

**Housing Element of the Master Plan  
and  
Fair Share Plan**

**November 4, 2013**



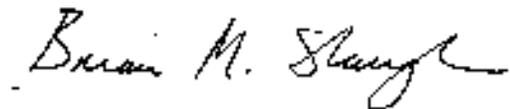
**Planning Board  
of the  
Borough of Woodbury Heights  
Gloucester County**

# Housing Element and Fair Share Plan Third Round

Borough of Woodbury Heights  
Gloucester County, New Jersey

November 4, 2013

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## EXECUTIVE SUMMARY

This amended housing element and fair share plan has been prepared for the Borough of Woodbury Heights in accordance with the extant rules of the New Jersey Council on Affordable Housing (hereinafter "COAH").<sup>1</sup> This document further amends the housing element and fair share plan of the Borough, last revised on January 7, 2013, and serves as the foundation for the Borough's filing with the Superior Court for a "prior round" judgment of repose. A "prior round" judgment of repose is a judicial decision approving a Housing Element and Fair Share Plan that addresses the municipality's known affordable housing obligations. At the time of the adoption of this document, the Borough's rehabilitation obligation and its prior round affordable housing numbers, but not its third round obligation, are known. Accordingly, this plan addresses the rehabilitation and prior round obligations of the Borough. As part of the housing element and fair share plan, the amendment also incorporates the settlement of *Woodbury Heights Development, LLC v. Borough of Woodbury Heights and the Planning Board of the Borough of Woodbury Heights* (Docket No. GLO-L-1750-09). The settlement received court approval on June 27, 2012 following a public hearing on the fairness of the agreement towards low and moderate income households.

This amendment addresses the removal of one of the Borough's anticipated inclusionary sites and establishes a different development scenario for a second fully affordable housing site.

There remain three components to a municipality's affordable housing obligation: the rehabilitation share, the prior round obligation and the third round obligation. As assigned by COAH, the Borough has a rehabilitation share of 10 units and a prior round obligation of 55 units. The third round rules for crafting a response in the present time period remain in flux. The plan only anticipates bonuses as credit towards the third round when the prior round rental affordable developments are completed. This assumes that the new third round rules include rental bonuses.

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<sup>1</sup> - N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq.

## AFFORDABLE HOUSING JUDICIAL AND LEGISLATIVE BACKGROUND

In its landmark 1975 decision now referred to as "Mount Laurel I", the New Jersey Supreme Court ruled that developing municipalities have a constitutional obligation to provide a realistic opportunity for the construction of low and moderate income housing.<sup>1</sup> In its 1983 "Mount Laurel II" decision, the Supreme Court extended the obligation to all municipalities with any "growth area" as designated in the State Development Guide Plan (NJDEA 1978). Subject to a number of limitations, Mount Laurel II also gave developers, under appropriate circumstances, the opportunity to secure a builder's remedy.<sup>2</sup> A builder's remedy is where a developer is granted the right to develop what is typically a multifamily project on land that was not zoned to permit this use at the time of the suit and where a "substantial" percentage of the units are reserved for low and moderate income households.

In 1985, the Legislature enacted the Fair Housing Act<sup>3</sup> was adopted in response to Mount Laurel II. The Fair Housing Act created the Council on Affordable Housing (COAH) and an administrative alternative to compliance in a court proceeding. The Legislature conferred "primary jurisdiction" on COAH and charged COAH with promulgating regulations: (i), to establish housing regions; (ii), to estimate low and moderate income housing needs; (iii), to set criteria and guidelines for municipalities to determine and address their fair share numbers, and (iv) to create a process for the review and approval of appropriate housing elements and fair share plans.

### First and Second Round Methods

COAH created the criteria and guidelines for municipalities to determine and address their respective affordable housing obligation, or number of affordable dwellings. COAH originally established a formula for determining municipal affordable housing obligation for the six-year period between 1987 and 1993 (N.J.A.C. 5:92-1 *et seq.*), which became known as the "first round." The first round formula was superseded by COAH regulations in 1994 (N.J.A.C. 5:93-1.1 *et seq.*). The 1994 regulations recalculated a portion of the 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 U.S. Census data. The regulations COAH adopted in 1994 to identify a municipality's "cumulative" obligations for the first and second round are known as "the second round" regulations. Under regulations adopted for round three, the obligation of municipalities to create new affordable housing for the

<sup>1</sup> - *Southern Burlington NAACP v. Twp. of Mt. Laurel*, 67 NJ 151 (1975)

<sup>2</sup> - *Southern Burlington NAACP v. Twp. of Mt. Laurel*, 92 NJ 158 (1983)

<sup>3</sup> - N.J.S.A. 52:27D-310

<sup>4</sup> - Also called a municipality's "fair share" of affordable housing.

first and second round is referred to as the "prior round" obligation. This plan will refer to the new construction obligation for the first and second housing cycles as the "prior round".

### **Third Round Method**

On December 20, 2004, COAH's first version of the third round rules became effective some five years after the end of round two in 1999. At that time the third round was defined as the time period from 1999 to 2014 but condensed into an affordable housing delivery period from January 1, 2004 through January 1, 2014. In other words, 15 years of necessary affordable housing activity is to take place in 10 years. The third round rules marked a significant departure from the methods utilized in COAH's prior round. Previously, COAH assigned an affordable housing obligation as an absolute number to each municipality. These third round rules implemented a "growth share" approach that linked the production of affordable housing to future residential and non-residential development within a municipality. Each municipality was required to project the amount of residential and non-residential growth that would occur during the period 2004 through 2014. Then municipalities were required to provide one affordable unit for every 8 market rate housing units developed and one affordable unit for every 25 jobs created. Jobs were not counted directly but rather by using non-residential building square footage as a substitute for employment.

This set of rules changed, however, when the New Jersey Appellate Court invalidated key elements of the first version of the third round rules on January 25, 2007. The Court ordered COAH to propose and adopt amendments to its rules within six months to address the deficiencies identified by the Court. COAH missed this deadline but did issue revised rules effective on June 2, 2008 (as well as a further rule revision effective on October 20, 2008). It met the Court's directive to provide residential development and job projections for the third round. The third round was expanded from 2014 to 2018. COAH retained the growth share approach but revised its ratios to require one affordable housing unit for every four market rate housing units developed and one affordable housing unit for every 16 jobs created.

Just as various parties challenged COAH's initial third round regulations, parties challenged COAH's 2008 revised third round rules. The Appellate Court issued a decision on October 8, 2010 deciding those challenges (see p. 5).

### **Roberts Bill and Nj Economic Stimulus Act**

On July 17, 2008, Governor Corzine signed P.L.2008, c.46<sup>6</sup>, which amended the Fair Housing Act in a number of ways. Key provisions of the legislation included the following:

- It established a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing;
- It eliminated regional contribution agreements ("RCAs") as a compliance technique available to municipalities whereby a municipality could transfer up to 50% of its fair share to a so called "receiving " municipality; and
- It added a requirement that 13% of all affordable housing units and 13% of all similar units funded by the state's Balanced Housing Program and its Affordable Housing Trust Fund be restricted to very low income households (30% or less of median income).
- It added a requirement that municipalities had to commit to spend development fees within four years of the date of collection after its enactment, which obligation commenced on the four year anniversary of the law (July 17, 2012).
- It created a State Housing Commission.

As of this date, COAH has failed to promulgate rules to implement the Roberts Bill.

On July 27, 2009, about a year later as the economic recession deepened, Governor Corzine signed the "NJ Economic Stimulus Act of 2009",<sup>7</sup> which instituted a moratorium on the collection of non-residential affordable housing development fees through July 2010. This moratorium was later extended until July 1, 2013 (P.L. 2011, c. 122). Since the moratorium has now expired, municipalities are obligated to collect the fee of 2.5% of the equalized assessed value of a non-residential development.

### **Governor's Housing Task Force**

On February 9, 2010, Governor Chris Christie signed Executive Order No. 12. This Order established a five-member Housing Opportunity Task Force and charged the Task Force with the job of reviewing the effectiveness of the Fair Housing Act, COAH and COAH's regulatory structure in meeting the constitutional obligations under the Mount Laurel doctrine. The Executive Order also ordered COAH to refrain

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<sup>6</sup> - Also known as the "Roberts Bill" after former NJ Assembly Speaker Joseph Roberts who sponsored the bill.

<sup>7</sup> - P.L. 2009, c. 90.

from continuing to process applications for substantive certification or from otherwise implementing the third round rules during the Housing Opportunity Task Force's 90-day review period. On February 19, 2010, the Appellate Division issued a stay on the portion of the Executive Order that prevented COAH from processing applications and implementing its third round rules. On March 20, 2010, Governor Christie issued Executive Order No. 20, which rescinded Executive Order No. 12.

The Governor's Executive Order No. 20 coincided with the release of the report prepared by the Housing Opportunity Task Force on March 20, 2010. In the report, the Task Force recommended that the Governor revisit COAH's original growth share methodology, reinstate the use of regional contribution agreements and eliminate prior round obligations. To date these recommendations have not been implemented.

### **Appellate Court's 2010 Decision**

On October 8, 2010, following the events described above involving the Governor's Task Force, the Appellate Division issued its decision with respect to the challenge to the second iteration of COAH regulations.<sup>6</sup> The Appellate Division validated the COAH's regulations that assigned rehabilitation and prior round numbers to each municipality, but invalidated the regulations by which the agency assigned housing obligations in the Third Round. Specifically, the Appellate Division ruled that COAH could not allocate obligations through a "growth share" formula. Instead COAH was directed to use similar methods that had been previously used in the first and second rounds. The Court gave COAH five months to address its ruling. Other highlights of the Appellate Court's decision include:

- Municipally-sponsored or 100% affordable housing site must show site control, site suitability, and a proposed source of funding to be granted credit.
- COAH's rules do not provide sufficient incentive for the private construction of inclusionary developments (market-rate and affordable units). "Bright-line standards" (clearly defined) must be provided. The Court noted that a 20% affordable housing set-aside was typical.
- The Court invalidated prior round rental bonuses for developments that were not built within a reasonable time-frame. COAH was directed to return to a time limitation for rental bonuses.

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<sup>6</sup> - *In the Matter of the Adoption of N.J.A.C. 5:26 and 5:27 by the New Jersey Council on Affordable Housing.*

- **Bonuses for smart growth and redevelopment activities were upheld; however the Court invalidated third round compliance bonuses.**
- **The Court upheld its prior ruling on COAH's formula that did not reallocate present need (existing substandard housing) from urban municipalities to other municipalities in the region. The Court also questioned whether urban municipalities should be assigned prospective (e.g., growth) numbers.**
- **The Court declined to remove COAH's rule-making powers and to appoint a special master as several of the plaintiffs requested.**

### **2010 Reform Legislation**

In an effort to reform affordable housing law, the State Legislature introduced various bills in 2009 and 2010. Of those efforts, S-1 emerged in January 2010 as the Senate's preferred bill. It was eventually passed by the Senate on June 3, 2010. However, the Assembly did not vote on this version of S-1 and instead spent the summer and fall of that year crafting its own housing reform bill, A-3447. In late December 2010 and early January 2011 these bills were conformed (S-1/A-3447) and ultimately passed by both chambers on January 10, 2011. Governor Christie conditionally vetoed the revised S-1/A-3447 on January 24, 2011 indicating that he preferred S-1 as it was originally passed by the Senate. However, the Senate and Assembly declined to act on the conditional veto and the reform efforts failed.

### **Judicial Activity from 2011 to the Present**

COAH sought a stay from the NJ Supreme Court of the March 8, 2011 deadline the Appellate Division had imposed in its October 2010 decision for the agency to issue new third round housing numbers. The Supreme Court granted COAH's application for a stay on January 18, 2011 and on March 31, 2011, the Court granted petitions and cross-petitions to all of the various challenges to the Appellate Division's 2010 decision. However, the Supreme Court did not hear oral argument on the various petitions and cross petitions until November 14, 2012.

The NJ Supreme Court decided on the appeal by the executive branch of the Appellate Court's decision of March 8, 2012 that disallowed the dissolution of COAH under Governor Christie's Reorganization Plan No. 001-2011. The Supreme Court upheld the lower court's ruling on the Executive Reorganization Act of 1969 on July 10, 2013, finding that the governor did not have the power to unilaterally reorganize COAH out of existence. Such an action requires the passage of new legislation.

Most recently on September 26, 2013, the NJ Supreme Court decided the appeals brought by many parties on the Appellate Division's 2010 decision concerning the validity of the third round rules. This decision, In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, upheld the Appellate Court's decision that found many of the third round rules to be invalid, but also went further in striking down the rules. The highlights of the Supreme Court's decision are as follows:

- The third round rules use the concept of growth share which is a method whereby a municipality's affordable housing obligation is a percentage of residential and non-residential development. The NJ Supreme Court found it to be ultra vires, or beyond the scope of the statute – the Fair Housing Act.
- The NJ Council on Affordable Housing deviated substantially when it used a different method than the one outlined in the statute which required affordable housing obligations to be allocated to municipalities on a regional, rather than a statewide basis.
- The concept of growth share is so intertwined with the rules governing the third round that it is not possible to disentangle it and leave some valid, intact, part.
- The Court found that much time had been lost and directed COAH within five months to allocate new numbers to municipalities based on the approaches used in the first and second rounds.
- The decision did not extend the third round which is scheduled through 2018.
- The decision left open the possibility of allowing compliance bonuses in the new rules, which the Appellate Court had struck down.
- Throughout the decision, the Court invited the Legislature to revisit affordable housing reform.

## **RULES USED IN THE PREPARATION OF THE HOUSING PLAN**

As set forth above, the Third Round rules issued by COAH have been the subject of various lawsuits and judicial decisions as well as being affected by amendment to the Fair Housing Act. In this document, the substantive rules of N.J.A.C. 5:97-1, et seq., have been used unless they were invalidated by the Appellate Division's decision of October 8, 2010.

## **HOUSING PLAN PROCESS**

Under the Municipal Land Use Law, a housing element is a required element of the Master Plan. COAH's process requires the municipal planning board to adopt the

housing element and the municipality to then endorse the housing element by resolution. In addition, the governing body's resolution requests that COAH review the housing element and fair share plan along with supporting documents for the certification of the housing plan ("substantive certification"). The judicial process that the municipality is engaged in also follows this adoption and endorsement progression. Prior judicial decision has confirmed the applicability of using the state agency's rules in the formulation of housing elements and fair share plans before the Court<sup>2</sup>.

Municipalities normally have the option of filing their adopted and endorsed housing elements and fair share plans with COAH and petitioning for COAH's approval, known as "substantive certification", or seeking court approval called a "judgment of repose". Since this document is being prepared in part to settle an affordable housing lawsuit, Woodbury Heights is seeking a judgment of repose for its rehabilitation and prior round obligations. The judgment of repose will also create immunity from future affordable housing lawsuits.

## AFFORDABILITY REQUIREMENTS

Affordable housing is defined under New Jersey's Fair Housing Act as a dwelling, either for sale or rent that is within the financial means of households of low or moderate income as income is measured within each housing region. Woodbury Heights Borough is in COAH's Region 5, which includes Burlington, Camden and Gloucester Counties. Moderate income households are those earning between 50% and 80% of the regional median income. Low-income households are those with annual incomes that are between 30% and 50% of the regional median income. In 2008, the State Legislature created an additional sub-category of low income - very-low income, which has been defined as households earning 30% or less of the regional median income.

In addition to N.J.A.C. 5:97-1, et seq., which are the substantive rules, and N.J.A.C. 5:96-1 et seq., which are the procedural rules implementing the Fair Housing Act, COAH in cooperation with other housing agencies in the state has promulgated the Uniform Housing Affordability Controls ("UHAC") found at N.J.A.C. 5:80-26.1, et seq. UHAC sets out the income limitations, controls on affordable dwellings, rules for buyers and sellers, and other rules necessary to ensure proper implementation of restrictions that ensure that affordable dwellings are occupied by low and moderate-income households. UHAC requires that the maximum rent for a qualified unit be

<sup>2</sup> *The Hills Development Co. v. Township of Bernards*, 103 N.J. 1 (1986)

affordable to households that earn no more than 60% of the median income for the region. The average rent must be affordable to households earning no more than 52% of the median income. The maximum sale prices for affordable units must be affordable to households that earn no more than 70% of the median income. The average sale price must be affordable to a household that earns no more than 55% of the median income.

The regional median income is defined by COAH using the federal Department of Housing and Urban Development (hereinafter "HUD") income limits on an annual basis. In the spring of each year HUD releases updated regional income limits which COAH reallocates to its regions. It is from these income limits that the rents and sale prices for affordable units are derived. See Table 1 for 2013 income limits for Region 5 and Tables 2 and 3 for illustrative sale prices and gross rents from 2011 (the latest figures available). The sample rents and sale prices are illustrative and are gross figures which do not account for the specified utility allowance.

**Table 1. Sample 2013 Income Limits for Region 5**

Household Income Levels	1 Person Household	2 Person Household	3 Person Household	4 Person household	5 Person Household
Moderate Income	\$45,640	\$52,160	\$58,680	\$65,200	\$70,416
Low Income	\$28,525	\$32,600	\$36,675	\$40,750	\$44,010
Very Low Income	\$17,115	\$19,560	\$22,005	\$24,450	\$26,406

Source: NJDCA 2011 Affordable Housing Regional Income Limits

**Table 2. Illustrative 2011 Affordable Rents for Region 5**

Household Income Levels (% of Median Income)	1 Bedroom Unit Rent	2 Bedroom Unit Rent	3 Bedroom Unit Rent
Moderate Income at 60%	\$937	\$1,124	\$1,299
Low Income at 46%	\$718	\$862	\$996
Very Low Income at 30%	\$468	\$562	\$650

Source: NJDCA 2011 Illustrative Rents

**Table 3. Illustrative 2011 Affordable Sale Prices for Region 5**

Household Income Levels (% of Median Income)	1 Bedroom Unit Price	2 Bedroom Unit Price	3 Bedroom Unit Price
Moderate Income at 70%	\$94,973	\$113,967	\$133,695
Low Income at 40%	\$54,270	\$65,124	\$75,254
Very Low Income at 30%	\$40,703	\$48,843	\$56,441

Source: NJPCA 2011 Illustrative Sales Prices for New Construction

### HOUSING ELEMENT REQUIREMENTS

A municipal Master Plan must include a housing element as part of the planning foundation for the municipal zoning ordinance (*N.J.S.A. 40:55D-62*). Pursuant to the Fair Housing Act, a municipality's housing element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element is required to contain at least the following:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development trends;
- An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share of low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low and moderate income housing; and
- A consideration of the lands most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including

a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

These requirements will be addressed in the remainder of the document.

## WOODBURY HEIGHTS' AFFORDABLE HOUSING HISTORY

Although Woodbury Heights has not participated in the COAH process, the Borough has a history of providing affordable housing opportunities. On February 28, 2007, the Borough adopted an inclusionary housing zoning ordinance. The ordinance rezoned a portion of the Borough to permit age-restricted dwellings at a density of up to 16 units per acre and a 15% affordable housing set-aside. Additionally, the Borough's joint Planning and Zoning Board ("Planning Board") granted two use variances for the creation of two inclusionary developments. The Borough also placed a deed restriction on a Borough-owned piece of property known as the Woodland Avenue site. The deed restriction limited the use of the Woodland Avenue site to affordable housing purposes.

The Borough prepared a housing element and fair share plan in 2009 to consolidate its affordable housing efforts in one place. Woodbury Heights decided to voluntarily petition COAH for third round substantive certification; however, during the drafting process of the 2009 plan, the Borough was sued by Woodbury Heights Development, LLC ("WHD"), claiming that the Borough's zoning ordinance is unconstitutional because the Borough has not provided its fair share of the region's affordable housing.<sup>12</sup> Following the filing of the litigation, the Borough continued in its efforts to centralize the Borough's past affordable housing efforts in the drafting of the Housing Element. The Borough's Planning/Zoning Board adopted the housing element on December 7, 2009. Borough Council endorsed the housing element and fair share plan on March 17, 2010. The 2010 Borough Plan amendment served to address the changing affordable housing landscape in the State of New Jersey and to clarify the Borough's intentions set forth in its previous housing element and fair share plan. Ultimately, the Borough and WHD settled the litigation as memorialized in a settlement agreement dated May 18, 2012 which was subsequently approved by the court on June 27, 2012.

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<sup>12</sup> - Also known as BPC Properties, Ltd, who is the parent organization of the WHD limited liability corporation.

## CHARACTERISTICS OF HOUSEHOLDS AND HOUSING

### Housing Stock Inventory

In 2010, there were 1,125 housing units in the Borough of Woodbury Heights, of which 44 or 3.9% were vacant. Of the 1,081 occupied units, 91.1% were owner occupied and 8.8% were rented. Table 4, Housing Units by Occupancy Status, illustrates this occupancy status in 2010.

Table 4. Housing Units by Occupancy Status, 2010.

	Housing Units	Owner Occupied	Percent Owner Occupied	Renter Occupied	Percent Renter Occupied
Occupied	1,081	985	91.1%	96	8.9%
Vacant	44	-	-	-	-
Total	1,125	985		96	

Source: 2010 U.S. Census

Single-family detached houses comprise 91.1% of the housing stock. While the duplexes and structures with three to four units make up 2.0% and 2.2% of the housing stock respectively. See Table 5, Housing Units by Number of Units in Structure for a detailed explanation of the housing units in 2010.

Table 5. Housing Units by Number of Units in Structure, 2010.

Number of Units	Totals	Percent of Total
1. Detached	1,074	91.1%
1. Attached	31	2.6%
2	23	2.0%
3 or 4	26	2.2%
5 to 9	25	2.1%
10 to 19	0	0.0%
20 to 49	0	0.0%
50 or more	0	0.0%
Mobile Home	0	0.0%
Other	0	0.0%
Total	1,179	100.0%

Source: 2006-2010 American Community Survey 5 Year Estimate-- Selected Housing Characteristics

The Borough's growth rate has slowed since 1970. Between 1990 and 1999, Woodbury Heights added 16 housing units. In contrast, the Borough added 413 units between 1960 and 1969, which was the Borough's largest period of housing development. In fact, approximately 49.7% of the Borough's housing stock was built in the two decades following WWII. Table 6, Housing Units by Age, below illustrates its age by decade.

Table 6. Housing Units by Age, 2010.

Year Built	Total Units	Percent
2005 or later	0	0.0%
2000-2004	33	2.8%
1990-1999	16	1.4%
1980-1989	97	8.2%
1970-1979	101	8.6%
1960-1969	413	35.0%
1950-1959	173	14.7%
1940-1949	78	6.6%
Before 1940	268	22.7%
Totals	1,379	100.0%

Source: American Community Survey 5-Year Estimates, Selected Housing Characteristics

Table 7 on the following page, Housing Units by Number of Rooms, shows that only 1.8% of the total dwellings have between one and three rooms; 38.3% of the housing stock has between four and six rooms; and 59.9% has seven or more rooms. The data from this and other tables indicate that the housing stock in Woodbury Heights has a relatively high average number of rooms, but this is due to the percentage of single family detached houses, which have the largest average number of rooms of all housing types.

Table 7. Housing Units by Number of Rooms, 2010.

Rooms	Number of Units	Percent
1	0	0.0%
2	0	0.0%
3	21	1.8%
4	71	6.0%
5	103	8.7%

Rooms	Number of Units	Percent
6	278	23.6%
7	207	17.6%
8	265	22.5%
9+	234	19.8%
<b>Total</b>	<b>1,179</b>	<b>100.0%</b>

Source: 2006-2010 American Community Survey 5-Year Estimates, Selected Housing Characteristics

Tables 8 and 9, below and on the following page, Housing Values, show that the median housing values in Woodbury Heights increased by 87% between 2000 and 2010, compared to a 97% increase for Gloucester County during the same period. In 2000, Woodbury Heights' median value of \$124,300 was 3.5% greater than Gloucester County's median value of \$120,100. However, the disparity in home values between the Borough and the County diminished in 2010. In 2010, Woodbury Heights' median housing value of \$232,500 was 1.7% below the median value of \$236,900 for Gloucester County. However, housing value in the U.S. Census is self-reported and often lower than actual sales prices.

Table 8. Housing Values, Owner-Occupied, 2000.

Housing Value	Dwellings	Percent
Less than \$50,000	7	0.8%
\$50,000-\$59,999	0	0.0%
\$60,000-\$69,999	0	0.0%
\$70,000-\$99,999	96	10.5%
\$100,000-\$124,999	364	39.9%
\$125,000-\$149,999	316	34.6%
\$150,000-\$174,999	77	8.4%
\$175,000-\$199,999	13	1.4%
\$200,000-\$249,000	21	2.3%
\$250,000-\$299,000	0	0.0%
\$300,000 or more	19	2.1%
<b>Total</b>	<b>913</b>	<b>100.0%</b>
<b>2000 Median Value</b>	<b>\$124,300</b>	

Source: 2000 U.S. Census

Table 9. Housing Values, Owner-Occupied, 2010.

Housing Value	Dwellings	Percent
Less than \$50,000	0	0.0%
\$50,000-\$99,999	34	3.3%
\$100,000-\$149,999	43	4.2%
\$150,000-\$199,999	164	15.9%
\$200,000-\$299,999	674	65.3%
\$300,000-\$499,999	100	9.7%
\$500,000-\$999,999	17	1.6%
\$1,000,000 or more	0	0.0%
<b>Total</b>	<b>1,032</b>	<b>100.0%</b>
<b>2010 Median Value</b>	<b>\$232,500</b>	

Source: 2006-2010 American Community Survey Selected Population Tables, Selected Housing Characteristics

In 2010, Woodbury Heights's median rental cost was higher than that of the County median (\$1,375 v. \$964). The rent structure for Woodbury Heights' housing units was considerably more expensive in 2010 than Gloucester County as a whole. See Table 10, Comparison of Woodbury Heights Borough and Gloucester County Monthly Rental Cost.

Table 10. Comparison of Woodbury Heights and Gloucester County, Monthly Rental Cost<sup>2</sup>, 2000.

Year 2010 Monthly Rent	Units in Woodbury Heights	Percent	Units in Gloucester County	Percent
\$0-\$99	0	0.0%	30	0.2%
\$100-\$149	0	0.0%	152	0.8%
\$150-\$199	0	0.0%	201	1.1%
\$200-\$249	0	0.0%	389	2.1%
\$250-\$299	0	0.0%	332	1.8%
\$300-\$349	0	0.0%	264	1.4%
\$350-\$399	0	0.0%	254	1.4%
\$400-\$449	0	0.0%	201	1.1%
\$450-\$499	0	0.0%	286	1.6%
\$500-\$549	0	0.0%	316	1.7%
\$550-\$599	0	0.0%	244	1.3%
\$600-\$649	0	0.0%	360	1.9%

Year 2010 Monthly Rent	Units in Woodbury Heights	Percent	Units in Gloucester County	Percent
\$650-\$699	0	0.0%	741	4.0%
\$700-\$749	0	0.0%	729	4.0%
\$750-\$799	0	0.0%	987	5.3%
\$800-\$899	6	7.5%	2,094	11.3%
\$900-\$999	16	20.3%	2,610	14.1%
\$1,000 to \$1,249	14	17.7%	4,235	22.9%
\$1,250 to \$1,499	7	8.9%	1,781	9.6%
\$1,500 to \$1,999	36	45.6%	1,713	9.3%
\$2,000 +	0	0.0%	578	3.1%
<b>Total</b>	<b>79</b>	<b>100.0%</b>	<b>18,497</b>	<b>100.0%</b>
Median Rent, 2010	\$1,375		\$964	

Sources: 2006-2010 American Community Survey Selected Population Tables, Selected Housing Characteristics  
 \* - Includes only those units with cash rents.

The Borough does not have any units that lack complete plumbing and kitchen facilities. Woodbury Heights does not have any housing units that are overcrowded (defined as having 1.01 or more persons per room). See Table 12, Selected Quality Indicators. See Table 11, Selected Quality Indicators.

Table 11. Selected Quality Indicators, Occupied Housing Stock, 2010.

	Overcrowded	Lacking Complete Plumbing	Lacking Complete Kitchen
No. Units	15	0	7

Source: 2006-2010 American Community Survey, Selected Population Tables, Selected Housing Characteristics

### General Population Characteristics

The population of Woodbury Heights experienced rapid growth between 1960 and 1970, increasing by 110%. Thereafter, the Borough's population steadily declined between 1970 and 2000 with a loss of 17.4% of its population. However, in the past decade the Borough has experienced a 2.2% increase in population, the first time in 30 years. While Gloucester County's growth rate peaked in the 1960's, the County has continued to add population, albeit at a slower rate. Between 1950 and 1960, the County grew at a rate of 47%. Between 2000 and 2010, the County's population increased by 13.2%. See Table 12, Population Growth, for additional information.

Table 12. Population Change 1930-2010.

Year	Woodbury Heights Population	Percent Change	Gloucester County Population	Percent Change
1930	997	-	70,802	-
1940	1,137	14.0%	72,219	2.0%
1950	1,373	20.8%	91,727	27.0%
1960	1,723	25.5%	134,840	47.0%
1970	3,621	110.2%	172,681	28.1%
1980	3,460	-4.4%	199,917	15.8%
1990	3,392	-1.9%	230,082	15.1%
2000	2,988	-11.9%	254,673	10.7%
2010	3,055	2.2%	288,288	13.2%

Source: 1930 through 2010 U.S. Census

The increase in the Borough's population did not fall evenly across age groups, or cohorts. The number of school age residents between the ages of 15 and 24 increased by 25.5% and residents between the ages of 45 and 64 both increased by 22.3% between 2000 and 2010. Youth between ages 5 and 14 experienced the greatest loss of population, declining by 18.0% between 2000 and 2010. See Table 13, Age Distribution for additional detail.

Table 13. Age Distribution, 1990-2000

Age Group	2000	Percent	2010	Percent	Percent Change
Under 5	178	6.0%	164	5.4%	-7.9
5-14	461	15.4%	378	12.4%	-18.0
15-24	337	11.3%	423	13.8%	25.5
25-34	348	11.6%	330	10.8%	-5.2
35-44	520	17.4%	429	14.0%	-17.5
45-54	461	15.4%	518	17.0%	12.3
55-64	288	9.6%	398	13.0%	38.2
65-74	241	8.1%	217	7.1%	-10.0
75+	154	5.2%	198	6.5%	28.6
Totals:	2,988	100.0%	3,055	100.0%	2.2
Median Age:			41.2		

Source: 2000 and 2010 U.S. Census

### Household Characteristics

A household is defined by the U.S. Census Bureau as those persons who occupy a single room or group of rooms constituting a housing unit; however, these persons may or may not be related. By comparison, a family is identified as a group of persons including a householder and one or more persons related by blood, marriage or adoption, all living in the same household. In 2010 there were 1,081 households in Woodbury Heights of which 832 were families. The average household size is 2.82 persons per household and the average family size is 3.22 persons per family.

