

**Town of Rhinebeck
Dutchess County, New York**

**Proposed Local Law No. _____, 2017
Relating to Affordable Housing**

Be it enacted by the Town Board of the Town of Rhinebeck as follows:

SECTION 1. AMENDMENT OF TOWN CODE CHAPTER 125, ZONING.

Town Code Chapter 125, Zoning, as adopted on December 29, 2009, and as amended from time to time thereafter, is hereby further amended to repeal §125-63 in its entirety and replace it with a new §125-63. Old §125-63Q(1) provided that §125-63 would not be effective until the Town Board adopted a new local law relating to affordable housing, which new local law contains provisions to administer an Affordable Housing Program . The provisions of old §125-63Q(1) have now been met and the Town has completed the SEQRA process for this amendment

SECTION 2. NEW CODE §125-63.

The following new §125-63 is to be inserted in Chapter 125 of the Town Code at Article V:

A. PURPOSE AND INTENT.

(1) The Town of Rhinebeck recognizes that a full range of housing options is vital to the promotion of a diverse and balanced community and economy, including schools and civic institutions. The Town recognizes that individuals with low and moderate incomes, who work in the Town and/or provide volunteer services to the Town, should have opportunities to find housing that is affordable to them within the Town. The Town also recognizes that a regional shortage of affordable housing adversely affects the quality of life of its residents and threatens to undermine local economic and cultural diversity. A sound Affordable Housing Program aids in the recruitment and retention of local businesses and their work forces, which are essential to the welfare of the Town. Because of the above, the Town has determined to provide increased opportunities for affordable housing to households with annual incomes near or less than the area median income.

(2) Specifically, the intent of the regulations in this Article is to achieve affordable housing opportunities through a variety of methods, which include the following:

- (a) Construction of affordable housing as an integral part of a residential development;
- (b) Payment of a fee in lieu of the construction of affordable housing to be used by the Town to purchase, subsidize the purchase of, and/or construct Affordable Housing Units;
- (c) Construction of Affordable Housing Units at other locations within the Town;
- (d) A combination of the above; and

(e) The granting of density bonuses. The Town Board has determined that it is appropriate to make adjustments to permissible density for the specific purpose of encouraging additional affordable housing, consistent with the Town Comprehensive Plan, in return for (i) the construction of affordable housing which exceeds the basic requirements of this Chapter; and/or (ii) the payment of a fee for a density bonus to be used by the Town to purchase, subsidize the purchase of, construct and/or encourage the development of affordable housing.

(3) The Town of Rhinebeck Comprehensive Plan recognizes that the availability of diverse housing choices is critical for the economic vitality of the Town and advocates use of appropriate proactive strategies to ensure housing opportunities exist for persons with diverse income levels, with particular emphasis placed on providing housing opportunities to persons who work in Rhinebeck and who are essential to maintaining the quality of life in the Town, such as fire department volunteers, employees of the Town, schools, hospitals and local merchants. The Town believes this §125-63 achieves the aims of the Comprehensive Plan in a manner which is feasible.

B. DEFINITIONS AND MATHEMATICAL ROUNDING CONVENTION.

(1) As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING APPLICANT — An Affordable Housing Applicant shall include all family members who have reached the age of 18 years and who will occupy the Affordable Housing Unit as their primary residence.

AFFORDABLE HOUSING BUYER — A buyer of an Affordable Housing Sales Unit.

AFFORDABLE HOUSING PLAN (FINAL) — A plan approved by the Planning Board in conjunction with the application for a subdivision and/or special use permit, including any Density Bonus, which prescribes how the Developer of proposed construction, development or subdivision will meet its affordable housing obligations.

AFFORDABLE HOUSING PLAN (PRELIMINARY) — A plan for affordable housing to be submitted to the Planning Board by a Developer for construction, subdivision and/or special use permit to be reviewed by the Planning Board, in conjunction with review of the application for construction, subdivision or special use permit including any Density Bonus, which Plan describes how the Developer will meet its affordable housing obligations, if any.

AFFORDABLE HOUSING PROGRAM — A plan to furnish housing to Persons whose income is below one hundred and ten percent (110%) of the Area Median Income, including a workforce housing program directed to Persons who work in either the Town or Village of Rhinebeck or in nearby municipalities.

AFFORDABLE HOUSING RENTAL APARTMENT — A single rental apartment in a Multifamily Dwelling which does not cost a household having an income of no more than eighty percent (80%) of the Area Median Income: (a) more than thirty percent (30%) of its annual gross income; or (b) such lesser or greater percentages of affordability levels and income guidelines fixed by the Town Board from time to time by resolution after public hearing.

AFFORDABLE HOUSING RENTAL BUILDING — A Multifamily Dwelling which contains one or more Affordable Housing Rental Apartment(s).

AFFORDABLE HOUSING SALES UNIT — A single unit offered for sale having a sales price which does not cost a household having an income of no more than one hundred percent (100%) of the Area Median Income: (a) more than thirty percent (30%) of its annual gross income; or (b) such lesser or greater percentages of affordability levels and income guidelines fixed by the Town Board from time to time by resolution after public hearing.

AFFORDABLE HOUSING TRUST ACCOUNT — A separate bank account maintained by the Town in which funds received and withdrawals made relating to the Affordable Housing Program are to be maintained and used as further specified in §125-63F.

AFFORDABLE HOUSING UNIT — An Affordable Housing Sales Unit or an Affordable Housing Rental Apartment.

AREA MEDIAN INCOME — The median annual income figures adjusted for family size, calculated annually by the United States Department of Housing and Urban Development (HUD) for the Hudson Valley which contains the Town of Rhinebeck (which figures may be available through the Dutchess County Planning and Development Department). In the event that HUD ceases publication of that data, another study selected by the Town Board by resolution after public hearing showing Area Median Income for a region which includes the Town of Rhinebeck and the surrounding area.

CAPITAL IMPROVEMENTS — Any addition or alteration of real property that substantially adds to the value of the real property or appreciably prolongs the useful life of the property and becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself and is intended to become a permanent installation. For example, building a deck, installing a hot water heater, or installing kitchen cabinets.

CONSUMER PRICE INDEX — Consumer Price Index shall mean the latest published version by the United States Bureau of Labor Statistics of the Consumer Index for All Urban Consumers (CPI-U) for the New York-New Jersey/Long Island Metropolitan Area. In the event that such index is no longer published, another comparable price index shall be selected by the Town Board by resolution after public hearing.

DENSITY BONUS — A right granted pursuant to this Local Law to exceed the density of permitted Units in any residential zoning district under the Town Zoning Code by up to fifteen percent (15%) of the otherwise permissible number of Units, except in Multifamily Dwellings. For example, in a zoning district having a minimum lot size of ten (10) acres, if a parcel is 100 acres, up to ten Units are allowed plus a Density Bonus of up to one point five (1.5) additional Units, subject to rounding as provided in this §125-63B(2).

DESIGNEE — One or more community based not-for-profit entities (as defined in Section 501(c)(3) of the Internal Revenue Code) and/or for-profit entities, in either case entities that are devoted to the expansion of decent, safe and affordable housing in Dutchess County, as selected from time to time by the Town Board by resolution after public hearing, to carry out, as set forth in a written agreement between the Town and the Designee, one or more of the duties specified in §§125-63H(10) and (12); 125-63I(3); 125-63J(1), (2), (3), (4) and (6); 125-63K(1), (2) and (3); 125-63N(10) and (12); 125-63O(1); 125-63R(1); and 125-63U.

DEVELOPER – a Person who proposes to build for income production for that Person ten (10) or more Market Rate Sales Units and/or Market Rate Apartment Units on a single or adjacent parcels, lots, plats or sites.

DEVELOPER AFFORDABLE HOUSING IN LIEU OF FEE — A fee to be paid to the Town by a Developer in lieu of the construction of Affordable Housing Units where permitted, which funds are to be deposited by the Town in its Affordable Housing Account.

