APPENDIX A
Draft Ordinance

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

WHEREAS, the New Jersey Council on Affordable Housing (“COAH”) is the State administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in New Jersey; and

WHEREAS, COAH’s Third Round Substantive Rules (N.J.A.C.5:94-1 et seq.) implement a “growth share” approach to affordable housing production which requires affordable housing to be produced in conjunction with market-rate residential and nonresidential growth and development within the municipality of Jersey City; and

WHEREAS, Jersey City desires to implement the “growth share” policies promulgated by COAH in its Third Round Substantive Rules in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households through COAH’s third round, which extends from 1999 to 2014.

BE IT ORDAINED AND ESTABLISHED BY THE CITY COUNCIL OF JERSEY CITY that the Land Use Ordinance of Jersey City be and is hereby amended as follows:

ARTICLE ___ Growth Share Ordinance

Section 1.
Purpose and Intent

The purpose of this article is to promote the public health, safety, and welfare by promoting housing of high quality located in neighborhoods throughout the community for households of all income levels, ages and sizes in order to meet the City’s goal of preserving and promoting a culturally and economically diverse population in the City. Based upon the review and consideration of reports and analyses of the housing situation in Jersey City, it is apparent that the diversity of the City’s housing stock has declined as a result of increasing property values and housing costs and a reduction in the availability of affordable housing; that the redevelopment of many sites throughout the City has in many cases contributed to property value increases that further the difficulty of providing affordable housing in the City; and that, with the exception of housing developed in partnership with the City, the privately developed new residential housing that is being built in the City generally is not
affordable to low- and moderate-income households. The City recognizes the need to provide affordable housing to low- and moderate-income households in order to maintain a diverse population and to provide housing for those who live or work in the City.

Without intervention, the trend toward increasing housing prices will result in an inadequate supply of affordable housing for City residents and local employees, which will have a negative impact upon the ability of local employers to maintain an adequate local work force and will otherwise be detrimental to the public health, safety, and welfare of the City and its residents. Since the remaining land appropriate for new residential development within the City is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to low- and moderate-income households and working families.

The intent and preference of this Article is for the provision of permanently affordable housing units constructed on-site and privately produced, owned, and managed.

Definitions. For the purpose of administering this Article:

“AFFORDABLE HOUSING” means decent, safe, and sanitary housing that is affordable to Eligible Households as defined below. The cost of such housing shall not exceed 30% of the Qualified Household’s gross income (the total income of all adults over eighteen years of age in said household).

“APPLICANT” means any Developer who applies to the ________ to receive approval of a “Covered Development” pursuant to this Article.

“AREA MEDIAN INCOME” means the median level for Jersey City, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.

“CONDOMINIUM CONVERSION” has the meaning established by: [ ]

“COOPERATIVE CONVERSION” has the meaning established by: [ ]

“COVERED DEVELOPMENT” means the residential development, substantial rehabilitation, condominium conversion or cooperative conversion of ten or more housing units on contiguous or adjacent sites, or continuing over or across one or more streets, ways or easements owned, controlled (including through option or lease) or sponsored by a Developer or any of its affiliates within Jersey City. All developments, including phased developments, shall be included.

“DEPARTMENT” means the Jersey City Department of ________________ or any successor agency.

“DEVELOPER” means any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops Housing Units, but does not include any governmental entity.
“ELIGIBLE HOUSEHOLD” means, in respect of any Housing Unit, a household whose total income does not exceed the percentage of Area Median Income specified in Section ___ of this Article.

INCLUSIONARY HOUSING PLAN has the meaning set forth in Section___ of this Article.

MARKET RATE UNITS means all Housing Units in a Covered Development that are not Affordable Housing Units as defined herein.

SUBSTANTIAL REHABILITATION means the reconstruction, enlargement, installation, repair, alteration, improvement or renovation of a building, structure or portion thereof to be used in whole or in part for Housing Units requiring a permit issued by the City that results in a change of occupancy. Any rehabilitation in a building or structure performed within an 18 month period will be considered the same project for the purposes of this Article. The rehabilitation of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or act of God, may be performed; provided, however, no rehabilitation nor repair shall increase the density, bulk or size of any such building or structure which previously existed prior to the damage or destruction thereof without triggering the requirements of this Article.

Section 2.
Applicability

The provisions of this Article shall apply to all developments that result in or contain ten or more residential housing units. The types of development subject to the provisions of this Article include, without limitation, the following:

a. A development that is new residential construction or new mixed-use construction with a residential component.

b. A development that is the renovation or reconstruction of an existing multiple family residential structure that contains at least ten residential units.

c. A development that will change the use of an existing building from non-residential to residential.

d. A development that includes the conversion of rental property to condominium property.

