**TOWNSHIP OF UPPER DEERFIELD**

**ORDINANCE NO. 807**

**ESTABLISHING CHAPTER 108, ENTITLED, "AFFORDABLE HOUSING PROCEDURAL AND ELIGIBILITY REQUIREMENTS", TO IMPLEMENT THE THIRD ROUND OF AFFORDABLE HOUSING IN ACCORDANCE WITH THE FAIR HOUSING ACT OF 1985**

**WHEREAS**, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of low and moderate income housing; and

**WHEREAS**, the Township Committee of the Township of Upper Deerfield are desirous of ensuring the proper implementation of the Fair Housing Act and associated rules through the adoption of land use regulations by the governing body; and

**WHEREAS**, the Township of Upper Deerfield desires to implement policies established by the New Jersey Supreme Court in In re N.J.A.C. 5:96 and 5:108, 221 N.J. 1, 30 (2015) (Mount Laurel IV) to foster affordable housing opportunities for the production of dwellings and their occupancy by low and moderate income households.

**WHEREAS**, the Township Committee of the Township of Upper Deerfield recognize the need to adopt Affordable Housing Procedural and Eligibility Requirements to implement the Housing Element and Fair Share Plan; and

**WHEREAS**, the Planning Board of the Township of Upper Deerfield has reviewed and recommended the adoption of this ordinance.

**NOW THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Upper Deerfield, Cumberland County, New Jersey, as follows:

**Section 1**. Chapter 108, Affordable Housing Controls and Procedures, shall be enacted, as follows:

**§108-1. Purpose.**

This chapter is designed to implement the Township's adopted housing element and fair share plan for low- and moderate-income housing adopted pursuant to the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (the "Act"); the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) ("UHAC"); extant regulations of the New Jersey Council on Affordable Housing ("COAH"), and judicial decisions. This Chapter is designed to ensure that affordable housing created under the Fair Housing Act is occupied by low- and moderate-income households for the appropriate period of time. All words, phrases, and terms not otherwise defined herein shall have the same meanings and usages as in the Act and UHAC. This chapter provides rules for the

establishment and administration of affordability controls on each income restricted dwelling unit for which the Township receives credit.

**§108-2. Word Usage and Definitions.**

A. Word Usage. In interpreting this Chapter words in one tense shall include other tenses or derivative forms; words in the singular shall include the plural and in the plural, the singular; either gender shall include the other; the word "shall" is mandatory; the word "may" is permissive; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used"; the word "lot" includes the words "plot," and "premises".

B. Definitions. The following definitions shall have the meanings indicated:

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 ordinance, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

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 restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE: A sales price or rent within the means of a very low, low- or moderate-income household as defined in N.J.S.A. 52:27D-304; 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 DWELLING UNIT: A very low, low or moderate income dwelling unit.

AFFORDABLE DEVELOPMENT: A housing development all or a portion of which consists of income 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% affordable development.

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

AFFORDABLE RENTAL CHARGES: A monthly rent including utilities charged to an eligible very low, low or moderate income family which shall not exceed thirty percent (30%) of their monthly gross income as calculated by N.J.A.C. 5:93-7.4(f).

AFFORDABLE UNIT: A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGE-RESTRICTED DEVELOPMENT: A residential development consisting housing units designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1), all the residents of the development wherein the unit is situated are sixty-two (62) years of age or older; or 2), at least eighty percent (80%) of the units are occupied by one person who is fifty-five (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 §807(b)(2) of the Fair Housing Act, 42 U.S.C. §3607.

ASSISTED LIVING RESIDENCE OR FACILITY: A facility that is licensed by the NJ 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.

ALTERNATIVE LIVING ARRANGEMENT: 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 DCA; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

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.

DEVELOPMENT FEE: means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8 and administered in Chapter 158 of the Code of the Township of Upper Deerfield.

FAIR SHARE PLAN: The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Township proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

HOUSEHOLD: Persons, whether related or unrelated, living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit.

HOUSING ELEMENT or HOUSING PLAN ELEMENT: The portion of the Township's Master Plan, required by the Municipal Land Use Law in N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes Upper Deerfield's fair share obligation.

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 gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD: A household with a total gross annual household income equal to fifty percent (50%) or less of the regional median household income by household size.

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 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 updated annually according to a formula approved by the Court.

MODERATE-INCOME HOUSEHOLD: A household with a total gross annual household income in excess of fifty percent (50%) but less than eighty percent (80%) of the regional median household income by household size.

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.

QUALIFIED PURCHASER OR RENTER: A person who:

A. Submits an application for certification as a qualified purchaser or renter to the management of the unit;

B. Whose gross aggregate family income at the time of the proposed purchase or rental of an affordable unit is within very low, low or moderate income levels, as defined herein; and

C. Who obtains certification as a qualified purchaser or renter of an affordable unit from Upper Deerfield Township's Administrative Agent as set forth in this Chapter.

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).

REFERRAL LIST, AFFORDABLE HOUSING: A register of eligible very low, low and moderate income households for which suitable units are not yet available.

REGIONAL ASSET LIMIT: The maximum housing value in each housing region affordable to a four-person household with an income at eighty percent (80%) of the regional median as defined by adopted/approved Regional Income Limits.

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 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 the Urban Homeownership Recovery Program (UHORP) or Market Oriented Neighborhood Investment (MONI) program.

UHAC: The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26-1, et seq.

VERY LOW-INCOME HOUSEHOLD: A household with a total gross annual household income equal to thirty percent (30%) or less of the median household income by household size.

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 rehabilitation.

**§108-3 General Provisions.**

A. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Upper Deerfield pursuant to the municipality's most recently adopted Housing Element and Fair Share Plan. All developers with sites identified for affordable housing pursuant to the most recent Housing Element and Fair Share Plan adopted by the Planning Board and Township Committee of Upper Deerfield, according to their respective duties, shall provide affordable housing units in accordance with the plan. All development that falls within the time period of the present round of affordable housing obligation shall construct units or pay a development fee in accordance with this Chapter.

