

Middlesex South Registry of Deeds  
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**Middlesex South Registry of Deeds**  
**Maria C. Curtatone, Register**  
208 Cambridge Street  
Cambridge, MA 02141  
617-679-6300  
[www.middlesexsouthregistry.com](http://www.middlesexsouthregistry.com)

LOCAL INITIATIVE PROGRAM

REGULATORY AGREEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS  
FOR  
RENTAL PROJECT  
Local Action Units

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this 8<sup>th</sup> day of September, 2022 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 Lexington, Massachusetts, a municipal corporation acting by and through its Board of Selectmen ("the Municipality"), and Lexington Senior Housing Owner LLC, a Delaware limited liability company, with a principal place of business at 2310 Washington Street, Newton Lower Falls, Massachusetts 02462, and its successors and assigns ("Developer").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (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 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP") and *Comprehensive Permit Guidelines: M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory* have been issued thereunder (the "Guidelines");

WHEREAS, the Developer intends to construct a senior independent and assisted living rental housing development known as Waterstone at Lexington at an approximately 13.18-acre site located at 55 Watertown Street in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of (a) 116 independent living residential dwellings (the "IL Units"), 18 of which will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Affordable IL Units"), and (b) 40 assisted living residential dwellings (the "AL Units," and together with the IL Units, the "Units"), 3 of which will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Affordable AL Units," and together with the Affordable IL Units, the "Affordable Units") for a total number of 156 rental dwellings;

WHEREAS, the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Developer have made application to DHCD to certify that the Affordable Units in the Project are Local Action Units (as that term is defined in the Guidelines) within the LIP Program; and

Property: 55 Watertown Street, Lexington, MA 02421  
Title reference: Book 74435, Page 235

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Developer hereby agree and covenant as follows:

1. Construction. The Developer agrees to construct the Project in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications"). A total of twenty-one (21) Units in the Project will be Affordable Units, as more particularly described herein. In addition, all Affordable Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the Guidelines and must contain complete living facilities including but not limited to (a) in the case of the Affordable IL Units, a stove, refrigerator, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, and (b) in the case of the Affordable AL Units, a refrigerator, kitchen cabinets, and plumbing fixtures, all as more fully shown in the Plans and Specifications.

<u>12</u>	of the Affordable IL Units shall be one bedroom units;
<u>3</u>	of the Affordable AL Units shall be one bedroom units;
<u>6</u>	of the Affordable IL Units shall be two bedroom units;
<u>0</u>	of the Affordable AL Units shall be two bedroom units;

Affordable IL Units must have the following minimum areas:

one bedroom units	-	690 square feet
two bedroom units	-	900 square feet

Affordable AL Units must have the following minimum areas:

one bedroom units	-	490 square feet
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During the term of this Agreement, the Developer covenants, agrees, and warrants that the Project and each Affordable Unit will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must comply with all similar local codes, ordinances, and by-laws, and at all times comply with applicable requirements of the Executive Office of Health and Human Services and the Executive Office of Elder Affairs or successor agencies, including with regard to the operation of independent living and assistance living residential dwellings, as applicable.

2. Affordability.

(a) Throughout the term of this Agreement, each Affordable Unit will be rented for no more than the rental rates set forth herein to an Eligible Tenant. An "Eligible Tenant" is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U.S. Department of Housing and Urban Development ("HUD"), whose members are each 62 years of age or older, and, with respect to the AL Units only, who require the services of the Developer. A "Family" shall mean two or more persons who will live regularly in the Affordable Unit as their sole and principal residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the Boston-Cambridge-Newton, MA-NH Metropolitan Statistical Area.

(b) The monthly rents charged to tenants of Affordable Units shall not exceed:

(i) with respect to the Affordable IL Units, an amount equal to forty percent (40%) of the monthly adjusted income of a Family whose gross income equals eighty percent (80%) of the median income for the Area, and

(ii) with respect to the Affordable AL Units, an amount equal to sixty percent (60%) of the monthly adjusted income of:

(A) with respect to an Affordable AL Unit occupied by a one (1) person Family, a one (1) person Family whose gross income equals eighty percent (80%) of the median income for the Area, as provided by HUD, and

(B) with respect to an Affordable AL Unit occupied by a two (2) or more person Family, a two (2) person Family whose gross income equals eighty percent (80%) of the median income for the Area, as provided by HUD.

