

**AMENDMENT TO THE JUNE 7, 2010 THIRD ROUND  
HOUSING ELEMENT AND FAIR SHARE PLAN**

**AMENDMENT TO THIRD ROUND  
HOUSING ELEMENT AND FAIR SHARE PLAN  
IMPLEMENTING FEBRUARY 10, 2015 DECISION  
CONDITIONALLY APPROVING HOUSING PLAN  
AND MARCH 30, 2016 FINAL JUDGMENT OF COMPLIANCE**

Borough of Hampton, Hunterdon County

Adopted \_\_\_\_\_



**TABLE OF CONTENTS**

	<b>Page</b>
<b>INTRODUCTION.....</b>	<b>1</b>
<b>CONSIDERATION OF LAND APPROPRIATE FOR AFFORDABLE HOUSING.....</b>	<b>6</b>
<b>HIGHLANDS REGIONAL MASTER PLAN .....</b>	<b>9</b>
<b>HAMPTON’S AFFORDABLE HOUSING OBLIGATION AND AFFORDABLE HOUSING PLAN.....</b>	<b>10</b>



## INTRODUCTION

As noted by Judge Buchsbaum in the February 10, 2016 Decision Conditionally Approving Housing Plan, the Hampton Borough Mount Laurel matter had been pending for a quarter century. After five recent years of litigation (2010- 2015) which included two years of settlement negotiations, Hampton Borough and Jacob Haberman (and his successor in interest, Hampton Farm LLC) entered into a Litigation Settlement Agreement on March 23, 2015. Summarized below is the litigation process which resulted in execution of an Amended Litigation Settlement Agreement on October 26, 2015, Court approval of same, and entry on March 30, 2016 of a Final Judgment of Compliance granting Hampton Borough ten (10) years of repose, i.e., protection from builders remedies.

On February 11, 2015, the Honorable Peter A. Buchsbaum, J.S.C. (retired on recall) determined that the March 23, 2015 Litigation Settlement Agreement had sufficient merit to justify a fairness hearing pursuant to Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super 359 (Law Div. 1984), aff'd o.b., 209 N.J. Super 108 (App. Div. 1988). The Court entered an Order dated March 23, 2015 setting procedures for said fairness hearing.

The Court then held a fairness hearing on May 29, 2015, June 10, 2015, June 11, 2015 and June 19, 2015. The Court received expert testimony at the fairness hearing on behalf of Mr. Haberman by Edward Kuc; David Krueger; Raymond Tully; Theodore Cassera; Adam Stern and Creigh Rahenkamp, and testimony on behalf of objectors to the Settlement Agreement, by Amy Greene and Jeffrey Goll.

On May 21, 2015, Adam M. Gordon, Esq. submitted a letter with certification of Dr. David N. Kinsey on behalf of the Fair Share Housing Center (F.S.H.C.), objecting to entry of a Final Judgment of Compliance. The F.S.H.C. objection was based primarily upon the fact that

the Litigation Settlement Agreement provided only 33 lower income units towards the 72 unit fair share for Hampton Borough as calculated by Dr. Kinsey.

Thereafter, in response to the F.S.H.C. objection, the parties negotiated and executed an Amended Litigation Settlement Agreement dated October 26, 2015, (last signature dated November 2, 2015). This Amended Litigation Settlement Agreement increased the setaside on the Haberman North Lot from 33 units to 45 units, all to be offered as rental units, allowed 50 of the market units to be offered as rental units and required Mr. Haberman to fund the rehabilitation of all of the 12 dilapidated units constituting Hampton Borough's present need. These provisions for setaside and housing rehabilitation were acceptable to the F.S.H.C.

The Court then continued the fairness hearing on November 16, 2015, at which time testimony was received from Plaintiff's expert professional planner, Creigh Rahenkamp, on the potential fair share numbers for Hampton Borough, the provision of the 72 unit fair share calculated by the F.S.H.C. by the mechanisms set forth in the October 26, 2015 Amended Litigation Settlement Agreement, the resulting 17% setaside (21.6% if rental bonus credits are included) and the lack of radical transformation.

The Court Appointed Master Eugene D. Serpentelli (retired Assignment Judge of the Superior Court), submitted a report dated November 11, 2015, recommending approval of the October 26, 2015 Amended Litigation Settlement Agreement and Judge Serpentelli testified and was subject to cross-examination on November 16, 2015 concerning his November 11, 2015 report.

On February 10, 2016 the Court issued a Decision Conditionally Approving Housing Plan, and on March 30, 2015, the Court entered a Final Judgment of Compliance.