B. Moreover, this Ordinance shall apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide very-low, low- and moderate-income housing units. All restricted units, including those funded with federal Low Income Housing Tax Credits or other subsidy programs, shall include the required bedroom distribution and income distribution, shall be subject to affordability controls, and shall be affirmatively marketed in accordance with UHAC, with the exception that instead of ten percent (10%) of all rental affordable units being affordable to

households earning thirty-five percent (35%) of less of the regional median household income by household size, thirteen percent (13%) of all rental affordable units shall be affordable to households earning thirty percent (30%) or less of the regional median household income by household size, and all other applicable law.

C. All new construction units shall be adaptable in conformance with N.J.S.A. 52:27D-311a and -311b and all other applicable law.

**§108-4 Inclusionary Calculations; Income and Bedroom Distributions.**

A. In the event that the inclusionary set-aside percentage (fifteen percent [15%] or twenty percent (20%), as the case may be) of the total number of residential units does not result in a full integer, the developer shall address the fractional unit in the following manner:

(1) The developer shall round the set-aside upward to construct a whole additional affordable unit; or

(2) If the set-aside includes a fractional unit less than 0.5, the developer may round the set-aside downward and construct the lesser whole number of affordable units, but shall also make a payment in lieu of constructing the fractional additional unit ("fractional payment in lieu"). The fractional payment in lieu amount shall be calculated as the fractional unit multiplied by the payment in lieu amount of $220,000.00, increased annually by the Urban Consumer Price Index. For example, if seven (7) total units are developed at an inclusionary site, a twenty percent (20%) set-aside would require 1.4 affordable units. The developer shall round up the 0.4 unit to one (1) whole affordable unit and construct a total of two (2) affordable units or pay $88,000.00 to the affordable housing trust fund in lieu of construction.

B. Income distribution of affordable dwelling units.

(1) At least half of all affordable units within each affordable housing development shall be affordable to low-income households.

(2) At least half of the affordable units within each affordable housing development shall be affordable to low-income households. Of the total number of affordable rental units, thirteen percent (13%) shall be affordable to very low-income households.

**§108-5 Occupancy Standards**

A. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(1) The combined number of efficiency and one-bedroom units is no greater than twenty percent (20%) of the total low- and moderate-income units;

(2) At least thirty percent (30%) of all low- and moderate-income units are two bedroom units;

(3) At least twenty percent (20%) of all low- and moderate-income units are three bedroom units; and

(4) The remainder, if any, may be allocated at the discretion of the developer.

B. Age-restricted low- and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

C. In determining the initial rents and initial sales prices for compliance with the affordable average requirements for restricted units other than age-restricted dwellings, the following standards shall be used:

(1) Studio shall be affordable to a one-person household;

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

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

(4) A three-bedroom unit shall be affordable to a four-and-one-half person household;

(5) A four-bedroom unit shall be affordable to a six-person household.

D. For age-restricted affordable dwellings, the following standards shall be used:

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

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

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

E. In referring certified households to specific restricted units, to the extent feasible and without causing an undue delay in occupying the unit, the administrative agent shall strive to:

(1) Provide an occupant for each unit bedroom;

(2) Provide children of different sex with separate bedrooms; and

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

F. Size of Units. The minimum size of affordable housing units, which is necessary to ensure the public health safety and welfare of its occupants, shall be as indicated in the following table:

**Table 108.1. Minimum Size of Affordable Housing Units**

| **Type of Unit** | **Minimum Size (gross square feet)** |
|---|---|
| Efficiency | 500 |
| One-bedroom | 600 |
| Two-bedroom | 750 |
| Three-bedroom | 900 |

In the event that a program providing funding for the construction of units requires a different minimum habitable floor area for a unit, such program requirements shall prevail.

G. Certificates of Occupancy. The following additional requirements for the issuance of certificates of occupancy shall apply to inclusionary developments:

(1) Final site plan or subdivision approval for any inclusionary development shall be contingent upon the affordable housing development meeting the following phasing schedule for low- and moderate-income units whether developed in one stage or more stages. The initial issuance of certificates of occupancy for market units shall be linked to the issuance of certificates of occupancy for affordable units. Prior to the issuance of the certificates of occupancy for market units, certificates of occupancy for affordable units shall be required in the following minimum ratios:

**Table 108.2. Required Percentage of Affordable to Market Units**

| Percentage of Affordable Housing Units Completed | Percentage of Market Housing Units Completed |
|---|---|
| 0% | 25% |
| 10% | 25% + 1 |
| 50% | 50% |
| 75% | 75% |
| 100% | 90% |

(2) Each unit of affordable housing shall require a certificate of occupancy, which shall become void upon a change of owner or tenant.

(3) No certificate of occupancy shall be issued for a low and moderate income unit unless the provisions of N.J.A.C. 5:93-9.3, or superseding administrative code, are met.

H. Utilities and Heating Source. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by the NJ Department of Community Affairs for its Section 8 program. Affordable units shall utilize the same type of heating source as market units within the affordable development.

I. Appearance and Location. The facade of an affordable housing dwelling shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be fully integrated with market rate housing to the greatest extent feasible and shall have access to open space and site amenities comparable to that of market rate units, unless otherwise approved by the Municipal Housing Liaison.

J. Tenure. For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.

## §108-6 Township Administrative Agent and Other Administrative Agents

A. The Township Committee shall yearly appoint a Township Administrative Agent to monitor

sales and resales of affordable housing units pursuant to N.J.A.C. 5:80-26.14. The Administrative Agent of the municipality may also be the Municipal Housing Liaison, but is not required to be.

