

Housing Plan Element and Fair Share Plan

Prepared for:

**The Borough of Allenhurst
Monmouth County, New Jersey**

2023

Prepared By:



788 Wayside Road
Neptune, New Jersey 07753
(732) 922-9229

A handwritten signature in black ink, appearing to read "Jennifer C. Beahm", is written over a horizontal line.

Jennifer C. Beahm, PP, AICP
License No. 05625

Contents

INTRODUCTION.....	1
MUNICIPAL SUMMARY.....	3
DEMOGRAPHIC CHARACTERISTICS.....	4
POPULATION.....	4
POPULATION COMPOSITION BY AGE.....	4
HOUSEHOLDS.....	6
INCOME.....	7
HOUSEHOLD COSTS.....	9
EXISTING HOUSING CONDITIONS.....	10
HOUSING UNIT DATA.....	10
HOUSING TYPE AND SIZE.....	10
HOUSING VALUES AND CONTRACT RENTS.....	11
HOUSING CONDITIONS.....	12
PROJECTED HOUSING STOCK.....	13
EMPLOYMENT DATA.....	14
EMPLOYMENT BY INDUSTRY.....	14
Lands Most Appropriate for Affordable Housing.....	18
Infrastructure.....	18
Anticipated Demand and Land Use Patterns.....	18
Environmental Constraints.....	19
Historic.....	19
Existing Land Use Designations.....	19
FAIR SHARE PLAN.....	21
Fair Share Obligation Summary.....	21
Lack of Developable Vacant Land.....	21
Satisfaction of the Borough's Realistic Development Potential.....	22
Satisfaction of the Borough's Unmet Need.....	23
APPENDICES.....	27
Appendix A. Vacant Land Adjustment	
Appendix B. Settlement Agreement	

List of Tables

TABLE 1: POPULATION TRENDS, 1940-2021	4
TABLE 2: POPULATION BY AGE COHORT, ALLENHURST, 2000-2021	5
TABLE 3: POPULATION BY AGE COHORT, MONMOUTH COUNTY, 2000-2021	5
TABLE 4: MEDIAN AGE	6
TABLE 5: HOUSEHOLD CHARACTERISTICS.....	6
TABLE 6: HOUSEHOLDS BY TYPE (2021).....	7
TABLE 7: PER CAPITA INCOME AND MEDIAN HOUSEHOLD INCOME.....	8
TABLE 8: HOUSEHOLD INCOME DISTRIBUTION	8
TABLE 9: MONTHLY OWNER COSTS AS A.....	9
TABLE 10: GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME, 2020.....	9
TABLE 11: HOUSING UNIT DATA, 2021.....	10
TABLE 12: HOUSING UNITS BY TYPE, 2021	11
TABLE 13: VALUE OF OWNER-OCCUPIED HOUSING UNITS, 2021	11
TABLE 14: GROSS RENT PAID, 2021	12
TABLE 15: HOUSING DEFICIENCY CHARACTERISTICS.....	12
TABLE 16: BUILDING PERMITS AND DEMOLITION PERMITS ISSUED,.....	13
TABLE 17: EMPLOYMENT STATUS, 2021	14
TABLE 18: CLASSIFICATION OF WORKERS IN ALLENHURST, 2021.....	14
TABLE 19: WORKFORCE BY SECTOR, 2021	15
TABLE 20: COMPARISON OF WORKFORCE BY SECTOR.....	16
TABLE 21: OCCUPATIONS BY TYPE.....	16
TABLE 22: PROJECTED EMPLOYMENT, MONMOUTH COUNTY, 2026.....	17
TABLE 23: FAIR SHARE OBLIGATION SUMMARY	21

Appendix C. Main Street Commercial District Inclusionary Overlay Zone

Appendix D. Mandatory Set-Aside Ordinance (“MSO”)

Appendix E. Affordable Housing Development Fee Ordinance

List of Tables

TABLE 1: POPULATION TRENDS, 1940-2021	4
TABLE 2: POPULATION BY AGE COHORT, ALLENHURST, 2000-2021	5
TABLE 3: POPULATION BY AGE COHORT, MONMOUTH COUNTY, 2000-2021	5
TABLE 4: MEDIAN AGE	6
TABLE 5: HOUSEHOLD CHARACTERISTICS.....	6
TABLE 6: HOUSEHOLDS BY TYPE (2021).....	7
TABLE 7: PER CAPITA INCOME AND MEDIAN HOUSEHOLD INCOME.....	8
TABLE 8: HOUSEHOLD INCOME DISTRIBUTION	8
TABLE 9: MONTHLY OWNER COSTS AS A.....	9
TABLE 10: GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME, 2020.....	9
TABLE 11: HOUSING UNIT DATA, 2021.....	10
TABLE 12: HOUSING UNITS BY TYPE, 2021	11
TABLE 13: VALUE OF OWNER-OCCUPIED HOUSING UNITS, 2021	11
TABLE 14: GROSS RENT PAID, 2021	12
TABLE 15: HOUSING DEFICIENCY CHARACTERISTICS	12
TABLE 16: BUILDING PERMITS AND DEMOLITION PERMITS ISSUED,.....	13
TABLE 17: EMPLOYMENT STATUS, 2021	14
TABLE 18: CLASSIFICATION OF WORKERS IN ALLENHURST, 2021.....	14
TABLE 19: WORKFORCE BY SECTOR, 2021	15
TABLE 20: COMPARISON OF WORKFORCE BY SECTOR.....	16
TABLE 21: OCCUPATIONS BY TYPE.....	16
TABLE 22: PROJECTED EMPLOYMENT, MONMOUTH COUNTY, 2026.....	17
TABLE 23: FAIR SHARE OBLIGATION SUMMARY	21

INTRODUCTION

In the case of Southern Burlington County NAACP v. the Borough of Mount Laurel, (commonly known as Mount Laurel I), the New Jersey Supreme Court established the doctrine that developing municipalities in New Jersey have a constitutional obligation to provide a realistic opportunity for the construction of low- and moderate-income housing in their communities. In its Mount Laurel decision, decided on January 20, 1983 (Mount Laurel II), the Supreme Court expanded the Mount Laurel doctrine by stating that this constitutional responsibility extended to all municipalities in New Jersey. The Court also established various remedies, including the “builder remedy” or court-imposed zoning, to ensure that municipalities affirmatively addressed this obligation.

In response to the Mount Laurel II decision, the New Jersey Legislature adopted the Fair Housing Act in 1985 (Chapter 222, Laws Of New Jersey, 1985). The Fair Housing Act established a Council on Affordable Housing (COAH) as an administrative alternative to the courts. COAH was also given the responsibility of establishing various housing regions in the state, determining regional and municipal fair share affordable housing obligations and adopting regulations establishing the guidelines and approaches that municipalities may use in addressing their affordable housing need.

Under COAH’s regulations, low-income households are defined as those with incomes no greater than 50 percent of the median household income, adjusted for household size, of the housing region in which the municipality is located, and moderate-income households are those with incomes no greater than 80 percent and no more than 50 percent of the median household income, adjusted for household size, of the housing region. For the Borough of Allenhurst, the housing region is defined by COAH as Region 4 and is comprised of Mercer, Monmouth and Ocean counties. In Region 4 the 2021 median income for a four-person household is \$109,242, the moderate-income level is \$87,393 and low-income is \$54,621. In addition, to the income levels referenced above the Fair Housing Act now requires that the Borough provide thirteen percent (13%) of units to very low income households that earn less than thirty percent of the median income of the Region.

Pursuant to both the Fair Housing Act and the Municipal Land Use Law (MLUL), municipalities in New Jersey are required to include a housing element in their master plans. The principal purpose of the housing element is to provide for methods of achieving the goal of access to affordable housing to meet the municipality’s low- and moderate-income housing needs. The statutory required contents of the housing element are:

- 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 ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

- 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 for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing; and
- A consideration of the lands that are 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.

MUNICIPAL SUMMARY

Allenhurst is a historic and tranquil suburban community located along the Atlantic Ocean in Monmouth County, New Jersey. The Borough is characterized by wide streets with mature shade trees and historic buildings belonging to the Greek Revival, Queen Anne, Italianate, Victorian Eclectic, Vernacular Variations, Colonial Revival, Spanish Mission/ Italian Renaissance, Bungalow, English Tudor, and other 19th century architectural styles.

The Borough of Allenhurst is approximately 0.3 square miles, almost completely built out and mainly occupied by single-family residential properties, with a downtown commercial area running along the Main Street corridor. Surrounding Allenhurst is the Atlantic Ocean to the east, the Village of Loch Arbour to the south, Ocean Township and the Borough of Interlaken to the west, and the Borough of Deal to the north. Deal Lake runs along the western boundary of the Borough, separating it from Ocean Township and the Borough of Interlaken.

The current year-round population of Allenhurst is estimated at 492 (ACS 2020 5-year data), swelling substantially in the summer months. Allenhurst has a population density of 1,640 persons per square mile. The Borough grew older by 7.3 years between 2000 and 2020, with a current median age of 49.8 years of age. Allenhurst's 2020 median household income estimate of \$100,625 was lower than that of the county (\$103,523), but higher than the State (\$85,245).

In the guidelines established by COAH, Allenhurst Borough is located in affordable housing Region 4 which is comprised of Monmouth, Mercer, and Ocean Counties.

Power Station at Allenhurst, LLC ("Developer") filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey, entitled Power Station at Allenhurst, LLC v. Borough of Allenhurst; Board of Commissioners of the Borough of Allenhurst; and Allenhurst Planning Board, Docket No.; MON-L-2441-21, seeking to compel the Borough to provide a realistic opportunity for the construction of affordable housing for very low, low and moderate income households and to meet the Borough's fair share of the housing region's need for such housing. In addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 ("FHA") and Mount Laurel. Fair Share Housing Center, being a Supreme Court designated interested party in this matter was granted leave to intervene in the case.

As a result of extensive settlement negotiations and mediation between the Borough, Developer and Fair Share Housing Center, the parties agreed to a Settlement Agreement. Copies of both Settlement Agreements are enclosed within Appendix B of this document.

DEMOGRAPHIC CHARACTERISTICS

POPULATION

In 2021, Allenhurst had an estimated total population of 454. This number represents a population decrease of 264 persons or 36.8% percent since 2000, when the total population was 718. The total population of Allenhurst peaked in 1970 at 1,012 people and has been decreasing ever since. However, over the last decade the population has begun to stabilize with the total population of both 2010 and 2020 being 492, before decreasing to 454 in 2021. Monmouth County, in comparison, has been experiencing consistent population increases since 1940, except for a slight population decrease of 9,559 between 2010 and 2020. However, between 2020 and 2021 the County population increased by 21,339 persons.

TABLE 1: POPULATION TRENDS, 1940-2021

Year	Allenhurst			Monmouth County			New Jersey		
	Population	Change		Population	Change		Population	Change	
		Number	Percent		Number	Percent		Number	Percent
1940	520			161,238	-	-	4,160,165	-	-
1950	758	238	45.7%	225,327	64,089	39.7%	4,835,329	675,164	16.2%
1960	795	37	4.8%	334,401	109,074	48.4%	6,066,782	1,231,453	25.5%
1970	1,012	217	27.3%	461,849	127,448	38.1%	7,171,112	1,104,330	18.2%
1980	912	-100	-9.8%	503,173	41,324	8.9%	7,365,011	193,899	2.7%
1990	759	-153	-16.7%	553,124	49,951	9.9%	7,730,188	365,177	5.0%
2000	718	-41	-5.4%	615,301	62,177	11.2%	8,414,350	684,162	8.9%
2010	492	-226	-31.5%	630,380	15,079	2.5%	8,791,894	377,544	4.5%
2020*	492	0	0%	620,821	-9,559	-1.52%	8,885,418	93,524	1.1%
2021*	454	-38	7.7%	642,160	21,339	3.44%	9,234,024	348,606	3.9%
2050**	504	50	11.0%	669,624	27,464	4.28%	-	-	-

Source: U.S. Census Bureau Decennial Census (table DP-1)
 *U.S. Census Bureau, ACS 5-Year Estimates (table DP05)
 **Population Projections from North Jersey Transportation Planning Authority (NJTPA)

POPULATION COMPOSITION BY AGE

The age composition of Allenhurst has shifted noticeably since 2000. According to American Community Survey 5-Year Estimates, significant changes occurred in many age groups. The greatest percentage decreases occurred in the 5 to 9 years age cohort, which decreased by 80%, followed by those aged 35 to 44 years, which decreased by 75.5 percent. Almost all age groups experienced losses in population, with the exception of adults in age cohorts ranging from 55 to 64 years old, and those aged 15 to 24 years. However, these cohorts experienced percentage increases smaller than the decrease in in percentages across all other age cohorts.

TABLE 2: POPULATION BY AGE COHORT, ALLENHURST, 2000-2021

Population	2000		2021		Change 2000-2021
	Number	Percent	Number	Percent	
Total population	718	100.0%	454	100%	-36.8%
Under 5 years	40	5.6%	19	4.2%	-52.5%
5 to 9 years	30	4.2%	6	1.3%	-80.0%
10 to 14 years	41	5.7%	15	3.3%	-63.4%
15 to 19 years	35	4.9%	36	7.9%	2.9%
20 to 24 years	31	4.3%	31	6.8%	0.0%
25 to 34 years	105	14.6%	55	12.1%	-47.6%
35 to 44 years	102	14.2%	25	5.5%	-75.5%
45 to 54 years	123	17.1%	74	16.3%	-39.8%
55 to 59 years	48	6.7%	70	15.4%	45.8%
60 to 64 years	29	4.0%	33	7.3%	13.8%
65 to 74 years	65	9.1%	62	13.7%	-4.6%
75 to 84 years	49	6.8%	18	4.0%	-63.3%
85 years and over	20	2.8%	10	2.2%	-50.0%
2000 US Census Bureau (table DP-1) U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table S0101)					

Monmouth County also experienced shifts in the age make-up of its population. The County experienced a significant decrease in elementary and middle school-aged population, with a substantial decrease of 25.3 percent in the population under 5 years of age. Similar to the Borough, the 35 to 44 years old age cohort experienced the most substantial population decrease over this timeframe, with a 33.4 percent decrease. However, the percentage of the County's older age cohorts (55 years and older) experienced significant increases between 2000 and 2021.

TABLE 3: POPULATION BY AGE COHORT, MONMOUTH COUNTY, 2000-2021

Population	2000		2021		Change 2000 to 2021	
	Number	Percent	Number	Percent	Number	Percent
Total population	615,301	100.0%	642,160	100.0%	26,859	4.4%
Under 5 years	42,231	6.9%	31,540	4.91%	-10,691	-25.3%
5 to 14	93,278	15.2%	77,770	12.11%	-15,508	-16.6%
15 to 24	67,406	11.0%	80,086	12.47%	12,680	18.8%
25 to 34	75,308	12.2%	68,888	10.73%	-6,420	-8.5%
35 to 44	111,681	18.2%	74,394	11.58%	-37,287	-33.4%
45 to 54	92,239	15.0%	93,238	14.52%	999	1.1%
55 to 64	56,235	9.1%	102,270	15.93%	46,035	81.9%
65 and over	76,923	12.5%	113,974	17.72%	37,051	48.2%
2000 US Census Bureau (table DP-1) U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table S0101)						

The median age of Allenhurst residents increased by 7.5 years between 2000 and 2021, which is greater than the County’s increase of 5.6 years, and the State’s increase of 3.3 years. This trend is consistent with the general “graying” of America as the Baby Boom Generation continues to age. The Borough’s median age of 50.7 years is older than the overall County median age of 43.3 years.

TABLE 4: MEDIAN AGE

Year	Allenhurst	Monmouth County	New Jersey
2000	42.5	37.7	36.7
2021	50.7	43.3	40.0
Change	7.5	5.6	3.3

U.S. Census Bureau, 2000 Decennial Census (table DP-1)
 U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table S0101)

HOUSEHOLDS

A household is defined as one or more persons, related or not, living together in a housing unit. 2021 ACS 5-Year Estimates note that there were approximately 192 households in Allenhurst. Approximately 62.5 percent of the Borough’s households were comprised of one or two persons, with the one-person category containing the greatest number of households. A smaller percentage (58.8%) of Monmouth County households fell into these categories. The Borough exhibited a lower percentage of four-or-more person households than the County. The Borough’s average household size of 2.36 is slightly smaller than that of the County’s 2.55.

**TABLE 5: HOUSEHOLD CHARACTERISTICS
 ALLENHURST AND MONMOUTH COUNTY, 2021**

	Allenhurst		Monmouth County	
	Number	Percent	Number	Percent
Total Households	192	100%	245,569	100%
1-person	82	42.7%	64,492	26.3%
2-persons	38	19.8%	79,730	32.5%
3-persons	41	21.4%	39,864	16.2%
4 or more persons	31	16.1%	61,483	25.0%
Average Household Size	2.36		2.55	

U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (tables S2501 & B25010)

Family households are defined as two or more persons living in the same household, related by blood, marriage or adoption. Most households in Allenhurst were family households, comprising 54.7 percent of all households, 38.5 percent of all households were with married couple householders, while 13.5 percent and 2.6 percent of households respectively were family households consisting of single parent female or male householders. The average family size was 3.31 persons.

TABLE 6: HOUSEHOLDS BY TYPE (2021)

Households	Total	Percent
	192	100.0%
Average Household Size	2.36	
Average Non-Family Household Size	1.05	
Family households	105	54.7%
Married Couple Family	74	38.5%
With own children under 18 years	32	16.7%
No children under 18 years	42	21.9%
Other Family	31	16.2%
Male householder, no spouse present	5	2.6%
With own children under 18 years	0	0.0%
No own children under 18 year	0	0.0%
Female householder, no spouse present	26	13.5%
With own children under 18 years	0	0.0%
No own children under 18 year	0	0.0%
Nonfamily Households	87	45.3%
Average Family Size	3.31	
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table S1101)		

INCOME

Allenhurst experienced a significant estimated percent increase in per capita income of 86.3 percent between 2000 and 2021, which was higher than Monmouth County's 85.7 percent increase, and higher than the State's 72.9% increase. The same trend is observed in terms of the per capita income, as Allenhurst experienced the highest increase of the three geographic regions studied. Allenhurst's per capita income of \$79,546 in 2021 is higher than the County's \$57,836 per capita income figure and the State's \$46,691 per capita income.

TABLE 7: PER CAPITA INCOME AND MEDIAN HOUSEHOLD INCOME

	2000 Per Capita Income	2021 Per Capita Income	Percent Change	2000 Median Household Income	2021 Median Household Income	Percent Change
Allenhurst	\$42,710	\$79,546	86.3%	\$54,610	\$84,605	54.9%
Monmouth County	\$31,149	\$57,836	85.7%	\$64,271	\$110,356	71.7%
New Jersey	\$27,006	\$46,691	72.9%	\$55,146	\$89,703	62.7%
U.S. Census Bureau, 2000 Decennial Census (tables DP-3 and P082)						
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (tables S1902 and S1903)						

The income distribution for the Borough indicates that while per capita incomes are higher in Allenhurst than in County overall, the median household income is lower, suggesting that the percentage of single income households in Allenhurst may be greater than that of the County overall. The income bracket containing the highest percentage of households was the \$75,000 to \$99,999, (29.7%), followed by the \$200,000 or more income bracket at 23.4%. The highest income bracket for Monmouth County was also \$200,000 or more, at 23.0%. The percentage of households in the \$200,000 or more bracket was similar in both the County and Allenhurst. In terms of median household income, households in Allenhurst earned less than households in Monmouth County and than the State overall in 2021. The median household income in Allenhurst was \$84,605 approximately; \$25,751 less than the County median household income and \$5,098 less than the State median household income. Between 2000 and 2020, the median household income increased 54.9 percent, lower than the 71.7 percent increase experienced in Monmouth County and the 62.7 percent increase for the State overall.

TABLE 8: HOUSEHOLD INCOME DISTRIBUTION ALLENHURST AND MONMOUTH COUNTY, 2021

	Allenhurst		Monmouth County	
	Number	Percent	Number	Percent
Total Households	192	100.0%	245,569	100.0%
Less than \$10,000	14	7.3%	8,481	3.5%
\$10,000 to \$14,999	2	1.0%	5,744	2.3%
\$15,000 to \$24,999	0	0.0%	12,752	5.2%
\$25,000 to \$34,999	6	3.1%	12,150	4.9%
\$35,000 to \$49,999	14	7.3%	17,286	7.0%
\$50,000 to \$74,999	30	15.6%	28,719	11.7%
\$75,000 to \$99,999	57	29.7%	26,483	10.8%
\$100,000 to \$149,999	12	6.3%	45,503	18.5%
\$150,000 to \$199,999	12	6.3%	31,915	13.0%
\$200,000 or more	45	23.4%	56,536	23.0%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table B19001)				

HOUSEHOLD COSTS

The tables below show housing expenditures for owner- and renter-occupied units in Allenhurst in 2021. The first table shows the housing costs of owner occupants as a percentage of total income. A total of 41 households (32.3%) were devoting more than 30 percent of their annual income to housing costs. The State affordability threshold for housing as a percent of income suggests that not more than 28 percent of gross income should be allocated for housing costs.

The second table shows rental costs as a percentage of household income. The percentage of households spending over 30 percent of their incomes on rent was slightly higher than that of owner-occupied units. In Allenhurst, a total of 24 households (36.9%) were spending over 30 percent. The State affordability threshold for housing as a percent of income suggests that not more than 30 percent of gross income should be allocated for rent.

TABLE 9: MONTHLY OWNER COSTS AS A PERCENTAGE OF HOUSEHOLD INCOME, 2021

	Allenhurst		Monmouth County	
	Number	Percent	Number	Percent
Total Owner-Occupied Housing Units	127	100.0%	189,905	100.0%
Less than 15%	52	40.9%	60,567	31.9%
15 to 19%	4	3.1%	31,707	16.7%
20 to 24%	9	7.1%	24,604	13.0%
25 to 29%	9	7.1%	17,301	9.1%
30 to 34%	10	7.9%	10,530	5.5%
35% or more	31	24.4%	43,991	23.2%
Not computed	12	9.4%	1,205	0.6%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table B25091)				

TABLE 10: GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME, 2020

	Allenhurst		Monmouth County	
	Number	Percentage	Number	Percentage
Total Renter-Occupied Housing Units	65	100.0%	60,833	100.0%
Less than 15%	14	21.5%	7,289	12.0%
15 to 19%	17	26.2%	6,256	10.3%
20 to 24%	3	4.6%	5,381	8.8%
25 to 29%	5	7.7%	6,270	10.3%
30 to 34%	8	12.3%	4,809	7.9%
35% or more	16	24.6%	27,908	45.9%
Not computed	2	3.1%	2,920	4.8%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table B25070)				

EXISTING HOUSING CONDITIONS

HOUSING UNIT DATA

According to the 2021 ACS, there are approximately 315 housing units in Allenhurst, with 192 occupied housing units. The majority (40.3%) are owner occupied and mainly consist of detached single-family homes. Approximately 39 percent of the Borough’s housing stock is vacant. The majority of these homes are considered vacant because they serve as seasonal homes, rather than as the primary residence of the owners. Approximately 68.9 percent of the housing structures were built 1939 or earlier, and most of the housing structures (~96%) were built prior to 2000.

