 5:97-1 et seq. and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq. as revised, including, but not limited to, requirements regarding phasing schedules, controls on affordability, very low / low / moderate income split, heating source, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.
- (2) To the greatest extent possible, affordable housing units being provided within an inclusionary development shall be distributed throughout the inclusionary development and shall be located within buildings designed to be architecturally similar to the market-rate units otherwise being constructed within the development. To that end, architectural detailing (such as the selection of exterior materials, doors, windows, roof pitch, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market-rate units.
- (3) For developments in which one (1) affordable housing unit is required under this Section that unit shall be affordable to a low income household

and shall be in conformance with the affordable housing regulations in subsection D(1) above.

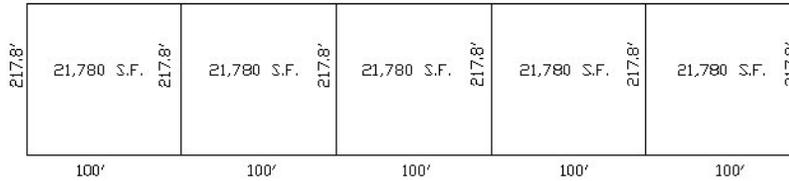
- (4) Affordable housing units constructed off-site shall meet the zoning requirements established in Article IV District Regulations.

- (5) In developments where a density bonus lot is permitted per §400-92C.(1) and affordable housing units are constructed on-site the minimum lot size and lot frontage may be reduced as follows:
 - (a) Not greater than 30% from the applicable minimum zoning requirements for the affordable lot.
 - (b) Not greater than 30% from the applicable minimum zoning requirements for the market rate bonus lot and remaining market rate lots.

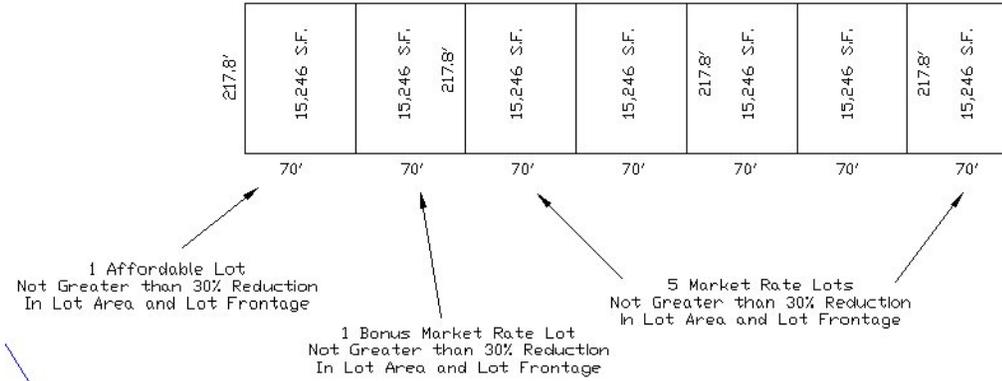
An example is as follows:

Zone	Required Minimum Lot Area (S.F.)	Reduced Minimum Lot Area (S.F.)	Required Minimum Lot Frontage (Feet)	Reduced Minimum Lot Frontage (Feet)
R-2 - Affordable Lot	21,780	15,246	100	70
R-2 - Market Rate and Bonus Lots	21,780	15,246	100	70

CONVENTIONAL SUBDIVISION (R-2 ZONE - 1/2 acre or 21,780 S.F. Area / 100 Ft. Frontage)



AFFORDABLE, MARKET RATE AND BONUS LOT SUBDIVISION (R-2 ZONE)



- (6) In developments where a density bonus lot is permitted per §400-92 C. (1) and affordable housing units are constructed on-site the minimum side yard shall be fifteen (15) feet.

E. Payment in Lieu Provisions

- (1) Any payment in lieu of construction of an affordable housing unit shall be derived from calculations for payments in lieu of constructing affordable housing as published in N.J.A.C. 5:97-6.4 (c) 3 for COAH Region 6 as may be amended from time to time.
- (2) All payments in lieu of constructing affordable housing shall be deposited by Lower Township into the Round 3 Lower Township Affordable Housing Trust Fund in accordance with §400-91E. Housing Trust Fund. These funds shall be used by Lower Township in accordance with regulations established by COAH to create new affordable housing opportunities within the physical boundaries of Lower Township.