Table 14, Households by Household Type, breaks down the different household types. Approximately 61% of the households are comprised of married couples. Of married couples, 26% are living with children. A moderate proportion of Borough households (23%) are "non-family" households.

Table 14. Households by Household Type, 2010

Household Type	Number of Households	Percent
Family Households (2+ Person Households)	832	77.0%
Total married:	662	61.2%
Married Couple with children	283	26.2%
Married without children	379	35.1%
Non-family households	249	23.0%
Living Alone	197	18.2%
Not Living Alone	52	4.8%
Total Households	1,081	100.0%

Source: 2010 U.S. Census

### Income Characteristics

Persons residing in the Borough of Woodbury Heights have on average higher incomes than in Gloucester County as a whole, based on 2010 inflation-adjusted dollars. Median income in 2010 in Woodbury Heights was \$82,411 for households and \$91,667 for families. Comparable figures for the County were \$72,664 for households and \$85,832 for families.

Within the Borough, 60% of all households have incomes of \$75,000 or more, which is considered to be an above middle class income. Table 15 on the following page,

Household Income by Income Brackets, 2010, illustrates these American Community Survey findings.

Table 15. Household Income by Income Brackets, 2010.

Income Brackets, 2010	Households	Percent
Less than \$10,000	6	0.5%
\$10,000-\$14,999	27	2.4%
\$15,000-\$24,999	46	4.1%
\$25,000-\$34,999	72	6.5%
\$35,000-\$49,999	74	6.7%
\$50,000-\$74,999	217	19.5%
\$75,000-\$99,999	260	23.4%
\$100,000-\$149,999	247	22.2%
\$150,000-\$199,999	126	11.3%
\$200,000 or more	36	3.2%
Total	1,111	100.0%
Median Household Income	\$82,411	
Median Family Income	\$91,667	

Source: 2006-2010 American Community Survey, Selected Population Tables, Selected Economic Characteristics

### Employment Characteristics

Table 16 on the following page, Distribution of Employment by Industry, shows the distribution of employment by industry for employed Woodbury Heights' residents, as contrasted to the number of jobs located in the municipality (covered employment). The education, health and social services industry captured the largest segment of the working population at 16.8%. The retail trade industry had the next largest segment of the working population employing 14.9% of the workforce. Other sizeable segments of the population are in the manufacturing industry (10.8%) and arts, entertainment, recreation, accommodation and food services trade category (11.5%).

**Table 16. Distribution of Employment by Economic Sector, Employed Woodbury Heights Residents, 2010**

<b>Employment by Economic Sector</b>	<b>Number</b>	<b>Percent</b>
Agriculture, Forestry, Fishing and Hunting, and Mining	0	0.0%
Construction	121	7.3%
Manufacturing	180	10.8%
Wholesale Trade	79	4.8%
Retail Trade	246	14.9%
Transportation and Warehousing, and Utilities	81	4.9%
Information	24	1.5%
Finance, Insurance, Real Estate, and Renting and Leasing	107	6.5%
Professional, Scientific, Management, Administrative, and Waste Management Services	143	8.6%
Education, Health and Social Services	279	16.8%
Arts, Entertainment, Recreation, Accommodation and Food Services	190	11.5%
Public Administration	101	6.1%
Other	105	6.3%
<b>Total</b>	<b>1,656</b>	<b>100.0%</b>

Source: 2006-2010 American Community Survey Selected Population Tables, Selected Economic Characteristics

Table 17, Employment by Occupation, identifies the occupations of employed persons in the Borough. The data in Table 17 indicates that largest percentage (33.6%) of Woodbury Heights residents are employed in management, professional and related occupations and the second largest percentage (28.9%) of the population is employed in sales and office occupations.

**Table 17. Employment by Occupation, Employed Woodbury Heights Residents, 2010**

<b>General Occupational Category</b>	<b>Number</b>	<b>Percent</b>
Management, Professional, and Related Occupations	557	33.6%
Service	278	16.8%
Sales and Office	479	28.9%
Natural Resources, Construction, and Maintenance	207	12.5%
Production, Transportation, and Material Moving	135	8.2%
<b>Total</b>	<b>1,656</b>	<b>100.0%</b>

Source: 2006-2010 American Community Survey Selected Population Tables, Selected Economic Characteristics

The Borough's estimated number of covered jobs in 2011 (the last time that jobs in different economic sectors were determined) was 1,311. Covered employment data includes only those jobs for which unemployment compensation is paid. By definition it does not cover public employees (federal, state, county and municipal), nor the self-employed, unpaid family workers, most part-time or temporary employees, and certain agricultural and in-home domestic workers. In Table 18, Covered and Governmental Employment Estimates, 2011, Woodbury Heights Borough, estimated public sector employment has been added to the covered employment to give a more accurate picture of employment, but as noted, the estimate still understates the number of actual jobs in the Borough.

Table 18. Covered and Governmental Employment Estimates, 2011,  
 Woodbury Heights Borough

ECONOMIC SECTOR	No. of Employers	Estimated Employees	Estimated Weekly Wages	Estimated Annual Wages
Private Sector				
Construction	7	33	\$1,026	\$53,327
Manufacturing	-	-	-	-
Wholesale trade	8	50	\$769	\$39,979
Retail trade	16	164	\$489	\$25,437
Finance and insurance	5	24	\$926	\$48,173
Real estate and rental and leasing	-	-	-	-
Professional and technical services	-	-	-	-
Administration/Waste Remediation	7	403	\$335	\$17,395
Health care and social assistance	17	137	\$756	\$39,306
Accommodation and food services	7	218	\$260	\$13,538
Other services, except public sector	14	89	\$462	\$24,043
Private Sector Total/Average	101	1,311	\$471	\$25,692
Federal Employees	1	0	\$3,193	\$166,038
County and Local Government Employees	5	296	\$952	\$49,527
Public Sector Total		296		
Private and Public Sector Total/Average		1,607		\$46,827

Source: New Jersey Department of Labor and Workforce Development, Quarterly Census of Employment and Wages, Municipal Annual Report by Sector. Data are the yearly average for 2011. The categories of manufacturing, real estate and rental and leasing, professional and technical services were suppressed for privacy purposes.

## GROWTH TRENDS AND PROJECTIONS

Woodbury Heights is nearly built out with limited land availability. Since the 2009 Housing Plan, no new residential development has taken place. Redevelopment of land for residential development that was previously used for non-residential purposes is anticipated to be the majority of new development in the Borough as the two affordable housing sites are constructed. The planning and zoning office reports very few inquiries and little action by the Planning Board since the start of the Great Recession and its slow recovery. The Borough did not suffer any significant permanent damage from Hurricane Sandy in October 2012.

### Residential Trends and Projections

Since 2004, Woodbury Heights Borough issued a total of 14 new residential certificates of occupancy<sup>11</sup>. No new certificates of occupancy have been issued since 2008. Four demolitions have occurred, three in 2012, for a net gain of 10 dwellings over ten years. Since the Borough is mostly built out, residential growth has occurred as individual left over lots instead of the more typical development of major subdivisions found in other areas with greater land resources. The development of the inclusionary site in the plan will constitute the largest residential development in five decades. Additional development of 10 dwelling units on the Borough's municipally sponsored Woodland Avenue site is expected. This site is an infill parcel. Anticipated residential development patterns will either be isolated infill development of single family detached dwellings or inclusionary developments.

### Non-residential Trends and Projections

Woodbury Heights has experienced minimal non-residential growth since 2004. During that period, the Borough added about 60,000 square feet, of which the largest category was storage, at 26,550 sf. The Borough also added almost 16,000 sf. of office space and more than 12,000 sf. in educational space. However, since the Great Recession ended in 2009, a mere 465 sf. of assembly and 512 sf. of institutional space has been added to the Borough's non-residential buildings.

The Borough has two commercial corridors: one along Rt. 45 (Mantua Pike) and the other on Woodbury-Glassboro Road (County Route 553). An industrial corridor is located on S. Evergreen Avenue (County Route 650). Commercial growth in the form of small scale retail and assembly uses is most likely to occur along Mantua Pike and other portions of the community commercial and highway commercial zones; however, much of the Rt. 45 corridor renovated in the mid-2000's so

<sup>11</sup> - *New Jersey Construction Reporter*, NJDCA.

opportunities for new growth will be limited. Industrial development will be limited to incremental expansions of existing businesses in the north end of the municipality.

Given the slow economy and the lack of available vacant land, the Borough expects only very modest gains in non-residential development during the third round period.

#### **Availability of Existing and Planned Infrastructure**

Woodbury Heights Borough has adequate sewer capacity to meet anticipated residential and non-residential growth that may occur. Developer-funded improvements to the local system are expected and some of these may be off-site, not just for on-site connections. None of these costs are anticipated to be significant and are at a level of typical development costs. Woodbury Heights' wastewater demands are serviced by a system operated by the Gloucester County Utilities Authority (GCUA). The GCUA is a regional entity that operates a 71 mile system of interceptors that are connected with the Borough's local collection system for conveyance to a sewage treatment facility located in West Deptford. The County system provides primary and secondary treatment of the waste. Woodbury Heights also has public water that is provided by the City of Woodbury's Water Department and a contract for supplemental water with New Jersey American Water Company. The Woodbury Heights Water Utility also supplies water to the City of Woodbury system from a Borough-owned well located on Helen Avenue. The well draws from the upper Potomac-Raritan-Magothy (PRM) aquifer – a primary ground water source for much of South Jersey. The supplemental water system was developed to limit the ground water withdrawn from the PRM aquifer pursuant to NJDEP order. The Borough is also in discussion with the New Jersey Department of Environmental Protection (NJDEP) to determine what steps may need to be taken by future developers to ensure an adequate water supply. With implementation of any required upgrades to the Borough's water supply systems as necessitated by NJDEP, it is anticipated that the existing public infrastructure will be sufficient to supply all of the development needs for market and affordable development within the third round.

#### **Borough Economic Development Policies**

Woodbury Heights Borough's economic development policies encourage business retention and development in its commercial districts. The Borough has encouraged economic development which comports with sound planning principles by providing

zoning districts that permit a variety of non-residential uses including neighborhood commercial uses, as well as highway commercial uses and light industrial uses.

### **Potential Constraints on Development**

Located entirely in the State Plan's Metropolitan Planning Area, PA 1, the Borough is not located within the jurisdiction of the Meadowlands, Highlands, Pinelands or CAFRA. There are no known federal regulations that would hinder the development of the projects in this housing element and fair share plan.

Woodbury Heights Borough is not affected by Category 1 waterways or other specially designated streams or tributaries. According to NJDEP mapped wetlands, approximately 35.6 acres of land in the Borough are affected by wetlands. Again, this does not significantly impede development within the Borough. While there are six small contaminated sites in Woodbury Heights Borough, they do not materially affect the ability of the Borough to develop affordable housing. The known contaminated sites are not located near the existing or proposed affordable housing sites.

### **CONSIDERATION OF LANDS APPROPRIATE FOR AFFORDABLE HOUSING**

Woodbury Heights, as noted above, has minimal vacant land available for development, which serves to limit the Borough's options for meeting its affordable housing obligation. In assessing its affordable housing opportunities, the Borough considered land in and adjacent to existing residential neighborhoods and land in the existing Residential Age-Restricted (RA) zone. The Borough has and more negotiated a settlement that will result in a considerable number of affordable housing units being constructed in the RA district by Woodbury Heights Development, LLC or successor organization.

In addition, the Borough reviewed the approval of the Heights Development, LLC project but determined that the development as approved in 2006 is infeasible for several reasons. This consisted of Block 84, Lots 6 and 8. As has come to light, the intended developer defaulted on its bank loan resulting in the lender taking possession of a portion of the tract, known as Block 84, Lot 6. The option to purchase the other portion of the tract, Block 84, Lot 8, expired and the property remains in possession of the original owner. This property is improved with a light industrial building (a former Bell Telephone maintenance facility). The approval was predicated on a developable area of 8.56 acres remaining after freshwater wetlands and a 50-foot wide transitional buffer were removed from the gross tract area. The approval was conditioned on receiving any outside agency approval, too, such as the NJ Department of Environmental Protection. Subsequent to the municipal approval,

a species on the threatened and endangered list was discovered in the wetland area which increased the freshwater wetlands transitional buffer to 150 feet. This reduced the developable area to approximately six acres. All of Lot 8 is unencumbered by environmentally sensitive land and is necessary in order to create a second means of access to the development. Since Lot 8 is the key development parcel because of its relationship to Lot 6 and its relatively unencumbered development potential, the Borough has concluded that the development is not feasible without its inclusion.

Other vacant and underutilized lands were considered. One of these, Block 91, Lot 6, has been singled out for a municipally sponsored affordable housing development as will be discussed below. Viewing the remaining vacant parcels in Woodbury Heights, the largest single landholder of vacant land is a public utility, making it unavailable for development.

## WOODBURY HEIGHTS'S AFFORDABLE HOUSING OBLIGATION

The rules governing affordable housing in New Jersey outline a three-part third round method that includes the rehabilitation obligation, the prior round obligation and the projected third round obligation. Since the Appellate Court invalidated the growth share methodology used by COAH to determine municipal third round obligations, it is not possible at this time to demonstrate third round compliance. The Borough seeks a judgment of compliance and repose approving its approach to satisfying its rehabilitation and prior round obligation. Woodbury Heights' affordable housing obligation is 10 units for the rehabilitation obligation and 55 units in the prior round obligation.

### Rehabilitation Obligation

The rehabilitation obligation is defined as the number of deficient housing units occupied by low and moderate income households within a municipality (N.J.A.C. 5:97-1.4). COAH calculates this figure using indices such as overcrowding of units constructed prior to 1950, incomplete kitchen facilities, incomplete plumbing facilities which have shown to have strong correlations with lower incomes and the estimated number of such households in the municipality (see Appendix B in N.J.A.C. 5:97). COAH has calculated Woodbury Heights' rehabilitation obligation to be 10 units. See Table 19, Calculation of the Rehabilitation Obligation, for additional insight.

**Table 19. Calculation of the Rehabilitation Obligation**

Overcrowding of units constructed prior to 1950	7
Incomplete plumbing facilities	+ 0
Incomplete kitchen facilities	17
Low and moderate income share*	0.737
Rehabilitation share credit	- 0
<b>Rehabilitation Obligation</b>	<b>10 units</b>

\* - From Appendix B in N.J.A.C. 5:97.

### **Prior Round Obligation**

The prior round obligation is defined as the cumulative 1987 through 1999 affordable housing obligation (N.J.A.C. 5:97-1.4). This period corresponds to the first and second rounds of affordable housing. COAH has calculated Woodbury Heights' prior round obligation to be 55 units (from Appendix C in N.J.A.C. 5:97).

### **Third Round Obligation**

The third round obligation of the Borough is not known at this time. Until COAH promulgates regulations consistent with the NJ Supreme Court's decision or new legislation is enacted, the Borough's future obligation will remain unknown.

## **WOODBURY HEIGHTS' AFFORDABLE HOUSING PLAN**

The Borough addresses its cumulative obligation with affordable housing units from group homes, rental bonus credits for units created in the prior round, the settlement agreement between the Borough and Woodbury Heights Development, LLC and a municipally sponsored site.

### **Satisfaction of the Rehabilitation Obligation**

Woodbury Heights' rehabilitation share is 10 units. Gloucester County operates an owner-occupied rehabilitation program through the Department of Economic Development, Division of Community Development. The division currently operates a rehabilitation program using U.S. Department of Housing and Urban Development Community Development Block Grant (hereinafter "CDBG") funds. CDBG funding is used to benefit low and moderate income households. The program operates when eligible low and moderate income homeowners apply to the program for renovation work. Once their eligibility is determined, the property is surveyed and the extent of rehabilitation work is investigated. This work is then bid and a contractor or contractors perform the work. The County places a lien on the

property that functions as a no-cost loan. The loan is repaid by the homeowner over a minimum of five years with a final 20% payment when the house changes title at the real estate closing. The Borough of Woodbury Heights has been actively participating in the County's rehabilitation program. To date, the County has completed one eligible dwelling in the Borough dating from 2003. (See Appendix A for the completed rehabilitation unit monitoring form.) The rehabilitated unit has an eleven year affordability control that meets the requirement of N.J.A.C. 5:97-6.2. The Borough will supplement the funding for this rehab program should the county have insufficient funding to rehab the number of lower income households who seek to take advantage of the program. Woodbury Heights will continue to participate in the Gloucester County program in order to address the remainder of its rehabilitation obligation. Gloucester County's Year 2013 Action Plan for community development has earmarked \$281,602 from federal Community Development Block Grant funds, \$126,806 in HOME funds and \$43,000 in repayment income for a total of \$453,408 in funding for the owner-occupied rehabilitation program<sup>14</sup>. At this level of funding no additional resources from Woodbury Heights are expected to be necessary.

Under N.J.A.C. 5:97-6.2(b)6, rehabilitation programs are to be open to rental property owners. Because of the requirements of the federal funding for rehabilitation programs used in county community development block grant programs, the Gloucester County program is only open to homeowners and not landlords. Woodbury Heights seeks a waiver from this provision based on an analysis of U.S. Census information. The Borough has 1,126 occupied housing units of which 1,160 were owner-occupied and a mere 66 were renter-occupied<sup>15</sup>. Of occupied housing units, the vacancy rate for owner-occupied housing units was 1.3% but there was a zero vacancy rate for renter-occupied housing units. A rental rehabilitation program includes a number of obstacles for landlords. First, the program requires a substantial amount of paperwork. Second, the landlord does not get to hire his or her own contractor and because the funding is government-based requires that the work be done at prevailing wage. This typically makes it more expensive than straight private hire. Third, the landlord must deed restrict the unit to only low and moderate income households for a period of at least ten years. This restricts the potential rental earnings for a significant period of time. Consequently, there are built-in disincentives for a landlord to use the program. These disincentives demonstrate that a rental rehabilitation program will not have much success in the Borough. From the viewpoint of the municipality, establishing a rental rehabilitation program will divert scarce public resources to an activity with a very low probability of use and success. Consequently a waiver is requested from this provision of COAH's

<sup>14</sup> - 2010-2014 Five Year Consolidated Plan and 2013 Annual Action Plan, pp. 9-10.

<sup>15</sup> - These and other figures are taken from the 2007-2011 rolling American Community Survey (U.S. Census Bureau, for Woodbury Heights, NJ).

rules. A copy of Gloucester County's Homeowner Rehabilitation Procedures Manual is attached as Appendix B.

### **Satisfaction of the Prior Round Obligation**

Woodbury Heights's prior round obligation (1987-1999) is 55 units. COAH permits new construction credits and bonuses addressing a first or second round affordable housing obligation to be used to address the prior round obligation. In addition, COAH permits proposed or approved affordable housing units to address the prior round obligation.

For the prior round, COAH requires that the Borough establish the maximum number of affordable age-restricted units and the minimum number of affordable rental units using the formulas below.

#### **PRIOR ROUND FORMULAS**

The following formulas apply to the prior round obligation:

- **Minimum Rental Obligation – 13 units**  
.25 (prior round obligation – prior cycle credits)  
 $= .25 (55 - 3) = .25 \times 52 = 13 \text{ units}$ 
  - A constructed rental unit available to the general public receives one rental bonus;
  - An age-restricted unit receives a 0.33 rental bonus, but no more than 50 percent of the rental obligation shall receive a bonus for age-restricted units; and
  - No rental bonus is granted in excess of the prior round rental obligation
  
- **Maximum Number of Prior Round Senior Units – 13 units**  
.25 (prior round obligation + rehabilitation share – prior cycle credits – rehabilitation credits – transferred RCAs)  
 $= .25 (55 + 10 - 3 - 10 - 0) = .25 \times 52 = 13 \text{ units}$

Though the Borough presently has only one credit towards its rehabilitation obligation, it intends to take credit in the third round for the remaining 9 dwellings as they are rehabilitated. The Borough will address its 55-unit prior round obligation with prior cycle credits; an existing group home; a 100% affordable municipally sponsored special needs facility; on-site affordable family rental units; and corresponding rental bonuses for completed units. The Borough's 13-unit rental obligation will be fulfilled with family rental units from the Woodbury Heights

Development project. Table 20, Credits and Bonuses Addressing the Prior Round Obligation, summarizes the Borough's prior round plan.

Table 20. Credits and Bonuses Addressing the Prior Round Obligation

Prior Round Obligation = 55 Units	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Prior Cycle Credits						
ARC Lincoln House Group Home (bedrooms)	x		x	3	0	3
Inclusionary Development						
Woodbury Heights Development	x		x	34	0	34
Municipally Sponsored						
Woodland Avenue Special Needs	x		x	10	0	10
Beech House Existing Group Home	x		x	4	4	8
			<b>Total</b>	<b>51</b>	<b>4</b>	<b>55</b>

**PRIOR CYCLE CREDITS**

The Lincoln House, a three bedroom group home facility located on Block 11, Lot 15, is eligible for prior cycle credits. Created in 1982, the group home is operated by ARC Gloucester, a non-profit organization that specializes in the treatment of individuals with developmental disabilities. The Lincoln House serves adults over the age of 18, all of whom have very low incomes. The residents of the group home are referred to ARC Gloucester through the NJ Department of Human Services, Division of Developmental Disabilities waiting list. ARC Gloucester received capital funding from the Division of Developmental Disabilities to create the group homes and continues to receive operational funding. Additional crediting information is included in Appendix C.

**EXISTING GROUP HOME**

Woodbury Heights is eligible for three credits from a licensed group home facility, Beech House that is operated by ARC of Gloucester County, a nonprofit organization that specializes in the treatment of individuals living with developmental disabilities. The home is located on Block 49, Lot 1. Created in 1999, the facility has four bedrooms. Residents of the group home are referred to ARC through the Division of Developmental Disabilities waiting list. ARC of Gloucester received capital funding from the Division of Developmental Disabilities to create the group homes and

continues to receive operational funding. Additional crediting information is included in Appendix D.

#### WOODLAND AVENUE SITE – 100% AFFORDABLE UNITS

The Woodland Avenue site is located at its intersection with Grandview Avenue. The lot is "L"-shaped and also has frontage on Church Street which the Borough shares with Deptford Township. Designated as Block 91, Lot 6, the site is wooded and vacant with approximately 0.79 acres in area. The site is free of environmental constraints. The site is surrounded by single-family detached residences and vacant land. It is currently zoned Residential (R). The Woodland Avenue site is located in the Borough's public water and sewer service area.

The lot was originally sold by the Borough to the Heights Development developer on July 12, 2006 for use as an affordable housing site<sup>14</sup>. The site has a deed restriction that requires the property to be used for affordable housing purposes. Woodbury Heights is in the process of buying the property back from the development entity. The Borough has an agreement of sale with W&C Associates, LLC to purchase the property for affordable housing purposes which will close by December 31, 2013. The Borough will thus control the site by the end of 2013. A copy of the executed agreement of sale is included as Appendix E.

The Borough has pending an agreement with an experienced affordable housing developer, Rukenstein & Associates, LLC to be executed once the property has been acquired by the municipality. A copy of the agreement is attached as Appendix F. The agreement proposes the construction of 10 new dwellings. Six of the units are expected to be developed as single family semi-detached (i.e., twins) and four of the units as duplex twins where each side of the structure houses two units. This form of housing will most closely emulate the single family detached houses in the neighborhood while providing the necessary density of development to meet the Borough's prior round affordable housing obligation. The density of development is 12.66 units per acre. A conceptual site plan of the development is included as Appendix G. A copy of the draft zoning ordinance permitting the development is included as Appendix H.

The agreement contemplates that the municipality will donate the land and that its value will meet the municipal share required by certain low income housing tax credit programs. In the ranking of projects for tax credit funding, which is the anticipated means of funding this project, points are awarded for a municipal

<sup>14</sup> A separate development entity, W & C Associates, LLC was formed to hold the property, controlled by the same persons.

contribution. It is anticipated that the municipal donation of the land will equal or exceed the 5% of total costs that award the most points to a low income housing tax credit project.

COAH's third round rules at *N.J.A.C. 5:97-6.4*, "Inclusionary Development", are addressed as follows:

**Site Suitability** – The site is suitable as defined in COAH's regulations at *N.J.A.C. 5:97-3.13* "Suitable Site". There are no encumbrances which preclude the development of affordable housing on the property and in fact mandate its construction. The municipality will reacquire the site. As was noted above, the site is located in an existing residential community, with single family detached residences nearly surrounding the site except for a cemetery located on its east side. The site has access to appropriate streets and can be accessed via Woodland Avenue and Church Street.

With regard to sanitary sewer service, as noted previously, the CCUA is a regional entity that operates a 71 mile system of interceptors that are connected with the Borough's local collection system for conveyance to a sewage treatment facility located in West Deptford. The County system provides primary and secondary treatment of the waste. There are no known constraints in the sanitary sewer system.

Woodbury Heights also has public water that is mostly provided by the Woodbury City Water Department, which also includes water from the Borough's well on Helen Avenue and a contract for supplemental water with New Jersey American Water Company. There are no known constraints in the public water supply that would prevent the development of the ten units.

The site is located in Planning Area 1 of the adopted State Development and Redevelopment Plan Policy Map ("State Plan"), which is a preferred location for affordable housing<sup>9</sup>. The site can be developed consistent with the Residential Site Improvement Standards (RSIS) and other state regulations such as those of the Department of Environmental Protection ("DEP"). The site is not affected by wetlands, Category 1 waterways, or 100-year flood hazard areas. The site encompasses approximately .79 acres of developable land. (See the aerial map of the Woodland Avenue site, below, for further detail.)

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<sup>9</sup> This edition of the State Plan for Development and Redevelopment, dated March 1, 2001, is expected to be replaced in early 2013. The new plan eliminates this tiered system of development intensity.



**Legend**

- New
- Slope in Percent**
  - 15-25%
  - 25%+
- NJDEP FLOOD PRONE**
  - 100 Year Flood - Documented
  - 100 Year Flood - Undocumented
  - Water

The site is not located within a historic district and is not on the State or National Register of Historic Places. Additionally, the site is not in an urban center or a workforce housing census tract.

*Administrative Entity* – As part of a developer's agreement, Rukenstein & Associates will propose an experienced housing administrator acceptable to the Borough to administer and affirmatively market the units at the Woodland Avenue site, income qualify applicants, place 30-year affordability controls on the units and provide long term administration of the units in accordance with COAH's rules at N.J.A.C. 5:97-1 et seq. and the UHAC per N.J.A.C. 5:80-26. In the alternative, the Borough will select an appropriate administrator provided that the developer pays the costs associated therewith in conjunction with its project.

*Low/Moderate Income Split* – At least half of the affordable units developed will be affordable to low income households per N.J.A.C. 5:97-3.3 and the UHAC.

*Affirmative Marketing* – The units will be affirmatively marketed in accordance with COAH's rules and the UHAC.

*Controls on Affordability* – The units will have 30-year affordability controls in accordance with COAH's rules and the UHAC.

*Bedroom Distribution* – The developer will be required to follow UHAC requirements regarding bedroom distribution for the Woodland Avenue Site.

*Accessible and Adaptable* – The affordable units on the Woodland Avenue site shall meet applicable accessible and adaptable requirements pursuant to state law and COAH's regulations at N.J.A.C. 5:97-3.14.

*Presumptive Density* – The density approved by the Borough meets the presumptive density established by COAH at N.J.A.C. 5:97-6.4(b)2i. The site density is more than 12.6 units to the acre.

#### WOODBURY HEIGHTS DEVELOPMENT, LLC – INCLUSIONARY DEVELOPMENT

The Borough anticipates that the Woodbury Heights Development, LLC site (Block 80, Lot 1) will be developed as an inclusionary housing project during the third round as a second round site. Located on Academy Avenue, the site consists of 17.56 acres, of which 15.39 acres are developable. Though on April 26, 2006, Woodbury Heights Development, LLC (formerly BPG Properties, Ltd.) sought and was granted a use

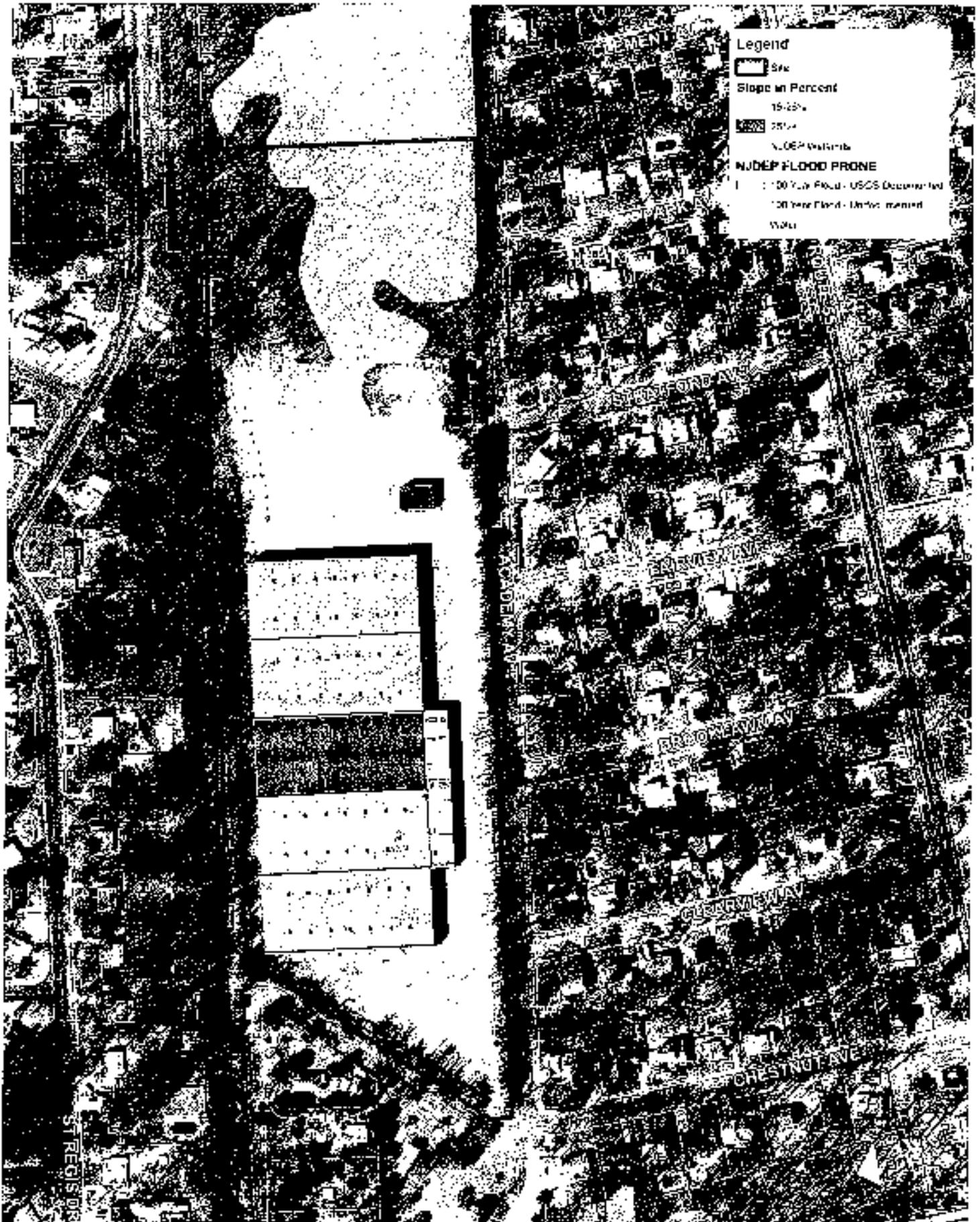
variance<sup>16</sup> to construct 274 age-restricted for-sale dwellings on the site, litigation ensued when the developer determined that this project was infeasible given changing economic conditions. (See aerial photograph, following page.) The suit alleged that the Borough was non-compliant with its affordable housing obligation. The subsequent settlement agreement, attached as Appendix I has become the controlling document under which the developer's affordable housing contribution will be made in the development of the subject site.

