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REGULATORY AND USE AGREEMENT

[Comprehensive Permit Rental]

LOCAL INITIATIVE PROGRAM

This Regulatory and Use Agreement (this "Agreement") is made this 14th day of June, 2017 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the Town of Sudbury (the "Municipality"), and Sudbury Avalon, Inc., a Maryland corporation, having a mailing address at 600 Atlantic Avenue, 20th Floor, Boston, Massachusetts 02210, and its successors and assigns ("Developer").

RECITALS

WHEREAS, the Developer is proposing a housing development known as Avalon Sudbury at an approximately 24.7 acre site within a larger subdivision located at 526 & 528 Boston Post Road in the Municipality, as 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 (as may be amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the "Act") and pursuant thereto has issued its Comprehensive Permit Guidelines (the "Guidelines") and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules"); and

WHEREAS, pursuant to the Act and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at the Regulations which establish the Local Initiative Program ("LIP"); and

WHEREAS, DHCD acts as Subsidizing Agency for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, a comprehensive permit pursuant to the Act was issued by virtue of a Decision dated July 18, 2016 issued by The Town of Sudbury Zoning Board of Appeals ("ZBA"), which was recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 67882, Page 210 ("the Comprehensive Permit"); and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of 250 rental units, of which twenty five percent (25%) (i.e. 63 units) (the "Affordable Units") will 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, DHCD has adopted the *Preparation of Cost Certification for 40B Rental Developments: Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified*

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Goulston & Storrs
400 Atlantic Ave
Boston MA 02110-3333

deed ref
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Public Accountants and Municipalities (the "Cost Certification Guidance"), which shall govern the cost certification and limited dividend requirements for the Development pursuant to the Comprehensive Permit Rules; 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

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and

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, DHCD, the Municipality 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 7(f) hereof.

Accumulated Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Accumulated and Unpaid Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

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

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by DHCD, as further set forth in Section 3.

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

Allowable Development Costs shall have the meaning given such term in Section 21 hereof.

Annual Excess Revenues shall have the meaning given such term in Section 7(e) hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5609 (or any successor regulations).

Area shall mean the Boston, Cambridge, Quincy MA-NH Metropolitan Statistical Area (MSA)/County/HMFA as designated by the Department of Housing and Urban Development ("HUD").

Area Median Income ("AMI") 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.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development, if any.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan, if any.

Cost Certification shall have the meaning given such term in Section 21 hereof.

Current Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Developer's Equity shall be calculated according to the formulas outlined in Attachment C of the Cost Certification Guidance, using the Cost Method until the Cost Certification process is complete, and either the Cost Method or the Value Method, whichever results in the greater amount, thereafter. Developer's Equity shall be retroactively applied to the period from the start date (commencement of construction of the Development as evidenced by issuance of the first building permit) until Substantial Completion (the "Construction Period"). For the Construction Period, Developer's Equity shall mean the average of costs expended by the Developer on the Development during the period in question, based on a review of Developer's financial reports by an independent accounting firm. By way of example only, if on the first day of construction the Developer's costs are \$10,000,000 (all attributable to land acquisition costs), and one year later the Developer's costs are \$20,000,000 (half attributable to land acquisition costs, half attributable to construction costs), then the Developer's Equity for that year of construction would be the average of those two amounts of \$15,000,000. The Developer's Equity for the construction period shall be appropriately prorated for any partial year during such period.

Developer Parties shall have the meaning given such term in Section 7(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 7(b) hereof.

Distribution Payments shall have the meaning given such term in Section 7(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 7(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 providing rental or other subsidy to the Development or to Low or Moderate Income Tenants.

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

Lender shall mean the Construction Lender and/or the Permanent Lender.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit.

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 7(c) hereof.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage, if any.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns, if any.

Permanent Loan shall mean the Permanent Loan which may be made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof, if any.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender securing the Permanent Loan, if any.

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).

Substantial Completion shall have the meaning given such term in Section 21 hereof.

Surety shall have the meaning given such term in Section 22 hereof.

Tenant Selection Plan shall mean the Tenant Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by DHCD, with such changes thereto provided that any substantive changes have been approved by the DHCD.

