

Name: Avalon at Bedford Center  
MHFA No. 05-006-N  
Execution Copy



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**AMENDED AND RESTATED REGULATORY AND DISPOSITION AGREEMENT**

This Amended and Restated Regulatory Disposition Agreement (this "Agreement") is made as of this 1<sup>st</sup> day of June, 2012, by and between the MASSACHUSETTS HOUSING FINANCE AGENCY (the "Project Administrator"), as project administrator acting on behalf of the Department of Housing and Community Development ("DHCD"), and AVALON AT GREAT MEADOW, INC., and its successors and assigns ("Developer") and is intended to amend and restate (i) the Regulatory Agreement among the Project Administrator and Developer dated June 4, 2007, and recorded in the Middlesex (S.D.) County Registry of Deeds ("Registry") in Book 49556, Page 43 and filed with the Middlesex (S.D.) County Registry District of the Land Court (the "Land Court") as Document No. 1445162; and (ii) the Disposition Agreement by and between the Developer and the Project Administrator dated June 4, 2007, and recorded at the Registry in Book 49555, Page 564 and filed with the Land Court as Document No. 1445160 (collectively, the "Prior Agreement").

**RECITALS**

WHEREAS, the Developer has constructed a housing development known as Avalon at Bedford Center located at 200 Avalon Drive, Bedford Massachusetts (the "Municipality"), more particularly described in Exhibit A attached hereto and made a part hereof (the "Development"); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (the "Act") and pursuant thereto has issued its Comprehensive Permit Guidelines effective February 22, 2008 (the "Guidelines");

WHEREAS, the Massachusetts Housing Finance Agency serves as project administrator pursuant to Guidelines and in accordance with the terms and provisions hereof; and

WHEREAS, the Developer has received a comprehensive permit by the Town of Bedford recorded at the Registry in Book 44192, Page 1 (the "Comprehensive Permit"); and

WHEREAS, pursuant to the Comprehensive Permit, the Regulations, and the Guidelines, the Development consists of a total of 139 rental units, of which 25 percent (35 units) (the "Affordable Units") are being be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and

WHEREAS, the parties intend that this Agreement shall serve as a "Use Restriction" as defined in and required by Section 56.05(13) of the Regulations; and

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WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Project Administrator and the Developer hereby agree as follows:

### DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Accountant's Annual Determination shall have the meaning given such term in Section 6(f) hereof.

Accumulated and Unpaid Distribution Amounts shall have the meaning given such term in Section 6(c) hereof.

Act shall have the meaning given such term in the Recitals hereof.

Adjusted Family Income means the anticipated annual income of a person (together with the anticipated annual income of all persons who intend to reside with such person in one residential unit), as calculated in a manner consistent with determinations of lower income families under Section 8 of the United States Housing Act of 1937 (or, if such program is terminated, with such program as is in effect immediately before such termination). Determinations of income shall include adjustments for family size, and Section 7872(g) of the Code shall not apply to such determinations.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines.

Affordable Units shall have the meaning set forth in the Recitals above.

Annual Excess Revenues shall have the meaning given such term in Section 6(e) hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations).

Annual Income Limit shall mean the Annual Income (adjusted for household size) not in excess of eighty percent (80%) of the Area Median Income for the Area.

Annual Low Income Rental Ceiling shall mean an amount equal to thirty percent (30%) of the Annual Income Limit.

Area shall mean the Boston Metropolitan Statistical Area as designated by HUD.

Area Median Income shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof as the same may be amended from time to time.

Current Distribution Amounts shall have the meaning given such term in Section 6(c) hereof.

Developer's Equity shall mean (i) the appraised as-built value of the Development less (ii) the sum of secured debt on the Development plus public equity, whether structured as a grant or loan.

Developer Parties shall have the meaning given such term in Section 6(b) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues shall have the meaning given such term in Section 6(b) hereof..

Distribution Payments shall have the meaning given such term in Section 6(b) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement existing after the expiration of any applicable notice and cure periods.

Excess Revenues Account shall mean the account established under Section 6(e) hereof.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program, if any, providing rental or other subsidy to the Development.

HUD shall mean the United States Department of Housing and Urban Development.

Low or Moderate Income Persons or Families shall mean persons or Families whose annual income is equal to or less than fifty percent (50%) of the Area Median Income adjusted for family size, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit or any applicable Housing Subsidy Program.

Low or Moderate Income Tenants shall mean Low or Moderate-Income Persons or Families who occupy the Affordable Units.

