**BOROUGH OF WATCHUNG**
**ORDINANCE NO. 19/11**

**AN ORDINANCE OF THE BOROUGH OF WATCHUNG, COUNTY OF SOMERSET, STATE OF NEW JERSEY, REPEALING ARTICLE 28-1000, TITLED "AFFORDABLE HOUSING", OF THE LAND DEVELOPMENT ORDINANCE OF THE BOROUGH, AND REPLACING WITH A NEW ARTICLE 28-1000, TITLED "AFFORDABLE HOUSING", AND REPEALING SECTION 28-402Z, TITLED "AFFORDABLE HOUSING GROWTH SHARE"**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Watchung, in the County of Somerset and State of New Jersey, that the Borough Land Development Ordinance is amended as follows:

**Section 1.** Article 28-1000, titled "Affordable Housing", of the Land Development Ordinance of the Borough is hereby repealed and replaced with a new Article 28-1000, titled "Affordable Housing" as follows:

## Article 28-1000: AFFORDABLE HOUSING

### 28-1001. PURPOSE AND GENERAL REQUIREMENTS

**A. Purpose.**

1. This Section is intended to assure that very-low, low-, and moderate-income units ("affordable units") are created with controls on affordability and that very-low, low-, and moderate-income households shall occupy these units. This Section shall apply except where inconsistent with applicable law.

2. The Borough of Watchung entered into a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") on June 7, 2018 (hereinafter "FSHC Settlement Agreement"), and the Superior Court Order on Fairness and Preliminary Compliance Hearing, preliminarily approving the FSHC Settlement Agreement, was entered by the Court on September 19, 2018 after a properly noticed Fairness Hearing. The FSHC Settlement Agreement describes how the Borough of Watchung shall address its fair share of very-low, low-, and moderate-income housing which will be documented in the Borough of Watchung Housing Element and Fair Share Plan ("HEFSP") itself.

3. The Borough of Watchung shall track the status of the implementation of the Fair Share Plan.

**B. Monitoring and Reporting Requirements.**

The Borough of Watchung shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its FSHC Settlement Agreement.

1. Beginning one year after the entry of the Borough's Round 3 Judgment of Compliance and Repose, and on every anniversary of that date through 2025, the Borough shall provide an annual report of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs ('NJDCA"), Council on Affordable Housing "COAH"), or New Jersey Local Government Services ("NJLGS"), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the NJDCA, COAH, or NJLGS. The report shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Watchung's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

2. Beginning one year after the entry of the Borough's Round 3 Judgment of Compliance and Repose, and on every anniversary of that date through 2025, the Borough agrees to provide an annual report of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH, or any other forms endorsed by the Superior Court Appointed Special Master and FSHC.

3. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during its ten (10) year repose period. The Borough will comply with those provisions as follows:

   a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its HEFSP and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the Borough, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Superior Court regarding these issues.

b. For the review of very-low-income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third anniversary of the entry of the Borough's Judgment of Compliance and Repose, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough and FSHC on the issue of whether the Borough has complied with its very-low-income housing obligation under the terms of this settlement.

c. In addition to the foregoing postings, the Borough may also elect to file copies of its reports with COAH or its successor agency at the State level.

**28-1002. DEFINITIONS.**

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

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) as has been subsequently amended.

"Accessory Apartment" shall mean a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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

"Administrative agent" means the entity designated by the Borough responsible for the administration of affordable units in accordance with this ordinance, applicable COAH regulations and the Uniform Housing Affordability Controls (UHAC)(N.J.A.C. 5:80-26.1 et seq.)

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

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

"Affordable" means a sales price or rent within the means of a very low-, low or moderate-income household as defined by COAH in its applicable regulations or an equivalent controlling New Jersey state agency; 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" means a housing development in which all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in or pursuant to the Borough's Fair Share Plan or otherwise intended to address the Borough's current or future fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"Affordable housing program(s)" means any mechanism in the Borough's Fair Share Plan prepared or implemented to address the Borough's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to applicable COAH regulations, the FSHC Settlement Agreement, or an order of the Superior Court.

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

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. § 3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

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

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

"COAH" means the New Jersey Council on Affordable Housing and/or its successors and assigned pursuant to applicable laws.

"The Department" means the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system.

"Developer" means 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" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

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

"Low-income household" means a household with a total gross annual household income equal to 50 percent or less of the median household income.

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

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

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

"Median-income" means the median income by household size for the applicable housing region, as updated annually by COAH or through a court-approved process.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

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

"Municipal Housing Liaison" means the employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for Watchung.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

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

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

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

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

"Very-low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income.

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

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

**28-1003. APPLICABILITY.**

A. The provisions of this Section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Watchung pursuant to the Borough's most recently adopted HEFSP.