DEVELOPER DENSITY BONUS FEE — A fee to be paid to the Town, which funds are to be deposited by the Town in its Affordable Housing Account, by a Developer for a Density Bonus.

FORECLOSURE EVENT — A judgment of foreclosure, the issuance of a deed in lieu of foreclosure, the exercise of a trustee’s power of sale in the event of a default or the equivalent of any of the foregoing, obtained and/or exercised by an institutional lender holding a mortgage or deed of trust for an Affordable Housing Sales Unit or Affordable Housing Rental Building.

HOUSEHOLD INCOME — Gross income of the Affordable Housing Applicant received annually from all sources by all wage earners in a household including, but not limited to, wages and salary, child support, alimony, interest, dividends, Social Security benefits, Veterans Administration benefits, overtime pay, unemployment insurance benefits, bonus payments, pension and retirement benefits, long-term disability benefits, and other annuities or stipends received.

HOUSING EXPENSES — The sum of mortgage principal and interest, taxes, homeowner insurance and other expenses of home ownership, including common charges and fees, if any. The rate of interest for computing Housing Expenses shall be three point five percent (3.5%) or as otherwise set by the Town Board from time to time by resolution after public hearing.

INITIAL PRICE OF AN AFFORDABLE HOUSING SALES UNIT — The initial price of an Affordable Housing Sales Unit shall be determined as specified in §J.

LANDLORD — The owner of a Multifamily Dwelling which contains one or more Affordable Housing Rental Apartments.

LESSEE — The person or persons signing the lease for an Affordable Housing Rental Apartment.

MARKET RATE APARTMENT — An apartment that is not an Affordable Housing Rental Apartment, but in the same building as, or in an adjacent building to, the Affordable Housing Rental Apartment.

MARKET RATE SALES UNIT — A housing unit that is not an Affordable Housing Sales Unit, but is in the close vicinity of an Affordable Housing Sales Unit.

MULTIFAMILY DWELLING — A “Dwelling, Multifamily” as defined in Town Code §125-135 as a building containing separate living units for three or more families, including apartment buildings, town houses and row houses, regardless of the form of ownership (condominium, fee simple, rental) and also regulated by Town Code§ 125-68B and §125-68C.

OPEN SPACE AND AFFORDABLE HOUSING COMMITTEE (“OSAHC”) — A committee appointed by the Town Board to assist in the administration of the Town’s Affordable Housing Program , as provided in Town Code §125-63U.

PERSON — An individual, partnership, corporation, other legal entity, including other Persons if controlled by, or affiliated with, the same Person.

PRIMARY PLACE OF RESIDENCE — Place where a Person resides for one hundred and eighty four (184) days or more in a calendar year.

SELECTION PRIORITIES — The priorities specified in Town Code §125-63I(3).

UNIT – a house, apartment, or other residential living space.

(2) Where a provision of this Article §125-63 provides for calculations which do not result in whole numbers, except as otherwise provided, resulting fractions shall be rounded down, or up, to the nearest whole number, and 0.5 shall be rounded up. For example, 10% of a twelve-unit development equals 1.2, which is rounded down to one unit; and 10% of a fifteen-unit development equals 1.5, which is rounded up to two units.

C. AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL CONSTRUCTION AND CONVERSIONS IN ALL DISTRICTS.

(1) Options Available. Developers shall, at their option, meet their affordable housing obligation, except in Village Gateway “VG” (R6000) and Active Senior Housing Floating (ASH-F) Districts and except for Multifamily Dwellings, as follows:

- (a) By payment to the Town of a Developer Affordable Housing In Lieu Of Fee, as applicable, as set forth in §125-63D with respect to each Unit; or
- (b) By building ten percent (10%) of the total Units as Affordable Housing Sales Units on site (for the avoidance of doubt, if ten (10) Units are built, at least one (1) Unit shall be set aside as an Affordable Housing Sales Unit) and, if so, no additional requirement under §125-63C must be met; or
- (c) By construction of the required Affordable Housing Sales Units at another site elsewhere in the Town of Rhinebeck or Village of Rhinebeck, which site the Town Board determines, in its sole discretion, to accept as appropriate for the construction of Affordable Housing Sales Units; or
- (d) By utilizing a combination of the above.

(2) Village Gateway (R1000) and Active Senior Housing Floating Districts. Developers of construction in the Village Gateway (R6000) and Active Senior Housing Floating Districts, except for Multifamily Dwellings, shall meet their affordable housing requirements, as follows:

- (a) If ten (10) or more Units are to be built, ten percent (10%) of the total Units in the development or subdivision in the Village Gateway (R6000) and the Active Senior Housing Floating Districts shall be Affordable Housing Sales Units.

(b) ¹

¹ DEPENDING ON NUMBER OF UNITS IN DEVELOPER DEFINITION (PG. 6), THIS PROVISION IS: “(b) If fewer than ten (10) Units are to be built, (i) at least one (1) Unit shall be an Affordable Housing Unit as defined herein and, if so, no additional requirement under §125-63C must be met; (ii) by payment to the Town of a Developer Affordable Housing In Lieu of Fee, as set forth in §125-63D with respect to each Unit.”

(3) Multifamily Dwellings. A Developer seeking to construct a Multifamily Dwelling and/or convert an existing structure into a Multifamily Dwelling shall meet its affordable housing requirements as follows:

(a) If one Unit is mandated to be affordable pursuant to Town Code §125-68 (“Specific standards for certain uses”), then the Developer shall comply with the requirements of §125-68 and no additional compliance with §125-63C shall be required.

(b) If there is no applicable affordable housing requirement in Town Code §125-68,

(i) At least one Unit shall be affordable as defined herein and, if so, this shall fully satisfy the affordable housing requirements under this §125-63C; or

(ii) By payment to the Town of a Developer Affordable Housing In Lieu Of Fee as set forth in §125-63D with respect to each Unit in the Multifamily Dwelling (unless one of the exceptions set forth in Town Code §125-63D(2) applies); or

(iii) By utilizing a combination of the above.

(4) In the event that any of the development provisions in this Subsection are inconsistent with the provisions of Zoning Code Article VI, §125-68KK (active senior housing development), the provisions of §125-68KK, shall prevail.

D. DEVELOPER AFFORDABLE HOUSING IN LIEU OF FEE.

(1) Amount. The Developer Affordable Housing In Lieu Of Fee shall be twenty-five cents (\$0.25) per square foot for Units which are not Affordable Housing Sales Units, based on exterior square footage of all floors to be constructed, including attics, basements and cellars, except crawl spaces, or such other amount as determined by the Town Board from time to time by resolution after public hearing. The amount of such fee shall be stated in the Town’s Schedule of Fees. The Developer Affordable Housing In Lieu Of Fee shall be payable by Developers to the Town on all newly constructed residential structures. Such fee, when paid, shall be deposited by the Town in its Affordable Housing Account. For example, if a Developer is building twenty (20) Units which are **not** in the Village Gateway “VG” (R6000) District or in the Active Senior Housing Floating District and each Unit has 2,000 square feet as measured by the Town’s Building Department, the Developer would pay ten thousand dollar (\$10,000) (i.e., 20 units x 2,000 sq.ft. x \$0.25) to the Town; if the twenty (20) Units are to be built **in** the Village Gateway “VG” (R6000) District or in the Active Senior Housing Floating District, two (2) Units must be Affordable Housing Sales Units.

(2) Exceptions: No Developer Affordable Housing In Lieu Of Fee shall be payable on (a) new unit construction and conversions having a gross floor area of under one thousand (1,000) square feet; or (b) accessory buildings, garages, decks, enclosed porches, or outdoor storage units provided that they do not contain living space.