Term shall have the meaning set forth in Section 24 hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications") and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit. All Affordable Units to be constructed as part of the Development must be similar in exterior appearance to other units in the Development and shall be evenly dispersed throughout the Development. In addition, all Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and sanitary facilities, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

(c) Unless the same shall be modified by a change to the Comprehensive Permit approved by the Board of Appeals for the Municipality, the bedroom mix for the Development shall be as follows:

31 of the Affordable Units shall be one bedroom units;

25 of the Affordable Units shall be two bedroom units; and
7 of the Affordable Units shall be three bedroom units.

All Affordable Units to be occupied by families must contain two or more bedrooms. Affordable Units must have the following minimum areas:

one bedroom units – 700 square feet
two bedroom units – 900 square feet
three bedroom units – 1,200 square feet

USE RESTRICTION/RENTALS AND RENTS

3. (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. In fulfilling the foregoing requirement, Developer will accept referrals of tenants from the Public Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Tenant Selection Plan. 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, DHCD shall have no 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) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Affordable Unit plus one. 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 in this Agreement.

(c) If, after initial occupancy, the income of a tenant of an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted (in which case the unit in question shall continue to be counted as an Affordable Unit) or (ii) the Developer rents the next available unit at the Development as an Affordable Unit in conformance with Section 3(a) of this Agreement, or otherwise demonstrates compliance with Section 3(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease

term, the rent restrictions shall no longer apply to such tenant.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. Thereafter, the Developer shall annually submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that such review rights shall be with respect to the maximum rents for all the Affordable Units, and not with respect to the rents that may be paid by individual tenants in any given unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without DHCD's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants. If an annual request for a new schedule of rents for the Affordable Units as set forth above is based on a change in the AMI figures published by HUD, and the Municipality and DHCD fail to respond to such a submission within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission. If an annual request for a new schedule of rents for the Affordable Units is made for any other reason, and the Municipality and DHCD fail to respond within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Developer may send DHCD and the Municipality a notice of reminder, and if the Municipality and DHCD fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and DHCD shall be deemed to have approved the submission.

Without limiting the foregoing, the Developer may request a rent increase for the Affordable Units to reflect an increase in the AMI published by HUD between the date of this Agreement and the date that the Units begin to be marketed or otherwise made available for rental pursuant to subsections 3 (h) and (i) below; if DHCD approves such a rent increase in accordance with this subsection (e), the Rental Schedule attached as Appendix A hereto shall be deemed to be modified accordingly.

(f) Developer shall obtain income certifications satisfactory in form and manner to DHCD at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to DHCD and the Municipality upon request.

(g) Throughout the term of this Agreement, the Municipality shall annually certify in writing to DHCD that each of the Affordable Units continues to be an Affordable Unit as provided in Section 2(c), above; and that the Development and the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement.

(h) Prior to marketing or otherwise making available for rental any of the units in the Development, the Developer shall submit an Affirmative Fair Housing Marketing Plan (also known as an "AFHM Plan") for DHCD's approval. At a minimum, the AFHM Plan shall meet the requirements of the Guidelines, as the same may be amended from time to time to comply with the requirements of fair housing laws. The AFHM Plan, upon approval by DHCD, shall become

a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement. At the option of the Municipality, and provided that the AFHM Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the AFHM Plan may also include a preference for local residents for up to seventy percent (70%) of the Affordable Units, subject to all provisions of the Regulations and Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the AFHM Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the AFHM Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the AFHM Plan which are set forth as responsibilities of the Municipality in the AFHM Plan. If the Chief Executive Office of the Municipality fails to approve the tenant selection and local preference (if any) aspects of the AFHM Plan for the Affordable Units above within thirty (30) days of the Municipality's receipt thereof, the Municipality shall be deemed to have approved those aspects of the AFHM Plan. In addition, if the Development is located in the Boston, Cambridge, Quincy MA-NH MSA/HMFA/County, Developer must list all Affordable Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center). The Developer agrees to maintain for at least five years following the initial lease-up of the Development a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts as described in the AFHM Plan as approved by DHCD which may be inspected at any time by DHCD.

(i) The AFHM Plan shall designate entities to implement the plan who are qualified to perform their duties. DHCD may require that another entity be found if DHCD finds that the entity designated by the Developer is not qualified. Moreover, DHCD may require the removal of an entity responsible for a duty under the AFHM Plan if that entity does not meet its obligations under the AFHM Plan.

(j) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, 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 DHCD shall require.

