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## REGULATORY AGREEMENT AND AFFORDABLE HOUSING COVENANT

This Regulatory Agreement and Affordable Housing Covenant (the "Agreement") made this 27th day of November, 2006 by Avalon Acton, Inc, a Maryland corporation, having an office address of 2900 Eisenhower Avenue, Third Floor, Alexandria, Virginia 22314 (the "Developer") and The Town of Acton, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting by and through its Board of Selectmen with its offices at 472 Main Street, Acton, Massachusetts 01720 (the "Town").

### BACKGROUND:

A. Developer proposes to construct a 296-unit rental development with related amenities and improvements (the "Development") on an approximately 35-acre site more particularly described on Exhibit A attached hereto (the "Property"). The Development is also proposed to include 84 units in the Town of Westford. The Westford component of the Development is not governed or affected by this Agreement, and except where otherwise explicitly specified, the word "Development" as used herein shall mean only those buildings and other improvements that are located within the Town of Acton.

B. Developer received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals for the Town pursuant to M.G.L. Chapter 40B, §§20-23, authorizing the Development. The Comprehensive Permit was filed with the Acton Town Clerk on December 20, 2005 and was recorded with the Middlesex (S.D.) Registry of Deeds (the "Registry of Deeds") in Book 47074, Page 265.

C. The Comprehensive Permit requires that "low or moderate income housing" be included as part of the Development in perpetuity, and includes provisions concerning the inclusion of low or moderate income housing in the Development (the "Affordability Requirements").

D. Construction and/or permanent financing for the Development will be obtained from the Massachusetts Development Finance Agency or another qualified subsidizing agency (the "Subsidizing Agency"). As a component of such financing, Developer will be entering into a separate Regulatory Agreement and other agreements with respect to the Development which, inter alia, will set forth certain restrictions as to low or moderate income housing to be provided as part of the Development as the same may be hereafter extended or amended (the "Subsidizing Agency Agreements").

E. The terms of the Subsidizing Agency Agreements are not in perpetuity, and do not contain certain other provision governing the inclusion of low or moderate income housing in the Development, and therefore the Town and the Developer desire to enter into a supplemental regulatory agreement to govern those issues for which the Subsidizing Agency Agreement are silent, and to govern the Affordability Requirements if and when the Subsidizing Agency Agreements terminate or expire.

PLEASE RETURN TO: JOANN ALLAN  
FIRST AMERICAN TITLE INSURANCE COMPANY  
101 HUNTINGTON AVENUE, 13TH FLOOR  
BOSTON, MA 02199

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, Developer and the Town hereby agree and covenant as follows:

1. Regulatory Agreements. It is the intention of the Comprehensive Permit and the parties hereto that the Development would, in perpetuity and without interruption, be subject to a suitable regulatory agreement consistent with the Comprehensive Permit governing the low or moderate income housing (the "Affordable Units") in the Development. For so long as the Subsidizing Agency Agreements are in force and effect (hereinafter, the "Subsidy Period"), the Subsidizing Agency Agreements shall satisfy in full the requirements of Condition R.4 for a regulatory agreement. From and after the expiration or termination of the Subsidizing Agency Agreements, this Agreement shall immediately take effect as the Regulatory Agreement specified in Condition R.7 of the Comprehensive Permit. The provisions of the preceding sentence shall be self-operative, but Developer agrees to give notice to the Town within ten days after the termination of the Subsidizing Agency Agreements should the same terminate prior to the end of the Qualified Project Period (as defined in the Subsidizing Agency Agreements). Developer shall also provide the Town with copies of:

- (a) any notices of default under the Subsidizing Agency Agreements immediately following Developer's receipt of any such notices (e.g., the notices contemplated under Section 10(a) and (g) of the MassDevelopment Regulatory Agreement); and
- (b) any notices or correspondence from the Subsidizing Agency or its agent or assignees to Developer, notifying Developer of the Agency's intention to terminate the Subsidizing Agency Agreements prior to the expiration of the Qualified Project Period (e.g., any notice served under Section 9 of the MassDevelopment Regulatory Agreement).