(3) Payable: The Developer Affordable Housing In Lieu Of Fee shall be paid in conjunction with the fee for the Certificate of Occupancy, which under §125-63G(4) may be in connection with phased construction, and shall be a prerequisite to such issuance.

(DRAFT NOTE: REMOVE SECTION/FOOTNOTE IF ADOPTED)

E. DENSITY BONUSES.

(1) Availability. Pursuant to the provisions of this §125-63E of the Zoning Code, the density limits specified in this Chapter for various Zoning Districts may be lawfully exceeded by virtue of a Density Bonus as defined herein in §125-63B. Except for Multifamily Dwellings, Developers may qualify for a Density Bonus by (a) construction of Affordable Housing Sales Units, or (b) payment of a Developer Density Bonus Fee (except in the Village Gateway “VG” (R6000) and Active Senior Housing Floating Districts where the Density Bonus is to be given only for construction of Affordable Housing Sales Units). Developers who wish to construct additional Units by virtue of a Density Bonus shall so state in the Plan presented to the Planning Board. The Planning Board shall determine whether the Developer’s land qualifies for a Density Bonus under §125-63E(2). The Planning Board shall also determine whether the Density Bonus being sought is within the limit allowed under the definition of Density Bonus in §125-63B(1). The Planning Board shall review the entire project in accordance with this Article, including the Units to be built pursuant to the Density Bonus.

(2) Eligibility. The Developer Density Bonus will apply to projects located on a single parcel, or on contiguous parcels under common control, which are of sufficient size as to allow for the development of at least ten (10) Units under the allowable density for that parcel or parcels under the Town Zoning Code. For example, in a zoning district having a five (5) acre minimum lot area, eligibility for a Developer Density Bonus would require at least fifty (50) buildable acres; in a zoning district having a ten (10) acre minimum lot area, eligibility for a Density Bonus would require at least one hundred (100) gross acres; and, in a zoning district having a minimum lot area of twenty (20) acre, eligibility for a Density Bonus would require at least two hundred (200) gross acres.

(3) Fee. The Developer Density Bonus Fee for Units to be built by virtue of a Density Bonus shall be five dollars (\$5.00) per square foot based on exterior square footage of all floors to be constructed, including attics, basements and cellars, except crawl spaces, or such other dollar amount as determined by the Town Board from time to time by resolution after public hearing. The amount of such fee shall be stated in the Town’s Schedule of Fees. The Developer Density Bonus Fee shall be in addition to the Developer Affordable Housing In Lieu Of Fee on the same Unit for a total of five dollars and twenty five cents (\$5.25) per square foot, unless such fees are changed by the Town Board by resolution after public hearing. The Developer Density Bonus Fee, when paid, shall be deposited by the Town in its Affordable Housing Account. For example, a Developer owning 100 acres in a ten (10) acre zone could build ten (10) Units. If that Developer wants a Density Bonus and wants to build four thousand (4,000) square feet homes, the Density Bonus would allow two (2) additional homes (i.e., 15% density bonus x 10 units = 1.5, rounded up to 2.0) totaling eight thousand (8,000) square feet and the Developer would pay forty thousand dollars (\$40,000) (i.e., 8,000 sq.ft. x \$5) for the Developer Density Bonus Fee plus two thousand dollars (\$2,000) (i.e., 8,000 sq.ft x \$0.25) for the Developer Affordable Housing In Lieu Of Fee.

(4) Exceptions. No Developer Density Bonus Fee shall be payable on (a) new unit construction or conversions having a gross floor area of under one thousand (1,000) square feet; or (b) accessory buildings, garages, decks, enclosed porches, enclosed porches, or outdoor storage units, provided they do not contain living space.

(5) Fractional Units. A Developer Density Bonus is subject to the rounding provision in §125-63B(2). For example, in a ten (10) acres district, on a parcel of one hundred and sixty (160) acres, a Developer may construct sixteen (16) Units. Using this example, if a Density Bonus is sought, the maximum Density Bonus would be two point four (2.4) Units ($15\% \times 16 = 2.4$ which is rounded down to two (2) additional Units).

(6) Payable: The Developer Density Bonus Fee shall be paid in conjunction with the fee for the first Certificate of Occupancy in the project regardless of whether the first Unit is a Market Rate Sales Unit or an Affordable Housing Sales Unit and shall be a prerequisite to such issuance. If the Developer's Affordable Housing Plan includes payment of both a Developer Affordable Housing In Lieu Of Fee and a Developer Density Bonus Fee, the first units to receive a Certificate of Occupancy shall be deemed to be constructed pursuant to the Density Bonus.

F. AFFORDABLE HOUSING TRUST FUND ACCOUNT.

(1) The Town hereby establishes an Affordable Housing Trust Fund, to be kept in a separate bank account established by the Town and to be used for only the following purposes:

(a) Funding of costs to be incurred by the Town in the implementation, administration and enforcement of the Affordable Housing Program established by this Law, as well as funding of such future Affordable Housing Programs as the Town may otherwise establish by legislation, order, or resolution;

(b) The purchase, support and/or development of affordable housing at locations within the Town of Rhinebeck and the Village of Rhinebeck, and to further the Town's affordable housing goals.

(c) Defraying consulting and legal fees and expenses incurred, or to be incurred, by the Town in the establishment of such Affordable Housing Programs;

(d) Defraying the cost of improvements to municipal infrastructure, including but not limited to roads, water, sewer, and drainage improvements, to the extent such capital expenditures are incurred in order to promote the development of affordable housing;

(e) Holding the proceeds of public grants or loans to the Town to promote affordable housing opportunities, administration and/or enforcement, as well as accepting private monetary contributions to the Town for that donative purpose;

(f) Transferring to the Affordable Housing Trust Fund Account money heretofore received by the Town for use to advance affordable housing and currently kept in the Town's Trust and Agency bank account;

(g) Any other purpose authorized by state or local law in connection with the expansion or improvement of affordable housing opportunities within the Town, including but not limited to establishment, to the extent authorized by law, of a program of grants or loans to not-for-profit or for-profit entities.

(2) The Town shall keep a record of the Developer Affordable Housing In Lieu Of Fees paid, Developer Density Bonus Fees paid, and other debits to the Affordable Housing Account, as well as credits to such Account. The balance of funds recorded in the Affordable Housing Account shall be determinable at all times by the Town and a report of such balance shall be made available monthly to the Town Board and upon request to the OSAHC.

G. STANDARDS FOR ALL AFFORDABLE HOUSING SALES UNITS IN DEVELOPMENTS.

(1) Integration. A Developer who builds Affordable Housing Sales Units within a development shall have such Units constructed to be physically and visually integrated into the design of the residential housing development and interspersed among the Market Rate Sales Units.

(2) Dwelling Unit Type and Size. Affordable Housing Sales Units may be located in multifamily, single-family attached or single-family detached dwellings and may be studio, one-, two-, three- or four-bedroom units, except as otherwise specified in this Article.

(3) Design of Affordable Units. If Affordable Housing Sales Units are to be constructed adjacent to the Market Rate Sales Units, the exteriors of the Affordable Housing Sales Units shall resemble to the fullest extent practicable in construction and appearance the Market Rate Sales Units of the same unit type. Interiors of Affordable Housing Sales Units need not be the same as Market Rate Sales Units, except Affordable Housing Sales Units shall have at least the same number and size of bedrooms as the average number and size of bedrooms in similar Market Rate Sales Units constructed or planned. Such average is subject to the rounding provision in §125-63B(2). For example, if the average number of bedrooms is two point six (2.6), three (3) bedrooms would be required in Affordable Housing Sales Units.

(4) Phasing. For all phased developments, the construction of required Affordable Housing Sales Units shall occur proportionately with the construction of the Market Rate Sales Units in the development in the following manner:

(a) No Certificates of Occupancy for Affordable Housing Sales Units are required to be obtained prior to the time twenty percent (20%) of the project's total units receive Certificates of Occupancy.