Included in the monthly rent charged for an Affordable Unit under this clause the Developer shall provide at no extra cost to the tenant, utilities (excluding telephone and cable) and certain services and amenities such as housekeeping, transportation and life enrichment activities as described in more detail in the Marketing Plan (as defined below). In addition, in the case of Affordable AL Units, the Developer shall also provide at no extra cost to the tenant, all services required by law and regulation to be provided to all assisted living residents, including those required under regulations promulgated by the Executive Office of Elder Affairs ("EOEA"), which services currently consist of three (3) meals per day and one (1) hour of personal care services per day. In no event shall the levels of utilities, services or activities provided to the tenants of the Affordable IL Units or the Affordable AL Units be less than the corresponding levels of services provided to the tenants of the remaining (i.e., market rate) IL Units or AL Units, respectively. Annual income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD. The initial maximum monthly rents and utility allowances for the Affordable Units are set forth in Exhibit B attached hereto. If the rent for an Affordable Unit is subsidized by a state or federal rental subsidy program, then the rent applicable to the Affordable Unit may be limited to that permitted by such rental subsidy program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

Annually as part of the annual report required under Subsection 2(e) below, the Developer shall submit to the Municipality and DHCD a proposed schedule of monthly rents and charges for

all Affordable Units in the Project. Such schedule shall be subject to the approval of the Municipality and DHCD for compliance with the requirements of this Section. Rents for Affordable Units shall not be increased without the Municipality's and DHCD's prior approval of either (i) a specific request by Developer for a rent increase or (ii) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by 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 Area median income 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 Area median income 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 Section 4 below; if the Municipality and DHCD approve such rent increase in accordance with this subsection, the Initial Maximum Rents and Utility Allowances for Affordable Units in Exhibit B of the Agreement shall be deemed to be modified accordingly.

(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 or (ii) the Developer rents the next available unit of comparable type (i.e., IL or AL), size, features, and bedrooms at the Development as an Affordable Unit in conformance with Section 2(a) of this Agreement, or otherwise demonstrates compliance with Section 2(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) Throughout the term of this Agreement, the Developer shall annually determine whether the tenant of each Affordable Unit remains an Eligible Tenant. This determination shall be reviewed by the Municipality and certified to DHCD as provided in section 2(g), below.

(f) The Developer shall enter into a written lease with each tenant of an Affordable Unit which shall be for a minimum period of one year and which provides that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease.

(g) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Affordable Units continues to be Affordable Unit as provided in sections 2 (a) and(c), above; and that the Project and the Affordable Units have been maintained in a manner consistent with the Regulations and Guidelines and this Agreement.

### 3. Subsidized Housing Inventory.

(a) The Project will be included in the Subsidized Housing Inventory upon the occurrence of one of the events described in 760 CMR 56.03(2). Only Affordable Units will be deemed low and moderate income housing to be included in the Subsidized Housing Inventory.

(b) Units included in the Subsidized Housing Inventory will continue to be included in the Subsidized Housing Inventory in accordance with 760 CMR 56.03(2) for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Developer are in default hereunder; (2) the Project and each of the Affordable Units continue to comply with the Regulations and the Guidelines as the same may be amended from time to time and (3) each Affordable Unit remains an Affordable Unit as provided in section 2(c), above.