2. Affordability Requirements. Pursuant to the terms of Condition R.1 of the Comprehensive Permit, the Developer has elected to restrict twenty percent (20%) of the units in the Development (the "Affordable Units") to households earning not more than fifty percent (50%) of the median income for the applicable area, charging rents (the "Maximum Rents") that are permitted by the Subsidizing Agency Agreements, all in accordance with the applicable rules, regulations and guidelines of the Subsidizing Agency. Without derogating from the provisions of Section 6 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the affordability requirements during the Subsidy Period, the Developer shall provide a copy to the Board of Selectmen, of any statements, reports, notices, or certifications made by the Developer to the Subsidizing Agency (or its monitoring agent) relative to the Developer's compliance with the affordability requirements in the Subsidizing Agency Agreements contemporaneous with the Developer's delivery of such documents to the Subsidizing Agency.

From and after the Subsidy Period, the Development shall continue to be restricted so that 20% of the rental units therein will be occupied by households earning not more than fifty (50%) of the applicable area median income, and the rents charged to the Affordable Units are affordable to households earning 50% of said area median income (the "General Affordability

Requirement"), all in accordance with the applicable rules, regulations and guidelines of the Subsidizing Agency (or its successor agency) that existed just prior to the expiration or termination of the Subsidizing Agency Agreements. To the extent that the Subsidizing Agency (or its successor agency) has ceased to promulgate such applicable rules, regulations and policies, then the General Affordability Requirement shall be carried out in accordance with substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Developer and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the Agreement. Further, if M.G.L. c. 40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, then the Developer agrees to operate and manage the Development as would permit the Development to be credited towards the Town's Subsidized Housing Inventory for purposes of Chapter 40B. The provisions of the foregoing sentence shall not require the Developer to take any steps or impose any additional restrictions on itself or the Development after the Subsidy Period, in addition to the General Affordability Requirement.

The Board of Selectmen shall establish reasonable rules and protocols to govern the monitoring of the affordability requirements, including any reporting and notice obligations, and may designate an entity to serve as its monitoring agent to monitor the Developer's compliance with the affordability requirements. The selection of tenants in the event of unit vacancies shall be governed by the applicable rules of the Subsidizing Agency just prior to the expiration or termination of the Subsidizing Agency Agreements, and in the absence of such rules, by the rules of another subsidizing agency that are reasonably acceptable to the Town and the Developer.

3. Phasing-in of Affordable Rental Units. Consistent with the requirements of the Subsidizing Agency, the Affordable Units shall be constructed and rented contemporaneously with the market-rate units in the Development.

4. Reporting on Limited Dividend; Cooperation. Without derogating from the provisions of Section 6 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements relative to limited dividends from the Development during the Subsidy Period, the Developer shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by the Developer to the Subsidizing Agency to revalue the Developer's equity in the Development, made by the Developer to the Subsidizing Agency (or its monitoring agent) relative to the Developer's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g., all statements required to be submitted under Section 19 of the MassDevelopment Regulatory Agreement), contemporaneous with the Developer's delivery of such documents to the Subsidizing Agency (or its monitoring agent). If, at any time during the Subsidy Period, the Subsidizing Agency determines that there is project income or funds that, in accordance with the Subsidizing Agency's limited dividend policies are (a) not eligible to be distributed to, or retained by, the Developer, or (b) not retained by the Developer or the Subsidizing Agency for the benefit of the Development, ("Excess Profits") then the Developer shall cooperate in good faith with any effort by the Town to have the Subsidizing Agency direct the Excess Profits to the Town's affordable housing trust fund.

5. Local Preference. In accordance with the terms of the Comprehensive Permit, to the maximum extent permitted by law, households having an Acton Connection (as such term is defined in the Comprehensive Permit) shall have first preference for the rental of 70% of the Affordable Units, all in accordance with the terms of Condition R.4(b) of the Comprehensive Permit.

6. Monitoring and Enforcement. During the Subsidy Period, the Subsidizing Agency shall have exclusive authority and jurisdiction for all monitoring, oversight and enforcement functions with respect to the Affordable Units, including without limitation, provision of the Affordable Units, monitoring eligibility for tenancy, calculation of affordable rentals and all matters related to limited dividend restrictions. Notwithstanding the foregoing, throughout the term of this Agreement (including, without limitation, during the Subsidy Period), the Town shall have the right to monitor the Developer's compliance with Sections 3 and 5 of this Agreement, and the Developer shall reasonably cooperate with the Town in its tenant selection processes to ensure that the local preference set forth herein is complied with, to the maximum extent permitted by law and the requirements of the Subsidizing Agency.