TABLE 11: HOUSING UNIT DATA, 2021

Housing Units in Allenhurst	Number	Percent
Total Housing Units	315	100.0%
Vacant Housing Units	123	39.0%
Occupied Housing Units	192	61.0%
Owner Occupied	127	40.3%
Renter Occupied	65	20.6%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP04)		

	Number	Percent
Built 1939 or earlier	217	68.9%
Built 1940 to 1949	35	11.1%
Built 1950 to 1959	19	6.0%
Built 1960 to 1969	3	1.0%
Built 1970 to 1979	19	6.0%
Built 1980 to 1989	5	1.6%
Built 1990 to 1999	4	1.3%
Built 2000 to 2009	6	1.9%
Built 2010 or later	7	2.2%
Total	315	100.0%
Median Year Structure Built	1939	
U.S. Census Bureau, American Community Survey 5 Year Estimates (table DP04 and B25035)		

HOUSING TYPE AND SIZE

The majority of residences in Allenhurst are single-family detached homes, which comprises 80.3 percent of the housing stock, followed by residences with 10 to 19 units, which comprise 7.9% of the housing stock. The median number of rooms per unit was 7.8.

TABLE 12: HOUSING UNITS BY TYPE, 2021

Units in Structure	Total	Percent
Total	315	100%
1 Unit, detached	253	80.3%
1 Unit, attached	5	1.6%
2 Units	10	3.2%
3 or 4 Units	12	3.8%
5 to 9 Units	8	2.5%
10 to 19 Units	25	7.9%
20 Units or more	2	0.6%
Mobile home	0	0.0%
Boat, RV, van, etc.	0	0.0%
Rooms		
1 room	0	0.0%
2 rooms	6	1.9%
3 rooms	25	7.9%
4 rooms	30	9.5%
5 rooms	28	8.9%
6 or more rooms	226	71.7%
Median number of rooms	7.8	
U.S. Census Bureau, American Community Survey 5 Year Estimates (DP04)		

HOUSING VALUES AND CONTRACT RENTS

According to ACS 5-Year Estimates, all of the units in Allenhurst (100.0%) were valued at over \$500,000. Table 13 provides a breakdown of home values for owner-occupied units within the Borough and Monmouth County. The median value of an owner-occupied housing unit in Allenhurst was \$1,118,100 at the time of the survey, compared to the county's median value of \$454,000.

TABLE 13: VALUE OF OWNER-OCCUPIED HOUSING UNITS, 2021

	Allenhurst		Monmouth County	
	Number	Percentage	Number	Percentage
Total	127	100%	184,566	100%
Less than \$50,000	0	0.0%	2,944	1.6%
\$50,000 to \$99,999	0	0.0%	2,141	1.2%
\$100,000 to \$149,999	0	0.0%	3,140	1.7%
\$150,000 to \$199,999	0	0.0%	5,217	2.8%
\$200,000 to \$299,999	0	0.0%	24,319	13.2%
\$300,000 to \$499,999	0	0.0%	70,104	38.0%
\$500,000 and greater	127	100%	76,701	41.6%
Median Value	\$1,118,100		\$454,000	
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP04)				

The number of rental units in Allenhurst is estimated at 65. With respect to gross rent paid, most rental units

in the Borough carry rental costs within the \$1,000 to \$1,499 range per month (44.6%). At the time of the ACS 5-Year Estimates, the median gross rent in Allenhurst was \$1,364. No rental units in the Borough carried rental costs less than \$500 per month, and only 2 units did not require cash rent payments.

TABLE 14: GROSS RENT PAID, 2021

	Allenhurst		Monmouth County	
	Number	Percentage	Number	Percentage
Total Renter Occupied Units	65	100%	58,412	100%
Less than \$500	0	0.0%	4,156	7.11%
\$500 to \$999	15	23.1%	4,670	7.99%
\$1,000 to \$1,499	29	44.6%	19,720	33.76%
\$1,500 to \$1,999	11	16.9%	14,358	24.58%
\$2,000 or more	8	12.3%	15,508	26.55%
No cash rent	2	3.1%	2,591	4.44%
Median Contract Rent	\$1,364		\$1,523	
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP04)				

HOUSING CONDITIONS

According to the 2021 ACS, there were a couple of units exhibiting overcrowding (more than one person per room) and lacking complete kitchen facilities. Table 15 details the condition of housing within Allenhurst based on plumbing facilities, kitchen facilities, and overcrowding. These factors are utilized in determining housing deficiency and general housing problems and are used as the basis to calculate the municipal rehabilitation obligation. According to the data, 0.0 percent of occupied housing units experienced over-crowding and 1.56 percent of units lacked complete kitchen facilities.

TABLE 15: HOUSING DEFICIENCY CHARACTERISTICS

	Count	Percent
Housing Units with 1.01 or More Persons Per Room		
Owner-Occupied	0	0.0%
Renter-Occupied	0	0.0%
Plumbing Facilities		
Total Occupied Housing Units	192	100%
Lacking complete plumbing facilities	0	0.0%
Kitchen Equipment		
Total Occupied Housing Units	192	100%
Lacking complete kitchen facilities	3	1.56%
U.S. Census Bureau, American Community 5 Year Estimates (tables B25014, S2504)		

PROJECTED HOUSING STOCK

The Borough of Allenhurst is a built-out community with the number of housing units over the past twenty-five years remaining relatively flat at approximately four hundred seventy (470) housing units. It is not anticipated that this will change much in the next decade but for the proposed one-hundred thirteen units being proposed in the Fair Share Portion of this Housing Element and Fair Share Plan, resulting in approximately Five Hundred Eighty Three (583) housing units within the Borough.

According to the New Jersey Department of Community Affairs, Allenhurst Borough has issued building permits for 18 residential dwelling units between 2000 and December of 2021. During that same time period, the Borough issued 23 residential demolition permits. The highest number of building permits (3) were authorized in 2008, 2009, and 2014. The Borough has lost 5 dwelling units since 2000. Building permit data by year is summarized in Table 16 below.

TABLE 16: BUILDING PERMITS AND DEMOLITION PERMITS ISSUED, 2000 - 2021

Year	Residential Building Permits Issued	Residential Demolitions	Total Added
2000	0	0	0
2001	1	0	1
2002	2	3	-1
2003	0	0	0
2004	0	0	0
2005	0	0	0
2006	0	1	-1
2007	2	3	-1
2008	3	8	-5
2009	3	4	-1
2010	1	0	1
2011	0	0	0
2012	0	0	0
2013	0	1	-1
2014	3	2	1
2015	0	0	0
2016	2	1	1
2017	1	0	1
2018	0	0	0
2019	0	0	0
2020	0	0	0
2021	0	0	0
Total	18	23	-5
<i>Source: New Jersey Department of Community Affairs Division of Codes and Standards</i>			

EMPLOYMENT DATA

The 2021 ACS reports on the work activity of residents aged 16 years and older. The Borough’s working age population was 405 (89.2 percent of the overall population), approximately 284 of whom were part of the labor force (70.1%). Approximately 29.9 percent of the Borough’s working age residents were not participating in the labor force, which is 3.7 percent lower than that of the County. All of Allenhurst’s labor force was employed in civilian jobs. Approximately 9.1 percent of Borough residents are estimated to be unemployed at this time, higher than the estimated unemployment rate of Monmouth County overall (4.8%).

TABLE 17: EMPLOYMENT STATUS, 2021

	Allenhurst		Monmouth County	
	Number	Percent	Number	Percent
Population 16 years and over	405	100%	528,640	100%
In labor force	284	70.1%	350,863	66.4%
Civilian Labor Force	284	70.1%	349,905	66.2%
Employed	247	61.0%	324,664	61.4%
Unemployed	37	9.1%	25,241	4.8%
Armed Forces	0	0.0%	958	0.2%
Not in labor force	121	29.9%	177,777	33.6%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP03)				

Over three quarters of the workers in Allenhurst were employed in private wage and salary positions, while about 10.1 percent of workers are self-employed. Government workers comprise about 4.5 percent of the Borough’s workforce. Table 18 provides a breakdown of worker classifications.

TABLE 18: CLASSIFICATION OF WORKERS IN ALLENHURST, 2021

	Number	Percent
Total	247	100%
Private Wage and Salary Worker	211	85.4%
Government Worker	11	4.5%
Self-Employed Worker	25	10.1%
Unpaid Family Worker	0	0.0%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP03)		

EMPLOYMENT BY INDUSTRY

An analysis of employees (over the age of 16) by economic sector indicates that employed working age individuals in Allenhurst were involved in a range of economic sectors. As depicted in Table 19 below, the highest concentration of workers (27.5%) are employed in the professional, scientific, and management, and administrative and waste management services. The other sectors employing over 10 percent of Borough’s residents were retail trade, education services, and health care and social assistance, and finance and insurance, and real estate and rental and leasing.

TABLE 19: WORKFORCE BY SECTOR, 2021

Sector	Number	Percent
Civilian employed population 16 years and over	247	100%
Agriculture, forestry, fishing and hunting, mining	0	0.0%
Construction	10	4.0%
Manufacturing	10	4.0%
Wholesale Trade	21	8.5%
Retail Trade	35	14.2%
Transportation and Warehousing, and Utilities	5	2.0%
Information	9	3.6%
Finance and insurance, and real estate and rental and leasing	26	10.5%
Professional, scientific, and management, and administrative and waste management services	68	27.5%
Educational services, and health care and social assistance	46	18.6%
Arts, entertainment, and recreation, and accommodation and food services	8	3.2%
Other Services, except public administration	5	2.0%
Public administration	4	1.6%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP03)		

Table 20 provides a percentage comparison of the Borough's workforce against that of the County. A higher percentage of the Borough's workforce is employed in wholesale trade, and professional, scientific, and management, and administrative and waste management services; while a higher percentage of the County's workforce was employed in the educational services, and health care and social assistance sector.

**TABLE 20: COMPARISON OF WORKFORCE BY SECTOR
ALLENHURST BOROUGH AND MONMOUTH COUNTY, 2021**

Sector	Allenhurst	Monmouth County
Civilian employed population 16 years and over	100%	100%
Agriculture, forestry, fishing and hunting, mining	0.0%	0.2%
Construction	4.0%	6.4%
Manufacturing	4.0%	5.5%
Wholesale Trade	8.5%	2.0%
Retail Trade	14.2%	10.8%
Transportation and Warehousing, and Utilities	2.0%	4.8%
Information	3.6%	3.5%
Finance and insurance, and real estate and rental and leasing	10.5%	10.9%
Professional, scientific, and management, and administrative and waste management services	27.5%	16.0%
Educational services, and health care and social assistance	18.6%	24.7%
Arts, entertainment, and recreation, and accommodation and food services	3.2%	6.6%
Other Services, except public administration	2.0%	4.2%
Public administration	1.6%	4.3%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimate (table DP03)		

Table 21 provides a breakdown of occupations by type for the Borough’s employed civilian labor force. Over half of the Allenhurst’s employed civilian labor force was employed in management, business, science and arts, followed by sales and office occupations.

TABLE 21: OCCUPATIONS BY TYPE

Occupation	Number	Percent
Employed Civilian population 16 years and over	247	100%
Management, business, science and arts occupations	135	54.7%
Service occupations	14	5.7%
Sales and office occupations	71	28.7%
Natural resources, construction and maintenance occupations	6	2.4%
Production Transportation and material moving occupations	21	8.5%
U.S. Census Bureau, American Community Survey 2021 5 Year Estimates (table DP03)		

As indicated in Table 22 below, it is projected that Monmouth County will add 26,620 jobs by 2026. The Health Care and Social Assistance, Ambulatory Health Care Services, and Accommodation and Food Services sectors are poised to experience the greatest increase in number of jobs over the course of the projection period.

TABLE 22: PROJECTED EMPLOYMENT, MONMOUTH COUNTY, 2026

Industry Title	2016 Actual Employment	2026 Projected Employment	Numeric Change	Annual Growth Rate	Percent Change	Outlook
Mining	10	10	0	0.0	0.0%	Stable
Utilities	1,470	1,540	70	0.5	4.8%	Growing
Construction	14,520	17,210	2,690	1.9	18.5%	Growing
Manufacturing	9,550	10,400	850	1.0	8.9%	Growing
Wholesale Trade	8,900	10,080	1,180	1.4	13.3%	Growing
Retail Trade	38,760	38,560	-200	-0.1	-0.5%	Declining
Transportation and Warehousing	4,710	5,510	800	1.8	17.0%	Growing
Postal Service	1,080	1,040	-40	-0.4	-3.7%	Declining
Information	6,310	6,100	-210	-0.4	-3.3%	Declining
Finance and Insurance	10,520	10,090	-430	-0.5	-4.1%	Declining
Real Estate and Rental and Leasing	3,530	3,650	120	0.4	3.4%	Growing
Professional, Scientific, and Technical Services	20,490	21,980	1,490	0.8	7.3%	Growing
Management of Companies and Enterprises	3,220	3,580	360	1.2	11.2%	Growing
Administrative and Support and Waste Management and Remediation Services	12,720	14,070	1,350	1.1	10.6%	Growing
Educational Services	27,830	28,700	870	0.3	3.1%	Growing
Health Care and Social Assistance	44,900	53,400	8,500	1.9	18.9%	Growing
Ambulatory Health Care Services	18,980	23,680	4,700	2.5	24.8%	Growing
Hospitals	11,390	12,910	1,520	1.4	13.3%	Growing
Nursing and Residential Care Facilities	8,760	10,100	1,340	1.6	15.3%	Growing
Social Assistance	5,770	6,710	940	1.7	16.3%	Growing
Arts, Entertainment, and Recreation	8,910	11,750	2,840	3.1	31.9%	Growing
Accommodation and Food Services	26,400	30,300	3,900	1.5	14.8%	Growing
Other Services (except Government)	13,970	16,060	2,090	1.6	15.0%	Growing
Government	15,240	13,580	-1,660	-1.3	-10.9%	Declining
Total Federal Government Employment	2,030	1,950	-80	-0.4	-3.9%	Declining
State Government, Excluding Education and Hospitals	1,920	1,890	-30	-0.2	-1.6%	Declining
Local Government, Excluding Education and Hospitals	11,290	9,740	-1,550	-1.6	-13.7%	Declining
Federal Government, Excluding Post Office	950	910	-40	-0.5	-4.2%	Declining
Total Self Employed and Unpaid Family Workers, All Jobs	17,710	19,720	2,010	1.2	11.3%	Growing
Total All Industries	289,660	316,280	26,620	1.0	9.2%	Growing

Source: 2016-2026 Industry Employment Projections, NJ Department of Labor and Workforce Development

Lands Most Appropriate for Affordable Housing

An analysis was conducted to determine which areas of the Borough could accommodate developments that address affordable housing need. This analysis reviews the Borough's existing zoning and planned zoning changes and outlines the Borough's capacity to accommodate residential and non-residential growth projections. The following are included:

- An analysis of the available existing and planned infrastructure;
- The projected demand for types of uses permitted by zoning based on present and anticipated future demographic characteristics of the Borough and anticipated land use patterns; and
- Factors, such as environmental conditions, that present constraints on development.

Infrastructure

Water and Sewer

Allenhurst Borough is located within public water and sewer service areas. Sewer service is provided by the Township of Ocean Sewerage Authority (TOSA). Public water is provided by New Jersey American Water.

Anticipated Demand and Land Use Patterns

The Borough of Allenhurst contains mainly residential neighborhoods, as well as commercial uses located primarily along Main Street in the western portion of the Borough. The Atlantic Ocean and beachfront are located along the eastern portion of the Borough. According to NJTPA population estimates projected to 2045, it is anticipated that the Borough will grow to approximately 504 (an 11 percent increase) since 2021. As a fully built-out municipality, it is anticipated that Allenhurst will need to accommodate future population and employment growth as opportunities for redevelopment arise.

Residential

The Borough is predominantly zoned for Single Family housing in zones R-1 and R-2 throughout the majority of the Borough. Currently, the higher-density R-2 residential area is concentrated in the center of the Borough, bounded by Page Avenue and the R-1 district to the east and the commercial and business districts to the west. The R-1 Zone District encompasses the largest portion of the Borough, and is located from Page Avenue, east to the Atlantic Ocean, and west of the NJ Transit railroad to Deal Lake. The C-2 Zone District, which includes the MFO multi-family overlay is located in the southern portion of the Borough, bordering Main Street to the east and west.

Non-Residential

Allenhurst has a well-defined commercial area along the western portion of the Borough, which runs along Main Street, extending from the north to the south of the Borough. The southern portion of this commercial

corridor has been designated as an Area in Need of Redevelopment. Given the built-out nature of Allenhurst, new commercial development will most likely take the place of existing tenants or will require some degree of redevelopment to occur on already developed sites. The Borough's Redevelopment Area calls for the inclusion of residential units and illustrates the desire to accommodate residential units within generally non-residential zones to the maximum extent possible given current development patterns.

Environmental Constraints

Allenhurst enjoys many natural environmental amenities, including the Atlantic Ocean to the east and Deal Lake to the west. In order for these environmentally sensitive features to retain their existing quality and perform vital ecosystem functions, the Borough must be conscious of its role as steward of its natural environment. As a fully developed community, there are limited pervious surface areas within Allenhurst. Impervious surface contributes to negative environmental outcomes, particularly in coastal communities, by creating high velocity runoff and limiting groundwater recharge during storm events. Given these realities, the Borough must conserve natural features such as dunes and wetlands that can absorb excess stormwater and help filter polluted runoff.

Historic

Allenhurst is known as a historical shore town, and the Allenhurst Residential Historic District was created in 1999, containing the majority of the Borough and recognized on both the National and State Historic Registers. The Allenhurst Railroad Station is listed as a national historic property, and the Allenhurst Water Tower and Firehouse are identified as locally historic properties. In 2003, the Borough issued Design Guidelines for the Residential Historic District under the Historic Preservation Ordinance. The recognized historic nature of the Borough impedes the ability for large areas of future development.

Existing Land Use Designations

The Borough's land use designations have been continually examined and updated through the Master Plan Reexamination process. The last Reexamination Report was adopted in June 2018.

The following districts comprise the Borough's **residential** zones:

Single-Family Residential Zones: R-1 and R-2

The R-1 and R-2 districts allow one-family dwelling homes as the only principally permitted uses.

MFO: Multi-Family Overlay

The Multifamily Overlay District is created as an overlay district in the C-2 Zoning District so as to provide opportunities for the development of multifamily residences in the Borough in an area that contains buildings and properties that lend themselves for renovation of such use, and so as to provide for the continued availability of housing for the elderly, small families, and single persons. Multi-family residences are permitted as a conditional use in this overlay zone. This ordinance is currently being repealed by the Borough and replaced with a revised Multi-Family Overlay Ordinance.

FAIR SHARE PLAN

Fair Share Obligation Summary

The cumulative 1999-2025 affordable housing obligation for the Borough the result of the Supreme Court's Mount Laurel IV decision when a Third-Round fair share obligations have yet to be definitely determine, the Borough has recognized and agreed that it is appropriate for the Borough and Fair Share Housing Center to enter into an Agreement settling the Borough's Third Round Present and Prospective Need obligations as is outlined in Table 23 below.

TABLE 23: FAIR SHARE OBLIGATION SUMMARY

Obligation Component	Number of Credits Required
Present Need	4
Prior Round Obligation (1987-1999)	50
Third Round "Gap" and Prospective Need (1999-2025)	44

The following sections outline how the Borough will comply with its Fair Share Obligation.

Lack of Developable Vacant Land

The cumulative 1999-2025 affordable housing obligation calculated as noted above does not factor in the availability of vacant and developable land within the Borough. The Borough conducted an analysis of vacant developable land within the Borough pursuant to N.J.A.C. 5:93-4.2 (Attached as Appendix A) and has preliminarily determined that the Borough was entitled to a vacant land adjustment that reduces the Borough's new construction obligation to twenty-seven (27) as part of the Borough's Cumulative Affordable Housing Obligation (Prior Round, Gap and Prospective Need). Allenhurst agrees that the properties listed below shall be precluded from future development via a deed restriction or placement on the New Jersey Department of Environmental Protection Recreation and Open Space ("ROSI") for the Borough of Allenhurst.

- a. Block 3, Lot 1, the Borough owned public beach, shall be fully deed restricted as recreation and/or open space or recorded on the ROSI for the Borough of Allenhurst.
- b. Block 3, Lot 2, the Borough owned "Beach Club Facility," houses lockers, ocean water pools, rest rooms, other club facilities and a restaurant facility that the Borough leases out to an operator in accordance with the Local Lands and Buildings Law every ten (10) years. Said parcel shall be deed restricted solely for those uses.
- c. Block 28, Lot 3, the Borough owned ballpark, shall be deed restricted as open space or recorded on the ROSI for the Borough of Allenhurst.

- d. Block 23, Lot 1, the Borough owned Railroad Park, shall be deed restricted as open space or recorded on the ROSI for the Borough of Allenhurst.
- e. Block 13, Lot 1, Main Street Park, shall be deed restricted as open space or recorded on ROSI for the Borough of Allenhurst.
- f. Block 31, Lot 3, the Borough owned Lake Drive parcel, will be developed by Developer with twenty-three (23) family affordable housing rental units based upon a 20% set-aside for the Inclusionary Development, but in no event shall there be less than twenty (20) affordable units in accordance with the terms of the Affordable Housing Settlement Agreement at **Appendix B**. Also, pursuant to and subject to Affordable Housing Settlement Agreement, it is anticipated that the Lake Drive parcel will be subdivided and developed, in part, to erect a communications monopole and used by the Borough for general storage. The Borough shall restrict any remaining land as open space or record them on the ROSI for the Borough of Allenhurst.

The Court and Fair Share Housing Center’s preliminarily acceptance of the Borough’s vacant land adjustment has preliminarily established a Realistic Development Potential (“RDP”) of twenty-seven (27) units and an “unmet need” of 67 units within the Borough. N.J.A.C. 5:93-4.2(g) permits a municipality to address its RDP through any activity permitted to be used to satisfy a municipality’s new construction obligation outlined in N.J.A.C. 5:93-5. The mechanisms adopted by the Borough in accordance with N.J.A.C. 5:93-5 are specifically described in the sections below.

Satisfaction of the Borough’s Rehabilitation/ Present Need Obligation

The Borough of Allenhurst will participate in the Monmouth County Housing Improvement Program, which is administered by the Monmouth County Community Development Block Grant (CDBG) program through an intergovernmental agreement between the Borough and County. The Borough will fund the program until such time as the funds become available in the Affordable Housing Trust Fund. The Borough anticipates completing one rehabilitation per year between 2022 and 2025 to satisfy its 4-unit obligation.