TENANT SELECTION AND OCCUPANCY

4. 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 Tenant Selection Plan and Affirmative Fair Housing Marketing Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and the Local Initiative Program. The Developer shall enter into a lease with each tenant for a minimum term of one year. The lease 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, the Municipality, or DHCD; 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, the Municipality, or DHCD may direct, but at least annually, he or she will furnish to Developer certification of then current family income, with such documentation as the Municipality or DHCD shall reasonably require; and agrees to such charges as the Municipality or DHCD 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 included in the rentals, as amended from time to time pursuant to Section 3 above.

6. Omitted

LIMITED DIVIDENDS

7. (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. No Distribution Payments may be made during any period in which an Event of Default has occurred and is continuing, which shall include but not be limited to failure to maintain the Development in good physical condition in accordance with Section 8 hereof.

(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 profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are 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.

(c) For the purposes hereof, the "Maximum Annual Distributable Amounts" for any particular fiscal year shall be defined and determined as follows: the sum of (i) an amount equal to ten percent (10%) of the "Developer's Equity" for such fiscal year, subject to adjustment

as provided in (d) below (the "Current Distribution Amounts"); plus (ii) the amount of all Accumulated and Unpaid Distributions calculated as of the first day of such fiscal year.

In no event shall the total Maximum Annual Distributable Amounts actually distributed for any given year exceed total funds available for distribution after all current and owed-to-date expenses have been paid and reserves, then due and owing, have been funded.

"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) When using the Value-Based Approach, 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, unless the Developer is otherwise directed by DHCD, shall be based upon an appraisal commissioned by (and naming as a client) DHCD and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, DHCD. The appraiser shall submit a Self-Contained Appraisal Report to DHCD in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). 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 DHCD.

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, in an escrow account to be established to the satisfaction of DHCD) designated as the "Excess Revenues Account." No distributions may be made to the Developer from the Excess Revenues Account except those permitted pursuant to this Section (e) with the prior written consent of DHCD.

Upon Developer's request, amounts may also be withdrawn from the Excess Revenues Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by the Developer to be

sufficient to meet anticipated capital needs of the Development (the "Replacement Reserve") which may be held by a lending institution reasonably acceptable to DHCD and which reserves may be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of Developer for Development expenses, provided that Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the DHCD) and shall have supplied the applicable Lender (or DHCD) with such evidence as the applicable Lender (or DHCD, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by DHCD) that the expenditure is necessary to address the Development's physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Developer shall be subject to the prior written approval of DHCD, which approval shall not be unreasonably withheld or delayed; it being agreed by DHCD that if the Developer can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for comparable developments in the Commonwealth of Massachusetts, DHCD shall approve such request. Further, in no event shall such review or approval be required by DHCD to the extent any such capital expenditures or reserves are mandated by Lender.

Further, DHCD agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Revenues Account, 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.

In the event that DHCD's approval is requested pursuant to this Section 7(e) for expenditures out of the Excess Revenues Account, and DHCD fails to respond within thirty (30) days of DHCD receipt thereof, then DHCD shall be deemed to have approved the request, and DHCD shall have no further rights to object to, or place conditions upon, the same.

In any event, cash available for distribution in any year in excess of 20% of Developer's Equity, subject to payment of Accumulated and Unpaid Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein, or as otherwise directed by DHCD. Upon the expiration of the "Limited Dividend Term" as that term is defined in Section 24(b) hereof, any balance remaining in the Excess Revenues Account shall be contributed by the Developer to the Replacement Reserve held for the Development if reasonably deemed necessary by DHCD, and otherwise shall be paid to the Developer.

(f) The Developer shall provide DHCD for each fiscal year with a copy of its audited financial statements, and provide the DHCD with a certificate from the independent certified public accountant (the "CPA") who prepared such reports which certifies as to their

determination (the "Accountant's Annual Determination") of the following for such fiscal year, based on the terms and conditions hereof:

- (i) Accumulated 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 Accumulated Distribution Amounts and Accrued Interest); and
- (vi) Development Revenues.

Such Accountant's Annual Determination shall be accompanied by a form completed by the CPA and by a Certificate of Developer in forms as reasonably required by DHCD certifying under penalties of perjury as to the matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who made such Accountant's Annual Determination, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Accountant's Annual Determination, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Accountant's Annual Determination and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Accountant's Annual Determination and believes that such determination is an appropriate representation of the Development.