B. The Township Administrative Agent shall monitor the designated Administrative Agent of the developer in the initial sales and rental transactions for low- and moderate-income dwellings in accordance with N.J.A.C. 5:80-26.14, as it may be amended or superseded. The developer's administrative agent shall have all of responsibilities as put forth in this rule. After the initial sales and rental transactions, the Township Administrative Agent shall monitor the activities of the developer's or owner's Administrative Agent for any re-sales or re-rentals. If the person is the Township's Administrative Agent, then he or she shall assume all of the duties and responsibilities set forth in N.J.A.C. 5:80-26.14 following the initial renting, sales and occupancy of low- and moderate-income dwellings. The affordability controls set forth in this chapter shall be administered and enforced by the Administrative Agent regardless of association. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units are sold or rented, as applicable, only to low- and moderate-income households in accordance with the Fair Housing Act.

C. The Township Committee may establish a reasonable fee to program participants for the administration of the affordability controls program.

D. The Administrative Agent, whether the Township's representative, developer's agent, or a delegated agent, shall have the responsibility to income qualify low and moderate-income households, to place income eligible households in low- and moderate-income units upon initial occupancy, to provide for the initial occupancy of 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 advertising and outreach to low- and moderate-income households, and to enforce the terms of the deed restriction and mortgage loan. All Administrative Agents shall 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.

E. The Municipal Housing Liaison shall coordinate his or her activities with the Township Administrative Agent to ensure the accurate tracking of the progress of affordable housing in the municipality, answer inquiries regarding affordable housing from the public or direct same to the appropriate official or agency, and comply with the affordable housing monitoring and reporting requirements of the state.

F. In order to ensure an orderly transfer of control responsibility from a municipality to an Administrative Agent, from one Administrative Agent to another Administrative Agent, or other transfer, the requirements as set forth in N.J.A.C. 5:80-26.17 shall apply as are necessary before or during the transition. The Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.

G. By accepting state funds for affordable housing purposes, or by submitting to the jurisdiction of the NJ Department of Community Affairs or its successor agency, the Township of Upper Deerfield shall be deemed to have delegated to the Administrative Agent the day-to-day responsibility for implementing practices and procedures designated to ensure effective

compliance with the controls set forth in this Article. The governing body of the municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with the requirements as set forth in UHAC and any settlement agreements pertaining to affordable housing matters.

H. The Township Administrative Agent shall keep records of the affirmative marketing activities undertaken in accordance with the affirmative marketing plan established by any developer's Administrative Agent. The records shall include, but not be limited to, the following:

(1) Electronic reporting of affordable housing activity; any required paper forms;

(2) Copies of any press releases, brochures, flyers, print advertisements and application forms used in the affirmative marketing program.

(3) The income and demographic characteristics of each household applying for and occupying income-restricted housing.

(4) An evaluation of any necessary adjustments required to the affirmative marketing program as communicated by the Administrative Agent.

**§108-7 Monitoring Requirements.**

A. The Municipal Housing Liaison shall complete and return to COAH, its successor, or court of competent jurisdiction all forms necessary for monitoring requirements related to dwelling units in affordable housing projects and the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, 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 Upper Deerfield's approved housing program, as well as to the expenditure of revenues and implementation of the approved plan.

B. Beginning on January 22, 2020, and on every anniversary of that date through January 2026, the Township agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the NJDCA, COAH, or NJLGS. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

C. Beginning on January 22, 2020, and on every anniversary of that date through January 2026, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

D. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to

present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity. Any interested party may by motion request a hearing before the Court regarding these issues.

E. By January 22, 2021, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

**§108-8 Submission of Affordable Housing Plan.**

A. The developer of low and moderate income housing units shall submit to the Township Administrative Agent an Affordable Housing Plan that describes of the means to be used to insure that the required low and moderate income units are sold or rented only to low and moderate income households for a period of not less than thirty (30) years, that such units meet bedroom distribution and phasing requirements, and comports with the requirements of this Chapter pertaining to the provisions, leasing, selling and transferring units among eligible low and moderate income households.

B. The Affordable Housing Plan shall indicate how the developer will comply with the procedures of this Article for selecting occupants of low and moderate income housing and the required affirmative marketing requirements. The requirements for affirmative marketing are found in §108-19. Whenever a developer proposes a third party operator or manager of affordable housing units, the Municipal Housing Liaison shall specifically approve such operator and manager.

C. The following information shall promptly be provided to the Township Administrative Agent by the developer or sponsor of any project containing any affordable units' subject to the requirements of this Article, upon the later of either final municipal land use approval or issuance of a grant contract by a governmental authority:

(1) The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low and which are moderate income dwellings, and including street addresses of restricted dwellings;

(2) Floor plans of all affordable dwellings, including complete and accurate identification of uses and dimensions of all rooms;

(3) A project map identifying the locations of low and moderate income and market dwellings;

(4) A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;

(5) Projected construction schedule;

(6) Proposed pricing for all units, including any purchaser options and add-on items;

(7) A list of all public funding sources and copies of grant or loan agreements for those sources;

(8) Condominium fees or homeowner association and any other maintenance or other fees;

(9) Estimated real property taxes for sale units;

(10) Sewer, trash disposal and any other utility assessments;

(11) Flood insurance requirement, if applicable;

(12) A description of all HVAC systems;

(13) Location of any common areas and elevators;

(14) Proposed form of lease for any rental units;

(15) The name of the person who will be responsible for official contact with the Township Administrator for the duration of the project;

(16) The name and qualifications of the developer's administrative agent, if applicable; and

(17) The State-approved Planned Real Estate Development public offering statement and/or master deed where available or applicable.

D. The developer shall submit the Affordable Housing Plan to the Township Administrative Agent at least forty-five (45) days prior to the advertising of the availability of the units. The agent will approve or modify the plan within thirty (30) working days of receipt of the plan or within such time as additionally granted by the developer.

**§108-9 Household Income Limitations.**

A. The incomes of low and moderate-income households occupying affordable housing shall not exceed the income limits as of January 1 of the current year.

B. Median Income Determination. Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by the U.S. Department of Housing and Urban Development (HUD) as follows:

(1) Regional income limits shall be established for the Region 6 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 Region 6. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) 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 fifty percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be thirty percent (30%) of the regional

weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

(2) The income limits calculated each year shall be the result of applying the percentages set forth in subparagraph –(1) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(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 Township annually by taking the percentage increase of the income limits calculated pursuant to subparagraph –(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.

