

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

DECLARATION OF MODERATE INCOME HOUSING RESTRICTION

(Property Address: 53 & 55 Watertown Street, Lexington, Massachusetts)

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, its successors and assigns (the "Declarant") hereby makes the following described Declaration of Moderate Income Housing Restriction on Declarant's interest in and to an approximately 13.4-acre parcel of land, together with all the buildings and improvements now or hereafter situated thereon, located at 53 and 55 Watertown Street, Lexington, Massachusetts, as described in more detail in Exhibit A attached hereto ("Premises"), in favor of the Town of Lexington, Massachusetts ("Lexington" or the "Municipality"), a municipal corporation acting by and through its Select Board (the "Select Board"), having a usual place of business at the Lexington Town Office at 1625 Massachusetts Avenue, Lexington, MA 02420.

WHEREAS, the Municipality, acting by and through its Select Board, and ND Acquisitions LLC, a Massachusetts limited liability company and an affiliate of the Declarant (the "Developer"), entered into a Memorandum of Understanding dated as of November 5, 2018, as amended by that certain First Amendment to Memorandum of Understanding (the "First Amendment") dated as of November 14, 2018 (as so amended, the "MOU"), notice of which MOU is recorded with Middlesex South District Registry of Deeds (the "Registry") in Book 74434, Page 270, in connection with, among other things, the development and use of the Premises as a senior independent living and senior assisted living residence (the "Project"), which Project shall contain (a) 116 independent living residential dwellings (the "IL Units"), and (b) 40 assisted living residential dwellings (the "AL Units," and together with the IL Units, the "Units").

WHEREAS, Section III of the MOU, as amended by Section 1.d of the First Amendment, requires the Developer to cause four (4) of the Units in the Project to be available for rent to residents who earn between 100% and 150% of the Median Income (as defined below), at rental rates as hereinafter provided (as such Units may hereafter be identified from time to time, the "Moderate Income Units").

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and covenant that the terms of this Moderate Income Housing Restriction (hereinafter referred to as the "Restriction"), authorized by M.G.L. c. 184, §§31-33 and otherwise by law, are as follows:

1. Purpose. The purpose of this Restriction is to assure that the Moderate Income Units will be maintained and made available to Eligible Tenants (as defined in Paragraph 9 below) in accordance with the MOU.

2. Prohibited Uses. This Restriction shall prohibit the use of the Moderate Income Units, when constructed on the Premises, for any use except residential use by persons who qualify as Eligible Tenants, subject to and in accordance with the terms set forth herein.

3. Monitoring Agent. Declarant has engaged the Municipality, at the Declarant's expense, as a monitoring agent (the "Monitoring Agent") to ensure that the Declarant is abiding by its obligations relative to the Moderate Income Units pursuant to the MOU. Declarant has, at the Declarant's expense, entered into a monitoring agreement with the Monitoring Agent ("Monitoring Agreement"), which Monitoring Agreement has been approved by the Municipality, and shall obtain the Monitoring Agent's approval of a tenant selection plan for the Moderate Income Units (which approval shall not be unreasonably withheld, conditioned or delayed). The specific scope of the Monitoring Agent's roles and responsibilities with respect to the Project are more particularly set forth in the Monitoring Agreement

4. Scope. The Declarant intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Restriction regulating and restricting the use and occupancy of the Premises (i) shall be and are covenants running with the Premises, encumbering the Premises in perpetuity, binding upon the Declarant's successors in title and all subsequent owners of the Premises, (ii) are not merely personal covenants of the Declarant, and (iii) shall bind the Declarant and its successors and assigns (and the benefits shall inure to the Municipality and to any present or prospective tenants of the Moderate Income Units); provided, however, that the Declarant and each successive owner of all or any portion of the Project shall be liable only for the obligations accruing during the period of their respective ownership of the Project.

5. Duration Not Limited. This perpetual Restriction is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the 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. The Declarant hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to ensure that this Restriction runs with the land.

6. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Premises or portion thereof shall expressly provide that such conveyance is subject to this Restriction, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Premises or portion thereof provides that such conveyance is subject to this Restriction.

7. Moderate Income Units. For so long as the Premises are used for the Project, the Moderate Income Units shall be provided as follows:

- (a) Four (4) of the Units shall at all times be provided as Moderate Income Units. All or any portion of the Moderate Income Units may, from time to time

and as reasonably determined by Declarant, be comprised of IL Units or AL Units, or a combination thereof. Any IL Unit designated by Declarant to be a Moderate Income Unit shall be referred to herein as a "Moderate Income IL Unit," and any AL Unit designated by Declarant to be a Moderate Income Unit shall be referred to herein as a "Moderate Income AL Unit." In the event of any change in the designation of any Moderate Income Unit within the Project (other than a change in the designation of a Moderate Income Unit from an IL Unit to an AL Unit, or vice versa, it being acknowledged by the parties that IL Units and AL Units are not necessarily of the same size or nature as one another), any such newly designated Moderate Income Unit shall be generally similar in size and nature to the previously designated Moderate Income Unit it replaces.

(b) The initial Moderate Income Units are identified on Exhibit B hereto.

(c) If, after initial occupancy, the income of a tenant of a Moderate Income Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, such unit shall be deemed an Excess Income Unit (as defined herein) and the provisions of Section 9(d) below shall apply, *mutatis mutandis*.

(d) No entry fee shall be charged for the Moderate Income Units.

(e) The construction of the Project shall meet all applicable codes, regulations, statutes and zoning bylaws of the Municipality and all applicable codes, regulations and statutes of the Commonwealth of Massachusetts. The Moderate Income Units shall be distributed amongst the Units within the Project.

8. Tenant Selection.

(a) Nondiscrimination. The Declarant shall not discriminate on the basis of race, creed, color, sex, age (except that the parties expressly acknowledge that the Project is an age-restricted senior housing facility 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), handicap, marital status, sexual preference, national origin, familial status, genetic information, ancestry, children (except that the practical effect of the Age Restriction is to restrict children), receipt of public assistance, or any other basis prohibited by law in the lease, use and occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. The Declarant shall not discriminate against, or refuse to lease, rent or otherwise make available units in the Project to a holder of a federal or state rental certificate or voucher. The parties acknowledge that the building in which the Project is located is a non-smoking facility and that smokers may accordingly be excluded as residents, visitors, or otherwise.

(b) Selection Policies for the Moderate Income Units. The Declarant shall adopt and submit to Municipality for approval resident selection policies and criteria for the Moderate Income Units acceptable to Municipality that provide for (i) the selection of residents from a written waiting list in the chronological order of their application and, as applicable, with respect to the particular category of senior living residences within the Project to which they have applied (i.e., IL or AL), insofar as practicable, provided that following initial lease-up, current residents of the market rate IL Units and market rate AL Units shall, to the extent such residents qualify as Eligible Tenants, be given preference for the next available Moderate Income Units, and (ii) the prompt written notification to any rejected applicant of the grounds for any rejection. The selection process to be made according to chronological order of application, as aforesaid, shall be fair and open and shall not impede equal housing opportunity for any applicants. An Eligible Tenant for an AL Unit is subject to a health assessment by the Declarant to ensure that the Declarant can meet the health needs of the Eligible Tenant, provided that such health assessments shall be no more stringent than the requirements imposed by the Massachusetts Executive Office of Elder Affairs. If the Declarant determines, using the same criteria as applied to market rate Units, that an Eligible Tenant applying for a Moderate Income AL Unit does not require the services of the Declarant or requires more services than the Declarant provides, the Eligible Tenant will not be offered a Moderate Income AL Unit. The Declarant shall also provide the Municipality with a tenant selection plan for the Moderate Income Units reasonably acceptable to the Municipality (the "Tenant Selection Plan"). The approved Tenant Selection Plan and the approved resident selection policies and criteria shall be adhered to in every material respect.