(g) DHCD shall have sixty (60) days after the delivery of the Accountant's Annual Determination to accept it, to make its objections in writing to the Developer and the Developer's CPA, or to request from the Developer and/or CPA additional information regarding it. If DHCD does not object to it or request additional information with respect to it, it shall have been deemed accepted by the DHCD. If DHCD shall request additional information, then the Developer shall provide DHCD with such additional information as promptly as possible and DHCD shall have an additional thirty (30) days thereafter to review such information and either accept 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 accepted by DHCD. Prior to acceptance of the Accountant's Annual Determination, DHCD shall deliver a copy of the Accountant's Annual Determination to the Municipality with DHCD's determination of the Developer's compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise

objections to the Accountant's Annual Determination as provided above.

To the extent that DHCD shall raise any objections to such Accountant's Annual Determination as provided above, then the Developer and DHCD 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 DHCD 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 DHCD, 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 (e) 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 (e) above within thirty (30) days after the approval of the Accountant's Annual Determination as set forth in subsection (g) above.

(i) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

(j) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall (unless otherwise limited by DHCD) be limited to no more than that amount resulting from the calculation in Attachment B, Step 3 ("Calculation of Maximum Allowable 40B Developer Fee and Overhead") of the Cost Certification Guidance (the "Maximum Allowable Developer Fee"). The Maximum Allowable Developer Fee shall not include fees or profits paid to any other 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. The Developer shall comply with the requirements of Section 21 below regarding Cost Certification in accordance with the requirements of 760 CMR 56.04(8) (e), in the event that DHCD determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 21 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein.

(k) The Municipality agrees that upon the receipt by the Municipality of any cash available for distribution pursuant to subsection (e) above or upon the receipt of any Excess Distributions pursuant to subsection (j) above, the Municipality shall deposit any and all such

monies into an affordable housing fund, if one exists in the Municipality, or into an affordable housing trust fund, if one exists in the Municipality, or otherwise into a fund established pursuant to G.L. c. 44, §53A (collectively, an "Affordable Housing Fund") to be used by the Municipality for the purpose of creating or subsidizing the construction, purchase, rehabilitation, or preservation of housing in the Municipality for persons and families of low and moderate income housing. The expenditure of funds from the Affordable Housing Fund shall be reported on an annual basis to DHCD.

MANAGEMENT OF THE DEVELOPMENT

8. Developer shall maintain the Development in good physical condition in accordance with DHCD's requirements and standards and the requirements and standards of the Lender ordinary wear and tear and casualty excepted. Developer 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 the foregoing, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, DHCD has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS

9. (a) Except for rental of Units to Low or Moderate Income Persons or Families as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease or exchange (collectively, a "Sale") the Development or any portion thereof or any interest therein without the prior written consent of DHCD, which consent shall be granted by DHCD provided that: (1) the Developer secures from the transferee a written agreement, which in the case of any transfer other than a transfer of Beneficial Interests, shall be recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the sale, stating that the transferee will assume in full the Developer's obligations and duties under this Agreement, (2) the proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has no documented history of failures to abide by agreements with funding or regulatory agencies of the Commonwealth or the federal government and is not currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, and (3) the Development is in compliance with this Agreement at the time of the proposed Sale.

(b) The Developer shall provide DHCD and the Municipality with thirty (30) days' prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority 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); or

(iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Development or any party of the Development.

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.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Development to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Development by deed in lieu of foreclosure), subject, however to the provisions of Section 25 hereof.

Developer hereby agrees that it shall provide copies of any and all written notices received by Developer from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

10. Omitted.

BOOKS AND RECORDS

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement 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 applicable regulations and/or guidelines issued by DHCD from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of DHCD or the Municipality. Failure to keep such books and accounts and/or make them available to the DHCD or the Municipality will be an Event of Default hereunder if such failure is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer. The Developer agrees to comply and to cause the Development to comply with all requirements of the Regulations and Guidelines (except that in the extent of a conflict between the express terms of this Agreement and any modifications to the Regulations and Guidelines after the date hereof, the terms of this Agreement shall control), and all other applicable laws, rules, regulations, and executive orders.