The agreement for settling *Woodbury Heights Development, LLC v. Borough of Woodbury Heights and the Planning Board of the Borough of Woodbury Heights*, envisions that the proposed development will consist of 234 multi-family units of which 34 will be affordable to low and moderate income households in accordance with UHAC standards. All of the 34 units will contribute toward the prior round. This constitutes a density of approximately 13.3 units per acre. Regardless of the tenure of the market rate dwellings, the affordable housing units will be family rental. This will more than fulfill the prior round obligation of 13 rental units. The settlement requires the following actions:

- 1) A fairness hearing on the merits of the settlement.
- 2) A compliance hearing intended to result in a judgment of repose of the prior round plan;
- 3) The application of the RM Residential Multifamily District regulations and standards to the property, adopted as Ordinance 6-2012 on April 18, 2012, attached as Appendix J;
- 4) Expedient review and processing of the development application by the Planning Board;
- 5) Cooperation in the extension of any necessary utilities to service the site;
- 6) A limit of 320 total bedrooms and no three-bedroom units in the market dwellings;
- 7) The application of UHAC requirements on the project, including 30-year income-based restrictions on the affordable dwellings;
- 8) Dispersal of the affordable dwellings throughout the project, unless the market rate units are a primarily different tenure;
- 9) The construction of a community center and other site amenities; and
- 10) A sidewalk from the development to the adjacent elementary school.

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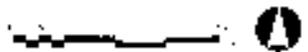
<sup>16</sup> - At the time of the use variance, the property was zoned as Limited Industrial



5073 Block 66 1/2

# Woodbury Heights Development Inclusionary Site

100000 1000000 10000000 100000000 1000000000



Close Call Hintz

The Hon. Anne McDonnell, P.J.G.E., after a public hearing on the settlement agreement held on June 27, 2012, found that it met the judicial standards articulated in *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super. 311 (App. Div. 1996) for protecting the interests of low and moderate income persons and approved the agreement. This document is supplied as material support for the compliance hearing noted in item 2, above. The Order is attached as Appendix K.

COAH's extant rules that apply to this project are addressed as follows:

*Site Suitability* – The site is suitable as defined in COAH's regulations at *N.J.A.C. 5:97-3.13* "Suitable Site". There are no encumbrances which preclude the development of affordable housing on the property. The site is adjacent to property owned by the Board of Education and existing residential neighborhoods. The site has access to Academy Avenue and Chestnut Avenue. There are no historic structures listed on the State or National Historic Registers on the site, and the property is not within an historic district listed on the State or National Historic Registers.

The site is presently served by public water and sewer service, though both services will need to be upgraded to service the increased demands of the residential development in comparison to the manufacturing facility that it will replace. Additionally, the site can be developed consistent with the Residential Site Improvement Standards and all other state regulations (such as the freshwater wetland rules of NJDEP). The unoccupied industrial building and associated site improvements will be demolished to build the residential development.

The site is located entirely in the Metropolitan Planning Area, PA 1. The site was previously developed with light industrial uses, and is not substantially affected by environmental constraints. Approximately 2.17 acres are undevelopable due to freshwater wetlands, transition buffers and riparian land; however, the site is not in a C-1 stream buffer area. The site does not have steep slopes. Additionally, the site is not in an urban center or a workforce housing census tract.

*Administrative Entity* – In accordance with the settlement agreement, the Borough will contract with an experienced affordable housing administrator to administer the affordable units and the developer will be responsible for paying the expenses the Borough incurs in this regard. The settlement agreement also has a failsafe clause that permits the developer to contract with an appropriate person should the Borough fail to act. The affordable units shall have 30-year affordability

controls and shall be affirmatively marketed. The experienced administrator shall income qualify applicants and shall provide long-term administration of the units in accordance with COAH's rules at N.J.A.C. 5:97-1 et seq. and the Uniform Housing Affordability Controls (UHAC) found in N.J.A.C. 5:80-26.

*Low/Moderate Income Split* – At least half of all the affordable units at the site shall be affordable to low income households per N.J.A.C. 5:97-3.3 and UHAC. In the case of an odd number of affordable units, the split will favor the low income unit.

*Bedroom Distribution* – The affordable units on the site shall meet the bedroom distribution requirement pursuant to UHAC requirements.

*Accessible and Adaptable* The affordable units at the Woodbury Heights Development site shall meet applicable accessible and adaptable requirements pursuant to state law and COAH's regulations at N.J.A.C. 5:97-3.14.

*Presumptive Density* – The density approved by the Borough meets the presumptive density established by COAH at N.J.A.C. 5:97-6.4(b)2i. The site density is more than 13.3 units to the acre.

## IMPLEMENTATION SCHEDULE

The Borough anticipates that the affordable housing units yet to be built will be developed in accordance with the following schedule:

Table 21. New Construction Implementation Schedule

Program	2013	2014	2015	2016	2017	2018
Woodbury Heights Dev.		22	12			
Rukenstein & Assoc.			4	6		
<b>Total</b>	<b>0</b>	<b>22</b>	<b>16</b>	<b>6</b>	<b>0</b>	<b>0</b>

## COST GENERATION

The Woodbury Heights Development, J.J.C litigation has been fully resolved in accordance with the settlement agreement and that demonstrates that the developer accepts the level of site and other construction costs to be feasible and not cost generative. The proposed developer's agreement with Rukenstein & Associates will,

in a similar fashion, address those costs to be borne by the developer and the municipality at a level consistent with other affordable housing projects. This plan is not intended to confer any rights over and above these agreements.

## **MONITORING**

In accordance with N.J.A.C. 5:96-11, Woodbury Heights Borough shall complete the annual monitoring reports on affordable housing units and programs.

## **BARRIER FREE AFFORDABLE HOUSING**

Woodbury Heights Borough will comply with COAH's regulations regarding barrier free affordable units. Specifically, and pursuant to N.J.A.C. 5:97-3.14(b), all affordable units which are townhouses or apartments shall have the following features:

- An adaptable toilet and bathing facility on the first floor;
- An adaptable kitchen on the first floor;
- An accessible route of travel; however, an interior accessible route of travel shall not be required between stories;
- An adaptable room that can be used as a bedroom, with a door or the casing for installation of a door, on the first floor; and
- An accessible entranceway or evidence that the municipality has collected the appropriate funds pursuant to N.J.A.C. 5:97-3.14(d).

With regard to this last requirement, a developer may deposit funds equal to the cost of adapting at least 10% of the affordable units' entrances to be accessible for all persons. These funds shall be maintained in an Affordable Housing Trust Fund for the sole purpose of adapting entrances of affordable units. As noted in Monitoring, the Borough will establish an Affordable Housing Trust Fund in the event a deposit is made. Using these funds, the Borough shall adapt the entrances upon request by a person with a disability occupying or intending to occupy an affordable unit.

### **AFFORDABLE HOUSING TRUST FUND**

The Borough proposes to adopt an affordable housing trust fund ordinance in accordance with COAH rule for the purposes of funding affordable housing activities. Over the course of the third round, its contents may consist of development fees, payments in lieu of construction, barrier free funds and interest. At the present time the fund is intended to address a future third round obligation. The Borough recognizes that it must adopt a Spending Plan for review and approval by COAH prior to expending any funds that may be collected. Due to the low level of development activity, any funds collected are expected to be modest in nature. The draft Affordable Housing Trust Fund Ordinance is attached as Appendix L.

### **FAIR SHARE ORDINANCES AND AFFIRMATIVE MARKETING**

The Borough of Woodbury Heights will adopt an Affordable Housing Ordinance in accordance with COAH's substantive rules, N.J.A.C. 5:97-9, and the UHAC at N.J.A.C. 5:80-26. The Borough's Fair Share Ordinance governs the establishment of affordable units in the Borough as well as regulating the occupancy of such units. The Fair Share Ordinance covers the phasing of affordable units, the low/moderate income split, bedroom distribution, occupancy standards, affordability controls, establishing rents and prices, affirmative marketing, income qualification, and similar operational rules of UHAC. A draft of the Affordable Housing Ordinance is attached as Appendix M.

To conduct affirmative marketing and monitoring of affordable units, the Borough will contract with an experienced administrative agent to administer future affordable housing units, as needed. The existing group homes will continue to be administered by ARC of Gloucester County.

The affirmative marketing plan is 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 the affordable units located in the Borough. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who reside in Housing Region 5, consisting of Camden, Burlington and Gloucester Counties.

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 5:80-26-11. 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 costs of implementing the affirmative marketing plan (i.e., the costs of advertising the affordable units, etc.) are the responsibilities of the developers of the affordable units. This requirement is included in the Borough's Fair Share Ordinance and shall be a condition of any municipal development approval.

W:\2013\Woodbury Heights\2013\2013-11-04\Amendments\2013 - Woodbury Heights Housing Element Housing Requirements.doc

# Appendix A

## Rehabilitation Unit Monitoring Form





# Appendix B

## Gloucester County Homeowner Rehabilitation Procedures Manual

# COUNTY OF GLOUCESTER



## **HOMEOWNER REHABILITATION** **PROCEDURES MANUAL**

**Department of Economic Development**

*Division of Community Development*

**Robert M. Damming**  
Freeholder Director

**Heather Simmons**  
Freeholder Liaison

**County of Gloucester**  
***Homeowner Rehabilitation Program***

*Provide to applicants or inquiries.*

**How Do I Apply?**

- Complete an application form, and be sure to fill in completely. Call the Program Manager or Intake Person at the County if you need help.
- Attach proof of your income:
  - If you are employed, attach two biweekly pay stubs or four weekly pay stubs from the previous 30 days.
  - If you are self-employed, attach three years' Federal and state tax returns.
  - If you receive Social Security benefits, attach your benefit adjustment letter from Social Security Administration for this year.  
If you receive a pension(s), attach 1099 Form from pension provider(s) for last year.
  - If you receive alimony or child support, attach verification of your receipt of child support or alimony in the form of a separation agreement or court order.
- Attach copies of latest bank statements.
- Fill out the permission to verify deposits and employment documentation
- Send the whole package to the Gloucester County Homeowner Rehabilitation Program.

We will call you within five (5) days to review your application.

## SECTION 1 - INTRODUCTION

Throughout Gloucester County, the preservation of housing stock has become one of the primary objectives of citizens, elected officials and staff professionals who believe that the quality of housing is a primary source of neighborhood stability. The decline of our housing stock can be attributed to three factors: strict loan underwriting standards leading to deferred maintenance, the minimum extra income of recent purchasers, and the increasing age of the housing stock.

The cost of new home construction is prohibitive to most low- and middle-income families. This Program helps to preserve the existing housing stock. Our effort will insure more adequate housing to more low- and moderate-income families because it will help to preserve and stabilize existing communities.

The objectives of the Program are:

- To provide safe and efficient housing within the financial reach of our area residents;
- To stimulate broad interest in neighborhood preservation; and
- To partner with other programs for maximum impact.

The primary mission of the Gloucester County Homeowner Rehabilitation Program is to provide decent, safe and sanitary housing for the citizens of the County whose primary residence are in need of repair but lack the resources to make these repairs. With competing requests for the available federal assistance, it continues to be difficult to meet the needs of all citizens requiring help. As a result, the County has established a subsidy limit at \$25,000.00. This amount may be amended in the future.

When addressing rehabilitation, except in emergency circumstances, the entire home being addressed needs to meet the appropriate codes and standards. Should the inspection determine that to meet these standards the subsidy limit is exceeded; the homeowner may contribute the additional funds from their own resources.

As noted above, except for special needs circumstances, in the event the rehabilitation exceeds this amount the County may deny assistance to that homeowner unless they can obtain the balance of funds from another source (i.e., loans or cash). Each instance will be evaluated on a case-by-case basis.

## **SECTION 2 - MARKETING AND OUTREACH**

The County of Gloucester will continually apply and implement a program marketing plan consistent with the following objectives:

- Adequately publicize the program to interested and potentially qualified clients
- Affirmatively market the program to minorities, persons with disabilities or other protected groups
- Meet all State of New Jersey Fair Housing Requirements

To insure that those citizens for whom the rehabilitation program is designed are aware of the assistance that is available, the county shall provide a brochure that summarizes the program and the qualification criteria. In addition the County will consider:

- Periodic press releases to show the progress of the program
- Involving social service agencies that may be able to refer applicants; and
- Holding periodic meetings with interested groups

## **SECTION 3 - CDBG/HOME ELIGIBILITY**

### **Who Can Participate in the Program?**

Homeowners who meet all of the following criteria can borrow money:

- The property to be improved is owner-occupied;
- The property to be improved by a single-family dwelling
- The applicant household's total gross income does not exceed 80% of the area median income;
- The owner occupies the property as their principal residence; and
- The owner has resided in the residence for at least one year.

Applicants who do not meet these requirements are not eligible for assistance through this program.

## **SECTION 4 - ELIGIBLE PROPERTIES**

An applicant's property must meet three conditions to be eligible for the rehabilitation program: It must be:

- A single family residence;
- Located in Gloucester County; and
- Owned by the applicant

## **SECTION 5 - MOBILE HOME POLICY**

The County has established a subsidy limit at a maximum of \$5,000.00 for conditions considered an Urgent Need where **there is no heat\*** and/or **running water**. No lien will be placed on the mobile home.

\* Only during the winter season as defined by regulations governing when heat must be made available to tenants and when utility companies cannot issue shut off notices.

## **SECTION 6 - APPLICATION**

Gloucester County requires each applicant to complete an application form for review and processing. When the potential applicant contacts the office, staff assigned to intake will briefly describe the program and assess the effectiveness of marketing efforts. That application includes information necessary to determine eligibility of the applicant. This includes information about who will occupy the dwelling and the income and assets of the household members.

Information necessary to determine eligibility includes:

- Household income and assets
- Current tax information
- Copy of deed
- Household demographics
- Property information, including proof of insurance

To avoid spending unnecessary time and resources, as a first step, the county will pre-screen potential applicants and make a preliminary determination of eligibility. If the applicant appears eligible, the staff will complete the interview process. The applicant will be provided a summary sheet of "items to bring to the interview". If an applicant is clearly ineligible, they will be informed and may be referred to other resources in the community. The second step will involve the inspection of the dwelling to determine the level of rehabilitation and to incorporate all appropriate lead-based paint hazard reduction elements.

For equal opportunity reporting purposes, the county must document the extent to which each racial and ethnic group, single headed households (by gender of household head), and persons with disabilities have applied for, participated in, or benefited from, any program funded in whole or in part by CDBG or HOME funds.

## **SECTION 7 - PERFORMING APPLICANT INTERVIEWS**

The intake/rehabilitation staff will meet with and interview the applicant. During this interview, they will:

- Review the "Homeowners Expectations" form with the applicant
- Assure the application is completed in its entirety
- Have the applicant complete income verification forms and sign appropriate releases

It is important that a household provide the necessary documentation to the County for evaluation. This step is paramount before any further actions can be taken. The county requests full cooperation of the participants and will provide a checklist with the application that identifies the elements that need to be provided. Delays in approval of the application will result if information provided is incomplete. (Copy of checklist in appendix.) In extreme hardship circumstances it may be necessary for County staff members to meet with an applicant in their home to complete the applicant interview. This will be determined on a case-by-case basis.

Should a household not provide this information in a timely manner; the County will provide a written notice allowing up to 10 business days for the homeowner to complete this task. An applicant's name is not placed on the processing list (waiting list) until the application is complete and information verified concerning their eligibility. If not fully completed at the end of the 10 day period, the household will be advised that processing has stopped and they may re-apply for consideration at a later date.

## **SECTION 8 - SET UP AND PROJECT CASE FILES**

The County Rehabilitation Staff will place new applicants on the processing list and will establish a project file where they will keep all documentation pertaining to the property and the borrower. The file should have a File Checklist/Tracking Sheet affixed to the inside left hand side of the file. Documentation must be maintained as indicated on the checklist.

## **SECTION 9 - AFTER REHABILITATION VALUE**

The HOME Program requires that the after rehabilitation is completed; the value of the property must not exceed the 203(b) mortgage limit (95% of the median purchase price for the area). The after-rehabilitation value of the property must be established prior to closing by an appraisal or estimate of value by qualified staff.

This appraisal will be in writing and maintained in the case file.

## **SECTION 10 - DETERMINING INCOME ELIGIBILITY**

To insure the program is being used by households who meet the HOME Program income limit as well as the LMI National Objective for housing activity (depending how the unit is funded, HOME and/or CDBG funds may be used) income eligibility must be determined using the 24 CFR Part 5 definition.

Income and asset information must be verified and included in the calculation of eligibility. Regular income as well as income from assets must be projected over the 12 months following the application. Verification forms may not be more than 6 months old at the time assistance is provided, (i.e., Contract is signed with rehabilitation contractor). Therefore, there may be times when verification needs to be updated to remain current.

Third party verification of income and assets is preferred, but review of current documents can substantiate the record if enough information is being provided.

Should an adult household member be unemployed or have zero income, a "Zero Income" certification needs to be completed and signed and notarized by the applicant.

All income eligibility will be completed using the HOME Program Guide on *Determining Income and Allowances in the HOME Program*.

The next few pages describe the Part 5 definition of income and the income certification to be used for all households. Copies of the appropriate supporting documentation must be attached.

## Annual Income Inclusions

- 1) The full amount before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- 2) Net income from the operation of a business or profession. Expenditures for business expansion or amortization for capital indebtedness cannot be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- 3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
- 4) The full amount of periodic payments received for Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount, except as provided in number (13) under Income Exclusions (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action)
- 5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in number 3 of Income Exclusions).
- 6) Welfare Assistance received by the family. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
  - the amount of the allowance or grant exclusion of the amount specifically designated for shelter or utilities; plus
  - The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one application of the percentage.
- 7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
- 8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions)

## Annual Income Exclusions

- 1) Income from employment of children (including foster children) under the age of 18 years.
- 2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
- 3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
- 4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expense for any family member.
- 5) Income of a live-in aide (as defined in 24 CFR 5.403).
- 6) The full amount of student financial assistance paid directly to the student or to the educational institution.
- 7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire. (e.g., in the past, special pay included Operation Desert Storm).
- 8)
  - (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3).
  - (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
  - (c) Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing transportation, childcare, etc.) and that are made solely to allow participation in a specific program.
  - (d) Amounts received under a resident service stipend. A resident stipend is a modest amount, (not to exceed \$200 per month), received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of the life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time.
- (e) Incremental earnings and benefits resulting of any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.
- 9) Temporary, nonrecurring or sporadic income (including gifts).
- 10) Reparation payments paid by a foreign government pursuant to claims under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era).
- 11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
- 12) Adoption assistance payments in excess of \$480 per adopted child.
- 13) Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
- 14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- 15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

16) Amounts specifically excluded by any other federal statute from consideration as income purposes of determining eligibility benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5 608(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:

- a) The value of the allotment made under the Food Stamp act of 1977 (7 U.S.C. 2017 [b]);
- b) Payments received under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through Americorps, Volunteer in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternative senior companions);
- c) Payments received under the Alaskan Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e) States that held in trust for certain Indian tribes.
- e) Payment or allowances made under The Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8524(f)),
- f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)), (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs and career intern programs, AmeriCorps).
- g) Payments derived from the

- disposition of funds to the Grand River Band of Ottawa Indians (Pub L-94-540, 90 Stat. 2503-04);
- h) The first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408).
- i) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j) Payments received under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program);
- k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721).
- m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).
- n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 including advanced earned income credit payments (26 U.S.C. 32(j));
- o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- p) Allowances, earnings, and payments to Americorps participants under the national and Community Service Act of 1990 (42 U.S.C. 12637(d));

- q) Any allowances paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam Veteran;
- r) Any amount of crime victim compensation, (under the Victims of Crime Act), received through crime victim assistance, (or payment or reimbursement of the cost of such assistance), as determined by the Victims of Crime Act because of the commission of a crime against the applicant under (the Victims of Crime Act (42 U.S.C. 10602), and
- s) Allowances, earnings and payments to individuals participating in programs under Workforce Investment Act of 1998 (29 U.S.C. 2931).



## **Section 11 VERIFYING OWNERSHIP AND PROPERTY TAXES**

To insure that the applicant is the current owner of the property to be rehabilitated and that the property is the principal residence of the applicant, it is necessary to document that the applicant has title to the unit being rehabilitated.

The applicant must provide proof of ownership in the form of a copy of the current deed. It is advisable for the County to do a last-owner search at the Recorder of Deeds Office to verify that the applicant is the current owner of the property.

To insure that the property is not lost at tax sale during rehabilitation, the owner must provide copies of the latest property tax receipts. An alternative is for the county to perform a certified tax search at the court house.

## **SECTION 12 - CONSULT WITH SHPO AND DETERMINE FLOOD PLAIN REQUIREMENTS**

To insure that historic properties are protected in accordance with the National Historic Preservation Act of 1966, this step is required if determined during the Section 106 review. The County may have the County's Engineering Consultant take the necessary photographs of the property and streetscape during the initial inspection. The County shall complete a site-specific review form for each project. If the scope of the work does not include items that are on the "No Effect" checklist, contact with SHPO may not be required. If work items are listed on the "No Effect" list, the photos of the property, location map, and known historic district information are to be submitted to the SHPO as early in the rehabilitation process as possible to give that office an opportunity to perform their review and respond prior to finalizing the work specifications.

The County must determine whether the property proposed for rehabilitation is located within any identified flood plain. If the property is located in a flood plain, the County must then require the owner to provide evidence of flood insurance.

## **SECTION 13- PROCESSING (WAITING) LIST**

The County will maintain a processing list of those applicants requesting homeowner rehabilitation who have completed their application and have provided supporting documentation as previously indicated. A priority will be placed on an applicant who documents an "Emergency Repair". At the present time, the County defines an "Emergency repair" as circumstances which render a unit as unoccupiable.

Households will be placed on the list and will be selected in the order their applications are completed. Note, should a household not complete the necessary preliminary documentation to be placed on the list, they will remain in a pending file and allowed to complete their application (or re-apply) at a later date. Updated information may be required to re-apply to the program.

## **SECTION 14 - ELIGIBLE COSTS**

CDBG and HOME funds can be used to cover rehabilitation costs associated with general property improvements that are considered standard for the area. These may include the correction of the code violations, incipient code violations and general property improvements. HOME funds cannot be used for emergency repairs (unless it brings the entire unit up to the appropriate codes and standards) or for luxury improvements.

The Program's basic goal is to create homes that are in compliance with Local Housing Codes governing the condition and maintenance of dwellings. Therefore, the following types of repairs can be made:

- **HEALTH AND SAFETY IMPROVEMENTS.** Improvements to address the health and safety of the occupants are eligible.
- **REMOVAL OF BLIGHT.** Improvements that assist in preventing neighborhood blight and exterior repairs that increase the life of the structure or improve the physical appearance of the structure are eligible.
- **LEAD HAZARD REDUCTION.** In accordance with the HUD Lead-Based Paint Regulation (24 CFR Part 35), rehabilitation work on housing built before 1978 that is financially assisted by the Federal government is subject to requirements that will control lead-based paint hazards. At the very least, we will repair any painted surface that is disturbed during our work. We may stabilize deteriorated paint, which includes the correction of moisture leaks or other obvious causes of paint deterioration. We will have clearance examination conducted following most work activities to ensure that the work has been completed; that dust, paint chips and other debris have been satisfactorily cleaned up; and that dust lead hazards are not left behind.

As necessary, we will conduct a risk assessment to identify lead-based paint hazards, perform interim control measures to eliminate any hazards that are identified or, in lieu of a risk assessment, perform standard treatments throughout a unit. The type and amount of Federal assistance

and rehabilitation hard costs for the unit will determine the level of lead hazard reduction we will complete.

- **REQUIRED** repairs include, but are not limited to, the following:
  - Replacement of private water and sewage systems;
  - Repair or replacement of inefficient or dangerous heating systems (AC units (exclusive of window units) will be repaired or replaced only with verification by a medical specialist specific to a medical condition requiring maintenance of such unit) ;
  - Repair or upgrading of electrical systems and fixtures;
  - Replacement of defective plumbing, including defective sinks, tubs and toilet facilities;
  - Reduction of all lead paint hazards in the interior, exterior and soil, as required by the HUD Lead-Based Paint Regulation;
  - Elimination of all serious insect and rodent infestations;
  - Creation of safe exit ways;
  - Attic insulation to R-32;
  - Hardwired smoke detectors; and
  - Removal of a blighted exterior condition.

Eligible costs include project hard costs, project soft costs, administrative costs and project delivery costs,

#### **A. Project “Hard” Costs**

Project hard costs are the actual costs needed to rehabilitate the property.

Project hard costs include:

- Costs to meet the applicable building code and standard
- Essential improvements
- Energy-related improvements
- Lead-Based paint hazards
- Improvements for disabled persons

#### **B. Project “Soft” Costs**

Project Soft Costs must be reasonable, necessary and attributable to the specific project. Project soft costs include:

- Finance related costs
- Construction related costs
- Project audit costs
- Affirmative marketing and fair housing

#### **C. Administrative Costs**

Administrative costs can cover staff and overhead costs incurred administering the program.

#### **D. Project Delivery Costs**

Staff costs related to the development or financing may be considered project delivery costs and eligible under the HOME/CDBG Programs. These costs must be reasonable and necessary and unlike administrative costs cannot be for services performed by third party.

### **SECTION 15 - INELIGIBLE COSTS**

#### **INELIGIBLE COSTS:**

- Creation of secondary housing attached to a primary unit
- Installation of luxury items
- Costs of equipment, furnishings or other personal property not an integral structural fixture such as window air conditioners, washers or dryers (however stoves or refrigerators)
- Rehabilitation of property that includes income producing rooms or units
- **INELIGIBLE** items include, but are not limited to, the following:
  - Reimbursement for an Owner's Personal Labor;
  - Room additions and extensions (unless family size demands);
  - Appliances (except built-in stove, cook-top, and garbage disposal when the existing is deteriorated, hazardous and beyond repair);
  - Purchase, installation, or repair of furnishings;
  - Demolition that does not improve the existing structure;
  - Free standing concrete block walls;
  - Interior wood paneling;
  - Bookcases;
  - Wrought iron security bars;
  - Barbecue pits/outdoor fireplaces;
  - Bath houses, swimming pools, saunas, and hot tubs;
  - Burglar alarms;
  - Dumbwaiters;
  - Flower boxes, greenhouses, and greenhouse windows;
  - Kennels;
  - Photo murals;
  - Steam cleaning of exterior;
  - TV antennas;
  - Tennis courts;
  - Valances, cornice boards, and drapes; and

- Materials, fixtures, or equipment of a type or quality exceeding that customarily used on properties of the same general type as the property to be rehabilitated.

## **SECTION 16 - INSPECTION OF THE PROPERTY**

To determine the extent and preliminary estimate of cost of repairs needed to make the property conform to the rehabilitation standards an inspection is performed by the County's engineering representative. Using the adopted rehabilitation standards, the inspector must inspect the property to determine the extent to which repairs are needed to comply with the standards and develop a preliminary estimate of costs of the repairs.

The Contractor will use the New Jersey State housing code for inspecting existing housing and identifying deficiencies that must be addressed to meet the requirements of HOME and CDBG as applicable. The rehabilitation standards will specify the type and quality of repairs, equipment, installation, and finish materials that will be provided through the program. This includes any special guidance required for contractors that may not be included in the housing code.

This cost will be supplemented by the appropriate lead evaluation and lead work necessary to meet the Part 35 Regulations for lead Hazard Reduction.

The owner of the property is encouraged to participate in this inspection and to accompany the inspector to assure all latent items are detected.

Items to be addressed will bring the unit into compliance with the applicable standards. No "luxury items" will be eligible under the loan, nor will detached structures or attached garages with roofing exceptions.

The engineer will determine an estimated value of rehabilitation work needed. As part of the inspection process, the engineer will document necessary repairs by providing at least three "before" photos of the inspected property. If the sum of the estimated work is within the program guidelines, the lead-based paint hazard testing will be authorized.

To comply with the regulations controlling lead hazards in housing receiving federal assistance, the County will ensure the regulations implementing sections 1012 and 1013 of the Residential Lead-Based Hazard reduction Act of 1992, which is Title X of the housing and Community Development Act of 1992 applies to all homes constructed prior to 1978 are fully adhered to.