Satisfaction of the Borough’s Realistic Development Potential

The Borough’s Realistic Development Potential (RDP) is 27 units. The Borough proposes to address this RDP through the Power Station Inclusionary Development. The Power Station Inclusionary Development will consist of Block 18, Lot 1: 315 Hume St. (East Side Property), Block 21, Lots 5 & 6: 500-523 Main Street (West Side Property), and Block 31, Lot 3: Lake Drive (Lake Drive Property). The east & west side properties are owned by the developer Power Station at Allenhurst, LLC and the Lake Drive property is municipally owned. This redevelopment project will consist of 28 market rate town homes on the east side property, 62 market rate condominium units on the West Side Property, and 23 family affordable units on the Lake Drive Property. These 23 affordable units are based on a 20% set-aside of the combined

development. The 23 affordable family units will generate a 7-unit rental bonus. The 23 real units created + 7 rental bonus credits will generate a total of 30 credits/ bonuses to fully address the Borough's 27-unit RDP and provide a 3-unit surplus towards the Borough's unmet need. The developer is required to start construction for affordable units before the 23rd CO will be issued for townhomes on the east side property. No CO will be given for west side property unit COs for all affordable units have been issued. The 23 affordable units will consist of four (4) 1-bedroom units, 14 2-bedroom units, and five (5) 3-bedroom units. The income level distribution will be as follows:

Unit Type	Very-Low Income (30% or less RMI)	Low Income (30% to 50% RMI)	Moderate Income (50% to 80% RMI)	Total
1-bedroom	0	2	2	4
2-bedrooms	2	5	7	14
3-bedrooms	1	2	2	5
Total	3	9	11	23

This distribution of income satisfies the Borough's very low-income requirements as well as the requirement for the low- and moderate-income distribution. The Borough has complied with the minimum obligation to provide rental units and since all the low- and moderate-income units will be family rental the Borough has demonstrated compliance with the maximum age-restricted requirements as well as the minimum family rental requirements.

The Settlement Agreement with Power Station provides for the possibility that the redeveloper may sell the proposed project on the West Side Property. In the event that the project is sold, the Borough shall have the Right of First Refusal and will have sixty (60) days to make an offer to Power Station. Power Station has no obligation to accept any Borough offer and after sixty (60) days or the rejection of a Borough offer, the Power Station can market the property to third parties and solicit offers.

The East Side Property is roughly trapezoidal in shape, with Main Street to the west, Elberon Avenue to the north and Hume Street to the south. It contains an empty commercial building, to be demolished, and associated parking. The West Side Property, across Main Street from the East Side Property, is a rectangle comprising two (2) lots, across both of which sits an empty office building and garage once used by Jersey Central Power & Light (JCP&L). Both properties are now owned by Power Station at Allenhurst, LLC. The East Side Property is surrounded along Elberon Avenue to the north by residential uses, to the east by residential uses, and one Hume Street to south by a firehouse and residential uses. To the north of the West Side Property is the JCP&L substation, to the south are residential and low-density commercial uses, and to the west is the Lake Drive Property.

The Lake Drive Property is to the west of the West Side Property, across the NJ Transit tracks. It is owned by the Borough and includes frontage along a north-south branch of Deal Lake. Currently on the property are storage, tennis courts and an abandoned water tower. The intent is for this

property to be subdivided, with the portion that includes storage and tennis courts retained by the Borough, the portion that includes the water tower, the Affordable Housing Parcel, conveyed to Power Station for development of up to twenty-three (23) affordable family rental units, representing a 20% affordable housing set-aside of the total 113 units in the Inclusionary Development.

The East Side Property and West Side Property are located within the Borough's C-2 Commercial Zone, where residential development is not a permitted use. The Lake Drive property is currently designated on the Borough's Zoning Map as municipally owned and municipal recreation/open space. A redevelopment plan will be adopted as part of the Settlement Agreements enclosed within Appendix B which will rezone all three (3) properties to enable the proposed inclusionary development.

Within a half-mile to the north of the properties is the Allenhurst NJ Transit train station. A half-mile to the east stops in both directions for NJ Transit's bus route 837. The properties are within the State Development and Redevelopment Plan's Planning Area 1 (PA-1), the Metropolitan Planning Area, where redevelopment including affordable housing is encouraged. Within a half-mile to the north of the properties is the Borough's Railroad Plaza Park, which includes playground equipment, park benches, picnic tables, fitness stations, running trails, shoreline kayak launch and a historic gazebo. Both the East and West Side Properties are located within CAFRA jurisdiction, which will require any redevelopment to obtain a CAFRA permit for the market-rate portion of the development.

There are no wetlands or FEMA special flood hazard areas on either the East Side or West Side properties. The portions of the Lake Drive lot that border the lake are within the flood hazard area, but it does not extend sufficiently into the Affordable Housing Parcel to impede the contemplated development. There is an abandoned water tower on the Affordable Housing Parcel, and, per the Power Station Settlement Agreement, enclosed within Appendix B, the designated redeveloper will remove the water tower at its sole expense. Power Station has represented to the Borough that the remediation of all prior contamination of the JCP&L portions of the West Side Property has been completed and may obtain a state-wide Remedial Action Outcome (RAO) to residential standards. The remediation of the East Side Property to residential standards will also be completed once the building has been demolished.

As such, the East Side, West Side and Lake Drive properties have all been determined to be available, suitable, developable and approvable in accordance with N.J.A.C. 5:93-5.3,

Satisfaction of the Borough's Unmet Need

The Borough's unmet need is 94 units based on the remaining Prior Round Obligation and Gap period and Prospective Need (1999-2025) Obligation. When the 27-unit RDP is subtracted, an unmet need obligation of 67 units is remaining. The Borough proposes to implement the following mechanisms to address its unmet

need:

Surplus Credits

Allenhurst has 3 surplus credits generated from the Power Station Inclusionary Development Project.

Main Street Commercial District Overlay Inclusionary Zoning

The Borough will adopt a Main Street Commercial District Inclusionary Overlay Zone, consisting of Block 21, Lots 8, 9, 10, 11, 12, 13, Block 9, Lots 1 & 2: Southern Gateway District, all remaining parcels in C-2 Main Street Redevelopment Area, the C-3 Commercial Zone, the B-1 Business Office Zone, and the B-2 Business Office Zone District. The Overlay Zone permits multi-family housing up to 2 stories over ground floor commercial on Main Street, three (3) story multi-family apartments in certain locations not fronting Main St., and requires a mandatory 20% set-aside for affordable housing. The Overlay Zone's bulk standards will permit shared parking ratios and 15 unit per acre density. This Overlay Zoning can be found in Appendix C.

Mandatory Set-Aside Ordinance ("MSO")

The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance ("MSO") in place. The MSO currently requires a 20 percent (20%) affordable housing set-aside for all new multi-family residential developments comprised of five or more dwelling units at a density of 6 or more units per acre. The MSO requires that to the extent possible, in all inclusionary developments, low- and moderate-income units shall be integrated with market units.

The MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of Allenhurst or its boards to grant such rezoning, variance, redevelopment designation or other relief. The proposed ordinance is included herein as Appendix D.

Affordable Housing Development Fee Ordinance

The Borough will adopt a development fee ordinance for all new non-residential development and new non-inclusionary residential development. The ordinance will also require that residential development fees be collected for all residential expansions that create new bedrooms. The proposed ordinance can be found in Appendix E.

Changed Circumstances

The Fair Share Housing Center Settlement Agreement, enclosed in Appendix B, acknowledges that, should the Borough purchase the West Side property from Power Station and subsequently abandon the municipal

uses on the firehouse lot at Block 19, Lot 2, which is across Hume Street to the south of the East Side Property, or Borough Hall at Block 6, Lot 11, the resulting availability of these municipal lots for development amounts to a substantial changed circumstance that would affect the Borough's realistic development potential for affordable housing, resulting in an increase in the Borough's Third Round RDP. The Settlement Agreement requires that, in that instance, the Borough will amend its RDP to account for the newly available land and will have the right to first address the changed circumstance with notice to the Court, Special Master and Fair Share Housing Center.

APPENDICES

Appendix A. Vacant Land Adjustment

Vacant Land Inventory and Analysis Report

Prepared for:
Borough of Allenhurst
Monmouth County, New Jersey

September 2023

Prepared By:



788 Wayside Road
Neptune, New Jersey 07753
(732) 922-9229

A handwritten signature in black ink, appearing to be "Jennifer C. Beahm", is written over a horizontal line.

Jennifer C. Beahm, PP, AICP
License No. 05625

I. INTRODUCTION

As noted in N.J.A.C. 5:93, “there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing.” In recognition of the need to provide for the opportunity to adjust municipal affordable housing obligations, N.J.A.C. 5:93 outlines standards and procedures for municipalities to demonstrate that a municipal response to its housing obligation is limited by lack of land, water or sewer. This report outlines the vacant land analysis methodology and summarizes the results of the vacant land analysis prepared on behalf of the Borough of Allenhurst by Leon S. Avakian Inc (Avakian).

Previous Housing Rounds and Vacant Land Analyses

The Borough of Allenhurst is a fully developed shore community located in Monmouth County. Allenhurst has not participated in any prior housing rounds.

Current Housing Round and Vacant Land Assessment

Given the Borough’s relative lack of vacant and developable land, the Borough’s ability to satisfy its Court-determined affordable housing obligation is limited. To demonstrate its continued lack of vacant developable land, the Borough has prepared an updated Vacant Land Adjustment analysis in accordance with N.J.A.C. 5:93:4.2, which includes the following components:

- An inventory of all vacant parcels in accordance with N.J.A.C. 5:93-4.2(b), included as Attachment A.
- A Vacant Land Map depicting vacant properties within the Borough, included as Attachment B.
- An existing land use map for the Borough in accordance with N.J.A.C. 5:93-4.2(a), included as Attachment C.
- An aerial map for the Borough, included as Attachment D.
- An environmental constraints map for the Borough, included as Attachment E.
- An aerial map of the power station properties within the Borough, included as Attachment F.

The realistic development potential (RDP) of the Borough’s vacant land was analyzed in accordance with the provisions of Subchapter 4 of N.J.A.C. 5:93 based on the most recently available data. After following the procedures as outlined, the analysis shows that the Borough has one (1) suitable site available for development, and consequently, has an RDP new construction obligation of 27 affordable units.

II. PERMITTED EXCLUSIONS

N.J.A.C. 5:93 establishes criteria by which sites, or portions thereof, in a municipal land inventory may be excluded from a municipality's RDP. Environmentally sensitive areas, including flood hazard areas, areas within Environmentally Sensitive Planning Areas according to the State Plan Policy Map, areas outside of the Sanitary Sewer Service Area (SSA), wetlands, and areas characterized by steep slopes of greater than 15 percent that render a site unsuitable for affordable housing may be excluded from consideration. In addition, small, isolated lots lacking sufficient acreage to generate an affordable housing set-aside as part of an inclusionary development may also be excluded. Vacant lots under development or properties for which site plan approval has been granted may also be excluded. Finally, landlocked parcels or sites with limited or no access may also be excluded from the calculation of the Borough's RDP.

The vacant land inventory table in Attachment A provides a parcel-by-parcel description of exclusions that have been made pursuant to N.J.A.C. 5:93.

It should be noted that the Borough is permitted to reserve up to three percent of its total developed and developable acreage, less existing active municipal recreation areas, for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing pursuant to N.J.A.C. 5:93-4.2(e)4. Any such site designated for active recreation in accordance with this section must be purchased and limited to active recreational purposes within one year of substantive certification. Although this calculation has not been completed as part of this analysis, the Borough reserves the right to revise this analysis to complete this calculation.

III. Summary and Conclusion

Based on the procedures for municipal adjustments provided in N.J.A.C. 5:93, the Borough of Allenhurst's RDP has been determined to be 27 affordable units. This finding is consistent with the Borough's current development conditions.

ATTACHMENT A: VACANT LAND INVENTORY **TABLE**

Block	Lot	Class	Location	Owner Name	Area (acres)	Constrained Acreage	Unconstrained Acreage	Developable Acreage	Reason for Exclusion	Total Units	Affordable Units
20	11	1	210 ELBERON AVE	GIJNDI, HARRIS & MARCELINO	0.099072	0.0	0.10	0.00	The site is the front yard of a property located in adjacent Loch Arbor (Block 3 Lot 4). The lot is underzoned (less than 0.4 acres) and not developable.	0	0
11	3	1	224 CEDAR AVE	VARLEY, GERALDINE GREER	0.1607	0.0	0.16	0.00	Block 11 lots 2 and 3 are under common ownership. Lot 2 is developed with a single-family dwelling. Lot 3 is vacant and is underzoned (less than 0.4 acres).	0	0
20	10	1	216 ELBERON AVE	DOHERTY, ROSEMARY (MCFADDEN)	0.189989	0.0	0.19	0.00	The site is the front yard of a property located in adjacent Loch Arbor (Block 3 Lot 2). The site is underzoned (less than 0.4 acres) and not developable.	0	0
1	14	150	150 ELBERON AVE	ST ANDREWS CHURCH	0.3581	0.0	0.36	0.00	Existing Church	0	0
6	11	15C	125 CORLIES AVE	BORO OF ALLENHURST	0.36575	0.0	0.37	0.00	Administrative Building	0	0
1	6	15F	108 ALLEN AVE	CONGREGATION OHEL YISHAK, INC	0.3905	0.0	0.39	0.00	Existing Temple	0	0
19	2	15C	318 HUME ST	BORO OF ALLENHURST	0.532313	0.0	0.55	0.00	Friendhouse	0	0
31	4	15C	LAKE DRIVE	BORO OF ALLENHURST	0.7456	0.8	0.00	0.00	The site is entirely constrained by surface water and the 100-year floodplain (also referred to as the Special Flood Hazard Area).	0	0
29	1	15C	200 LAKE DR	BORO OF ALLENHURST	1	0.0	1.00	0.00	The site is developed with the Allenhurst Park (previously Block 29 Lot 2).	0	0
3	1	15C	BEACH	BORO OF ALLENHURST	4.14	4.1	0.00	0.00	The site is constrained by the 100-year floodplain (also referred to as the Special Flood Hazard Area). The site is also the beach. The Borough will deed restrict the lot.	0	0
27	3	15C	LAKE DRIVE	BORO OF ALLENHURST	0.653769	0.4	0.21	0.21	Marmouth County Open Space - Deed Restricted	2,13806	0
13	1	15C	E SIDE MAIN ST	BORO OF ALLENHURST	0.457811	0.0	0.46	0.46	Marmouth County Open Space - Deed Restricted	4,57811	0
25	1	1	89-99 MAIN ST	JCP&L T/D/B/A GPU ENERGY-TAX DEPT.	0.534487	0.0	0.53	0.53	Marmouth County Open Space - Deed Restricted	5,34487	0
28	3	15C	LAKE DRIVE	BORO OF ALLENHURST	0.593215	0.0	0.59	0.59	Marmouth County Open Space - Deed Restricted	5,93215	0
23	1	15C	MAIN ST	BORO OF ALLENHURST	0.674387	0.0	0.67	0.67	Marmouth County Open Space - Deed Restricted	6,74387	0
31	3	15C	LAKE DRIVE	BORO OF ALLENHURST	2.597288	0.9	1.69	1.69	Marmouth County Open Space - Deed Restricted	16,905103	0
3	2	15C	1 OCEAN PLACE	BORO OF ALLENHURST	1.889544	0.1	1.84	1.84	The site will be subdivided for Affordable Housing Development the balance will be deed restricted	18,3701	0
21	1.01	15C	412 ALLEN AVE	BORO OF ALLENHURST	0.242716	0.0	0.24	0.24	Allenhurst Beach Club - The Borough will deed restrict the lot	2,42716	1
21	8	1	527 MAIN ST	SIS COMMUNITY CORP., C/O TAWIL	0.24647	0.0019	0.24	0.24	The site is developed with the municipal parking lot, which is critical for the Borough as customers park there to visit the local businesses. The lot is also underzoned (less than 0.4 acres).	2,4247	2
30	1	1	300 LAKE DR	HIRIZ, CATHERINE M	0.250469	0.0	0.25	0.25	Underzoned (less than 0.4 acres)	2,50469	1
21	2		415 MAIN ST	JCP&L T/D/B/A GPU ENERGY - TAX DEPT.	0.1722	0.0	0.17	0.00	Block 30 Lots 1 and 3 are under common ownership. Lot 3 is developed with a single-family home. Lot 1, while vacant, is underzoned (less than 0.4 acres). Adjacent Lot 2 is a commercial property owned by Paul X Escandon, and it is underzoned (less than 0.4 acres).		
21	3		417-423 MAIN ST	JCP&L T/D/B/A GPU ENERGY - TAX DEPT.	0.5751	0.0	0.58	0.58	Redevelopment Site		
21	5	4A	500 MAIN ST	POWER STATION AT ALLENHURST, LLC	0.75732	0.0	0.76	0.76	Redevelopment Site		
21	6	4B	523 MAIN ST	POWER STATION AT ALLENHURST, LLC	0.50416	0.0	0.50	0.50	Redevelopment Site		
18	1	4A	315 HUME ST	POWER STATION AT ALLENHURST, LLC	2.199509	0.0	2.20	2.20	Redevelopment Site		23
Total Developable Acres										RDV	27

ATTACHMENT B: VACANT LAND MAPPING



Source: USA, NUCGN, NJDEP and Monmouth County GIS.



Vacant Land Mapping

Borough of Allenhurst
Monmouth County, New Jersey

LEON S. AVAKIAN, Inc.
Consulting Engineers

Revised: March 3, 2023

ATTACHMENT C: EXISTING LAND USE MAP



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Co

Source: LSA, NJGIN, NJDEP and Monmouth County GIS.

Attachment C: Existing Land Use Map

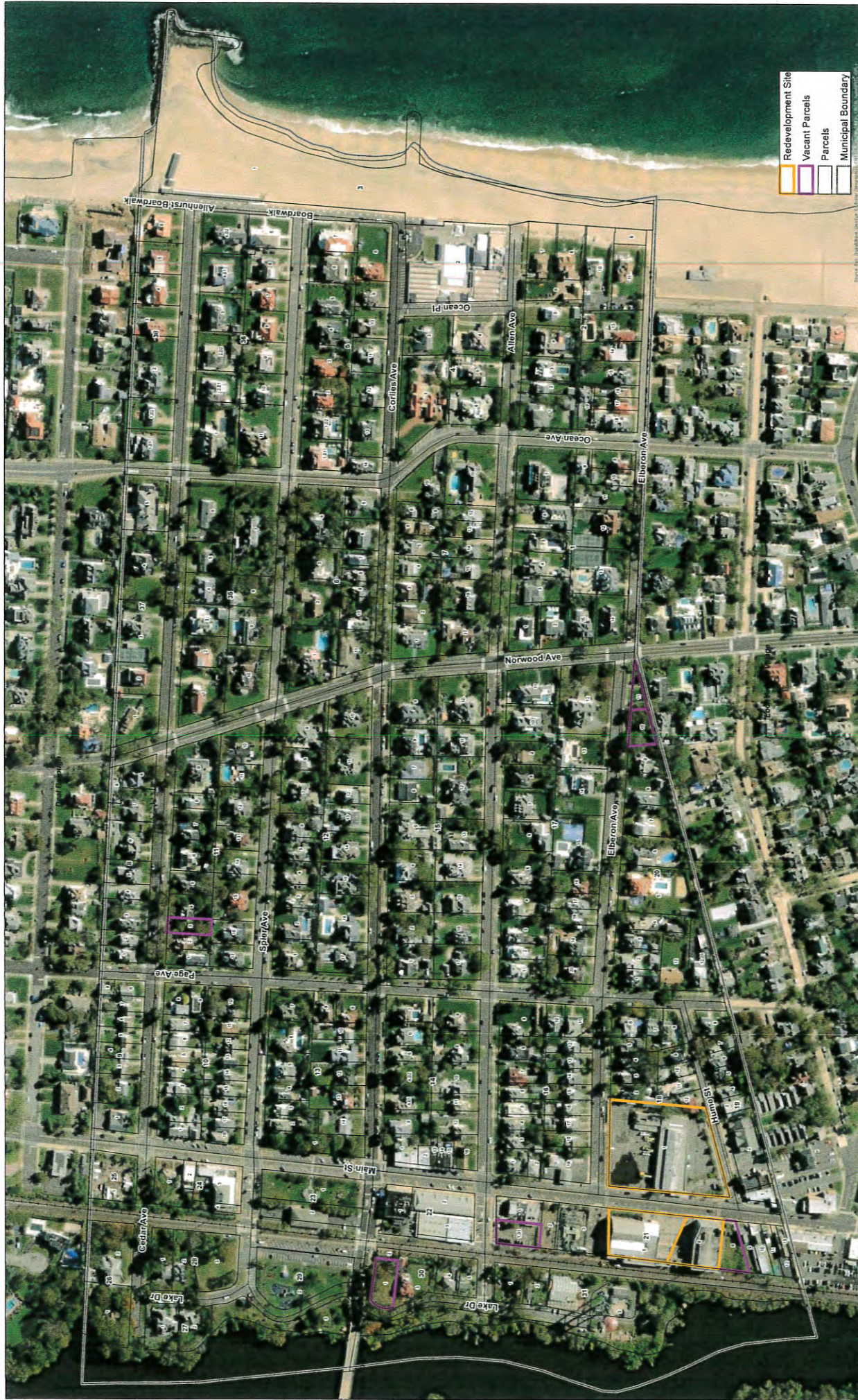
Borough of Allenhurst
Monmouth County, New Jersey

LEON S. AVAKIAN, Inc.
Consulting Engineers

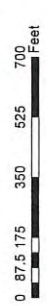
Revised: May 5, 2023



ATTACHMENT D: AERIAL MAP

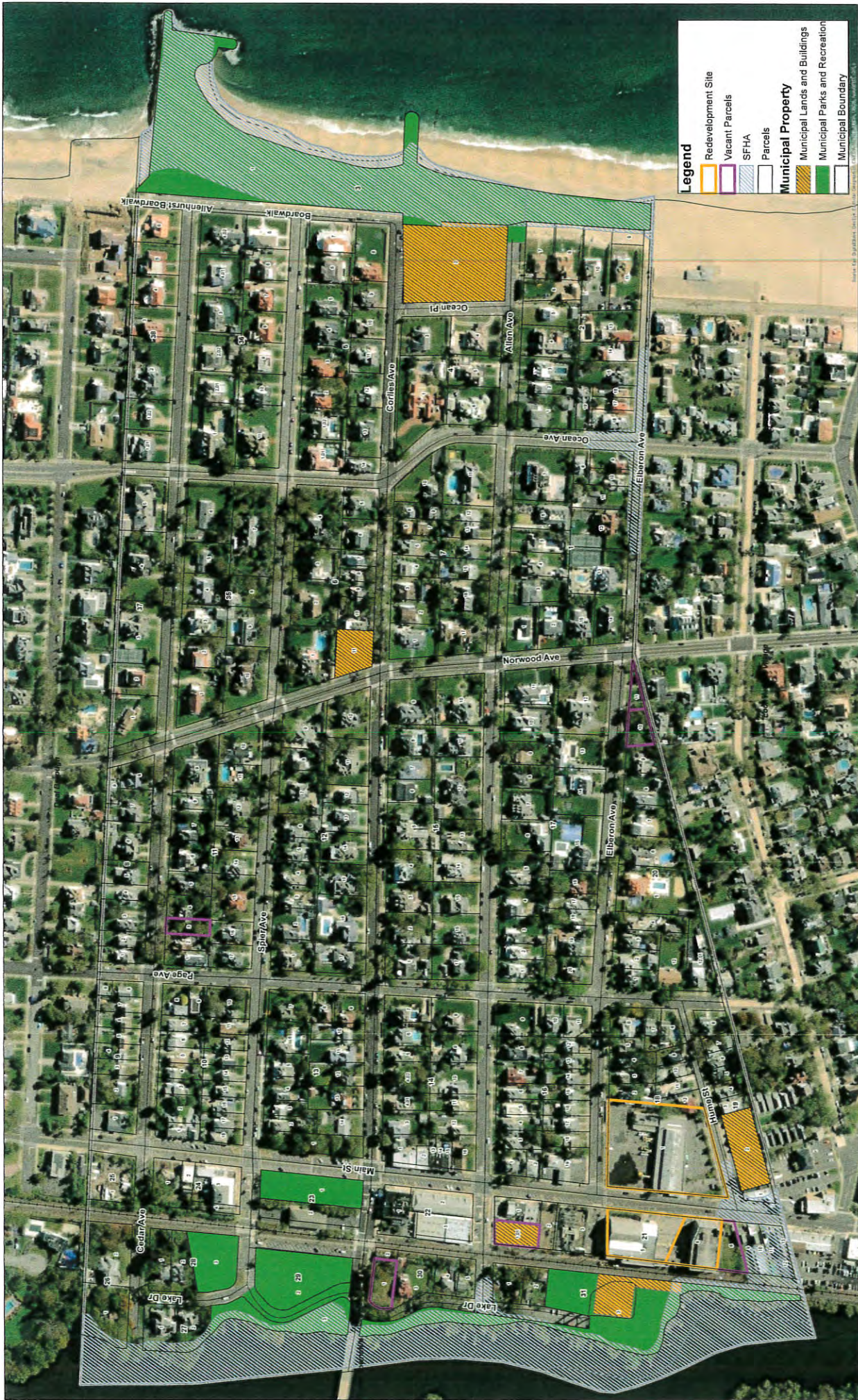


Source: LSA, NGIN, NJDEP and Monmouth County GIS.