This Final Judgment of Compliance confirmed the credits available to Hampton Borough for the 72 units of low and moderate income housing, which satisfies the highest calculation to date of Hampton Borough's fair share. This March 30, 2016 Final Judgment supersedes the 1991 Final Judgment on Compliance. Hampton Borough was therefore granted repose from Mt. Laurel litigation for 10 years from February 10, 2016, the date of the Court's Decision and the the October 26, 2015 Amended Litigation Settlement Agreement was approved. The Final Judgment of Compliance was conditioned upon conformance with the following terms and conditions; which are quoted from the Final Judgment:

1. Within 30 days of entry of this Judgment, the Hampton Borough Planning Board shall adopt an amendment to its 2010 Housing Element and Fair Share Plan as necessary to support the development on the Haberman North Lot provided for in the October 26, 2015 Amended Litigation Settlement Agreement and proposed Amended AH Zone Regulations Ordinance included in Schedule A to the October 26, 2015 Amended Litigation Settlement Agreement.

2. The Hampton Borough Council shall adopt the Amended AH Zone Regulations Ordinance within 60 days of entry of this Final Judgment of Compliance. In the event that the Planning Board of the Borough of Hampton fails to adopt the amendment to the 2010 Housing Element and Fair Share Plan required by paragraph 1 above, the Borough Council shall adopt the proposed Amended AH Zone Regulations Ordinance by majority vote in accordance with the procedure required by N.J.S.A. 40:55D-62(a).

3. Prior approval by the Highlands Council of the Amended AH Zone Regulations Ordinance shall not be required and, instead, Borough Council's adoption of this Ordinance shall be conditioned upon future conformance approval, map adjustment and/or center designation of the Haberman North Lot by the Highlands Council.

4. At the same Council meeting at which the Amended AH Zone Regulations Ordinance is adopted by the Borough Council, the Borough Council shall also adopt the ordinance attached as Schedule C to the October 26, 2015 Amended Litigation Settlement Agreement entitled "An Ordinance of the Borough of Hampton, County of Hunterdon, State of New Jersey, Providing Administrative Provisions for Affordable Housing Projects and Supplementing Section 157-53 AH-Affordable Housing Zone Provisions".

5. Within 45 days of receipt of draft Highlands Council documents provided by Plaintiff for submission of an amendment to Hampton Borough's

conformance petition as required by paragraph 1 of Schedule B of the October 26, 2015 Amended Litigation Settlement Agreement, Hampton Borough shall finalize said documents and submit same to the Highlands Council. In order to assure conformance with the Borough's obligations pursuant to the October 26, 2015 Amended Litigation Settlement Agreement, Hampton Borough shall provide all correspondence to and from the Highlands Council to Plaintiff and shall coordinate with Plaintiff any necessary responses to comments or inquiries by the Highlands Council. Plaintiff shall be given adequate advance notice of any meetings with the Highlands Council or staff to allow attendance by Plaintiff at all meetings.

6. The remaining municipal actions to facilitate development on the Haberman North Lot, as listed on Schedule B to the October 26, 2015 Amended Litigation Settlement Agreement, shall be expeditiously pursued by Hampton Borough as agreed upon in the Amended Litigation Settlement Agreement. Plaintiff Jacob Haberman shall be responsible for providing at his own costs, all necessary plans, documents and application, forms/fees to support the necessary municipal applications.

7. As provided for in the October 26, 2015 Amended Litigation Settlement Agreement, the back-up well shall be completed by Hampton Borough no later than one year from issuance of all permits and approvals for construction of the Haberman project or three years after execution of the October 26, 2015 Amended Litigation Settlement Agreement, whichever occurs first. Hampton Borough shall utilize diligent efforts to secure the DEP permits for the back-up well but shall not be deemed in default if for reasons beyond the Borough's control, the DEP permits are not obtained.

8. The municipal development process shall proceed with reasonable dispatch and the Hampton Borough Planning Board shall judge any submitted land development application for Plaintiff's site based upon the ordinance requirements approved by this Court.

9. Plaintiff Jacob Haberman shall commission within 30 days of entry of the within Judgment, all plans and reports necessary to file an application to the N.J. Department of Environmental Protection, and, upon completion of those plans and reports, shall submit, no later than 90 days from entry of the within Judgment, an application for DEP Flood Hazard Area verification for the North Lot.

10. Special Master Serpentelli shall continue his appointment as the Court-Appointed Monitor, and in that role shall be responsible for monitoring the progress of the parties with respect to permits and approvals required for the inclusionary development on the Haberman North Lot, including the back-up well. Special Master Serpentelli shall submit monitoring reports to the parties and to the Court every three months, the first report due three months from the date of entry of this Judgment of Compliance. The cost of monitoring shall be borne by

Plaintiff. The Special Master/Monitor shall upon request of plaintiff or defendant, have the right to grant reasonable extensions of any deadline in this Final Judgment.

11. Special Master Serpentelli shall have the authority to employ a Permit Coordinator to represent the public interest in assuring development of the inclusionary housing development on the Haberman North Lot pursuant to this Judgment of Compliance and to participate, as necessary, in any governmental approval process to assure that municipal, county and State agencies understand and implement the intent and terms of this Final Judgment of Compliance. The cost of work done by the Permit Coordinator employed by the Special Master shall be the responsibility of Plaintiff.