Maximum Annual Distributable Amounts shall have the meaning given such term in Section 6(c) hereof.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

Term shall have the meaning set forth in Section 19 hereof.

### USE RESTRICTION

2. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. The foregoing provisions shall not relieve Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, the Project Administrator shall have no right or obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including tenant-paid heat, hot water and electricity) for any such unit (the "Annual Rent") shall not exceed the Annual Low Income Rental Ceiling, adjusted for household size, assuming that an Affordable Unit which does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided above.

(c) For purposes of satisfying the requirement that the Affordable Units shall be occupied by Low or Moderate Income Tenants hereunder, no Low or Moderate Income Tenant shall be denied continued occupancy because, after admission, the Low Moderate Income Tenant's Annual Income exceeds fifty percent (50%) of Area Median Income (provided, however, that no Low or Moderate Income Tenant shall continue to be counted as a Low or Moderate Income Tenant as of any date upon which such tenant's Annual Income exceeds one hundred forty percent (140%) of the level at which a tenant may be qualified as a Low or Moderate Income Tenant); provided, however, that the Developer shall maintain the requirements of this Agreement to maintain occupancy of the Affordable Units by Low or Moderate Income Tenants by renting the next available unit or units of comparable or smaller

size to Low or Moderate Income Tenants as needed to achieve compliance with such requirements and, thereupon, as rented to a Low or Moderate Income Tenant such unit or units shall be deemed an Affordable Unit hereunder. Other than as provided in the preceding sentence, any unit shall retain its character as an Affordable Unit occupied by a Low or Moderate Income Tenant until it is reoccupied, at which time whether or not such unit is occupied by a Low or Moderate Income Tenant shall be redetermined under the rules set forth in this paragraph, except that no reoccupancy of an Affordable Unit for a temporary period not to exceed thirty-one (31) days shall be taken into account for this purpose.

(d) If the Annual Income of a Low or Moderate Income Tenant increases, and as a result of such increase, exceeds eighty percent (80%) of Area Median Income but is less than one hundred forty percent (140%) of Area Median Income for such a Low or Moderate Income Tenant, at the expiration of the applicable lease term, such tenant's rent may be increased to the higher of the total rental that may be required under any applicable Housing Subsidy Program (including both the tenant share and the subsidized portion) or thirty percent (30%) of such tenant's Annual Income. In the event that a Low or Moderate-Income Tenant's Annual Income exceeds one hundred forty percent (140%) of Area Median Income, the Developer may charge the Low or Moderate-Income Tenant a market rate for the dwelling unit.

(e) Intentionally Omitted.

(f) Developer shall obtain income certifications satisfactory in form and manner to the Project Administrator at least annually for all Low or Moderate-Income Tenants, or more frequently if required by any applicable Housing Subsidy Program. Said income certifications shall be kept by the management agent for the Development and made available to the Project Administrator upon request. The form of such certification is attached as Appendix D.

(g) Rentals for the Affordable Units may exceed the maximum limits set forth herein if such rentals include payment for services, but only if the charge for such services are consistent with the Regulations and Guidelines. Developer shall notify the Project Administrator on an annual basis of any such services for which additional charges are required.

(h) This Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as the Project Administrator shall require.



## TENANT SELECTION AND OCCUPANCY

3. Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Affirmative Fair Housing Marketing Plan which is incorporated herein by reference with the same force and effect as if set out in this Agreement so long as such Affirmative Fair Housing Marketing Plan is required by the Guidelines.

4. Occupancy agreements for Affordable Units shall be in a form reasonably approved by the Project Administrator (Project Administrator hereby agrees that the form currently used by the Developer is currently acceptable), subject to any requirements of any applicable Housing Subsidy Program, and, unless otherwise approved by the Project Administrator, shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Developer or the Project Administrator; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as Developer or the Project Administrator may direct, he or she will furnish to Developer certification of then current family income, with such documentation as the Project Administrator shall reasonably require; and agrees to such charges as the Project Administrator has previously approved for any facilities and/or services which may be furnished by Developer or others to such resident upon his or her request, in addition to the facilities and services, if any, included in the rentals, as amended from time to time pursuant to Section 2 above.