B. This Section shall apply to all developments that contain very low, low-and moderate-income housing units, including any currently unanticipated future developments that will provide affordable housing units.

C. In addition, any property in the Borough of Watchung that is currently zoned for nonresidential uses and that is subsequently rezoned for residential purposes or receives a zoning change or a use variance to permit residential development, or receives a zoning change or a density variance to permit higher density residential development in accordance with Section 28-401.AB.

**28-1004. REHABILITATION PROGRAMS.**

A. The Borough of Watchung and FSHC have agreed that the Borough's Round 3 (1999-2025) indigenous need Rehabilitation Obligation is four (4) units, as adjusted through the FSHC Settlement Agreement. The Borough will address its Round 3 Rehabilitation Obligation via continuation of the Borough Rehabilitation Program. The rehabilitation program will update and renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28. The Borough Rehabilitation Program shall be operated in accordance with the Borough's Rehabilitation Manual.

1. All rehabilitated rental and owner-occupied units shall remain affordable to low- and moderate-income households for a period of at least ten (10) years (the control period). For owner-occupied units, the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.

2. The Borough of Watchung shall dedicate an average of at least ten thousand dollars ($10,000) for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.

3. Units in the rehabilitation programs shall be administered in accordance with the Borough Rehabilitation Manual, and the following:

   a. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed

restriction shall require the unit to be rented to an income eligible household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-9 and UHAC.

b. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-9 and UHAC.

c. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9 or the standards set forth in this ordinance at Section 28-1007(H).

d. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:93-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

**28-1005. ALTERNATIVE LIVING ARRANGEMENTS.**

A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Superior Court;

2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

B. With the exception of units established with capital funding through a twenty (20) year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty (30) year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Superior Court.

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

**28-1006. PHASING SCHEDULE FOR INCLUSIONARY DEVELOPMENTS.**

In inclusionary developments the following schedule shall be followed:

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

**28-1007. NEW CONSTRUCTION.**

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

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least thirteen percent (13%) of all restricted rental units shall be very-low-income units (affordable to a household earning thirty percent (30%) or less of regional median income). The very-low-income units shall be counted as part of the required number of low-income units within the development. At least twenty-five percent (25%) of the obligation shall be met through rental units, including at least half in rental units available to families. At least fifty percent (50%) of the very-low-income units must be available to families. A maximum of 25 percent (25%) may be age restricted.

2. In each affordable development, at least fifty percent (50%) of the restricted units within each bedroom distribution shall be very-low or 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 (1) bedroom units shall be at least ten percent and no greater than twenty percent (20%) of the total affordable units;

   b. At least thirty percent (30%) of all affordable units shall be two (2) bedroom units;

   c. At least twenty percent (20%) of all affordable units shall be three (3) bedroom units; and

d. The remaining units may be allocated among two (2) bedroom units only.

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 (1) bedroom units or by having a two (2) 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).

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 (1) other dwelling unit shall have the following features:

a. An adaptable toilet and bathing facility on the first floor; and

b. An adaptable kitchen on the first floor; and

c. An interior accessible route of travel on the first floor; and

d. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

e. If all of the foregoing requirements in paragraphs B.2.a. through B.2.d. above cannot be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs .B.2.a through B.2.d. above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

f. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Subcode (N.J.A.C. 5:23-7), or evidence that Watchung has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:

(1) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities 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 into the Borough of Watchung's Affordable Housing Trust Fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.

(3) The funds deposited under Paragraph 2(f) above shall be used by the Borough of Watchung 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 to the Construction Official of the Borough of Watchung for the conversion of adaptable to accessible entrances.

(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 that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

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

C. Design:

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

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 most recently published regional weighted average of the uncapped Section 8 income limits published by HUD.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of median income, and the average rent for restricted rental units shall be affordable to households earning no more than fifty-two percent (52%) of median income.

3. The developers and/or municipal sponsors of restricted rental units shall establish at least one (1) rent for each bedroom type for very low-, low-income and moderate-income units, provided that at least thirteen percent (13%) of all low- and moderate-income rental units shall be affordable to very-low-income households, which very-low-income units shall be part of the low-income requirement.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy percent (70%) of median income, and each affordable development must achieve an affordability average of fifty-five percent (55%) for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three (3) different sales prices for each bedroom type, and low-income ownership units must be available for at least two (2) 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 (1) person household;

b. A one (1) bedroom unit shall be affordable to a one and one-half (1.5) person household;

c. A two (2) bedroom unit shall be affordable to a three (3) person household;

d. A three (3) bedroom unit shall be affordable to a four and one-half (4.5) person household; and

E. 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:

1. A studio shall be affordable to a one (1) person household;

2. A one (1) bedroom unit shall be affordable to a one and one-half (1.5) person household; and

3. A two (2) bedroom unit shall be affordable to a two (2) person household or to two (2) one (1) person households.

F. 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 ninety-five percent (95%) 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 twenty-eight percent (28%) 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.

G. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty percent (30%) 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.

H. Income limits for all units that are part of the Borough's HEFSP, and for which income limits are not already established through a federal program exempted from the UHAC pursuant to N.J.A.C. 5:80-26.1, shall be updated by the Borough annually within sixty (60) days of the publication of determinations of median income by HUD as follows:

1. Regional income limits shall be established for Region 3 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median County income for a family of four is multiplied by the estimated households within the County according to the most recent decennial Census. The resulting product for each County within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the municipality's housing region. This quotient represents the regional weighted average of median income for a family of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the regional weighted average

median income for a family of four. The income limit for a very low-income units for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than the previous year.

2. The income limits are the result of applying the percentages set forth in paragraph H.1. above to HUD's determination of median income for the current Fiscal Year and shall be utilized by the Borough until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

3. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the municipality annually by taking the percentage increase of the income limits calculated pursuant to paragraph H.1. above over the previous year's income limits and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

I. In establishing sale prices and rents of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

1. The resale prices of owner-occupied very-low, low- and moderate-income units may be increased annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to paragraph H above. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

2. The rent levels of very-low, low and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Region, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

**28-1008. 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 NJDCA for its Section 8 program.

**28-1009. OCCUPANCY STANDARDS.**

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

A. Provide an occupant for each bedroom;

B. Provide children of different sexes with separate bedrooms;

C. Provide separate bedrooms for parents and children; and

D. Prevent more than two (2) persons from occupying a single bedroom.

**28-1010. 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 Watchung Borough 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 Borough's 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.

**28-1011. PRICE RESTRICTIONS FOR RESTRICTED OWNERSHIP UNITS, HOMEOWNER ASSOCIATION FEES AND RESALE PRICES.**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

A. The initial purchase price for a restricted ownership unit shall be approved by the Borough's Administrative Agent.

B. The Borough's Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers, unless the master deed for the inclusionary project was executed prior to the enactment of UHAC.

D. The owners of restricted ownership units may apply to the Borough's 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. See Sec. 28-1014.

**28-1012. 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 thirty percent (30%) of median income, low-income ownership units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty percent (80%) of median income.

B. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three percent (33%) of the household's eligible monthly income.

**28-1013. 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 Borough's Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Borough's 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 ninety-five percent (95%) of the maximum allowable resale price of the unit, as such price is determined by the Borough's Administrative Agent, accordance with N.J.A.C. 5:80-26.6(b).

**28-1014. CAPITAL IMPROVEMENTS TO OWNERSHIP UNITS.**

A. The owners of restricted ownership units may apply to the Borough's 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 Borough's 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 ten (10) year, straight-line depreciation, has been approved by the Borough's Administrative Agent. Unless otherwise approved by the Borough's 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.

**28-1015. 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 thirty (30) years, until Watchung Borough 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 Somerset. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Borough's Administrative Agent within thirty (30) days of the receipt of a Certificate of Occupancy.

C. A restricted rental unit shall remain subject to the affordability controls described in 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.

**28-1016. 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 Borough's 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 Borough's Administrative Agent.

C. Application fees (including the charge for any credit check) shall not exceed five percent (5%) of the monthly rent of the applicable restricted unit and shall be payable to the Developer and/or Landlord or to the Borough's Administrative Agent. If the fees are paid to the Borough's Administrative Agent, they are to be

applied to the costs of administering the controls applicable to the unit as set forth in this Section.

D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least fifteen percent (15%) of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

**28-1017. 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 thirty percent (30%) of the regional median household income by household size.

2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of the regional median household income by household size.

3. Moderate-income rental units shall be reserved for households with a gross household income less than eighty percent (80%) of the regional median household income by household size.

B. The Borough's 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 thirty-five percent (35%) (forty percent (40%) 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 thirty-five percent (35%) (forty percent (40%) 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 thirty-five percent (35%) (forty percent (40%) for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

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

5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

C. The applicant shall file documentation sufficient to establish the existence of the circumstances in B.1. through B.5. above with the Borough's Administrative Agent, who shall counsel the household on budgeting.

**28-1017. MUNICIPAL HOUSING LIAISON.**

A. The position of Municipal Housing Liaison (MHL) for the Borough of Watchung is established by this Section. The Borough shall make the actual appointment of the MHL by means of a resolution.

1. The MHL must be either a full-time or part-time employee of Watchung.

2. The person appointed as the MHL must be reported to the Superior Court and thereafter posted on the Borough's website.

3. The MHL shall be duly qualified through a training program provided by the Borough Administrative Agent before assuming the duties of Municipal Housing Liaison.