4. Marketing. Prior to marketing or otherwise making available for rental any of the Units, the Developer must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Affordable Units. Such Marketing Plan must describe the tenant selection process for the Affordable Units and must set forth a plan for affirmative fair marketing of Affordable Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing 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 Marketing Plan may also include a local preference for up to seventy percent (70%) of the Affordable Units (i.e., a maximum of twelve (12) Affordable IL Units and a maximum of two (2) Affordable AL 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 Marketing 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 Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. **If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Developer must list all Affordable Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, Fair Housing Commission, Suite 966, One City Hall Plaza, Boston, MA 02201 (671-635-3321).** All costs of carrying out the Marketing Plan shall be paid by the Developer. A failure to comply with the Marketing Plan by the Developer or by the Municipality shall be deemed to be a default of this Agreement. The Developer agrees to maintain for five years following the initial rental of the last Affordable Unit and for five years following all future rentals, a record of all newspaper

advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Developer or the Municipality. The Developer and the Municipality agree that if at any time prior to or during the process of marketing the Affordable Units, DHCD determines that the Developer, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Developer or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

5. Non-discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age (except that the parties expressly acknowledge that the Project is age-restricted for persons 62 years of age and older (the "Age Restriction") and that accordingly the Age Restriction with respect to any and all residents, including without limitation Eligible Tenants, shall not be deemed a discrimination in violation of this Section 5 so long as the Developer complies with applicable Age Restriction laws), handicap, marital status, national origin, sexual orientation, familial status, genetic information, ancestry, children (except as permitted by law), receipt of public assistance, or any other basis prohibited by law in the selection of tenants; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

6. Inspection. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement.

7. Recording. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located or, if the Project consists in whole or in part of registered land, file this Agreement and any amendments hereto with the Registry District of the Land Court for the County where the Project is located (collectively hereinafter, the "Registry of Deeds"), 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.

8. 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 State of Delaware, and is 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 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, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred to in paragraph 17, below).

(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.

#### 9. Transfer Restrictions.

(a) Except for rental of Low or Moderate Income Units to Eligible Tenants in accordance with the terms of this Agreement, and the rental of any of the other Units and/or commercial space in the Development in the ordinary course of business, the Developer will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under Section (d) below) mortgage that portion of the Property that includes the Project, without the prior written consent of DHCD and the Municipality (such consent not to be unreasonably withheld, conditioned or delayed).

(b) A request for consent to a Sale shall include:

- A signed agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;
- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Development is in compliance with the affordability requirements of this Agreement.

(c) Consent to the proposed Sale shall be deemed to be given unless DHCD or the Municipality notifies the Developer within thirty (30) days after receipt of the request that



either

- The package requesting consent is incomplete, or
- The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, or
- The Project is not being operated in compliance with the affordability requirements of this Agreement at the time of the proposed Sale.

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

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any 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 Project 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 made at no greater than the prevailing rate of interest 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 Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof. For the avoidance of doubt, consent under this Section 9 shall also not be required of a purchaser acquiring the property at foreclosure of any such mortgage.

Developer hereby agrees that it shall provide to DHCD and the Municipality 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. Casualty; Demolition; Change of Use.

(a) The Developer represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer (subject to the approval of the lender(s) which has provided financing) will use its best efforts to repair and restore the Project 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 Project in accordance with this Agreement.

(b) The Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to this Agreement, change the type or number of Affordable Units. The Developer shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project, or permit the use of the dwelling accommodations of the Project for any purpose except residences and any other uses permitted by the applicable zoning then in effect.

11. Governing Law. 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.

12. 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 at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

DHCD: Department of Housing and Community Development  
Attention: Local Initiative Program Director  
100 Cambridge Street, 3rd Floor  
Boston, MA 02114

Municipality: Town of Lexington  
Lexington Town Office  
1625 Massachusetts Avenue  
Lexington, MA 02420

Developer: Lexington Senior Housing Owner LLC  
c/o National Development  
2310 Washington Street  
Newton Lower Falls, MA 02462

with a copy to:

Epoch Senior Living  
51 Sawyer Road  
Suite 500  
Waltham, MA 02453

13. Term.

(a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. 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. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual.

(b) 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 and inure to the benefit of DHCD and the Municipality and their 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.

14. Lender Foreclosure. The rights and restrictions contained in this Agreement shall not lapse if the Project 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 Project.

15. Further Assurances. The Developer and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Developer and the Municipality with the terms of this Agreement.

