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HALL, FINNEGAN, AHERN & DESCHENES, P.C.  
THE FISKE HOUSE AT CENTRAL SQUARE  
ONE BILLERICA ROAD  
CHELMSFORD, MA 01824

## REGULATORY AGREEMENT

This Regulatory Agreement (this "Agreement") is made this 3 day of March, 2004 by Concord Residential Gardens, LLC, a Massachusetts Limited Liability Company, having an address at 2 Lan Drive, Westford, MA 01886 ("Developer") and Citizens' Housing and Planning Association, Inc. ("CHAPA") with an address at 18 Tremont Street, Boston, Massachusetts 02108.

### BACKGROUND:

A. The Developer intends to construct a 42-unit rental development on land leased by the Developer consisting of an approximately 6.6-acre site located at 1100 Concord Turnpike in Concord, Massachusetts, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

B. The Developer has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals for the Town of Concord (the "Municipality") under Chapter 40B, sections 20 – 23, of the Massachusetts General Laws, the Comprehensive Permit is recorded at the Middlesex South District Registry of Deeds ("Registry") in Book 40820, at Page 181;

C. The Comprehensive Permit has specified that 11 units, or 25% of the total units in the Project will be affordable units, as this unit count may be altered as provided below, (the "Affordable Units") and will be rented to households earning no more than eighty percent (80%) of the median income, by household size, for the Boston Primary Metropolitan Statistical Area (the "Base Income") as published from time to time by the Department of Housing and Community Development or its successor agency ("DHCD") except as the requirements for the Affordable Units may be altered according to Condition 19 of the Comprehensive Permit which provides that only nine (9), or twenty percent (20%), of the total units in the Project must be restricted as affordable, if all nine (9) such units are rented to households earning no more than fifty percent (50%) of the aforementioned median income (referred to hereinafter as the "Fifty Percent Rental Scheme"), and that those Affordable Units will remain affordable for a period of 40 years;

D. The Project is being financed by Danvers Savings Bank of One Conant Street, Danvers, MA 01923 (the "Bank"), a member institution of the Federal Home Loan Bank of Boston ("FHLBB"), with proceeds from an advance under the FHLBB's New England Fund ("NEF") and requires the Developer to provide the Affordable Units described above;

E. Citizens' Housing and Planning Association ("CHAPA") shall perform monitoring services, regarding compliance of the Project with the affordability requirements and compliance of the Developer with the Limited Dividend Requirement, as specified below.

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

1. Unit Distribution. The distribution of the Affordable Units by unit size shall be as set forth below:

	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>
Number of Units	1	9	1
Initial Maximum Monthly Rent	\$997	\$1,192	\$1,376

So long as the Fifty Percent Rental Scheme is in effect under the terms of this Agreement, the distribution of the Affordable Units by unit size shall be as set forth below:

	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>
Number of Units	1	7	1
Initial Maximum Monthly Rent	\$600	\$636	\$826

The Affordable Units shall be disbursed throughout the Project at the Developer's reasonable discretion but shall not be situated so as to segregate these units from the market rate units in the Project

2. Affordability. The Affordable Units shall be rented at rents, including all estimated, basic utilities, such as heat, electricity and water (but not food or the cost of supportive services), which shall not exceed 30% of 80% of median income for the Boston Primary Metropolitan Statistical Area calculated as follows:

0 Bedroom unit	1 person household
1 Bedroom unit	1-2 person household
2 Bedroom unit	3 person household
3 Bedroom unit	4-5 person household
4 Bedroom unit	6 person household

Throughout the term of this Agreement, the Developer shall annually determine the income of each tenant of an Affordable Unit. This determination shall be certified to CHAPA on an annual basis. Any Affordable Unit occupied by a certified household at the commencement of occupancy shall be deemed an Affordable Unit so long as (a) such unit continues to be rent restricted and (b) the tenant's income does not exceed 140% of the Base Income. If the tenant's income exceeds 140% of the Base Income at the time of the annual income determination ("Disqualified Tenant"), his/her unit shall be deemed an Affordable Unit until the next available unit with the same or greater number of bedrooms which is not an Affordable Unit is rented. In the event that a tenant becomes a Disqualified Tenant and the next available unit that is not an Affordable Unit and that contains the same number of bedrooms as the unit of the Disqualified Tenant (the "Market Unit") becomes available for rent, the Developer shall ensure that the distribution of Affordable Units that is set forth in Section 1 above is maintained by ensuring that the Disqualified Tenant vacates his or her current unit by moving to the Market Unit or, is otherwise caused to vacate the unit so that the Disqualified Unit remains an Affordable Unit. The Developer may, from time to time, adjust rents for Affordable Units to reflect changes in median income as reported for the Boston Primary Metropolitan Statistical Area or its successor index or statistical area.