The following requirements apply to federally funded rehabilitation:

A. Rehabilitation where cost is between \$1,000 and \$5,000:

- Provision of the "Protect Your Family From Lead in your Home" Pamphlet
- Paint testing (where disturbed)
- Repair surfaces disturbed during rehabilitation
- Use Safe Work Practices
- Clearance of the Work Site
- Appropriate notices

B. Rehabilitation where cost is between \$5,000 and \$25,000:

- Provision of the "Protect Your Family From Lead in your Home" Pamphlet
- Paint testing and Risk Assessment
- Interim Controls
- Use Safe Work Practices
- Clearance of the Unit
- Appropriate notices

C. Rehabilitation where costs exceed \$25,000:

- Provision of the "Protect Your Family From Lead in your Home" Pamphlet
- Paint testing and Risk Assessment
- Abatement (Interim Controls exterior)
- Use Safe Work Practices
- Clearance of the Unit
- Appropriate notices

The County Lead Contractor will inspect the unit to perform a "Risk Assessment" and lead-based paint testing with an XRF machine. Those elements which require remediation will be incorporated into the Work write-up/cost estimate by the County Engineering Consultant. The owner will be provided a copy of the results of this test and the required pamphlet on lead-based paint hazards.

In terms of occupant protection and temporary relocation during Lead Hazard Reduction, if the job requires lead hazard reduction, appropriate actions typically will be taken to protect occupants from lead-based paint hazards if the unit will not be vacant during the rehabilitation project. In those cases, occupants may not enter the worksite during the lead hazard reduction activities. Re-entry is permitted only after such activities are completed and the unit has passed a clearance examination.

Occupants of the unit do not have to be relocated if:

- rehabilitation work will **not** disturb lead-based paint or create lead-contaminated dust;
- hazard reduction activities can be completed within one 8-hour daytime period and **the** worksite is contained to prevent safety, health, or environmental hazards;
- exterior-only work is being performed where the windows, doors, ventilation intakes, and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward, allowing for a lead-free entry to be maintained;
- hazard reduction activities will be completed within 5 calendar days and the work area is sealed, the area within 10 feet of the containment area is cleaned each day, occupants have safe access to sleeping areas, bathroom and kitchen facilities; and occupants are not permitted into the worksites until after clearance has been achieved.

HUD has advised that relocation of elderly occupants is not typically required, so long as complete disclosure of the nature of the work is provided and informed consent of the elderly occupant(s) is obtained before commencement of the work.

If occupied units are to undergo more extensive lead hazard abatement activities, the occupant(s) must be temporarily relocated. Most often, furniture and occupant belongings can be covered and sealed with protective plastic sheeting, although storage of major furniture and removal of all small furnishings during the hazardous materials reduction work may sometimes be necessary. Owners are responsible for carefully packing all breakables; removing all clothing from closets, etc. During the abatement work, only workers trained in lead hazard reduction may enter the work site. This means that neither owners nor occupants are permitted to return to the work site during the day or at night. If an owner requires special needs to re-enter the site, this will be arranged by the Gloucester County staff.

Only when the unit has been cleaned to the federally- mandated standards and passed a clearance examination is it safe and permissible to return. The County's staff will notify the homeowner with an Authorization for Re-Occupancy. Sometimes the jobs are completed in stages, with the lead hazard reduction work occurring first and the normal renovation work following. In these cases interim dust lead clearance must be obtained prior to re-occupancy by the owners or occupants and other non-lead related rehabilitation workers. Final lead dust clearance must be repeated following the rehabilitation work to verify that the

residence is free of lead hazards. The County's program staff can provide more information.

## **SECTION 17 - WORK SPECIFICATIONS**

**Work Write-Up.** While income and property verifications are being made, an engineer representing the County and a lead hazard risk assessor will inspect the property and prepare a write-up of the work to be done. This write-up will describe and list any code violations, energy requirements, and exterior blight that will be fixed. The County will approve the final list of work before asking contractors to bid on the job.

After conducting the property inspection, the inspector develops a work write-up/cost estimate for detailing the nature and cost of the required rehabilitation. These work write-ups serve as instructions to potential contractors about work to be done and therefore should be clear, specific and complete. Vague or poorly written write-ups can cause a great deal of confusion and misunderstandings between homeowners and contractors.

In preparing the work write-up, the inspector should compare the condition of the house to the applicable property standards and codes.

County staff will review the estimates and write-up with the owners so the owners understand all repairs and costs. This explanation to the owner is to describe that the program is intended to solve housing code violations first and then incipient code violations and general property improvements.

Work specifications need to be reviewed by the County to assure they contain all items listed by the engineer and lead-based paint examiner. They should be clearly written, well organized and precisely define the work to be undertaken to correct deficiencies and bring the property up to the programs standards. Photographs provided by the engineer following the work inspection will further document the necessary repairs.

1. Upon receiving the final inspection report that includes the lead requirements, a copy of the report will be sent to the homeowner along with an approval form.
2. The Homeowner will return the approval form at which time the Program Manager and Homeowner will determine a time frame on receiving quotes.

3. Upon the final date selected for receiving quotes, the bids will be presented to the Homeowner. The County will verify the bid amount of the lowest responsible bidder. This amount must be within 15% of the County engineer/consultants estimate. The homeowner will be informed if the cost is determined to be "reasonable". The Homeowner shall sign off on the selection of the lowest bidder.
  - a. The County encourages the acceptance of the lowest bidder, but should the timeline included in the bid package indicate a delay in the start of the rehabilitation, it may authorize the next highest responsible bid.
4. If the Homeowner decides on a contractor with a higher quote, they will be responsible for the difference in the bid costs with the money being held in escrow.
5. Once the Homeowner signs and returns the contractor approval form, all contract documents will be prepared.
6. The Program Manager will schedule the homeowner to review and sign the contract documents. The Homeowner will be invited to the Program Manager's office for execution of the documents. If the Homeowner cannot come to the office they may make a request for a reasonable accommodation to have the document signing at their residence.
7. The Program Manager will inform the contractor of the selection and schedule a time for signing documents and to receive the Proceed to Work Order.

## **SECTION 18 - SELECTION OF CONTRACTOR –SENDING BIDS TO CONTRACTOR**

Prior to contractor selection by the Homeowner, the County will assist the homeowner by providing the work write-up to a minimum of three contractors from a list of approved contractors who have met the County's requirements. Contractors may not be identified on HUD's list of debarred or suspended contractors. The County will be sensitive to the current work load already assigned to contractors and past work performance in establishing who will be requested to bid.

The County will maintain a list of pre-qualified contractors to provide services and will allow homeowners to bring in contractors to qualify. The County will suspend and debar contractors with repeated poor performance. Poor performance may include repeated problems with workmanship and/or failure to meet timelines established in the contractors bid response. If there are less than 5 contractors on this list at any time, the County will solicit RFQ for qualified firms.

Contractors involving lead-based paint hazard control work shall only be given to contractors who have "lead safe" trained work crews.

The intended method to be used is:

1. The County will fax **all** contractors on the approved Contractor List. This transmittal will identify the location of the house a thorough and specific bid documents. It is imperative that the bid process is managed in a documented and transparent fashion. All bid requests submitted to an approved contractor must be properly documented via a fax confirmation sheet. This documentation is to be kept in the homeowner's file. The County Purchasing Department will be copied on the cover letter.

Each request for bid will contain a deadline for submission at which time no other bids will be accepted. Bids will be received by the County Purchasing Department who will date stamp the bid submittals and record each on the Bid Summary Analysis Form. The completed form, along with a copy of each submitted bid will be forwarded via interoffice mail to the Division Head for review. Contractors will be required to submit proposals within ten working days of receiving the work write-up.

A contractor's proposal must include the following documents:

- Work-write ups describing the work to be covered in the contractors proposal
- Licensing, insurance and any other items required by the County
- Proposed timeline for start-up and completion

A minimum of two quotes will be needed to submit to the owner for selection. If less than two quotes are received, a second attempt will be required. If all bids received are 15% higher than the engineering contractor's work estimate, a second bidding cycle will also be required.

## **SECTION 19 - CONTRACTOR STANDARDS**

The County must assure that all contractors meet the following standards to be considered qualified:

- Adequate financial resources or the ability to obtain such resources as required during the performance of the contract
- Able to comply with the required or proposed performance schedule, taking into consideration all existing commitment
- Satisfactory record of past performances

- Not debarred by HUD
- Possesses the necessary licenses and permits to perform the construction
- Maintains adequate level of insurance.

## **SECTION 20 - BID REVIEW AND DETERMINATION OF APPROVAL**

The County Purchasing Department will review all quotes upon the deadline requested. Quotes can be received by fax only at the Purchasing Department, County Courthouse.

The quote results will then be listed and sent to the Homeowner for review. At this time a contractor will be selected by the Homeowner.

It is important that the owner is comfortable with the contractor and with the proposed improvements, and also that proposals are fair and competitive. The owner should be informed clearly and concisely that, based on program guidelines, contractor selection is at their discretion.

- Review of proposal by owner and program staff.
  - Owner should review the proposals and identify the first choice of contractor; and
  - The proposal must then be reviewed and approved by program staff.
- Proposals must be reviewed to ensure that:
  - The proposed price is within an acceptable range of an initial cost estimate;
  - All required work items have been identified in the proposal;
  - The contractors have the required licenses, bonding, and insurance;
  - The proposed approach to the construction complies with the applicable rehabilitation standards, specifications, and building codes;
  - The contractor is capable of starting and completing the job in the specified time frame; and
  - References from previous clients are submitted and verified.
- Cost Evaluation
  - A cost price analysis should be prepared for every procurement action, including contract modifications. The extent of the analysis varies with the type of procurement, but independent estimates should be made before bids or proposals are received. A price analysis is used to determine the reasonableness of the proposed contract price, except when a cost analysis is required. A cost analysis must be performed for the following situations:

- Under professional, consulting, or architectural engineering services contracts, when the offeror is required to submit the elements of his or her cost;
  - When adequate price competition is lacking; and
  - For sole source procurement, including contract modifications or change orders.
- If the contractor's price estimates are too high, the program administrator and owner should discuss:
    - A reduction in the scope of work which will help to lower costs while still meeting the applicable property standards;
    - revising the in-house cost estimate based on the new and/or additional information that may be provided by the contractor;
    - A change in the materials or techniques to be used to accomplish a task which could reduce costs without compromising quality or the required standards; and
    - Obtaining proposals from other contractors

Once receiving the Homeowner's selection, all rehabilitation documents will be prepared. This will include the Construction Agreement, Mortgage, Promissory Note and the Proceed to Work Order.

The Program Manager will then schedule a meeting with the Homeowner to sign all necessary documentation. The intention is for the Homeowner to attend a meeting in the County's Offices, but reasonable accommodations can be made when requested to perform this task at the residence.

The Contractor will then be informed that a Proceed to Work Order and Contract have been prepared and signed by the Homeowner. The Contractor will be scheduled to sign the Contract, the Waiver of Liens and receive a copy of the Proceed to Work Order.

During this pre-construction period, all parties will review their expectations, the work to be completed, and the procedures to be used. At this point, the Notification of Lead-Based Paint must be provided to the homeowner as required.

## **SECTION 21 - GRANT CLOSING**

At the time the homeowner has approved the rehabilitation contractor and the County concurs with that determination, documents will be prepared by the County.

Using the experience of the staff, milestones will be established to determine completion in a timely manner and establish when inspection for payout will occur.

The present restriction on affordability is as follows:

5 year affordability period requiring full payment of the County funds should the household sell, transfer, refinance, obtain a reverse mortgage or utilize any vehicle to obtain cash against the equity of the property within the first 5 years. There is an extended period of affordability where 1/5 of the affordability subsidy will be forgiven for the next 4 year period. The County will require 1/5 repayment should the owner transfer, sell, refinance obtain a reverse mortgage or utilize any vehicle to obtain cash against the equity of the property.

For extenuating circumstances the County may waive this restriction as determined by the Director of Economic Development. .

## **SECTION 22 - NOTICE OF RIGHT TO RESCIND**

Within three days of execution of the contract, the owner has the right to rescind the contract.

## **SECTION 23 - ISSUE PROCEED ORDER**

The proceed order will be signed by the owner after the 3-day recession period. The County will notify the contractor that they may begin work and ensure all parties understand what is to be done and when. The proceed order will include a time frame within which the owner expects the contractor to complete the work.

## **SECTION 24 - CHANGE ORDER**

In many housing rehabilitation situations, it is not uncommon for a change in the scope of the work to occur. A change order is a legal mechanism for amending the contract between the owner and the contractor. A change order can not be issued for more than 20% of the original agreed scope of work price without prior approval of the Director, Department of Economic Development and the approval of appropriate county administrative authorities. A change order must be approved and authorized by the County and signed and dated by the owner and contractor. A copy must be maintained in the County's files.

The purpose of the change order is to make changes to the construction contract. Sometimes this occurs when the contract completion date must be extended because of adverse weather, etc. At other times the scope of work must be amended to add or delete work items that were unforeseen in the beginning of the process.

## **SECTION 25 - INSPECTION PAYMENTS**

The County engineering consultant will inspect the rehabilitation work at various stages of the job so payment for completed work can be expedited. After a portion of the work has been completed and an invoice for the work done is received and approved by the homeowner, the County's engineering representative will schedule an inspection to review work performed. If satisfactory, partial payment will be issued in the name of the contractor. This is to assure the contractor is provided with sufficient cash flow to permit payment to employees, subcontractors and for labor and materials in a timely manner. The work must be completed in accordance with the specifications and other contract documents.

## **SECTION 26 - FINAL INSPECTION**

Final payment will not be made until the County's Engineering consultant has performed a final inspection and the inspector and owner are satisfied that all the work is completed in accordance with the specifications and other contract documents.

After completion of all repairs in the work write-up and change orders a final inspection will be performed by the engineering consultant. This inspection should be made together with the homeowner and the contractor. In most cases the final inspection does not turn out to be final. If additional work needs to be accomplished, a written punch list must be developed. This list is to be provided in writing to the contractor with instructions that upon completion of all items and inspection, final payment will be made. Immediately after all punch list items are completed, a Certificate of Final Inspection is prepared and signed by the homeowner and the County. This form indicates that all work is complete in accordance with the contract and change orders and will initiate the close-out procedures. At this time the engineering contractor will take at least three (3) photographs of the completed repairs and submit to the County for the homeowner's file.

Upon completion of the Certificate of Final Inspection, the contractor must submit;

- All invoices for materials
- All invoices for subcontractors
- Certificates and release of liens
- Written warranties as necessary
- Certification of work completed
- Before and after photographs of the rehabilitation (no less than 6 photos)

## **SECTION 27 - WORK COMPLETION WARRANTY**

The county has established a warranty duration period within which it would be reasonable to expect defects in materials or workmanship that become apparent to the owner and require the contractor make restitution of the defect. This time period is one year. All manufacturers' warranties should be supplied to the homeowner prior to final payment.

## **SECTION 28 - CLOSE OUT**

At this time, the owner is provided the items related to warranties and certificates noted above. Upon receipt of these forms, the county will prepare a check for the outstanding amount due the contractor in the name of the owner and contractor. The County will secure the owners endorsement and deliver to the contractor. The delivery of the check and the contractor's acknowledgement of receipt of the final payment will close the rehabilitation case.

## **SECTION 29 - COMPLAINT RESOLUTION**

The County has established an equitable process for resolution of any complaints or disputes that may arise during the rehabilitation process. Should the dispute be of a nature that the County staff can act as an intermediary, it will negotiate with both parties to come to a resolution.

A preliminary resolution may be established by the Program Manager intervening with all entities face to face as soon as a problem is identified.

If the parties cannot come to an agreement, the complainant may address the concerns to the Community Development Division Head. Within 15 days of receiving such complaint, the Division Head will schedule a meeting with the parties. If the dispute is still unable to be resolved, the complaint will be mediated by the Director, Department of Economic Development.

The decision of the Department Director will be final. Should the parties wish to pursue the matter further, they would have to consult legal counsel.

A copy of the Arbitration Agreement is in the appendix.

### **SECTION 30- REPEAT REQUESTS FOR ASSISTANCE**

The County recognizes that there may be instances when a homeowner who has already been assisted through the Homeowner Rehabilitation Program may be requesting additional assistance. It is the policy of the County that repeat beneficiaries residing at the original home, cannot ask for assistance within five (5) years of the completion of the initial rehabilitation and total value of their current lien(s) cannot exceed \$15,000.00. Total lien value held against the property cannot exceed \$25,000.

It is recognized that there may be instances when emergency assistance is needed. If this is the case, the applicant will be allowed to complete an application for emergency repairs which would be limited only to no heat in winter (Sept-Mar) or no running water.

### **SECTION 31 - SUBORDINATION**

Upon verification of program income eligibility standards, the County may consider the postponement of a Mortgage for the refinancing of a first mortgage at a lower interest rate and no additional cash out (See affordability rules under "Grant Closing"). An exception may be made for refinancing to cover medical costs or necessary home improvements. Verification such as work estimates and medical documentation will be required.

Prior to subordination, a copy of the new mortgage application will be required to verify that the income level of the homeowner has not increased to such a level that they no longer meet the eligibility requirements of the original loan. All requests will be reviewed and approved by both the Program Manager and the Division Head prior to subordination.

## **SECTION 32 - RECORDKEEPING**

The County will use a file checklist for project files to ensure consistency in filing systems between staff.

Each project file should contain a checklist at the front showing all required documents and laying out the proper order of those documents. A section of the project file will be dedicated to external and internal communication including correspondence, e-mail, and phone log reflecting all communications as relevant to the project.

- Project file checklist should include:
  - Address and description (with map);
  - Name and contact information of occupant;
  - Client application and income eligibility information;
  - Before and after photos;
  - Compliance with income eligibility requirements;
  - Form and amount of assistance;
  - Cost estimate;
  - Bid awarded;
  - Compliance with maximum per unit subsidy limits;
  - Compliance with subsidy layering guidelines;
  - Work specifications and plans;
  - Compliance with property standards;
  - Compliance with Environmental Review;
  - Compliance with lead based paint requirements;
  - Inspection records;
  - Invoices;
  - Final inspection and closeout; and
  
- Contractor file checklist should include:
  - Name, address, phone, email;
  - Names and dates of all jobs performed for jurisdiction;
  - Performance evaluation records;
  - Current insurance information; and
  - Client satisfaction records (complaints or compliments).
  
- The County will utilize checklists for all complex tasks, and to ensure completion of all components and regulatory compliance.

- Use inspection checklists to assure that all building elements and conditions have been noted. It should reflect the housing standards requirements discussed in the Guide.

The County will utilize standardized forms and requires their use by contractors.

- The following forms are required on every project and should be standardized:
  - Income verification and application forms;
  - Bid forms;
  - Payment requests;
  - Change orders;
  - Certificate and Release;
  - Certificate of final inspection;
  - Contractor's data sheet;
  - Contractor instructions;
  - Contractor payment request;
  - Contractor proposal form;
  - Property standards inspection form;
  - Rehabilitation tracking sheet;
  - Communication Log including copies of correspondence and e-mail, and Verification of Mortgage or Deed of Trust.

The County will make only the most current version of each form available to all staff in a central location, files or a shared electronic directory. It will develop and maintain a thorough record-keeping system.

- Maintain the following types of records, at a minimum:
  - Program administration records;
  - Project files;
  - Compliance records for other Federal requirements:
    - + Davis Bacon;
    - + Environmental review;
    - + Section 504;
    - + Section 3;
    - + MBE/WBE compliance; and
    - Relocation, if applicable.
  - Contractor and contract files
- The County will create orderly files and a filing system in which every document and every file exists in a logical place at any given time. Files should be user-friendly for auditors and monitors.

- Use a **file sign-out system** for all shared files so that a file can be located at any given time.  
**Train all staff on record-keeping and maintaining current files.**
- **Monitor and test staff record-keeping systems**

## Arbitration Agreement

The purpose of this agreement and the "Arbitration Rules" which are attached is to set up a procedure to resolve disputes that may arise between a property owner and contractor doing work on the home. Under this procedure, if a dispute arises between the [HOMEOWNER(S)] and [CONTRACTOR], the parties agree to attempt resolution through mediation. If that fails, the matter then goes to arbitration. Both parties pay \$\_\_\_ of the total \$\_\_\_ arbitration fee at the beginning of the process. The Arbitrator or "referee" will be an independent person appointed by [PJ's SELECTED ARBITRATION ENTITY]. That person will hear both sides of the dispute and will make a decision as to how the dispute will be best resolved. By signing this agreement, the [HOMEOWNER(S)] and [CONTRACTOR] have agreed that they will go along with the decision of the Arbitrator.

We, the undersigned, do hereby agree to submit to Binding Arbitration any dispute which we are unable to resolve concerning the home rehabilitation work at [PROPERTY ADDRESS] on the contract entered into by the undersigned on [DATE OF CONTRACT EXECUTION] together with corresponding Change Orders. By signing this document, we agree to abide by the Arbitration Rules attached. We further agree to abide by the decision reached by the assigned Arbitrator.

We understand, by signing this document, the Arbitration Agreement becomes a part of the contract documents.

CONTRACTOR's Authorized

Agent: \_\_\_\_\_

COMPANY: \_\_\_\_\_

Date: \_\_\_\_\_

HOMEOWNER(S): \_\_\_\_\_

Date: \_\_\_\_\_

**GLOUCESTER COUNTY  
CERTIFICATION OF WORK COMPLETED**

Property  
Owner: \_\_\_\_\_

Account Number:  
\_\_\_\_\_

Project Address:  
\_\_\_\_\_

Contractor:  
\_\_\_\_\_

I, the undersigned, hereby certify that the above named contractor has completed at least \_\_\_\_\_ % of the work Rehabilitation contract dated \_\_\_\_\_ I authorize the Gloucester County HOME/CDBG Program Staff, on my behalf, to extend an interim payment to this contractor in accordance with the payment provisions of this contract.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Rehab Inspector

\_\_\_\_\_  
Date

**GLOUCESTER COUNTY HOMEOWNER REHABILITATION  
NOTICE TO PROCEED**

CONTRACTOR NAME: \_\_\_\_\_

CONTRACTOR ADDRESS: \_\_\_\_\_

I, the undersigned, hereby authorize the contractor listed above to commence work on the property known as \_\_\_\_\_ within 10 days of the execution of this document. The projected completion date of this contract is \_\_\_\_\_. If the contractor does not commence work within the specified time, the owner may consider the Rehabilitation contract to be in default.

\_\_\_\_\_  
SIGNATURE OF PROPERTY OWNER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME OF PROPERTY OWNER (PRINT)

**GLOUCESTER COUNTY HOMEOWNER REHABILITATION  
NOTICE TO PROCEED**

DATE: \_\_\_\_\_

RE: GLOUCESTER COUNTY HOMEOWNER REHABILITATION PROGRAM HOME/CDBG

APPLICATION NUMBER: Bid Group #FIELD (group)

GENTLEMEN:

You are requested to proceed with rehabilitation of the following property:

APPLICATION NUMBER: Bid Group #FIELD (group)

ADDRESS: FIELD (address)

All work shall be performed in accordance with the contract executed on the date above.

AUTHORIZED BY: \_\_\_\_\_  
Owner

\_\_\_\_\_  
FIELD (address)  
Address

This letter is furnished in triplicate. Please acknowledge receipt and acceptance of this order in the space provided.

**ACCEPTANCE BY CONTRACTOR**

\_\_\_\_\_  
Contractor's Signature

Receipt of "Notice to Proceed" is hereby acknowledged.

\_\_\_\_\_  
PROGRAM MANAGER-GLOUCESTER COUNTY

\_\_\_\_\_  
Date

**GLOUCESTER COUNTY**

**CERTIFICATE OF FINAL INSPECTION**

Property

Owner: \_\_\_\_\_

Project Address: \_\_\_\_\_

Contractor:

\_\_\_\_\_

I, the undersigned, hereby certify that the Contractor has satisfactorily completed the rehabilitation work, including all change orders, as outlined in the rehabilitation contract dated \_\_\_\_\_ between the Property Owner and the Contractor.

\_\_\_\_\_  
Rehab Inspector

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

Client # \_\_\_\_\_

## Gloucester County Homeowner Rehabilitation Tracking Sheet

Homeowner: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: Home ( \_\_\_\_\_ ) \_\_\_\_\_ Work ( \_\_\_\_\_ ) \_\_\_\_\_

Initial Application/Inquiry Date: \_\_\_\_\_

### PRESETTLEMENT ACTIVITIES

Activity Description	Date Requested	Date Received/ Completed	Comments
Preliminary Application			
Full Application			
Credit Report(s)			
Verification of Income/Employment			
Verification of Mortgage(s) or Deed of Trust for Each Lien Secured by Property			
Verification of Deposits			
Verification of Public Assistance			
Verification of Other Assets			
Mortgage Lender's Most Recent Year-End Statement			
Proof That Real Estate Taxes Are Paid and Current			
Title Evidence			
Appraisal			
Lead-Paint Notification			
Work Write-Up/Cost Estimates			
State Historic Review (If Applicable)			
Borrower's Review/Approval of Work Write-Up			
Loan Approval/Disapproval			
Bid Proposal(s) from Contractor			
Owner Review of Proposals/Rehab Specialist Review of Proposals			
Contractor Selection			
Contract Signing			
Right of Recession			

**CONSTRUCTION AND CLOSE-OUT**

<b>Activity Description</b>	<b>Date Completed or Sent</b>	<b>Comments</b>
Pre-Construction Conference		
Notice to Proceed		
Request for Progress Payments		
Request #1		
Request #2		
Change Orders		
#1		
#2		
Certification of Final Inspection		
Request for Final Payment		
Notice of Completion		
Contractor's Release of Liens/ Warranties		
Disposition of Funds Statement		

**LOAN SETTLEMENT**

<b>Activity Description</b>	<b>Date Requested</b>	<b>Date Received/ Completed</b>	<b>Comments</b>
Truth-in-Lending Disclosure Statement			
Notice of Right-to-Cancel			
Promissory Note			
Mortgage or Deed of Trust			
Hazard Insurance Taxes, Special Assessments			
Supplemental Financing Agreement			
Repayment Schedule			
Record Mortgage Deed of Trust, or Promissory Note			

## Gloucester County Case File Checklist for Homeowner Rehabilitation Project

Owner: \_\_\_\_\_ Address: \_\_\_\_\_

Reviewer: \_\_\_\_\_ Administering Entity: \_\_\_\_\_ Date: \_\_\_\_\_

The items listed below should be found in the case files

ARE ITEMS IN PROJECT CASE FILE?	ANSWER		NOTES
	Y	N	
<b>Underwriting and Application Processing</b>			
Application form, authorization to release information			
Source documentation and calculation of income			
Documentation of principal residence			
Documentation of ownership			
Designation of property type and location			
Project underwriting worksheet			
Origination checklist			
Project activity log			
Verification of utility expenses (for past 12 months)			
Credit report			
<b>Legal and Financial Documents</b>			
Documentation of all costs and compliance with subsidy limits			
Written agreement			
Mortgage documents or note			
Title search and title insurance			
Copy of deed			
Closing documents			
Flood insurance			
Property insurance			
Program income records			

ARE ITEMS IN PROJECT CASE FILE?	ANSWER		NOTES
	Y	N	
Construction Management			
Lead-based paint notification pamphlet receipt			
Lead hazard risk assessment or other lead hazard evaluation; lead hazard evaluation and reduction notices to occupant			
Property inspection checklists to determine compliance with local codes and written rehabilitation standards			
Environmental review checklist			
Relocation notices; documentation of assistance			
Work specifications and program-generated cost estimate			
Documentation of after-rehabilitation property value			
Bid documents; bid analysis			
Verification of contractor eligibility			
Contract for construction work			
Pre-construction conference report			
Notice to proceed			
Change orders			
Ongoing and final inspection reports building code compliance inspections			
Payment records and lien releases			
Warranties and guarantees			
On-site monitoring of construction work performed			

**Gloucester County Homeowner Rehabilitation Program  
CERTIFICATE AND RELEASE OF LIENS**

From: \_\_\_\_\_ (Contractor)

To: \_\_\_\_\_ (Owner)

Reference contract entered into the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the above parties for the rehabilitation of the property at \_\_\_\_\_ (address of rehabilitated property).

1. The undersigned hereby certifies that there is due from and payable by the Owner to the Contractor, the balance of \$\_\_\_\_\_ pursuant to the Contract and duly approved Change Orders and modifications.

2. The undersigned certifies that all work required under this contract has been performed in accordance with the terms thereof, and that there are no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract.

3. That upon receipt of the final payment stated in Paragraph 1 hereof, the undersigned does hereby release the Property Owner from any and all claims arising under or by virtue of this Contract; provided, however, that if for any reason the Property Owner does not pay in full the amount stated in Paragraph 1 hereof, the unpaid amount will become the amount which the Contractor has not released.

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

Signed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
MY COMMISSION EXPIRES

## CONTRACTOR'S APPLICATION

TO: Gloucester County Homeowner Rehabilitation Program  
Department of Economic Development  
Rt 54 and Bluff Rd  
Woodbury, NJ 08096

The undersigned contracting firm hereby applies to be placed on the "ACCEPTABLE CONTRACTOR'S REGISTER" maintained by your office for the purpose of performing rehabilitation work in the County's HOME and CDBG Program. Program area and it is certified that the information given below is complete, factual, and that no unfavorable information has been withheld:

### SECTION I:

Name of Firm: \_\_\_\_\_ Business Name (if applicable): \_\_\_\_\_

Business Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

IRS# \_\_\_\_\_ Social Security Number: \_\_\_\_\_

### SECTION II:

Description of Services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### SECTION III:

Work History:

List the names and addresses and years of construction experience of all owners, partners and stockholders/use an additional sheet if necessary:

Name: \_\_\_\_\_ Yrs of Experience \_\_\_\_\_  
Address: \_\_\_\_\_ Experience \_\_\_\_\_

Name: \_\_\_\_\_ Yrs of Experience \_\_\_\_\_  
Address: \_\_\_\_\_ Experience \_\_\_\_\_

Name: \_\_\_\_\_ Yrs of Experience \_\_\_\_\_  
Address: \_\_\_\_\_ Experience \_\_\_\_\_

**SECTION IV:**

List the name of three (3) references where work has recently been completed by your firm. Please list the address and telephone number of each. Give a brief description of the work completed.

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_

**INSURANCE REQUIREMENT:**

Please furnish this office with a current in-force certificate of your Worker's Compensation and Public Liability Insurance and proof of your Permit Bond to the County of Gloucester and the State of New Jersey

Insurance coverage of no less than \$500,000 Coverage in the event of bodily injury including death and \$500,000 Coverage in the event of property damage arising out of the work performed by the contractor is required.

The contractor shall at all times during the life of the contract, comply with the Worker's Compensation laws of the State of New Jersey.