§ 400-93. Phasing Schedule for Inclusionary Zoning.

In all zones that will contain both affordable housing and market rate housing units and/or market rate non-residential development, the following schedule shall be followed:

Maximum Percentage of Market-Rate <u>Units Completed</u>	Minimum Percent of Very Low, Low and <u>Moderate-Income Units Completed</u>
25	0
25+1	10
50	50
75	75
90	100

§ 400-94. New Construction.

A. Very Low/Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

- (1) The fair share obligation shall be divided between very-low, low, and moderate-income units as follows:
 - (a) very low -13 percent
 - (b) low - 43.5 percent
 - (c) moderate - 43.5 percent

where there is fractional number of affordable housing units, the number shall be rounded up to the nearest whole number at 0.5 and rounded down to the nearest whole number at 0.5.

- (2) In each affordable development, at least 13 percent of the restricted units within each bedroom distribution shall be very low-income units.
- (3) 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 very low, low, and moderate-income units;
 - (b) At least 30 percent of all very low, low, and moderate-income units shall be two bedroom units;
 - (c) At least 20 percent of all very low, 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.
- (4) 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 N.J.A.C. 5:97-3.14.
- (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;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;

- (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;
- (e) An interior accessible route of travel between stories within an individual unit, except that if all of the terms of paragraphs (2) (a) through (2)(d) above have been satisfied, 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-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that Lower Township has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:

[1] 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.

[2] To this end, the builder of restricted units shall deposit funds within the appropriate Township of Lower's Affordable Housing Trust Fund (§400-91E.) sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.

[3] The funds deposited under paragraph (f)[2] above shall be used by the Township of Lower 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.

[4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion of adaptable to accessible entrances to the Construction Official of the Township of Lower.

[5] 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 N.J.A.C. 5:97-3.14, 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 appropriate Affordable Housing Trust Fund (§400-91E.) and appropriately earmarked.

[6] 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 and N.J.A.C. 5:97-3.14.

C. Design:

- (1) In inclusionary developments, to the extent possible, very low, low, and moderate-income units shall be integrated with the market units.
- (2) 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.

D. Maximum Rents and Sales Prices:

- (1) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH.

The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income and the maximum rent for a very low-income unit shall be affordable to households earning no more than 30 percent of the median household income; and

- (2) 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 low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income and the maximum rent for a very low-income unit shall be affordable to households earning no more than 30 percent of the median household income
- (3) 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.
- (4) 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 and very low income ownership units must be available for at least two different sales prices for each bedroom type.
- (5) 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:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) 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:

- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
-
- (7) 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. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 - (8) 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. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 - (9) 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.
 - (10) The rent 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 United States. 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.

§ 400-95. 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 the New Jersey Department of Community Affairs for its Section 8 program.

§ 400-96. Occupancy Standards.

- A. 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:
 - (1) Provide an occupant for each bedroom;
 - (2) Provide children of different sexes with separate bedrooms;
 - (3) Provide separate bedrooms for parents and children; and

- (4) Prevent more than two persons from occupying a single bedroom.

§ 400-97. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Section for a period of at least thirty (30) years, until Lower 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. 5:80-26.1, as may be amended and supplemented.
- 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 Section, 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 Section 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. 5:80-26.5(a), as may be amended and supplemented.

§ 400-98. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 - (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (3) 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.
 - (4) 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 anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§ 400-99. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that very low income ownership units shall be reserved for households with a gross household income less than or equal to 30 percent of median income or less, 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, however, the Administrative Agent may, subject to COAH's approval, permit moderate-income purchasers to buy low-income units in housing markets determined by COAH to have an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing restrictions for low-income units.
- 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 a 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.

§ 400-100. 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.5:80-26.6(b).

§ 400-101. 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.

§ 400-102. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Section for a period of at least 30 years, until Lower 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. 5:80-26.1, as may be 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 Cape May. 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 Section 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.

§ 400-103. 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 Section.

§ 400-104. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, 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 median income.

- (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of 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, 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, 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 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 the circumstances in B.(1) through B.(5) above with the Administrative Agent, who shall counsel the household on budgeting.

§ 400-105. Municipal Housing Liaison.