(b) Twenty-five percent of the required Affordable Housing Sales Units must be issued Certificates of Occupancy by the time forty percent (40%) of the project's total units have received Certificates of Occupancy.

(c) Sixty percent (60%) of the required Affordable Housing Sales Units must be issued Certificates of Occupancy by the time sixty percent (60%) of the project's total units have received Certificates of Occupancy.

(d) Ninety percent (90%) of the required Affordable Housing Sales Units must be issued Certificates of Occupancy by the time eighty percent (80%) of the project's total units have received Certificates of Occupancy.

(e) One hundred percent (100%) of the required Affordable Housing Sales Units must have received Certificates of Occupancy by the time one hundred percent (100%) of the project's total units have received Certificates of Occupancy.

H. APPLICATION REVIEW PROCEDURES FOR AFFORDABLE HOUSING SALES UNITS

(1) Meeting Requirement. Each residential housing application submitted to the Planning Board shall specify (a) whether the affordable housing requirement will be met by (i) construction of Affordable Housing Sales Units or Affordable Housing Rental Apartments, (ii) payment of a

Developer Affordable Housing In Lieu Of Fee, or (iii) another permitted alternative and (b) whether Units will be constructed pursuant to a Density Bonus.

(2) Affordable Housing Construction.

(a) If the affordable housing requirement will be met by construction, the application to the Planning Board should include a preliminary Affordable Housing Plan (Preliminary). The submitted plan should address:

(i) The number, type, size, count of bedroom(s) for each Affordable Housing Unit and each Market Rate Sales Unit;

(ii) The Developer's plan for construction of Affordable Housing Sales Units, including a phasing plan if those units are to be phased;

(3) Density Bonus. If the Developer intends to qualify for a Density Bonus, the number of Units to be built pursuant to the Density Bonus;

(4) Other Information. Any other documentation or information which the Planning Board determines it will require to evaluate the plan.

(5) Contents of Affordable Housing Plan. The Planning Board shall meet with the Developer prior to any sketch plan or conceptual approval to review the Affordable Housing Plan (Preliminary), and shall determine if additional documentation, information and/or materials must be included in the plan. If the Developer plans to construct Affordable Housing Sales Units, the OSAHC shall be included in the meeting.

(6) Referral to the OSAHC. If the Developer plans to construct Affordable Housing Sales Units or to use a Density Bonus, the Planning Board shall refer the plan to the OSAHC for its review and recommendation.

(7) Recommendation of the OSAHC. Upon receipt of a referral from the Planning Board, the OSAHC shall review the Affordable Housing Plan. Upon completion of its review, the OSAHC shall make a recommendation to the Planning Board that the Plan be: (i) denied; (ii) approved; or (iii) approved with modifications to the Plan to be required by the Planning Board. If the OSAHC recommends denial or approval, the recommendation of the OSAHC shall be in writing and shall contain an explanation of the basis of the recommendation. The OSAHC shall issue its written recommendation within thirty (30) days of the referral to the OSAHC by the Planning Board or, if additional documentation or information is required by the OSAHC to make its recommendation, within thirty (30) days of submission of all required documentation or information to the OSAHC. If the OSAHC requires additional time to conduct its review, it may request such additional time from the Planning Board. Unless the OSAHC requests and is granted additional time for its review, in the event the OSAHC fails to act within the thirty (30) day period (or within any extended period), the Planning Board may take action on the Affordable Housing Plan without the recommendation of the OSAHC.

(8) Approval of Affordable Housing Plan. If, after receiving the recommendation of the OSAHC and advice from the Attorney for the Planning Board, the Planning Board approves the Affordable Housing Plan, a copy of the final Affordable Housing Plan shall be filed with the Planning Board Clerk, within five (5) business days of the Planning Board's approval of the application. A copy of the Affordable Housing Plan (Final) shall be provided to the Zoning Enforcement Officer to ensure compliance with the terms of the Affordable Housing Plan

approved by the Planning Board. A copy of the Affordable Housing Plan (Final) should also be provided to the OSAHC.

(9) Notation on Approved Site Plans and Plat. If Affordable Housing Sales Units will be constructed, all approved site plans must contain a notation that Affordable Housing Units will be built and such site plans must be filed with Dutchess County and the Developer shall file with Town Planning Board Clerk proof of such filing. Also, if Affordable Housing Sales Units will be constructed, the Planning Board shall require the Developer to include a notation on the final subdivision plat which makes clear that the project is subject to certain affordable housing conditions and those conditions should be set forth as notes on the map or plat. The notation shall also make reference to the final Affordable Housing Plan. The plat shall designate which Units are Affordable Housing Sales Units, if any, and which Units are constructed pursuant to a Density Bonus, if any.

(10) Declaration for Affordable Housing Sales Units. The Developer shall prepare for review by the Attorney for the Planning Board a Declaration setting the requirements of the final Affordable Housing Plan. The Declaration shall provide:

(a) The Affordable Housing Applicant shall use the Affordable Housing Sales Unit as the Primary Place of Residence for the Affordable Housing Applicant and his/her family and shall submit to the Town or its Designee on the date of purchase, and thereafter from time to time as requested by the Town or its Designee, a sworn certification stating that the owner(s) occupies the Affordable Housing Sales Unit as his/her Primary Place of Residence. If the Affordable Housing Applicant is not in compliance, the Affordable Housing Applicant will sell the Affordable Housing Sales Unit for the price specified in §125-63J(4) to a purchaser identified by the Town or its Designee, after notice from the Town or its Designee. If the Affordable Housing Sales Unit is not sold within one hundred and eighty (180) days, the provisions of §126-63K(3) and §126-63K(4) shall apply.

(b) If the owner(s) of the Affordable Housing Sales Unit dies, at least one heir, legatee or other person taking title by will or by operation of law having a household income which does not exceed that to be eligible for an Affordable Housing Sales Unit must occupy the Affordable Housing Sales Unit as his/her Primary Place of Residence. If the new owner(s) is not in compliance, the new owner(s) will sell the Affordable Housing Sales Unit for the price specified in §125-63J(4) to a purchaser identified by the Town or its Designee, after notice from the Town or its Designee. If the Affordable Housing Sales Unit is not sold within one hundred and eighty (180) days, the provisions of §126-63K(3) and §126-63K(4) shall apply.

(c) Renting or subleasing of the Affordable Housing Sales Unit is prohibited, except as provided in this Subsection. After public hearing, the Town may waive by resolution for a temporary period of up to two (2) years the prohibition against renting or subleasing an Affordable Housing Sales Unit for good cause, including but not limited to a temporary job transfer, medical care needs for the Lessee or family member requiring a temporary move.

(d) If such waiver is granted in writing by the Town, the Town shall establish the allowable rent that the owner(s) may charge during the temporary rental or subleasing period. This allowable rent shall not exceed the total of principal and interest payments on the mortgage, real estate taxes, homeowner's insurance, reasonable expenses attendant to the maintenance of the Affordable Housing Sales Unit and any other expense allowed by the Town Board itself or by the Town Board upon recommendation by the Designee. If the owner(s) retains

responsibility for the payment of some or all of the utility expenses and maintenance costs, these expenses may be added to the allowable rent. An increase in the allowable rent may be permitted after one year, if the owner(s) shows that there has been an increase in the costs used to determine the allowable rent. Such allowable rent increase must be approved in writing by the Town Board itself or by the Town Board upon recommendation by the Designee.

(e) The Affordable Housing Sales Unit shall remain as such in perpetuity, except in the event of a Foreclosure Event, and subject to the restrictions on occupancy, rental and resale.