12. This Judgment may be enforced by R.1:10-3 motion in aid of litigant's rights.

13. This Judgment is hereby certified to be a Final Judgment and is thus a complete adjudication of all the rights and liabilities asserted in the pending litigation.

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

The discussion at p. 30 of the June 7, 2010 Third Round Housing Element and Fair Share Plan is replaced with the following:

The October 26, 2015 Amended Litigation Settlement Agreement proposed the development of 333 dwellings, including 45 low and moderate income units, plus 6,000 square feet of non-residential uses on Lot 1, Block 23, the Haberman North Lot. After five days of hearings, in which Hampton Borough residents and Council representatives participated, the Court issued a Decision which summarized planning and environmental testimony and exhibits relating to the suitability of the Haberman North Lot for the proposed development. The Court concluded:

1. On-Site Intermittent Stream. In this case the Court finds that there is at least a reasonable prospect that DEP's treatment of this feature (an intermittent stream shown on certain maps) will not preclude the development as proposed. The fact that the wetlands delineation found no water feature on this site, while not conclusive as to the flood hazard area or open water issue, certainly suggests that this feature is not very likely to interfere with the implementation of this development.

Second, the Krueger testimony based on actual site visits is strong enough that it gives the Court a reasonable degree of confidence that DEP is certainly capable of finding that the situation on-site will not be devastating to the development as proposed.

It is noted that Ms. Greene suggested that the plaintiff obtain a flood hazard area certification to assure that in fact this intermittent feature will not disrupt the proposed development plan. The Court agrees that such task should be undertaken, and promptly...

2. Drainage. Issues related to drainage will have to be addressed during the site plan review process. The issues raised by the Objectors go to matters of detail that cannot be ascertained at this time. There is no testimony that a drainage system as shown or something similar will fail to protect public health and safety or is contrary to engineering principles, e.g., water not draining. Therefore, at this point, there is insufficient evidence for the Court to determine that any problems with the drainage will interfere with implementation of the development as proposed in any significant fashion. It may well be that appropriate and approvable storm water designs can be fashioned without

significant impact on the scale of the proposed development. The evidence at this point does not warrant a finding that the development of the size proposed cannot be serviced by an approvable storm water management system or that the problem is so serious and incapable of resolution that the site must be rejected at once.

3. Carbonate Rock. The Court is satisfied that methods exist for dealing with carbonate issues in the event any are found. Further, there is no evidence of sinkholes presently within the site. Again, Dowel Associates, supra, is relevant since it specifically dealt with the DEP's primary jurisdiction over approval of on-site treatment plants. Neither this court nor the planning board should take it upon itself to declare that onsite treatment on this site is not feasible. The testimony by Mr. Tully shows that the carbonate rock related conditions do not preclude development of the site and that testimony is sufficient to satisfy the court that the site cannot be rejected on that basis. Again, time will tell if a detailed design will pass muster with DEP.

4. Water Supply. The Court is also satisfied and finds that Mr. Cassera's testimony as to the water system was persuasive. The problems on the Hampton water system relating to the lack of a backup well neither stem from or are exacerbated by the proposed development. These requirements exist independently of this development. The Court also has no reason to doubt the testimony that the residential and the 6,000 square feet of commercial development proposed for the north lot could not be served by the existing well number four subject to the mandate for all of Hampton that there be a backup system.

5. On-Site Discharge to Groundwater Sewage Disposal System. In addition, concerns were raised about the impact of ground water discharge from the sewerage treatment plant on the water quality of the Musconetcong River and the wellhead protection area surround Hampton Borough well number four. As to this issue, there is sufficient testimony from Adam Stern, the plaintiff's expert, that the proposed treatment plant would produce virtually drinking water quality effluent which would then go through recharge beds which would further treat the effluent. The discharge would then become part of the ground water flow system which would further disburse it. And as Adam Stern testified, and also as the Dowell court found, the DEP will be reviewing the quality of the discharge and the ability of the natural system to assimilate it.

6. Other Environmental Issues. Other issues relating to the Delaware Basin Commission, Wetlands and Wildlife Habitat and the National Park Service as raised by the parties do not warrant disapproval of this site. There is no evidence that such concerns will bar development of the North Tract. Among other things, the land does have a favorable wetlands determination from the DEP and there was adequate testimony from Edward Kuc for plaintiff that the site does not contain critical wildlife habitat. Again, to some extent they may be issues for the DEP or the site plan review process, but they do not render the site unsuitable as a matter of Mount Laurel law.