3. Dividend Limitation. Developer agrees that throughout the term of this Agreement distribution of return to the Developer or to the partners, shareholders, or other owners of Developer or of the Project shall not exceed ten percent (10%) of Imputed Equity per year, as determined from audited financial statements provided to the Bank (the "Allowable Dividend"). "Imputed Equity" in the Project shall be the difference between the amount provided by third party financing sources to the Project and the total cost of the Project, including, where applicable, a Developer's Risk Allowance (DRA) equal to twenty percent (20%) of the total project cost net of DRA

Distributions of the Allowable Dividend not made in any one year may be deferred and made in subsequent years. From time to time, but no sooner than five (5) years after issuance of a Certificate of Occupancy for one hundred percent (100%) of all the units, the Developer may increase the Imputed Equity by an amount equal to the difference between the total cost of the Project and the current appraised value of the Project, as determined by a third party appraiser plus an amount equal to the amount of the loan which has been amortized. Proceeds of any refinancing, or insurance or condemnation proceeds, or from the sale of any of Developer's assets shall be excluded from the determination of the Allowable Dividend.

Upon issuance of a final Certificate of Occupancy for all of the units in the Project, the Developer shall deliver to CHAPA an itemized statement of total development costs together with a statement of sources of financing from the Project received by the Developer to date certified by the Developer ("Certified Cost Statement").

If all units in the Project have not been rented as of the date the Certified Cost Statement is delivered to CHAPA, the Developer shall at least once every ninety (90) days thereafter, until such time as all of the units are rented, deliver to CHAPA an updated Certified Cost Statement.

After all units in the Project have been rented, the Developer shall, on or before March 31 of every year thereafter during the term of this Agreement, deliver to CHAPA an itemized statement of income and expenditures in form satisfactory to the member bank for the prior year. All profits from the Project in excess of the Allowable Profit shall be paid by the Developer to the Municipality for deposit in an affordable housing fund to be used by the Municipality for the purposes of encouraging, creating or subsidizing the construction or rehabilitation of affordable housing elsewhere in the Municipality.

4. Affirmative Marketing. The Developer shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin or any other basis prohibited by law in the selection of the tenants for the Affordable Units. The Developer shall affirmatively market the Affordable Units to minority households through direct outreach efforts to local churches, social service and civic organizations as well as local and area-wide newsprint media where minority households are most likely to be contacted. This outreach effort must continue for a period of at least 60 days prior to the selection of tenants for the Affordable Units. As provided in Condition 25 of the Comprehensive Permit, the Developer shall submit an affirmative fair marketing plan for the Project to the Board of Appeals for its review and approval before any certificate of occupancy is issued for the Project. In addition, the Developer agrees to adopt a preference for Concord residents, children or parents of Concord residents, and/or employees of the Town of Concord pursuant to a lottery or selection process that is initially reviewed and approved by the Concord Board of Appeals, that is thereafter periodically reviewed by the Concord Planning Division and that is administered during the term of this Agreement by the Developer. As provided in Condition 25 of the Comprehensive Permit, the Developer shall submit such preference plan to the Concord Board of Appeals for its review and approval before any certificate of occupancy is issued for the Project. The Developer agrees to maintain for at least five (5) years following the rental of the Affordable Units, a record of all newspaper ads, outreach letters, translations, leaflets and any other outreach efforts, which may be inspected by the Bank or the Municipality.

5. Recording. Upon execution hereof, the Developer shall immediately cause this Agreement to be recorded with the Registry of Deeds for the County where the Project is located and/or, if the Project consists in whole or in part of registered land, to be filed with the Registry District of the Land Court for the County where the Project is located. Upon recording and/or filing as applicable, the Developer shall immediately transmit to CHAPA evidence of such recording and/or filing.

6. Representations. The Developer hereby represents, covenants and warrants as follows:

- (a) The Developer (i) is a limited liability company duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own properties and assets and to carry on its business as now being conducted, and (iii) has full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Developer will, at the time of execution and delivery of this Agreement, control the Project by way of a valid land lease, free and clear of any lien or encumbrance, subject to the encumbrances created pursuant to this Agreement, any loan documents relating to the Project, or other permitted encumbrances.

7. Governing Law/Amendments/Severability. This Agreement shall be governed by the laws of The Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

8. Monitoring Agent.

- A. Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirement and the compliance of the Developer with the Limited Dividend Requirement based on and in accordance with the following:
  - (i) Receipt of annual reports from the Developer, within 90 days after the end of each calendar year, with respect to compliance of the Project with the Affordability Requirements, which reports shall include copies of tenant income certifications.
  - (ii) Receipt of annual audited financial reports for the Developer, within 90 days after the end of each fiscal year of the Developer.