2020 Aerial
 Borough of Allenhurst
 Monmouth County, New Jersey

**ATTACHMENT E: ENVIRONMENTAL
CONSTRAINTS MAP**



Legend

- Redevelopment Site
- Vacant Parcels
- SFHA
- Parcels
- Municipal Property
- Municipal Lands and Buildings
- Municipal Parks and Recreation
- Municipal Boundary

Source: LSA, NJGIS, NJDEP and Monmouth County GIS.



Environmental Constraints
 Borough of Allenhurst
 Monmouth County, New Jersey

**ATTACHMENT F: POWER STATION
PROPERTIES AERIAL MAP**



Project definition, mapping requests, and data distribution by NJ Office of Information Technology, Office of GIS
 Environmental Education
 Participatory Information Technology
 Department of Geological Survey & Affairs
 Environmental Safety & Contamination Management & Environmental Protection

Power Station Properties

Borough of Allenhurst
 Monmouth County, New Jersey

Appendix B. Settlement Agreement

**Borough of Allenhurst Settlement Agreement with Fair Share
Housing Center**

THIS SETTLEMENT AGREEMENT (“Agreement”) is made on this 10th day of May 2023, by and between the Borough of Allenhurst, with its principal offices located at 125 Corlies Avenue, Allenhurst, New Jersey 07711 (“Alehurst” or “Borough”) and Fair Share Housing Center, Inc., with offices located at 510 Park Boulevard, Cherry Hill, New Jersey 08002 (“FSHC”) (collectively hereinafter referred to herein as the “Parties”).

RECITALS

WHEREAS, the Power Station at Allenhurst, LLC (“Developer”) filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey (“Court”), entitled Power Station at Allenhurst, LLC v. Borough of Allenhurst; Board of Commissioners of the Borough of Allenhurst; and Allenhurst Planning Board, Docket No.: MON-L-2551-21, seeking to compel the Borough to provide a realistic opportunity for the construction of affordable housing for very-low, low and moderate income households and to meet the Borough’s fair share of the housing region’s need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 (“FHA”) and Mount Laurel jurisprudence (hereinafter “Builder’s Remedy Action”); and

WHEREAS, in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), FSHC is a Supreme Court designated interested party in this matter and was granted leave to intervene; and

WHEREAS, per Court Order dated November 5, 2021, the Honorable Linda Grasso Jones, J.S.C., granted FSHC’s motion to intervene in Developer’s Builder’s Remedy Action under Docket No.: MON-L-2551-21 as captioned above; and

WHEREAS, the Court having also appointed Mary Beth Lonergan, P.P., A.I.C.P., as the “Special Master” in this case as customary in Mount Laurel matters; and

WHEREAS, as a result of extensive settlement negotiations and mediation between the Borough and Developer, those two parties agreed to the Affordable Housing Settlement Agreement (“Affordable Housing Agreement”), attached hereto as **Exhibit A**, and the Settlement Term Sheet attached as **Exhibit B**, whereby Developer proposes, and the Borough Defendants agree to permit, the development of the East Side Property at Block 18, Lot 1 with twenty-eight (28) market-rate townhomes, the West Side Property at Block 21, Lots 5 and 6 with sixty-two (62) market-rate condominium units and a portion of the Lake Drive Property at Block 31, Lot 3 with twenty-three (23) affordable family rental units; and

WHEREAS, the Affordable Housing Agreement does not address and resolve the Borough’s entire affordable housing obligation which shall be addressed in the Borough’s Housing Element and Fair Share Plan (“HEFSP”) as discussed in more detail below after application of a permissible Vacant Land Adjustment, pursuant to N.J.A.C. 5:93-4; and

WHEREAS, Allenhurst and FSHC recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households, have engaged in good faith negotiations with the assistance of the Special Master; and

WHEREAS, the Parties having reached an amicable agreement on the various substantive provisions, terms and conditions delineated herein now wish to present that settlement to the Court for approval;

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. At this particular time in the process resulting from the Supreme Court’s Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, the Parties recognize and agree that it is appropriate for the Borough and FSHC to enter into this Agreement settling the Borough’s Third Round Present and Prospective Need obligations instead of pursuing plenary adjudication of the Borough’s Mount Laurel obligation.

2. The Effective Date of this Agreement shall be the last date on which all Parties have executed the Agreement.

3. FSHC and the Borough hereby agree that Allenhurst’s affordable housing obligations are as follow:

Rehabilitation/Present Need Obligation	4
Prior Round Prospective Need Obligation (pursuant to N.J.A.C. 5:93)	50
Third Round (1999-2025) Prospective Need Obligation (pursuant to Jacobson 2018 Mercer Trial, as adjusted via a 20% cap)	44

4. **Rehabilitation/Present Need Obligation**. The Borough’s efforts to meet its Present Need obligation include the following: The Borough will participate in the Monmouth County Housing Improvement Program (“MCHIP”) administered by the Monmouth County Development Block Grant (“CDBG”) program in accordance with applicable law. The Borough will fund the program through general revenue until such time as the funds become available in the Affordable Housing Trust Fund. The Borough anticipates completing at least one (1) rehabilitation per year until 2025 to satisfy its 4-unit obligation.

5. **Gap Period Present Need Obligation**. For purposes of this Agreement, the Borough’s Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which, as recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), is a measure of households formed between 1999 and 2015 that need affordable housing.

6. **Prior Round and Third Round Prospective Need Obligation**. Allenhurst has a Prior Round Prospective Need obligation of 50 units and a Third Round Prospective Need obligation of 44 units, for a cumulative fair share obligation of 94 affordable units. The Parties agree for purposes of settlement to establish 44 units as the Borough’s Third Round Prospective Need Fair Share Obligation as the number that multiple experts have used as an extrapolation

pursuant to the methodology established by the Honorable Mary C. Jacobson, A.J.S.C., decision in the consolidated declaratory judgment proceedings: In the Matter of the Municipality of Princeton, Docket No. MER-L-1550-15 and In the Matter of West Windsor Township, Docket No. MER-L01561-15, Superior Court of New Jersey, which are not otherwise binding on either party except by way of this Settlement Agreement, and as adjusted by a 20% cap in accordance with N.J.A.C. 5:93-2.16.

7. **Vacant Land Adjustment.** Pursuant to N.J.A.C. 5:93-4.2, the Parties agree that Allenhurst is entitled to an adjustment of its Prior Round and Third Round Prospective Need obligations due to the lack of developable vacant land in Allenhurst available to meet its cumulative fair share obligation. Within 120 days of the Court's entry of an Order approving this Settlement Agreement following a duly noticed Fairness Hearing, Allenhurst agrees that the properties listed below shall be precluded from future development via a deed restriction or placement on the New Jersey Department of Environmental Protection Recreation and Open Space ("ROSI") for the Borough of Allenhurst.

- a. Block 3, Lot 1, the Borough owned public beach, shall be fully deed restricted as recreation and/or open space or recorded on the ROSI for the Borough of Allenhurst.
- b. Block 3, Lot 2, the Borough owned "Beach Club Facility," houses lockers, ocean water pools, rest rooms, other club facilities and a restaurant facility that the Borough leases out to an operator in accordance with the Local Lands and Buildings Law every ten (10) years. Said parcel shall be deed restricted solely for those uses.
- c. Block 28, Lot 3, the Borough owned ball park, shall be deed restricted as open space or recorded on the ROSI for the Borough of Allenhurst.
- d. Block 23, Lot 1, the Borough owned Railroad park, shall be deed restricted as open space or recorded on the ROSI for the Borough of Allenhurst.
- e. Block 13, Lot 1, Main Street Park, shall be deed restricted as open space or recorded on ROSI for the Borough of Allenhurst.
- f. Block 31, Lot 3, the Borough owned Lake Drive parcel, will be developed by Developer with twenty-three (23) family affordable housing rental units based upon a 20% set-aside for the Inclusionary Development, but in no event shall there be less than twenty (20) affordable units in accordance with the terms of the Affordable Housing Settlement Agreement at **Exhibit A**. Also, pursuant to and subject to Affordable Housing Settlement Agreement at **Exhibit A**, it is anticipated that the Lake Drive parcel will be subdivided and developed, in part, to erect a communications monopole and used by the Borough for general storage. The Borough shall restrict any remaining land as open space or record them on the ROSI for the Borough of Allenhurst.

8. **Realistic Development Potential.** Allenhurst's vacant land adjustment, which will include a VLA Inventory and a VLA Aerial Map, reveals a Realistic Development Potential

("RDP") of 27 units generated from the following properties: 23-units of RDP from the Power Station Inclusionary Development as defined below; 2-units of RDP from Block 21/Lot 8; 1-unit of RDP from Block 21/Lot 1.01 and 1-unit of RDP from Block 30/Lot 1. Within 120 days of the Court's entry of an Order approving this Settlement Agreement, Allenhurst shall prepare a full VLA Inventory of sites included and excluded and VLA Aerial Map as part of its HEFSP as set forth in 17(a)(i.) below.

9. Allenhurst shall address its RDP of 27 units through the following compliance mechanisms:

- a. Power Station Inclusionary Development: Through the adoption of an Amended Redevelopment Plan, in accordance with the Affordable Housing Agreement between Allenhurst and Developer, the Borough shall rezone Block 18, Lot 1 located at 315 Hume Street ("East Side Property"), Block 21, Lots 5 and 6 located at 500-523 Main Street ("West Side Property") owned by Developer, and a portion of the municipally-owned Block 31, Lot 3, otherwise known as Lake Drive ("Lake Drive Property") to create a realistic opportunity for the construction of twenty-three (23) family affordable rental units on the Lake Drive Property based upon a twenty percent (20%) set-aside of the required affordable housing obligation associated with the combined East Side Property, West Side Property and Lake Drive Property ("Power Station Inclusionary Development").
- b. The Power Station Inclusionary Development encompasses twenty-eight (28) market-rate town homes on the East Side Property, sixty-two (62) market-rate condominium units (for-sale or rental at Developer's discretion) on the West Side Property and twenty-three (23) family affordable rental units on the Lake Drive Property.
- c. As the Affordable Housing Agreement requires Developer to provide twenty-three (23) affordable family rental housing units as part of the Power Station Inclusionary Development, this is the needed 'firm commitment' to generate the maximum seven (7) upfront rental bonuses (maximum rental bonuses calculated based on $0.25 \text{ of } 27\text{-unit RDP} = 6.75$, rounded up to 7 minimum rental units or 7 maximum rental bonuses). Thus, the total of thirty (30) affordable credits and rental bonuses (23 affordable rental units plus 7 rental bonuses = 30 total credits/bonuses) from the Power Station Inclusionary Development will fully address the Borough's 27-unit RDP and will provide a small three-unit surplus towards the Borough's unmet need as discussed below.
- d. Under the terms of the Affordable Housing Agreement, Developer has agreed to grant the Borough a Right of First Offer ("ROFO") in the event that Developer chooses to market the West Side Property for sale. In accordance with the Affordable Housing Agreement, in the event that the Borough exercises the ROFO and purchases the West Side Property from Developer, at closing on the sale of the West Side Property to the Borough, Developer shall cause \$4,600,000.00 to be held in escrow until all of the affordable housing units have received a certificate of occupancy. See Exhibit A.

- e. Given the different unit types and properties in the Power Station Inclusionary Development, pursuant to the Affordable Housing Agreement at Exhibit A, the Parties have agreed to modify the Council on Affordable Housing (“COAH”)’s Phasing Schedule for the affordable units as follows:
- i. Developer is permitted to construct all twenty-eight (28) townhomes on the East Side Property and obtain certificates of occupancy (“C of Os”) for twenty-two (22) of the twenty-eight (28) townhomes.
 - ii. The building permit and start of construction for the affordable units must commence before the C of O for the 23rd townhome on the East Side Property. “Start of construction” shall mean that the footing inspection for the foundation of the affordable unit buildings has occurred per the Uniform Construction Code (“UCC”) and has been approved.
 - iii. No C of O for the West Side Property may be issued until C of Os for all of the twenty-three (23) affordable units on the Lake Drive Property have been issued.
 - iv. In the event that the Borough exercises the ROFO and purchases the West Side Property from Developer, the COAH Phasing schedule shall be modified as follows:
 1. By the time Developer reaches C of Os for 50% of the townhomes on the East Side Property, Developer shall have C of Os for 50% of the affordable units on the Lake Drive Property.
 2. By the time Developer reaches C of Os for 90% of the townhomes on the East Side Property, Developer shall have received C of Os for 100% of the affordable units on the Lake Drive Property.
 - v. The twenty-three (23) affordable rental units on the Lake Drive Property shall consist of four (4) one-bedroom units, fourteen (14) two-bedroom units and five (5) three-bedroom units.
 - vi. The income level distribution for the affordable units shall be as follows:

Unit Type	Very-Low Income (30% or less RMI)	Low Income (30% to 50% RMI)	Moderate Income (50% to 80% RMI)	Total
1-bedroom	0	2	2	4
2-bedrooms	2	5	7	14
3-bedrooms	1	2	2	5
Total	3	9	11	23

- viii. Pursuant to the Affordable Housing Agreement, Developer agrees, in accordance with the above chart, that 13% of the total number of affordable

units shall be affordable to very-low income households earning thirty percent (30%) or less of the median income. Thus, in conjunction with the Uniform Housing Affordability Controls (“UHAC”)’s low/mod split requirements (very-low income units are considered low-income for the low/mod split determination), at least 13% of all affordable units shall be very-low income, at least 37% shall be affordable to low-income households, and up to 50% may be affordable to moderate-income households in accordance with Exhibit A.

- f. In the event that Allenhurst purchases the West Side Property from Developer and subsequently abandons the municipal uses at Block 19, Lot 2 (the Fire House) or Block 6, Lot 11 (Borough Hall), the Borough acknowledges and agrees that the availability of these municipal lots for development amounts to a substantial changed circumstance that would impact the Borough’s development potential for affordable housing, resulting in an increase in the Borough’s Third Round RDP. Should such changed circumstances occur, Allenhurst agrees to amend its RDP to account for the newly available land and shall have the right to first address the changed circumstance with notice to the Court, Special Master and FSHC, without any negative impact on its immunity. FSHC reserves the right to provide any comments or objections to the Court upon review of any mechanisms proposed by the Borough to address its increased RDP due to changed circumstances.

10. **Unmet Need Obligation.** Allenhurst’s 27-unit RDP, subtracted from its cumulative prospective need obligation of 94 units, results in an unmet need obligation of 67 units, which the Parties agree shall be addressed through the Borough’s implementation of the following compliance mechanisms:

- a. **Surplus Credits:** Allenhurst may apply three (3) surplus credits from addressing its 27-unit RDP with the 30 total credits/rental bonuses generated by the Power Station Inclusionary Development towards its unmet need obligation.
- b. **Main Street Commercial District Overlay Inclusionary Zoning:** Allenhurst shall adopt overlay inclusionary zoning over the Southern Gateway District, known as Block 21, Lots 8, 9, 19, 11, 12, 13, Block 19, Lots 1 and 2, and also along the Main Street commercial corridor including all remaining parcels in the C-1 Commercial zone, C-2 Main Street Redevelopment Area and all parcels in the C-3 Commercial zone, the B-1 Business Office zone, and the B-2 Business Office zone to create a realistic opportunity for the development of affordable housing. The overlay inclusionary zone along Main Street shall permit multifamily housing up to two stories over ground floor commercial, as well as three-story multifamily apartments in certain locations not fronting Main Street, such as at Block 19, Lot 2, all with a mandatory twenty percent (20%) set-aside for affordable housing. The bulk standards in this overlay shall permit shared parking ratios and otherwise accommodate a maximum density of fifteen (15) units per acre. The form of ordinance and Overlay Zone Map shall be finalized through collaboration between FSHC, the Special Master and

representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.

- c. Mandatory Borough-Wide Affordable Housing Set-aside Ordinance: Allenhurst shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential development of five (5) units or more at a density of six (6) or more units per acre, created through: a municipal rezoning permitting multifamily residential housing; use variance; a density variance increasing the permissible density at the site; or a redevelopment plan or a rehabilitation plan. The set aside for affordable housing shall be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more. The form of ordinance shall be finalized through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.
- d. Affordable Housing Development Fee Ordinance: Allenhurst shall implement an approved Development Fee Ordinance for all new non-residential development and new non-inclusionary residential development. The Ordinance shall provide for the Borough's collection of residential fees for all residential expansions that increase said residential square footage by the creation of a new bedroom. The form of ordinance shall be finalized through collaboration between FSHC, the Special Master and representatives of the Borough and adopted by the Borough in accordance with Paragraph 17(a) below.

11. Allenhurst shall meet its Prior Round and Third Round Prospective Need obligation of 94 units (both the 27-unit RDP and the 67-unit unmet need) in accordance with the following Mount Laurel standards:

- a. Rental bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least fifty percent (50%) of the units addressing Allenhurst's Prior Round and Third Round Prospective Need shall be affordable to very low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent (25%) of Allenhurst's Prior Round and Third Round Prospective Need shall be met through rental units, including at least half of the rental units being made available to families.
- d. At least half of the units addressing Allenhurst's Prior Round and Third Round Prospective Need shall be non-age-restricted units available to families.
- e. Allenhurst agrees to comply with COAH's Prior Round age-restricted cap of twenty-five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim

credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its cumulative Prior Round and Third Round fair share obligation.

- f. Thirteen percent (13%) of all affordable units referenced in this Agreement, with the exception of those units constructed or granted preliminary or final site plan approval prior to July 1, 2008, shall be very low-income units for households earning thirty percent (30%) or less of the median income pursuant to the FHA, with half of the very low income units being available to families.

12. **Affirmative Marketing Plan.** As part of its HEFSP, Allenhurst must prepare an Affirmative Marketing Plan and shall include the following entities in the list of community and regional organizations in its affirmative marketing plan, pursuant to UHAC, N.J.A.C. 5:80-26.15(f)(5):

- a. FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, Trenton Branches of the NAACP, and the Supportive Housing Association.
- b. As part of its regional affirmative marketing strategies during implementation of the affirmative marketing plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.
- c. The affirmative marketing plan shall include posting of all affordable units on the New Jersey Housing Resource Center ("HRC") website in accordance with applicable law. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this Paragraph.

13. **Affordability Controls.** In all development that produces affordable housing, the Parties agree that the following terms shall apply:

- a. All affordable housing units shall be governed by and fully comply with affordability controls and affirmative marketing requirements of UHAC, or any successor regulation, including without limitation, the required bedroom and income distribution, with the sole exception that, in lieu of the ten percent (10%) of the affordable units in rental projects being required to be at thirty-five percent (35%) of the median income, thirteen percent (13%) of the affordable units in such projects shall be required to be for very low-income households earning thirty percent (30%) or less of the median income pursuant to the FHA and all other applicable law.
- b. All of the affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income

pursuant to the FHA, and the affordability controls shall remain unless and until the Borough, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. If the Borough acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b).

- c. In all inclusionary developments, with the exception of the within Inclusionary Development constructed by Developer, the affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
- d. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
- e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law.
- f. Allenhurst, as part of its HEFSP, shall adopt appropriate and comprehensive implementing fair share ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

14. **Income Limits.** Income limits for all units that are part of Allenhurst's HEFSP required by this Agreement and for which income limits are not already established through a federal program exempted from UHAC, pursuant to N.J.A.C. 5: 80-26.1, shall be updated by Allenhurst annually within thirty (30) days of the publication of determinations of median income by the U.S. Department of Housing and Urban Development ("HUD") as follows:

- a. Regional income limits shall be established for the region that Allenhurst is located within (i.e. Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent (80%) of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent (50%) of the HUD determination of the

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

- b. The income limits, attached hereto as **Exhibit C**, are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2022, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by Allenhurst annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- d. The Parties agree to request the Court enter an order implementing this paragraph prior to or at the Fairness Hearing in this matter.

15. **New Construction.** All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-31 1a and -31 1b and all other applicable law.