## EXPIRATION OF RESTRICTIONS - TENANT PROTECTIONS

5. (a) If applicable and upon the expiration of the Term hereof, and if the affordability requirements under the Comprehensive Permit shall expire upon the expiration of the Term, Developer shall deliver a written notice to all Low or Moderate or Income Tenants of such expiration (the "Expiration Notice") at the same time that it shall provide such notice to the Project Administrator. The Expiration Notice shall inform all Low or Moderate or Income Tenants of the tenant protections described in this Section 5.

(b) For a period of one year after the date of expiration ("Year 1") (the date of expiration is hereinafter referred to as the "Expiration Date"), Developer may not increase the rentals payable by any Low or Moderate-Income Tenant on the Expiration Date (a "Protected

Low or Moderate-Income Tenant"), except for rental increases which would have been permitted by the terms and provisions of the applicable Housing Subsidy Program if such Expiration Date had not occurred.

(c) For a period of two years after Year 1 ("CPI Index Period"), the rentals for units occupied by Protected Low or Moderate Income Tenants may not be increased more than once annually by the greater of: (i) the consumer price index (applicable to the area in which the Development is located) times the rental rate in effect as of the Expiration Date; or (ii) such higher amount as the Project Administrator shall approve.

(d) For three (3) years after the CPI Index Period (the "Transition Period"), Developer shall provide Relocation Assistance, as defined herein, for any Protected Low or Moderate-Income Tenant who voluntarily terminates his or her lease during the Transition Period as a result of rental increases. For the purposes hereof, the term "Relocation Assistance" shall mean reasonable assistance in locating a comparable affordable unit, including the payment of any broker's fees and the payment of reasonable moving expenses within a thirty (30) mile radius of the Development.

(e) Upon expiration, Developer agrees to continue to use the form of occupancy agreement for all Protected Low or Moderate-Income Tenants until the expiration of the periods described in (b) and (c), above. Thereafter, Developer may require that all Protected Low or Moderate-Income Tenants enter into the lease form used for tenants in the market-rental units or a lease substantially in the form published by the National Apartment Association or the Greater Boston Real Estate Board, provided that any new occupancy agreement shall provide the Protected Low or Moderate-Income Tenants with the benefits of subsection (d), above.

(f) The provisions of this Section 5 shall survive the termination of any other provisions of this Agreement as a result of expiration until the expiration of the periods described in subsections (b), (c), and (d), above.

(g) Protected Low or Moderate-Income Tenants shall have a right to enforce the protections provided them in this Section 5.

(h) Intentionally Omitted.

(i) The provisions of this Section 5 shall not apply to the Developer or to the Development so long as the Comprehensive Permit is in effect, and the Developer is in compliance with the low-income affordability conditions set forth herein.

#### **LIMITED DIVIDENDS**

6. (a) The Developer covenants and agrees that Distribution Payments made in any fiscal year of the Development shall not exceed the Maximum Annual Distributable Amounts for such fiscal year.

(b) For the purposes hereof, the term "Distribution Payments" shall mean all amounts paid from revenues, income and other receipts of the Development, not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer (herein called "Development Revenues"), which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the "Developer Parties") as (i) profit, (ii) income, or (iii) fees or other expenses which are (A) unrelated to the operation of the Development or (B) in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and provide such services on an arms-length basis. Distributions in connection with the refinancing or with the sale of the Development shall not be deemed a "distribution" for purposes of this Agreement.

(c) For the purposes hereof, the "Maximum Annual Distributable Amounts" for any particular fiscal year shall be defined and determined as follows:

(i) an amount equal to ten percent (10%) of the "Developer's Equity" for such fiscal year and as of the date hereof the Developer's Equity shall be Thirty Three Million Four Hundred Thousand and 00/100 Dollars (\$33,400,000.00), subject to adjustment as provided in (d) below (the "Current Distribution Amounts"); and

(ii) the amount of all Accumulated and Unpaid Distributions calculated as of the first day of such fiscal year.

"Accumulated and Unpaid Distribution Amounts" shall be the aggregate of the Current Distribution Amounts calculated for all prior fiscal years less the Distribution Payments ("Accumulated Distribution Amounts") calculated for each such fiscal year together with simple interest ("Accrued Interest") resulting from such calculation in all prior years computed at five percent (5%) per annum. For the purposes of this calculation, it is assumed any amounts available for distribution in any year shall be fully disbursed.