(f) An owner of an Affordable Housing Sales Unit who wishes to sell or refinance that Affordable Housing Sales Unit shall notify the Town or its Designee of his/her intent to sell or refinance, and may request a resale price determination. The Town Board itself or the Town Board upon recommendation by the Designee will determine the resale price as set forth in §125-63J(4) based upon the purchase price paid by the then owner, increased or reduced by the Consumer Price Index, plus depreciated Capital Improvements made by the then owner, which improvements received prior written approval by the Town. Such improvements must be evidenced by reasonable documentation as determined by the Town Board itself or by the Town Board upon recommendation by the Designee.

(g) The right to enforce the terms, covenants, agreements, conditions and restrictions in the Declaration against buyers of the Affordable Housing Sales Unit shall belong to the Town. In the event of any violation or threatened violation of any of the terms, covenants, agreements, conditions and restrictions provided for in the Declaration, the Town will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. In the event legal redress is sought, the prevailing party shall recover the reasonable fees of its attorney and costs. These remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Town may be lawfully entitled in case of any breach, or a threatened breach, of any provision of the Declaration. Failure to insist in any one or more cases upon strict performance of any of the terms, covenants, agreements, conditions and restrictions in the Declaration, or to exercise any remedy, shall not be construed as a waiver or a relinquishment for the future for such terms, covenants, agreements, conditions, restrictions or remedies. The Town Board, after public hearing, may waive, in whole or in part, the application of any terms, covenants, agreements, conditions and restrictions in the Declaration that apply to any or all of the Affordable Housing Sales Unit. Such waiver must be by written instrument signed by a duly authorized representative of the Town.

(11) Recording of Declaration. After approval by the Attorney for the Planning Board, the Developer shall record, within fifteen (15) days and at its own expense, the Declaration in the land records in the Dutchess County Clerk's Office, with respect to each parcel which will have an Affordable Housing Sales Unit. The Developer will provide to the Attorney for the Planning Board, the Planning Board Clerk, and the Designee, a copy of the recorded Declaration within fifteen (15) days of filing, showing the receipt stamp of the Dutchess County Clerk.

(12) Other Procedures Prescribed by the Town Board. The Town Board may prescribe such other procedures and requirements as it deems necessary for the submission and approval of the Affordable Housing Plan by local law or resolution as advised by the Attorney for the Town.

I. DETERMINING ELIGIBILITY OF AFFORDABLE HOUSING APPLICANT.

(1) **Income Limits.** To be eligible to purchase an Affordable Housing Sales Unit, the Affordable Housing Applicant's aggregate annual income shall not exceed one hundred percent (100%) of the Area Median Income or such greater or lesser percentage fixed by the Town Board from time to time by resolution after public hearing.

(2) **Other Assets.** The Town Board may provide by resolution, after consultation with the OSAHC and a public hearing, such additional requirements for eligibility to purchase an Affordable Housing Sales Unit, including a limitation on family assets, and minimum income requirements.

(3) **Selection Priorities.** Once an Affordable Housing Applicant is determined to be eligible, by the Town Board itself or by the Town Board upon recommendation by the Designee, to buy an Affordable Housing Sales Unit, based upon the above income limits, priority shall be given to Affordable Housing Applicants as follows:

Category 1 - 10 Points will be assigned to members of the Rhinebeck Police Department and to active volunteer firepersons or rescue squad or other emergency services personnel in the Town of Rhinebeck or Village of Rhinebeck.

Category 2 - 9 Points will be assigned to employees of the Town of Rhinebeck or Village of Rhinebeck, employees of the Rhinebeck Central School District, employees of Northern Dutchess Hospital, and volunteers who have been appointed by the Town of Rhinebeck or Village Board to a Town or Village Board or committee and have served on such Board or committee for a minimum of six (6) months.

Category 3 - 8 Points will be assigned to employees of farm operations in the Town of Rhinebeck or to health care workers employed in nursing homes in the Town of Rhinebeck or other similar related health or social services agencies in the Town of Rhinebeck or Village of Rhinebeck.

Category 4 - 7 Points will be assigned to a resident of the Town of Rhinebeck or Village of Rhinebeck.

Category 5 - 5 Points will be assigned to an employee of a business located within the Town of Rhinebeck or Village of Rhinebeck.

Category 6 - 4 Points will be assigned to a resident of Dutchess County outside of the Town of Rhinebeck or a person employed outside of the Town of Rhinebeck but elsewhere in Dutchess County.

Category 7 - 3 Points will be assigned to a single parent of a minor child or children. Children shall be included in the household of the custodial parent or guardian. In cases of shared/joint custody (50% with each parent/guardian), each household may include the child in its household. Affordable Housing Applicants must provide legal documentation of custody arrangements. Married couples who are separated must provide a copy of a legal separation agreement, Judgement of Separation or other evidence of such separation, in order not to be considered part of the household for eligibility purposes.

Category 8 - 2 Points will be assigned to disabled persons, first-time homebuyers, those 62 years of age or older or to Veterans.

Category 9 - 1 Point will be assigned to immediate relatives of a resident of the Town of Rhinebeck or Village of Rhinebeck or to an employee of New York State or a Federal agency located in Dutchess County or to an employee of a municipal or local authority located in Dutchess County.

Category 10 – 1/2 Point will be assigned to all others.

(4) Multiple Category Priority. An Affordable Housing Applicant who qualifies to receive Points under more than one category shall receive Points under each such category and the Points under each category shall be totaled to calculate the Affordable Housing Applicant's selection priority.

J. DETERMINING PRICE FOR INITIAL SALE, REFINANCING AND RESALE OF AFFORDABLE HOUSING SALES UNITS.

(1) Obtaining a Sale Price. An owner of an Affordable Housing Sales Unit who wishes to sell or refinance that Affordable Housing Unit must notify the Town and the Designee of his/her intent to sell or refinance, and may request a resale price determination. The Town Board, with the advice of the Designee and the OSAHC, will arrive at a price determination.

(2) Determination. The initial price for each Affordable Housing Unit will be determined from time to time by the Town Board, at such time as the owner notifies the Town Board and its Designee that an Affordable Housing Unit will be sold or refinanced. The Designee, within thirty (30) days, will recommend to the OSAHC and to the Town Board an allowable sales price for the Affordable Housing Unit, with such recommendation based on establishing a price that is deemed affordable for an Affordable Housing Applicant.

(3) Calculation of Initial Sales Price. The Initial Sale price of an Affordable Housing Sales Unit will be calculated based on: (i) the information gathered by the Designee, and (ii) the assumptions as set forth below.

(a) Housing Expenses shall not exceed thirty percent (30%) of one hundred percent (100%) of the Area Median Income, or such percentage of the Area Median Income selected from time to time by the Town, based on the number of bedrooms in the Unit; and

(b) The Area Median Income, or such percentage of the Area Median Income determined by the Town Board from time to time by resolution after public hearing, for Affordable Housing Units shall be based on one and one-half (1.5) persons per bedroom. Thus, for a two bedroom Affordable Housing Sales Unit, the Area Median Income, or such percentage of the Area Median Income selected from time to time by the Town, for a three person household will be used in the calculation. Where this calculation results in a fractional number (e.g., 1.5), the household income used will be the mid-point between the household income of the adjacent household sizes (i.e., midpoint between Area Median Income for a one person and two person household);

(c) The initial principal of a conventional thirty-year (30) fixed rate mortgage using the prevailing interest rate developed by the Neighborworks Homeownership Center of Dutchess County, Dutchess County Department of Planning and Development or, at the Town's discretion, compiled by the Town or its Designee, from a sample of lenders determined by the Town or its Designee, and a review of mutually agreed upon interest rate forecasts from third

party sources such as regulated banks, investment institutions, Fannie Mae/Freddie Mac and other mortgage lenders;

(d) A down payment calculated by dividing the initial principal of the conventional thirty-year (30) fixed rate mortgage, as determined in §125-63J(3)(c) above, by zero point nine five (0.95), or by such amount determined by the Town Board from time to time by resolution after public hearing, and subtracting the initial principal of a mortgage determined in §125-63J(3)(c) above from the result.