- A. The Municipal Housing Liaison, a full or part time municipal employee shall be responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. The Municipal Housing Liaison shall be approved by COAH and shall be duly qualified before assuming the duties of Municipal Housing Liaison.
- B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Lower, including the following responsibilities which may not be contracted out to the Administrative Agent or Agents:
 - (1) Serving as Lower Township's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agent(s) and interested households;

- (2) Monitoring the status of all restricted units in Lower Township's Fair Share Plan;
- (3) Compiling, verifying and submitting annual monitoring reports as required by COAH;
- (4) Coordinating meetings with affordable housing providers and Administrative Agent(s), as needed; and
- (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

C. Subject to the approval of COAH, the Township of Lower shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the Mayor and Township Council and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Township Clerk and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).

Comment [BW1]: COAH or the Court?

§ 400-106. Administrative Agent.

Comment [BW2]: You can use yours or use the verbiage from the contract with AAs. What we know is missing are requirements to maintain records pursuant to DARM.

A. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

(1) Affirmative Marketing:

- (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Lower and the provisions of N.J.A.C. 5:80-26.15; and
- (b) 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.

(2) Household Certification:

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low, low, or moderate-income unit;
- (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- (d) 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. 5:80-26.1 et seq.;

- (e) 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; and
 - (f) Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Lower when referring households for certification to affordable units.
- (3) Affordability Controls:
- (a) 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;
 - (b) 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;
 - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Cape May County Register of Deeds or Cape May County Clerk's office after the termination of the affordability controls for each restricted unit;
 - (d) Communicating with lenders regarding foreclosures; and
 - (e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resales and Rerentals:
- (a) 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; and
 - (b) Instituting and maintaining an effective means of communicating information to very low, low, and moderate-income households regarding the availability of restricted units for resale or re-rental.
- (5) Processing Requests from Unit Owners:
- (a) 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 Section;
 - (b) 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;
 - (c) Notifying the Township of Lower of an owner's intent to sell a restricted unit; and
 - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement:

- (a) Securing annually from the Township 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;
 - (b) 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;
 - (c) 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 or other charges can be made;
 - (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - (e) Establishing a program for diverting unlawful rent payments to the appropriate Lower Township Affordable Housing Trust Fund (§400-91E.) or other appropriate municipal fund approved by the DCA; and
 - (f) Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering the affordability controls.
- (7) Additional Responsibilities:
- (a) The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.
 - (b) The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time for their submission by the Municipal Housing Liaison to COAH, as required by COAH.
 - (c) The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH.

§ 400-107. Affirmative Marketing Plan

- A. All affordable housing units shall be marketed in accordance with the provisions herein unless otherwise provided in COAH's Rules at N.J.A.C. 5:97-1, et seq.
- B. This Affirmative Marketing Plan shall apply to all developments that will contain very low, low, and moderate income units, including those that are part of the Township's current Housing Element and Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Housing Element and Fair Share Plan.
- C. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developer/seller/owner of the affordable units.
- D. In implementing the Affirmative Marketing Plan, the Affordable Housing Administrator, acting on behalf of the Township of Lower, shall undertake all of the following strategies:
 - (1) Publication of one advertisement in a newspaper of general circulation within the housing region.

- (2) Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.
 - (3) At least one additional regional marketing strategy using one of the other sources listed below.
- E. 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 or sponsor of affordable housing. The Affirmative Marketing Plan is also 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 all marketing activities toward the COAH Housing Region in which the Township is located and covers the entire period of the deed restriction for each restricted housing unit. The Township of Lower is in Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem Counties.
- F. The Affirmative Marketing Plan is a continuing program and shall meet the following requirements:
- (1) All newspaper articles, announcements and requests for applications for very low, low, and moderate income units shall appear in the Press of Atlantic City and Cape May Gazette.
 - (2) The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Township's Affordable Housing Administrator. All press releases and advertisements shall be approved in advance by the Township's Affordable Housing Administrator.
 - (3) The advertisement shall include a description of the:
 - (a) Location of the units;
 - (b) Direction to the units;
 - (c) Range of prices for the units;
 - (d) Size, as measured in bedrooms, of units;
 - (e) Maximum income permitted to qualify for the units;
 - (f) Location of applications;
 - (g) Business hours when interested households may obtain an application; and
 - (h) Application fees.
 - (4) Newspaper articles, announcements and information on where to request applications for very low, low and moderate income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented weekly newspapers within the region, one of which shall be circulated primarily in Cape May County and the other two of which shall be circulated primarily outside of Cape May County but within the housing region of Cape May, Atlantic, Cumberland and Salem Counties.
 - (5) The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:
 - (a) Local Cable Access Channel
 - (b) WNJZ 90.3 FM - Cape May Court House, N.J.
 - (c) WCZT 98.7 FM - Villas, N.J.
 - (d) WAIV 102.3 and 95.1. - Atlantic City / Cape May

G. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

- (1) Township of Lower Town Hall
- (2) Lower Township Public Library (Branch of Cape May Library)
- (3) Developer's Sales Office
- (4) Cape May County Administration Building.
- (5) Cape May County (Main) Library

Applications shall be mailed by the Administrative Agent to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and shall be mailed to prospective applicants upon request.

H. The Administrative Officer will be charged with developing, maintaining and updating a list of community contact person(s) and/or organizations(s) in Atlantic, Cape May, Cumberland and Salem Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional and local employers and local houses of worship.

I. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

- (1) Cape May County Board of Realtors
- (2) Atlantic County Board of Realtors
- (3) Cumberland County Board of Realtors
- (4) Salem County Board of Realtors

Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies in the counties of Cape May, Atlantic, Cumberland and Salem:

- (1) Welfare or Social Service Board
- (2) Rental Assistance Office (local office of DCA)
- (3) Office on Aging
- (4) Housing Authority
- (5) Community Action Agencies
- (6) Community Development Departments

Quarterly informational circulars and applications shall be sent to the chief personnel administrator for each of the following major employers in the region:

- (1) Lower Township Shopping Plaza
- (2) Lower Township Board of Education
- (3) Cape May County

J. A random selection method to select occupants of very low, low and moderate income housing will be used by the Affordable Housing Administrator, in conformance with N.J.A.C. 5:80-26.16 (1). The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 6 comprised of Cape May, Atlantic, Cumberland and Salem Counties.

K. The Affordable Housing Administrator shall administer the Affirmative Marketing Plan. The Affordable Housing Administrator has the responsibility to income qualify very low, low, and moderate income households; to place income eligible households in very low, low and moderate income units upon initial occupancy; to provide for the initial occupancy of very low, low, and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very low, low, and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, et seq.

L. The Affordable Housing Administrator shall direct qualified very low, low, and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage

qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.

- M. All developers/owners of very low, low, and moderate income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Affordable Housing Administrator.
- N. The Affirmative Marketing Plan shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The Affirmative Marketing Plan shall continue until all very low, low, and moderate income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary.
- O. The Affordable Housing Administrator shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq.

§ 400-108. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the Township 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 very low, low, or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the Township 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 Township 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 appropriate Township of Lower Affordable Housing Trust Fund (§400-91E.) 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 Township 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 very low, low, or moderate-income unit.
 - (a) The judgment shall be enforceable, at the option of the Township, by means of an execution sale by the Cape May County 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 Township, 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 Township 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 Township 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 Township 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 Township 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 Township 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 Township. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Township, whether such balance shall be paid to the Owner or forfeited to the Township.
- (c) Foreclosure by the Township 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 Township 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 Township shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the Township, 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.
- (e) 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.

§ 400-109. Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Section shall be filed in writing with the Executive Director of COAH.

VI

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

VII

If any section, subparagraph, sentence, clause, or phase of this Ordinance shall be held to be invalid, such decision shall not invalidate any remaining portion of this Ordinance.

VIII

This Ordinance shall take effect immediately upon passage, publication according to law and filing with the Cape May County Planning Board in accordance with N.J.S.A. 40:55D-16.

IX

A copy of this Ordinance shall be filed with New Jersey Council on Affordable Housing in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97.

A copy of this Ordinance shall be filed with the Township of Lower Tax Assessor, Zoning Officer, Construction Official, Planning Board, Board of Adjustment, Planner and Engineer.

Thomas Conrad, Councilmember

Wayne Mazurek, Councilmember

Glenn Douglass, Councilmember

Kevin Lare, Deputy Mayor

Michael E. Beck, Mayor

Adotped: July 6, 2009

Attest: _____
Claudia R. Kammer, Township Clerk