(d) The Developer's Equity may be adjusted not more than once in any five year period with the first five - year period commencing with the first fiscal year of the Development. Any adjustments shall be made only upon the written request of the Developer and shall be based upon an appraisal prepared by an independent and qualified appraiser selected by the Developer, which appraiser and its proposed scope of work shall be approved by the Project Administrator, which approval shall not be unreasonably withheld or delayed. The costs of such appraisal shall be borne by the Developer. Such appraisal shall be based on the so-called 'investment value' methodology, using assumptions subject to the reasonable approval of the Project Administrator.

Upon completion of an appraisal as provided above, the Developer's Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer's Equity shall be the Developer's Equity commencing with the first day of the month following the date of such appraisal and stay in effect until a subsequent adjustment.



(e) If at the end of any fiscal year, any Development Revenues for such fiscal year shall remain and are in excess of the Maximum Annual Distributable Amounts for such fiscal year, such amount (the "Annual Excess Revenues"), other than those which may be required by any Lender to remain at the Development as a reserve to pay the expenses of the Development, shall be deposited in an escrow account with the Lender (or if the Loan is paid off, with the Project Administrator) designated as the "Excess Revenues Account" and not released except with the prior written consent of the Project Administrator or if required by Lender to avoid a default on the Loan.

The Project Administrator agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held therein, upon the written request of the Developer that:

(i) provide a direct and material benefit to Low or Moderate Tenants; or

(ii) reduce rentals to Low or Moderate Tenants; or

(iii) for any purposes for which the replacement reserve held for the Development may be used and no other funds are available; or

(iv) to extend the affordability of the Development; or

(v) provide relocation and transitional assistance to Low or Moderate Tenants as described in Section 5 hereof.

Upon the expiration of the Term hereof, any balance remaining in the Excess Revenues Account shall be applied as directed by DHCD.

(f) The Developer shall provide the Project Administrator for each fiscal year with a copy of its audited financial statements and provide the Project Administrator with a certificate of an independent auditor preparing such reports a determination (the "Accountant's Annual Determination") of the following for such fiscal year, based on the terms and conditions hereof:

(i) Distribution Amounts;

(ii) Current Distribution Amounts;

(iii) Maximum Annual Distributable Amounts;

(iv) Annual Excess Revenues;

(v) Accumulated and Unpaid Distribution Amounts (including a calculation of Distribution Amounts and Accrued Interest); and

(vi) Development Revenues.

Such Accountant's Annual Determination shall be accompanied by a form completed as set forth in Appendix B hereto.

(g) The Project Administrator shall have thirty (30) days after the delivery of the Accountant's Annual Determination to accept it, to make its objections in writing to the Developer and the accountant, or to request from the Developer and/or accountant additional information regarding it. If the Project Administrator does not object to it or request additional information with respect to it, it shall have been deemed approved by the Project Administrator. If the Project Administrator shall request additional information, then the Developer shall provide the Project Administrator with such additional information as promptly as possible and the Project Administrator shall have an additional thirty (30) days thereafter to review such information and either approve or raise objections to such Accountant's Annual Determination. If no such objections are made within such thirty day (30) period, the Accountant's Annual Determination shall be deemed approved by the Project Administrator.

To the extent that the Project Administrator shall raise any objections to such Accountant's Annual Determination as provided above, then the Developer, and the Project Administrator shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then the Project Administrator may enforce the provisions under this Section by the exercise of any remedies it may have under this Agreement.

(h) If upon the approval of an Accountant's Annual Determination as provided above, such Accountant's Annual Determination shall show that the Distribution Payments for such fiscal year shall be in excess of the Maximum Annual Distributable Amounts for such fiscal year, then upon thirty (30) days written notice from the Project Administrator, the Developer shall cause such excess to be deposited in the Excess Revenue Account from sources other than Development Revenues to the extent not otherwise required by Lender to remain with the Development as provided in subsection (f) above.

If such Accountant's Annual Determination as approved shall show that there are Annual Excess Revenues for such fiscal year which have not been distributed, such amounts shall be applied as provided in subsection (f) above within thirty (30) days after the approval of the Accountant's Annual Determination as set forth in subsection (h) above.

(i) Payment of fees and profits from capital sources for the initial development of the Development to the Developer's related party consultants, partners and legal or beneficial owners of the Development shall be limited to no more than ten percent (10%) of Total Development Costs, net of (i) such fees and profits, and (ii) any working capital or reserves intended for operation of the Development and approved by the Project Administrator. Such ten percent (10%) shall not include fees or profits paid to any party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development.