9. Income and Rent/Fee Restrictions for the Moderate Income Units.

(a) During the term of this Restriction, all of the Moderate Income Units in the Project (i.e., four (4) Units) shall be leased exclusively to an Eligible Tenant, subject to the provisions of Section 8.B above. An "Eligible Tenant" is an individual or two or more persons who will live regularly in the Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship, and whose annual gross income is between 100% and 150% of the Median Income, as defined below (the "Moderate Income Tier"), are 62 years of age or older and, with respect to Moderate Income AL Units only, requires the services of the Declarant.

(b) An Eligible Tenant's annual gross income shall be the anticipated total income from all sources received by the individual, including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income specifically includes and excludes certain types of income as set forth in,

and shall be determined in accordance with, 24 C.F.R. § 5.609 (or any successor regulations).

(c) As used herein, the term "Median Income" shall mean the most current Boston-Cambridge-Newton, MA-NH Metropolitan Statistical Area median income as determined by the U.S. Department of Housing and Urban Development ("HUD").

(d) Any Moderate Income Unit occupied by an Eligible Tenant at the commencement of occupancy shall be deemed a Moderate Income Unit so long as (i) such Unit continues to be rent restricted and (ii) the tenant's income does not exceed 140% of the highest Median Income within the Moderate Income Tier. If the tenant's income exceeds 140% of such Median Income as aforesaid at the time of annual recertification determination (as set forth below), his/her Unit (the "Excess Income Tenant Unit") shall be deemed a Moderate Income Unit until Declarant shall rent to an Eligible Tenant the next available Unit which is not a Moderate Income Unit and which is otherwise substantially similar to the Excess Income Tenant Unit, at which point the first tenant will be required to pay the then-current monthly market fee charged for rent and services for the Excess Income Tenant Unit.

10. Income Certifications and Reporting for the Moderate Income Units. The Declarant represents, warrants and covenants that the determination of whether an individual occupying a Moderate Income Unit meets the income requirements set forth herein shall be made by Declarant at the time of leasing of the Moderate Income Units in the Project and thereafter at least annually on the basis of the current income of such individual. Declarant shall maintain as part of its Project records copies of all leases of the Moderate Income Units in the Project and all initial and annual income certifications by tenants of the Moderate Income Units in the Project. Within ninety (90) days after the end of each calendar year of occupancy of any portion of the Project, the Declarant shall provide to the Municipality annual reports consisting of certifications regarding the annual and monthly gross income of each individual occupying a Moderate Income Unit at the Project. With respect to individuals who moved to a Moderate Income Unit at the Project in the prior year, the annual report shall also include certification of such individuals at the time of their initial occupancy at the Project. The annual reports shall be in a form reasonably approved by the Municipality and the Monitoring Agent and shall contain such supporting documentation as the Municipality and the Monitoring Agent shall reasonably require. In addition to the foregoing, Declarant shall keep such additional records with respect to the Moderate Income Units and prepare and submit to Municipality and the Monitoring Agent such additional reports with respect to the Moderate Income Units as Municipality and the Monitoring Agent may reasonably deem necessary to ensure compliance with the requirements of this Restriction. The annual reports shall initially be in the form of Exhibit C attached hereto.

11. Maximum Monthly Rents for the Moderate Income Units. The maximum monthly fees charged for rent and services for each of the Moderate Income Units in the Project (the "Maximum Monthly Rents") shall be reasonably determined by Declarant by calculating the then-current monthly market fees charged for rent and services for comparable Units and services in the Project (i.e., for IL Units and/or AL Units, as applicable), and by discounting such monthly market

fees by thirty-three percent (33%). The Declarant shall provide tenants forty-five (45) days' notice prior to any change in the Maximum Monthly Rents. The Declarant shall provide the Municipality with the Project's then-current rent roll on an annual basis together with the annual report to allow the Municipality to confirm that the Maximum Monthly Rents are being calculated in accordance with this Section.