**SECTION V: (Credit History)**

Please list the name(s) of your present Supplier(s):

_____	_____
Name of Supplier	Phone Number
_____	_____
Name of Supplier	Phone Number

How many years have you had credit with this Supplier? \_\_\_\_\_

What has been your highest credit limit? \_\_\_\_\_

How would you describe your present status with the Supplier?

\_\_\_\_ Outstanding, \_\_\_\_ Good, \_\_\_\_ Poor

The undersigned Firm certifies that all the above given information is true and complete to the best of his knowledge.

\_\_\_\_\_  
Signature of Firm

\_\_\_\_\_  
Date

**Gloucester County Homeowner Rehabilitation  
CONTRACTOR ELIGIBILITY VERIFICATION**

**This form is required to determine if a contractor has been debarred or suspended from contracting under Federal programs.**

Date: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Project Name \_\_\_\_\_

Contractor: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tax ID #: \_\_\_\_\_

**List Below Names of Principals:**

NAME	TITLE

FOR DEPARTMENT USE ONLY:

VERIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

# Appendix C

## Lincoln House Crediting Documentation



The Arc Gloucester  
1355 Gateway Blvd.  
Woodbury, NJ 08096

(856) 848-8648 - Phone (856) 848-7753 - Fax [www.thearcgloucester.org](http://www.thearcgloucester.org)

July 25, 2006

Tiffany A. Cuvillo, PP, AICP  
359 Superior Road  
Egg Harbor Township, NJ 08224

Re: Beech House Group Home  
Lincoln House Group Home

Dear Tiffany,

Enclosed you will find the two completed Alternative Living Arrangement Surveys, 1 for our Beech House Group Home located at 300 Beech Avenue and 1 for our Lincoln House Group Home located at 395 Lincoln Avenue. Both locations are within the Borough of Woodbury Heights, NJ.

For the Beech House I have enclosed copies of the following:

- a.) Page 18 of the Capital Funding Agreement signed and dated April 19<sup>th</sup> 1999.
- b.) The Annex A Project Summary with the Agreement dates
- c.) The dated Promissory Note.

I feel this should be sufficient for the Beech House verification.

As mentioned on phone, July 21<sup>st</sup>, The Arc Gloucester will be applying to the State for Capital Funding to increase our level of service from 3 men to 4 men. The additional individual will be handicapped and the Group Home will be retrofitted accordingly. This will likely be completed late fall, 2006

As mentioned by phone on Monday, July 24<sup>th</sup>, the Lincoln House's Affordability Controls has been released. The Arc Gloucester continues to be annually licensed by DDD. DDD is our source of needed funding for Lincoln House's continued operations.

Please feel free to contact me if you need any additional information or questions about the information on the Surveys.

Jack Wesh, Facilities Manager



### Council on Affordable Housing (COAH) Alternative Living Arrangement Survey

Municipality: Borough of Woodbury Heights County: Gloucester County

Sponsor: \_\_\_\_\_ Developer: Arc / Gloucester County

Block: 11 Lot: 15 Street Address: 395 Lincoln Avenue

Facility Name: Kincaid House Group Home

Type of Facility:

- Group Home for developmentally disabled as licensed and/or regulated by the NJ Dept. of Human Services (Division of Developmental Disabilities (DDD))
- Group Home for mentally ill as licensed and/or regulated by the NJ Dept. of Human Services (Division of Mental Health Services) (DMHS)
- Transitional facility for the homeless
- Residential health care facility (Licensed by NJ Dept. of Community Affairs or NJ Dept. of Human Services)
- Congregate living arrangement
- Other - Please Specify: \_\_\_\_\_

# of bedrooms occupied by low-income residents 3

# of bedrooms occupied by moderate-income residents \_\_\_\_\_

Separate bedrooms? Yes  No

Affordability Controls? Yes  No

Length of Controls: \_\_\_\_\_ years

Effective Date of Controls: 1/1/82 *Referenced*

Expiration Date of Controls: 1/1/11

Average Length of Stay: N/A months (transitional facilities only)

The following verification is attached:

- Copy of deed restriction (30-year minimum, HUD, FHA, FHLB, BHP deed restriction, etc.)
- Copy of Capital Application Funding Unit (CAFU) Letter (20-year minimum, no deed restriction required)
- Award letter/financing commitment (proposed new construction projects only)

Residents 18 yrs or older?  Yes  No

Age-restricted?  Yes  No

Population Served (describe): Developmentally Disabled Formerly Committed

Accessible (in accordance with NJ Barrier Free Subcode)?  Yes  No

For proposed new construction projects only:

Sources of funding committed to the project (check all that apply):

- Capital funding from State - Amount \$ \_\_\_\_\_
- Balanced Housing - Amount \$ \_\_\_\_\_
- HUD - Amount \$ \_\_\_\_\_
- Federal Home Loan Bank - Amount \$ \_\_\_\_\_
- Farmers Home Administration - Amount \$ \_\_\_\_\_
- Development fees - Amount \$ \_\_\_\_\_
- Bank financing - Amount \$ \_\_\_\_\_
- Other - Please specify: \_\_\_\_\_

Are funding sources sufficient to complete project?  
 Yes  No

Residents qualify as low or moderate income?

Yes  No

CO Date: 1/5/82

Indicate licensing agency:

DDD  DMHS  DHSS  DCA

Initial License Date: 4/1/82

Current License Date: 9/1/05

Affirmative Marketing Strategy (check all that apply):

- DDD/DM/HIS/D/HSS/DCA waiting list
- Other (please specify): \_\_\_\_\_

**CERTIFICATIONS**

I certify that the information provided is true and correct to the best of my knowledge and belief.

Certified by: Jack Wool Facilities Manager \_\_\_\_\_ 7/25/06  
 Project Administrator Date

Certified by: \_\_\_\_\_  
 Municipal Housing Liaison Date



License Number: GH028

*State of New Jersey*  
**DEPARTMENT OF HUMAN SERVICES**  
**GROUP HOME**  
**LICENSE**

This is to certify that 395 LINCOLN AVENUE  
WOODBURY HEIGHTS, NJ 08096

Operates by **ARC-GLOUCESTER COUNTY**

having met the requirements of the New Jersey Statute,  
P.L. 1977 c. 449,  
and the regulations of this Department, is hereby licensed as a

from  
**GROUP HOME**  
(type of membership)  
8/31/2008  
(initial license)  
to  
6  
Individuals  
(number)  
8/31/2009  
(expiration date)

For Official Use: Commissioner, Department of Human Services

# Appendix D

## Beech House Crediting Documentation

### Council on Affordable Housing (COAH) Alternative Living Arrangement Survey

Municipality: Borough of Woodbury Heights County: Gloucester County

Sponsor: \_\_\_\_\_ Developer: ARC / Gloucester County

Block: 49 Lot: 1 Street Address: 300 Beech Avenue

Facility Name: Beech House Group Home

Type of Facility:

- Group Home for developmentally disabled as licensed and/or regulated by the NJ Dept. of Human Services (Division of Developmental Disabilities (DDI))
- Group Home for mentally ill as licensed and/or regulated by the NJ Dept. of Human Services (Division of Mental Health Services) (DMHS)
- Transitional facility for the homeless
- Residential health care facility (licensed by NJ Dept. of Community Affairs or NJ Dept. of Human Services)
- Congregate living arrangement
- Other - Please Specify: \_\_\_\_\_

For proposed new construction projects only:

Sources of funding committed to the project (check all that apply):

- Capital funding from State - Amount \$ \_\_\_\_\_
- Balanced Housing - Amount \$ \_\_\_\_\_
- HUD - Amount \$ \_\_\_\_\_
- Federal Home Loan Bank - Amount \$ \_\_\_\_\_
- Farmers Home Administration - Amount \$ \_\_\_\_\_
- Development fees - Amount \$ \_\_\_\_\_
- Bank financing - Amount \$ \_\_\_\_\_
- Other - Please specify: \_\_\_\_\_

# of bedrooms occupied by low-income residents 3\*

# of bedrooms occupied by moderate-income residents \_\_\_\_\_

Separate bedrooms?  Yes  No

Affordability Controls?  Yes  No

Length of Controls: BC years

Effective Date of Controls: 11/10/1999

Expiration Date of Controls: 4/18/2019

Average Length of Stay: N/A months (transitional facilities only)

Are funding sources sufficient to complete project?  
 Yes  No

Residents qualify as low or moderate income?

Yes  No

LO Date: 9/16/99

Indicate licensing agency:

DDD  DMHS  DHES  DCA

Initial License Date: 9/19/99

Current License Date: 9/1/05

The following verification is attached:

- Copy of deed restriction (30-year minimum, EFJD, FHA, FHLS, BHP deed restriction, etc.)
- Copy of Capital Application/Funding Unit (CAFU) Letter (20-year minimum, no deed restriction required)
- Award letter/financing commitment (proposed new construction projects only)

Residents 18 yrs or older?  Yes  No

Age-restricted?  Yes  No

Population Served (describe): \* 3 Developmentally Disabled Male Consumers

Accessible (in accordance with NJ Barrier Free Subcode)?  Yes  No

\* The live-in staff is leaving and this bedroom will be converted to a handicapped bedroom with bath - 4 Men - Separate bedrooms - house will then become partially ADA except obligatory bedrooms & bathroom.  
COAH May 2005

Affirmative Marketing Strategy (check all that apply)

ODD/DMHS/DHSS/DCA waiting list

Other (please specify): \_\_\_\_\_

**CERTIFICATIONS**

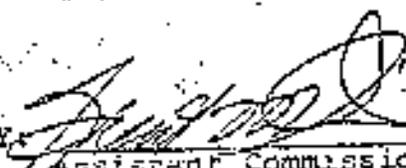
I certify that the information provided is true and correct to the best of my knowledge and belief.

Certified by: Jack Wash Facilities Manager 7/25/06  
Project Administrator Date

Certified by: \_\_\_\_\_  
Municipal Housing Liaison Date

AGREEMENT SIGNATURES AND DATE

The terms of this Agreement have been read and understood by the persons whose signatures appear below. The parties agree to comply with the terms and conditions of the Agreement as set forth in Article I through Article X above.

BY:   
Assistant Commissioner, New Jersey  
Department of Human Services

BY: Ann Rivera L.S.  
Authorized Agency Representative

NAME: Ann Rivera

TITLE: Executive Director

AGENCY: Arc Gloucester

ADDRESS: 1555 Gateway Blvd.,  
Woodbury, NJ 08096

AGREEMENT DATED:

April 19, 1999



License Number G14352

*State of New Jersey*  
**DEPARTMENT OF HUMAN SERVICES**  
**GROUP HOME**

**LICENSE**

This is to certify that 300 DEEPT AVENUE

WINDOBURY HEIGHTS, NJ 08097

Operated by **ARC-GLOUCESTER COUNTY**

Having met the requirements of the New Jersey Statutes,  
P.L. 1977, c. 448,  
and the regulations of this Department, I hereby license as a

GROUP HOME  
Type of institution: 8/31/2008  
Date issued: 8/31/2008  
Effective to: 8/31/2008  
Expires on: 8/31/2008  
Number of individuals licensed: 5

Janet Valle, Commissioner, Department of Human Services

COMMUNITY RESIDENTIAL FACILITY FUNDING PROGRAM  
STATE OF NEW JERSEY - DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES

ANNEX A - PROJECT SUMMARY

1. This Agreement commences on 4-19-99 and expires on 4-18-2019

2. Legal Name of Agency: The Arc Gloucester

3. Agency Address (Including P.O. Box, City, State, Zip Code, County):

1555 Gateway Blvd.

Woodbury, NJ 08096

4. Date of Agency Incorporation: 12/30/97

5. Federal I.D. Number: 21-068-7151

6. Project Location (Street, Address, City, State, County):

300 Beach Avenue

Woodbury Heights, NJ 08097

Project Scope:

- Purchase  Land  Existing Building/s
- Renovation  Expansion of Existing Facility
- New Construction  Equipment

The Project Period commences on 4-19-99 and expires on 10-18-99

Project Director: 10. Agency Officer authorized to sign this and other documents:

Name: Branda Scarfield, Ass't Exec Dir. Name: Ana Rivera and/or Terry Carter

Address: The Arc Gloucester Address: The Arc Gloucester

1555 Gateway Blvd.

1555 Gateway Blvd.

Woodbury, NJ 08096

Woodbury, NJ 08096

Phone: (609) 848-8648 Phone: (609) 848-8648

Persons to whom Notices shall be directed:

a) Agency Name: Ana Rivera, Executive Director

b) Department Name: Peter A. Sorra

Address: The Arc Gloucester

Address: Rt. 30 & Elvins Avenue

1555 Gateway Blvd.,

Hammonton, NJ 08037

Woodbury, NJ 08096

PROMISSORY NOTE

\$ 149,900

April 19, 1999

In accordance with the terms of a Funding Agreement for Construction, Purchase, or Purchase and Renovation of Community-Based Facilities dated April 19<sup>th</sup>, 1999

The Arc Gloucester

promises to pay on demand to the order of the State of New Jersey, Department of Human Services, One hundred and forty-nine thousand and nine hundred

(149,900.00)

dollars, payable at Capital Place One, 222 South Warren Street, Trenton, New Jersey 08625.

Sworn to and subscribed before me this 14th day of April, 1999.

Lisa M. Kummer

LISA M. KUMMER  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES NOV. 2, 1999

BY: Terry L. Gerber U.S.

NAME: Terry L. Gerber

TITLE: Director of Finance

AGENCY: 1555 Gateway Blvd.

Woodbury, NJ 08096

## Appendix E

### Agreement of Sale for Woodland Avenue Site

## **AGREEMENT OF SALE**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between W & C ASSOCIATES, L.L.C., a New Jersey Limited Liability Company (the "Seller") and THE BOROUGH OF WOODBURY HEIGHTS, or their nominee or assignee (the Buyer").

- A. Seller is the owner of all that tract or parcel of land, including any buildings and other improvements located thereon (the "Improvements"), and known as Block 91, Lot 6, of the Tax Maps of the Borough of Woodbury Heights, County of Gloucester, New Jersey, being all the real property owned by Seller at that location (the "Seller's Total Property").

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions of this Agreement, the Property, together with (a) any land lying in the bed of any street, road or alley, open or proposed, in front, abutting or adjoining the subject property; (b) any easement, privilege, license or right-of-way inuring to the benefit of the subject property; and (c) the appurtenances and hereditament belonging or otherwise pertaining to the subject property. For purposes of this Agreement, the phrase "Effective Date" used within this Agreement shall mean the date on which Buyer receives a fully executed copy of this Agreement.

2. Purchase Price. The total purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") shall be the sum of One Hundred Forty Thousand (\$140,000.00) Dollars.

2.1 The aforesaid Purchase Price shall be payable as follows:

(a) The sum of Two Thousand (\$2,000.00) Dollars ("First Deposit") in cash or by check to be deposited with Buyer's title insurance company in New Jersey (the "Escrow Agent") within three (3) business days following Buyer's receipt of a fully executed copy of this Agreement.

(b) The balance of the Purchase Price is to be paid by certified check, title company check or wire transfer of funds at Closing (hereinafter defined).

(c) Escrow Agent shall hold the Deposit in escrow in a federally insured, interest-bearing account for the benefit of Buyer, pursuant to the terms of this Agreement.

(d) The Deposit and all interest accrued thereon shall be applied to the Purchase Price to be paid by Buyer at Closing (as hereinafter defined).

3. Closing. Closing (the "Closing") hereunder shall occur on or before December 30, 2013, and only if the conditions set forth in Section 6 (a) below have been

satisfied by Buyer. Closing shall take place at the offices of Buyers' title insurance company, or at such other location as the parties hereto shall mutually agree.

#### 4. Condition of Title.

(a) Title to the Property shall be (i) good and marketable, and free and clear of all liens, restrictions, easements, encumbrances, leases, tenancies and other title objections except regarding those required by any Municipal or County approvals, and (ii) insurable under an ALTA Owner's Policy, Form B, Amended 10-21-87, as aforesaid, by any reputable title insurance company at regular rates. Buyer shall order a commitment for a title insurance policy for the Property (the "Title Commitment") after the execution of this Agreement and then deliver a copy of the Title Commitment to Seller upon receipt, but prior to the expiration of the Due Diligence Period. If any title objections are disclosed in the Title Commitment, and which are identified as objectionable in writing from Buyer to Seller, Seller shall use its best efforts (except for the affirmative obligation to remove monetary liens as provided below) to correct, at Seller's sole cost, any such title objections within ten (10) days after Seller's receipt of the Title Commitment. Buyer shall provide Seller with a list of title objections prior to the expiration of the Due Diligence Period. Buyer's objections shall consist of only those items which Buyer reasonably believes will adversely impact the construction of Buyer's intended improvements on the Property. If Seller is unable to correct such objections within said ten (10) day period (or as otherwise extended by Buyer), Buyer may, at any time thereafter, exercise its rights set forth in Section 4(b). Failure of Buyer to provide Seller with a list of Title Objections prior to expiration of the Due Diligence Period shall be deemed a waiver thereof by Buyer.

(b) In the event Seller is unable to convey good and marketable title and such as will be insured by any reputable title insurance company at regular rates as set forth in Section 4(a), Buyer shall have the option of (i) taking such title as Seller can give without abatement of the Purchase Price, except that any existing liens or encumbrances which can be removed by the payment of money shall be paid and discharged by Seller at or prior to Closing, or (ii) terminating this Agreement, in which event, the Escrow Agent shall return the Deposit to Buyer, this Agreement shall become null and void, and neither party shall have any further obligations or liabilities hereunder.

#### 5. Inspections and Studies; Plans and Reports

(a) Buyer, at Buyers' sole expense, may engage a soil consultant, environmental consultant, civil engineer, attorney and/or other professionals to perform an inspection of the environmental condition of the Property and the approvals and improvements proposed for the Property. The aforesaid inspection (the "Due Diligence Inspection") may include, but is not limited to, (i) a Phase I and II environmental site assessment and soils testing, (ii) a wetlands and floodplain delineation and analysis, geotechnical studies, (iii) an inspection as to the availability of all utilities required to service the Property (including, without limitation, public or on-site sewer service, public or on-site water service, gas, electric and cable services), (iv) an inspection as to the condition of the title to the Property, including any restrictions, encumbrances and/or easements applicable thereto, (v) a review of all permits, approvals and improvements proposed for the Property and (vi) any other reviews, inspections or interviews Buyer deems necessary in connection with Buyer's proposed purchase of the Property.

#### 6. Conditions Precedent to Buyer's Obligation.

(a) The obligation of Buyer under this Agreement to purchase the Property from Seller is subject to the satisfaction at the time specified of each of the following conditions (any or all of which may be waived in whole or in part by Buyer at or prior to Closing):

(i) Buyer shall be satisfied, in Buyer's sole and absolute discretion, with the results of the Due Diligence Inspection. If Buyer is dissatisfied for any reason whatsoever with the results of the Due Diligence Inspection, then Buyer shall have the option to terminate this Agreement by delivery of written notice to Seller at any time prior to December 27, 2013, in which event Escrow Agent shall deliver the Deposit (which term includes all interest earned thereon) to Buyer. If the Buyer does not terminate this Agreement within the period aforesaid, the Buyer's right to terminate shall expire and be considered null and void.

(ii) All of Seller's representations set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the date of Closing as though made on and as the date of Closing. Seller shall have performed and complied with all of the terms and conditions required by this Agreement to be performed or complied with by Seller prior to or on the date of Closing.

7. Operation of the Property Prior to Closing. Between the date of this Agreement and the date of Closing:

(a) Seller shall use good faith efforts to maintain the Property and all portions thereof, including the Improvements (if any), in the same condition as on the date hereof, normal wear and tear excepted.

(b) Buyer and its architects, contractors, engineers, inspectors, consultants, agents and other representatives shall have access to and permission to enter the Property, on reasonable notice to Seller, to inspect, survey, measure, take test borings or soil samples, or appraise the Property. Buyer shall indemnify, defend and hold Seller harmless for any claim or damage which may be caused by Buyer or its representatives entering upon the Property after the Effective Date and shall restore the Property to its condition existing prior to such tests.

(c) Seller shall cooperate with Buyer in connection with Buyer's efforts to satisfy the conditions set forth in this Agreement, including, without limitation, executing all applications and other documents which are required in connection therewith but at no cost or expense of Seller. Notwithstanding such, Seller shall pay all real estate taxes on or before due dates therefore.

(d) Seller shall not convey or encumber the Property or any portion thereof without Buyer's prior written consent.

(e) Seller shall deliver to Buyer, immediately upon delivery or receipt by Seller, copies of any and all notices, letters, memoranda and other correspondence to or from any government agencies relating to the Property.

8. Provisions with Respect to Closing.

(a) At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(i) Deed. A Bargain and Sale Deed with Covenants against Grantors Acts for the Property, duly executed and acknowledged by Seller, and in form satisfactory to Buyer's attorney and Title Company.

(ii) Title Company Affidavit. An affidavit to Buyer's title insurance company of the type customarily provided by sellers of real property to induce title companies in the Southern New Jersey area to insure over certain "standard" or "preprinted" exceptions to title.

(iii) Closing Certificate. A certificate stating that Seller's representations contained in this Agreement are true and correct as of the date of Closing, and that the conditions precedent to Closing required to be performed by Seller have been satisfied.

9. Taxes; Apportionments.

(a) Buyer shall be responsible for payment or cancellation of real estate taxes at Closing, inclusive of accrued interest and penalties thereon.

(b) All realty transfer taxes in connection with this transaction shall be paid by Seller. Buyer shall pay all title insurance premiums charged by Buyer's title insurance company. Each party shall pay its own counsel fees. All other recording and closing costs of any nature or description shall be paid or apportioned in accordance with the custom and practice in the county in which the Property is located with each party to equally pay the cost of the Title agent settlement fee at Closing. Seller shall pay all roll-back taxes, if applicable.

10. Eminent Domain. If, at any time prior to the date of Closing, Seller is notified of any eminent domain proceedings against all or any portion of the Property, Seller shall promptly give written notice thereof to Buyer. Buyer shall have the right, within thirty (30) days of receipt of any such notice, at its sole option, to terminate this Agreement, in which event the Deposit (together with all interest earned thereon) shall be returned to Buyer and this Agreement shall become null and void and neither party shall have any further liabilities or obligations hereunder. If Buyer does not elect to terminate this Agreement as aforesaid, then (a) Buyer shall have the right, to participate in and approve the determination of any eminent domain award, (b) the proceeds of any eminent domain award with respect to the Property paid between the date of this Agreement and the Closing shall be credited against the Purchase Price, and (c) all unpaid claims and rights in connection with the taking shall be assigned to Buyer at Closing.

11. Representations of Seller. Seller, to induce Buyer to enter into this Agreement and to purchase the Property, represents to Buyer as follows:

(a) Compliance. Seller has received no notices from any governmental

authority of any violations of any federal, state or local law, regulation or ordinance affecting any portion of the Property which remains uncorrected. Seller shall use best efforts to cure, prior to Closing, any violation of which Seller receives written notice pertaining to the Property.

(b) Litigation. There is no action, suit or proceeding pending or, to the knowledge of Seller, threatened, against or affecting the Property or any portion thereof or relating to or arising out of the ownership, management or operation of the Property in any court or before or by any federal, state or local department, commission, board, bureau or agency or other governmental instrumentality which could, if adversely decided, have any adverse effect on Buyer's acquisition, ownership, development or use of the Property.

(c) Public Improvements. No assessment for public improvements has been served upon the Seller with respect to the Property which remains unpaid, including, but not limited to, those for construction of sewer, water, electric, gas lines and mains, streets, sidewalks and curbing. In the event work for any public improvements with respect to the Property is assessed or commenced before the Closing, Seller shall be responsible for the assessments and charges that are imposed on Seller or the Property in connection therewith. Seller knows of no public improvements which have been ordered to be made and/or which have not heretofore been completed and paid for.

(d) Environmental Disclosures. Seller has not installed or used or knowingly permitted anyone else to install or use, any asbestos-containing materials on the Property, and no machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) have been located on the Property at any time during Seller's ownership of the Property. To the best of Seller's actual knowledge, no current or prior tenant, or prior owner, of the Property has used or permitted the Property to be used for any of the matters described in the preceding two sentences. No notice from any governmental body has ever been served upon Seller, its agents or employees or, to the best of Seller's knowledge, any current or prior tenant, or prior owner, of the Property, claiming any violation of any federal, state or local law, regulation or ordinance concerning the environmental state, condition, or quality of the Property, or requiring or calling attention to the need for any work, repairs, construction, alterations, demolition, renovation or installation on or in connection with the Property in order to comply with any law, regulation or ordinance concerning the environmental state, condition or quality of the Property.

Further, Seller hereby warrants and represents to Buyer that, to Seller's best knowledge and belief, after due inquiry, that the Property has not been used for landfill or toxic waste disposal activities or operations and that there are no materials, substances, products or wastes of any nature located on or in the Property. If Seller learns, at any time, that the representations contained in this Paragraph are no longer true and correct with respect to this Property, then Seller shall immediately deliver a notice thereof to the Buyer. Additionally, Seller represents and warrants that there are no underground fuel storage tanks within or below the surface of the Property. The terms and provisions of this subparagraph 11(d) shall survive the date of closing and transfer of title to the Buyer for a term of two (2) years from the date of Closing.

(e) Leases. There will be, at Closing, no outstanding leases, tenancies, licenses or other rights of occupancy or use for any portion of the Property except as Buyer may, in writing, agree.

12. Brokers. Seller and Buyer each warrant and represent to the other that each has had no dealings, negotiations or communications with any brokers or realtors or other intermediaries in connection with this Agreement or the sale of the Property. In the event that any claim is asserted by any other person, firm or corporation, whether broker or otherwise, claiming a commission and/or finder's fee with respect to the sale and purchase of the Property resulting from any act, representation or promise of either party, such party shall indemnify and save the other harmless from any such claim.

13. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be deemed to have been properly given if personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by private overnight express carrier, such as Federal Express, next day delivery, charges prepaid, addressed as follows: if intended for Seller: Attn.: George Diemer, 3000 Atrium Way, Suite 219, Mt. Laurel, New Jersey, 08054 with a copy to Robert Messick, Esq., 41 Grove Avenue, Haddonfield, New Jersey, 08033; if intended for Buyer: 500 Elm Avenue, Woodbury Heights, New Jersey, 08097, with a copy to Barry N. Lozuko, Esquire, 131 Delaware Street, Woodbury, New Jersey, 08096, or at such other address of which Seller or Buyer shall have given notice as herein provided. Notices by the parties may be given on their behalf by their respective counsel. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes on the date of delivery, if personally delivered, or the postmarked date of mailing, if sent by registered or certified mail, or the date of deposit if sent by private overnight express carrier.

14. Buyer's Default; Seller's Default; Interest.

(a) In the event Buyer violates or fails to fulfill or perform any of the terms and conditions of this Agreement required to be performed by Buyer, and Buyer fails to cure such violation or failure within 10 days after Buyer's receipt from Seller of a written notice notifying Buyer of said violation or failure, Seller shall have the option to take the deposit as full and complete damages or, in the alternative, to seek damages from the Buyer by way of any legal remedy. In addition, if Seller is the prevailing party in any dispute between Seller and Buyer under this Agreement, then Buyer shall reimburse Seller for all reasonable attorney's fees and costs incurred by Seller in resolution of any such dispute.

(b) In the event Seller violates or fails to fulfill and perform any of the terms and conditions of this Agreement required to be performed by Seller, Buyer shall have the right to compel transfer of the property to Buyer by a suit for specific performance of Seller's obligations hereunder or the right to terminate this Agreement and receive a refund of the Deposit (including the interest thereon and all portions designated as "non-refundable") in the alternative at the sole discretion of the Buyer. In addition, if Buyer is the prevailing party in any dispute between Seller and Buyer under this Agreement, then Seller shall reimburse Buyer for all reasonable attorney fees and costs incurred by Buyer in the resolution of any such dispute.

(c) The interest earned on the Deposit shall belong to Buyer unless Buyer defaults pursuant to Section 14(g) above.

15. Escrow Agent. Seller and Buyer agree that Escrow Agent is acting as agent only and shall not be liable to either party for any act or omission except as the result of Escrow Agent's gross negligence or willful misconduct. Escrow Agent shall be entitled to rely upon any document reasonably believed by it to be genuine. In the event of any dispute between Buyer and Seller regarding the Deposit, Escrow Agent shall be entitled to deposit the Deposit into Court and thereafter shall have no further liability or obligation hereunder as Escrow Agent.

16. Miscellaneous.

(a) The headings and captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(c) The representatives and officers who have executed this Agreement on behalf of Seller and Buyer hereby represent, warrant and confirm that they have the authority to execute this Agreement.

(d) Possession is to be delivered by Seller to Buyer at Closing.

(e) This Agreement contains the entire agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement shall not be altered, amended, changed or modified except in writing executed by the parties hereto.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

(g) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

(h) Time is of the essence with respect to each and every provision of this Agreement.

(i) At Closing, title shall be transferred to Buyer free and clear of any tenancies or tenant claims.

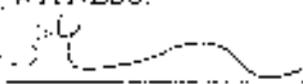
(j) Buyer may assign all of Buyer's rights and obligations of this Agreement to an entity formed and authorized to do business in the State of New Jersey.

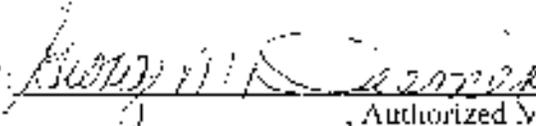
17. Buyer's Ability to Settle. Buyer represents that it is financially able to pay the purchased price and complete the settlement under the terms and conditions of this Agreement. The Buyer represents that this purchase is not contingent upon Buyer receiving a mortgage, loan or any other third-party financing in order to complete settlement and fulfill Buyer's obligations under this Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have executed this Agreement as of the date first above written.