4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Watchung, including the following responsibilities which may not be contracted out to the Administrative Agent.

a. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

b. The implementation of the Affirmative Marketing Plan and affordability controls;

c. When applicable, supervising any contracting Administrative Agent;

d. Monitoring the status of all restricted units in the Borough's Fair Share Plan;

e. Compiling, verifying and submitting annual reports as required;

f. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and

g. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.

B. Subject to the approval of the Superior Court, the Borough of Watchung shall designate one (1) or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Section. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s), to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).

**28-1018. ADMINISTRATIVE AGENT.**

An Administrative Agent may be an independent entity serving under contract to and reporting to the Borough. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Borough Administrative Agent shall monitor and work with any individual Administrative Agents appointed by individual developers. The Administrative Agent(s) 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:

A. Affirmative Marketing:

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Watchung and the provisions of N.J.A.C. 5:80-26.15; and

2. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

B. Household Certification:

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

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

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

4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;

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

6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Watchung when referring households for certification to affordable units; and

7. Notifying the following entities of the availability of affordable housing units in the Borough of Watchung: FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, Supportive Housing Network, Central Jersey Housing Resource Center.

C. Affordability Controls:

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

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

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

4. Communicating with lenders regarding foreclosures; and

5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

D. Resales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Borough's Administrative

Agent regarding the availability of restricted units for resale or re-rental; and

2. Instituting and maintaining an effective means of communicating information to very-low, low and moderate-income households regarding the availability of restricted units for resale or re-rental.

E. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Section;

2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;

3. Notifying the Borough of an owner's intent to sell a restricted unit; and

4. Making determinations on requests by owners of restricted units for hardship waivers.

F. Enforcement:

1. Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Borough's Administrative Agent.

3. Posting annually, in all rental properties (including two (2) family homes), a notice as to the maximum permitted rent together with the telephone number of the Borough's Administrative Agent, where complaints of excess rent or other charges can be made;

4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

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

6. Creating and publishing a written operating manual for each affordable housing program administered by the Borough's Administrative Agent, to be approved by the Borough Council and the Superior Court, setting forth procedures for administering the affordability controls.

G. Additional Responsibilities:

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

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

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

**28-1019. AFFIRMATIVE MARKETING REQUIREMENTS.**

A. The Borough of Watchung shall adopt by resolution an Affirmative Marketing Plan that is compliant with N.J.A.C 5:80-26.15, as may be amended and supplemented.

B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 3 and is required to be followed throughout the period of restriction.

C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 3, comprised of Hunterdon, Middlesex and Somerset Counties.

D. The Borough has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and re-sales and re-rentals. The Borough's Administrative Agent designated by the Borough of Watchung, shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

E. In implementing the Affirmative Marketing Plan, the Borough's Administrative Agent, shall provide a list of counseling services to very-low, low, and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Borough's Administrative Agent, shall consider the use of language translations where appropriate.

G. The affirmative marketing process for available affordable units shall begin at least one hundred and twenty days (120) prior to the expected date of occupancy.

H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; and the municipal building in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**28-1020. ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS.**

A. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the Borough 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, recoupment of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the Borough may take the following action(s) against the Owner, Developer or Tenant for any violation that remains

uncured for a period of sixty (60) days after service of the written notice:

1. The Borough 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 Superior Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one (1) or more of the following penalties, at the discretion of the Court:

   a A fine of not more than two thousand dollars ($2,000.00) per day or imprisonment for a period not to exceed ninety (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 Borough of Watchung Affordable Housing Trust Fund of the gross amount of rent illegally collected;

   c. In the case of an Owner who has rented a very-low, low or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

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

   a. The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the 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 Borough, 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 low- and moderate-income unit. The excess, if

any, shall be applied to reimburse the Borough 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 Borough 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 Borough 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 Borough for the Owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the Owner shall make a claim with the Borough for such. Failure of the Owner to claim such balance within the two (2) year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the Owner or forfeited to the Borough.

c. Foreclosure by the Borough 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 Borough 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 Borough shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by

the Borough, with such offer to purchase being equal to the maximum resale price of the very-low, low, and moderate-income unit as permitted by the regulations governing affordable housing units.

f. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

**28-1021. APPEALS.**

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

**Section 2.** Section 28-402Z of the Borough Land Development Ordinance, titled "Affordable Housing Growth Share", is hereby repealed.

**Section 3.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 4.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Watchung, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of Watchung are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 5.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

**Section 6.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the

Borough of Watchung for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64.

**Section 7.** This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16, and shall be transmitted to the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

INTRODUCED BY: Black
PASSED: May 16, 2019
PUBLISHED: May 23, 2019
ADOPTED: June 20, 2019

ATTEST:

Michelle DeRocco, Borough Clerk

Keith S. Balla, Mayor