12. Lease Form for the Moderate Income Units. The Declarant's lease form for a Moderate Income Unit in the Project shall follow the standard lease form for market rate Units in the Project, except that the lease form for Moderate Income Units shall (a) contain an annual recertification requirement, and (b) contain a provision stating that if the tenant does not requalify for the moderate housing program, then Declarant shall have the right to terminate the lease upon thirty (30) days' notice if the tenant is unwilling to pay the then-current monthly market fees charged for rent and services for comparable Units and services in the Project.

13. Transfer Restriction. Except for the rental of (i) Moderate Income Units in accordance with the terms of this Restriction and (ii) Units other than the Moderate Income Units, the Declarant will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under subsection (d) below) mortgage the Property without the prior written consent of the Municipality (such consent not to be unreasonably withheld, conditioned or delayed).

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

- A signed letter stating that the transferee will assume in full the Declarant's obligations and duties under this Restriction arising following such transfer;
- 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 or moderate housing developments in the Commonwealth owned by such entities.

(b) Consent to the proposed Sale shall be deemed to be given unless the Municipality notifies the Declarant within (30) thirty days after receipt of the request that either:

- The package as described in clause (a) above 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 moderate income requirements of this Agreement at the time of the proposed Sale.
- (c) The Developer shall provide 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 Declarant; 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 Restriction).
 - (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Declarant's interest in the Project or any part of the Project.
 - (iv) in the case of any transfer other than a transfer of Beneficial Interests (as hereinafter defined), a copy of the assumption agreement signed by the transferee assuming Declarant's obligations under the Restriction.

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.

(d) Notwithstanding the above, consent under this Section 13 shall not be required with respect to the grant by the Declarant 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 13 shall also not be required of a purchaser acquiring the property at foreclosure of any such mortgage.

(e) Any sale or transfer of title to the Project by any such mortgagee subsequent to the exercising of any of its rights and remedies referenced in subsection (d) above shall be subject to the requirements of subsections (a) and (b) above.

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

the mortgage.

14. Lender Foreclosure. The rights and restrictions contained in this Restriction shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action or a sale subsequent to foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Project.

15. No Demolition. The Declarant shall not demolish any material part of the Project or substantially subtract from any material real or personal property of the Project unless required by law and provided that after such action the ratio of Moderate Income Units to total number of remaining Units in the Project is in conformity with the MOU in conjunction with renovation or rehabilitation of the Project or construction of a new project on the Premises, in either case subject to the prior written consent of the Municipality, which consent shall not be unreasonably withheld, conditioned or delayed. However, in no event shall such renovation, rehabilitation or new construction contain less than four (4) Moderate Income Units. The Declarant shall not permit the use of any Moderate Income Unit for any purpose other than rental housing.

16. Casualty. The Declarant represents, warrants and agrees that if the Project, or any material part thereof, shall be damaged or destroyed, the Declarant 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, subject to the approval of the lender(s) which has provided financing for the Project. The Declarant shall maintain the same ratio of Moderate Income Units to total number of remaining Units in the Project as required by the MOU, but in no event less than four (4) Moderate Income Units. The Declarant represents, warrants and agrees that the Moderate Income Units shall thereafter continue to operate in accordance with the terms of this Restriction.