C. Affordable Housing Purchase or Rent. Very low income housing units shall be reserved for households with a gross household income less than or equal to thirty percent (30%) of the median regional income. Very low income households shall be considered a subset of low income units. Of the number of very low income households, at least fifty percent (50%) shall be for family households. Low income housing units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of the median regional income. Moderate income units shall be reserved for households with a gross household income more than fifty percent (50%) but equal to or less than eighty percent (80%) of the median income.

D. Assisted Living Facilities. Income determination and eligibility for assisted living facilities shall also comply with the New Jersey Housing and Mortgage Finance Agency's Assisted Living Underwriting Guidelines and Financing Policy, dated May 28, 1996, as it may be amended or superseded. The monthly fee for rent, meals, and basic services for the affordable units in the assisted living facility shall not exceed eighty percent (80%) of household income. For the purposes of this section, 62.5% of the fee shall be assumed to be for meals and basic services and 37.5% of the fee for rent.

**§108-10 Household Income Verification.**

A. The Administrative Agent shall secure all information from applicant households necessary and appropriate to determine that restricted dwellings are occupied by properly sized households with appropriate very low, low or moderate income levels. No household may be referred to a restricted dwelling, or may receive a commitment with respect to a restricted dwelling, unless that household has received a signed and dated certification, as set forth in this section, and has executed the certificate in the form provided.

B. The Administrative Agent shall use a random selection process to select occupants of very low, low and moderate- income housing.

C. The Administrative Agent shall prepare a standard form of certification and shall sign and date one for each household when certified. This certification shall be known as a Certificate of

Eligibility and shall be a prerequisite for the purchase or rental of an income-restricted dwelling. An initial certification shall be valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In this event, certifications shall be valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the Administrator or Administrative Agent.

D. When reviewing an applicant household's income to determine eligibility, the Administrator or Administrative Agent shall compare the applicant household's total gross annual income to the regional very low, low and moderate income limits then in effect, as approved by the court of competent jurisdiction. For the purposes of this subchapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, Temporary Assistance for Needy Families (TANF), verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

E. Except as otherwise specifically stated in this subchapter, the sources of income considered by the Administrator or Administrative Agent shall be the types of regular income reported to the Internal Revenue Service and which is eligible to be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

F. Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include, but are not limited to, present real estate equity. Applicants owning real estate shall produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit, a Certificate of Eligibility shall be denied by the Administrator or Administrative Agent, unless the applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 33% of the household's eligible monthly income.

G. Rent from real estate shall be considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the Administrator or Administrative Agent shall impute a fair market rent.

H. Income does not include benefits, payments, rebates or credits received under any of the following:

(1) Federal or State low income energy assistance programs;

(2) Food stamps, payments received for foster care, relocation assistance benefits;

(3) Income of live-in attendants, scholarships, student loans, and personal property, including but not limited to, automobiles; and

(4) Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students.

(5) Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.

I. The Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income must produce documentation of current status. Income verification documentation may include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:

(1) Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;

(2) Copies of Federal and State income tax returns for each of the preceding three tax years;

(3) A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, TANF, disability or pension income (monthly or annually);

(4) A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;

(5) Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and

(6) Evidence or reports of income from directly held assets such as real estate or businesses.

(7) Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.

J. At the discretion of the Administrative Agent, households may also be required to produce documentation of household composition for determining the correct dwelling size and applicable median income guide.

K. Tenant Income Eligibility. In addition to the foregoing requirements, tenant income eligibility shall be in accordance with the median income limits of N.J.A.C. 5:80-26.13. 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. 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. 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.

L. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, 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:

M. 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;

(a) 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;

(b) The household is currently in substandard or overcrowded living conditions;

(c) The household documents the existence of assets with which the household proposes to supplement the rent payments; or

(d) 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.

N. The applicant shall file documentation sufficient to establish the existence of the circumstances in –M(a) through –M(d) above with the Administrative Agent, who may counsel the household on budgeting.

**§108-11 Certificate of Eligibility, Waiting List and Selection**

A. If the household is found to be eligible for low- and moderate-income housing, they shall be issued a Certificate of Eligibility and placed on the affordable housing waiting list, except in the event that such a certificate is withheld or removed in accordance with this section. Eligible persons that live or work within Housing Region 6 shall have preference over those that live or work in another housing region.

B. Applicants shall be selected in the order in which their applications are certified and in accordance with the provisions of this section.

C. Households remaining on a waiting list shall update its application no later than April 30 each year, including the most recent federal income tax return of each member of the proposed household and such other updated income and other information requested on the application.

D. Households on the waiting list who have not submitted the required information by May 15 each year shall be notified by certified mail, mailed to the address on file that they have until June 30 of that year to provide the information or they shall be removed from the waiting list.

E. Any household whose income or priority category has changed such that the household has become eligible for a different category of housing or priority list shall be placed on the appropriate list without penalty or favor as of the date of the original application.

F. Any household whose income has increased to the degree that it is no longer eligible for low or moderate income housing shall be removed from the waiting list.

G. If the Township Administrative Agent or Administrative Agent has reason to believe that the information on file is erroneous or incomplete, he or she shall have the right to conduct an investigation and request any additional information deemed necessary to obtain accurate household information. If an applicant does not cooperate in such investigation or refuses to reply with the requested additional information within 30 days of said request, the applicant shall be removed from the list.

H. All applications shall be notarized and certified complete and accurate. Anyone knowingly submitting incomplete, inaccurate, incorrect or false information may be removed from eligibility for very low-, low- and moderate-income dwellings. All information submitted to the Township Administrative Agent or Administrative Agent for the purposes of determining applicant eligibility shall be strictly confidential and not considered a public record.