Section 3.
Exemptions

Developments that receive preliminary or final approval from the Planning Board prior to the effective date of this ordinance.
Section 4.

Residential Growth Share Provisions

A. General Requirement. Except as otherwise specifically provided in Section 7 of this Article, 25 percent of the total number of residential units within any covered development shall be affordable housing units and shall be located on the site of the covered development.

B. Calculation. To calculate the number of affordable housing units required in a covered development, the total number of proposed units shall be multiplied by 25 percent. If the product includes a fraction, a fraction of .5 or more shall be rounded up, and a fraction of less than .5 shall be rounded down.

C. Cash Payment In-Lieu of Housing Units

1. General Applicability. The applicant may make a cash payment in lieu of constructing some or all of the required affordable housing units if, and only if, the covered development is a single-family detached development that has no more than 9 units.

2. Amount and Use of Cash in Lieu. The per unit payment amount shall be determined by the City Council and set forth in the City's annual fee resolution. The per unit amount shall be based on an estimate of the cost of providing an affordable housing unit and shall be no less than $150,000. All cash payments received pursuant to this Article shall be deposited directly into the _________Fund for purposes authorized under Section ___________ of this Code.

3. Calculation. For purposes of determining the total in lieu payment amount, the per unit amount established by the City pursuant to subsection C paragraph 2 of this Section shall be multiplied by 25 percent of the number of units proposed in the covered development. For purposes of such calculation, if 25 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more but not all of the required units, the calculation shall be prorated as appropriate.

Section 5.

Compliance Procedures

A. No Evasion. It is the intent of this Article to prevent evasion of its requirements by the artificial subdivision, separation or phasing of development through the manipulation of design or implementation schedule. Concurrently with the initial filing of the first of any application for site approval, building permits or other governmental approval required for any Residential Development, Substantial Rehabilitation, or Condominium Conversion, the Applicant shall file with the Department a sworn affidavit that the project is not part of any larger development and has not been artificially subdivided, separated or developed apart
from that larger development through the manipulation of the design or implementation scheduled in order to evade the provision of this Section. No site plan approval or building permits will be issued if the Department determines that such evasion has occurred.

B. Application. For all covered developments, the applicant shall file an application for approval on a form provided and required by the Department. The application shall require, and the applicant shall provide, among other things, general information about the nature and scope of the covered development, as well as other documents and information as the Department may require. The application shall include, and the applicant shall provide, the Inclusionary Housing Plan, enumerated in subsection C of this section.

C. Inclusionary Housing Plan. As part of the approval of a covered development project, the applicant shall present to the Department an inclusionary housing plan that outlines and specifies the covered development's compliance with each of the applicable requirements of this Article. The plan shall be subject to approval by the City and shall be incorporated into the development agreement between the applicant and the City as required pursuant to subsection D of this section. The plan shall specifically contain, at a minimum, the following information regarding the covered development:

1. A general description of the development, including whether the development will contain rental units or individually owned units, or both.

2. The total number of market rate units and affordable units in the development.

3. The number of bedrooms in each market rate unit and each affordable unit.

4. The square footage of each market rate unit and each affordable unit.

5. The location within any multiple-family residential structure and any single-family residential development of each market rate unit and each affordable unit.

6. The anticipated prices and rents for each market rate unit and each affordable housing unit.

7. The phasing and construction schedule for each market rate unit and each affordable unit.

8. Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the development and each of its individual units.

9. A description of the marketing plan that the applicant proposes to utilize and implement to promote the sale or rental of the affordable units within the development.

10. A description of the specific efforts that the applicant will undertake to provide affordable housing units to households pursuant to the priorities set forth in Section 10 of this Article.
D. **Agreement.** Prior to issuance of preliminary site plan approval or, if not applicable, any building permit for any covered development (or portion thereof), the applicant shall have entered into an agreement with the City, acting through _________________, regarding the specific requirements and restrictions on the covered development with respect to affordable housing consistent with this Article. The applicant shall agree to execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable housing units in accordance with this Article. The agreement shall set forth the commitments and obligations of the City and the applicant, and shall incorporate, among other documents, the Inclusionary Housing Plan. The __________ can establish regulation requirements for the marketing plan for covered developments, which would be incorporated to any such Agreement. The Agreement may be modified by mutual consent of the applicant and the __________, as long as the modified agreement remains in conformity with this Article.

Section 6. **Development Cost Off-Sets.**

An applicant that fully complies with the requirements of this Article shall, upon written request, receive from the City, with regard to the affordable housing units in the covered development, a waiver of all of the otherwise applicable application fees, building permit fees, plan review fees, inspection fees, sewer and water tap-on fees, demolition permit fees, the demolition tax, and such other development fees and costs which may be imposed by the City. To the extent that there are impact fees attributable to the affordable housing units, those impact fees shall be paid from funds in the Affordable Housing Trust Fund.