17. Inspection. Any use of the Moderate Income Units or activity thereon which is inconsistent with the purpose of this Restriction is expressly prohibited. Declarant hereby grants to Municipality, the Monitoring Agent and its duly authorized representatives the right to enter the Premises upon reasonable advance written notice to Declarant at reasonable times and in a reasonable manner for the purpose of inspecting the Premises to determine compliance with this Restriction and all applicable laws, rules, regulations. The Municipality shall notify Declarant in writing of any alleged non-compliance by Declarant of this Restriction, specifying in reasonable detail the nature of such alleged noncompliance and the requested cure. Declarant shall thereafter have thirty (30) days from the date of its receipt of the notice to cure the alleged noncompliance, or, in the case of a default which cannot with due diligence be cured within thirty (30) days, such additional time as may be reasonably necessary to permit the same to be cured with all due diligence provided Declarant has commenced to cure such noncompliance within thirty (30) days and shall thereafter use commercially reasonable efforts to complete such cure. If Declarant fails to use commercially reasonable efforts or does not cause the alleged noncompliance to be cured, then the Municipality may take, but shall have no obligation to take, reasonable and appropriate action under the circumstances to cure any such violation and Declarant shall pay the Municipality the cost thereof within ten (10) days of invoice. Any mortgagee(s) of Declarant of which the Municipality has notice shall receive reasonable notice and opportunity to cure within thirty (30)

days from and after the expiration of the time period allowed Declarant hereunder; provided, however, as to any breach or default by Declarant the cure of which requires possession and control of the Project, and provided that any such mortgagee undertakes, by written notice to Municipality within thirty (30) days after receipt of notice of default, to obtain possession and control of the Project with due diligence and thereafter exercise 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.

18. Enforcement. Provided that the applicable notice and cure rights in Section 17 have expired, the Municipality may enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Moderate Income Units to their condition prior to any such violation, and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality. Declarant covenants and agrees to reimburse Municipality for all reasonable costs and expenses (including without limitation reasonable counsel and consultant fees) incurred in enforcing this Restriction or in taking reasonable measures to cure any violation hereof by Declarant, in each case in the event of a default by Declarant that continues beyond applicable notice and cure periods. By its acceptance of this Restriction, Municipality does not undertake any liability or obligation relating to the condition of the Premises.

19. No Waiver. Any election by the Municipality as to the manner and timing of its right to enforce this Restriction, or otherwise exercise its rights hereunder, shall not be deemed or construed to be a waiver of such rights.

20. Further Assurances. The Declarant and its successors and assigns agrees to execute any notices or instruments appropriate to assuring the enforceability of this Restriction upon the Municipality's reasonable request. The benefits of this Restriction shall be in gross and shall be assignable by the Municipality. The Declarant and the Municipality intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

21. Estoppel. Upon request by the Declarant, the Municipality shall within thirty (30) days execute and deliver to the Declarant any document, including an estoppel certificate, which certifies the Declarant's compliance with any obligation of the Declarant contained herein. Failure by the Municipality to respond such request within said thirty (30) day period shall be deemed a certification of compliance and a waiver by the Municipality of any claims hereunder.

22. Recordation. Declarant shall record this Restriction executed by Declarant and the Board of Selectmen of the Municipality with the Registry, and provide a certified copy thereof to the Municipality.

23. Representations. Declarant does hereby declare, represent, covenant and warrant as follows:

- (a) Declarant (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 Restriction.
- (b) The execution of this Restriction and the performance of the obligations hereunder by Declarant (i) to the best of Declarant's knowledge, 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 Declarant 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) Declarant will, at the time of the delivery and recordation of this Restriction, have good and marketable title to the Premises free and clear of any lien or encumbrance which would prevent use of the Premises for the Project or which would prevent the execution and recording of this Restriction.
- (d) To the best of Declarant's knowledge, 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 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 Restriction).

24. Governing Law. This Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

25. Successors and Assigns. This Restriction shall also be and is for the benefit of the Municipality, its successors and assigns.

26. Restriction Perpetual. This Restriction shall run with the Premises in perpetuity from the date of recordation in the Registry and shall be binding upon Declarant, Declarant's successors and assigns in interest in the Premises, and any other party having an ownership interest

in said Premises or claiming to have an interest with respect to said Premises as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing and is not merely a personal restriction of Declarant. This Restriction is hereby intended and declared to be a Restriction in perpetuity held by a governmental body as defined in and with the benefit of M.G.L. c. 184, § 32 and no re-recording of this Restriction under G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority thereof and Declarant and its successors and assigns, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Restriction. Declarant hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts required to be satisfied in order for the provision of this Restriction to constitute a Restriction 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.