7. Conclusion Re: Environmental Issues. For the above reasons, the Court finds as a fact that this site can be approved as a Mount Laurel site despite the environmental testimony produced at the hearing. The Court specifically adopts as its own finding the language from pages seven and eight of the November 11, 2015 report of the Court Master, Eugene Serpentelli, except to the extent that the Master's report could be read to suggest on page seven that the planning board has authority to determine site suitability and zoning. The Court would disclaim that any such reading is intended or was testified to. The planning board's authority is limited to issues of compliance with the zoning and other ordinances applicable to the development. Pizzo Martin Group v. Township of Randolph, 137 N.J. 216 (1994).

8. Conclusions Regarding Suitability. Based on the findings set forth above, the Court finds that the site is suitable as set forth in N.J.A.C. 5:93-13 since for the reasons stated it is first of all approvable, even if it is not clear at this point that approvals will actually be obtained. In addition, the testimony also shows that it is available since the developer wants to develop it. Third, it is developable since it has access to water and sewer infrastructure as set forth above and either is or can become consistent with the area wide wastewater management plan. Finally, it is suitable subject to site plan review and DEP review since it also for the reasons set forth above and in addition because it has been approved as a suitable site for 25 years. For all these reasons the Court finds that the site is a legitimate location for Mount Laurel compliance and that the development as proposed in the revised settlement agreement is approved subject to the conditions set forth below.

For all of the reasons stated by the Court, Lot 1, Block 23, the Haberman North Lot, is appropriate and suitable for the 333 dwelling units, 6000 sq. foot non-residential use approved by the Court in its Final Judgment and Decision and by Hampton Borough in the October 26, 2015 Amended Litigation Settlement Agreement.

## HIGHLANDS REGIONAL MASTER PLAN

The discussion at pp. 31-32 of the June 7, 2010 Third Round Housing Element and Fair Share Plan is replaced with the following.

The Court made the following findings in its February 10, 2016 Decision:

This site (the Haberman North Lot) has been committed to Mount Laurel development for a long period of time – over a quarter century. The Court agrees with Mr. Rahenkamp that it should have been mapped as [an existing] community zone by the Highlands Council since it was a then extant Mount Laurel development. Clearly a remapping or a center designation request, combined with any necessary proposed amendment for the sewer service area, would obviate the regional planning concerns. Hampton will be obliged to support the development as proposed in the settlement agreement, notwithstanding any other position it may have previously taken with the Highlands Council.

The key observation here relates to the undisputed lack of any other site in Hampton for satisfaction of its fair share. Were the Court to rule out this site, it would essentially be holding one of two things. Either Hampton's fair share would be extinguished, or the fair share would have to be satisfied on the south site notwithstanding the Highlands Act. Either of these two alternatives are unpalatable. The fair share obligation is of constitutional dimension. While the environmental concerns set forth are undoubtedly legitimate, in the balance, the Court must follow the constitution and make sure that the fair share obligation even if unpopular is met. It is also the duty of the Court to avoid constitutional confrontations such as might have to occur if this site is vetoed somewhere along the line and there is no alternative land except the South tract.

For all of the reasons stated by the Court, Hampton Borough has committed to pursue a map adjustment to Existing Community Zone and Center designation for Lot 1, Block 23, the Haberman North Lot.

Pursuant to the April 12, 2013 Order of the Appellate Division of Superior Court in Hampton Farm, LLC v. Highland Water Protection and Planning Council, the Hampton Borough petition for Plan Conformance approval was remanded to the Highlands Council for reconsideration of the Hampton Farm (Haberman North Lot) development. The map adjustment and center designation request will be presented pursuant to this remand.

**HAMPTON'S AFFORDABLE HOUSING OBLIGATION AND AFFORDABLE HOUSING PLAN.**

The discussion at pp. 33-50 of the June 7, 2010 Third Round Housing Element and Fair Share Plan is replaced with the following:

In its February 10, 2016 Decision, the Court found as follows:

It is generally agreed that in a settlement situation the Court need not find a specific fair share so long as the proposed housing plan sets forth a reasonable allocation. See *Morris County Fair Housing Council v. Boonton*, 197 N.J. Super. 159 (Law Div. 1984). In this case the proposed fair share, 72, was supported by the testimony of Creigh Rahenkamp, the plaintiff's planner. The Court also notes that it is equivalent to the number in the proposed Kinsey report which has been regarded as an upper limit in the discussions of fair share that have occurred subsequent to the decision in *Mount Laurel IV*. Therefore, the Court finds that the proposed fair share is reasonable, and that the techniques used to obtain it, namely 45 rentals, plus 15 unit rental bonus, plus 12 units of rehabilitation, are well within the contemplation of the *Mount Laurel* decisions and applicable COAH regulations which have survived court scrutiny.

As a result of the Amended Litigation Settlement Agreement, as approved in the Court Decision and Final Judgment of Compliance, Hampton Borough's affordable housing obligation shall be entirely satisfied by the inclusionary housing development on the Haberman North Lot, Lot 1, Block 23, as provided for in the October 26, 2015 Amended Litigation Settlement Agreement.