I. Prior to the time of availability of a very low-, low- and moderate-income dwelling, the Township Administrative Agent or Administrative Agent shall notify by certified mail the top three households on the waiting list for the type of dwelling available, its location and the estimated date it will be available. If a purchaser or tenant cannot be found from the top three households on the waiting list, notice shall be sent to the fourth, fifth, etc., household until a purchaser or tenant is found. The household shall, within 14 days of mailing, notify the Township Administrative Agent or Administrative Agent, in writing, of its intent to occupy the dwelling and, if selected, its intent to comply with the requirements of paragraph –J, below, within 15 days. Any household which fails to respond to the notice or chooses to reject a specific dwelling by informing the Administrative Agent in writing, shall retain its priority and shall be notified of available dwellings in the future, except that if a household chooses to reject a dwelling or fails to respond three times, it shall be removed from the list and must reapply and re-qualify if it wishes to be placed on the list at a new qualified priority.

J. At the time of notice to a household of the availability of an appropriate type of dwelling and if the household notifies the Administrative Agent of its intent to occupy the dwelling and that household is selected for occupancy, each household member shall update the records on file and recertify the accuracy of the information as required herein. Information shall be reviewed and the eligibility status reconfirmed. The household selected shall only at that point proceed to make the legal and financial arrangements to acquire or lease the dwelling.

K. If a household selected for occupancy is unable to obtain financing, it shall lose its eligibility for that dwelling, after notice, but shall retain its priority status for a similar appropriate dwelling as other dwellings become available and as long as the household remains eligible. When notified of the availability of another dwelling, updating and recertifying data as outlined in Subsection –J above is required.

L. A certificate of eligibility may be withheld by the Township Administrative Agent or Administrative Agent as a result of an applicant's inability to demonstrate sufficient present assets for down payment or security deposit purposes.

M. A certificate of eligibility may be withheld by the Township Administrative Agent or Administrative Agent as a result of an applicant's inability to verify funds claimed as assets, household composition or other facts represented.

N. A certificate of eligibility shall be denied by the Township Administrative Agent or Administrative Agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.

**§108-12 Initial Selling and Renting Determinations.**

A. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures as set forth in the Uniform Housing Affordability Controls.

B. Required pricing stratification.

(1) The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60% of median income and the average rent for low- and moderate-income units shall be affordable to households earning no more than 52% of median income. 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 thirteen percent (13%) of all low- and moderate-income units shall be affordable to households earning no more than thirty percent (30%) of median income.

(2) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income. Each affordable development shall achieve an affordability average of 55% for restricted ownership units. In achieving this affordability average, moderate income ownership units shall be available for at least three different prices for each bedroom type, and low income ownership units shall be available for at least two different prices for each bedroom type.

C. Initial Pricing and Annual Increases of Affordable Dwellings.

(1) Owner-occupied dwellings initial pricing. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the dwelling, including principal and interest (based on a mortgage loan equal to 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 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement as noted above.

(2) Rental dwellings initial pricing. The initial rent for a restricted rental dwelling shall be calculated so as not to exceed thirty percent (30%) of the eligible monthly income of the appropriate household size 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.

(3) Owner-occupied dwellings annual increase. The price of owner-occupied 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.

(4) Rental dwellings annual increase. The rent of low and moderate income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent (9%) 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.

(5) Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by the NJ Department of Community Affairs for its Section 8 program.

D. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

(1) The initial purchase price for a restricted ownership dwelling shall be approved by the Township Administrative Agent.

(2) The Township Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

(3) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income homeowners and the market homeowners.

E. The owners of restricted ownership units may apply to the Township Administrative Agent to increase the maximum sales price for the dwelling on the basis of eligible capital improvements. Eligible capital improvements shall be those that render the dwelling suitable for a larger household or the addition of a bathroom.

**§108-13 Affordability Controls for Ownership Units.**

A. The affordability control period for a restricted ownership dwelling shall commence on the date the initial certified household takes title to the dwelling.

B. Each restricted ownership dwelling shall remain subject to the requirements of UHAC until the Township of Upper Deerfield elects to release the dwelling from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.5(g). Prior to such municipal election, a restricted ownership dwelling shall remain subject to the requirements of N.J.A.C. 5-80-26.5, for a period of at least thirty (30) years, and for a period of at least ten (10) years or the sale and repayment of any loan proceeds for owner-occupied units that were rehabilitated. Where a dwelling unit is entered into an extension of expiring controls program, the time period for the ownership restriction shall be at least thirty (30) years from the date that the existing or prior restriction would have expired.

C. The affordability control period for a restricted ownership dwelling shall commence on the date the initial certified household takes title to the dwelling.

D. Each restricted ownership dwelling shall remain in compliance with and subject to the requirements of N.J.A.C. 5:80-26.5 for control periods, N.J.A.C. 5:80-26.6 for price restrictions, N.J.A.C. 5:80-26.7 for buyer income eligibility, N.J.A.C. 5:80-26.8 for limitations on indebtedness and subordination, N.J.A.C. 5:80-26.9 for capital improvements, and N.J.A.C. 5:80-26.10 for maintenance.

E. Limitations on Indebtedness Secured by Ownership Dwelling; Subordination.

(1) Prior to incurring any indebtedness to be secured by a restricted ownership dwelling, the Township Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.

(2) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership dwelling to exceed 95% of the maximum allowable resale price of that dwelling, as such price is determined by the Township Administrative Agent in accordance with N.J.A.C. 5:80-26.6(b).

F. Capital Improvements to Ownership Units.

(1) The owners of restricted ownership units may apply to the Township Administrative Agent to increase the maximum sales price for the dwelling on the basis of capital improvements made since the purchase of the dwelling. Eligible capital improvements shall be those that render the dwelling suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing dwelling exceed the limits of affordability for the larger household.

(2) Upon the resale of a restricted ownership dwelling, all items of property that are permanently affixed to the dwelling or were included when the dwelling 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 Township 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 dwelling and not included in the base price may be made a condition of the dwelling resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Township Administrative Agent. Unless otherwise approved by the Township Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the dwelling 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.

G. Notice of Resale, Recapture Covenant and 95/5 Purchase Options.

(1) The owner of the property is required to notify the Township Administrative Agent by certified mail of any intent to sell the property 90 days prior to entering into an agreement for the first non-exempt sale of the Property after the conclusion of the period of affordability controls on restricted units in effect at the time the Property was first restricted as part of the Affordable Housing Program.