16. Default.

(a) The Developer and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Developer or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Developer or the Municipality hereunder without receiving a Default Notice from Developer or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Developer or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, 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 non-compliance with this Agreement. Any mortgagee(s) of Developer of which the Municipality and DHCD have notice shall receive reasonable notice and opportunity to cure within thirty (30) days from and after the expiration of the time period allowed Developer hereunder; provided, however, as to any breach or default by Developer the cure of which requires possession and control of the Project, and provided that any such mortgagee undertakes, by written notice to Municipality and DHCD within thirty (30) days after receipt of notice of default, to obtain possession and control of the Project with due diligence and thereafter exercises reasonable efforts to cure or cause to be cured by a receiver (or other agent or contractor) such breach or default with due diligence, such mortgagee's cure period shall continue for such additional time as such mortgagee may reasonably require to prosecute such cure to its completion (not to exceed an additional ninety (90) days following the date on which mortgagee obtains possession and control of the Project or the appointment of a receiver, as applicable), before such remedies are exercised.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 16, then the Affordable Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed Affordable housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided herein is to create and maintain long-term affordable rental housing, and by reason thereof the Developer agrees that DHCD or the Municipality or any prospective, present, or former tenant shall be entitled for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce the specific performance by the Developer of its obligations under this Agreement in a state court of competent jurisdiction. The Developer further specifically acknowledges that the beneficiaries of its obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement by Developer, which continues beyond applicable notice and cure periods, the Developer shall reimburse DHCD and the Municipality, respectively, for all of its reasonable, out of pockets costs and attorney's fees associated with such breach.

17. Mortgagee Consents. 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 the Consent and Subordination of Mortgage to Regulatory Agreement attached hereto and made a part hereof.

18. Documentary Stamps. No documentary stamps are required at the time of recording this Agreement because this Agreement and the restrictions herein are not being purchased from the Developer by DHCD or the Municipality

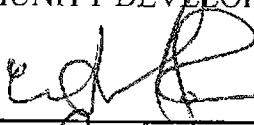
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Executed as a sealed instrument as of the date first above written.

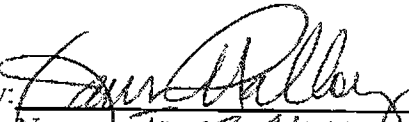
LEXINGTON SENIOR HOUSING OWNER LLC

By:  rps  
Name: Stephen A. Kinsella  
Its: Authorized Real Estate Signatry

DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

By:   
Name: Catherine Raeder  
Its: Director

MUNICIPALITY

By:   
Name: JAMES MULLOY  
Its Chief Executive Officer

Attachments: Exhibit A - Legal Property Description  
Exhibit B - Rents for Affordable Units

COMMONWEALTH OF MASSACHUSETTS

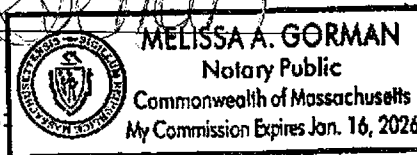
COUNTY OF MIDDLESEX, ss.

July 13, 2022

On this 13<sup>th</sup> day of July, 2022, before me, the undersigned notary public, personally appeared Stephen A. Kinsella, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, as an Authorized Real Estate Signatory of Lexington Senior Housing Owner LLC, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Melissa A. Gorman*

Notary Public  
Print Name:  
My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS

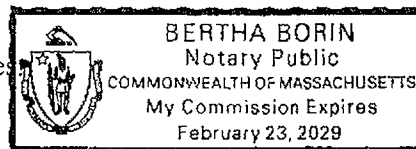
COUNTY OF Suffolk, ss.