16. **Spending Plan.** Allenhurst shall prepare a Spending Plan, which shall be approved by the Borough prior to a duly noticed compliance hearing. FSHC reserves the right to provide any comments or objections on the Spending Plan to the Court upon review. The Borough reserves the right to seek a finding by the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, in which case the four-year time period for expenditures shall begin to run with the entry of a final judgment approving this Agreement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563).

17. Allenhurst agrees to take the following steps within the timeframes specified below:

- a. Within 120 days of the Court entering an order approving this Agreement following a duly noticed Fairness Hearing:
 - i. Introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinances referenced above to implement the terms of this Agreement and the zoning contemplated herein, with the exception of the Revised Redevelopment Ordinance approving a Revised Redevelopment Plan for the Inclusionary Development, which is subject to the approval timeline as

set forth in Exhibit A, and adopt and endorse a HEFSP and Spending Plan in conformance with the terms of this Agreement;

- ii. Adopt a Development Fee Ordinance in accordance with the terms of this Agreement, and submit the ordinance to the Court, Special Master and FSHC.
- b. Within 125 days of the Court entering an order approving this Agreement following a duly noticed Fairness Hearing, Allenhurst shall provide notice to the Court, Special Master and FSHC that it has complied with the terms of (a) above and shall request the Court schedule a compliance hearing at least 60 days from the request to allow for appropriate public notice.

18. **Determination of Reduced Obligation**. Subsequent to the Court entering an order approving this Agreement following a duly noticed Fairness Hearing, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the FHA, determines that Allenhurst's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third Round Need obligation established in this Agreement, with any relevant appeal period having passed, the Borough may, with notice to FSHC, seek to amend the judgment solely to reduce its fair share obligation accordingly. Notwithstanding any such reduction, Allenhurst shall be obligated to implement the HEFSP prepared, adopted and endorsed as a result of this Agreement, including adopting and/or leaving in place any site-specific zoning adopted or relied upon in connection with the HEFSP approved pursuant to this Agreement; taking all steps necessary to support the development of all municipally-sponsored non-inclusionary developments referenced herein or deemed suitable for affordable housing development by a court; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of Allenhurst's obligation below that established in this Agreement does not provide a basis for seeking leave to amend any provision of this Agreement or to amend an order or judgment pursuant to R. 4:50-1 with respect to any term other than the Borough's calculated Third Round Prospective Need obligation pursuant to the process set forth in this Paragraph. Should a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch responsible for implementing the FHA, determines that Allenhurst's Third Round (1999-2025) obligation is decreased by more than twenty percent (20%) of the total Prospective Third Round Need obligation established in this Agreement, the Borough will be permitted to carry over any resulting extra credits to the Fourth Round in conformance with the then-applicable law.

19. **Reporting of Trust Fund Activity**. On June 30, 2024, and on every anniversary of that date thereafter through 2025, Allenhurst shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by COAH, the Special Master or FSHC. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

20. **Reporting on Affordable Housing.** On June 30, 2024, and on every anniversary of that date thereafter through 2025, Allenhurst shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

21. **The Midpoint Review, Very Low-Income Housing Monitoring.** The Parties agree that, given the commencement of the Fourth Round on July 2, 2025, and the opportunity for public comment and objections at the fairness hearing and compliance hearing, Allenhurst will not be required to submit a midpoint review report pursuant to N.J.S.A. 52:27D-313, and the compliance hearing shall suffice as the midpoint review. In accordance with the provisions of the FHA regarding actions to be taken by the Borough during the ten-year period of protection provided in this Agreement, Allenhurst agrees to comply with those provisions as follows:

- a. For the review of very low-income housing requirements required by N.J.S.A. 52:27D-329.1, on June 30, 2024, Allenhurst shall post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low-income housing obligation under the terms of this Agreement.

22. **Fairness Hearing.** This Agreement must be approved by the Court following a duly noticed fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Upon full execution of this Agreement, the Fairness Hearing shall be scheduled by the Court. Allenhurst shall make its consulting planner and any other relevant witnesses available for testimony at the fairness hearing(s). FSHC agrees to support this Agreement at the fairness hearing. If this Agreement is rejected by the court at the fairness hearing, it shall be null and void.

23. **Compliance Hearing and Judgment of Compliance and Repose.** In the event the court approves this Agreement and the Borough's HEFSP at a Compliance Hearing, the Parties agree that Allenhurst will receive the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as set forth in the New Jersey Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The accompanying protection shall remain in effect through July 1, 2025.

24. **Attorney's Fees.** The Borough agrees to pay FSHC's attorney's fees and costs in the amount of \$55,000.00 within thirty (30) days of the court's approval of this Agreement following the entry of an order approving this Settlement Agreement after a duly noticed fairness hearing.

25. **Obligation to Defend.** Allenhurst and FSHC shall each fulfill the intent and purpose of this Agreement. If an appeal is filed challenging the Court's approval or rejection of this Agreement, Allenhurst and FSHC agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and

to continue to implement the terms of this Agreement if the Agreement is approved before the trial Court, unless and until an appeal of the Court's approval is successful, at which time the Parties each reserve their right to return to the *status quo ante*.

26. This Agreement shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against either party because such party drafted or requested such provision, or this Agreement as a whole.

27. 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.

28. **Severability.** Unless otherwise specified, the various provisions of this Agreement are independent and severable and if any item, condition or provisions of this Agreement is declared or found to be illegal, void or unenforceable to any extent, the Parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, and if the Parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

29. **Entire Agreement.** Each party acknowledges that this Agreement, and all Exhibits and Schedules annexed hereto, constitutes the complete, exclusive, entire statement between the Parties of the terms and conditions with respect to the subject matter of this Agreement, and supersedes and merges all previous communications, representations, understandings, agreements, communications, and negotiations, written or oral, between the Parties relating to this Agreement.

30. **Amendment or Modification.** This Agreement may not be modified or amended except by written instrument that specifically states that it is a supplement, modification, or amendment to this Agreement and is signed by an authorized representative for each party.

31. **Waiver.** No waiver, forbearance or failure by any party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of such party's right to enforce any other provision of this Agreement or such party's right to enforce such provision in the future.

32. **Headings.** The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. In the case of a conflict between the headings and the content of the section or subsection, the content shall control.

33. **Legal Capacity.** Each party who signs this Agreement in a representative capacity warrants that the party's execution of this Agreement is duly authorized, execute and delivered by and for the entity for which that party signs. Each party warrants that the party has carefully read and understands the scope and effect of each and every provision of this Agreement, that the party has consulted with chosen legal counsel who has explained the terms of the provisions of this Agreement, and all attachments hereto, and has executed this Agreement voluntarily, without duress, coercion, or undue influence with the express intent to be bound thereby.

34. **Enforcement.** This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Monmouth County.

35. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey

36. **Notices.** Any notice, demand, request or other communication required or permitted under this Agreement shall be valid and effective only if given by written instrument which is personally delivered or sent by facsimile, prepaid overnight or second-day air courier, or registered or certified air, postage prepaid, addressed as follows:

If to Allenhurst to:

Borough of Allenhurst
Donna M. Campagna, R.M.C.
125 Corlies Avenue
Allenhurst, New Jersey 07711
Fax: (732) 531-8694
Email: dcampagna@allenhurstnj.org

If to FSHC to:

Adam M. Gordon, Esq.
Fair Share Housing Center, Inc.
510 Park Boulevard
Cherry Hill, NJ 08002
P: (856) 665-5444
F: (856) 663-8182
Email: adamgordon@fairsharehousing.org

Any notice, demand, request or other communication given as provided in this Paragraph, if given personally, shall be effective upon delivery; if given by facsimile shall be effective upon transmission; if given by mail, shall be effective ten (10) business days after deposit in the mail; and, if given by prepaid courier service, shall be effective on the date established by such courier as the date delivered. Any party may change the address at which it is to be given notice by giving written notice to the other party as provided in this Paragraph.

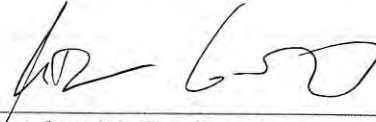
37. **Counterparts.** This Agreement may be executed in counterparts all of which when taken together shall constitute one original executed Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their duly authorized officers and/or representatives.

Attest:

FAIR SHARE HOUSING CENTER, INC.

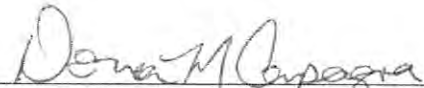
By: _____
Name:
Title:

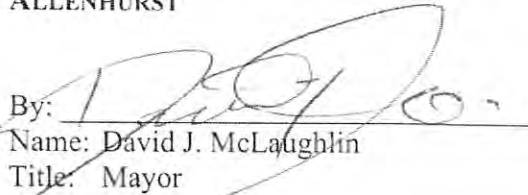
By: 
Name: Adam M. Gordon, Esq.
Title: Executive Director

Date: May 10, 2023

Attest:

BOROUGH OF ALLENHURST AND BOARD OF
COMMISSIONERS OF THE BOROUGH OF
ALLENHURST

By: 
Name: Donna M. Campagna, R.M.C.
Title: Municipal Clerk & Administrator

By: 
Name: David J. McLaughlin
Title: Mayor

Date: May 9, 2023

Borough of Allenhurst Settlement Agreement with Powerstation

AFFORDABLE HOUSING SETTLEMENT AGREEMENT

THIS AFFORDABLE HOUSING SETTLEMENT AGREEMENT ("Agreement") is made this 23 day of February, 2023, by and between:

BOROUGH OF ALLENHURST, a municipal corporation of the State of New Jersey in the County of Monmouth, and the **BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST**, the governing body of the Borough of Allenhurst (hereinafter together the "Borough"), and the **BOROUGH OF ALLENHURST PLANNING BOARD**, an administrative agency created by the Borough pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (hereinafter the "Board") (hereinafter collectively the "Borough Defendants"), all with their principal place of business at 125 Cortlies Avenue, Allenhurst, New Jersey 07711; and

POWER STATION AT ALLENHURST, LLC, a New Jersey Limited Liability Company having a principal place of business at 1000 Sanger Avenue, Oceanport, New Jersey 07757 (hereinafter "Developer").

Collectively, the Borough, the Board and Developer shall be referred to as the "Parties" and each a "Party." All references to Developer shall include its successors, affiliates and assigns.

P R E A M B L E

WHEREAS, the Developer filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey ("Court"), entitled Power Station at Allenhurst, LLC v. Borough of Allenhurst; Board of Commissioners of the Borough of Allenhurst; and Allenhurst Planning Board, Docket No.: MON L 2551 21, seeking to compel the Borough to provide a realistic opportunity for the construction of affordable housing for very-low, low and moderate income households and to meet the Borough's fair share of the housing region's need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 ("FHA") and Mount Laurel jurisprudence (hereinafter "Builder's Remedy Action"); and

WHEREAS, Developer is the owner of two parcels of property within the Borough located at Block 18, Lot 1 on the Tax Map of the Borough of Allenhurst located at 315 Hume Street ("East Side Property"), and Block 21, Lots 5 and 6 (which includes former Lot 7), located at and 500-523 Main Street ("West Side Property"), Allenhurst, New Jersey, respectively (hereinafter collectively referred to as the "Developer Properties"); and

WHEREAS, the Borough is the owner of property located at Block 31, Lot 3 on the Tax Map of the Borough of Allenhurst otherwise known as the Lake Drive property ("Lake Drive Property" together with Developer Properties, the "Development Properties"); and

WHEREAS, as a result of extensive settlement negotiations and mediation between the Parties, the Parties agreed to the Settlement Term Sheet attached as Exhibit "A" which forms the basis for this Settlement Agreement whereby Developer proposes, the Borough Defendants agree to permit, the development of the East Side Property with twenty-eight (28) market rate town homes

("East Side Development") and the West Side Property with sixty-two (62) market rate condominium units ("West Side Development") as generally shown in the concept plans attached as Exhibit "B;" and

WHEREAS, as part of addressing the Borough's affordable housing obligation, the Borough will contribute and dedicate, in fee simple interest, a described portion of its Lake Drive Property to the Developer which shall be deed restricted for the development of Affordable Housing and upon which the Developer shall construct twenty three (23) rental residential units for low and moderate income households ("Lake Drive Development" together with the East Side Development and West Side Development, the "Overall Development") as generally shown in the concept plans attached as Exhibit "B" ("Concept Plans") to satisfy the required affordable housing obligation related to both the East Side Development and the West Side Development, all of which is to be considered one inclusionary development for the purposes of satisfying the required affordable housing obligation; and

WHEREAS, in light of the above, the Parties have come to a resolution of the Builder's Remedy Action by proposing the rezoning of the Development Properties through the adoption of amended and revised Redevelopment Plan as defined in Section 4.2 of this Agreement, to permit the Overall Development as set forth in detail herein and to provide affordable housing on the Lake Drive Property and by including the Development Properties in the Borough's Housing Element and Fair Share Plan ("HEFSP"), to address a component of its Prior Round / Third Round affordable housing obligation; and

WHEREAS, this Agreement does not address and resolve the Borough's entire affordable housing obligation which shall be addressed in the HEFSP after application of a Vacant Land Adjustment, which shall be established and addressed in a separate agreement to be entered into between the Borough and Fair Share Housing Center ("FSHC");

NOW, THEREFORE, in consideration of the promises and the mutual obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each binding itself, its successors, affiliates and assigns, agree as follows:

1. INCORPORATION OF PREAMBLE

1.1 The Parties hereto agree that the statements contained in the foregoing preamble be and are hereby incorporated into this Agreement as if more fully set forth herein at length.

2. PURPOSE

2.1 The Parties acknowledge that the Borough has not met its constitutional obligation to provide for its fair share of affordable housing. The purpose of this Agreement is for the Borough Defendants to create a realistic opportunity for the construction of affordable housing by creating zoning incentives through the adoption of a Revised Redevelopment Plan for the Development

Properties sufficient to generate twenty three (23) creditable rental affordable units on the Lake Drive Property available to very-low, low and moderate income households.

2.2 The Parties agree that the Development Properties are available, approvable, developable and suitable for the proposed Overall Development as those terms are used in the New Jersey Fair Housing Act, N.J.S.A. 52:27D 301 ("FHA") and Council on Affordable Housing ("COAH") regulations, N.J.A.C. 5:93 1 et. seq. & 5:97 1 et seq. for the use permitted by this agreement. The Borough Defendants are not aware of any water or sanitary sewer capacity issues that would affect the Overall Development.

3. BASIC TERMS AND CONDITIONS

3.1 In the event of any legal challenges to the Required Approvals (as defined in Section 6.2), including a challenge by any third party, Developer and the Borough Defendants shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or of the Development, the Parties must negotiate in good faith with the intent to draft a mutually acceptable amended Agreement.

3.2 **Settlement Term Sheet.** The Parties hereto agree that the statements contained in the Settlement Term Sheet developed by and between the Parties through extensive settlement negotiations and mediation be and are incorporated herein by reference. Said Settlement Term Sheet is attached hereto as Exhibit "A." The rights of the Parties referenced in the Settlement Term Sheet are specifically made a part hereof. To the extent there is determined to be a conflict between the Settlement Term Sheet and this Agreement, this Agreement shall control.

3.3 The Parties hereto recognize that this Settlement Agreement must be approved by the Court following a fairness hearing ("Fairness Hearing") as required by *Morris Cty. Fair Hous. Council v. Boonton Twp.*, 197 N.J. Super. 359, 367 69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986) and *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super. 311, 328 29 (App. Div. 1996). The Borough shall present its planner as a witness at said Fairness Hearing and the ultimate effective date hereof will be the date of a court order approving this Agreement.

3.4 This Agreement does not purport to resolve all of the issues associated with the Borough's affordable housing compliance.

4. RE-ZONING

4.1 The Borough Defendants shall rezone the Development Properties (in accordance with Section 4.3), and include in its HEFSP, to permit the Overall Development substantially in accordance with the Concept Plans attached as Exhibit "B." In summary, the East Side will permit up to 28 townhouses, the West Side shall permit up to 62 market-rate condominium units (for-sale or rental at Developer's discretion) and Lake Drive shall permit up to 23 family affordable units based upon a 20% set-aside for the Overall Development.

4.2 The proposed zoning for the East Side Property, West Side Property and Lake Drive Property shall be accomplished through the adoption of an Ordinance ("**Revised Redevelopment Ordinance**") approving a Revised Redevelopment Plan in conformance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A 45:14A-12. The Borough professionals and the Developer professionals, and to the extent necessary with the assistance of the special master, between the date of this Agreement and the Fairness Hearing shall work together to prepare an amended and revised redevelopment plan to allow for the Overall Development based upon the Concept Plans ("**Revised Redevelopment Plan**"). The goal is for the Revised Redevelopment Plan is to ensure that the Concept Plans are fully conforming without the need for variance or design waiver relief.

4.3 **Timing of Re-zoning.** The Borough shall introduce the Revised Redevelopment Ordinance approving the Revised Redevelopment Plan for the Development Properties at the first meeting of the Borough Board of Commissioners following the Court's entry of an Order approving this Agreement after a duly noticed Fairness Hearing is held, but in no event more than 45-days after the Order. The Revised Redevelopment Ordinance will then be sent to the Planning Board for consistency review and comment at its first meeting following the introduction of the Revised Redevelopment Ordinance by the Borough Board of Commissioners, but in no event later than 30 days after the Borough Board of Commissioners refers the Revised Redevelopment Plan Ordinance to the Planning Board. The Planning Board shall not provide any comments that are outside of, different than or inconsistent with terms of this Agreement. The Borough Board of Commissioners will then adopt the Revised Redevelopment Ordinance on second reading at its first meeting following the consistency review meeting of the Board, but in no event more than 90 days after the Court's Order approving this Agreement.

5. DEVELOPER OBLIGATIONS

5.1 **ROFO.** The Developer agrees to grant the Borough a Right of First Offer ("**ROFO**") in the event Developer chooses to market the West Side Property for sale. The terms of the ROFO are as set forth below. Developer has no obligation to accept any Borough offer and after sixty (60) days or Developer's rejection of a Borough offer (which ever happens earlier), Developer can market the property to third-parties and solicit offers, subject to this ROFO. Unsolicited offers from third-parties prior to Developer marketing the Property and any sale of minority interest in the West Side Property are not subject to this provision, but any such purchaser of a minority interest shall be subject to this ROFO.

i. Notice. Developer, prior to marketing for sale, assignment or other transfer of the West Side Property, (identified as Block 21, Lots 5 and 6 [which includes former Lot 7] located at 500 523 Main Street), shall deliver to the Borough a notice (the "**Marketing Notice**") of its intention to so market the West Side Property.

ii. Right of First Offer. Within sixty (60) days of Developer providing the Marketing Notice, Borough may elect to make an offer in writing to Developer to purchase the West Side Property ("**Offer Notice**"), with failure to provide an Offer Notice within that time shall relieve Developer of any obligations under this ROFO.

Developer shall have sixty (60) days from receipt of the Offer Notice to accept or reject the Borough's offer. If Developer provides no response within sixty (60) days, the offer shall be deemed rejected. If Developer accepts the Borough's offer, then Developer and Borough shall proceed diligently and in good faith to negotiate a written contract of sale in accordance with the Offer Notice. However, nothing herein shall obligate Developer to enter into a written contract of sale with the Borough for the West Side Property.

5.2 Obligation To File Development Applications. The Developer will file development applications after adoption of the Revised Redevelopment Plan, which will be consistent with the Concept Plans, attached hereto as Exhibit "B." Notwithstanding the last sentence of Section 4.2 of this Agreement, nothing herein shall preclude the Developer from seeking reasonable bulk variances, waivers or de minimis exceptions as part of the development applications, which shall reasonably be considered by the Board as provided for in N.J.A.C. 5:93.10.1(b) and N.J.A.C. 5:97 10.3(b). It is understood that Developer's site plan application is permitted to include a phasing plan, which will be permitted to be developed in development phases (Phase 1, Phase 2, and Phase 3). Notwithstanding the Development Properties being permitted to be developed in Phases, for COAH Affordable Housing phasing purposes it will be viewed as a single development.

5.3 Affordable Housing Requirements. Developer shall satisfy the affordable housing obligation required in connection with the Overall Development by constructing twenty three (23) affordable family rental units on the Lake Drive Property for very low, low and moderate income households based upon a 20% set-aside for the Overall Development, but in no event shall there be less than 20 affordable units. These affordable units shall consist of four (4) one-bedroom units, fourteen (14) two-bedroom units and five (5) three-bedroom units as further broken down by income level in the chart below. The affordable units shall fully comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., with the sole exception that very low income shall be defined as at or below thirty percent (30%) of the median income. The affordability controls shall remain in effect unless and until the municipality elects to release the unit from such controls after at least thirty (30) years from the date of initial occupancy in accordance with UHAC. The affordable units shall be constructed in accordance with the phasing schedule as outlined in Section 3(i) of the Settlement Term Sheet attached as Exhibit "A."

Unit Distribution by Income Level-Family Affordable Rental Units				
Unit Type	Very-Low Income (30% or less RMI)	Low Income (30% to 50% RMI)	Moderate Income (50% to 80% RMI)	Total
1 bedroom	0	2	2	4
2 bedrooms	2	5	7	14
3 bedrooms	1	2	2	5
Total	3	9	11	23

i. Developer agrees, in accordance with the above chart, that 13% of the total number of affordable units shall be affordable to very low income households earning thirty percent (30%) or less of the median income. Thus, in conjunction with UHAC's low/mod split requirements (very low income units are considered low income for the low/mod split determination), at least 13% of all affordable units shall be very low income, at least 37% shall be affordable to low income households, and up to 50% may be affordable to moderate income households.

ii. The affordable units shall comply with the COAH and UHAC requirements for accessibility and adaptability.

iii. The Developer should ensure that there will not be additional fees for the use of any amenities by the tenants of the affordable units. There shall be no off street parking charges for residents of the affordable units.

iv. The Developer agrees to retain an experienced Administrative Agent to handle affirmative marketing, reviewing the deed restriction, establishing pricing, tenant income eligibility determination, and long term administration of the affordable units including monitoring per UHAC at N.J.A.C. 5:80 26.14. It is the obligation of the Developer to pay for all Administrative Agent costs including affirmative marketing efforts, etc. The selected Administrative Agent shall be identified for the affordable units no later than the compliance hearing in this matter.

v. COAH at N.J.A.C. 5:93 11 and UHAC at N.J.A.C. 5:80 26.15 requires an affirmative marketing program for the affordable family rental units by an experienced administrative agent. Also, per a future agreement between the Borough and FSHC, additional housing advocacy groups must be noticed of all available affordable housing units. Per a 2020 law, Developers must advertise all affordable units on the NJ State's Housing Resource Center ("HRC") website in accordance with P.L. 2020, c.51.

vi. As part of the affirmative marketing efforts, a regional preference for individuals or households that live or work in Region 4 (Mercer, Monmouth, Ocean counties) shall be implemented.

vii. In the event the Borough purchases the West Side Property, the affordable housing set-aside shall still be based upon the Overall Development factoring in 62 residential condominiums on the West Side Property. In the event of the West Side Property Sale to the Borough, Developer shall reserve in escrow \$4.6 million in proceeds from the sale of the West Side to the Borough, with half of the \$4.6 million being released to Developer from escrow upon completion and C of O for half of the affordable units and the balance of the \$4.6 million in escrow being released upon completion and C of O for all of the affordable units. Further, in such an event, the COAH phasing schedule shall be modified in accordance with Section 3.i(v) of the Term Sheet.