## MANAGEMENT OF THE DEVELOPMENT

7. Developer shall maintain the Development in good physical and financial condition (reasonable wear and tear and damage from casualty excepted) shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding anything to the contrary, Developer shall not be under any obligation to restore all or any portion of the Development in the event of any damage or destruction to the Property caused by any casualty so long as at all times during the term hereof the minimum percentage of Affordable Units remain as subject to this Agreement.

## CHANGE IN COMPOSITION OF DEVELOPER ENTITY

8. The Developer shall provide the Project Administrator with notice of the following within ten (10) days after its occurrence:

(a) any change, substitution or withdrawal of any general partner or manager of Developer; or

(b) the conveyance, assignment, transfer, or relinquishment of twenty-five percent (25%) or more of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

## BOOKS AND RECORDS

9. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Development shall at all times be kept separate and identifiable from any other business of Developer which is unrelated to the Development, and shall be maintained, as required by the Regulations and Guidelines and in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Project Administrator for purposes of determining compliance with the terms of this Agreement. Failure to keep such books and accounts and/or make them available to the Project Administrator will be an Event of Default hereunder.

## ANNUAL FINANCIAL REPORT

10. Within ninety (90) days following the end of each fiscal year of the Development, and within ninety (90) days following Completion, Developer shall furnish the Project Administrator with a complete annual financial report for the Development based upon an examination of the books and records of Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of the Project Administrator which include: (i) financial statements submitted in Project Administrator format; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 6 above. A duly authorized agent of Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by the Project Administrator.

## FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

11. At the request of the Project Administrator, Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the Developer's compliance with the terms of this Agreement

## NO CHANGE OF DEVELOPMENT'S USE

12. Developer shall not, without prior written approval of the Project Administrator during the Term of this Agreement, change the type or percentage of Affordable Units.

## NO DISCRIMINATION

13. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap or marital status in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development. Developer or its management company shall, with respect to the Development, take affirmative measures to advertise for employment or contracts for goods and services, and hire and promote employees.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, or familial status, and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provisions shall be a proper basis for the Project Administrator to take any corrective action it may deem necessary.



## **DEFAULTS; REMEDIES**

14. (a) If any default, violation, or breach of any provision of this Agreement is not cured to the satisfaction of the Project Administrator within thirty (30) days after the giving of notice to the Developer as provided herein, then at the Project Administrator's option, and without further notice, the Project Administrator may either terminate this Agreement, or the Project Administrator may apply to any state or federal court for specific performance of this Agreement, or the Project Administrator may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. No party other than the Project Administrator shall have the right to enforce Developer's compliance with the requirements of this Agreement.

(b) If the Project Administrator elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD rules and regulations then in effect.

(c) The Developer shall pay all reasonable fees and expenses (including legal fees) of the Project Administrator in the event enforcement action is taken against the Developer hereunder. The Project Administrator shall be entitled to seek recovery of its respective fees and expenses incurred in enforcing this Agreement against the Developer and, to the extent permitted by law, assert a lien on the Development, junior to the lien securing any mortgage loan on the property, to secure payment by the Developer of such fees and expenses. To the extent permitted by law, the Project Administrator may perfect a lien on the Development by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry.

(d) The Developer hereby grants to the Project Administrator or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement, or of taking all actions with respect to the Development which the Project Administrator may determine to be necessary or appropriate to prevent, remedy or abate any violation of this Agreement. The exercise of the rights of the Project Administrator as set forth in this paragraph shall only be exercised upon reasonable advance written notice to the Developer, at reasonable times and with a minimum of disruption to the operation of the Development.

## **MONITORING AGENT; FEES; SUCCESSOR PROJECT ADMINISTRATOR**

15. The Developer hereby agrees to pay the Project Administrator fees for its services hereunder as set forth on Appendix C hereto in the amounts and on the dates therein provided and hereby grants to the Project Administrator a security interest in Development Revenues as security for the payment of such fees subject to the lien of this Agreement shall constitute a security agreement with respect thereto.

16. The Project Administrator shall have the right to engage a third party, subject to Developer's reasonable approval rights (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. The Project Administrator shall



notify the Developer and the Municipality in the event the Project Administrator engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by the Project Administrator, payable within thirty (30) days of the end of each fiscal year of the Developer during the Term of this Agreement, but not in excess of the amounts as shown on Appendix C hereof and any fees payable under Section 16 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as the Project Administrator under this Agreement, and shall act on behalf of the Project Administrator hereunder, to the extent that the Project Administrator delegates its rights and duties by written agreement with the Monitoring Agent.