(2) The municipal construction code official shall inspect the available affordable resale unit for construction and property maintenance code violation(s). The code official shall submit in writing to the owner and the Township Administrative Agent a listing of the violation(s). The estimated cost of the repairs not completed by the owner prior to resale shall be deducted from the resale price. The cost of repairs not undertaken by the owner will be determined by estimator(s) and/or contractor(s) supplied by the Township Administrative Agent and charged back to the seller.

(3) Upon the first such non-exempt sale of the Property, 95% of the difference between, (i), the actual sale price; and (ii), the regulated maximum sales price that would be

applicable were the period of affordability controls on restricted units still in effect, shall be paid at closing to the Township of Upper Deerfield; or, to the NJ Department of Community Affairs or NJ Housing and Mortgage Finance Agency, when acting as receiving agent for the municipality. Exempt sales shall be as listed in §108-14.

(4) Such non-exempt sale is subject to the options provided for in N.J.A.C. 5:80-26.20 (Option to buy 95/5 units), N.J.A.C. 5:80-26.21 (Municipal Option on 95/5 units), *N.J.A.C.* 5:80-26.22 (State Option on 95/5 Units), N.J.A.C. 5:80-26.23 (Non-Profit Option on 95/5 Units), N.J.A.C. 5:80-26.24 (Seller Option on 95/5 Units), N.J.A.C. 5:80-26.25 (Municipal Rejection of Repayment Option on 95/5 Units) and N.J.A.C. 5:80-26.26 (Continued Application of Options to Create, Rehabilitate or Maintain 95/5 Units) of UHAC.

**§108-14 Affordability Controls on Rental Dwellings.**

A. Each restricted rental dwelling shall remain subject to the requirements of UHAC until the Township of Upper Deerfield elects to release the dwelling from such requirement pursuant to action taken in compliance with N.J.A.C. 5:80-26.11(e). Prior to such a municipal election, a restricted rental dwelling shall remain subject to the requirements of N.J.A.C. 5:80-26.11, for a minimum of 30 years, and for a period of at least 10 years or the sale and repayment of any loan proceeds for renter-occupied units that were rehabilitated.

B. Each restricted rental dwelling shall remain in compliance with and subject to the requirements of N.J.A.C. 5:80-26.11 for control periods, N.J.A.C. 5:80-26.12 for restrictions on rents, and N.J.A.C. 5:80-26.13 for tenant income eligibility.

C. 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 Cumberland. A copy of the filed document shall be provided to the Township Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

D. A restricted rental dwelling shall remain subject to the affordability controls of this Article, despite the occurrence of any of the following events:

(1) Sublease or assignment of the lease of the dwelling;

(2) Sale or other voluntary transfer of the ownership of the dwelling; or

(3) The entry and enforcement of any judgment of foreclosure.

E. Rent Restrictions for Rental Units; Leases.

(1) 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 dwelling shall be provided to the Township Administrative Agent.

(2) No additional fees or charges shall be added to the approved rent without the express written approval of the Township Administrative Agent.

(3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted dwelling and shall be payable to the Township

Administrative Agent to be applied to the costs of administering the controls applicable to the dwelling as set forth in this Article.

**§108-15 Accessibility Requirements.**

The following barrier free accessibility and adaptability requirements shall apply to all new construction:

A. 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 Sub-code, N.J.A.C. 5:23-7.

B. All restricted townhouse dwellings and all restricted units in other multistory buildings in which a restricted dwelling is attached to at least one other dwelling shall have the following features:

(1) An adaptable toilet and bathing facility on the first floor;

(2) An adaptable kitchen on the first floor;

(3) An interior accessible route of travel on the first floor;

(4) An interior accessible route of travel shall not be required between stories within an individual dwelling;

(5) 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

(6) An accessible entranceway in accordance with N.J.S.A. 52:27D-311a and the Barrier Free Sub-code, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:

(a) Where a dwelling has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling, an accessible entrance shall be installed.

(b) To this end, the developer of restricted units shall deposit funds within the affordable housing trust fund of the Township of Upper Deerfield sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.

(c) The funds deposited under subparagraph –(b) above shall be used by the Township for the sole purpose of making the adaptable entrance of any affordable dwelling accessible when requested to do so by a person with a disability who occupies or intends to occupy the dwelling and requires an accessible entrance.

(7) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from an adaptable to an accessible entrance to the Construction Code Official.

(8) Once the Construction Code 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 into the municipality's affordable housing trust fund by the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

(9) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that physical or environmental conditions of the site render it 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.

**§108-16 Exempt Transactions.**

A. The following transactions shall be deemed "non-sales" for purposes of these regulations and the owner receiving title by virtue of any of the following transactions shall be entitled to a statement of exemption to the owner receiving title by virtue of any of the following transactions:

(1) Transfer of ownership of an affordable sales unit between husband and wife;

(2) Transfer of ownership of an affordable sales unit between former spouses ordered as a result of a judicial decree of divorce (and not including sales to third parties);

(3) Transfer of ownership of an affordable unit between family members as a result of inheritance;

(4) Transfer of ownership of an affordable unit through an executor's deed to a Class A beneficiary;

(5) Transfer of ownership of an affordable unit through an order of the Superior Court or other court, in a foreclosure proceeding or transfer in lieu of foreclosure after a foreclosure proceeding has commenced.

B. Except for the income level of the family acquiring title by an exempt transaction, the exempt transfer will not eliminate any restrictions set forth herein including, but not limited to, the unit remaining the prime resident and the requirement for resale to low and moderate income families as applicable and all such restrictions shall remain in effect following the exempt transfer except as stated in subsection –A(5).