12. Within ninety (90) days following the end of each fiscal year of the Development, Developer shall furnish DHCD 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 DHCD which include: (i) financial statements submitted in a format acceptable to DHCD; (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 7 above. A duly authorized agent of Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by DHCD.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of DHCD or the Municipality, 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 ownership and operation of the Development as it pertains to the Developer's compliance with the requirements of this Agreement.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted in connection with a change to the Comprehensive Permit approved in accordance with the Regulations or as set forth in Section 28 below, Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to the Agreement, change the type or number of Affordable Units. Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit; provided however, that the foregoing shall not be deemed to prohibit the conversion of the use of the property on which the Development is built for other uses permitted by the applicable zoning then in effect. Notwithstanding any other provision of this Agreement, in no event shall the Developer change the use of the Development to a use other than a multi-family residential use or change the number or type of Affordable Units on or before the date that is thirty (30) years from the date of the execution of this Agreement (except as provided in Section 29 hereof).

NO DISCRIMINATION

15. (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 or any other basis prohibited by law 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.

(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, familial status, or any other basis prohibited by law 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 Municipality or DHCD to take any corrective action it may deem necessary.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement by the Developer is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer as provided herein, then at DHCD's option, and without further notice, the DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD 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. If any default, violation, or breach of any provision of this Agreement by the Municipality is not cured to the satisfaction of DHCD within thirty (30) days after the giving of notice to the Municipality as provided herein, then DHCD may either terminate this Agreement or may apply to any state or federal court for specific performance of this Agreement, or may exercise any other remedy at law or in equity or take any other action as may be necessary to correct noncompliance with this Agreement. The thirty (30) day cure periods set forth in this paragraph shall be extended for such period of time as may be necessary to cure such a default so long as the Developer or the Municipality, as the case may be, is diligently prosecuting such a cure.

(b) If DHCD 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 according to the rules and regulations then in effect.

(c) In the event DHCD brings an action to enforce this Restriction and prevails in any such action, DHCD shall be entitled to recover from the Developer all of DHCD's reasonable costs of an action for such enforcement of this Restriction, including reasonable attorneys' fees.

(d) The Developer hereby grants to DHCD or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. DHCD intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay DHCD fees for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to DHCD a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security interest with respect thereto.

18. DHCD shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. In carrying out its obligations as a Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. DHCD shall notify the Developer and the Municipality in the event DHCD 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 DHCD, payable within thirty (30) days of the end of each fiscal year of the Developer during the Limited Dividend Term as defined in Section 24(b) below, but not in excess of the amounts as shown on Appendix B hereto and any fees payable under Section 17 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 DHCD under this Agreement, and shall act on behalf of DHCD hereunder, to the extent that DHCD delegates its rights and duties by written agreement with the Monitoring Agent.

19. The Municipality shall have the right to engage a third party (the "Affordability Monitoring Agent"), pursuant to the terms of a separate monitoring agreement between the Municipality and the Developer in accordance with the terms of the Comprehensive Permit, to monitor compliance with all or a portion of the ongoing affordability requirements of this Agreement which Municipality is responsible for overseeing hereunder, but for no other purpose. In carrying out its obligations as an Affordability Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. The Municipality shall notify the Developer and DHCD in the event the Municipality engages an Affordability Monitoring Agent, and in such event the Developer hereby agrees that the Affordability Monitoring Agent shall have the same rights, and be owed the same duties, as the Municipality under this Agreement, and shall act on behalf of the Municipality hereunder, to the extent that the Municipality delegates its rights and duties by written agreement with the Affordability Monitoring Agent.

CONSTRUCTION AND FINAL COST CERTIFICATION

20. The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

21. Upon Substantial Completion, the Developer shall provide the Municipality with a certificate of the architect for the Development in the form of a "Certificate of Substantial Completion" (AIA Form G704) or such other form of completion certificate acceptable to the

Municipality.

In addition, within ninety (90) days after Substantial Completion, the Developer shall provide DHCD with its Cost Certification for the Development.

As used herein, the term "Substantial Completion" shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

For the purposes hereof the term "Cost Certification" shall mean the determination by the DHCD of the aggregate amount of all Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date in the format provided in the Cost Certification Guidance (the "Cost Examination"). The Cost Certification must be examined in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner's and/or general contractor's certificate, as provided in the Cost Certification Guidance, executed by the Developer and/or general contractor under penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. "Allowable Development Costs" shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

Prior to acceptance of the Cost Certification, DHCD shall deliver a copy of the Cost Certification to the Municipality with DHCD's determination of the Developer's compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Cost Certification as provided in Section (g) above.