5.4 Obligation To Support Borough's Application for Approval of its HEFSP As May Be Amended. As it pertains to the Borough's application for approval of its HEFSP as may be amended and provided the Borough has complied with its obligations herein and is not in default under this Agreement, Developer shall not object to the Borough's efforts to secure approval of its HEFSP as may be amended and shall support the Borough's request for the Court to approve the same at a Compliance Hearing, unless the HEFSP deprives Developer of any rights created hereunder, or unless the Borough undertakes any action to obstruct or impede Developer from securing such approvals as it needs to complete the Overall Development.

5.5 Release. Except for claims only seeking to enforce the terms of this Agreement, Developer does hereby, release, acquit, waive and forever discharge the Borough Defendants (including its current and former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors) from any and all actions, causes of action, damages, demands, rights, claims, costs, expenses, attorneys' fees and demands whatsoever, whether at law or in equity, known or unknown, foreseen or unforeseen, which Developer had, may have had or now has, concerning the Borough's overall affordable housing obligation, up to and including the Effective Date, including all claims, demands or actions that were raised or could have been raised in the Builder's Remedy Action. In addition, provided the Borough is not in default of the terms of this Agreement, Developer, and its principals, shall not bring any future Mount Laurel exclusionary zoning or builder's remedy lawsuit in connection with the Borough's Third Round affordable housing obligation against the Borough during the Third Round affordable housing cycle.

6. OBLIGATIONS OF THE BOROUGH DEFENDANTS

6.1 Dedication of Land. As part of addressing the Borough's affordable housing obligation, the Borough will dedicate and contribute, in fee simple interest, a described portion of its Lake Drive Property to the Developer which shall be deed restricted for the development of Affordable Housing and upon which the Developer shall construct twenty three (23) rental residential units for very-low, low and moderate income households. Borough will prepare a survey and property description of the parcel to be donated to Developer and reflecting such portion of the current lot and block as will be reserved for Borough's ownership and use.

In consideration of the value of the land being dedicated and contributed, the Power Station shall be responsible for any and all costs related to the development of the land, including all costs for provision of necessary utilities for the project.

6.2 The Revised Redevelopment Ordinance. The Borough shall adopt the Revised Redevelopment Ordinance to effectuate the rezoning of the Development Properties as set forth in the Revised Redevelopment Plan in order to permit the Development consistent with the Concept Plans within the time specified in Section 4.3 above. For the avoidance of doubt, the term "Revised Redevelopment Ordinance" as defined herein and used throughout this Agreement shall encompass any such Borough ordinance(s) as are needed to adopt and effectuate the Revised Redevelopment Plan and the rezoning to permit the Development.

6.3 **Obligation To Cooperate.** The Borough acknowledges that in order for Developer to construct the Development on the Development Properties, the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which have jurisdiction over the Parties to this Agreement and the Overall Development contemplated hereby, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Board, the County of Monmouth, the Monmouth County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "**Required Approvals**"). The Borough Defendants agree to cooperate with Developer in Developer's efforts to obtain the Required Approvals. Further, consistent with the FHA and COAH regulations, the Borough Defendants agree to use all reasonable efforts to assist the Developer in its undertakings to obtain the Required Approvals which includes taking all necessary and reasonable steps to support the Overall Development's efforts to obtain adequate water service from New Jersey American Water and sewer service from Township of Ocean Sewerage Authority, including expediting all municipal endorsements and approvals of the same. Nothing herein shall be deemed to require the Borough to incur any expense or cost whatsoever to build, erect, extend or otherwise develop any utility infrastructure.

6.4 **Obligation to Maintain Proposed Re-Zoning of Property.** The Borough agrees that if a decision of a court of competent jurisdiction in Monmouth County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, or any other act of any federal, state, county, municipal, or other governmental authority would result in a calculation of an affordable housing obligation for the Borough for the period 1987 2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987 1999 and/or the Court for the period 1999 2025, the Borough shall nonetheless implement the Revised Redevelopment Ordinance contemplated by this Agreement and take all steps necessary to support the completion of the Development contemplated by this Agreement. The Borough shall not seek to repeal, amend or change the Revised Redevelopment Plan for 10 years without Developer's written consent.

6.5 **Obligation to Refrain From Imposing Cost Generative Requirements.** The Development Properties shall be exempt from cost generative features of the Borough Code pursuant to N.J.A.C. 5:93 10.1, including, but not limited to, any tree removal ordinance or any impact fees. The Parties acknowledge that the Revised Redevelopment Ordinance has been designed to permit the Overall Development in accordance with the Concept Plans attached hereto. The Board agrees not to impose any unnecessary conditions that would be cost generative to the Overall Development and there shall be no affordable housing residential development fees charged to any part of the Development Properties as it is an inclusionary development.

6.6 **Settlement Term Sheet.** The Parties hereto agree that the statements contained in the Settlement Term Sheet developed by and between the Parties through extensive settlement negotiations and mediation be and are incorporated herein by reference. Said Settlement Term Sheet is attached hereto as Exhibit "A." The obligations of all Parties referenced in the Settlement Term Sheet are specifically made a part hereof.

6.7 **Ordinance Review.** After the Borough introduces the Revised Redevelopment Ordinance and refers the same to the Board for comment and a Master Plan consistency review, the Board shall expeditiously make such a determination consistent with the requirements of the Municipal Land Use Law and refer the Revised Redevelopment Ordinance back to the Borough for a hearing.

6.8 **Obligation to Adopt a Housing Element and Fair Share Plan.** Pursuant to the FHA and subsequent Mount Laurel I and Mount Laurel II decisions, a Housing Plan Element must be designed to address a municipality's fair share for very-low, low and moderate income housing, as determined by the Fair Share Housing Center. The Board is vested with the responsibility to prepare a HEFSP to address the Borough's affordable housing obligations and to recommend zoning and land use regulations in furtherance and implementation thereof. The Board shall prepare and adopt, as an amendment to the Borough's HEFSP, and to the extent necessary the Master Plan, such resolutions as are necessary in order to include the Development Properties within the Borough's HEFSP (and if necessary the Master Plan) to address the Borough's constitutional obligation to provide a realistic opportunity for the satisfaction of the Borough's Second Round and Third Round Fair Share Obligation.

6.9 **Obligation to Process Developer's Development Applications with Reasonable Diligence.** The Board shall expedite the review of any development and zoning applications filed by the Developer following Court approval of this Agreement (including granting reasonable checklist waivers). In the event of any appeal of the Court approval of this Agreement, the Board shall review and take action on any applications filed by Developer for the Overall Development. The Board's decisions on such applications may be conditioned upon the outcome of any pending appeal. If Developer's development application cannot be scheduled for the next regularly scheduled meeting or if regularly scheduled meetings are cancelled, upon request from the Developer, the Board shall schedule special meetings to process Developer's application(s) at no cost to Developer. Notwithstanding the last sentence of Section 4.2 of this Agreement, the Board shall reasonably consider any bulk variances, waivers or de minimis exceptions sought as part of the development applications. Nothing herein eliminates the Developer's obligations to comply with the Planning Board's filing fees and escrow fees relative to its application for review.

6.10 **Escrow.** The Borough agrees to waive any unpaid escrow balance of Developer in connection with the Developer Properties as of the date of this Agreement and the Borough shall not charge any additional escrow in connection with its obligations under this Agreement. Nothing herein eliminates the Developer's obligations to comply with the Planning Board's filing fees and escrow fees relative to its site plan application in accordance with the Borough Ordinance.

6.11. **Borough Construction Moratorium Ordinance.** The Borough Defendants agree to a modified application to the Construction Moratorium Ordinance such that Developer (and its contractors) will be permitted to perform work associated with the Project during the Moratorium Period (July 1 through Labor Day) between the hours of 8 am and 5 pm, Monday through Friday, with no work on Saturdays, Sundays and Federal Holidays. All deliveries must be scheduled during the permitted work hours.

7. MUTUAL OBLIGATIONS

7.1 **Redeveloper Agreement.** Developer and the Borough agree to enter good faith negotiations for the execution of a Redeveloper Agreement consistent with the Revised Redevelopment Plan ("**Redeveloper Agreement**"). The Redeveloper Agreement shall designate the Developer as the official Redeveloper of the Development Properties pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. The Parties agree to prepare a final draft of the Redeveloper Agreement prior to the Fairness Hearing. Each Party shall be responsible for its own attorney's fees in connection with the negotiation and preparation of the Redeveloper Agreement.

7.2 **PILOT.** Developer and the Borough agree to enter good faith negotiations for the execution of a payment-in-lieu-of-taxes ("**PILOT**") agreement for the Development. The Parties agree that such PILOT(s) will provide for the following: (a) payments under the PILOT for the East Side Property shall be equivalent to ninety-five percent (95%) of the conventional taxes that would otherwise be imposed on the East Side Property; (b) payments under the PILOT for the West Side Property shall be equivalent to ninety-five percent (95%) of the conventional taxes that would otherwise be imposed on the West Side Property; and (c) payments under the PILOT for the Lake Drive Property shall be equivalent to six and two hundred eighty five thousandths percent (6.285%) of gross rental income generated by the affordable housing units on the Lake Drive Property. Each Party shall be responsible for its own attorney's fees in connection with the negotiation and preparation of the PILOT(s). There shall be no administrative fee charged by the Borough in connection with the PILOT(s).

7.3 **Communications Tower.** The Borough will be reserving unto itself a portion of the lot and block referred to as the Lake Drive Property on which it will see that a communications tower will be erected ("**Communications Tower**"). The Developer and Borough shall work together, in consultation with the special master if needed, to identify an appropriate location agreeable to both the Borough and Developer so as not to interfere with the affordable housing development on the Lake Drive Property. The Developer agrees that it will not object to the construction of a monopole Communications Tower on that portion of the Lake Drive Property that shall remain owned by the Borough.

7.4 **Water Tower.** The Lake Drive Property to be contributed and dedicated, in fee simple interest, by the Borough to the Developer shall be "as is where is", inclusive of the existing Water Tower. Ownership of the long inoperative Water Tower shall transfer to the Developer with the dedication and contribution of the Lake Drive Property. It shall be Developer's obligation to remove the Water Tower at Developer's sole case and expense. The Developer recognizes that the Water Tower must be removed prior to construction of the affordable units on the Lake Drive Property, which includes, but is not limited to, any site work. In accepting the contribution and dedication of the land, Developer acknowledges that removal of the Water Tower is its responsibility and shall not seek anything from the Borough Defendants relating to the costs of removal. The Borough represents that the Water Tower is not operational and no approvals, consents or notices are required with the utility company.

7.5 **Obligation To Comply with State Regulations.** The Parties shall comply with any and all federal, state, county and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Development, or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

7.6 **Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the expedited introduction and adoption of the Revised Redevelopment Ordinance, the expedited review and approval of the Required Approvals and applications related thereto, the completion of the Development consistent with the terms hereof, and the mutual defense against any third party challenge with regard to any of the foregoing.

7.7 **Special Master's Fees.** The Borough and Developer agree that the Special Master's fees up to the date of this Agreement and going forward with respect to implementation of this Agreement and the Overall Development shall be split 50/50 between them in accordance with the Court's previous Order establishing the same. The Borough shall be responsible 100% of the special master fees associated with any Borough settlement with FSHC and the preparation and review of its HEFSP.

7.8 **Notices.** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and in addition, where feasible (for example, any transmittal of less than fifty (50) pages), by facsimile or electronic mail ("e-mail"). 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 affected 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: Power Station at Allenhurst, LLC
Attn: Michael Abboud
1000 Sanger Avenue
Oceanport, New Jersey 07757

With a copy to: Craig M. Gianetti, Esq.
Day Pitney LLP
One Jefferson Road
Parsippany, New Jersey 07054 2891
Fax: (973) 206-6273
Email: cgianetti@daypitney.com

TO THE BOROUGH:

Borough of Allenhurst
Donna M. Campagna, R.M.C.
125 Corlies Avenue
Allenhurst, New Jersey 07711
Fax: (732) 531-8694
Email: dcampagna@allenhurstnj.org

With a copies to:

David A. Laughlin, Esq.
Birdsall & Laughlin, LLC
1720 Highway 34 North
P.O. Box 1380
Wall, New Jersey 07719
Fax: (732) 749-3901
Email: dlaughlin@birdsallandlaughlin.com

and

Andrew Bayer, Esq.
Pashman Stein Walder Hayden, PC
Bell Works
101 Crawfords Corner Road, Suite 4202
Holmdel, New Jersey 07733
Phone: (732) 852 2482
E mail: abayer@pashmanstein.com

TO THE PLANNING BOARD:

Borough of Allenhurst Planning Board
Kelly Barrett, Secretary
125 Corlies Avenue
Allenhurst, New Jersey 07711
Fax: (732) 531-8694
Email: planningboard@allenhurstnj.org

With a copies to:

Erik Anderson, Esq.
Reardon Anderson, LLC
55 Gilbert Street North, Suite 2204
Tinton Falls, New Jersey 07701
Fax: (732) 758-8071
Email: eanderson@reardonanderson.com

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

8. MISCELLANEOUS

8.1 **Necessity of Required Approvals.** The Parties recognize that the site plans required to implement the Development, and such other actions as may be required of the Board or Borough under this Agreement, cannot be approved except in accordance with the procedures established by

law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, it being understood that any such action shall be in accordance with procedures established by law. For the avoidance of doubt, however, by the terms of this Agreement the Borough Defendants agree that the Development as detailed in the Concept Plan conforms to the Revised Redevelopment Plan and the Revised Redevelopment Ordinance and the new zoning to be effectuated thereby. The Parties acknowledge that the Borough and Board professionals have reviewed the Revised Redevelopment Plan and confirmed that the Concept Plan are fully conforming without the need for variance or design waiver relief. Notwithstanding the immediately preceding sentence or anything contained herein, the Developer shall have the right to seek and obtain any such variances, waivers, exceptions, or other relief as may be necessary to secure site plan approval and complete the Development. The Board specifically agrees to grant such relief from the Residential Site Improvement Standards parking requirements, N.J.A.C. 5:21-1.1 et seq., as Developer may require in order to develop twenty-three (23) affordable housing units on the Lake Drive Property.

8.2 **Default.** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived in writing by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty five (45) days or such other reasonable period of time as may be appropriate if of the nature that cannot be cured within 45 days. In the event the defaulting Party fails to cure within forty five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. With respect to any uncured default by the Borough with respect to its obligations to adopt the Revised Redevelopment Plan, approve the PILOT and enter into the necessary agreements for the Development (e.g., PILOT, Redevelopers Agreement, etc.), Developer may immediately file a motion to the court to enforce litigant's rights, and if successful, Developer shall be entitled to reasonable attorney and professional fees. With respect to any uncured default by the Planning Board in performing its obligations, including, but not limited to granting site plan approval for the Development with any reasonable variances, if Developer may immediately file a motion to the court to enforce litigant's rights, and if successful on such a motion, Developer shall be entitled to reasonable attorneys fees and professionals fees in connection with site plan application.

8.3 **Severability.** It is intended that the material provisions of this Agreement *are not severable*. If any material provision of this Agreement shall be fully adjudged by a court (including all appeals) to be invalid, illegal or unenforceable in any respect, the entire Agreement becomes invalid, illegal or unenforceable and the Parties shall be returned to their respective positions whereby Developer may prosecute its builder's remedy claim in this case.

8.4 **Successors Bound.** The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors, affiliates and assigns, including any person, corporation, partnership or other legal entity

which at any particular time may have a fee title interest in the Development Properties which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates and assigns.

8.5 **Disclaimer of Liability.** It is understood and agreed that this is a compromise and settlement of disputed claims, and that nothing in this Agreement shall be construed as an admission of liability on the part of the Parties, or any of the Parties' current or former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors, all of whom expressly deny any such liability.

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

8.7 **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties or, in the event of a partial assignment, signed by the assignee whose rights and obligations are affected by such modification, amendment, or alteration.

8.8 **Effect of Counterparts.** This Agreement may be executed simultaneously in one (1) or more facsimile or PDF counterparts, each of which shall be deemed an original. Any facsimile or PDF counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth in this Agreement.

8.9 **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 possesses 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 in this Agreement.

8.10 **Interpretation.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties 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 person(s) executing it.

8.11 **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 all Parties.

8.12 **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.

8.13 **Effective Date.** The effective date ("**Effective Date**") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement, subject to the Court approving this agreement following a duly noticed Fairness Hearing.

8.14 **Waiver.** The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

8.15 **Captions.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

8.16 **Construction, Resolution of Disputes.** Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Monmouth County. Service of any complaint may be affected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

8.17 **Conflicts.** The Parties acknowledge that this Agreement cannot be affected by any contradictory amendments to the Borough's Fair Share Plan or zoning ordinances, and this Agreement shall control with respect to those matters as applied to the Development Properties.

8.18 **Transferability.** Developer shall have the right to transfer the development rights bestowed upon it in this Agreement to another developer, subject however to prior written approval by the Borough, which shall not be unreasonably withheld or delayed. Failure to provide consent upon request may be addressed via a motion to enforce litigant's rights with the prevailing party entitled to attorney's fees. The Borough shall also be liable for any damages suffered by Developer for any consent unreasonably withheld or delayed. This provision shall also be included in the Redeveloper's Agreement(s).

[Signature Page to Follow.]

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

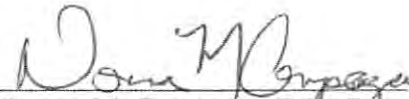
Attest: **POWER STATION AT ALLENHURST, LLC**

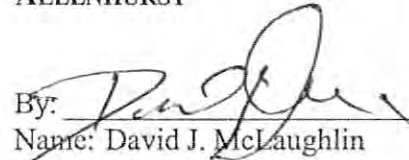
By: _____
Name:

By: _____
Name:
Title: Member

Date: _____, 2023

Attest: **BOROUGH OF ALLENHURST AND BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST**

By: 
Name: Donna M. Campagna, R.M.C.
Title: Municipal Clerk and Administrator

By: 
Name: David J. McLaughlin
Title: Mayor

Date: February 21, 2023, 2023

Attest: **BOROUGH OF ALLENHURST PLANNING BOARD**

By: 
Name: Kelly Barrett
Title: Administrator & Secretary

By: 
Name: Joseph Tomaino
Title: Chairman

Date: February 22, 2023

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:

POWER STATION AT ALLENHURST, LLC

By: *Sandeep Gandhi*
Name: **Sandeep Gandhi**

By: *MA*
Name: **Michael Abboud**
Title: **Member**

Date: *February 28*, 2023

Attest:

BOROUGH OF ALLENHURST AND BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST

By: _____
Name: **Donna M. Campagna, R.M.C.**
Title: **Municipal Clerk and Administrator**

By: _____
Name: **David J. McLaughlin**
Title: **Mayor**

Date: _____, 2023

Attest:

BOROUGH OF ALLENHURST PLANNING BOARD

By: _____
Name: **Kelly Barrett**
Title: **Administrator & Secretary**

By: _____
Name: **Joseph Tomaino**
Title: **Chairman**

Date: _____, 2023

SETTLEMENT AGREEMENT

between

Borough of Allenhurst

and

Fair Share Housing Center, Inc.

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

S E T T L E M E N T T E R M S H E E T

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Page 1 of 5

1. East Side:
 - a) To be developed as 28 town homes per the plan used for the 2021 Redevelopment Plan (attached). The units will be:
 - i. Ground Floor: Garage and a full bathroom
 - ii. First Floor: Living space with full bathroom
 - iii. Second Floor: 3 bedrooms and 2 bathrooms.
 - iv. Attic: One bedroom, a full bathroom and a Den that can be converted to another bedroom.
 - v. Site layout and design to be in keeping with the concept designs previously exchanged between the parties (attached).
 - b) Parking to be RSIS compliant
 - c) To be taxed via PILOT at 95% of conventional taxes
 - d) Certificates of Occupancy (hereinafter "C of O") on units 23 to 28 to be withheld until "Footing Inspection" conducted on Lake Drive Affordable Housing project and has been approved.
 - e) Redevelopment agreement and financial agreement to be prepared.

2. West Side:
 - a) Parties agree that Borough shall have a Right of First Offer ("ROFO") in the event Power Station chooses to sell the West Side parcel. Borough will have 60 days to make an offer to Power Station. Power Station has no obligation to accept any Borough offer and after 60 days or Power Station's rejection of a Borough offer, Power Station can market the property to third parties and solicit offers.
 - b) To be developed as 62, market rate, condos (for sale or rental at Power Station's discretion) within a building substantially similar to the West Side building in the 2021 Redevelopment Plan (up to 5 stories and 65 ft.).
 - i. The total square footage for floor space will be substantially the same as the West Side building in the 2021 Redevelopment Plan
 - ii. Developer has option to include a 3,000 sq. ft. amenity space in the building.
 - iii. Units to be large with up to 4 bedrooms.
 - iv. Developer retains right to determine if Units will be rental or for sale, depending on market conditions (both parties prefer for sale).
 - v. If Developer chooses for sale condos, the condo formation documents shall indicate that they cannot be rented by the unit owners for less than an annual term. If Developer chooses rentals, rental term shall be no less than annual. In no case may any unit be sublet for less than an annual term (i.e. no "summer rentals" nor any "winter rentals").
 - c) Bulk Standards (taken from previous 108 unit 2021 Redevelopment Plan):
 - i. Maximum Residential Density is 62 Units on the West Side. Total floor area of the proposed building is approximately 190,000 sq ft.
 - ii. Maximum Height, Five (5) Stories, 65 Feet

SETTLEMENT TERM SHEET

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Page 2 of 5

- A. Architectural features (e.g. a cupola) and rooftop mechanical equipment including elevator towers, HVAC units, antennas and other typical installations may exceed the maximum height limit by up to 10 feet.
- B. Rooftop amenity space associated with a permitted use on site (i.e. roof deck for residents may exceed the maximum height by up to 10 feet provided such space does not occupy more than 20% of the rooftop).
- iii. All rooftop appurtenances (mechanical equipment, amenity spaces, solar arrays, etc.) shall be set back a minimum of 10 feet from the edge of the roof to limit visibility from below. Amenity space that is not covered by a roof may be located within the required setback area.
- iv. The existing front yard setback shall be maintained.
- v. There shall be no required minimum setback for the side and rear yards.
- vi. Parking Standards, RSIS using the "Mid Rise or Garden Apartment" standard for residential uses, 2.0 spaces for each 2 Bedroom Unit, 2.1 spaces for each 3 bedroom or larger unit
- d) To be taxed via PILOT at 95% of conventional taxes
- e) No C of O's to issue on West Side building until all Affordable Housing units have received C of O's on Lake Drive
- f) Redevelopment agreement and financial agreement to be prepared.
- g) Borough and Developer to work to locate a pole on either the West Side parcel or Lake Drive parcel, before April of 2023, to act as an Osprey Nest.