(4) Calculation of Subsequent Sales Prices. The initial resale price and each subsequent resale price will be the purchase price paid by the then owner, increased or reduced by the Consumer Price Index since the date of purchase by the then owner, plus depreciated Capital Improvements made by the then owner, as determined by the Town Board itself or by the Town Board upon recommendation by the Designee, plus the amount payable by the owner to the Designee under §125-63K(2) or payable by the owner to the real estate agent, if any.

(5) Sales of Affordable Housing Sales Units. Owners of Affordable Housing Sales Units shall not sell such Units at greater than the Initial Sales Price of the Affordable Housing Sales Unit, or the Subsequent Sales Price, as applicable.

(6) Resale Procedures. Procedures on resale will also be determined by the Town Board in consultation with its Designee, which procedures may include the Designee maintaining a list of potential purchasers who qualify for Affordable Housing Sales Units. Prior to the closing on the resale of any such Unit, the owner shall provide a copy of the proposed deed to the Town and its attorneys for review and approval. All deeds conveying any Affordable Housing Sales Unit shall include, as an attachment, a certificate signed by the Town Supervisor, acknowledging compliance with the resale provisions.

K. SALE OF AN AFFORDABLE HOUSING SALES UNIT.

(1) Sale of Unit. When the Affordable Housing Sales Unit is ready for sale, the owner shall notify the Designee in writing. The Designee shall have one hundred and eighty (180) days to find a buyer for the Affordable Housing Sales Unit, using the criteria in §125-63I and at a price determined as specified in §125-63J.

(2) Payment to Designee. Upon the sale of an Affordable Housing Sales Unit where the Designee presented the Affordable Housing Buyer to the then owner, the owner shall pay the Designee, at the closing, an administration fee equal to two percent (2%) of the sale price.

(3) Other Sales. If the Designee is unable to arrange for the sale of the Affordable Housing Sales Unit within one hundred and eighty (180) days after notification by the owner to the Designee as provided in §125-63K(1) above, the owner:

(a) may solicit potential buyers, but may not sell the Affordable Housing Unit for more than the price provided in §125-63J, or

(b) may remove the Unit from being an Affordable Housing Unit by notifying the Town and its Designee in writing, and paying to the Town the Developer Affordable Housing In Lieu Of Fee as would be applicable if the Certificate of Occupancy had been issued at the time the owner notifies the Town and the Designee of the decision to remove the Unit from being an Affordable Housing Sales Unit. If the Affordable Housing Sales Unit was built pursuant to a Density Bonus and if the owner obtained the Density Bonus or is the parent, subsidiary or

affiliate of such owner, the owner shall also pay the Town the same Developer Density Bonus Fee as would be applicable if the Certificate of Occupancy had been issued at the time the owner notifies the Town and the Designee of the decision to remove the Unit from being a Affordable Housing Sales Unit. For example, if an Affordable Housing Unit was built in January 2017 and there was a Density Bonus in connection with that Affordable Housing Unit, and if the owner notifies the Town and the Designee that he or she wishes to remove the Unit from being an Affordable Housing Unit on January 30, 2019, the owner must pay the amount of the Developer Affordable Housing In Lieu of Fee and Developer Density Bonus Fee in effect on January 30, 2019.

(4) Arrangement by Town. Prior to an Affordable Housing Sales Unit being converted to a Market Rate Sales Unit, the Town shall have an additional ninety (90) days to determine if it can arrange to keep the Affordable Housing Sales Unit as an Affordable Housing Sales Unit while providing the owner thereof with the price specified in §125-63J.

(5) Removal of Unit. After receipt of such notice and payment of the Developer Affordable Housing In Lieu of Fee and, where applicable, the Developer Density Bonus Fee, the Town shall furnish the owner with an instrument properly executed in recordable form that will release such Unit from the Declaration that was filed with respect to the parcel containing such Unit. The Town's release shall be drawn in a form suitable for recording and shall be signed by the Town Supervisor and his/her signature shall be notarized. The Town shall execute any other documents as shall be reasonably necessary to facilitate clear, insurable title without the Declaration being applicable.

L. DEED FOR INITIAL SALE AND RESALE OF AFFORDABLE HOUSING SALES UNIT.

(1) Deed Restrictions. In the event that an Affordable Housing Sales Unit is sold to an Affordable Housing Buyer, the initial deed for the Affordable Housing Sales Unit and any subsequent deeds or instruments used to transfer title to such Affordable Housing Sales Unit shall include a provision indicating that the Unit shall remain an Affordable Housing Sales Unit in perpetuity, except for a Foreclosure Event, and subject to the restrictions on occupancy, rental and resale specified in the Declaration For Affordable Housing Sales Units as provided in §125-63H(10).

(2) Release of Restrictions Upon Foreclosure. Notwithstanding anything contained in the Declaration for Affordable Housing Sales Units to the contrary, the designation of a Unit as an Affordable Housing Sales Unit shall not survive a judgment of foreclosure, the issuance of a deed in lieu of foreclosure, the exercise of a trustee's power of sale, or the equivalent of any of the foregoing, obtained and/or exercised by an institutional lender holding a mortgage or deed of trust with respect to such Unit. Upon the occurrence of any of the foregoing events whereby the ownership of the Affordable Housing Sales Unit is divested from such a mortgagor or trustor, such Unit shall be deemed automatically released as an Affordable Housing Sales Unit, and all of the restrictions thereon, including, but not limited to, those of use, ownership, transfer, pricing, and enjoyment, shall be deemed and become void and of no force and effect automatically and without further action on the part of such mortgagee or its transferee. Upon written request, the Town shall execute any instrument, by its duly authorized officer or agent, in recordable form, and any other documents, as shall be reasonably requested by such mortgagee or its transferee in order to evidence the release of such Unit as an Affordable Housing Sales Unit.

M. RESIDENTIAL CONSTRUCTION AND CONVERSION OF MULTIFAMILY DWELLINGS.

(1) Construction and Conversion. Developers proposing to build or convert Multifamily Dwellings shall comply with §125-68B and §125-68C, as applicable, including the requirement with respect to construction of Affordable Housing Units.

(2) Types of Units in Multifamily Dwellings. If Multifamily Dwellings are to be constructed or converted by a Developer with Units to be sold, §125-63A through §125-63L shall be applicable to such Units except as otherwise provided in such sections of §125-63. If Multifamily Dwellings are constructed by a Developer with Units to be rented, §125-63C(3) and §125-63N through §125-63R shall be applicable to such Units except as otherwise provided in such sections of §125-63. For avoidance of doubt, if a Multifamily Dwelling is to be constructed or converted by a Developer both with Units to be sold and Units to be rented, §125-63A through §125-63L shall apply to Units to be sold, and §125-63C(3) and §125-63N through §125-63S shall apply to Units to be rented.

N. APPLICATION REVIEW PROCEDURES FOR AFFORDABLE HOUSING RENTAL APARTMENTS IN MULTIFAMILY DWELLINGS.

(1) Meeting of Requirement. Each application by a Developer submitted to the Planning Board relating to rental apartments in a Multifamily Dwelling shall specify the number of such apartments to be constructed and whether the affordable housing requirement will be met under §125-63C(3) by construction of a Developer Affordable Housing Rental Apartment, payment of a Developer Affordable Housing In Lieu Of Fee, or another permitted alternative.

(2) Affordable apartment construction. If the affordable housing requirement will be met by construction of one or more Affordable Housing Rental Units, the application by a Developer to the Planning Board should include a preliminary Affordable Housing Plan (Preliminary). The submitted plan should address:

- (a) The number, type, size and count of bedroom(s) for each apartment;
- (b) The Developer's plan for construction of Affordable Housing Rental Apartments, including a phasing plan if those apartments are to be phased;

(3) Other information. Any other documentation or information which the Planning Board determines it, and/or the OSAHC, will require in order to evaluate the plan.