1. Rehabilitation Obligation: 12 units. Twelve (12) units of rehabilitation share, to be satisfied through the transfer of \$96,000 by Mr. Haderman to Hampton Borough, which funds shall be deposited to an Affordable Housing Trust Fund Account and designated solely for rehabilitation of dilapidated units occupied by low or moderate income households in Hampton Borough. The rehabilitation program shall be administered by the administrative agent designated pursuant to section 26 of the ordinance attached as Schedule C to the Amended Limitation Settlement Agreement, in conformance with N.J.A.C. 5:99-6.1 as proposed on June 2, 2014, and where applicable, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.

2. Prior Round Obligation: 2 units; Third Round Prospective Need: 58 units. Two (2) units of prior round obligation and 58 units of third round prospective need through the year 2025, through the provision of 45 low and moderate income rental units on the Haberman North Lot, with the allocation of an additional 15 rental credits. These units shall also satisfy the rental obligation composed of 25% of the new construction obligation ( $.25 \times 60 = 15$ ).

Implementing Ordinances, as approved by the Court, are attached hereto as Exhibits A and B.

113956195v1

Schedule C

BOROUGH OF HAMPTON  
COUNTY OF HUNTERDON

ORDINANCE NO. 10-\_\_\_\_\_

AN ORDINANCE OF THE BOROUGH OF HAMPTON, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY PROVIDING ADMINISTRATIVE PROVISIONS FOR AFFORDABLE HOUSING PROJECTS AND SUPPLEMENTING SECTION 157-53, ALL AFFORDABLE HOUSING ZONE PROVISIONS

WHEREAS, the New Jersey Council on Affordable Housing ("COAH") has promulgated rules, set forth at N.J.A.C. 5:96 and 5:97, concerning the substantive and procedural requirements for obtaining third round substantive certification of the Borough's Housing Element and Fair Share Plan; and

WHEREAS, a Litigation Settlement Agreement dated March 3, 2015 was executed by Jacob Haberman and Hampton Borough ("the Borough"), said Agreement having been reviewed by the Honorable Peter A. Buchsbaum, J.S.C., such review resulting in the entering of an Order dated February 11, 2015; and

WHEREAS, the February 11, 2015 Order required review of the Ordinance attached as Schedule A to the Litigation Settlement Agreement by the Court-Appointed Master, the Honorable Eugene D. Serpentelli, A.J.S.C. (retired); and

WHEREAS, the Court Appointed Master has reviewed the Schedule A Ordinance and determined that it should be supplemented with standard affordable housing administrative provisions, specifically the affordable housing administrative provisions contained in Appendix G on the COAH website and as required by the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Hampton, County of Hunterdon and State of New Jersey, that the "Code of the Borough of Hampton" ("Code") is hereby amended as follows:

Section 1. Article XI entitled "Housing Rehabilitation Assistance" is hereby supplemented. Where a provision of this Ordinance governing housing rehabilitation conflicts with any provision of Article XI, this Ordinance shall govern.

Chapter \_\_  
AFFORDABLE HOUSING

ARTICLE I  
General Program Purposes, Procedures

Section \_\_-1. Affordable Housing Obligation.

- A. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with applicable affordable housing administrative provisions contained in 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 section applies requirements for very low income housing as established in the Fair Housing Act, N.J.S.A. 52:27D-329.1.
- B. This Ordinance is intended to assure 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 applicable law.
- C. The Hampton 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-1, *et seq.* The Plan has also been endorsed by the Borough Council of the Borough of Hampton. The Fair Share Plan describes the ways the Borough shall address its fair share for low and moderate income housing consistent with the 2015 Final Judgment.
- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97 and UHAC as may be amended and supplemented.
- E. The Borough shall file monitoring reports with the Court-Appointed Master if required by the Master or the 2015 Final Judgment. All monitoring reports shall be available to the public at the Hampton Borough Municipal Building, 1 Wells Avenue Hampton, New Jersey.

Section \_\_-2. Definitions.

As used herein the following terms shall have the following meanings:

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

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

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

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, as appointed pursuant to Section 26 of this Ordinance.

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

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

"Affordable" means, a sales price or rent within the means of a 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" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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

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

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

"Age-restricted unit" means a housing unit designed to meet the needs of and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development 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" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregating dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

"COAH" means 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.*).

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

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

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

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

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:97-3.

"Group Home for Developmentally Disabled Persons" shall mean such facilities provided for under N.J.A.C. 5:97-6.10.

"Housing Element" means the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:97-2.3 and establishes the Borough's fair share obligation.

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

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

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

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

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

"Median income" means the median income by household size for the applicable county, as adopted annually by COAH.

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

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

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

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

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

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

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

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

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

“Very low income household” means a household with a total gross annual household income equal to 30% or less of the median household income.

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

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

### Section \_\_-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, buildings containing low and moderate income units shall be integrated with buildings containing the market units.
- C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.
- D. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- E. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
1. The fair share obligation shall be divided equally between low and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit, unless a different split between low and moderate income units is required by the Litigation Settlement Agreement and approved by the 2015 Final Judgment.