3. Lake Drive:

- a) To be developed as 23 Affordable Housing rental residential units on as much of the Lake Drive property needed for the development, including parking and amenity space based upon a 20% set-aside for the West Side, East Side and Lake Drive developments combined, but in no event shall there be less than 20 affordable units on the Lake Drive property. The Borough desires to keep the tennis courts, summer storage unit storage space and cell antenna tenants (currently on the water tower), if reasonably feasible; however, ensuring a quality affordable development is the priority. The development is based upon a survey prepared by the Borough Engineer.
 - i. Mix of units to be 4 one bedroom units, 14 two bedroom units and 5 three bedroom units.
 - ii. Developer has option to construct units up to 3 stories in height if that is needed given site size.
 - iii. Power Station's engineer is preparing a concept plan to share with the Borough on a Lake Drive development, recognizing it is being prepared without a survey of the land.

SETTLEMENT TERM SHEET

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Page 3 of 5

- A. Borough has supplied a survey, with topographical data and wetlands delineation to be prepared at Borough's expense.
- iv. Borough would like to max out the number of 1 bedroom units in the Lake Drive development permitted under UHAC and do the minimum number of 3 bedrooms, as per 3(a)(i) above.
- v. Borough to retain right to locate a cell communications monopole on the property and associated equipment space. Rent from providers will belong to Borough.
- b) The Borough will contribute and dedicate, in fee simple interest, a specifically described portion of the Lake Drive parcel to Power Station, deed restricted for affordable housing.
 - i. In consideration of the value of the land being donated, the Power Station shall be responsible for any and all costs related to the development of the land, including all costs for provision of necessary utilities for the project.
- c) Power Station will accept the contribution / dedication of the Lake Drive land in fee, inclusive of the water tower. Power Station hereby acknowledges that removal of the water tower shall be its responsibility and at Power Station's sole cost and expense. The Borough represents that the water tower is no longer in use and no approvals are required by the utility company to remove the water tower.
- d) Communications Tower. The Borough will be reserving unto itself a portion of the lot and block referred to as the Lake Drive Property on which it will see that a communications tower will be erected ("Reserved Lake Drive Property"). The Developer and Borough shall work together, in consultation with the special master if needed, to identify an appropriate location agreeable to both Parties so as to not interfere with the affordable housing development on the Lake Drive Property.
- e) Parking to be reviewed and, if RSIS relief is needed, the Borough / Planning Board agree to grant such relief in order to ensure 23 units are achieved with appropriate amenities.
- f) To be taxed via PILOT at 6.285% of gross rental income.
- g) Re-development agreement and financial agreement to be prepared.
- h) Amenities to be considered include a playground and pickle ball courts.
- i) The COAH Phasing Schedule for Market Rate Units and Affordable Units:
 - i. Given there are different unit types and properties involved, the Parties will seek a modification to COAH's Phasing Schedule (which is based upon issuance of certificates of occupancy), subject to FSHC approval.
 - ii. Power Station is permitted to build all 28 townhouses on the East parcel and obtain certificates of occupancy for 22 of those townhouse units on the East Side.
 - iii. The building permit and start of construction for the affordable units must start before the certificate of occupancy for the 23rd townhouse unit can be issued. "Start of construction" means that the footing inspection for the

SETTLEMENT TERM SHEET

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Page 4 of 5

- foundation of the affordable unit buildings has occurred per UCC code and has been approved.
- iv. No certificate of occupancy for the West Side building can issue until the certificate of occupancy for all of the affordable units on Lake Drive are issued.
 - v. In the event that the Borough purchases the West Side Property from the Developer, Developer shall reserve in escrow \$4.6 million in proceeds from the sale of the West Side to the Borough, with half of the \$4.6 million being released to Developer from escrow upon completion and C of O for half of the affordable units and the balance of the \$4.6 million in escrow being released upon completion and C of O for all of the affordable units. In the event the Borough purchases the West Side Property from the Developer, the COAH Phasing schedule shall also be modified as follows:
 - By the time Developer reaches C of Os for 50% of the THs on the East Property, Developer shall have C of Os for 50% of the affordable units on Lake Drive.
 - By the time Developer reaches C of Os for 90% of the THs on the East Property, Developer shall have received C of Os for 100% of the affordable units on Lake Drive.
4. Terms common to all three parcels (East, West & Lake):
- a) Each side to bear its own legal fees during negotiation of PILOTS, Redeveloper's agreement(s) and financial agreement(s).
 - i. Power Station agrees to release and surrender any and all claims for payment of any legal fees from the Borough or the Defendant Planning Board as of the date of a fully executed Settlement Agreement (which does not include any claim to enforce the terms of a fully executed Settlement Agreement).
 - ii. Special Master's fees. The Borough and Developer agree that the Special Master's fees associated with the builder's remedy and this settlement shall be split 50/50 between them in accordance with the Court's previous Order establishing the same. The Borough shall be responsible for all special master fees associated with any settlement with Fair Share Housing Center and the preparation of a Housing Element & Fair Share Plan.
 - b) Defendant Planning Board agrees to grant expedited review of the development plans, with special meetings, to facilitate development.
 - c) Borough agrees that there will be no off-site impact fees relating to any of the above.
 - d) The Borough shall amend the Redevelopment Plan to permit the developments contemplated on the East Side, West Side and Lake Drive as contemplated in this term sheet. The Borough will also enter into a redeveloper's agreements and PILOT/Financial Agreements with Power Station for East Side, West Side and Lake Drive developments as contemplated in this term sheet.

SETTLEMENT TERM SHEET

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Page 5 of 5

- e) Borough will permit modification of the Construction Moratorium to permit work during the Moratorium period (July 1 through Labor Day) between the hours of 8 am and 5 pm, Monday through Friday, with no work on Saturdays, Sundays or Holidays. All deliveries must be scheduled during the aforesaid work hours.
- f) Borough to provide an access agreement to Developer to permit Phase I environmental review of Lake Drive. Developer to obtain Phase I review at Developer's expense.
- g) The parties expect the following to occur after the Borough approves the Settlement Agreement and it is signed by both parties:
 - i. The Settlement Agreement will be presented to the Court for a Fairness Hearing. Prior to the Fairness Hearing, the parties will work to draft and finalize the Redevelopment Plan Amendment and Redevelopers Agreement.
 - ii. After the Settlement Agreement is approved by the Court, the Borough will introduce the Redevelopment Plan amendment at its next Commissioner's Meeting. It will then be referred to the Planning Board for consistency review and comment. The Planning Board shall not provide any comments that are outside of, different than or inconsistent with terms of the Settlement Agreement. The Borough will then adopt the Redevelopment Plan at a second reading.
 - iii. Following adoption of the Redevelopment Plan, the Power Station will then apply to the Planning Board for site plan approval for the East, West and Lake Drive sides, which will be permitted to be developed in development Phases (Phase 1, Phase 2 and Phase 3). Notwithstanding the East, West and Lake Drive sides being permitted to be developed in Phases, for COAH phasing purposes it will be viewed as a single development (as discussed in Section 3(i) herein).

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

AFFORDABLE HOUSING SETTLEMENT AGREEMENT

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21



ARTISTIC CONCEPTUAL RENDERING. ACTUAL
COLORS AND CONDITIONS MAY VARY

ALLENHURST REDEVELOPMENT
STREETSCAPE RENDERING
ALLENHURST, NEW JERSEY



APPEL DESIGN GROUP
ARCHITECTS

07.22.20

SETTLEMENT AGREEMENT

between

Borough of Allenhurst

and

Fair Share Housing Center, Inc.

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - April 28, 2022

2022 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents** Sales***		Regional Asset Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$80,954	\$86,737	\$92,519	\$104,084	\$115,649	\$120,275	\$124,901	\$134,153	\$143,405	\$152,657	2.9%	11.13%	\$223,627
	Moderate	\$64,764	\$69,390	\$74,016	\$83,267	\$92,519	\$96,220	\$99,921	\$107,323	\$114,724	\$122,126			
	Low	\$40,477	\$43,368	\$46,260	\$52,042	\$57,825	\$60,138	\$62,451	\$67,077	\$71,703	\$76,329			
	Very Low	\$24,286	\$26,021	\$27,756	\$31,225	\$34,695	\$36,083	\$37,470	\$40,246	\$43,022	\$45,797			
Region 2 Essex, Morris, Union and Warren	Median	\$80,634	\$86,394	\$92,154	\$103,673	\$115,192	\$119,800	\$124,407	\$133,623	\$142,838	\$152,053	2.9%	7.04%	\$220,995
	Moderate	\$64,507	\$69,115	\$73,723	\$82,938	\$92,154	\$95,840	\$99,526	\$106,898	\$114,270	\$121,643			
	Low	\$40,317	\$43,197	\$46,077	\$51,836	\$57,596	\$59,900	\$62,204	\$66,811	\$71,419	\$76,027			
	Very Low	\$24,190	\$25,918	\$27,646	\$31,102	\$34,558	\$35,940	\$37,322	\$40,087	\$42,851	\$45,616			
Region 3 Hunterdon, Middlesex and Somerset	Median	\$94,920	\$101,700	\$108,480	\$122,040	\$135,600	\$141,024	\$146,448	\$157,296	\$168,144	\$178,992	2.9%	10.06%	\$258,203
	Moderate	\$75,936	\$81,360	\$86,784	\$97,632	\$108,480	\$112,819	\$117,158	\$125,837	\$134,515	\$143,194			
	Low	\$47,460	\$50,850	\$54,240	\$61,020	\$67,800	\$70,512	\$73,224	\$78,648	\$84,072	\$89,496			
	Very Low	\$28,476	\$30,510	\$32,544	\$36,612	\$40,680	\$42,307	\$43,934	\$47,189	\$50,443	\$53,698			
Region 4 Mercer, Monmouth and Ocean	Median	\$85,831	\$91,962	\$98,092	\$110,354	\$122,615	\$127,520	\$132,425	\$142,234	\$152,043	\$161,852	2.9%	12.24%	\$230,643
	Moderate	\$68,665	\$73,569	\$78,474	\$88,283	\$98,092	\$102,016	\$105,940	\$113,787	\$121,635	\$129,482			
	Low	\$42,915	\$45,981	\$49,046	\$55,177	\$61,308	\$63,760	\$66,212	\$71,117	\$76,022	\$80,926			
	Very Low	\$25,749	\$27,588	\$29,428	\$33,106	\$36,785	\$38,256	\$39,727	\$42,670	\$45,613	\$48,556			
Region 5 Burlington, Camden and Gloucester	Median	\$73,780	\$79,050	\$84,320	\$94,860	\$105,400	\$109,616	\$113,832	\$122,264	\$130,696	\$139,128	2.9%	9.11%	\$195,337
	Moderate	\$59,024	\$63,240	\$67,456	\$75,888	\$84,320	\$87,693	\$91,066	\$97,811	\$104,557	\$111,302			
	Low	\$36,890	\$39,525	\$42,160	\$47,430	\$52,700	\$54,808	\$56,916	\$61,132	\$65,348	\$69,564			
	Very Low	\$22,134	\$23,715	\$25,296	\$28,458	\$31,620	\$32,885	\$34,150	\$36,679	\$39,209	\$41,738			
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$60,768	\$65,108	\$69,449	\$78,130	\$86,811	\$90,283	\$93,756	\$100,701	\$107,646	\$114,591	2.9%	5.76%	\$162,586
	Moderate	\$48,614	\$52,087	\$55,559	\$62,504	\$69,449	\$72,227	\$75,005	\$80,561	\$86,117	\$91,672			
	Low	\$30,384	\$32,554	\$34,724	\$39,065	\$43,405	\$45,142	\$46,878	\$50,350	\$53,823	\$57,295			
	Very Low	\$18,230	\$19,532	\$20,835	\$23,439	\$26,043	\$27,085	\$28,127	\$30,210	\$32,294	\$34,377			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U); Regions by expenditure category and commodity and service group). Landlords who did not increase rents between 2015 through 2021 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2022 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). 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.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Appendix C. Main Street Commercial District Inclusionary Overlay Zone



Legend

- Inclusionary Overlay
- Parcels
- Municipal Boundary

Flood Zone

- AE
- VE



Main Street Commercial District Overlay Inclusionary Zoning

Borough of Allenhurst
Monmouth County, New Jersey

Appendix D. Combined Compliance Ordinance

**BOROUGH OF ALLENHURST
ORDINANCE #2023 ___**

**AN ORDINANCE OF THE BOROUGH OF ALLENHURST TO
IMPLEMENT THE TERMS OF THE BOROUGH'S SETTLEMENT
AGREEMENTS REACHED WITH FAIR SHARE HOUSING CENTER AND
POWER STATION AT ALLENHURST, LLC AS APPROVED BY THE
SUPERIOR COURT ON JULY 31, 2023**

WHEREAS, the Borough of Allenhurst ("Borough") in the County of Monmouth and State of New Jersey, in furtherance of its settlement agreements with Fair Share Housing Center ("FSHC") and Power Station at Allenhurst, LLC and to comply with the Order of Fairness and Preliminary Compliance entered by the Superior Court of New Jersey on July 31, 2023, must supplement and revise portions of its existing Borough Code, and;

WHEREAS, the Borough has sought, to the best of its ability as a built out municipality with a lack of available vacant land, to meet the intent and spirit of the Affordable Housing process by drafting an affordable housing plan, participating in the court led settlement process, and reviewing its existing land use ordinances, and;

WHEREAS, the FSHC settlement agreement and Order of Fairness and Preliminary Compliance require the Borough to enact a number of ordinances including a Development Fee Ordinance, an Affordable Housing Ordinance, a Mandatory Set Aside Ordinance, an Overlay Zone Ordinance and a Redevelopment Plan Amendment all in accordance with the Borough's Third Round Housing Element and Fair Share Plan, consistent with the terms of the Settlement Agreement reached with Fair Share Housing Center regarding compliance with the Borough's affordable housing obligations.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Allenhurst that the Borough Code of the Borough of Allenhurst, be and is hereby amended, revised and supplemented to create the following Chapters and sections:

SECTION I. The Borough Code of the Borough of Allenhurst be and is hereby supplemented to create Chapter 21 entitled "Affordable Housing Development Fees" as follows:

21-1 Affordable Housing Development Fees, Purpose:

- a. In Holmdel Builder's 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 (COAH's) adoption of rules.
- b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH 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 the Council or court of

competent jurisdiction and have a COAH or court approved spending plan may retain fees collected from non-residential development.

c. In In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025, are under the Court's jurisdiction and are subject to approval by the Court.

d. This section 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 section shall be used for the sole purpose of providing very low-, low and moderate income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

21-2 Definitions. As used in this Chapter 21 of the Borough Code of the Borough of Allenhurst, the following terms shall have the following meanings:

a. **"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 percent affordable development.

b. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

c. **"Development fee"** means money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the NJ Statewide Non-Residential Development Fee Act, P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 et seq.), regulated by applicable COAH regulations.

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

e. **"Equalized assessed value"** means 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 (C.54:1-35a through C.54:1-35c).

f. **"Green building strategies"** means those 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.

21-3 Basic Requirements.

a. This chapter shall not be effective until approved by the Court.

b. The Borough of Allenhurst shall not spend development fees until the Court has approved a Spending Plan.

21-4 Residential Development Fees:

a. Imposed Fees

1. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one 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.

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 if permitted by ordinance shall be exempt from development fees.

2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

3. Owner occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or when the square footage is increased by the creation of a new bedroom. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

5. Nonprofit organizations which have received tax exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.

6. Federal, state, county and local governments shall be exempted from paying a development fee.

21-5 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 a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre existing land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

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 a 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. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form NRDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

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 it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Allenhurst as a lien against the real property of the owner.

21-6 Collection Procedures

a. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official or Zoning Officer 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 NRDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form NRDF 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 NRDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form NRDF.

c. The construction official responsible for the issuance of a building permit shall notify the local 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 local assessor of any and all requests for the scheduling of a final inspection of 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 assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g. Should Allenhurst 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 (C.40:55D 8.6).

h. One hundred percent (100%) of the development fee shall be collected at the issuance of the certificate of occupancy.

i. Appeal of development fees

1. 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 Allenhurst. 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, R.S.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.

2. 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 forty five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Allenhurst. 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, R.S.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.

21-7 Affordable Housing Trust Fund

a. There is hereby created a separate, interest bearing affordable housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on site construction of affordable units if permitted by ordinance;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with Allenhurst's affordable housing program.

c. In the event of a failure by Allenhurst to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aft.'d 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within Allenhurst, or, if not practicable, then within the County or the Housing Region.

d. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non compliant condition(s), and upon a finding of continuing and deliberate non compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

e. All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities approved by the Superior Court.

21-8 Use of Funds

a. The expenditure of all funds shall conform to a spending plan approved by the Superior Court. Funds deposited in the affordable housing trust fund may be used for any activity approved by the Superior Court to address Allenhurst's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary

for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- b. Funds shall not be expended to reimburse Allenhurst for past housing activities.
- c. At least thirty (30) percent of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, 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 30 percent or less of median income by region.
 - 1. 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.
 - 2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 - 3. 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.
- d. Allenhurst 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.
- e. No more than twenty percent (20%) of all revenues collected from development fees and interest, 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 twenty percent (20%) of the revenues collected from development fees and interest 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 the court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the affordable housing trust fund.

21-9 Monitoring

- a. On June 30, 2024, and June 30, 2025, Allenhurst shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs ("DCA"), COAH, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by COAH, the Special Master or FSHC. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in

connection with Allenhurst's housing program, as well as the expenditure of revenues and implementation of the plan approved by the Court.

21-10 Ongoing collection of fees

a. The ability for Allenhurst to impose, collect and expend development fees shall expire with its Judgment of Compliance and Repose. If Allenhurst fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose 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 section 20 of P.L.1985, c.222 (C.52:27D-320). Allenhurst shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall Allenhurst retroactively impose a development fee on such a development. Allenhurst shall not expend development fees after the expiration of its Judgment of Compliance and Repose.

SECTION II. The Borough Code of the Borough of Allenhurst be and is hereby supplemented to create Chapter 22 entitled "Affordable Housing" as follows:

22-1 Affordable Housing, General Program Purposes & Procedures

a. Affordable Housing Obligation

Established hereby are the Borough's regulations regarding very low, 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", N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Borough's constitutional obligation provide a fair share of affordable housing for very low, low and moderate income households as reflected in the NJ Fair Housing Act ("FHA") at N.J.S.A 52:27D-301, except where modified by the requirements for very low-income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1) as reflected in the terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very low-income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income.

b. This section is intended to assure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units. This section shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

c. The Borough of Allenhurst 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 Allenhurst. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and

moderate-income housing as approved by the Superior Court and documented in the Borough's Housing Element and Fair Share Plan.

d. This section implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.

22-2 Definitions. As used in this Chapters 22 of the Borough Code of the Borough of Allenhurst, the following terms shall have the following meanings:

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

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

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

d. **"Administrative agent"** shall mean the entity responsible for the administration of affordable units in accordance with section 22-9(c) below, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

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

f. **"Affordability average"** shall mean the average percentage of median income at which restricted units in an affordable housing development are affordable to very-low, low- and moderate-income households per N.J.A.C. 5:80-26.3.

g. **"Affordable"** shall mean a sales price or rent within the means of a very-low, low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; 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.

h. **"Affordable development"** shall mean a housing development all or a portion of which consists of restricted units.

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

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

k. **"Affordable unit"** shall mean a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93 and approved for crediting by the Court, and/or funded through an affordable housing trust fund.

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

m. **"Age-restricted unit"** shall mean 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 percent 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.

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

o. **"Assisted living residence"** shall mean a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for 4 or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, 1 unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

q. **"COAH"** or the **"Council"** shall mean the New Jersey Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.) which had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

r. **"DCA"** shall mean the State of New Jersey Department of Community Affairs.

s. **"Deficient housing unit"** shall mean 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.

t. **"Developer"** shall mean 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.

u. **"Development"** shall mean the division of a parcel of land into 2 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.

v. **"Development fee"** means money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the NJ Statewide Non-Residential Development Fee Act, P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 et seq.), regulated by applicable COAH regulations.

- w. **"Equalized assessed value"** shall mean 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 (C.54:1-35a through C.54:1-35c).
- x. **"Fair Share Plan"** shall mean 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. 5:93-5.
- y. **"Green building strategies"** shall mean those 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.
- z. **"Housing Element"** shall mean 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. 5:93-5.1 and establishes the Borough's fair share obligation.
- aa. **"Inclusionary development"** shall mean 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.
- bb. **"Low-income household"** shall mean a household with a total gross annual household income equal to 50% or less of the median regional household income by household size.
- cc. **"Low-income unit"** shall mean a restricted unit that is affordable to a low-income household.
- dd. **"Major system"** shall mean 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.
- ee. **"Market-rate units"** shall mean housing not restricted to low- and moderate-income households that may sell or rent at any price.
- ff. **"Median income"** means the median income by household size for the applicable housing region, as adopted annually by the Borough pursuant to this section, by COAH or a successor entity approved by the Court.
- gg. **"Moderate-income household"** shall mean a household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.
- hh. **"Moderate-income unit"** shall mean a restricted unit that is affordable to a moderate-income household.
- ii. **"Non-exempt sale"** shall mean 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.

- jj. **"Random selection process"** shall mean 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).
- kk. **"Regional asset limit"** means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.
- ll. **"Rehabilitation"** shall mean the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.
- mm. **"Rent"** shall mean 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.
- nn. **"Restricted unit"** shall mean 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.
- oo. **"Special master"** shall mean an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.
- pp. **"UHAC"** shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.
- qq. **"Very low-income household"** shall mean a household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.
- rr. **"Very low-income unit"** shall mean a restricted unit that is affordable to a very low-income household.
- ss. **"Weatherization"** shall mean building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

22-3 Monitoring and Reporting Requirements

a. The Borough of Allenhurst shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

- 1. Beginning on June 30, 2024, and on every anniversary of that date through June 30, 2025, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs ("NJDCA"), Council on Affordable Housing ("COAH"), or Local Government Services ("NJLGS"), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the NJDCA, COAH, the Special Master or FSHC. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

2. Beginning on June 30, 2024, and on every anniversary of that date through June 30, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

3. By June 30, 2024, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

22-4 Applicability

a. The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Allenhurst pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

b. Moreover, this section shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very- low, low- and moderate-income housing units.

c. Projects receiving Federal Low Income Housing Tax Credit financing shall comply with the income and bedroom distribution requirements of UHAC at N.J.A.C. 5:80-26.3 (with the exception that the UHAC requirement for 10% of the affordable units in rental projects being required to be at 35% of median income be modified as required by the statutory requirement, N.J.S.A. 52:27D-329.1 to 13% of affordable units in such projects shall be required to be at 30% of median income) and the length of the affordability controls applicable to such projects shall be not less than a thirty (30) year compliance period plus a 15 year extended use period.