(4) Contents of Affordable Housing Plan. The Planning Board shall meet with the Developer prior to any sketch plan or conceptual approval to review the Affordable Housing Rental Apartments Plan (Preliminary), and shall determine what additional documentation, information and/or materials must be included in the plan. If the Developer plans to construct Affordable Housing Rental Units, the OSAHC shall be included in the meeting.

(5) Design of Affordable Housing Rental Apartments. If Affordable Housing Rental Apartments are to be constructed by the Developer together with Market Rate Apartments, the exteriors of the Affordable Housing Rental Apartments shall resemble to the fullest extent practicable in construction and appearance the Market Rate Apartments of the same unit type. Interiors of Affordable Housing Rental Apartments need not be the same as Market Rate Apartments, except Affordable Housing Rental Apartments shall have at least the same number and size as the average number and size of bedrooms of the Market Rate Apartments constructed or planned.

Affordable Housing Rental Apartments shall be interspersed among the Market Rate Apartments.

(6) Referral to the OSAHC. If the Developer plans to construct Affordable Housing Rental Apartments, the Planning Board shall refer the plan to the OSAHC for its review and recommendation.

(7) Recommendation of the OSAHC. Upon receipt of a referral from the Planning Board, the OSAHC shall review the Affordable Housing Plan. Upon completion of its review, the OSAHC shall make a recommendation to the Planning Board that the Plan be: (i) denied; (ii) approved; or (iii) approved with modifications to the Plan to be required by the Planning Board. If the OSAHC recommends denial or approval, the recommendation of the OSAHC shall be in writing and shall contain an explanation of the basis of the recommendation. The OSAHC shall issue its written recommendation within thirty (30) days of the referral to the OSAHC by the Planning Board or, if additional documentation or information is required by the OSAHC to make its recommendation, within thirty (30) days of submission of all required documentation or information to the OSAHC. If the OSAHC requires additional time to conduct its review, it may request such additional time from the Planning Board. Unless the OSAHC requests and is granted additional time for its review, in the event the OSAHC fails to act within the thirty (30) day period (or within any extended period), the Planning Board may take action on the Affordable Housing Plan without the recommendation of the OSAHC.

(8) Approval of final Affordable Housing Plan. If, after receiving the recommendation of the OSAHC, and advice from the Attorney for the Planning Board, the Planning Board approves the Affordable Housing Plan before it, a copy of the final Affordable Housing Plan shall be filed with the Planning Board Clerk, within five (5) business days of the Planning Board's approval of the application. A copy of the Affordable Housing Plan (Final) shall be provided to the Zoning Enforcement Officer to ensure compliance with the terms of the Affordable Housing plan approved by the Planning Board. A copy of the Affordable Housing Plan (Final) shall also be provided to the OSAHC.

(9) Notation on Approved Site Plans and Plat. If Affordable Housing Rental Apartments will be constructed, the Planning Board shall require the Developer to include a notation on the final subdivision plat, and site plan, if any, which makes clear that the project is subject to certain affordable housing conditions and those conditions shall be set forth as notes on the map or plat. The notation shall also make reference to the final Affordable Housing Plan.

(10) Declaration for Affordable Housing Rental Apartments. The Developer shall prepare for review by the Attorney for the Planning Board a Declaration setting the requirements of the final Affordable Housing Plan. The Declaration shall provide:

(a) The Developer will require the Lessee(s) to use the Affordable Housing Rental Apartment(s) as the Primary Place of Residence for the Lessee(s) and his/her family and shall submit to the Town or its Designee on the date of rental, and thereafter from time to time as requested by the Town or its Designee, a sworn certification stating that the Lessee and his/her family use the Affordable Housing Rental Apartment(s) as their Primary Place of Residence. If the Lessee(s) is not in compliance, the Affordable Housing Rental Apartment shall be vacated.

(b) The lease shall provide that, if the Lessee who occupies the Affordable Housing Rental Apartment as a Primary Place of Residence dies, at least one heir, legatee or other person occupying the apartment before the death and having a household income which does not exceed that to be eligible for an Affordable Housing Rental Apartment, must occupy the Affordable Housing Rental Apartment as a Primary Place of Residence. If the person(s) occupying the apartment is not in compliance, the apartment shall be vacated.

(c) The lease shall provide that subleasing the Affordable Housing Rental Unit is prohibited, except the Landlord may waive in writing for a temporary period of up to one (1) year the prohibition against subleasing an Affordable Housing Rental Apartment for good cause, including but not limited to a temporary job transfer, medical care needs for the Lessee or family member requiring a temporary move.

(d) The lease shall provide that if such waiver is granted in writing by the Landlord, the allowable rent that the Lessee(s) may charge during the temporary rental or subleasing period shall be the same rent as paid by the Lessee(s).

(e) The Affordable Housing Rental Apartment(s) shall remain as such in perpetuity, except in the event of a Foreclosure Event or as otherwise provided, and subject to the restrictions on occupancy, rental and resale.

(f) The right to enforce the terms, covenants, agreements, conditions and restrictions against the Landlord shall belong to the Town, and against the Lessee(s) of the Affordable Housing Rental Apartment(s) shall belong to the Town and the Landlord. In the event of any violation or threatened violation of any of the terms, covenants, agreements, conditions and restrictions provided for in the Declaration, the Town and/or the Landlord will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. In the event legal redress is sought, the prevailing party shall recover the reasonable fees of its attorney and costs. These remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Town and/or the Landlord may be lawfully entitled in case of any breach, or a threatened breach, of any provision of the Declaration. Failure to insist in any one or more cases upon strict performance of any of the terms, covenants, agreements, conditions and restrictions in the Declaration, or to exercise any remedy, shall not be construed as a waiver or a relinquishment for the future for such terms, covenants, agreements, conditions, restrictions or remedies. The Town Board, after public hearing, and the Landlord, acting together, may waive, in whole or in part, the application of any terms, covenants, agreements, conditions and restrictions in the Declaration that apply to any or all of the Affordable Housing Rental Apartment(s). Such waiver must be by written instrument signed by a duly authorized representative of both the Town and Landlord.

(11) Recording of Declaration. After approval by the Attorney for the Planning Board, the Developer shall record, within fifteen (15) days and at its own expense, the Declaration in the land records in the Dutchess County Clerk's Office, with respect to each parcel which will have an Affordable Housing Rental Building. The Developer will provide to the Attorney for the Planning Board, the Planning Board Clerk, and the Designee, a copy of such recorded Declaration, within fifteen (15) days of filing, showing the receipt stamp of the Dutchess County Clerk.

(12) Other procedures prescribed by the Town Board. The Town Board shall prescribe such other procedures and requirements as it deems necessary for the submission and approval of the Affordable Housing Plan by local law or resolution after public hearing, as advised by the Attorney for the Town.

O. DETERMINING ELIGIBILITY FOR AND RENT FOR INITIAL LEASE AND RENEWALS OF AFFORDABLE HOUSING RENTAL APARTMENTS.

(1) Selection of Lessees. The Landlord shall use the Selection Priorities in §125-63I(3) in determining to whom to rent the Affordable Housing Rental Apartment(s) after consulting with the Designee and, if the Designee maintains an eligibility list for apartments, the Landlord shall make a selection from the top three (3) from such eligibility list.

(2) Calculating permissible rent. Maximum monthly rent, including utilities (such as heat, hot water and electric), shall be set by the Town Board from time to time by resolution after public hearing, after consultation with the OSAHC and Planning Board for each type of rental unit (studio, one-bedroom, two-bedroom, etc.), for each household size, and shall be amended by the Town Board from time to time by resolution after public hearing, after review of relevant information that may be provided by federal, state and county housing departments, developers and the OSAHC and Planning Board. Rent for an Affordable Housing Rental Apartment shall include an estimated cost for utilities and shall not exceed thirty percent (30%) of the annual gross family income allowed for such unit. Maximum rent shall be set in such a manner that the eligible households will have sufficient income to qualify to rent such units.