Dated: 9/5/13

SELLER: W&C ASSOCIATES, LLC

WITNESS:  


BY:   
Authorized Member

Dated: \_\_\_\_\_

BUYER: BOROUGH OF WOODBURY HEIGHTS

BY: \_\_\_\_\_  
HARRY W. ELTON, JR., MAYOR

ATTEST: (Buyer)

\_\_\_\_\_  
JANET PIZZI, CLERK

# Appendix F

## Agreement with Housing Developer

**DEVELOPER'S AGREEMENT BY AND BETWEEN THE BOROUGH OF  
WOODBURY HEIGHTS AND THE BOROUGH OF WOODBURY HEIGHTS  
PLANNING BOARD AND RUKENSTEIN & ASSOCIATES, LLC AS DEVELOPER**

THIS AGREEMENT ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between

**The Borough of Woodbury Heights**, a municipal corporation of the State of New Jersey, County of Gloucester, having an address at 500 Elm Avenue, Woodbury Heights, New Jersey 08097 (hereinafter the "Borough");

And

**The Planning Board of the Borough of Woodbury Heights**, having an address at 500 Elm Avenue, Woodbury Heights, New Jersey 08097 (hereinafter the "Planning Board");

And

**Rukenstein & Associates, LLC**, having an address at PO Box #1 407 Pennington Titusville Road, Titusville, NJ 08560. (hereinafter the "Developer").

Collectively, the Borough, The Planning Board and the Developer shall be referred to as the "Parties."

**WHEREAS**, the Developer has proposed to construct a one hundred percent affordable housing project consisting of a minimum of 10 units of low and moderate income housing for special needs and supportive housing (hereinafter the "Project") on a parcel of land known as Lot 6 in Block 91 (hereinafter the "Property") to be acquired by the Borough and to be contributed to the Developer for one dollar (\$1.00) or other nominal amount as the Borough's share of its contribution to the Project; and

**WHEREAS**, the Developer has represented to the Borough that it will ensure that each of the units in the Project will be affordable to the region's low and moderate income households and will be creditworthy units in accordance with N.J.A.C. 5:97, N.J.A.C.5:80-26.1 et seq, and other applicable law to enable the Borough to use such units towards satisfaction of the Borough's Mount Laurel affordable housing obligations; and

**WHEREAS**, the Borough has determined that the construction of the Project, in compliance with the requirements of COAH and the implementation of the required affordability controls, will assist the Borough in satisfying its affordable housing obligations; and

**WHEREAS**, the Borough, the Planning Board and the Developer have agreed to enter into this Development Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties; and

**WHEREAS**, the Developer agrees to implement the Project in accordance with the

relevant terms and conditions of this Agreement: and

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

### **ARTICLE I - PURPOSE**

1.1 The purpose of this agreement is to create a realistic opportunity for the creation of a minimum of 10 affordable, non-age-restricted units on a .79 -acre site previously owned by the Borough, which the Borough is seeking to reacquire, by setting forth the obligations of each party to facilitate the construction of said affordable units on the subject property.

1.2 It is also the purpose of this Agreement to create COAH creditworthy supportive and special needs housing.

### **ARTICLE II - BASIC TERMS**

2.1 **The "Project"**: Subject to approval by the Planning Board, the Project shall consist of a minimum of ten (10) one hundred percent affordable units consistent with the Concept Plan attached hereto as Exhibit "A" with all other required site improvements including, but not limited to parking, landscaping, lighting, storm water maintenance, on and off-site infrastructure, and roadways and other improvements. At least fifty (50) percent of the units in the project shall be leased to low income households in accordance with applicable COAH and UIIAC standards.

### **ARTICLE III - DEVELOPER'S OBLIGATIONS**

3.1 **Obligations to develop Subject Property In Accordance With Various Requirements**: The Developer agrees, at its sole cost and expense, to develop the Property in accordance with (a) the Concept Plan attached hereto as Exhibit A; (b) the Zoning Amendment Ordinance attached hereto as Exhibit B; (c) any developmental approvals by the Woodbury Heights Borough Planning Board; (d) any other applicable governmental approvals, and (e) the terms and conditions of this Agreement.

3.2 **Obligations To Develop In Accordance With Local Planning Approval**: Developer shall be obligated to obtain all necessary governmental approvals, including Planning Board approvals, which shall be acquired before commencement of construction on the Project. Developer shall submit applications for all necessary preliminary and final site plan approvals and any subdivision to the Planning Board in accordance with Municipal Ordinances, the MLUL, the Zoning Amendment Ordinance, and the Project Schedule, which is attached hereto as Exhibit C. Developer agrees that all approvals shall be subject to full satisfaction of the terms and requirements of this Agreement.

3.3 **Obligation to Provide Creditworthy Units And Maintain the Creditworthiness of the Units**: Developer shall ensure that the Project results in the construction of ten (10) creditworthy affordable housing units to be used by the Borough in

addressing its current and/or future Mount Laurel affordable housing obligations. Developer shall ensure that all units constructed on the Property shall comply and comport with all applicable laws, including but not limited to COAH regulations (N.J.A.C. 5:97-1.1 et seq.), the Uniform Housing Affordability Controls ("UHAC") (N.J.A.C. 5:80-26.1 et seq.) regulations and such other laws as may apply. The Parties acknowledge that these regulations address, among other things, bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, screening requirements, re-rental requirements, deed restriction requirements and unit monitoring report preparation as required by COAH. The supportive and special needs housing provided shall adhere to N.J.A.C. 5:97-6.10.

**3.4 Obligation To Bear All Expenses Associated With Creating and Maintaining Creditworthy Units.** Other than its contribution to the Project of land, the Borough shall have no financial obligations under this provision to assure the creditworthiness of the units, and all associated expenses shall be solely borne by the Developer, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. The Developer shall also be responsible for the costs of all funding applications including, but not limited to, low income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

**3.5 Obligation To Cooperate With the Borough in its Efforts To Monitor the Units:** The Parties acknowledge that the Borough may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. Developer will cooperate with the Borough and provide all monitoring and reporting requirements within fifteen (15) business days of the request.

**3.6 Obligation to Properly Deed Restrict The Units:** The Project will be deed restricted for a minimum of thirty (30) years as affordable housing so that all the units therein will qualify for affordable housing credits towards the Borough's affordable housing obligations. Developer will retain an experienced Administrative Agent or successor Administrative Agent/s subject to Borough Council approval, and will work with the Borough's special Mount Laurel counsel, to ensure that the deed restriction satisfies COAH and UHAC regulation requirements and all other requirements of law. Developer shall have an obligation to record the deed restriction, along with this Agreement, with Gloucester County. Developer shall be responsible for all costs associated with retaining an Administrative Agent in conjunction with this Project, and said Administrative Agent shall be responsible for providing the Borough with all information that it or other governmental entities may require.

**3.7 Obligation To Develop Subject Property In Accordance With A Specific Schedule:** The Project Schedule as set forth in attached Exhibit C shall control the progress and completion of the Project and Developer shall adhere to the Project Schedule subject only to

relief resulting from the occurrence of an uncontrollable circumstance, such as an act of God (lightning, blizzards, hurricane, etc.), man-made disasters (an explosion, nuclear radiation, etc.), a Federal or State court order, a delay caused by not getting a governmental approval, or a strike or similar labor action. If Developer fails to meet the Project Schedule or determines at any time that it will fail to meet the Project Schedule, Developer shall promptly provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task, (b) the proposed method for correcting such failure, (c) a schedule for completing such task, and (d) the method or methods by which the Developer proposes to achieve subsequent tasks by the relevant date in the Project Schedule. This Section shall not in any way limit the rights of the Borough under any other relevant sections of this Agreement.

**3.8 Obligation to Provide Infrastructure and Other Improvements:** Developer will design and construct all infrastructure and other improvements necessitated by the Project in a workmanlike manner and in accordance with all applicable laws and regulations, as well as the requirements of the Zoning Amendment Ordinance attached hereto as Exhibit B. Developer acknowledges that such infrastructure improvements may include, but are not limited to, road improvements, walkways, storm water facilities, sidewalks, electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television/internet cable lines and other utilities. The Developer agrees that it is solely responsible to undertake the appropriate measure to negotiate with, acquire, relocate or otherwise address the existence of these utilities and infrastructure or other improvements and easements therefore, in order to complete the Project as provided by this Agreement.

**3.9 Obligation to Enter PILOT Agreement At Specific Rate:** The Developer's obligations contained in this Agreement are expressly conditioned upon the execution of a mutually acceptable Agreement for Payment in Lieu of Taxes (hereinafter "PILOT"), providing for five percent (5%) of the Project's revenue as a payment in lieu of taxes pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.) (the "HMFA Law") with the approval of the New Jersey Housing and Mortgage Finance Agency, as required by N.J.S.A. 55:14K-37 or other New Jersey law that authorizes the PILOT agreement with respect to the Project. The negotiation and execution of such PILOT shall be completed in accordance with the Project Schedule set forth in Exhibit C.

**3.10 Obligation To Obtain A Certificate of Completion:** The Developer shall be responsible to obtain, from the Borough, a Certificate of Completion as set forth *infra* in Section 4.07.

**3.11 Obligation Not To Suspend, Discontinue or Terminate Work:** Once Developer commences the Project, Developer shall not suspend or discontinue its performance of its obligations under this Agreement or terminate this Agreement (other than in the manner provided for herein) for any reason other than an uncontrollable circumstance (as defined *supra* in Section 3.9), but only to the extent and for the period of time that such performance is limited or prevented as a direct result of such occurrence and subject to such time as Developer may reasonably require to re-commence its development activities.

**3.12 Obligation To Lease Units In Manner That Maintains Their Creditworthiness:** Notwithstanding the foregoing, Developer, including its successors and assigns shall have the continuing responsibility to lease the units in accordance with applicable Federal, State, and local laws for at least thirty (30) years and maintain the affordable housing creditworthiness of the units. In the event of any breach of this continuing responsibility, the Borough shall have all remedies available in equity and law.

#### **ARTICLE IV - OBLIGATIONS OF THE BOROUGH AND THE PLANNING BOARD**

**4.1 Obligation of Borough to Appoint Ruckenstein & Associates, LLC as the Developer of the Subject Property:** Ruckenstein & Associates, LLC is hereby designated as Developer of the Project Site and shall have the exclusive right to develop and implement the Project in accordance with the terms and conditions of this Agreement. Developer may not assign or transfer these rights or responsibilities without the prior written authorization of the Borough.

**4.2 Obligation to Provide A PILOT:** Subject to appropriate notice to the public and the public's opportunity to be heard, and consistent with Section 3.11, the Borough shall execute an Agreement for Payment in Lieu of Taxes.

**4.3 Acknowledgement of Satisfaction of Obligation to Adopt Ordinance:** The Parties acknowledge that prior to the execution of this Agreement by all Parties, the Borough has introduced the Zoning Amendment Ordinance attached hereto as Exhibit B (hereinafter the "Ordinance"), the Planning Board has reviewed the Ordinance to ensure that it is consistent with the Master Plan, and, the Borough has adopted the Ordinance after a duly noticed public hearing. The Parties further acknowledge that the adoption of the Ordinance satisfies the Borough's zoning obligations under this Agreement. The Parties acknowledge that the Ordinance contains an "effective date" section, which provides that the Ordinance will only take effect upon the Court's approval of this Agreement. Developer waives any right to challenge or fail to abide by this provision.

**4.4 Obligation to Acquire Property.** The Borough shall undertake to acquire the Property and contribute the Property to the Project by no later than March 1, 2014.

**4.5 Obligation of Planning Board to amend Housing Element and for Borough to Endorse Amendment To Include the Project:** The Parties acknowledge that this Agreement is subject to the Woodbury Heights Planning Board amending its Housing Element and Fair Share Plan to include the project and the Borough endorsing said Amendment. If the Planning Board declines to adopt a Plan Amendment after a public hearing or if the Borough declines to adopt the Plan Amendment after giving the public an opportunity to be heard, this agreement shall be void, the parties shall be restored to the status quo ante and no party shall be permitted to use this agreement to attempt to gain an advantage against each other in future litigation. The Parties acknowledge that said plan amendment will satisfy the obligation of the Planning Board and Borough to amend the Borough's current Housing Element and Fair Share Plan.

**4.6 Obligation to Assist Developer In Pursuing Low Income Housing Tax Credits or Special Needs Financing.** The Borough shall adopt resolutions and take other appropriate actions to provide the support required to facilitate Developer's efforts to secure the funding from non-municipal sources necessary to assist the economic feasibility of the Project. The Borough will work with the Developer in preparing an eligible and competitive tax credit application for a 2014 submission and, if necessary, a submission in 2015. The Parties acknowledge that to be competitive, the Developer will need to demonstrate that it has established site control, secured preliminary site plan approval and entered into a PILOT consistent with this Agreement.

**4.7 Obligation to Adopt A Resolution of Intent to Bond, if Necessary.** The Borough shall have an obligation to adopt a resolution of intent to bond, if necessary, to provide any gap in funding needed to consummate the project. Notwithstanding the foregoing, the Borough shall have a right to declare this agreement null and void and to have the parties return to the status quo ante if the Developer makes a fiscal demand on the Borough for the Project.

**4.8 Obligation to Provide a Certificate of Completion Upon Developer's Satisfaction of Certain Responsibilities.** The Borough shall issue a certificate ("Certificate of Completion") in recordable form to Developer upon (i) the completion of the Project and satisfaction of its responsibilities under this Agreement, (ii) the obtaining of a Certificate of Occupancy, temporary or permanent, and proof that all labor, services, materials and supplies used in connection thereto have been paid for (or, if disputed, bonded for), and (iii) the issuance of an appropriate certification from an architect in a form deemed acceptable to the appropriate Borough professional that the Project has been completed in accordance with the drawings and specifications for the buildings.

**4.9 Obligation of Planning Board To Fast Track Development Applications:** The Planning Board shall process, review, and adjudicate all development applications for the Project and the Property in an expeditious, "fast-track" manner, which shall include, if requested and paid for by the Developer, any required special meetings of the Planning Board. Specifically included in the concept of "fast-track" review shall be the agreement of the Planning Board to review and adjudicate the Developer's application if the application is for preliminary or final approvals in accordance with the time frames established by the MLLL.

**4.10 Obligation to Transfer Property:** Upon Developer securing all requisite development approvals and non-municipal funding commitments necessary to construct the Project, the Borough shall contribute, for a nominal cost and as a contribution to address any municipal matching requirement pursuant to HMFA's Qualified Allocation Plan, the Subject Property to Developer for purposes of developing the Project. The title to the Property shall be good and marketable and free from any liens, encumbrances or restrictions that unreasonably interfere with the intended use of the Property as an affordable and special needs housing development.

## **ARTICLE V- ENVIRONMENTAL RESPONSIBILITIES**

**5.1 Property Conditions:** It is intended and agreed between the Parties that the Borough makes no promises or representations as to the state of the Subject Property to be contributed to the Project, or the Property's environmental condition, or the ability for the Developer to build on the Property.

**5.2 Right to Inspect:** The Developer shall have the right to conduct an environmental inspection of the subject property and void this Agreement if it encounters a substantial problem, provided that it does so within 60 days from the date hereof.

**5.3 Developer Environmental Obligation:** If Developer foregoes its right to void this Agreement pursuant to Section 5.2, Developer agrees and specifically assumes, at its sole expense, any and all responsibility for the investigation and remediation of all environmental conditions at, on, under or migrating to or from the Property as may be required by applicable environmental laws and regulations to a level that the property will be sufficiently clean to construct the 10-unit affordable residential project contemplated hereby. Developer also agrees, at its sole expense, to obtain all environmental approvals for the remediation of the Project Property.

#### **ARTICLE VI – COURT APPROVAL OF AGREEMENT**

**6.1 Court Approval of the Agreement:** Within 30 days of the execution of this Agreement by all Parties, the Parties shall seek Court approval of this Agreement. This Agreement is subject to Court approval of same following a duly noticed fairness hearing.

#### **ARTICLE VII – COOPERATION AND COMPLIANCE**

**7.1 Implementation of Agreement:** The parties agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Borough's obligation to cooperate shall be further conditioned upon the Developer paying and maintaining current real estate taxes and ultimately the PILOT. Furthermore, the Borough's cooperation shall be conditioned upon the Borough being able to provide such cooperation with municipal employees. If the Borough determines it must utilize the services of outside professionals to cooperate, the cooperation is contingent upon Developer bearing those costs and expenses. Prior to the Borough taking any action that would subject the Developer to any additional cost or expense under this section, the Borough shall provide the Developer with an estimate of such costs, and obtain Developer's written approval. If such approval is rejected, the Borough will be under no obligation to cooperate.

**7.2 Project Progress Meetings:** Developer shall submit quarterly status reports to Borough in writing until such time as the Borough issues a Certificate of Occupancy for the Project. In addition, Borough may require, in its sole discretion that Developer meet with Borough to discuss project progress, on an as-needed basis.

**7.3 Enforcement of Agreement:** The Parties hereto agree to cooperate with each other, furnish all necessary and reasonable documentation and take all necessary actions to assure compliance with the terms of this Agreement.

**ARTICLE VIII – NOTICES**

8.1 **Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice(s)") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

**TO DEVELOPER:** Rukenstein & Associates, LLC  
PO Box #1  
Titusville, NJ 08560  
Facsimile: (609) 730-8139

**TO THE BOROUGH OF WOODBURY HEIGHTS:**

Janet Pizzi, Municipal Clerk/Administrator  
Borough of Woodbury Heights  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Facsimile: (856) 848-2381

**WITH COPIES TO:** Jeffrey R. Surenian, Esq., Special Counsel  
Jeffrey R. Surenian and Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Facsimile: (732) 612-3101

**AND TO:** Barry N. Lozuke, Esq., Borough Attorney  
Law Office of Barry N. Lozuke, Esq.  
131 Delaware Street  
Woodbury, NJ 08096  
Facsimile: (856) 845-6121

**TO THE BOARD:** Anne Deeck, Land Use Admin/Secretary  
Borough of Woodbury Heights  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Facsimile: (856) 848-1763

**WITH A COPY TO:** Gerald Sinclair, Esq., PB Attorney

38 Cooper St.  
Woodbury, NJ 08096  
Facsimile: (856) 848-7772

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

#### **ARTICLE IX – MISCELLANEOUS**

9.1 **Severability:** Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

9.2 **Successors Bound:** The Agreement shall be binding upon the respective parties hereto and their successors and assigns.

9.3 **Governing Law:** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

9.4 **No Modification:** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

9.5 **Recording:** It is intended that this Agreement will be recorded in the Clerk's Office of Gloucester County by the Developer.

9.6 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

9.7 **Voluntary Agreement:** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

9.8 **Interpretation:** In the event of any subsequent dispute or ambiguity involving the interpretation of this Agreement, inasmuch as Developer and its attorneys have had substantial input into the terms and conditions contained herein, this Agreement shall not be interpreted against the Borough or its attorneys as a result of the Agreement being primarily drafted by the Borough.

9.9 **Assignment:** None of the Parties may assign this Agreement without the written consent of the other Parties. Furthermore, the Developer may, upon advance notice

to the Borough, but without consent of Borough, assign this Agreement to other existing or to be created entities that are owned or controlled by the Developer.

**9.10 Preparation:** The Parties acknowledge that they each have been represented by counsel with regard to the preparation of this Agreement and that this Agreement has been prepared jointly by attorneys representing each Party as a means of furthering the purposes set forth, and therefore, this Agreement shall be construed on a parity among the Parties, and any presumption for resolving ambiguities against the drafter or any Party shall not apply.

## **ARTICLE X – BOROUGH TERMINATION RIGHTS**

**10.1 Additional Termination Rights of Borough.** In addition to the rights and remedies set forth in this Agreement, the Borough shall have the right to terminate this Agreement upon written notice to Developer, notwithstanding the occurrence of an uncontrollable circumstance as described above or an event of default as described below, if Developer has not commenced construction of the Project within two years of the time frames indicated in the Project Schedule attached hereto as Exhibit C, unless extended by the Parties and consistent with the time extension provisions and criteria of the Municipal Land Use Law at N.J.S.A. 40:55D-49.

## **ARTICLE XI - EVENTS OF DEFAULT AND REMEDIES**

**11.1 Events of Default.** Any one or more of the following shall constitute an Event of Default hereunder, unless such event results from the occurrence of an uncontrollable circumstance as described above:

(a) Failure of the Developer, the Borough or the Borough's Planning Board to observe and perform any covenant, condition or agreement in this Agreement and continuance of such failure for a period of thirty (30) days, after receipt by the Party of written notice from the other Party specifying the nature of such failure and requesting that such failure be remedied ("Default Notice"); provided however that in the event any such default is not capable of being cured within said period, then provided that the defaulting Party has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(b) The Developer shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Developer; (iii) the Developer (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Developer has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Developer shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Developer and shall not have been dismissed for a period of sixty (60) consecutive days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of the Developer under the Bankruptcy Code; or (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the

Developer by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Developer or a substantial part of its assets and such order, judgment or decree shall have continued un-stayed and in effect for any period of sixty (60) consecutive days.

(c) The Developer shall fail to satisfy its obligations with respect to the timely construction of the Project in accordance with this Agreement, final site plan approval, or the Project Schedule, following the issuance of any Governmental Approvals required to do so, or shall abandon or substantially suspend construction work, and any such failure, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after receipt of the Default Notice from the Borough, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after receipt of the Default Notice, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same and the default is fully remedied not later than one hundred forty-five (145) days after mailing of the Default Notice.

(d) The Developer shall otherwise default in or violate its obligations with respect to the Project Schedule and any such default or violation shall not be cured, ended, or remedied within thirty (30) days after receipt of the Default Notice from the Borough; provided however that in the event any such default is not capable of being cured within said period, then provided that Developer has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(e) The Developer or any successor Developer shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and within thirty (30) days after written demand by Borough to do so, such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, including but not limited to the provision of a surety bond satisfactory to the Borough.

(f) The Developer or any successor Developer shall fail to pay the PILOT.

(g) The occurrence of any action or inaction by the Developer which nullifies, terminates, delays or endangers COAH compliance for any of the residential units within the Project or the Borough's entitlement to credits and rental bonuses for all of the 10 units contemplated by this agreement and any such default, nullification, termination, delay, endangerment or violation shall not be cured, ended, or remedied within thirty (30) days after receipt of the Default Notice from the Borough; provided however that in the event any such default is not capable of being cured within said period, then provided that Developer has diligently commenced a cure within such period, the cure period shall be extended for an additional period of time necessary to allow Developer to effect the cure.

(h) The Developer shall implement a transfer of the property in violation of this Agreement.

## **11.2 Remedies Upon Event of Default:**

(a) **Termination or Institution of Lawsuit.** In the event of an Event of Default by any party hereto, the non-defaulting party shall provide notice of the default to the other party. The party accused of default shall have 30 days either to agree or dispute the claim of default. If the party accused of default disputes the default, then the non-defaulting party may terminate this Agreement upon a final un-appealable judgment of a Court having jurisdiction over this matter and/or may institute whatever action, at law or in equity, it may deem desirable, including the seeking of damages.

(b) **Additional Remedies in the Event of Default.** In the event of an Event of Default, in addition to the right to terminate the Agreement, the Borough may implement any or all of the following remedies:

(i) Suspension of cooperation with Developer pursuant to the terms of this Agreement;

(ii) Suspension of the review and/or approval process of any application or submission related to any Governmental Approvals.

(c) **Additional Remedies of the Borough in the Event of Termination of the Agreement.** In the event that this Agreement is terminated by the Borough, the Developer's designation as the Developer of the Project shall in that event automatically terminate.

**11.3 No Waiver of Rights and Remedies by Delay:** Any delay by an aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of such rights or limit the aggrieved party's rights in any way. It is the intent of this provision that the parties' rights under this Agreement shall not be unduly abridged by concepts of waiver, laches, or otherwise, so that the parties may enforce their rights while it is still possible to resolve the problems created by the default involved. Nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the defaulting party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other defaults by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

## **ARTICLE XII - EXHIBITS AND SCHEDULES**

**12.1 Schedules:** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both parties.

## **ARTICLE XIII - ENTIRE AGREEMENT**

13.1 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

**ARTICLE XIV - CONFLICT OF INTEREST**

14.1 **Conflict of Interest:** No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

**ARTICLE XV - EFFECTIVE DATE**

15.1 **Effective Date:** Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be properly executed and their corporate seals where applicable) affixed and attested to this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Witness/Attest:

Rukenstein & Associates, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Ronald Rukenstein, Member/Manager

Dated: \_\_\_\_\_, 2013

Witness/Attest:

Borough of Woodbury Heights

\_\_\_\_\_

By: \_\_\_\_\_

Harry W. Elton Jr., Mayor

Dated: \_\_\_\_\_, 2013

Witness/Attest:

Planning Board of the Borough of  
Woodbury Heights

\_\_\_\_\_

By: \_\_\_\_\_

Richard Phalines, Chairman

Dated: \_\_\_\_\_, 2013

**EXHIBIT A**  
**Concept Plan**

**EXHIBIT B**  
**Zoning Ordinance**

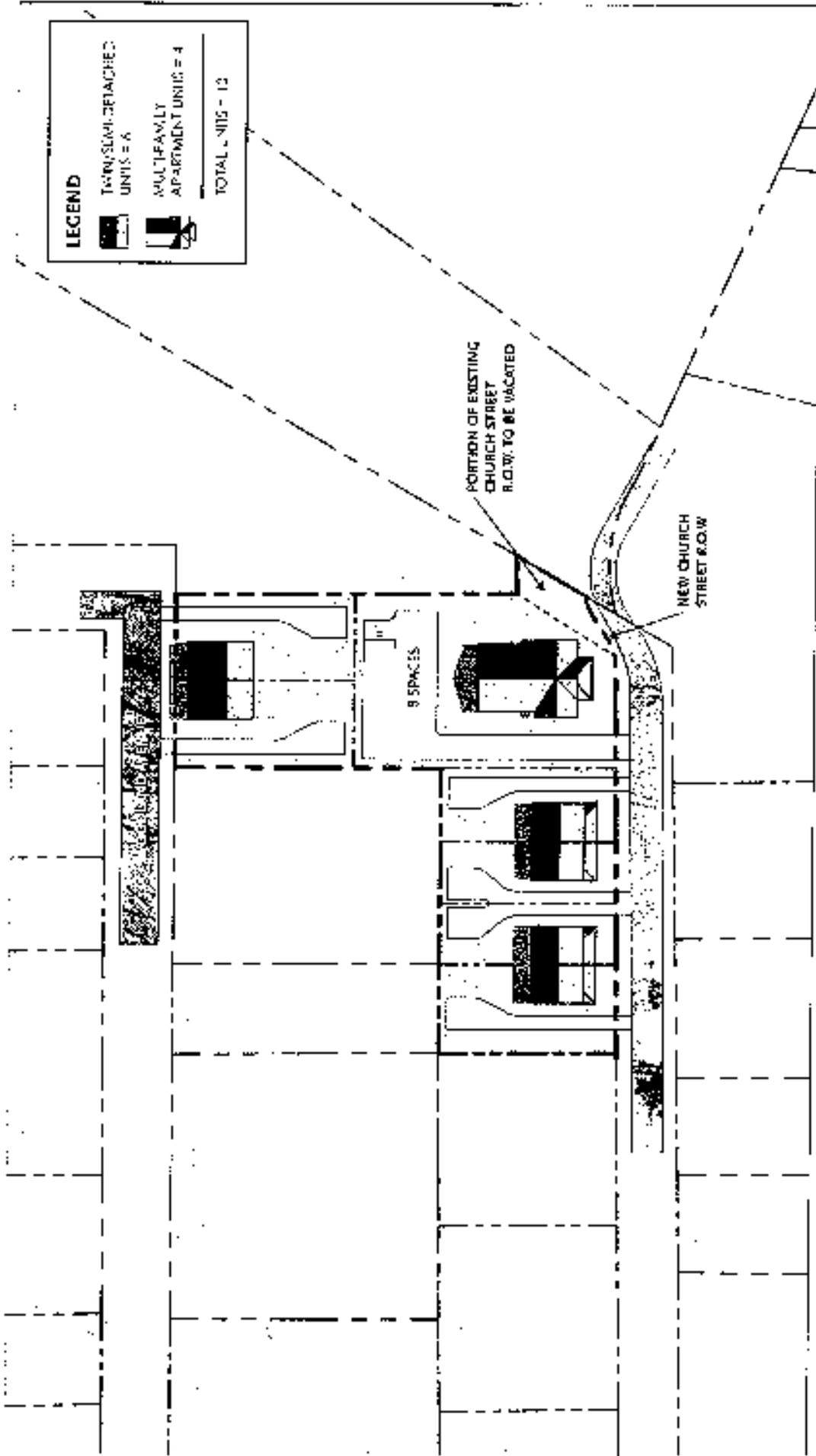
## **Exhibit C Project Schedule**

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<u><b>Task</b></u>	<u><b>Due Date</b></u>
1. Zoning Amendment Ordinance Adopted -----	November 27, 2013
2. Developer Agreement Executed -----	November 27, 2013
3. PILOT Agreement Executed -----	November 27, 2013
4. Apply for Planning Board Approvals -----	90 days after Court Approval
5. Agreement approved by the Court -----	December 31, 2013
6. Submit Financing Application -----	30 days after preliminary site approval
7. Project Closing -----	Within 6 months of funding award from NJ HMF A
8. Commence Construction -----	Within one week following Closing
9. Complete Construction -----	18 Months from Closing
10. Occupancy -----	9 Months from Construction Completion

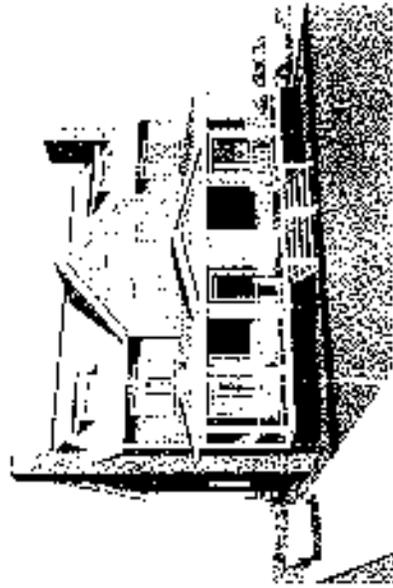
# Appendix G

## Woodland Avenue Concept Plan

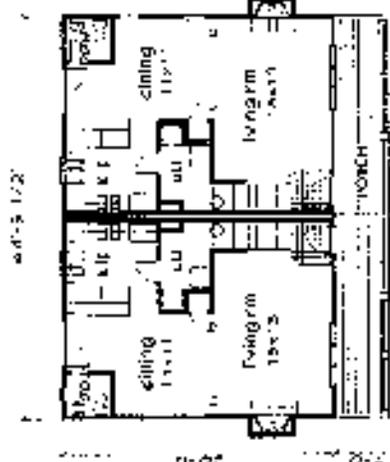


# Concept Site Plan - Affordable Housing

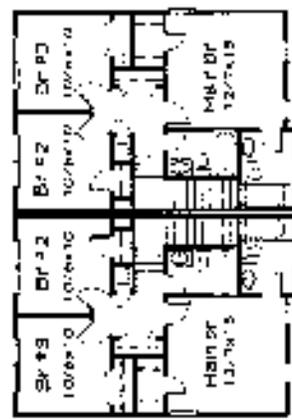
Woodland - August 11, 2013



TWIN SEMI-DETACHED PROTOTYPE (2 DU)/BLOCK



TWIN SEMI-DETACHED: FIRST FLOOR



TWIN SEMI-DETACHED: SECOND FLOOR



MULTI-FAMILY APARTMENT PROTOTYPE (4 APTS./BLOCK)



MULTI-FAMILY APARTMENT: FIRST FLOOR



MULTI-FAMILY APARTMENT: SECOND FLOOR

WOODLAND AVE. SITE AFFORDABLE HOUSING - BLOCK 91, LOT 6

# Housing Prototypes

Woodbury Heights, NJ March 2013

Cook-Cook-Hill
   
 100% w/ financing
   
 Low-Income Housing

# Appendix H

## Woodland Avenue Draft RM-2 Zoning District



**ORDINANCE 15 – 2013**  
**ORDINANCE AMENDING THE ZONING ORDINANCE AND ZONING MAP FOR**  
**THE BOROUGH OF WOODBURY HEIGHTS, GLOUCESTER COUNTY, NEW**  
**JERSEY**

**WHEREAS**, by the Borough Council of the Borough of Woodbury Heights, County of Gloucester and State of New Jersey (“the Borough”) has proposed a revised Housing Element and Fair Share Plan Amendment to the Master Plan; and

**WHEREAS**, the Borough Council has deemed it in the best interest of the public health, safety and welfare to implement the aforesaid Amendment to the Master Plan; and

**WHEREAS**, in order to facilitate the consistency of the Woodbury Heights Master Plan with the Land Use Code and Ordinances of the Borough of Woodbury Heights, the Borough Council desires to codify and implement the recommendations contained in the aforesaid Housing Element and Fair Share Plan Amendment; and

**WHEREAS**, to further implement the Amended Housing Element and Fair Share Plan, the Borough intends to hereby establish a new Zoning District entitled “Residential Multifamily Affordable District (RM-2)” and to further supplement and amend the Zoning Ordinance as follows:

A. Create a new Section 70-13.3 under Article IV, District Regulations as follows:

**1. Section 70-13.3 Residential Multifamily Affordable (RM-2)**

A. The purpose of the RM-2 District is to provide for the construction of supportive housing for persons of low and moderate income consistent with New Jersey's Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the rules of the New Jersey Council on Affordable Housing and the Mount Laurel Doctrine.