Section 7. **General Provisions for Constructing Affordable Units**

Affordable housing units being constructed on-site or off-site shall meet the requirements of Jersey City’s affordable housing ordinance, and shall be in conformance with COAH’s third round rules at N.J.A.C. 5:94-1 et seq. and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

A. **Location of Affordable Housing Units.** Affordable housing units shall be dispersed among the market rate units throughout the covered development.

B. **Phasing of Construction.** The affordable housing plan and the development agreement shall include a phasing plan that provides for the timely and integrated development of the affordable housing units as the covered development project is built out. The phasing plan shall provide for the development of the affordable housing units concurrently with the market rate units. Building permits shall be issued for the covered development project based upon the phasing plan. The phasing plan may be adjusted when necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the market rate and the affordable housing.
units. The phasing plan shall also provide that the affordable housing units shall not be the last units to be built in any covered development.

C. **Exterior Appearance.** The exterior appearance of the affordable housing units in any covered development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable housing units as for market rate units.

D. **Interior Appearance and Finishes.** Affordable housing units may differ from market rate units with regard to interior finishes and gross floor area, provided that:

1. The bedroom mix of affordable units shall be in equal proportion to the bedroom mix of the market rate units.

2. The differences between the affordable housing units and the market rate units shall not include improvements related to energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.

3. The gross floor area for the affordable housing units shall be no less than the lesser of (a) 75 percent of the gross floor area of market rate units with a comparable number of bedrooms or (b) the minimum size requirements outlined in the table below.

<table>
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<th>Unit Type</th>
<th>Number of Bedrooms</th>
<th>Attached</th>
<th>Detached Single Family</th>
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<tr>
<td>Studio</td>
<td>1</td>
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<td>--</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>625 square feet</td>
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<td>3</td>
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<tr>
<td></td>
<td>4</td>
<td>1,175 square feet</td>
<td>1,350 square feet</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>1,350 square feet</td>
<td>1,475 square feet</td>
</tr>
</tbody>
</table>

**Section 8. Alternatives to On-Site Affordable Housing Units.**

**Applicability.** In lieu of the provision of affordable housing on the site of the covered development as otherwise required by Section 4 of this Article, the City Council, following consideration by and a recommendation from the Housing Authority, may approve one or both of the two alternatives for affordable housing as set forth in this Section. Utilization and the requirements of the provisions of this Section shall be specifically set forth in the affordable housing development agreement for the covered development. This Section shall not be utilized unless the applicant demonstrates to the satisfaction of the City Council that the alternate means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the otherwise applicable on site requirements of this Article.
Any one or both of the following affordable housing alternatives may be utilized in lieu of all or part of the otherwise applicable on site requirements of Section 4 of this Article:

(1) A dedication of land to the Jersey City Housing Authority or the Authority's not-for-profit designee.

(2) The provision of the equivalent of 25 percent of the total market-rate residential units of affordable housing units at another site within the City.

Section 9.
Income Levels for Affordable Housing Units.

A. For-Sale Affordable Housing Units. In covered development projects that contain for-sale units, at least one affordable housing unit and no less than 25 percent of the affordable housing units shall be sold to households with incomes below 50% of the area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 50 percent of area median income. 75 percent of the affordable housing units shall be sold to households with incomes between 50-80 percent of the area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 80 percent of area median income. The owner shall execute and record any documents required by Section 5(D) of this Article to ensure compliance with this Subsection.

B. Rental of Affordable Housing Units. In covered development projects that contain rental units, no less than 75 percent of the affordable housing units shall be rented or leased to households with gross incomes below 50 percent of the Jersey City area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 45 percent of area median income; 25 percent of the affordable housing units shall be rented or leased to households with gross incomes between 50-80 percent of the Jersey City area median income at a price, as determined pursuant to Subsection (C) of this Section, that, on average, is affordable to a household with an annual income that is 65 percent of area median income. If fewer than three affordable units will be provided, such units shall be rented or leased to low-income households at a price, as determined pursuant to Subsection (C) of this Section, that does not exceed what is affordable to a household with an annual income that is 65 percent of area median income.

C. Pricing Schedule. The Department shall publish a pricing schedule of rental and sales prices for affordable housing units in accordance with the following provisions, which schedule shall be updated annually:

(1) In calculating the rental and sales prices of inclusionary units, the following relationship between unit size and household size shall apply:
Efficiency units: 1-person household
One-bedroom units: 2-person household
Two-bedroom units: 3-person household
Three-bedroom units: 4-person households
Four-bedroom and larger units: 5-person households

(2) With respect to affordable units offered for sale, prices will be calculated on the basis of:

   (a) An available fixed-rate thirty-year mortgage, consistent with the average rate published from time to time by Freddie Mac;
   
   (b) A down payment of no more than 5 percent of the purchase price;
   
   (c) A calculation of property taxes;
   
   (d) A calculation of homeowner insurance; and
   
   (e) A calculation of condominium or homeowner association fees.