(3) Lease terms and renewal. Persons seeking to rent Affordable Housing Rental Apartments shall, if eligible and selected for occupancy, sign leases for an initial term of one (1) year. As long as the household remains eligible and has complied with the terms of the lease, the household shall be offered a one-year renewal every year. If at the time of renewal the household's annual gross income exceeds the maximum income limit as set by the Town Board, such household shall be offered a Market Rate Apartment in the Affordable Housing Rental Building or Buildings, if available. If no such apartment is available at a rental price that the household can afford, the household may renew the lease at the affordable housing rental rate for one more year, subject to the condition that should a Market Rate Apartment become available, the household shall be required to move to such unit. At the end of the lease for such additional year, the household shall have no further right to reside in the Affordable Housing Rental Apartment at the restricted Affordable Housing Rental Apartment rent. At that time, the Landlord shall have the option of increasing the rent of the Affordable Housing Rental Apartment to a market rate, provided that the Landlord makes a comparable apartment available to another eligible household at the restricted Affordable Housing Rental Apartment rate.

(4) Town Board Review. All lease terms shall be reviewed and approved periodically by the Town Board in consultation with the OSAHC and Planning Board.

(5) Additional Criteria and Procedures. The Town Board shall prescribe such additional procedures and criteria, by local law or resolution after public hearing, for the lease and renewals of Affordable Housing Rental Apartments as in its discretion it determines appropriate after consultation with the Planning Board and the OSAHC.

P. MAINTENANCE, UPKEEP AND REPAIRS.

Satisfactory maintenance. Multifamily Dwellings containing Affordable Housing Rental Apartments shall be maintained in a clean and attractive manner. Repairs for normal wear and tear shall be made promptly by the Landlord after receipt of notice from the Lessee. All Affordable Housing Rental Apartments shall be maintained at least at the original builder's specifications level. Neither a Landlord nor a Lessee shall make any improvements which require a building permit without prior written permission, not to be withheld unreasonably, from the Town Board itself or by the Town Board upon recommendation by the Designee.

Q. DEED FOR INITIAL SALE AND RESALE OF AFFORDABLE HOUSING RENTAL BUILDING.

(1) Deed Restrictions. The initial deed for the Affordable Housing Rental Building and any subsequent deeds or instruments used to transfer title to such Affordable Housing Rental Building shall include a provision indicating that the building shall remain an Affordable Housing Rental Building in perpetuity, except for a Foreclosure Event or as otherwise provided, and subject to the restrictions on occupancy, rental and resale, as specified above in §125-63N(10).

(2) Release of Restrictions Upon Foreclosure. Notwithstanding anything contained in the Declaration to the contrary, the designation of a building as an Affordable Housing Rental Building shall not survive a judgment of foreclosure, the issuance of a deed in lieu of foreclosure, the exercise of a trustee's power of sale, or the equivalent of any of the foregoing, obtained and/or exercised by an institutional lender holding a mortgage or deed of trust with respect to such building. Upon the occurrence of any of the foregoing events whereby the ownership of the Affordable Housing Rental Building is divested from such a mortgagor or trustor, such Affordable Housing Rental Building shall be deemed automatically released as an Affordable Housing Rental Building, and all of the restrictions thereon, including, but not limited to, those of use, ownership, transfer, pricing, and enjoyment, shall be deemed and become void and of no force and effect automatically and without further action on the part of such mortgagee or its transferee. Upon written request, the Town shall execute any instrument, by its duly authorized officer or agent, in recordable form, and any other documents, as shall be reasonably requested by such mortgagee or its transferee in order to evidence the release of such building as an Affordable Housing Rental Building.

R. SALE OF AFFORDABLE HOUSING RENTAL BUILDING.

(1) Proper Maintenance. At the time an Affordable Housing Rental Building is offered for sale, the Town Board may determine whether the Affordable Housing Rental Apartments have been properly maintained and may require the owner to return such Units to their original specifications and present such Units in a clean and attractive manner. The Affordable Housing Rental Building may not be sold until such work is done.

(2) Sales Effort. An owner of an Affordable Housing Rental Building who wishes to sell shall find a buyer who will keep the building as an Affordable Housing Rental Building.

S. TAX ASSESSMENT.

The Town Assessor shall consider the limited resale value of Affordable Housing Sales Units and Affordable Housing Rental Buildings when determining the appropriate assessment on such units.

T. INCORPORATION OF CONDITIONS OF APPROVAL.

Any special permit, site plan or subdivision approval involving the creation of affordable housing under this Chapter shall include specific conditions referencing the requirements of this Chapter.

U. ADMINISTRATION.

The Town Board shall appoint an Affordable Housing Committee to assist in the administration of the Affordable Housing Program. The Town Board may also hire staff or contract with Dutchess County or a qualified not-for-profit organization, for-profit entity, government agency, or private consultant to administer all or a portion of the Affordable Housing Program under the direction and oversight of the Town Board and the OSAHC. The responsibilities and duties of the OSAHC or the Designee shall include, but shall not necessarily be limited to, the following:

- (1) Reviewing preliminary affordable housing plans involving the construction of Affordable Housing Units, and making recommendations to the Planning Board.
- (2) Establishing procedures for selecting Affordable Housing Applicants that have equal priority.
- (3) Assisting the Town Board/Planning Board in determining and reviewing applications to build Affordable Housing Units.
- (4) Recommending annual maximum income limits; rental prices; resale values.
- (5) Reviewing certification from owners and lessors of rental units certifying that units are occupied by eligible families.
- (6) Reviewing the available funds in the Affordable Housing Account.
- (7) Reviewing all deed restrictions for Affordable Housing Units.
- (8) Reviewing all lease terms for Affordable Housing Units.
- (9) Such other and additional responsibilities and duties as are specified in additional regulations and procedures established by the Town Board.
- (10) Consulting with, and providing recommendations to, the Town Board in enacting all additional local laws and/or resolutions that are referred to in this Article.
- (11) Advise the Town Board on the use of the funds in the Affordable Housing Account.
- (12) Advise the Town Board on the purchase or development of residential housing to be used as Affordable Housing Units.
- (13) Advise the Town Board on creative approaches to address the Town's affordable housing needs and assist with the implementation of such approaches, such as a down-payment assistance program.

V. PENALTIES.

Any violations of the provisions of this Article or any plans approved hereunder may be addressed by the Town pursuant to the provisions set forth in Article X of this Chapter.

SECTION 3. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing by the Town with the Secretary of State of the State of New York. However, construction of Units on a parcel or adjacent to a parcel where the owner of Units to be constructed after the effective date of this Local Law has entered into an arrangement prior to the effective date of this Local Law with the Town to subsidize the provision of Affordable Housing Sales Units and/or Affordable Housing Rental Apartments, the Developer Affordable Housing In Lieu Of Fee shall only apply to the extent the total of such fees exceeds the amount of the subsidy.

SECTION 4. AUTHORITY

This Local Law is enacted pursuant to Articles 2 and 3 of the Municipal Home Rule Law and pursuant to the authority granted in Article 16 of the New York State Town Law.

SECTION 5. TOWN CONSTRUCTION

Nothing in this Local Law shall apply to construction by the Town or sponsored by the Town.

6. SEVERABILITY

If any provision of this Local Law or its applications to any person or circumstances is held invalid, the invalidity does not affect other provisions of this Local Law which can be given effect without the invalid provision of application, and to this end, provisions of this Local Law are severable.

SECTION 6. REPEAL OF EXISTING PROVISIONS

This Local Law shall repeal, and replace in its entirety, §125-63 of the Town Code of the Town of Rhinebeck entitled "Affordable Housing."