- (iii) Review of (a.) the adequacy and completeness of the annual reports and annual financial statements; and (b.) the substantive compliance of the Project with the Affordability Requirement and of the Developer with the Limited Dividend Requirement.
- (iv) Preparation annually of a report (the "Annual Compliance Report") within 120 days after the end of each fiscal year of the Project to the member Bank and the zoning enforcement officer of the Municipality on the compliance (a.) of the Developer with reporting requirements; (b.) of the Project with the Affordability Requirement; and (c.) of the Developer with the Limited Dividend Requirement. The Annual Compliance Report shall indicate the extent of noncompliance with the relevant reporting and/or substantive requirements, describe efforts being made by the Developer to remedy such noncompliance and, if appropriate, recommend possible enforcement action against the Developer.

The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Project and the Developer with the Affordability Requirement and the Limited Dividend Requirement. The services hereunder shall not include any construction period monitoring. The services hereunder shall include follow-up discussions with the Developer after an event of noncompliance.

The Developer shall deliver to the Monitoring Agent the reports described in (i) and (ii) above within the specified times.

- B. The Monitoring Agent shall receive a fee of \$5,000.00 from the Developer at the time of execution of this Agreement and thereafter on an annual basis the Monitoring Agency shall receive a fee from Developer in the amount of \$200.00 per affordable housing unit for the first year of occupancy and \$100.00 per affordable unit for every year thereafter. Such fee shall constitute payment in full for the services of the Monitoring Agent hereunder over the term of this Agreement. The member Bank shall have no responsibility for payment of any fee to Monitoring Agent hereunder.
- C. The Monitoring Agent shall not be held liable for any action taken or omitted under the Agreement so long as it shall have acted in good faith and without negligence.
- D. The Developer agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project under this Agreement except with respect to any such damages, costs or liabilities arising from improper or inadequate performance by Monitoring Agent hereunder or otherwise from the negligence or willful misconduct of the Monitoring Agent.

9. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto and the Municipality at the addresses set forth below, or to such other place as a party and the Municipality may from time to time designate by written notice:

Developer:  
Concord Residential Gardens, LLC  
2 Lan Drive  
Westford, MA 01886

CHAPA:  
Citizens' Housing and Planning Association  
18 Tremont Street  
Boston, MA 02108

Municipality:  
Town Manager's Office  
Town of Concord  
Town House  
P.O. Box 535  
Concord, MA 01742

10. Term. The term of this Agreement shall be a minimum of forty (40) years, , provided that this Agreement shall terminate if the Project is acquired by foreclosure or instrument in lieu of foreclosure so long as the holder of the mortgage has given the Municipality not less than sixty (60) days prior written notice of the holder's intention to foreclose the mortgage or to accept an instrument in lieu of foreclosure. Because of the fact, if the comprehensive permit granted to the Developer by the Municipality requires affordability restrictions for a term longer than thirty (30) years, CHAPA can elect to assign the monitoring services responsibilities, as contained in this Regulatory Agreement to another organization, after notification to the Developer and the Municipality, and after receiving written approval for such assignment from the Municipality, such approval shall not be unreasonably withheld. This Agreement shall terminate and be of no further force or effect forty (40) years from the date of this Agreement, unless the Municipality should, a.) elect to extend the affordability period of the Affordable Units by making payments to the Developer, as set forth at Conditions 2 and 19 of the Comprehensive Permit; and b.) record notice of same at the Registry within six (6) months of the end of said forty (40) year period. In that event, the term of this Agreement shall be extended only for so long as the Municipality should remain in compliance with said Conditions 2 and 19 and makes timely payments to the Developer as required therein.

11. Successors and Assigns. The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns for the term of the Agreement. Developer hereby agrees that any and all requirements of the laws of The Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

12. Default. If any default, violation or breach by the Developer is not cured to the satisfaction of the member Bank within thirty (30) days after notice to the Developer thereof, then the member Bank may send notification to the Municipality's Zoning Enforcement Officer and any other mortgagee that the Developer is in violation of the terms and conditions hereof. The mortgagee may exercise any remedies available to it under its loan agreement with the Developer. The Developer shall pay all costs and expenses, including legal fees, incurred by CHAPA, in enforcing this Agreement and Developer hereby agrees that the member Bank shall have a lien on the Project to secure payment of any such costs and expenses. The member Bank may perfect such a lien on the Project by recording a certificate setting forth the amount of the costs and expenses due and owing in the Registry of Deeds or the Registry District of the Land Court for the county in which the Project is located. A purchaser of the Project or any portion thereof shall be liable for the payment of any unpaid costs and expenses which were the subject of a perfected lien prior to the purchaser's acquisition of the Project or portion thereof.

13. Mortgagee Consent. The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed a consent to this Agreement and have subordinated their interests under any existing mortgages to this Agreement.