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low income units, unless the low and moderate income split provided for in the Litigation Settlement Agreement and approved by the 2015 Final Judgment precludes this distribution.
3. At least 13% of the total number of affordable units (i.e., 27% of the required low income units) shall be affordable to very low income households.
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.

F. 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-311a *et seq.*) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3-14, or evidence that 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 Hampton's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable unit 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 Hampton.
  - (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 Hampton'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 site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

G. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH.
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.
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 must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate income ownership units must be available for at least three different prices for each bedroom type, and low income ownership units must 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 anyone 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.

**Section \_\_-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 100% of the market rate fee.

**Section \_\_-5. Group Homes For Developmentally Disabled Persons.**

Group homes for developmentally disabled persons shall comply only with the provisions set forth in N.J.A.C. 5:97-6.10.

Section \_\_-6. Reserved.

Section \_\_-7. Reserved.

Section \_\_-8. Reserved.

Section \_\_-9. Reserved.

## ARTICLE II Affordable Unit Controls and Requirements

Section \_\_-10. 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.

Section \_\_-11. Affirmative Marketing.

- A. The Administrative Agent shall implement an Affirmative Marketing Plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is 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 3 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 3, comprised of Hunterdon, Middlesex and Somerset Counties.
- D. The Administrative Agent shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- E. 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.
- F. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

- G. 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 Hampton.

Section \_\_-12. 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 sex with separate bedrooms; and
  - 3. 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.

Section \_\_-13. 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.*

Section \_\_-14. 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.
- 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. 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.
- E. 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.

Section \_\_-15. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

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

- A. The initial purchase price for a restricted ownership unit shall be approved by the 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.

Section \_\_-16. 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. 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.

Section \_\_-17. 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).

Section \_\_-18. 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.
- 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 Hunterdon. 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.

Section \_\_-19. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, 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.

Section \_\_-20. 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 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section \_\_-21. 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.

Section \_\_-22. Reserved.

Section \_\_-23. Reserved.

Section \_\_-24. Reserved.

ARTICLE III  
Administration

Section \_\_-25. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the Borough of Hampton 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 COAH.
- B. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Hampton.
- C. The Municipal Housing Liaison must 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 Hampton, including the following responsibilities which may not be 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. Monitoring the status of all restricted units in the Borough of Hampton's Fair Share Plan;
  - 3. Compiling, verifying and submitting annual reports as required by COAH;
  - 4. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

Section \_\_-26. Administrative Agent.

- A. Developer shall contract with an Administrative Agent from the list of DCA/COAH approved Administrative Agents. The Administrative Agent shall 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. This Operating Manual shall conform with COAH's Model Operating Manual (June, 2008). The Operating Manual shall be available for public inspection in the Office of the Municipal Clerk and in the office of the Administrative Agent.
- C. The Administrative Agent 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 Manual, including those set forth in N.J.A.C. 5:80-26.14, 18 and 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 Borough.
9. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section \_\_-27. 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 Borough 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:
  - I. The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is 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 Hampton 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 Borough 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 Borough by means of an execution sale by the Sheriff, at which time the low and moderate income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the 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 Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the Borough for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the Owner or forfeited to the Borough.

- E. Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the 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 Borough 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 Borough shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the Borough, with such offer to purchase being equal to the maximum resale price of the 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.

**Section \_\_-28. 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.

Section 2. Repealer. All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 3. Severability. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any Court of competent jurisdiction that any such portion of this Ordinance is unconstitutional, void or ineffective for any cause or reason, shall not affect any other portion of this Ordinance.

Section 4. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law.

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Hampton, in the County of

Hunterdon, State of New Jersey, held on (Insert Date). It will be further considered for final passage, after public hearing thereon, at a meeting of the Borough Council to be held in the meeting room of the Municipal Building, 1 Wells Avenue, Hampton on (Insert Date) at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's Office to the members of the general public who shall request the same.