17. The Project Administrator may resign from its duties hereunder upon ninety (90) days prior written notice to DHCD, the Developer, and the Municipality. In such event, DHCD may appoint a successor Project Administrator hereunder who shall succeed to all the duties and rights of the Project Administrator hereunder and the Project Administrator shall turn over all amounts and security held by it hereunder to the successor Project Administrator.

#### **MISCELLANEOUS CONTRACT PROVISIONS/TERM**

18. This Agreement supersedes the Prior Agreement in its entirety and upon the full execution and delivery hereof, the Prior Agreement shall be of no further force and effect. This Agreement may not be modified or amended except with the written consent of the Project Administrator or its successors and assigns and Developer or its successors and assigns. The Developer and the Project Administrator hereby agree, at the other parties written request, to make such modifications to this Agreement including but not limited to eliminating certain sections and definitions that shall no longer apply, as may be required by DHCD to implement the Guidelines, as amended from time to time or as otherwise directed by DHCD, but with respect to such amendments to the Guidelines or directives from DHCD, only if such amendments or directives, as a matter of law, are enforceable retroactively with respect to the Development or as otherwise specifically required by DHCD. Notwithstanding the foregoing, in no event shall the Developer be obligated to agree to any amendment hereof that increases its requirements with respect to the Affordable Units beyond those contained in this Agreement.

19. The covenants set forth in this Agreement shall run with the land and shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and the Project Administrator and its successors and assigns, until May 1, 2022 (the "Term"). Upon expiration of the Term, this Agreement and the rights and obligations of the Project Administrator hereunder shall automatically terminate without the need of either party executing any additional document. Notwithstanding the foregoing, this Agreement may be released by the Project Administrator prior to the expiration of the Term if the Development is financed by a state or federal agency and, in connection with such financing, a regulatory agreement acceptable to the Project Administrator is recorded in the Registry.

20. Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the

requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

21. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

### NOTICES

22. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

Avalon at Great Meadow, Inc.  
c/o AvalonBay Communities, Inc  
1000 Bridgeport Avenue, Suite 258  
Shelton, CT 06484  
Attn: Joanne Lockridge  
Senior Vice President of Finance  
Fax: (203) 926-2304

With a copy which shall not constitute notice to:

Steven Schwartz, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110  
Fax: (617) 574-7636

AvalonBay Communities, Inc.  
Ballston Tower  
671 N. Glebe Road, Suite 800  
Arlington, VA 22203  
Attn: Edward M. Schulman  
Executive Vice President and General Counsel  
Fax: (703) 329-9130

If to Project Administrator:

Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, MA 02108  
Attention: Director of Comprehensive Permit Programs  
Fax: 617-854-1029

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

### **CAPTIONS**

23. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

### **GENDER AND PLURALS**

24. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

### **ESTOPPEL CERTIFICATE**


25. Within ten (10) business days after written request therefor made from time to time (but in any event not more than twice annually), Project Administrator shall furnish to Developer, or the holder (or prospective holder) of any mortgage encumbering the Development, an estoppel certificate in reasonable form as to any matter contained in this Agreement, including, without limitation, a statement that this Agreement is in full force and effect and acknowledging that to the Project Administrator best knowledge at that time (or the extent to which) Developer is in compliance with the terms hereof.

**[Remainder of page intentionally left blank.]**

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

**DEVELOPER:**

**AVALON AT GREAT MEADOW INC.**

By:   
Name: Joanne M. Lockridge  
Title: Senior Vice President

**MASSACHUSETTS HOUSING FINANCE AGENCY,  
as Project Administrator as aforesaid**

By: \_\_\_\_\_  
Gina B. Dailey, Director of  
Comprehensive Permit Programs

**Attachments:**

Exhibit A – Legal Description  
Appendix A – Omitted  
Appendix B – Form of Accountant's Annual Determination  
Appendix C – Project Administrator Fees  
Appendix D – Form of Tenant Income Certification

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

**DEVELOPER:**

**AVALON AT GREAT MEADOW INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MASSACHUSETTS HOUSING FINANCE AGENCY,  
as Project Administrator as aforesaid**

By: *Gina B. Dailey*  
Gina B. Dailey, Director of  
Comprehensive Permit Programs

*Bk 51717  
141  
7*

Attachments:

- Exhibit A – Legal Description
- Appendix A – Omitted
- Appendix B – Form of Accountant’s Annual Determination
- Appendix C – Project Administrator Fees
- Appendix D – Form of Tenant Income Certification



COMMONWEALTH OF MASSACHUSETTS

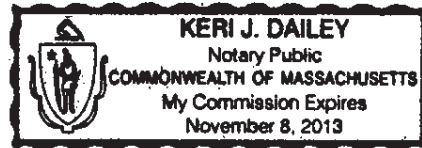
County of Suffolk

JUNE 6, 2012

Then personally appeared before me, the undersigned notary public, the above-named Gina B. Dailey, the Director of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency, proved to me through satisfactory identification which was my own personal knowledge of identity of the signatory to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as the Director of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency.