14. Controlling Documents. In the event of any inconsistency or discrepancy between the terms of the Comprehensive Permit, this Agreement and any other instrument, document or agreement pertaining to the Project, the terms of the Comprehensive Permit (and this Regulatory Agreement, the terms of which are incorporated into the Comprehensive Permit by reference) shall control.

15. Third-party Beneficiary. The parties to this Agreement hereby agree that (a) the Town of Concord is a third-party beneficiary hereto because the Developer will be constructing Affordable Units which will be added to the affordable housing inventory of the Town of Concord under Massachusetts General Laws Chapter 40B, Section 20-23, and (b) while the Town of Concord is not required to enforce the terms of this



Agreement, the Town of Concord may choose to enforce the terms hereof at any time as a third-party beneficiary to this Agreement.

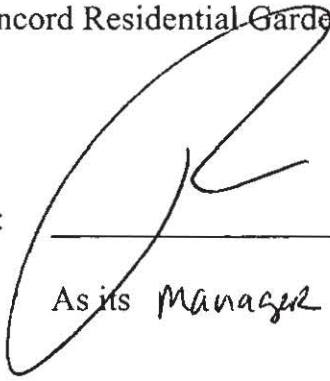
16. Garage Parking for Affordable Units. Up to eight (8) of the total number of garage parking spaces in the Project shall, in the first instance, be set aside and made available for rental by tenants of Affordable Units in accordance with the terms set forth in Condition 52 of the Comprehensive Permit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument as of the date first above written.

Concord Residential Gardens, LLC

Citizens' Housing and Planning Association, Inc.

By:

  
\_\_\_\_\_

As its Manager

By:

  
\_\_\_\_\_

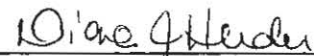
As its Director of citizens

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

March 5, 2004

Then personally appeared the above-named Robert Walker, the Manager of Concord Residential Gardens, LLC and acknowledged the foregoing instrument to be his/her free act and deed and that of Concord Residential Gardens, LLC, before me

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10/21/09



COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

March 15, 2004

Then personally appeared the above-named Aaron Gornstein, the Executive Director of Citizens' Housing and Planning Association, Inc. and acknowledged the foregoing instrument to be his/her free act and deed and that of Citizens' Housing and Planning Association, Inc., before me

Christopher T. Norris  
Notary Public  
Commonwealth of Massachusetts  
My commission expires: December 23, 2005

Christopher T. Norris  
Notary Public  
My Commission Expires: Dec. 23, 2005

~~BK 44622 PG 598~~

## EXHIBIT A

The land with the buildings thereon in CONCORD, Massachusetts, bounded and described as follows: Beginning at the Northeasterly corner of the premises on Fairhaven Road by land now or formerly of William T. McCarthy; thence running Southeasterly along said Fairhaven Road 230 feet to land now or formerly of Catherine L. Hill; thence Southwesterly by land now or formerly of said Hill 179.08 feet; thence Southeasterly by land now or formerly of said Hill 85.38 feet to land now or formerly of George F. Wheeler; thence Southwesterly by land now or formerly of said Wheeler 774.72 feet to land now or formerly of John Hagerty at a drill hole in rock set in wall; thence turning and running in a Northerly direction by land now or late of said John Hagerty 371.34 feet; thence still Northerly by land now or late of said Hagerty 101.15 feet to a stone post on Potter Street; thence Northeasterly along said Potter Street 223.5 feet to land now or formerly of Bedford Coal & Grain Company; thence Southeasterly by land now or late of said Bedford Coal & Grain Company about 100 feet; thence Northeasterly by land now or late of said Bedford Coal & Grain Company and land now or late of George D. Hubbard about 181 feet to land of Derby O'Connell et als; thence Southeasterly by said O'Connell land 100 feet; thence Northeasterly by said O'Connell land 300 feet; thence Northwesterly by said O'Connell land 10 feet to land of said McCarthy; thence Northeasterly by land of said McCarthy 188.46 feet to the point of beginning, excepting therefrom the parcels of land previously conveyed by the said Martin O'Brien by the following deeds:

1. Deed to Timothy Fitzpatrick dated September 15, 1923 and recorded in Middlesex South District Deeds, Book 4656, Page 182;
2. Deed to Mary W. Ryan dated September 1, 1925 and recorded with said Deeds, Book 4886, Page 294;
3. Deed to Commonwealth of Massachusetts dated September 8, 1934 recorded in said Deeds, Book 5864, Page 288 and Order of Taking relating to the same premises recorded in said Deeds, Book 5766, Page 357;
4. Deed to Michael F. Delory dated November 16, 1935 and recorded with said Deeds, Book 6044, Page 286;
5. Deed to Harry Bullard et ux, dated December 9, 1937 and recorded with said Deeds, Book 6172, Page 312.

REGISTRY OF DEEDS  
SOUTHERN DISTRICT  
ATTEST:

*E. J. Ryan*  
REGISTER