27. Notice. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered or if deposited for overnight delivery with a nationally recognized overnight courier service (such as UPS, FedEx or DHL), postage prepaid, to the parties at their respective addresses set forth below or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice delivered by hand shall be deemed given upon receipt, and a notice deposited for overnight delivery as aforesaid shall be deemed given when delivered to addressee.

If to Declarant:

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

with a copy to:

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

If to Municipality:

Town Manager
Lexington Town Office
1625 Massachusetts Avenue

Lexington, MA 02420

28. Modification or Amendment. This Restriction shall not be modified, amended, changed, terminated or waived without the consent of the Declarant (or Declarant's successor in interest in the Premises) and the consent of the Municipality. The Declarant as well as the Municipality may enforce and, if necessary, extend this Restriction in accordance with applicable law. Declarant agrees for itself, and its heirs, successors and assigns to execute and record such notices of restriction as are required to extend this Restriction in perpetuity in accordance with applicable law. The Municipality is hereby declared to be a benefited party to and a holder of this Restriction and the Declarant hereby appoints the Municipality as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf which may at any time be necessary for the specific and limited purpose of maintaining this Restriction in effect in perpetuity. Without limiting the forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Municipality.

29. Enforceability. If any court or other tribunal of competent jurisdiction determines that any clause, part, or provision of this Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

30. Mortgage Consent and Subordination. To the extent that there are any mortgages or other liens encumbering the Premises and recorded with the Registry prior to the date and time of the recording with the Registry of this Restriction, Declarant represents and warrants that it has obtained the consent of such existing mortgagees and lienholders of the Project to the execution of this Restriction and to the terms and conditions hereof, and that all such mortgagees and lienholders have executed a consent to this Restriction.

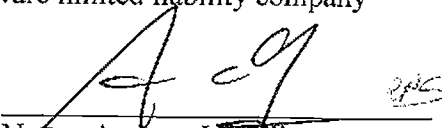
31. Documentary Stamps. No documentary stamps are required as this Restriction is not being purchased by the Municipality.

[Remainder of page left intentionally blank. Signatures follow.]

Executed under seal as of this 25th day of March, 2022.

DECLARANT:

LEXINGTON SENIOR HOUSING OWNER LLC,
a Delaware limited liability company

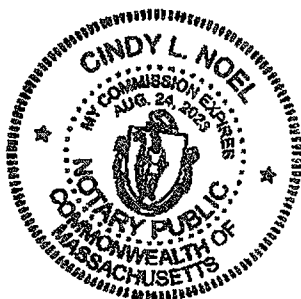
By: 
Name: Andrew J. Gallinaro
Title: Authorized Real Estate Signatory
Hereunto duly authorized

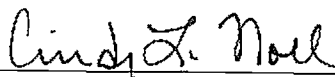
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

March 25, 2022

Before me, the undersigned notary public, personally appeared Andrew J. Gallinaro, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed as it voluntarily for its stated purpose as authorized real estate signatory of LEXINGTON SENIOR HOUSING OWNER LLC.




Notary Public
My Commission Expires: 8/24/25

ACCEPTANCE OF RESTRICTION BY MUNICIPALITY

The Select Board of the Town of Lexington hereby accepts the foregoing Restriction for the Town of Lexington.

EXECUTED as an instrument under seal this 30th day of March, 2022.

TOWN OF LEXINGTON
BY SELECT BOARD

By: [Signature]
Name: JILL HAN

By: [Signature]
Name: JOSEPH N PATO

By: [Signature]
Name: SUZANNE E BARRY

By: [Signature]
Name: DOUGLAS M. WENTE

By: [Signature]
Name: MARK SANDEEN

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 30th day of March, 2022, before me, the undersigned Notary Public, personally appeared Jill Han, Joseph Pato, Suzanne Barry, Douglas Wente, and Mark Sandeen, who proved to me through satisfactory evidence of identification, which were personally known to be the persons whose names are signed on the preceding or attached document, as Select Board for the Town of Lexington, and acknowledged to me that they signed it voluntarily for its stated purpose.