C. Should a mortgagee acquire title pursuant to subsection –A(5) it may re-sell the unit to any family, regardless of income, with the municipality having the right of first refusal. The sales price to the municipality is the amount necessary to cure the foreclosure. This includes all principal and interest due to the mortgagee and other lien holders, repayment of equity to the owner prior to foreclosure and the costs of foreclosure. If the municipality does not purchase the unit, the mortgagee may sell the unit without any of the restrictions set forth in this section. The amount of the sale above that which is necessary to cure the foreclosure will be turned over to the municipality to be used for low and moderate income housing.

**§108-17 Leasing Restriction.**

Initial and subsequent owners of affordable housing units shall occupy the dwelling as their principal residence. Rental or subleasing of the affordable housing unit is expressly forbidden.

**§108-18 Effect on Landlord and Tenant Relationship.**

A. Nothing in these rules should be construed to limit the rights and duties of the owner and tenant to maintain the dwelling in accordance with all appropriate New Jersey State or municipal construction and property maintenance codes.

B. Notwithstanding anything to the contrary in this Article, any member of a household occupying a dwelling under this Article and subject to the regulations of the Township of Upper Deerfield is subject to eviction for any reasons allowed under applicable New Jersey law. The provisions of this Article are not intended to confer any additional rights or obligations on property owners or tenants other than those mandated by statute or required by the courts of the State of New Jersey or the duly adopted regulations of any of its agencies.

**§108-19 Affirmative Marketing for Affordable Housing.**

A. Purpose. The purpose of this Section is to establish administrative procedures to ensure a wide dissemination of knowledge of affordable housing units as they become available to the low and moderate income population, and that the selection of tenants or homeowners, as the case may be, meets the requirements of UHAC.

B. An 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. An Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region.

C. Affirmative Marketing Requirements. Within the overall framework of the municipality's affirmative marketing program, all affordable housing units in Upper Deerfield Township shall be marketed in accordance with the provisions in this Section unless otherwise provided for in *N.J.A.C.* 5:80-26-1. An Affirmative Marketing Plan shall be created for each development that contains or will contain low and moderate income units, including those that are part of the Township's prior round Housing Element and its current Housing Element and those that may be constructed in future developments not yet anticipated. This Affirmative Marketing Plan shall also apply to any rehabilitated units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units when Upper Deerfield is allocated a rehabilitation component.

D. Plan Preparation. The Township Administrative Agent or other Administrative Agent shall prepare an Affirmative Marketing Plan for each affordable housing program, as applicable, comporting with N.J.A.C. 5:80-26.15. The Township Administrative Agent shall review and approve any other Administrative Agent's Plan for use in the municipality. Regardless of the drafting agent, the Affirmative Marketing Plan is intended to be used by developers of affordable housing restricted to low and moderate income households located within the municipality. The Administrative Agent responsible for specific affordable housing programs

or developments shall ensure that the affirmative marketing of all affordable units is consistent with these provisions.

E. Affirmative Marketing Implementation. The Affirmative Marketing Plan includes regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance to N.J.A.C. 5:80-26. All newly created affordable units will comply with the thirty-year affordability control required by UHAC, N.J.A.C. 5:80-26.5 and -26.11. This plan will be adhered to by all private, non-profit or municipal developers of affordable housing units and will cover the period of deed restriction or affordability controls on each affordable unit. The Affirmative Marketing Plan for each affordable housing development shall meet the following minimum requirements:

1. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 6, comprised of Atlantic, Cape May, Cumberland, and Salem Counties.

2. Although the Township has the ultimate responsibility for implementing all aspects of Upper Deerfield's affordable housing program, the Administrative Agent designated by the Township Administrative Agent shall assure that the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.

3. The Administrative Agent shall provide a list of counseling services to low and moderate income applicants on subjects such as budgeting, credit problems, mortgage qualification, rental lease requirements, and landlord/tenant law.

4. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all of the affordable units have been leased or sold.

5. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Upper Deerfield.

6. The Affirmative Marketing Plan for each affordable housing development shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

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

8. The Township Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in the Region 6 Housing Area for the use of the Township and other Administrative Agents. In addition, the list shall also include Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association, the NAACP Mainland/Pleasantville Branch, the NAACP Mizpah Branch, the NAACP Greater Vineland, the NAACP Atlantic City Branch, the NAACP Cape May County Branch, the NAACP Southern Cumberland County Branch, the NAACP Willingboro Branch,

Upper Deerfield Ecumenical Neighborhood Development (MEND), Lutheran Social Ministries (LSM) and the Cumberland County Community Action Program (BCCAP), which entities shall receive specific notice of all available affordable housing units along with copies of application forms. This list shall be updated periodically. The list shall contain organizations that will aid in the affirmative marketing program with particular emphasis on contacts with outreach to groups and individuals that are least likely to apply for affordable housing within the region. A representative sample of the organizations on the list not otherwise requiring specific notice herein shall be contacted as part of the affirmative marketing effort as approved by the Township Administrative Agent.

9. The Affirmative Marketing Plan of a developer or operator of restricted units shall be approved by the Township Administrative Agent prior to implementation.

**§108-20 Violations of Chapter 108 Regulations.**

A. Upon the occurrence of a breach of any of the regulations governing the affordable dwelling by an owner, developer or tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the 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 dwelling and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found 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 one thousand dollars ($1,000.00) or imprisonment for a period not to exceed ninety (90) days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

   b. In the case of an owner who has rented his or her low- or moderate-income dwelling in violation of the regulations governing affordable housing units, payment into the Township of Upper Deerfield's Affordable Housing Trust Fund of the gross amount of rent illegally collected;

   c. In the case of an owner who has rented his or her low or moderate income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the dwelling, in the nature of a mortgage foreclosure. Any 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 and moderate income unit.