B. Permitted Principal Uses.

1. All principal permitted uses in the Residential R district under Section 70-13A.
2. Supportive Housing in single-family, semi-detached or quadruplex dwelling units.

C. **Accessory Uses Permitted.** All accessory uses permitted in the R District under Section 70-13B.

D. A maximum density of 13 units per acre.

E. **Maximum Building Height** in accordance with Section 70-13C.

F. **Area and Yard Requirements.**

1. For all uses as permitted in the R-District the area and yard requirements of Section 70-13D, apply.

2. **Supportive Housing Single-family units** in accordance with the following:

Minimum Lot Area: 5,000 square feet

Minimum Lot Width: 50 feet

Minimum Lot Depth: 100 feet

Minimum Side Yard Setback: 10 feet

Minimum Front Yard Setback: 25 feet

Minimum Rear Yard Setback: 25 feet

3. **Supportive Housing Semi-Detached single-family units** in accordance with the following:

Minimum Lot Area: 3,750 square feet

Minimum Lot Width: 37 feet

Minimum Lot Depth: 100 feet

Minimum Side Yard Setback: 0-feet and 10-feet

Minimum Front Yard Setback: 25 feet

Minimum Rear Yard Setback: 25 feet

4. **Supportive Housing Quadruplex Swelling Units** in accordance with the following:

Minimum Lot Area: 10,000 square feet

Minimum Lot Width at Building Line: 100 feet

Minimum Lot Depth: 150 feet

Minimum Side Yard Setback: 15-feet with an aggregated of 25-feet

Minimum Front Yard Setback: 30 feet

Minimum Rear Yard Setback: 30 feet

G. Design Criteria.

1. If parking is proposed in the front yard for the duplex units, the front yard setback shall be increased to accommodate all spaces on-site.
2. Parking for the quadruplex units shall be provided in the rear yard area. The total number of spaces shall meet the Residential Site Improvement Standards. All parking areas shall be screened from adjoining properties.
3. Street/Shade trees shall be provided for each residential unit with a minimum spacing of one tree for every 50-feet of lot width.
4. Landscaping plans shall be provided including foundation plantings. Perimeter plantings/fencing shall be provided adjacent to existing single-family dwelling units.

**BE IT FURTHER ORDAINED**, as follows:

**1. Repealer.** Any and all other Ordinances or parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistency.

**2. Saved from Repeal.** Any and all other Ordinances or parts of Ordinances not inconsistent with the terms and provisions of this Ordinance are hereby saved from repeal.

**3. Filing.** Upon adoption, a copy of this Ordinance shall be forthwith filed with the Gloucester County Planning Board via Certified Mail.

**4. Effective Date.** This Ordinance shall take effect immediately upon its final adoption and publication, and as otherwise provided by law.

BOROUGH OF WOODBURY HEIGHTS

By: \_\_\_\_\_

HARRY W. ELTON, JR., MAYOR

ATTEST:

BY: \_\_\_\_\_

JANET PIZZI, CLERK/ADMINISTRATOR

NOTICE

Notice is hereby given that the foregoing ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 9<sup>th</sup> day of October, 2013 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the      day of      , 2013 at 7:30 pm. at which time and place any interested party will be given the opportunity to be heard.

\_\_\_\_\_  
JANET PIZZI, CLERK/ADMINISTRATOR

# Appendix I

## Woodbury Heights Development, LLC Settlement Agreement



LITIGATION SETTLEMENT AGREEMENT

This Litigation Settlement Agreement made as of May \_\_\_\_\_, 2012 by and among Woodbury Heights Development, LLC ("WHD"), a limited liability company of the State of New Jersey, with a business address of 770 Township Line Road, Suite 150, Yardley, PA 19067; BOROUGH OF WOODBURY HEIGHTS ("BOROUGH"), a New Jersey municipal corporation with a principal address of 500 Elm Avenue, Woodbury Heights, NJ 08097; and PLANNING BOARD OF THE BOROUGH OF WOODBURY HEIGHTS ("PLANNING BOARD"), a New Jersey municipal planning board having an address of 500 Elm Avenue, Woodbury Heights, NJ 08097.

WHEREAS (1st), WHD is the owner and developer of property within the Borough, which property is designated on the tax map of the Borough as Block 89, Lot . ("Property");

WHEREAS (2nd), in or about 2006, WHD received approval for the development of a residential project that proposed two hundred seventy four (274) residential, age restricted units;

WHEREAS (3rd), following that 2006 approval, but prior to proceeding with development, WHD filed a builder's remedy lawsuit against the BOROUGH and PLANNING BOARD alleging that the Borough had failed to comply within its constitutional obligations pursuant to the Mount Laurel Doctrine as expressed in *Southern Burl. Co. NAACP v. Sp. of Mount Laurel*, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act,

N.J.S.A. 52:270-301, et seq. (the "EIA") and applicable regulations promulgated pursuant to the FRA (the "Regulation");

**WHEREAS** (4th), The Litigation was captioned "*Woodbury Heights Development, LLC v. Borough of Woodbury Heights and the Planning Board of the Borough of Woodbury Heights,*" filed in the Superior Court of New Jersey, Law Division Gloucester County, as Docket No. GLC-L 1750-09 (the "Litigation");

**WHEREAS** (5th), during the course of the Litigation, WHD filed a Motion for Summary Judgment that, if granted, may have approved a project consisting of two hundred seventy four (274) residential, non-age restricted units;

**WHEREAS** (6th), during the pendency of WHD's Motion for Summary Judgment, the Parties began to discuss the potential for settlement;

**WHEREAS** (7th), as a result of such settlement discussions, the Parties have reached an agreement so as to provide for a less intensive development of the Property that still provides for the production of affordable housing to assist the BOROUGH in meeting its affordable housing obligations under the *Mount Laurel Doctrine*;

**WHEREAS** (8th), in fulfillment of its responsibilities under this Agreement, the Borough has adopted the Ordinance (hereinafter defined);

WHEREAS (9th), this Agreement is contingent upon Court approval of this Agreement following a Fairness Hearing, all in accordance with applicable legal requirements; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and terms and conditions provided herein, it is agreed by and among WHD, BOROUGH and PLANNING BOARD as follows:

## 1. PURPOSE

1.1. This Agreement is reached after due deliberation by all PARTIES and upon the considered judgment of all PARTIES that it is in the best interest of the public good and welfare to settle all claims asserted by WHD in the Litigation upon the terms and conditions contained herein so as to advance affordable housing purposes and objectives in a manner consistent with sound land use planning principles.

1.2. The intent of this Agreement and the proposed Ordinance is to permit development on the WHD Property of a maximum of 234 multifamily units, including 34 units affordable to low and moderate income households consistent with the criteria in Section 5.11 (the "Project"). If fewer than 234 units are approved for development, the intent is to maintain a set aside of at least 14.5 percent.

## 2. COURT APPROVAL AND MOUNT LAUREL FAIRNESS HEARING

2.1. The obligations of the PARTIES under this Agreement are contingent upon Court approval of this Agreement and the

Ordinance following a Fairness Hearing conducted in accord with applicable case law, including, but not limited to the procedures proscribed by the Appellate Division in *East/West Ventures v. Borough of Fort Lee*, 286 N.J. Super. 311 (App. Div. 1996) and associated case law.

2.2. Within ten (10) days after execution of this Agreement, the PARTIES shall make application to the Court for the scheduling of a Fairness Hearing for approval of this Agreement and the Ordinance (hereinafter defined). Following the scheduling of a Fairness Hearing date, BOROUGH shall comply with all notice requirements as may be directed by the Court.

2.3. The PARTIES agree to cooperate and participate in the defense of any challenge to or appeal of the contemplated Court approval, this Agreement, the Ordinance or any related implementing action.

2.4. Each PARTY shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement, including any litigation defense costs. This provision shall not be construed to preclude joint representation of BOROUGH and PLANNING BOARD in any litigation or other proceeding. All decisions as to strategy as to particular actions to be taken in defense of any litigation shall be within the sole discretion of each PARTY.

2.5. WHD acknowledges that BOROUGH and PLANNING BOARD intend to seek Court approval of the Borough's Housing Element and Fair Share Plan (the "Compliance Plan"), including possible amendments thereto, in continued proceedings directed at entry of a Compliance Judgment that will constitute a final adjudication of any and all affordable housing claims against BOROUGH and will entitle BOROUGH to 10 years of repose and related rights and protection from affordable housing litigation in accordance with principles set forth in the *Mount Laurel II* decision and the PHA. WHD agrees to cooperate with and support BOROUGH and PLANNING BOARD in connection with such continuing judicial proceedings. However, this matter shall proceed independent of the BOROUGH'S efforts to obtain a Compliance Judgment.

2.6. The obligations of the PARTIES under this Agreement are contingent on Court approval as contemplated by this Section 2. If this Agreement is not approved by the Court within ninety (90) days after execution, then each PARTY shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

### 3. OBLIGATIONS OF THE BOROUGH

3.1. BOROUGH has rezoned the WHD Property in fulfillment of its responsibilities under this Agreement for multi-family development subject to an affordable housing set-aside

requirement as set forth in Section 5.1 hereunder, consistent with the Ordinance attached hereto as Exhibit A (the "Ordinance").

3.2. BOROUGH has an obligation to maintain the rezoning for 10 years subsequent to the date of Court approval of this Agreement.

3.3 BOROUGH shall have an obligation to retain an Administrative Agent to perform administrative tasks. The administrative tasks shall include, but are not limited to promptly carrying out the following: (i) appropriately marketing the affordable units, (ii) screening potential applicants for the units to ensure that they qualify as low or moderate households, (iii) pricing the units at affordable rates, (iv) ensuring that the affordable units are properly deed restricted, (v) overseeing re-renting of the units to insure that subsequent renters qualify as affordable tenants and (vi) enforcing any and all other Uniform Housing Affordability Control ("UHAC") requirements and requirements of the Commissioner as to the affordability of the units.

3.4. BOROUGH shall contract with a properly certified administrative agent within 120 days of a request by WHD. WHD shall serve notice of said request upon the Mayor and Council, the Borough solicitor, and Mount Laurel counsel for Woodbury Heights. Said Administrative Agent shall perform the necessary

services to establish and maintain the creditworthiness of the affordable units in the Project as required by applicable regulations.

3.5. BOROUGH represents that there are currently no restrictions on the ability of WHD to obtain public water and sewer service for the Property. Further, the BOROUGH agrees to cooperate with WHD in its efforts to obtain utility service for the Property, including but not limited to all necessary approvals from the Gloucester County Planning Board, New Jersey Department of Environmental Protection, Conrail and any other agencies having jurisdiction over the proposed development provided that such cooperation does not require the Borough to retain professionals or use professionals other than employees of the Borough.

3.6. BOROUGH shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

#### **4. OBLIGATIONS OF PLANNING BOARD**

4.1 PLANNING BOARD acknowledges that as an inclusionary developer, WHD shall be entitled to expeditious review and processing of its development application(s), and PLANNING BOARD agrees to make a bona fide effort to expedite all requisite municipal development approvals, which may include the scheduling of special meetings and adjustments to meeting agendas, consistent with the intent of N.J.A.C. 5:97-10.3.

PLANNING BOARD agrees that as a minimum of at least one meeting per month will be devoted to WFD's development application(s).

4.2 PLANNING BOARD shall grant reasonable waivers and variances from the requirements of the Ordinance provided that the applicant satisfies the criteria set forth in the MLUL to warrant such relief.

4.3. In connection with development application review proceedings, PLANNING BOARD will offer WFD the option of either preparing expert reports itself or preparing traffic and environmental impact studies or, as to each such study, choosing a consultant from a list of at least six (6) professionals prepared by PLANNING BOARD to prepare the study or studies. If WFD chooses a consultant from the municipally prepared list, WFD and PLANNING BOARD will rely on the consultant's recommendations and no other study or studies, as applicable, will be prepared on such subject(s); consistent with N.J.A.C. 5:97-10.4. Nothing herein shall preclude the PLANNING BOARD from disagreeing with the recommendations of any of the consultants for good reason or from considering other testimony related to the areas of expertise of the experts it is required to rely upon.

4.4. PLANNING BOARD represents that it is aware of no restrictions on the ability of WFD to obtain public water and sewer service for the Property. Further, PLANNING BOARD agrees to cooperate with WFD in its efforts to obtain utility service

for the Property, including but not limited to all necessary approvals from the Gloucester County Planning Board, New Jersey Department of Environmental Protection, Conrail and any other agencies having jurisdiction over the proposed development provided that such cooperation does not require the Planning Board to retain professionals or use professionals other than employees of the Planning Board.

4.5. Neither the BOROUGH nor the PLANNING BOARD shall subject the residential development contemplated and authorized by the Ordinance and this Agreement to any affordable housing development fee requirement, since the development will constitute an inclusionary development.

4.6. PLANNING BOARD shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

## 5. OBLIGATIONS OF WHD

5.1. If PLANNING BOARD approves an application for 234-units, WHD shall reserve and restrict 34 of the units for low and moderate income households. If PLANNING BOARD approves an application for fewer than 234-units, WHD shall have the right to reduce the number of affordable units provided that the developer maintain a set aside of at least 14.5%.

5.2. If PLANNING BOARD approves an application for 234 units, WHD agrees to limit the total number of bedrooms in the market rate units within the Project to no more than three

hundred twenty (320) total bedrooms. If the Board approves an application for fewer than 234 units, then the limit on the number of bedrooms on market rate units shall be reduced commensurately.

5.3. WHD shall not provide any three (3) bedroom market rate units within the Project.

5.4. WHD shall rent the affordable units.

5.5. Notwithstanding anything herein to the contrary, WHD shall take all necessary steps to make the affordable units provided for under the Settlement Agreement and in the approved site plan creditworthy under GHAC regulations, the regulations of the DCA Commissioner, as the successor to COAH, and all other applicable laws. WHD shall also maintain the creditworthiness of the affordable units over the 30-year period of restriction. Such steps shall include, but not be limited to complying with the bedroom distribution for the affordable units, integrating the affordable units in accordance with the approved site plan provided that the project is a rental project and otherwise cooperating with the Administrative Agent who shall be responsible for performing all administrative tasks.

5.6. All costs related to the administrative tasks associated with the affordable units in the Project shall be borne by WHD.

5.7. In the event that BOROCCA does not contract with a properly-certified administrative agent as set forth at §3.3, WHD shall be free to retain a certified Administrative Agent at its cost to perform the administrative tasks set forth above and to otherwise maintain the creditworthiness of the units. If WHD retains an administrative agent, WHD shall be responsible for all duties associated with the administrative agent that would otherwise be the responsibility of the BOROCCA. The duties of such an administrative agent retained by WHD would be limited to the tasks associated with the Project only.

5.8. If the PLANNING BOARD approves an application for 234-units and if WHD accordingly provides 30 affordable units, as required hereby, the bedroom distribution of the affordable units required by applicable regulations shall be as follows:

- 7 one-bedroom units
- 20 two-bedroom units
- 7 three bedroom units

5.9. WHD shall disburse the affordable units throughout the development and shall not concentrate the affordable units in a single building provided that the market units are primarily rental units. If the market units are for sale, WHD shall be permitted to concentrate the affordable units at its discretion for ease in administration of those units.

5.10. WHD shall present a development application consistent with the terms of the Ordinance and shall not seek modifications to the zoning applicable to the subject property.

5.11. WHD shall present a development application substantially consistent with a certain plan entitled "Sketch Plan Multi-Family - Academy Pointe", prepared by Glackin Thomas Panzak, last dated August 31, 2011 and attached hereto as Exhibit 5 (the "Concept Plan").

5.12. WHD shall present a development application subject to the design criteria and related requirements set forth below:

a. To facilitate prohibition of utilizing the den in one-bedroom units as a bedroom, WHD agrees to the following restrictive measures:

(i) The inclusion of a provision within all lease agreements, and the enforcement of such a provision, prohibiting the den to be used as a bedroom or sleeping area; and

(ii) The design of any den area may include either a closet or a door, but shall not include both design features.

b. There shall be at least a minimum of three points of vehicular ingress and egress access to the site, two of which shall be located on Academy Avenue and one on Chestnut Avenue; WHD agrees, if determined to be needed by

a traffic engineering study acceptable to the Board, to add one or more accesses if so recommended.

e. The building design shall incorporate a combination of exterior elevation materials and the buildings shall include breaks in the building facades. Roofs shall either be pitched or, if flat, incorporate design techniques to shield any equipment to be located on the roofs of buildings within the Project. The exterior finishes for the buildings shall include stone, stucco or other combinations of materials.

d. The Project shall consist of no more than nine buildings, each of which shall not exceed three stories in height.

e. WHD shall comply with all RSIS requirements.

f. WHD shall provide at least the following amenities: a Community Center with a minimum of a 5,000 square foot community activity room, a swimming pool, and two lot lots.

g. WHD shall construct the Community Center in the first phase of development.

5.13. The proposed development of the Property shall be governed by the provisions of the Ordinance and current BOROUGH land use and zoning regulations and shall require preparation of detailed conforming development plans and subdivision and/or site plan approval proceedings, as applicable, in accordance

with procedural requirements of the MLUL and the provisions of this Agreement.

5.14. WHD acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, PLANNING BOARD may require on-site and off-site improvements as appropriate consistent with the MLUL. WHD shall comply with all such conditions.

5.15. In addition to those conditions that may lawfully be imposed on the Project, WHD agrees to accept a condition of approval for the Project that requires WHD to provide sidewalks and appropriate lighting for those sidewalks, both on tract and off tract, to allow sidewalk access to the Woodbury Heights Elementary School. All off tract sidewalks to be installed shall be installed on property either owned by the Borough or on property located within the Borough's right-of-way. WHD shall be responsible for the costs of any permits and/or fees, including inspection fees, incurred in connection with the construction of the off tract sidewalks and related lighting. WHD further agrees to cooperate with PLANNING BOARD professionals to ensure that the aforementioned sidewalks and lighting are appropriately provided by WHD.

5.16. WHD agrees that if the market units in the Project are operated as rental units, certain measures should be taken to ensure that occupancy levels within such units of the

Project are maintained at a safe and reasonable level. Accordingly, in the event that WHD, and or its successors and/or assigns, own and/or manage any of the market units in the Project as rental units, such rental units shall be restricted by occupancy to two (2) persons per bedroom. For purposes of such a restriction, a "person" shall not include those children under the age of two. WHD agrees to provide for such a restriction within its lease and/or rental agreements and take all reasonable measures permissible under New Jersey law to enforce such a restriction. There shall be no occupancy restrictions imposed on units within the Project if such units are sold for fee simple ownership.

5.17. WHD accepts and will comply with the requirement that any development approval granted by PLANNING BOARD for the Property shall incorporate by reference this Agreement, shall be consistent with all terms and provisions of this Agreement, and shall include an express condition requiring compliance by WHD with all obligations under this Agreement.

5.18. WHD shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

5.19. WHD shall take no direct or indirect action to interfere with implementation of BOROUGH'S Compliance Plan or any subsequent amendment thereto, provided that any amendment does not deprive WHD of any express rights created hereunder.

6. NOTICES

6.1. The PARTIES and their respective counsel agree to promptly provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, whether threatened or pending, which could have a material adverse impact on implementation of this Agreement.

6.2. All notices required under this Agreement shall be in writing and shall be given by facsimile, certified mail return receipt requested or same day or overnight delivery service providing delivery confirmation. All notices shall be deemed received upon the date of delivery. Unless notice of a change in name or address has been provided to the other PARTIES, the persons and entities entitled to receive notice shall be as follows:

TO WHD:

Woodbury Heights Development, LLC  
770 Township Line Road, Suite 150  
Yardley, PA 19067  
Attn: Andrew Brockman, Esquire  
Steve Spaeder  
Telecopier: (610) 355-1871 and (215) 575-2434

Richard J. Hoff, Esq.  
Bisgaier/Hoff  
21 Tanner Street  
Haddonfield, NJ 08033  
Telecopier: 856.784.7407

TO BOROUGH:

Borough Clerk

Borough of Woodbury Heights  
Borough Hall  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Telecopier: (856) 848-2381

Barry Lozuke, Esquire  
Zane & Lozuke  
131 Delaware St.  
Woodbury, NJ, 08096  
Telecopier: (856) 845-6121

Jeffrey R. Surenian and Associates, LLC  
707 Union Avenue, Suite 30  
Bridle, New Jersey 08731  
Telecopier: 732 612 3101

TO PLANNING BOARD:

Borough of Woodbury Heights Planning Board  
Borough Hall  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Telecopier: (856) 848 1763

Gerald Sinclair, Esquire  
Gerald A. Sinclair, P.C.  
38 Cooper Street  
Woodbury, NJ 08036  
Telecopier: 856-848-7772

## 7. MISCELLANEOUS PROVISIONS

7.1. The terms and conditions set forth in this Agreement shall bind and inure to the benefit of and/or be the responsibility of the current Parties and any successor in interest of any PARTY to this Agreement and may be enforced by any such PARTY. WHD shall record this Agreement within 14 days of approval by the Court.

7.2. This Agreement is the entire agreement between the PARTIES concerning all matters referred to herein and supersedes all prior oral and written promises, conditions, representations, undertakings, and interpretations of any nature whatsoever that are not incorporated within this document.

7.3. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original.

7.4. The preamble to this Agreement is hereby incorporated as if contained in the body of same.

7.5. The PARTIES acknowledge that this Agreement was not drafted by any one PARTY, but was drafted, negotiated and reviewed by all PARTIES and, therefore, the presumption of resolving ambiguities against the drafter shall not apply.

7.6. Each PARTY expressly represents that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

7.7. Each PARTY waives all rights to challenge the validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the PARTIES' authorized representatives have signed this Agreement.

ATTEST:

BOROUGH OF WOODBURY HEIGHTS

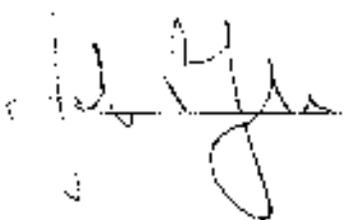
By: \_\_\_\_\_  
Mayor Harry W. Ellison, Jr.

WOODBURY HEIGHTS PLANNING BOARD

By: \_\_\_\_\_  
Richard Phalines

WOODBURY HEIGHTS DEVELOPMENT, LLC

By:   
Stephen M. Spaeder  
Senior Vice President

\_\_\_\_\_  


ACKNOWLEDGEMENTS

STATE OF NEW JERSEY

SS:

COUNTY OF GLOUCESTER:

BE IT REMEMBERED that on \_\_\_\_\_, 2011, personally came before me and acknowledged under oath, to my satisfaction, that: (a) She/He is the \_\_\_\_\_ of the Borough of Woodbury Heights, the municipal corporation named in this Litigation Settlement Agreement; (b) She/He is the attesting witness to the signing of this Litigation Settlement Agreement by the proper municipal official, \_\_\_\_\_, who is the \_\_\_\_\_ of the Borough of Woodbury Heights; and (c) this Litigation Settlement Agreement was signed and delivered by the Borough of Woodbury Heights as its voluntary act duly authorized by a proper resolution of the Borough Council.

\_\_\_\_\_  
Notary Public of the State of New Jersey

STATE OF NEW JERSEY

SS:

COUNTY OF GLOUCESTER:

BE IT REMEMBERED that on \_\_\_\_\_, 2011, personally came before me and acknowledged under oath, to my

satisfaction, that: (a) She/He is the \_\_\_\_\_ of the Borough of Woodbury Heights Planning Board, the municipal corporation named in this Litigation Settlement Agreement; (b) She/He is the attesting witness to the signing of this Litigation Settlement Agreement by the proper municipal official, \_\_\_\_\_, who is the \_\_\_\_\_ of the Planning Board of the Borough of Woodbury Heights; and (c) this Litigation Settlement Agreement was signed and delivered by the Borough of Woodbury Heights as its voluntary act duly authorized by a proper resolution of the Planning Board.

\_\_\_\_\_  
Notary Public of the State of New Jersey

\_\_\_\_\_  
Notary Public of the State of New Jersey

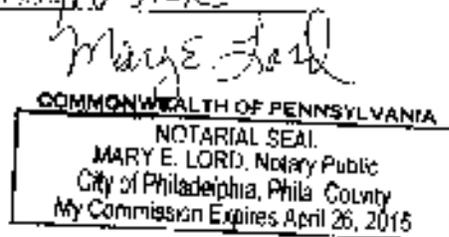
STATE OF Pennsylvania

SS:

COUNTY OF Philadelphia:

BE IT REMEMBERED that on May 10, 2012, Stephen M. Spaeder, Senior Vice President of Woodbury Heights Development, LLC ("WHD") personally came before me and acknowledged under oath, to my satisfaction, that WHD is named in this Litigation Settlement Agreement and that this Litigation Settlement Agreement was signed by him on behalf of WHD as its voluntary and duly authorized act.

Notary Public of the State of Pennsylvania



List of Exhibits

Exhibit A Ordinance 6 2012

Exhibit B - "Sketch Plan Multi-Family Academy Pointe",  
prepared by Clackin Thomas Fausak, last dated August 31, 2011.

## Appendix J

### Adopted RM – Residential Multi-Family Zone

**ORDINANCE 6 - 2012**

**ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF GLOUCESTER, AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE LAND DEVELOPMENT ORDINANCES AND THE WOODBURY HEIGHTS CODE TO CODIFY AND IMPLEMENT THE PROVISIONS OF THE HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT OF THE MASTER PLAN**

**SECTION I:**

**WHEREAS**, the Borough Council of the Borough of Woodbury Heights, County of Gloucester, and State of New Jersey (the "Borough") has reviewed the "Housing Element and Fair Share Plan Amendment" to the Master Plan adopted by the Planning Board on March 19, 2012; and

**WHEREAS**, the Borough Council has deemed it in the best interest of the public health, safety and welfare to implement the aforesaid amendment to the Master Plan as set forth above; and

**WHEREAS**, in order to facilitate the consistency of the Woodbury Heights Master Plan with the Land Use Code and Ordinances of the Borough of Woodbury Heights, the Borough Council desires to codify and implement the recommendations contained in the aforesaid Housing Element and Fair Share Plan Amendment; and

**WHEREAS**, this Ordinance was referred to the Planning Board of the Borough of Woodbury Heights pursuant to the New Jersey Municipal Land Use Law; and

**WHEREAS**, the Planning Board of the Borough of Woodbury Heights has recommended the adoption of this Ordinance and has determined that it is consistent with the Master Plan and the 2012 amendment to the Housing Element and Fair Share Plan thereof.

**NOW, THEREFORE**, be it Ordained by the Borough Council of the Borough of Woodbury Heights, County of Gloucester, State of New Jersey that the Land Use Ordinances and Code of the Borough of Woodbury Heights be supplemented and amended as follows:

**Section 70-13.2 RM Residential Multifamily District**

- A. The purpose of the RM District is to provide for the construction of multifamily dwellings, and to create a realistic opportunity for the construction of a portion of the low and moderate income housing obligation of the Borough of Woodbury Heights under New Jersey's Fair Housing Act, N.J.S.A. 52:27D-201 et seq., the rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:93-1 et seq., and the Mount Laurel doctrine.

The Residential Multifamily District will result in a set-aside of at least 14.5% affordable housing units.

B. Principal Permitted Uses.

- (1) Multi-family residential units

C. Accessory Uses Permitted.

- (1) Recycling and solid waste collection facilities
- (2) Recreation facilities and buildings
- (3) Fences, walls and signs
- (4) Other customary incidental uses

D. A maximum density of 13.4 units per acre in no more than 9 separate buildings shall be permitted.

E. Maximum Building Height of 3 stories/45 feet if the following conditions are satisfied:

- (1) The building is designed to conform to the applicable building codes.
- (2) Additional requirements are provided under Section 70-34.