Before me,

Keri J. Dailey  
Notary Public  
My Commission Expires: \_\_\_\_\_



STATE OF Connecticut

County of Fairfield

June 1, 2012

Then personally appeared before me Francis M. Lockwood, the Senior V.P. of the Avalon at Great Meadow, Inc. proved to me through satisfactory evidence of identification, which was [ ] a current driver's license, [ ] a current U.S. passport, [ ] my personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

Carman J. Smith

Notary Public

My Commission Expires:

EXHIBIT A

**Legal Description**

**57 Concord Road (Registered Land):**

That certain parcel of land situated in Bedford in the County of Middlesex and said Commonwealth, bounded and described as follows:

- Southerly: by Concord Road, two hundred fifty-four and 35/100 feet;
- Westerly: one hundred forty-five and 77/100 feet;
- Southerly: thirty-three feet;
- Westerly: eight hundred forty-one and 38/100 feet;
- Southwesterly: one hundred fifty-one and 80/100 feet;
- Southerly: three hundred eighty and 58/100 feet;
- Southwesterly: thirty-nine and 60/100 feet; and
- Easterly: two hundred ninety-six and 04/100 feet by land now or formerly of Wallace H. Goldsmith;
- Southwesterly: six hundred twenty and 40/100 feet;
- Northwesterly: four hundred nine and 20/100 feet; and
- Southwesterly: three hundred and 75/100 feet by land now or formerly of Charles W. Jenks;
- Northeasterly: by land now or formerly of William Barnett, five hundred and ninety-four feet;
- Northwesterly: by said Barnett land and by land now or formerly of Margaret Fitzgerald et al., thirteen hundred ninety-two and 60/100 feet; and
- Easterly: by land now or formerly of Laroy Procter et al., eleven hundred nine and 93/100 feet;

All of said boundaries are determined by the Court to be located as shown on a plan, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 184, Page 509, with Certificate 28877, Land Court Plan No. 13303A.

*Cont.*  
There is excepted and excluded from the above described land lot 1, shown on plan filed in Registration Book 462, Page 133, Land Court Plan No. 13303A.

**5 Davis Road (Unregistered Land):**

Those certain parcels of land situated in Bedford in the County of Middlesex and said Commonwealth, being shown as Lot 5 Remaining on a plan entitled "Subdivision Plan of Land in Bedford, Massachusetts", drawn by Vanasse Hangen Brustlin, Inc., Professional Land Surveyors, dated November 21, 2004, and recorded with the Middlesex South Registry of Deeds as Plan No. 1557 of 2004 and Lot 5B-1 on a plan entitled "Plan of Land in Bedford, Massachusetts" drawn by Vanasse Hangen Brustlin, Inc., dated February 9, 2006, and recorded with Middlesex South Registry of Deeds as Plan No. 1601 of 2006.

## APPENDIX A

Omitted



## APPENDIX B

### Form of Accountant's Annual Determination (For each Fiscal Year of the Development)

Item	Each Year ending _____	References
a. Stated Equity Amount		See Section 6(c)(i) and Section 6(d)
b. Current Distribution Amounts;		See Section 6(c)(i)
c. Accumulated and Unpaid Distribution Amounts, consisting of: -Accumulated Distribution Amounts, and -Accrued Interest		See Section 6(c)
d. Maximum Annual Distributable Amounts;		See Section 6(c)
e. Distribution Payments		See Section 6(b)
f. Development Revenues		See Section 6(b)
g. Annual Excess Revenues		See Section 6(e)

**APPENDIX C**

**FEE PAYABLE TO PROJECT ADMINISTRATOR**

An annual fee of \$200.00 per Affordable Unit

**APPENDIX D**

**INCOME COMPUTATION AND CERTIFICATION**

(to be revised per current regulations, as necessary)