---

Cathy Drummond, R.M.C., Clerk

12365391v1

SCHEDULE A

PROPOSED AMENDED AH ZONE REGULATIONS

§157-53. AH Affordable Housing Zone

- A. Purpose. The intent of this district and Article XI is to provide a realistic opportunity for the construction of a variety of housing types in the Borough and to provide for the construction of a 13.5% set aside of low- and moderate-income households on the Haberman property, Block 23, Lot 1 and Block 24, Lot 2, by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mount Laurel II. In accordance with the requirements of the Municipal Land Use Law as interpreted in *Pizzo-Mantin v. Randolph Township*, 137 N.J. 216(1994), site plan and subdivision applications shall be reviewed solely for compliance with the standards contained in these Amended AH Zone Regulations as adopted by Ordinance \_\_\_\_\_ on \_\_\_\_\_ and Article III (subdivision) or Article V (site plan), except for such sections as may be made not applicable by these Amended AH Zone Regulations.
- B. Application procedure.
1. The applicant shall submit required plans and documents to the Planning Board for review and approval. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to Borough agencies which normally review development plans.
  2. Within 30 days of a submission of an application for development in this zone, the Planning Board will either determine the application complete or render a detailed report identifying the specific deficiencies that must be addressed prior to the start of the hearing process. Upon a determination of completeness or a failure to issue a completeness determination within the 30 day period, the Planning Board shall schedule and hold a hearing on the application within 45 days.
- C. Use regulations. Permitted principal and accessory uses shall be as follows:
1. Residential development at a maximum net density of 10 dwelling units per acre, including any combination of multi-family, townhouses, other attached units, single-family detached and two-family dwellings shall be permitted, provided that:
    - a. The maximum gross density does not exceed 2.4 dwelling units per acre, but in no event shall the total number of housing units in the AH Zone exceed 333 units.
    - b. A total of 13.5% of the housing units shall be affordable to low and moderate income households in accordance with applicable Council on Affordable Housing regulations or case law requirements.

SCHEDULE A

- c. The mix of permitted building types (multi-family, townhouse, and other attached, single-family detached and two-family dwellings) shall be at the discretion of the applicant. Supportive and special needs housing for the developmentally disabled shall also be a permitted residential use.
  - d. 6,000 square feet of commercial/retail uses shall be permitted in accordance with the requirements of the HC Zone.
- D. Schedule of area and bulk requirements for multi-family, townhouse and other attached dwellings in the AH Zone
- 1. Building spacing:
    - a. The minimum distance between structures shall be as follows:
      - i. Front to front: 50 feet.
      - ii. Rear to rear: 50 feet.
      - iii. End to end: 25 feet.
    - b. Upon request, the Planning Board shall reduce the above distances by up to 1/3 if there is an angle of 20° or more between buildings and if landscaping or buffers are placed between buildings.
    - c. Any building wall to internal street right-of-way: 10 feet.
    - d. Any building wall to collector street right-of-way: 40 feet.
    - e. Any building wall to arterial street right-of-way: 50 feet.
    - f. Any building wall to parking area curbs: 10 feet.
  - 2. Minimum off-street parking requirements: as per RSIS, N.J. A.C. 5:21-1 et seq.
  - 3. The maximum number of dwelling units per structure shall not exceed 48.
  - 4. The maximum length of a residential structure shall not exceed 280 feet.
  - 5. The maximum building height shall be the greater of 3 ½ stories or 35 feet. Building height shall be measured from post-construction grade to the midpoint of the building eave.

SCHEDULE A

Area and Bulk Requirements For Single-Family Detached and Two-Family Dwellings

E. Schedule of Area and Bulk Requirements For Single-Family Detached and Two-Family Dwellings in the AH Zone.

		Detached Single-Family Residential Dwellings	Two-Family Dwellings
1	Minimum lot size	5,000 sq. ft.	2,500 sq. ft. (per d.u.)
2	Minimum lot width	50 feet	25 feet
3	Minimum lot depth	100 feet	100 feet
4	Minimum yard setback: principal building		
	Front	20 feet	20 feet
	Side, one	5 feet	0 feet
	Side, other	5 feet	5 feet
	Rear	15 feet	20 feet
5	Minimum yard setback: accessory structure		
	Side, one	5 feet	0 feet
	Side, other	5 feet	5 feet
	Rear	5 feet	5 feet
6	Maximum permitted height: principal building		
	Stories	2 ½	2 ½
	Feet	35	35
7	Maximum permitted height: accessory structure		
	Stories	1	1
	Feet	10	10
8	Parking (as per RSIS, N.J.A.C. 5:21-1 et seq.)		
9	Two-family dwellings may be constructed in either the duplex dwelling or twin dwelling form.		

F. Open space. At least 45 % of the entire development tract must be dedicated irrevocably as open space or common open space or utilized for agriculture. No on-site recreational facilities or contributions to off-site facilities shall be required but recreational and community facilities and structures may be included within said area at the developer's option. Utilities, access roads and stormwater basins/facilities may be located within open space areas.