F. Area and Yard Requirements.

- (1) Minimum Lot Frontage: 200 feet
- (2) Minimum Lot Depth: 200 feet
- (3) Minimum Side Yard Setback: 50 feet
- (4) Minimum Front Yard Setback: 60 feet
- (5) Minimum Rear Yard Setback: 50 feet
- (6) Maximum Building Coverage: 25%
- (7) Maximum Impervious Coverage: 45%
- (8) A minimum building separation of 35 feet shall be provided
- (9) Accessory structures shall be subject to the same setback requirements as principal buildings, as provided above

G. Landscaping, buffers, street/shade trees and landscaping in parking facilities shall be provided in accordance with Section 79-19.14 and as follows:

- (1) All rear, front and side yards shall include a minimum 25-foot wide landscape buffer. The buffer width may be reduced to accommodate sidewalks provided that the material included in the buffer is sufficient to screen the development from the adjoining single-family residential area. Berms may be appropriate where the buffer width is reduced.
- (2) The landscaping in the buffer shall consist of a combination of trees, shrubs and planting beds. The use of landscape berms and decorative fencing are encouraged. In addition to this section, the plans shall conform to the buffer requirements under Section 79-49.14F in order to ensure adequate screening between the multifamily development and surrounding single-family residential development.

- (3) Existing vegetation should be preserved to the extent possible and be supplemented with additional screening.
  - (4) Within required landscape buffers, where existing vegetation is to remain, the plans shall identify the remaining material including size and type. The plans shall generally define the remaining vegetation in all other areas.
  - (5) Tree protection measures shall be provided on the plans for areas where existing vegetation will remain.
  - (6) Landscaping around stormwater management areas shall be provided in accordance with Section 70-49.6G.
- H. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards and Section 70-23. Parking shall not be permitted along drive aisles and shall be within designated parking areas.
- I. A minimum of three site access points shall be provided to the site. Two of the access points shall be provided on Academy Avenue and one on Chestnut Avenue.
- J. Curbs and sidewalks shall be provided along the entire length of street frontage and throughout the development connecting the residential units to the parking areas.
- K. Building Design. The design of the buildings shall be consistent with the surrounding single-family neighborhood so that the appearance remains residential and not institutional.
- (1) Architectural elevations and floor plans shall be provided for each of the buildings.
  - (2) The building design shall incorporate a combination stone, stucco or other combination of building materials.
  - (3) The buildings shall include breaks in the facades to break up the building lengths.
  - (4) Rooflines shall be pitched. If flat roofs are provided they shall incorporate design techniques to shield any roof mounted equipment.
  - (5) No more than two bedrooms per unit shall be provided. This shall not apply to the affordable housing units, which shall meet the requirements of the Uniform Housing Affordability requirements.
  - (6) All HVAC and mechanical equipment shall be incorporated into the building design and not visible except where such equipment shall be placed at ground level, in which case such equipment shall be appropriately screened from public view.
- L. Bedroom Distribution (excluding the affordable housing units)
- (1) No more than two bedrooms shall be provided per unit.
  - (2) The number of two-bedroom units shall not exceed 60% of the total market rate units.
  - (3) Dens are permitted in a one-bedroom unit subject to the following:
    - i. The inclusion of a provision within the lease agreements, and the enforcement of such a provision, prohibiting the den to be used as a bedroom or sleeping area.
    - ii. The design of any den area may include either a closet or a door, but shall not include both design features.
    - iii. Dens are not permitted in a two-bedroom unit.

M. Common recreation shall be provided as follows:

- (1) A clubhouse or community building with a minimum size of 5,000 square feet and a swimming pool shall be provided.
- (2) A playground area for children shall be provided. The playground shall include equipment appropriate for different age groups. The playground may be separated into two areas. Seating shall be provided around all playground areas. The plans shall include details of the proposed equipment, surface area and any other improvements.
- (3) Additional recreation areas may be appropriate consisting of picnic areas, sitting areas, walkways or other similar areas.
- (4) All such common uses shall be subordinated to the residential character of the development, and no commercial advertising shall be permitted.
- (5) Architectural elevations and floor plans shall be provided for the clubhouse.
- (6) The completion of the common recreation areas shall be tied to the completion of the units so that at no time shall there exist residential units without any recreational amenities. The clubhouse area shall be considered a recreational amenity provided that areas for recreational use are included within the building. A plan shall be submitted addressing the timing of the completion of the common recreation areas.

N. Permitted Signs

- (1) A site identification sign shall be permitted on each street entry.
- (2) The maximum sign area shall not exceed 26 square feet.
- (3) The maximum height shall not exceed 8 feet.
- (4) All signs shall be located in a landscaped island.
- (5) Signs shall be located outside all sight triangles.
- (6) Subject to additional sign regulations as provided under Section 70-28

O. Refuse storage.

- (1) The refuse storage area shall be suitably located and screened and arranged for access and ease of collection and shall not be part of, restrict or occupy any parking aisle.
- (2) All refuse storage areas shall be within a solid enclosed structure. Fencing is not considered a solid structure for the purposes of this section. The enclosure shall either include a landscaping screen or decorative finish. The intent is to ensure that the enclosure is sturdy and screened from view either with an appropriate finish in more visible areas, or landscaping in more remote areas.
- (3) The gate on the refuse storage enclosure shall consist of a solid material and be self closing.
- (4) A side entry shall be provided to the trash enclosure so that residents can easily access the containers.
- (5) Landscaping shall be provided around the exterior of the refuse storage enclosure as needed to provide appropriate screening from public view.

P. Subject to developer's right to seek variances and waivers in accordance with the Municipal Land Use Law Standards, all development shall conform to the Residential

Site Improvement Standards and other provisions of the local land use ordinance not specifically referenced in this subsection.

**Q. Affordable Housing Requirements**

- (1) A set-aside of at least 14.5% of the total units shall be provided as affordable housing units. The affordable housing units shall be constructed as either sale or rental units.
- (2) The developer is responsible for preparing and implementing an Affirmative Marketing Plan in accordance with the requirements of Section 70-32.2 of the ordinance. The developer shall enter into a contract with the Borough to act as the Municipal Housing Liaison and be responsible for administering the affordable housing program pursuant to standards and requirements provided in Section 70-32.2.M of this ordinance.
- (3) Affordable Housing Regulations: The affordable housing units shall be developed and sold or rented in accordance with the current applicable Uniform Housing and Affordability regulations (N.J.A.C. 5:80-26 et seq.) including requirements on: split between low and moderate income housing, bedroom distribution, range of affordability, pricing and rent of units, affirmative marketing, affordability controls, and construction phasing with the market-rate units developed on the tract. Developer shall not be required to provide "very low" income units as such units are defined at *N.J.S.A. 52:27D-30(l)(m)*.
- (4) Design and Location of Affordable Housing: The affordable housing units shall be dispersed throughout the development in various buildings. If the affordable housing units are rental units and the market rate units are sale units then the affordable units may be located in a single structure for the purposes of management and maintenance. The facade of an affordable housing structure shall be indistinguishable from the facade of the market-rate structures.

**SECTION 2:**

If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by a Court to be invalid, such adjudication shall apply only to that section, paragraph, subsection, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**SECTION 3:**

All Ordinances of the Borough of Woodbury Heights inconsistent with the provisions of this Ordinance be and are hereby repealed to the extent of any such inconsistency.

**SECTION 4:**

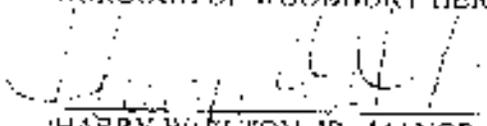
All Ordinances not inconsistent with the provisions of this Ordinance are hereby saved from repeal.

**SECTION 5:**

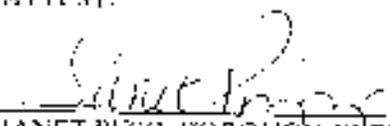
This Ordinance shall take effect immediately upon approval of a Settlement Agreement in the case entitled Woodbury Heights Development, LLC vs. Borough of Woodbury Heights

and the Planning Board of the Borough of Woodbury Heights, bearing Docket No. GLO-L-1750-09 pending in the Superior Court of New Jersey and after a duly noticed fairness hearing conducted by the Court and upon publication and as otherwise according to law

BOROUGH OF WOODBURY HEIGHTS

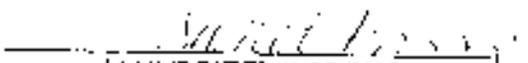
  
HARRY W. ELTON, JR., MAYOR

ATTEST:

  
JANET PIZZI, BOROUGH CLERK

**NOTICE**

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 21st day of March, 2012 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the 18<sup>th</sup> day of April, 2012 at 7:30 P.M. at which time and place any interested party will be given the opportunity to be heard.

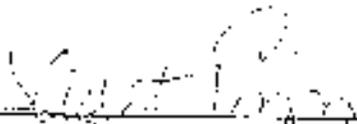
  
JANET PIZZI, BOROUGH CLERK

PUBLIC NOTICE

ORDINANCE 6-2012

ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF GLOUCESTER AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE LAND DEVELOPMENT ORDINANCES AND THE WOODBURY HEIGHTS CODE TO CODIFY AND IMPLEMENT THE PROVISIONS OF THE HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT OF THE MASTER PLAN

I, Janet Pizzi, Clerk of the Borough of Woodbury Heights, hereby certify that the above Ordinance was duly adopted by the Borough Council of the Borough of Woodbury Heights at the Regular meeting of Mayor and Borough Council held on the 18<sup>th</sup> day of April, 2012

  
\_\_\_\_\_  
JANET PIZZI, BOROUGH CLERK

## Appendix K

### Order Approving the Woodbury Heights Development, LLC Settlement Agreement

RECEIVED JUN -2 2012

BISGAIER HOFF, LLC  
21 Tanner Street  
Madisonfield, NJ 08033  
(856) 795-0100  
Richard C. Hoff, Jr., Esquire  
Attorneys for Plaintiff

RECEIVED & FILED  
JUN 27 2012  
CLERK OF SUPERIOR COURT

WOODBURY HEIGHTS DEVELOPMENT, LLC,  Plaintiff,  v.  BOROUGH OF WOODBURY HEIGHTS AND THE PLANNING BOARD OF THE BOROUGH OF WOODBURY HEIGHTS,  Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - GLOUCESTER COUNTY  DOCKET NO: L-1750-09 P.W.  CIVIL ACTION     MOUNT LAUREL  ORDER APPROVING SETTLEMENT AGREEMENT
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THIS MATTER having been opened to the Court by way of Motion to Approve the May 13, 2012 Litigation Settlement Agreement (the "Settlement Agreement") by Richard J. Hoff, Jr., Esquire of the law firm of Bisgajer Hoff, LLC, appearing on behalf of the Plaintiff, Woodbury Heights Development, LLC, ("WHD"); Jeffrey R. Surelian, Esquire of the law firm of Jeffrey R. Surelian and Associates, LLC and Larry Lozuka, Esquire of the law firm of Zane & Lozuka appearing on behalf of Defendant, the Borough of Woodbury Heights (the "Borough") and Gerald Sinclair, Esquire, of the law firm of Gerald A. Sinclair, P.C., appearing on behalf of the Defendant, the Planning Board of the Borough of Woodbury Heights (the "Planning Board"); and the Court having conducted a hearing on the Settlement Agreement on June 27, 2012 to determine whether the Settlement Agreement entered into between WHD, the Borough and the Planning Board is fair and

reasonable to low income and moderate income households; and for the reasons set forth on the record at the June 27, 2012 hearing, and for further good cause shown,

IT IS on this 27 day of June, 2012, ORDERED, ADJUDGED and DECREED that:

1. The Court finds and determines that adequate notice of the June 27, 2012 hearing was published, served, mailed and otherwise provided in accordance with applicable Mount Laurel case law and that jurisdiction was properly before the Court to conduct the June 27, 2012 hearing.

2. The Court finds and determines that pursuant to the judicial standard prescribed by *East/West Venture v. Borough of Fort Lee*, 236 N.J. Super. 311 (App. Div. 1996) and other, applicable judicial precedent, the Settlement Agreement in this matter is fair, reasonable and adequately protects the interest of low income and moderate income persons.

3. In consideration of the terms of the Settlement Agreement and the findings of this Court, this matter is dismissed with prejudice pursuant to R. 4:37-1(b).

4. Counsel for WLD shall serve a copy of this Judgment on counsel for all parties within 14 days of the date of this Judgment.

  
\_\_\_\_\_  
Hon. Anne McDonnell, S.J.C.P.

# Appendix L

## Draft Affordable Housing Trust Fund Ordinance

**ORDINANCE 17 – 2013**  
**ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF**  
**GLOUCESTER, NEW JERSEY ESTABLISHING STANDARDS FOR THE**  
**COLLECTION, MAINTENANCE AND EXPENDITURE OF DEVELOPMENT FEES**  
**PURSUANT TO REGULATIONS OF THE COUNCIL OF AFFORDABLE HOUSING**  
**REGULATIONS AND P.L. 2008, c.46, SECTION 8 and 32-38**

**BE IT ORDAINED**, by the Borough Council of the Borough of Woodbury Heights,

County of Gloucester, New Jersey, as follows:

**§ 1. Authority and Purpose**

- A. In *Holmdel Builders Association V. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's adoption of rules.
- B. Pursuant to *N.J.S.A. 52:27D-329.2* and the Statewide Non-Residential Development Fee Act, *N.J.S.A. 40:55D-8.1* through *-8.7*, the NJ Department of Community Affairs is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or a court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- C. This Article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, *N.J.A.C. 5:97-8*.

**§ 2. Limitations on Enactment**

- A. This ordinance shall take effect upon approval by the Court pursuant to *N.J.A.C. 5:96-5.1*.
- B. Borough of Woodbury Heights shall not spend development fees until COAH or the Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

**§ 3. Residential Development fees**

- A. Imposed fees.

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

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and a half percent (1.5%) of the equalized assessed value on the first two units; and six percent (6%) of the equalized assessed value for the two (2) additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (2) Developments that have received preliminary or final site plan approval prior to the date of the first adoption of the Woodbury Heights municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (3) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is otherwise not exempt from the payment of a development fee. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (4) Non-profit organizations which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Borough Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay at established, existing charges, shall be exempted from paying a development fee.

- (5) Federal, state, county, local governments and agencies of the same shall be exempted from paying a residential development fee.
- (6) Residential dwellings destroyed due to fire, flood, or natural disaster and rebuilt by their owners shall be exempt from paying a development fee.

#### **§ 4. Non-Residential Development Fees**

##### **A. Imposed fees.**

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two-and-one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (2) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two-and-one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two-and-one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

##### **B. Eligible exactions, ineligible exactions and exemptions for non-residential development.**

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two-and-one-half percent (2.5%) development fee, unless otherwise exempted below.
- (2) The two-and-one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (3) Any exemption claimed by a developer of non-residential development shall be substantiated in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form". Non-residential development exempt from the development fee (exempted categorically, not exempted by statutory moratorium), include the following:
  - (a) State, county and local government buildings;

- (b) Houses of worship and ancillary structures and buildings exempt from real property taxation;
  - (c) Non-residential development that is an amenity made available to the public, including but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer; and
  - (d) Non-residential construction resulting from a relocation of or an on-site improvement to a non-profit hospital or skilled nursing facility.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate for occupancy of the non-residential development, whichever is later.
- (5) If a property which was exempted from the collection of a non-residential development fee hereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Woodbury Heights as a lien against the real property of the owner.

#### **§ 5. Collection Procedures.**

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct the combined Planning Board Secretary to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the municipal tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within ninety (90) days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the municipal tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within ten (10) business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements in the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Woodbury Heights fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (*N.J.S.A. 40:55D-8.6*).
- H. Fifty percent (50%) of the total estimated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the issuance of the building permit and that determined at the issuance of the certificate of occupancy.

#### **§ 6. Appeal Procedures.**

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

#### **§ 7. Borough Affordable Housing Fund**

- A. Establishment of Fund. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the Borough of Woodbury Heights for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

**B. General Provisions.**

- (1) The following funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - (a) Payments in lieu of on-site construction of affordable units;
  - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - (c) Rental income from municipally operated units;
  - (d) Repayments from affordable housing program loans;
  - (e) Recapture funds;
  - (f) Proceeds from the sale of affordable units; and
  - (g) Any other funds collected in connection with Woodbury Heights's housing program.
- (2) The Mayor and Council, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purposes of the fund.

C. Within seven (7) days of the opening of the trust fund account or change to a different bank, the Borough of Woodbury Heights shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank of deposit and any bank in successor, and COAH to direct the disbursement of the funds as provided for in *N.J.A.C. 5:97-8.13(b)*.

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the COAH. Funds shall not be expended to reimburse the Borough of Woodbury Heights for past housing activities.

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

- (1) At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.
  - (2) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - (3) Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less of median income.
  - (4) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- F. **Administrative Expenditures.** No more than twenty percent (20%) of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- G. **Monitoring Requirements.** Woodbury Heights Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to 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 userow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Woodbury Heights's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.
- H. **Collection Coterminous with Certification.** The ability for the Borough of Woodbury Heights to impose, collect and expend development fees shall expire with its substantive certification or judgment of repose unless the Borough of Woodbury Heights has filed an adopted Housing Element and Fair Share Plan with COAH or the court, has petitioned for substantive certification or judgment of repose, and has received the Court and COAH's approval of its development fee ordinance. If the Borough of Woodbury Heights fails to renew its ability to impose and collect development fees prior to the expiration of

substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to *N.J.S.A. 52:27D-320*. The Borough of Woodbury Heights shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Borough of Woodbury Heights retroactively impose a development fee on such a development. The Borough of Woodbury Heights shall not expend development fees after the expiration of its substantive certification or judgment of repose.

1. The Borough of Woodbury Heights may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with *N.J.A.C. 5:96-18*.

**BE IT FURTHER ORDAINED**, as follows:

1. **Repealer.** Any and all other Ordinances or parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistency.

2. **Saved from Repeal.** Any and all other Ordinances or parts of Ordinances not inconsistent with the terms and provisions of this Ordinance are hereby saved from repeal.

3. **Filing.** Upon adoption, a copy of this Ordinance shall be forthwith filed with the Gloucester County Planning Board via Certified Mail.

4. **Effective Date.** This Ordinance shall take effect immediately upon its final adoption and publication and as otherwise provided by law.

BOROUGH OF WOODBURY HEIGHTS

BY: \_\_\_\_\_  
HARRY W. ELTON, JR., MAYOR

ATTEST:

BY: \_\_\_\_\_  
JANET PIZZI, CLERK/ADMINISTRATOR

NOTICE

Notice is hereby given that the foregoing ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 9<sup>th</sup> day of October, 2013 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the        day of        2013 at 7:30 pm, at which time and place any interested party will be given the opportunity to be heard.

---

JANET PIZZL, CLERK/ADMINISTRATOR

# Appendix M

## Draft Affordable Housing Ordinance

**ORDINANCE 16 – 2013**  
**ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF**  
**GLOUCESTER, NEW JERSEY ESTABLISHING REGULATIONS FOR LOW AND**  
**MODERATE INCOME HOUSING UNITS**

**ARTICLE I**

**BE IT ORDAINED**, by the Borough Council of the Borough of Woodbury Heights, for the purpose of establishing regulations for low and moderate income housing units in the Borough and applying requirements for very low income housing units Pursuant to P.L. 2008, c.46, as follows:

**Article I. General Program Purposes, Procedures**

**§1. Affordable Housing Obligation**

- A. This Chapter of the Woodbury Heights Borough Code sets forth regulations regarding low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008 with amendments through October 20, 2008", *N.J.A.C. 5:97 et seq.*, the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C. 5:80-26.1 et seq.*, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this Chapter applies requirements for very low income housing as established in P.L. 2008, c.46.
- B. This Ordinance is intended to ensure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with other applicable law.
- C. The Woodbury Heights Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A. 40:55D-28* and has been endorsed by the Woodbury Heights Borough Council. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing ("COAH") and documented in the Housing Element.
- D. This Ordinance implements the Fair Share Plan and addresses the requirements of *N.J.A.C. 5:97-1, et seq.*, as it may be amended or superseded.

E. The Borough shall file monitoring reports as required by law or rule tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report concerning the Housing Element and Fair Share Plan and monitoring prepared by COAH or successor agency in accordance with *N.J.A.C.* 5:96 shall be made available to the public at the Woodbury Heights Borough Municipal Building, 500 Elm Avenue, Woodbury Heights, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey.

§2. **Definitions.** As used herein the following terms shall have the following meanings:

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

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

**ADMINISTRATIVE AGENT** - Any entity responsible for the administration of affordable units in accordance with this article, *N.J.A.C.* 5:96 and 5:80-26.1 *et seq.*

**AFFIRMATIVE MARKETING** - Any 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 is affordable to low- and moderate-income households.

**AFFORDABLE** - Any sales price or rent within the means of a low- or moderate-income household as defined in *N.J.A.C.* 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in *N.J.A.C.* 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in *N.J.A.C.* 5:80-26.12, as may be amended and supplemented.

**AFFORDABLE DEVELOPMENT** - Any housing development all or a portion of which consists of restricted units.

**AFFORDABLE HOUSING DEVELOPMENT** - Any 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(S)** - Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

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

**AGE-RESTRICTED UNIT** - Any housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

1. All the residents of the development where the unit is situated are 62 years or older; or
2. At least 80% of the units are occupied by one person that is 55 years or older; or

3. The development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

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

**CERTIFIED HOUSEHOLD** - Any household that has been certified by an administrative agent as a low-income household or moderate-income household.

**COAH or COUNCIL** - The Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (*N.J.S.A. 52:27D-301 et seq.*), or successor agency.

**DCA** - The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT** - Any housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

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

**DEVELOPMENT FEE** - Any money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

**EQUALIZED ASSESSED VALUE** - The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (*N.J.S.A. 54:1-35a through 54:1-35c*).

**GREEN BUILDING STRATEGIES** - Any strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

**INCLUSIONARY DEVELOPMENT** - Any development containing both affordable units and market rate units. This term includes, but is not necessarily limited to, new

construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

**LOW-INCOME HOUSEHOLD** - Any household with a total gross annual household income equal to 50% or less of the median household income.

**LOW-INCOME UNIT** - Any 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 UNIT** - Any housing not restricted to low- and moderate-income households that may sell or rent at any price.

**MEDIAN INCOME** - The median income of a household, by household size, for Cumberland County and as adopted annually by COAH.

**MODERATE-INCOME HOUSEHOLD** - Any household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

**MODERATE-INCOME UNIT** - Any restricted unit that is affordable to a moderate-income household.

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

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

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

**REGIONAL ASSET LIMIT** - The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

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

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

**RESTRICTED UNIT** - Any 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 UHCRP or MONT.

**SUPPORTIVE AND SPECIAL NEEDS HOUSING** - A structure or structures in which individuals or households reside, as listed in *N.J.A.C. 5:97-6.10(a)*; previously defined by COAH as "alternative living arrangements".

**SUPPORTIVE SHARED LIVING HOUSING** - Permanent lease-based supportive housing that provides access to supportive services to individuals with special needs who maintain separate leases for bedrooms and share common living space.

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

**UNIT** - Any dwelling unit, as defined in §425-270. For purposes of this chapter, bedrooms shall also be considered units in those limited instances where State affordable housing regulations allow bedrooms to be counted as units (e.g., group homes).

**VERY-LOW-INCOME HOUSEHOLD** - Any household with a total gross annual household income equal to 30% or less of the median household income.

**VERY-LOW-INCOME UNIT** - Any restricted unit that is affordable to a very-low-income household.

**WEATHERIZATION** - Any 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.

**§3. New Construction.** The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

A. **Phasing.** Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

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

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

C. **Utilities and Common Elements.** In inclusionary developments, affordable units

shall utilize the same type of heating source as the market units within the development, and the occupants of the affordable units shall have access to all of the same common elements and facilities as the occupants of the market units within the development.

**D. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units.**

1. Affordable units in a development shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
3. At least 10% of all affordable rental units shall be very low income units (affordable to households earning 30% or less of median income). The very low income units shall be counted as part of the required number of low income units within the development.
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
  - (b) At least 30% of all low- and moderate-income units shall be two bedroom units;
  - (c) At least 20% of all low- and moderate-income units shall be three bedroom units; and
  - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

**E. Accessibility Requirements.**

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical

design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*.

2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first floor;
  - (b) An adaptable kitchen on the first floor;
  - (c) An interior accessible route of travel on the first floor;
  - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
  - (e) 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
  - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311 a, et seq.*) and the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - (2) To this end, the builder of restricted units shall deposit funds within the Borough of Woodbury Heights's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
    - (3) The funds deposited under paragraph (2) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
    - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to

accessible entrances to the Construction Official of the Borough of Woodbury Heights.

- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Woodbury Heights's affordable housing trust fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is impracticable to meet the requirements on the site. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*.

F. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. At least 10% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
4. 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, and 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.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
  - (a) A studio or efficiency unit shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
  - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
  - (a) A studio or efficiency unit shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
  - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% 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, as may be amended and supplemented, provided, however, that the price shall be subject to the affordability average requirement of *N.J.A.C.* 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% 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 of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
9. 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.
10. 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 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.
11. 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 DCA for its Section 8 program.

#### **§4. Condominium and Homeowners Association Fees**

For any affordable housing unit that is part of a condominium association and/or homeowners association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 140% of the market rate fee.

### **Article II. Affordable Unit Controls and Requirements**

#### **§5. Purpose.**

The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate- income housing units.

#### **§6. Affirmative Marketing**

- A. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender,

affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 4 and covers the period of deed restriction.

- B. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4, comprised of Monmouth, Monmouth and Ocean Counties.
- C. Although the Borough has the ultimate responsibility for implementing all aspects of Woodbury Heights's affordable housing program, the Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- D. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of 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 affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- F. 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 Borough of Woodbury Heights.
- G. 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.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

#### **§7. Occupancy Standards.**

- A. 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 bedroom;
  2. Provide children of different sexes with separate bedrooms;
  3. Provide separate bedrooms for parents and children; and
  4. Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

#### **§8. Selection of Occupants of Affordable Housing Units**

- A. The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 *et seq.*

#### **§9. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5 and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years and, thereafter, until Woodbury Heights takes action to release the unit from such requirements.
- B. Rehabilitated owner-occupied single family housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- E. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted

fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- F. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- G. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

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

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

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

**§11. Capital Improvements to Ownership Units**

- A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are

permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser shall 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.

#### **§12. Buyer Income Eligibility**

- A. Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C.* 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, however, the Administrative Agent may, in accordance with COAH's criteria, permit moderate-income purchasers to buy low-income units in housing markets determined by COAH to have an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing restrictions for low-income units.
- C. A certified household that purchases a restricted ownership unit shall occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to a certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

**§13. Limitations on indebtedness secured by ownership unit; subordination**

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with *N.J.A.C. 5:80-26.6(b)*.

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

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11* and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years and, thereafter, until Woodbury Heights takes action to release the unit from such requirements.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- 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 Monmouth. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or
  - 3. The entry and enforcement of any judgment of foreclosure.

**§15. Rent Restrictions for Rental Units; Leases**

- A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

#### **§16. Tenant Income Eligibility**

- A. Tenant income eligibility shall be in accordance with *N.J.A.C. 5:80-26.13*, as may be amended and supplemented, and shall be determined as follows:
  - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
  - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
  - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - 1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - 3. The household is currently in substandard or overcrowded living conditions;
  - 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in -(B)1 through -(B)5 above with the Administrative Agent, who shall counsel the household on budgeting.

#### **§17. Conversions**

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

### **ARTICLE III. Administration**

#### **§18. Municipal Housing Liaison**

- A. The position of Municipal Housing Liaison for the Borough of Woodbury Heights is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Council and be subject to the approval of the Court or COAH, as appropriate. Nothing herein shall be construed as to affect any person presently serving in the capacity of the Municipal Housing Liaison.
- B. The Municipal Housing Liaison shall be either a full-time or part-time employee of the Borough of Woodbury Heights.
- C. The Municipal Housing Liaison shall meet COAH's requirements for qualifications, including initial and periodic training.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Woodbury Heights, including the following responsibilities if not contracted out to the Administrative Agent:
  1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  2. The implementation of the Affirmative Marketing Plan and affordability controls, unless contracted to the Administrative Agent.
  3. When applicable, supervising all Administrative Agents.

4. Monitoring the status of all restricted units in the Borough of Woodbury Heights's Fair Share Plan;
5. Compiling, verifying and submitting annual reports as required by COAH;
6. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

**§19. Administrative Agent**

- A. The Borough shall designate by resolution of the Borough Council, subject to the approval of the Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:96, N.J.A.C. 5:97* and UHAC.
- B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- C. The Administrative Agents shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manuals, including those set forth in *N.J.A.C. 5:80-26.14, -26.15, -26.16* and *-26.18* thereof, which includes:
  1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  2. Affirmative Marketing;
  3. Household Certification;
  4. Affordability Controls;
  5. Records retention;
  6. Resale and re-rental;
  7. Processing requests from unit owners; and
  8. Enforcement, although the ultimate responsibility for retaining controls on

the units rests with the municipality.

9. The Administrative Agent shall, as delegated by the Borough Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

#### **§20. Enforcement of Affordable Housing Regulations**

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the 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 unit 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 \$500.00 or imprisonment for a period not to exceed 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 unit in violation of the regulations governing affordable housing units, payment into the Borough of Woodbury Heights 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 unit, 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.

- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the 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.
- D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- E. 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 unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- F. 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.

- G. Failure of the 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.
- H. 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.

**§21. Appeals.** Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

**BE IT FURTHER ORDAINED,** as follows:

1. **Repealer.** Any and all other Ordinances or parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistency.

2. **Saved from Repeal.** Any and all other Ordinances or parts of Ordinances not inconsistent with the terms and provisions of this Ordinance are hereby saved from repeal.

3. **Filing.** Upon adoption, a copy of this Ordinance shall be forthwith filed with the Gloucester County Planning Board via Certified Mail.

4       **Effective Date.** This Ordinance shall take effect immediately upon its final adoption and publication and as otherwise provided by law.

BOROUGH OF WOODBURY HEIGHTS

BY: \_\_\_\_\_  
HARRY W. ELTON, JR., MAYOR

ATTEST:

BY: \_\_\_\_\_  
JANET PIZZI, CLERK/ADMINISTRATOR

NOTICE

Notice is hereby given that the foregoing ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 9<sup>th</sup> day of October, 2013 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 2013 at 7:30 pm. at which time and place any interested party will be given the opportunity to be heard.

\_\_\_\_\_  
JANET PIZZI, CLERK/ADMINISTRATOR