22. In order to ensure that the Developer shall complete the Cost Certification as required by Section 21 hereof, the Developer has provided DHCD herewith adequate financial surety (the "Surety") provided through a letter of credit, bond or cash payment in the amounts and in accordance with the Comprehensive Permit Rules and in a form approved by DHCD. If DHCD shall determine that the Developer has failed in its obligation to provide Cost Certification as described above, DHCD may draw on such Surety in order to pay the costs of completing Cost Certification.

23. Omitted.

TERM

24. (a) This Agreement shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns, in perpetuity, except as provided in Section 24(b) below, (the "Term"). Upon expiration of the Term, this Agreement and the rights and obligations of the parties hereunder shall automatically terminate without the need of any party executing any additional document. For the purposes hereof, the term "perpetuity" shall mean for so long as the Development does not comply with applicable zoning or other local requirements without the benefit of the Comprehensive Permit. Notwithstanding any other provision of this Agreement, in no event shall the Term expire prior to the date that is thirty (30) years from the date of the execution of this Agreement.

(b) Notwithstanding subsection (a) above, the provisions of Section 7(a)-(i) herein ("Limited Dividends") shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns, and the Municipality and its successors and assigns until the date which is fifteen (15) years from the date of this Agreement (the "Limited Dividend Term").

LENDER FORECLOSURE

25. The rights and restrictions contained in this Agreement shall not lapse if the Development is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Development.

INDEMNIFICATION/LIMITATION ON LIABILITY

26. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless DHCD and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against DHCD or the Municipality by reason of its relationship to the Development under this Agreement to the extent the same is attributable to the acts or omissions of the Developer and does not involve the negligent acts or omissions of DHCD or the Municipality.

27. DHCD and the Municipality shall not be held liable for any action taken or omitted under this Agreement so long as they shall have acted in good faith and without gross negligence. Further, no officer, partner, manager, member, agent or employee of DHCD or the Municipality shall have any personal liability hereunder.

28. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by the Developer hereunder, DHCD will look solely to the Developer's interest in the Development for the satisfaction of any judgment against the Developer or for the performance of any obligation of the Developer hereunder. Further, no officer, partner, manager, member, agent or employee of the Developer shall have any personal liability hereunder.

CASUALTY

29. Subject to the rights of the Lender, Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by Developer, Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS AND WARRANTIES

30. The Developer hereby represents and warrants as follows:

(a) The Developer (i) is a Maryland corporation, qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the 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 Development 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, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other documents executed in connection with the Construction Loan, or other encumbrances permitted by DHCD).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

MISCELLANEOUS CONTRACT PROVISIONS

31. This Agreement may not be modified or amended except with the written consent of DHCD or its successors and assigns, the Municipality or its successor and assigns, and

Developer or its successors and assigns.

32. 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. Without limiting the foregoing, any local preference criteria to be used in the selection of tenants for the Affordable Units shall conform to the requirements of the Guidelines.

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

34. 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.

35. 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.

36. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

NOTICES

37. 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:

c/o AvalonBay Communities, Inc.
600 Atlantic Avenue, 20th Floor
Boston, MA 02210
Attention: Vice President – Development
Fax: 617-426-1610

with copies by regular mail or such hand delivery

[or facsimile transmission] to:

Sudbury Avalon, Inc.
c/o AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road Suite 800
Arlington, VA 22203
Attention: Senior Vice President and General Counsel
Fax: 703-329-9130

And to:
Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110
Attention: Steven Schwartz, Esq.
Fax: 617-574-7636

If to DHCD:

Department of Housing and Community Development
100 Cambridge St., Suite 300
Boston, MA 02114
Attention: Director of Local Initiative Program
Fax: 617-573-1330

If to the Municipality:

Town Manager
Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776
Fax: (978) 443 - 0756

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.

RECORDING

38. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

39. 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.