9/8, 2022

On this 8<sup>th</sup> day of September, 2022, before me, the undersigned notary public, personally appeared Catherine Baeer, 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 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:

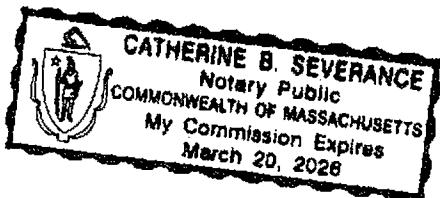


COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

July 25, 2022

On this 25<sup>th</sup> day of July, 2022, before me, the undersigned notary public, personally appeared JAMES MALLOY, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding document, as Town Manager/Chief Exec. for the City/Town of Lexington, MA, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



*Catherine B. Severance*  
Notary Public  
Print Name: Catherine B. Severance  
My Commission Expires: 3/20/28

**CONSENT AND SUBORDINATION OF MORTGAGE  
TO REGULATORY AGREEMENT**

Reference is hereby made to a certain Mortgage dated April 7, 2020 given by Wells Fargo Bank, National Association to Lexington Senior Housing LLC, recorded with the Middlesex South Registry of Deeds at Book 74437, Page 424 ("Mortgage").

The Undersigned, present holder of said Mortgage, hereby recognizes and consents to the execution and recording of this Agreement and agrees that the aforesaid Mortgage shall be subject and subordinate to the provisions of this Agreement, to the same extent as if said Mortgage had been registered subsequent thereto. The Undersigned further agrees that in the event of any foreclosure or exercise of remedies under said Mortgage it shall comply with the terms and conditions hereof.

WELLS FARGO BANK, NATIONAL ASSOCIATION

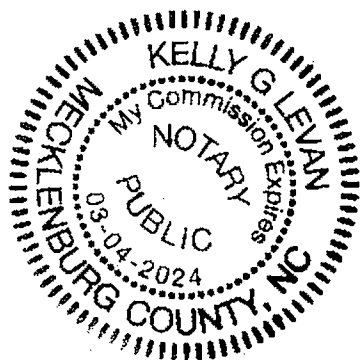
By: *Sarah Pearson*  
Its: *Director*

STATE OF *NC*

COUNTY OF *Mecklenburg* ss.

*July 8*, 2022

On this *8* day of *JULY*, 2022, before me, the undersigned notary public, personally appeared *Sarah Pearson*, 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 *Director* of Wells Fargo Bank, National Association, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



*Kelly G Levan*  
Notary Public  
Print Name: *Kelly G. Levan*  
My Commission Expires: *3/4/24*

**EXHIBIT A**

Re: Waterstone at Lexington  
(Project name)  
Lexington, Massachusetts  
(City/Town)  
Lexington Senior Housing Owner LLC  
(Developer)

Property Description

That certain parcel of land situated in Lexington, Middlesex County, Massachusetts shown as "Proposed Lot B-2" on a plan entitled "Approval Not Required Plan of Land, Belmont Country Club, Watertown Street, Lots 2A Map 1 & Lot 2A, Map 3, Town of Lexington, Middlesex County, Commonwealth of Massachusetts", dated April 25, 2018, prepared by Control Point Associates, Inc. and recorded with the Middlesex South Registry of Deeds as Plan No. 469 of 2018.



**EXHIBIT B****Waterstone at Lexington**

(Project name)

**Lexington, Massachusetts**

(City/Town)

**Lexington Senior Housing Owner LLC**

(Developer)

**Initial Maximum Monthly Rents for Affordable Independent Living Units:**

<b><u>Unit Type</u></b>	<b><u>Rents</u></b>
One bedroom units	\$2,983.33*
Two bedroom units	\$3,356.67**

\* Based on **80%** of 2022 Area Median Income for **2-person household** (which 80% equals \$89,500.00), multiplied by **40%**

\*\* Based on **80%** of 2022 Area Median Income for **3-person household** (which 80% equals \$100,700.00), multiplied by **40%**

**Initial Maximum Monthly Rents for Affordable Assisted Living Units:**

<b><u>Unit Type / Resident Type</u></b>	<b><u>Rents</u></b>
One bedroom units / 1 person Household	\$3,915.00***
One bedroom units / 2+ person Household	\$4,475.00****

\*\*\* Based on **80%** of 2022 Area Median Income for **1-person household** (which 80% equals \$78,300.00), multiplied by **60%**

\*\*\*\* Based on **80%** of 2022 Area Median Income for **2-person household** (which 80% equals \$89,500.00), multiplied by **60%**