3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the County 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 municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

C. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien upon the dwelling and any prior liens on the dwelling. 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 deficiency, in addition to any and all costs incurred by the Township in connection with collecting said deficiency. The remainder, if any, up to a maximum of the amount the owner would be entitled to if he or she were to sell the dwelling as permitted by *N.J.S.A.* 5:80-26.1 *et seq.*, shall be placed in escrow by the Township for the owner and shall be held in such escrow for a period of two years or until such time as the owner shall make a claim with the Township for the same. Failure of the owner to claim said sum within the two-year period shall automatically result in a forfeiture of said remainder to the municipality and paid into the Affordable Housing Trust Fund. Any interest accrued or earned on the remainder while being held in escrow shall belong to and shall be paid to the Upper Deerfield Township Affordable Housing Fund whether the remainder is paid to the owner or forfeited to the Township. Any excess funds derived over and above the sum due the owner shall be paid over to the Township's Affordable Housing Trust Fund.

D. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the 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 dwelling. 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.

E. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the 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 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.

F. Failure of the very low-, low- and moderate- income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

G. 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.

H. Right to Cure. The Township may, at its option, advance and pay all sums necessary to protect, preserve and retain the dwelling as an affordable dwelling, subject to the terms of this Article. All sums so advanced and paid by the Township shall become a lien against said dwelling and shall have a higher priority than any lien except the first purchase money mortgage lien and liens by duly authorized government agencies. Such sums may include but are not limited to insurance premiums, taxes, assessments (public or private) and costs of repair necessary to bring the dwelling up to any and all applicable local, state or federal codes and liens which may be or become prior and senior to any first purchase money mortgage as a lien on the dwelling or any part thereof. If, in the event of a default or nonpayment by the owner of an affordable dwelling, any first mortgagee or other creditor of an owner of an affordable dwelling exercises its contractual or legal remedies available, the owner shall notify the Administrative Agent and the Township Solicitor of the Township, in writing, within 10 days of notification by the first mortgagee or creditor and no later than 10 days after service of any summons and complaint, and the Township shall have the option to purchase, redeem or cure any default upon such terms and conditions as may be agreeable to all parties in interest and/or to acquire the first purchase money mortgage to the dwelling, thereby replacing the first mortgagee as the first mortgagee of the dwelling. The Township shall have the same priority of lien as was held by the first mortgagee at the time the Township acquires such first purchase money mortgage and shall have the right of subrogation with respect to any other claim or lien it satisfies or acquires.

I. Provisions for First Purchase Money Mortgagees.

1. The terms and restrictions of this section shall be subordinate only to a first purchase money mortgage lien on any affordable dwelling and in no way shall impair the first mortgagee's ability to exercise the contract remedies available to it in the event of default as set forth in the first purchase money mortgage. The first mortgagee and/or mortgage servicer shall serve written notice upon the Township within 10 days after the first purchase money mortgage is two months in arrears and again within 10 calendar days of the filing of a complaint seeking foreclosure of the first purchase money mortgage held on an affordable dwelling. However, a judgment of foreclosure upon the property shall in no instance terminate the conditions and requirements of this Article maintaining the dwelling as an affordable, income-restricted residence.

2. The obligation of the first mortgagee and servicer to notify the Township shall cease automatically and immediately upon the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market, unless the rules and regulations or guidelines of the Federal National Mortgage Association are amended so as to not prohibit or exclude placing such obligation upon the holder of the mortgage or its service representative, in which case, an instrument duly evidencing the

same shall be recorded with the Register of Deeds, Cumberland County, New Jersey, before any such obligation shall exist. Provided that the first mortgagee is obligated to give the Township the above-mentioned notices, the first mortgagee shall also serve written notice of any proposed foreclosure sale upon the Township at least 30 days prior to the first scheduled date of such sale. The first mortgagee shall serve notice upon the Township within 30 days of the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market.

3. The Township of Upper Deerfield or any instrumentality designated by the Township shall have the right to purchase any mortgage which is in default at any time prior to the entry of a foreclosure judgment or within the redemption period thereafter. Notification of a default and of the institution of a foreclosure action and of a sheriff's sale shall be served, in writing, upon the Township Clerk and Municipal Attorney. The Township of Upper Deerfield shall at all times be considered a party in interest and shall have the right to be joined as a party defendant and/or shall have the right to intervene in any foreclosure action seeking foreclosure of a first mortgage and/or shall have the right to redeem and acquire the owner's equity of redemption or to acquire the dwelling from the owner upon such terms and conditions as may be determined by the Township.

4. Surplus funds. In the event of a foreclosure sale by the holder of the first purchase money mortgage, the owner shall be personally obligated to pay to the Township any excess funds, but only to the extent that such excess funds exceed the difference between what the owner could have resold his dwelling for under this Article at the time of the foreclosure sale and the amount necessary to redeem and satisfy the first purchase money mortgage debt, including costs of foreclosure and costs of repairs necessary to bring the dwelling up to any and all applicable local, state or federal codes. For the purposes of this subsection, excess funds shall be the total paid to the sheriff in excess of the amount required to pay and satisfy the first purchase money mortgage, including the costs of foreclosure, even if junior creditors actually receive payment from said surplus funds to the exclusion of the owner. The Township is hereby given a first priority lien, second only to the first mortgagee for any taxes or public assessments by a duly authorized governmental body up to the full amount of excess funds. This obligation of the owner to pay this full amount to the Township shall be deemed to be a personal obligation of the owner of record at the time of the foreclosure sale, and the Township is hereby empowered to enforce this obligation in any appropriate court of law or equity as though the same were a personal contractual obligation of the owner. Neither the first mortgagee nor the purchaser at the foreclosure sale shall be responsible or liable to the Township for any portion of this excess. The Township shall deposit any funds received in the Affordable Housing Trust Fund and use it for the purposes as set forth in the Housing Element and Fair Share Plan.

**Section 3. Severability.** If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Zoning Ordinance as a whole, or any other part thereof.

**Section 4. Repealer.** All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

**Section 5. Enactment.** This Ordinance shall take effect upon the filing thereof with the Cumberland County Planning Board after final passage, adoption, and publication by the Township Clerk of the Township of Upper Deerfield in the manner prescribed by law.

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James Crilley, Chairman

Adopted: August 1, 2019

Finally Attested:

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Roy J. Spoltore, Township Clerk

First Reading: June 20, 2019
Publication: June 26, 2019
Publication of Final Adoption: August 6, 2019