22-5 Borough-wide Affordable Housing Mandatory Set-Aside Requirement

a. If the Borough or the Borough's Land Use Board permits the construction of multi family or single family attached residential development consisting of five (5) or more net new dwelling units at a density of six (6) or more units per acre, that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough's Land Use Board shall require that 20% (twenty percent) of the residential units be set aside for very-low, low and moderate income households.

b. This requirement shall apply beginning with the effective date the Ordinance creating this section was adopted to any multi family or single family attached residential development, including the residential portion of a mixed use project, which consists of five (5) or more net new residential units at a density of six (6) or more units per acre, whether permitted by a zoning amendment, a variance granted by the Borough's Land Use Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.

- c. Nothing in this section precludes the Borough or the Borough's Land Use Board from imposing an affordable housing set aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- d. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- e. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with Power Station at Allenhurst, LLC and/or FSHC, or in the Borough's Housing Element and Fair Share Plan, for which density and set aside standards shall be governed by the specific standards set forth therein.
- f. Furthermore, this section shall not apply to developments containing four (4) or less net new dwelling units.
- g. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- h. Where a developer demolishes existing dwelling units and with the intent to construct new dwelling units on the same site, the provisions of this section shall apply only if the net number of new dwelling units is five (5) or more.
- i. All affordable housing units built as required by this section will comply with the requirements of Chapter 22 and any other applicable provisions of the Allenhurst Municipal Code relating to affordable housing.
- j. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. For example, a developer cannot subdivide a project into two lots and then make each of them generate a number of units that is lower than the threshold.

22-6 New Construction. The following requirements shall apply to all new or planned developments that contain very low-, 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 very low-, 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
 - 1. In inclusionary developments, to the extent possible, very-low, low- and moderate- income units shall be integrated with the market units.

2. In inclusionary developments, very-low, low- and moderate-income units shall have access to all of the same common elements and facilities as the market-rate units.
- c. Payments in lieu and off-site construction. Off-site construction of required affordable units shall not be permitted. Payments in lieu of constructing affordable units on-site shall not be permitted, with the exception of fractional units that are part of a required set-aside calculation, as follows:

In the event that the 20% inclusionary set-aside percentage of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:

1. If the set-aside includes a fractional unit equal to 0.5 or more, the developer shall round the set-aside upward to construct a whole additional affordable unit; or
 2. If the set-aside includes a fractional unit less than 0.5, the developer may either round the set-aside upward and provide an additional affordable unit; or may round the set-aside downward and construct the lesser whole number of affordable units, in which case the developer shall also make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu").
 - i. The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established N.J.A.C. 5:97-6.4(c)3, as may be increased. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above, the developer shall either:
 - A. Round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units; or
 - B. Round the set-aside downward so as to construct only (1) affordable unit AND shall pay into the Borough's affordable housing trust fund a fractional in-lieu payment equal to 0.4 times the dollar amount established in N.J.A.C. 5:97-6.4(c)3, as may be increased.
- 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 N.J.A.C. 5:93-2.20, 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 percent of the restricted units shall be affordable to low-income households. Also, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
 3. Within rental developments, of the total number of affordable rental units, at least 13 percent 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:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total very-low, low- and moderate-income units;

- ii. At least 30 percent of all very-low, low- and moderate-income units shall be two bedroom units;
 - iii. At least 20 percent of all very-low, low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining affordable units may be allocated among 2 and 3 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 very-low, 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 the following:
 - 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:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. 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
 - v. If not all of the foregoing requirements in 2.i. through 2.iv can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2.i) through 2.vi) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - A. 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.
 - B. To this end, the builder of restricted units shall deposit funds within the Borough of Allenhurst's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - C. The funds deposited under paragraph (f.2.vi.B) 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.

D. 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 Allenhurst.

E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Allenhurst'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.

F. 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.

g. Maximum Rents and Sales Prices. In conjunction with realistic market information, the following criteria shall be used in determining maximum rents and sale prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed herein.

Regional income units shall be established for the region that the Borough is located within (i.e., Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted very-low, low- and

moderate-income units shall be affordable to households earning no more than 52 percent 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 very-low, low-income and moderate-income units.

i. Very low-Income. At least 13 percent of all very-low, low- and moderate-income rental units shall be affordable to households earning no more than 30 percent 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 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different 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:

i. A studio or efficiency unit shall be affordable to a one-person household;

ii. A one-bedroom unit shall be affordable to a one and one-half person household;

iii. A two-bedroom unit shall be affordable to a three-person household;

iv. A three-bedroom unit shall be affordable to a four and one-half person household; and

v. A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be met:

i. A studio or efficiency unit shall be affordable to a one-person household;

ii. A one-bedroom unit shall be affordable to a one and one-half person household; and

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

7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate 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 very-low, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

10. The rent of very low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9 percent in any one year. Rent increases for units constructed pursuant to very-low, 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.

22-7 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 percent of the market rate fee.

22-8 Affordable Unit Controls and Requirements

a. Purpose. The requirements of this subsection apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide very-low, low- and moderate- income housing units.

b. Affirmative Marketing

1. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

2. 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 is required to be followed throughout the period of deed restriction.

3. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4, comprised of Mercer, Monmouth and Ocean counties.

4. The municipality has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and re-rentals. 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.

5. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to very-low, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

6. The affirmative marketing process for available affordable units shall begin at least 4 months (120 days) prior to the expected date of occupancy.

7. 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 Allenhurst.

8. 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.

9. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Allenhurst Borough, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton Branches of the NAACP, and the Supportive Housing Association.

10. The affirmative marketing plan shall include posting of all affordable units on the New Jersey Housing Resource Center ("HRC") website in accordance with applicable law. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this Paragraph.

c. Occupancy Standards

1. 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:

- i. Provide an occupant for each bedroom;
- ii. Provide children of different sex with separate bedrooms;
- iii. Prevent more than 2 persons from occupying a single bedroom; and
- iv. Provide separate bedrooms for parents and children.

2. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

- d. Selection of Occupants of Affordable Housing Units
 - 1. The Administrative Agent shall use a random selection process to select occupants of very-low, low- and moderate- income housing.
 - 2. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.1 et seq.
- e. Control Periods for Restricted Ownership Units and Enforcement Mechanisms
 - 1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this ordinance for a period of at least thirty (30) years, until Allenhurst Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
 - 2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
 - 3. 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.
 - 4. 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.
 - 5. 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.
 - 6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- f. 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:
 - 1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 - 2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - 3. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the very-low, low- and moderate-income unit owners and the market unit owners.

4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

5. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

g. Buyer Income Eligibility

1. 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 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.

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

3. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

4. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

- h. Limitations on Indebtedness Secured by Ownership Unit; Subordination
 - 1. 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, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
 - 2. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent 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).
- i. Control Periods for Restricted Rental Units
 - 1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this ordinance for a period of at least 30 years, until Allenhurst Borough takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
 - 2. Rehabilitated renter-occupied or owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
 - 3. 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.
 - 4. A restricted rental unit shall remain subject to the affordability controls of this section, despite the occurrence of any of the following events:
 - i. Sublease or assignment of the lease of the unit;
 - ii. Sale or other voluntary transfer of the ownership of the unit; or
 - iii. The entry and enforcement of any judgment of foreclosure on the property containing the unit.
- j. Rent Restrictions for Rental Units; Leases
 - 1. 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.
 - 2. 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.
 - 3. Application fees (including the charge for any credit check) shall not exceed 5 percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section.
 - 4. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least

20% of the total number of dwelling units are restricted rental units in compliance with this ordinance.

k. Tenant Income Eligibility

1. 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:

i. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of regional median income by household size.

ii. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of regional median income by household size.

iii. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of regional median income by household size.

2. 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 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

i. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

ii. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

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

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

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

3. The applicant shall file documentation sufficient to establish the existence of the circumstances in paragraphs k.2(i) through k.2(v) above with the Administrative Agent, who shall counsel the household on budgeting.

l. 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.

m. Alternative Living Arrangements

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

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

- ii. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- 2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- 3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

22-9 Administration

- a. Unnecessary Cost-Generating Features. Section 14(b) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. incorporates the need to eliminate unnecessary cost-generating features from Allenhurst Borough's land use ordinances. Accordingly, the Borough will eliminate development standards that are not essential to protect the public welfare and to expedite or fast-track municipal approvals/denials on inclusionary development applications. Allenhurst Borough will adhere to the components of N.J.A.C. 5:93-10.1 - 10.3.
- b. Municipal Housing Liaison
 - 1. The Borough shall appoint a Municipal Housing Liaison by duly adopted resolution of the Borough, and be subject to the approval by the Superior Court.
 - 2. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Allenhurst.
 - 3. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
 - 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Allenhurst, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls;
 - iii. When applicable, supervising any contracting Administrative Agent;
 - iv. Monitoring the status of all restricted units in the Borough of Allenhurst's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by the Court and this ordinance;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as approved by the Superior Court.
- c. Administrative Agent
 - 1. Should affordable units be developed through any of the Borough's Unmet Need mechanisms, the Borough shall designate by resolution of the Borough, subject

to the approval of the Court, one or more Administrative Agents to administer and to affirmatively market the affordable units in accordance with N.J.A.C. 5:93, UHAC and this ordinance.

2. An Operating Manual for each program shall be provided by the Administrative Agent(s) to be adopted by resolution of the Governing Body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk, the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

3. The Administrative Agent(s) 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, 16 and 18 thereof, which includes:

i. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

ii. Affirmative marketing:

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

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

C. Household certification:

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

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

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

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

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

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

4. Affordability controls:
 - i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - ii. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - iii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Monmouth County Register of Deeds or Monmouth County Clerk's office after the termination of the affordability controls for each restricted unit;
 - iv. Communicating with lenders regarding foreclosures; and
 - v. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
5. Records retention; Per State of New Jersey, Municipal Agencies General Records Retention Schedule, subsection M500000-002, Municipal Housing and Development records retention guidelines.
6. Resale and re-rental:
 - i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
 - ii. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.
7. Processing requests from unit owners:
 - i. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this ordinance;
 - ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 - iii. Notifying the municipality of an owner's intent to sell a restricted unit; and
 - iv. Making determinations on requests by owners of restricted units for hardship waivers.
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality:
 - i. Securing annually from the municipality a list of all affordable for-sale housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

- ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - iii. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
 - iv. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - v. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
 - vi. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough and the Court, setting forth procedures for administering the affordability controls.
9. Preparation of monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this ordinance; and
10. The Administrative Agent shall, as delegated by the Borough, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.
- d. Enforcement of Affordable Housing Regulations
1. 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.
 2. After providing written notice of a violation to an Owner, Developer or Tenant of a very-low, low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the 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 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 five hundred (\$500.00) dollars 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 very-low, low- or moderate- income unit in violation of the regulations governing affordable housing units, payment into the Borough of Allenhurst 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 very-low, low- or moderate- income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

ii. 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 very-low, low- and moderate-income unit.

3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very-low, low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the 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.

4. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very-low, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the 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.

5. 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 very-low, low- and

moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

6. 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 very-low, low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very-low, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

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

8. 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.

e. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this section shall be filed in writing to the Borough.

SECTION III. The Borough Code of the Borough of Allenhurst be and is hereby amended to revise sections of Chapter 26 to create the Main Street Commercial District Inclusionary Overlay Zone (MS CD) as follows:

III. A.: Insert under §26-3 ZONING DISTRICTS AND ZONING MAP:

The MS CD zone shall include the following lots as described on the Tax Map of the Borough of Allenhurst:

- Block 9, Lot 1
- Block 10, Lots 1 and 18
- Block 14 Lots 1.01, 1.02, 2.01, 13, 14, 15 and 16
- Block 16, Lots 1, 2 and 19
- Block 19, Lots 1 and 2
- Block 21, Lots 1, 1.01, 8, 9, 10, 11, 12 and 13
- Block 22, Lots 1, 2 and 3
- Block 23, Lot 2
- Block 24, Lots 1, 2, 3 and 4
- Block 25, Lot 1

III. B.: The existing Chapter §26-3.1 is hereby deleted to be replaced in its entirety by the following:

26-3.1 For the purposes of this chapter, the Borough is hereby divided into seven (7) districts with one Overlay zone as follows:

Zone Designation	Primary Use
R 1	Residential
R 2	Residential
B 1	Business Office
B 2	Business Office
C 1	Commercial
C 2	Commercial
C 3	Commercial
MS CD	Main Street Commercial District Inclusionary Overlay Zoning

III. C.: The existing Chapter 26-3.2 is hereby deleted and replaced in its entirety by the following:

26-3.2 Zoning Map: The boundaries of each of the districts are established as shown on the map entitled "Allenhurst Borough Zoning Map" prepared by Leon S. Avakian, Inc. dated August 26, 2020, which is hereby made a part of this chapter. The Zoning Map referred to herein can be found on file at the office of the Borough Clerk.

III. D.: The existing Chapter 26-4.10 entitled "Multifamily Overlay District" is hereby deleted, to be replaced in its entirety by the following:

26-4.10 Main Street Commercial District Inclusionary Overlay Zone

a. Purpose. The purpose of this section is to establish a Main Street Commercial District Inclusionary Overlay Zone (MS CD) that places an overlay zone over specific areas of the Borough. Given the built out nature of the Borough, an effective inclusionary housing overlay zone will produce affordable units when suitable opportunities become available through redevelopment or other planning mechanisms. This overlay zone would provide for inclusionary residential housing to be developed either over first floor commercial development along Main Street or completely as inclusionary residential development not fronting Main Street on tax lots included in the overlay zone. The specific areas included are the portions of the Borough that can realistically accommodate inclusionary housing development, which are in proximity to public transit and the Borough's main mixed use commercial thoroughfares.

The inclusionary overlay zone will regulate said developments through bulk and design standards. However, the Borough's underlying zoning will still be in effect. This will allow inclusionary affordable housing to be approved under local ordinance and regulations without detriment to the existing Borough zoning plan and ordinance. This creates a realistic opportunity to provide for the development of affordable housing in conformance with the requirements of the Court, the Fair Housing Act (N.J.S.A. 52:27D-301), the New Jersey Council on Affordable Housing ("COAH") prior round regulations, the Housing Element and Fair Share Plan of the Borough of Allenhurst prepared by the Borough to address its Prior Round and Third Round affordable housing obligation and the court-approved Settlement Agreement between the Borough and FSHC. Permitted and conditional uses within the MS-CD Inclusionary Overlay Zone shall include all permitted and conditional uses in the underlying zoning district in which the Overlay Zone is located and allow for inclusionary housing development within the provisions of this section.

- b. Principal Permitted Uses:
 - 1. All uses permitted within the zoning districts underlying this overlay zone.
 - 2. Multi-family residential development for sale or for rent, as follows:
 - i. On upper floors above ground-floor commercial space (mixed use buildings) of properties that front on Main Street;
 - ii. On any floor of properties that do not front on Main Street.
- c. Permitted Accessory Uses: Uses that are customary and incidental to multi family housing, including, but not limited to:
 - 1. Parking
 - 2. Garages
 - 3. Signs
 - 4. Fences
 - 5. Trash Enclosure
 - 6. Temporary construction trailers
 - 7. Utility pump stations, transformers, switches and meter facilities to support the development
 - 8. HVAC units
 - 9. Generators
- d. Bulk regulations: For purposes of this Overlay District, for lots that abut Main Street and also abut any other intersecting street, Main Street shall be considered the front yard and any intersecting street shall be considered the side yard.

No.	Description	Measurement in Feet (unless noted otherwise)
1.	Minimum Lot Frontage (Feet)	50
2.	Minimum Lot Depth (Feet)	75
3.	Minimum Front Yard Setback (Feet)	0 feet, unless not facing Main Street, in which case setback shall be as per underlying zone requirements
4.	Minimum Side Yard Setback (Feet, total both)	6 (only when building not attached to adjacent building)
5.	Minimum Rear Yard Setback (Feet)	15 feet or 20% of lot depth, whichever is greater.

6.	Maximum Height (Stories/Feet)	3 stories/ 45 feet
7.	Maximum Building Coverage (Percent)	45%
8.	Maximum Improved Lot Coverage (Percent)	85%
9.	Maximum Residential Density	15 units/acre

e. Projections from buildings, such as, but not limited to balconies, patios, chimneys and windows, may extend into the building set back provided they shall be set back a minimum of 5' from all property lines.

f. All property lines abutting a residential use (unless the building abuts an adjacent building) shall provide a 5 foot landscaped buffer. Said buffer shall not be in addition to the required setback.

g. Area, Yard and Bulk Requirements for Accessory Structures (including parking) & Uses. No accessory structures shall be permitted in the front yard set back.

No.	Description	Measurement in Feet (unless noted otherwise)
1.	Minimum Side Yard Set back (Feet)	3
2.	Minimum Rear Yard Setback (Feet)	5
3.	Minimum Distance Between Accessory and Principal Structures (Feet)	0
4.	Maximum Height (Stories/Feet)	1 story /15 feet

h. Parking

1. Commercial uses 0 spaces

2. Residential uses 1.5 spaces per unit as may be further modified through shared parking studies.

i. Affordable housing requirement: A 20% set aside shall apply. In the event that the 20% inclusionary set-aside percentage of the total number of residential units does not result in a full integer, section 22-6.c. et seq. of the Borough of Allenhurst's Affordable Housing Ordinance shall apply. All affordable housing developments shall conform to the standards found in the Borough of Allenhurst's Affordable Housing Ordinance including provisions for affordability, very low income units, and UHAC standards as modified per the Borough's FSHC Settlement Agreement.

SECTION IV. ADOPTING THE AMENDED MAIN STREET REDEVELOPMENT PLAN PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW

WHEREAS, on November 15, 2004, in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), the Borough designated certain properties fronting on Main Street and Deal Lake as an area in need of redevelopment (as further described in the Redevelopment Plan defined below, the "Redevelopment Area"); and

WHEREAS, in accordance with the provisions of the Redevelopment Law, the Borough enacted the "Main Street Redevelopment Plan" in October 2006, as amended November 2007 (the "Prior Redevelopment Plan") for the Redevelopment Area; and

WHEREAS, an action entitled Power Station at Allenhurst, LLC v. Borough of Allenhurst, Board of Commissioners of the Borough of Allenhurst and Allenhurst Planning Board, Superior Court of New Jersey, Law Division, Docket No.: MON-L-2551-21 was brought by Power Station at Allenhurst, LLC (hereinafter "Developer") alleging that the Borough had failed to provide a realistic opportunity for the construction of affordable housing and to meet the Borough's fair share of the region's need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 and Mount Laurel jurisprudence (hereinafter "Builder's Remedy Action"); and

WHEREAS, as a result of extensive settlement negotiations and in excess of a year of mediation between the Parties, the Parties arrived at agreements to resolve their differences and at a Fairness Hearing on July 6, 2023 before the Superior Court of New Jersey, the Hon. Linda Grasso Jones, J.S.C. determined the Affordable Housing Settlement Agreement to be "fair, reasonable, and adequately protects the interests of very low, low, and moderate-income households, and the Court hereby approves"; and

WHEREAS, in order to comply with the Affordable Housing Settlement Agreement and the Order of Fairness and Preliminary Compliance entered by the Superior Court on July 31, 2023, the Board of Commissioners of the Borough of Allenhurst is obligated to adopt an amended and restated redevelopment plan for the Redevelopment Area; and

WHEREAS, an amended and restated "Main Street Redevelopment Plan" was prepared by the Borough's Planner, Jennifer C. Beahm, PP, AICP, in keeping with the terms and conditions of the settlement agreements between the parties and the Order of the Court, which Amended Redevelopment Plan is on file in the Office of the Borough Clerk and available for public inspection; and

WHEREAS, the Borough now desires to adopt the Amended Main Street Redevelopment Plan.

IV. A.: The recitals set forth above be and are hereby incorporated in this Ordinance as if more fully set forth herein at length.

IV. B.: In further compliance with the Settlement Agreements and as directed by the Court in the July 31, 2023 Order of Fairness and Preliminary Compliance, the Amended Main Street Redevelopment Plan be and is hereby approved and adopted pursuant to N.J.S.A. 40A:12A-7 and shall supersede any previous Redevelopment Plan in its entirety. As such, the Prior Redevelopment Plan is no longer of any effect.

IV. C.: The Board of Commissioners does hereby refer the Amended Main Street Redevelopment Plan to the Planning Board for their determination that the same is in accordance

with the master plan and the Planning Board's obligations as a party to the Settlement Agreements and the Order of Fairness and Preliminary Compliance set forth above.

IV. D.: All of the provisions of the Amended Main Street Redevelopment Plan shall supersede the applicable development regulations of the Borough's municipal code in accordance with the terms of the Amended Main Street Redevelopment Plan, and the sections of the zoning map of the Borough that relate to the Redevelopment Area are hereby amended to incorporate the provisions of the Amended Main Street Redevelopment Plan.

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

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

SECTION V.: REPEALER. The remainder of all other sections and subsections of the aforementioned ordinances not specifically amended by this Ordinance shall remain in full force and effect.

SECTION VI.: INCONSISTENT ORDINANCES. All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

SECTION VII.: SEVERABILITY. If any section, paragraph, subdivision, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION VIII.: EFFECTIVE DATE. This Ordinance shall take effect upon its passage and publication according to law.

VOTE: Comm. McLoughlin ____; Comm. Cumiskey ____; Mayor McLaughlin ____.

APPROVED: _____, 2023

ADOPTED: _____, 2023

BOROUGH OF ALLENHURST

The ordinance published herewith was introduced and approved upon first reading at a meeting of the governing body of the Borough of Allenhurst, in the County of Monmouth, New Jersey, held on October 17, 2023. It will be further considered for final passage and adoption after

public hearing thereon, at a meeting of said governing body to be held at the Borough Hall, 125 Corlies Avenue, Allenhurst, New Jersey, on November 14, 2023. at 7:30 PM, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning the same.

A copy of this ordinance has been posted on the bulletin board upon which public notices are customarily posted in the Borough Hall of the Borough during the week prior to and including the date of such meeting; copies of the ordinance are available to the general public of the Borough who shall request such copies, at the office of the Borough Clerk in said Borough of Allenhurst, in the County of Monmouth, New Jersey.