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

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

\_\_\_\_\_

\_\_\_\_\_

Company: \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above facility for which this application is made, all of whom are listed below:

<u>Name of Members of the Household</u>	<u>Relationship to Head of Household Age</u>	<u>Social Security Number</u>	<u>Place of Employment</u>
_____	HEAD	_____	_____
_____	SPOUSE	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

## Income Computation

1. The anticipated income of all of the above persons during the 12-month period beginning this date, is \$\_\_\_\_\_.

In computing the anticipated income:

- INCLUDE: -- all wages and salaries, overtime pay, commission, fees, tips and bonuses and other compensation for personal services, before payroll deductions;
- net income from the operation of a business or profession (without deducting expenditures for business expansion or amortization of capital indebtedness);
- interest, dividends and other net income of any kind from real or personal property;
- the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
- the maximum amount of welfare assistance available to the above persons;
- periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and
- all regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is the head of the household or spouse.
- EXCLUDE: -- temporary, nonrecurring or sporadic income (including gifts);
- amounts which are specifically for or in reimbursement of medical expenses;
- income from employment of children (including foster children) under age 18;
- lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and

workmen's compensation), capital gains and settlement for personal or property losses;

- amounts of student financial assistance paid directly to the student or the educational institution;
- special pay to a serviceman head of a family who is away from home and exposed to hostile fire;
- foster child or foster adult care payments; income of a live-in aide; amounts under training program funded by HUD; amounts received by a disabled person that are disregarded for purposes of Supplemental Security Income eligibility because they are set aside under a Plan to Attain Self Sufficiency (PASS);
- amounts received by participants in publicly assisted program specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937;
- any resident service stipend [(not to exceed \$200 per month)] received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development;
- compensation from state or local employment training programs and training of a family member as resident management staff;
- repatriation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- earnings in excess of [\$\_\_\_\_] for each full time student 18 years old or older (excluding the head of household and spouse) and adoption assistance payments in excess of [\$\_\_\_\_] per adopted child;
- amounts received as deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;
- amounts received as refunds or rebates for property taxes paid on the dwelling unit; and



-- amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

2. If any of the persons described above (or whose income or contributions was included in item 1) has any savings, bonds, equity in real property or other form of capital investment, provide:

- (a) \$\_\_\_\_\_ is the total value of all such assets owned by all such persons;
- (b) \$\_\_\_\_\_ is the amount of income expected to be derived from such assets in the 12-month period commencing this date; and
- (c) \$\_\_\_\_\_ is the amount of such income which is included in item 1.

3. (a) Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students? (check one)

YES [ ] NO [ ]

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return? (check one)

YES [ ] NO [ ]

4. I/We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on the Bond issued to finance the apartment for which application is being made. We consent to the disclosure of such information to the Issuer of such Bond, the holders of such Bond and any trustee acting on their behalf.

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE OR RESIDENCY AGREEMENT FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED MAY BE SUBJECT TO CANCELLATION IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ (name of document signer, and insert the representative capacity of the person signing, if applicable), proved to me through satisfactory evidence of identification, which were \_\_\_\_\_ (identify the type of evidence), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
[seal of notary]

**FOR COMPLETION BY THE COMPANY ONLY**

1. Calculation of eligible tenant income:

Amount entered for entire household  
(as listed in 1 above):

\$ \_\_\_\_\_

2. If the amount entered in 2(a) of the income computation above is greater than \$5,000, enter the greater of:

- (a) the amount entered in 2(b) of the income computation above less the amount entered in 2(c) of the income computation above;
- (b) the amount entered in 2(a) of the income computation above multiplied by the current passbook savings rate (as determined by HUD), less the amount entered in 2(c) or the income computation above; or

- (c) zero:

\$ \_\_\_\_\_

3. TOTAL ELIGIBLE INCOME  
(Line 1 plus Line 2):

\$ \_\_\_\_\_

4. The amount entered in 3 is less than or equal to \_\_\_\_\_ percent (\_\_\_%) of Median Income for the area in which the Project is located, as defined under the Regulatory Agreement ("Lower Income Tenant").

5. Number of apartment unit assigned:

6. This apartment unit was last occupied for a period of at least thirty-one (31) consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was [more than] [not more than] [\_\_\_\_\_ percent (\_\_\_%)] of Median Income in the area in which the Project is located, as defined under the Tax Regulatory Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

[END LOAN BORROWER]

Dated:

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

Title: \_\_\_\_\_

\*Delete inapplicable clause.