(3) With respect to affordable units offered for rent, rental prices will be calculated on the basis of 30 percent of gross monthly income, adjusted for household size, minus a utility allowance (excluding telephone service).

Section 10. Eligibility of Households.

Eligibility for rental or purchase of Affordable Housing Units shall be based on household size and income. The rental of Affordable Housing Units shall be restricted to occupancy by eligible households whose income does not exceed 80% of the Area Median Income. The owner-occupied Affordable Housing Units shall be restricted to occupancy by eligible households whose income does not exceed 80% of the Area Median Income.

For-Sale Affordable Housing Units. Only eligible households shall be permitted to purchase an affordable housing unit for purposes of this Article. Priority will be given first to households who live in Jersey City or households in which the head of the household or the spouse or domestic partner works in Jersey City. At the applicant’s request, the City or its not-for-profit designee shall select eligible households for the affordable housing units at an additional charge to the applicant at an amount to be determined by the City. If the gross income of the eligible household increases above the eligible income levels provided in section 10 of this Article, the eligible household may continue to own the affordable housing unit. Subleasing an affordable unit shall not be permitted without the express written consent of the Director. The owner shall execute and record any documents required by Section 5(D) of this Article to ensure compliance with this Subsection.

Rental Affordable Housing Units. Only eligible households shall be permitted to rent an affordable housing unit for purpose of this Article. Priority will be given first to households who live in Jersey City or households in which the head of the household or the spouse or
domestic partner works in Jersey City. At the applicant’s request, the City or its not-for-profit designee shall select eligible households for the affordable housing units at an additional charge to the applicant at an amount to be determined by the City. If the gross income of the eligible household increases above the eligible income levels provided in Section I of this Article, during the lease period, the eligible household may continue to lease the unit and may renew the lease as well. The owner shall execute and record any documents required by Section 5(D) of this Article to ensure compliance with this Subsection.

Section 11. Marketing of the Affordable Housing Units.

At the applicant’s request, the City shall assist the applicant in marketing the affordable housing units to eligible households for an additional charge to be determined by the City.

Section 12. Period of Affordability.

A. Sale of Affordable Housing Units. In covered developments that contain for-sale units, affordable housing units shall be resold to low- and moderate-income households in perpetuity or as long as permissible by law. The owner shall execute and record any documents required by Section 5(D) of this Article to ensure compliance with this Subsection.

B. Rental of Affordable Housing Units. In developments that contain rental units, affordable housing units shall be rented to low- and moderate-income households in accordance with Section 10 of this Article in perpetuity from the date of the issuance of the certificate of occupancy for the respective unit. The owner shall execute and record any documents required by Section 5(D) of this Article to ensure compliance with this Subsection.

(1) In the event that the owner of a covered rental development sells the development, the new owner shall be required to continue to provide the affordable housing units in accordance with Section 10 of this Article.

(2) If the owner of a covered rental development converts the development to condominiums, the development shall be subject to the for-sale development requirements of Subsection 9(A) of this Article.

(3) The Housing Authority or its designee shall have the right, but not the obligation, to purchase any for-sale affordable housing units in the development pursuant to Section 13 of this Article.

Section 13. Affordability Controls.

A. For-Sale Affordable Housing Units.
(1) Housing Authority Purchases. The Housing Authority, or a not-for-profit agency designated by the Housing Authority, shall have the pre-emptive option and right, but not an obligation, to purchase each of the for-sale affordable housing units prior to any sale of any such unit. If the City, or the designated not-for-profit, exercises the option and purchases the affordable housing unit, the affordable housing unit shall be subject to such documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable housing units in accordance with this Article.

(2) Private Party Purchases. In all other sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by Section 5(D) of this Article to ensure the provision and continuous maintenance of the affordable housing units. Such documentation shall include the provisions of this Article and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by an eligible household.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall permanently maintain the affordability of such affordable housing units for eligible households.

B. Rental Affordable Housing Units. For covered rental developments that contain affordable housing units, the owner of the development shall execute and record such documentation as required by Section 5(D) of this Article to ensure the provision and continuous maintenance of the affordable housing units. Such documentation shall include the provisions of this Article and shall provide, at a minimum, each of the following:

(1) The affordable housing units must be leased and occupied by eligible households.

(2) The affordable housing units must be leased at rent levels affordable to eligible households in perpetuity from the date of the initial certificate of occupancy.

(3) Preference for the affordable housing units shall be given to eligible households pursuant to the priorities set forth in Section 10 of this Article.

(4) Subleasing of affordable units shall not be permitted.