DELEGATION BY DHCD

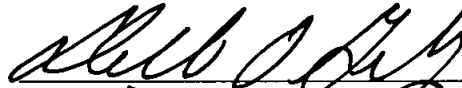
40. DHCD may delegate its compliance and enforcement obligations under this Agreement to a third party, if the third party meets standards established by DHCD, by providing written notice of such delegation to the Developer and the Municipality. In carrying out the compliance and enforcement obligations of DHCD under this Agreement, such third party shall apply and adhere to the pertinent standards of DHCD.

[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.

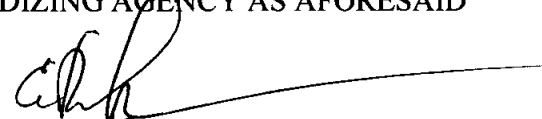
DEVELOPER:

SUDBURY AVALON, INC.

By: 
Name: David G. Lipp
Its: Vice President
Hereunto duly authorized

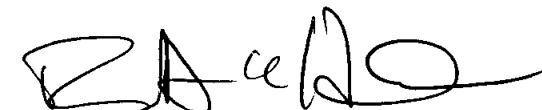
DHCD:

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT, AS
SUBSIDIZING AGENCY AS AFORESAID

By: 
Name: Catherine Racer
Its: Associate Director
Hereunto duly authorized

MUNICIPALITY:

TOWN OF SUDBURY

By: 
Name: Robert C Haarde
Its: _____
Hereunto duly authorized

Attachments:

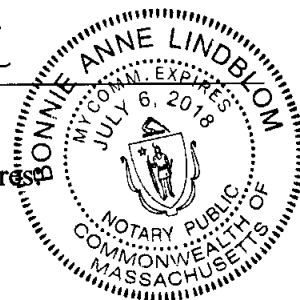
- Exhibit A – Legal Description
- Appendix A – Rent Schedule
- Appendix B – Fees Payable to DHCD

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Suffolk, ss.

On this 5 day of June, 2017, before me, the undersigned notary public, personally appeared David Gillegie, proved to me through satisfactory evidence of identification, which were known to me, to be the person whose name is signed on the preceding document, as VP of Sudbury Avalon, Inc., a Maryland corporation, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

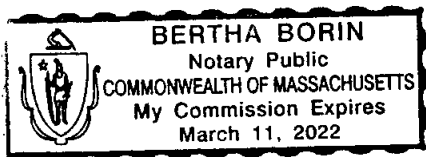
Bonnie Anne Lindblom
Notary Public
Print Name:
My Commission Expires 7/6/18



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

On this 14th day of June, 2017, before me, the undersigned notary public, personally appeared Catherine Racer, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding document, as Associate Director for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Bertha Borin
Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

On this 23 day of May, 2017, before me, the undersigned notary public, personally appeared Robert C. Haarde, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding document, as the BOS Chair for the Town of Sudbury, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Sudbury.

Carol P. Hobin

Notary Public

Print Name: Carol P. Hobin

My Commission Expires: July 6, 2023

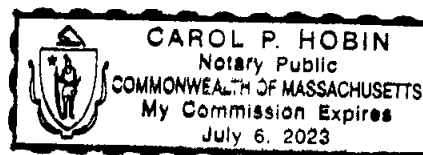


EXHIBIT A

LEGAL DESCRIPTION

That certain parcel of land with the improvements thereon located in the Town of Sudbury, Middlesex County, Massachusetts, being shown as "Lot 3, Area = 1,078,022 sq. ft. (24.748 Acres)" on a plan entitled "Subdivision Plan of Land in Sudbury, Massachusetts," prepared by VHB Inc., dated May 6, 2016, and recorded with the Middlesex South District Registry of Deeds as Plan No. 1005 of 2016.

APPENDIX A

RENT SCHEDULE (INITIAL)

Re: Avalon Sudbury
Sudbury, MA
Sudbury Avalon, Inc.

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

	<u>Rents</u>	<u>Utility Allowances</u>
Studio Units	\$1216	\$61
One-bedroom Units	\$1419	\$78
Two-bedroom Units	\$1622	\$103
Three-bedroom Units	\$1825	\$128
Four-bedroom Units	N/A	\$N/A

APPENDIX B

FEES PAYABLE TO DHCD

During the term of this Agreement, the Development shall pay to DHCD a monitoring fee of \$30.00 per month for each Affordable Unit with a maximum annual fee of \$4,000. The Developer shall make each payment to DHCD within ten (10) days of the end of every month until such time as it shall have paid DHCD the maximum annual fee.