SCHEDULE A

G. Engineering and construction design.

1. Drainage: as per RSIS, N.J.A.C. 5:21-1 et seq. and stormwater management rules, N.J.A.C. 7:8-1 et seq. The provisions of Article VII shall not apply.
2. Lighting.
  - a. Streetlighting shall be provided for all street intersections and along all collector and local streets, parking areas and anywhere else deemed necessary for safety reasons.
  - b. Any outdoor lighting, such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, roads and traffic safety from glare, reflection and overhead sky glow in order to recommend steps needed to minimize these impacts.
  - c. Specific lighting requirements. The maximum intensity of lighting permitted on roadways shall be as follows:

Type of Roadway	Average Maintained Horizontal Illumination for Residential Areas (footcandles)
Collector	0.6
Local	0.4

3. Sanitary sewers. The developer shall design and construct such facilities in accordance with the New Jersey Department of Environmental Protection permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development. When said treatment and collection system is included as part of a development application, the developer shall install sewers, including connections to each home to be constructed.
4. Street standards. RSIS, N.J.A.C. 5:21-1 et seq. shall govern.
5. Carbonate Rock. The following design and construction techniques will be utilized in carbonate rock geology:
  - a. Areas with sinkholes or which are susceptible to sinkhole formation should be improved with construction techniques recommended by a qualified professional engineer. Examples of such techniques include excavation and placement of grout or graded filler, deep dynamic

## SCHEDULE A

compaction and piping of grout to fill voids.

- b. Storm drain pipes shall be constructed with water-tight gaskets to prevent leakage. Roof drains shall be piped and directed to the storm system in sealed pipes or discharged to an impervious swale to prevent recharge. Clean crushed stone should not be used as pipe bedding and utility backfill should consist of silty and clayey soils.
- c. During construction, the site shall be graded to divert water runoff away from construction areas. Installation of the storm drainage system in the early stages of construction is necessary and any temporary swales shall be properly graded to prevent water from ponding. Permanent swales shall be lined with impervious materials to prevent recharge and construction excavations shall be dewatered promptly.
- d. Where necessary, buildings shall be designed to be supported by reinforced foundations which can temporarily span a predetermined loss of support should ground subsidence occur. Pile foundation systems may be used to bypass poor soils or voids in the subsurface.

### H. Resource Protection Standards.

- 1. Freshwater wetlands, wetlands transition areas, State open waters, flood hazard areas, riparian zones and well-head protection areas shall be protected pursuant to NJDEP regulations and permit programs.
- I. Water Supply. Water mains shall be constructed in such a manner as to make adequate water service available to each lot or building within the development. The system shall be designed and constructed in accordance with the requirements and standards of the agency or authority having water supply jurisdiction.
- J. Waivers. Notwithstanding any provisions set forth elsewhere in this section, the Planning Board may waive any engineering and construction design requirements contained in this section in order to achieve the objectives of the AH Zone, provided that the Planning Board is satisfied that such a waiver does not jeopardize the public health and safety.

§157-53J. Contrary to Hampton Borough Ordinance Section 157-8, no appeals of any approval in the AH zone shall be filed with or heard by the Borough Council. Appeals shall be filed only with the Law Division of Superior Court.

§157-53K. Section 157-12 shall not be applicable.

§157-53L. Sketch plat submission pursuant to Sections 157-18, 157-69.2 or 157-70 shall be optional and in the discretion of the developer.

§157-53M. Sections 157-24 and 157-27A shall not be applicable

SCHEDULE A

§157-53N. Any section of Article III or Article V which is pre-empted by the RSIS shall not be applicable.

§157-53O. In lieu of Section 157-30, the requirements of the Hunterdon County Soil Conservation District shall apply.

§157-53P. In lieu of Sections 157-32, 157-33, and 157-73, posting of a performance guarantee in the form required by the RSIS shall be a condition of final approval, said guarantee to be posted immediately prior to any pre-construction meeting. In lieu of Section 157-34, a maintenance guarantee pursuant to the requirements of the Municipal Land Use Law shall be posted.

§157-53Q. Sections 157-75 and 157-76 shall not be applicable.

§157-53R. Sections 157-103 through -106 shall not be applicable.

11895163v1

Schedule B

Necessary Hampton Borough Actions to Allow Development of Haberman Property

The following applications would have to be submitted and pursued. Haberman will provide, at his own cost, all necessary plans, documents and application forms/fees to support these applications:

1. Highlands Council application for amendment to Hampton Borough's conformance petition, the amended petition to include:
  - (a) Center designation and map adjustment to Existing Community Zone for the North Lot, proposing on-site sewer and water service from the Borough's system;
  - (b) AH Zone ordinance amendments standards as per Schedule A to the Amended Litigation Settlement Agreement;
  - (c) Revised Housing Element and Fair Share Plan and Highlands Council plans to allow the Haberman development.
2. Wastewater Management Plan amendment (if applicable, site specific amendment) to place Haberman property in a sewer service area to allow onsite discharge to groundwater and a sewage treatment plant;
3. Endorsement signatures on Haberman applications for NJPDES and TWA permits for groundwater disposal/sewage treatment system and if applicable, a TWA permit for water line extension.
4. If deemed necessary by DEP, applications for modification of Hampton Borough's water allocation permit to increase pumpage and allocation limits of main and back-up wells;
5. Hampton Borough construction and authorization to operate back-up well;

Schedule B

6. DEP Bureau of Safe Drinking Water application to allow construction of water lines and any other water facilities needed for service to the Haberman property, as well as an application to DEP for connection of Haberman property to water system.