[Signature]
(Official Signature and Seal of Notary)

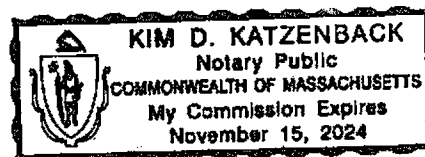


Exhibit A

Premises 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

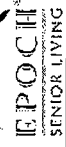
Initial Moderate Income Units

<u>Unit No.</u>	<u>Level</u>	<u>Bedrooms</u>	<u>Unit Type</u>
405	4	1	AL
259	2	1	IL
458	4	1	IL
344	3	2	IL

Exhibit C
Form of Annual Report

(See attached)

COMPLIANCE MONITORING REPORT & CERTIFICATION FOR TOWN OF LEXINGTON



Completion Instructions: Complete for all households in moderate income units based on information current as of 12/31 of the reporting year.

Development Name: Waterstone Lexington

Total # Units: 156

Total # of Affordable Units: 21

Total # of Moderate Units: 4

Total # of Market Units: 131

Town: Lexington Massachusetts

Metropolitan Statistical area: Boston-Cambridge-Newton, MA-NH

Owner: Epoch Senior Housing Owner LLC

Management Agent: Belth Anderson

Contact Name/Title: banderson@epochsl.com

Email Address: banderson@epochsl.com

Telephone #: 781.810.1230

Report Date: _____

Note: this report is only for the Moderate units (a separate DHCD report and certification addresses the Affordable units at this property).
 Note: At the Owner's discretion, these units can be either 4 assisted living units or 4 independent living units (or a mix of the two).

Section 1: Tenant Roster

#	TYPE	UNIT #	Head of Household Name (Last, First)	Vacant - V (Not Collecting Rent)	Unit Size (0,1,2)	Market Type (Specify % of AMI)	Move-In Date	Move-Out Date	Total Gross Income @ Move In Certification	Income Min (100% AMI) in Effect as of Move-In Date	Income Max (150% AMI) in Effect as of Move-In Date	Date of Most Recent Annual Recert.	Total Gross Income @ Most Recent Annual Recert.	140% Income Limit in Effect as of Annual Recert.	Tenant Rent as of 12/31/ (Utilities Included)	Voucher (Yes or No)	Proposed Annual Rent Increase for 20__
1	AL or IL				1	100% to 150%			\$0	\$0	\$0		\$0	\$0	\$0.00		\$0.00
2	AL or IL																
3	AL or IL																
4	AL or IL																

Section 2: Waitlist

#	Dated added to list	Head of Household Name (Last, First)	Household Size	Income at time of Application
1				\$
2				\$
3				\$
4				\$
5				\$
6				\$
7				\$
8				\$
9				\$
10				\$

This Certificate is provided by Lexington Senior Housing Owner LLC, a Delaware limited liability company (the "Owner"), in connection with that certain development known as WATERSTONE AT LEXINGTON (the "Development"), located at 53 & 55 Waterstone Street, Lexington, Massachusetts (the "Municipality"), for purposes of assisting the Municipality in determining the Owner's compliance with the requirements of that certain Moderate Income Housing Agreement pertaining to the Development dated as of _____, 20__.

The undersigned hereby certifies to the Municipality that the information provided above is, to the best of my knowledge, true, correct and complete as of the date hereof.
 EXECUTED under seal this _____ day of _____, 20__.

LEXINGTON SENIOR HOUSING OWNER LLC,
 a Delaware limited liability company

By: _____
 Name: _____
 Title: Authorized Real Estate Signatory