7. Subordination and Compliance. In the event of any conflict or inconsistency between the terms hereof and the terms of the Subsidizing Agency Agreements, the terms of the Subsidizing Agency Agreement that is attached hereto as Exhibit A shall control during the Subsidy Period, and the terms of this Agreement shall control on and after the expiration of the Subsidy Period. The execution and recording of this Agreement and the Subsidizing Agency Agreements shall satisfy in full:

- (a) the requirements of Sections R.4 of the Comprehensive Permit to execute and record a Regulatory Agreement; and
- (b) the requirements of Section R.7 of the Comprehensive Permit.

8. 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.

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

To Developer:

Avalon Acton, Inc.  
c/o AvalonBay Communities, Inc.  
1000 Bridgeport Avenue  
Suite 258  
Shelton, Connecticut 06484  
Attention: Joanne Lockridge, Senior Vice President -- Finance

With copies to:

AvalonBay Communities  
2900 Eisenhower Avenue, Third Floor  
Alexandria, Virginia 22314  
Attention: General Counsel

and

Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Attention: Steven Schwartz, Esq.

To Town:

Town of Acton  
Town Hall  
472 Main Street  
Acton, Massachusetts 01720  
Attn: Board of Selectmen

With a copy to:

Stephen D. Anderson, Esq.  
Anderson & Kreiger, LLP  
43 Thorndike Street  
Cambridge, Massachusetts 02141

10. 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 is made for the benefit of the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created by this Agreement. The Town 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 remain for so long as the Development exists on the Property.

11. Developer intends, declares and covenants on behalf of itself and its successors and assigns, and the parties hereto agree (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Development for the term of this Agreement, which shall run concurrently with the term of the "Affordability Requirements" in the Comprehensive Permit, and are binding upon Developer's successors in title, (ii) are not merely personal covenants of Developer, and (iii) shall bind Developer, its successors and assigns for the term of the Agreement, and shall inure to the benefit of the parties hereto and their respective successors and assigns. 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 privileges of estate are also deemed to be satisfied in full. Developer shall cause this Agreement to be recorded in the Registry of Deeds (or, if the Property consists of registered land, to be filed in the Middlesex (S.D.) Registry District of the Land Court). Developer shall pay all fees and charges incurred in connection with such recording or filing.

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

- (a) The Developer (i) is a corporation duly organized under the laws of the State of Maryland, 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 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 recording 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).

13. Recognizing that each party may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, either party on the request of the other party made from time to time, will promptly furnish to the requesting party a statement of the status of any

matter pertaining to this Agreement, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Agreement.

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

DEVELOPER:

AVALON ACTON, INC.

By: *JM*  
Its JOANNE M. LOCKRIDGE  
Hereby SENIOR VICE PRESIDENT

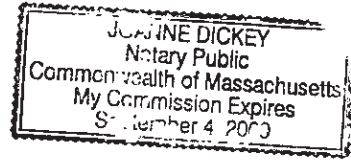
COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss

On this 20<sup>th</sup> day of December, 2006 before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification, which were Conn. License, to be the person whose name is signed on the preceding document, as Sr. V.P. of Avalon Acton, Inc., a Maryland corporation, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

*Joanne Dickey*  
Notary Public

My commission expires: 9/4/09



TOWN:

By its Board of Selectmen,

[Signature]  
Walter M. Foster, Chairman

[Signature]  
F. Dore Hunter

[Signature]  
Lauren S. Rosenzweig

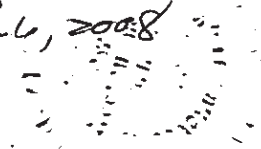
[Signature]  
Peter K. Ashton  
[Signature]  
Andrew D. Magee

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

On this 27 day of NOV, 2006 before me, the undersigned notary public, personally appeared Board of Selectmen 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 Chairman of the Board of Selectmen for the Town of Acton, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Signature]  
Notary Public  
Print Name: Christine M. Joyce  
My Commission Expires Sept 26, 2008



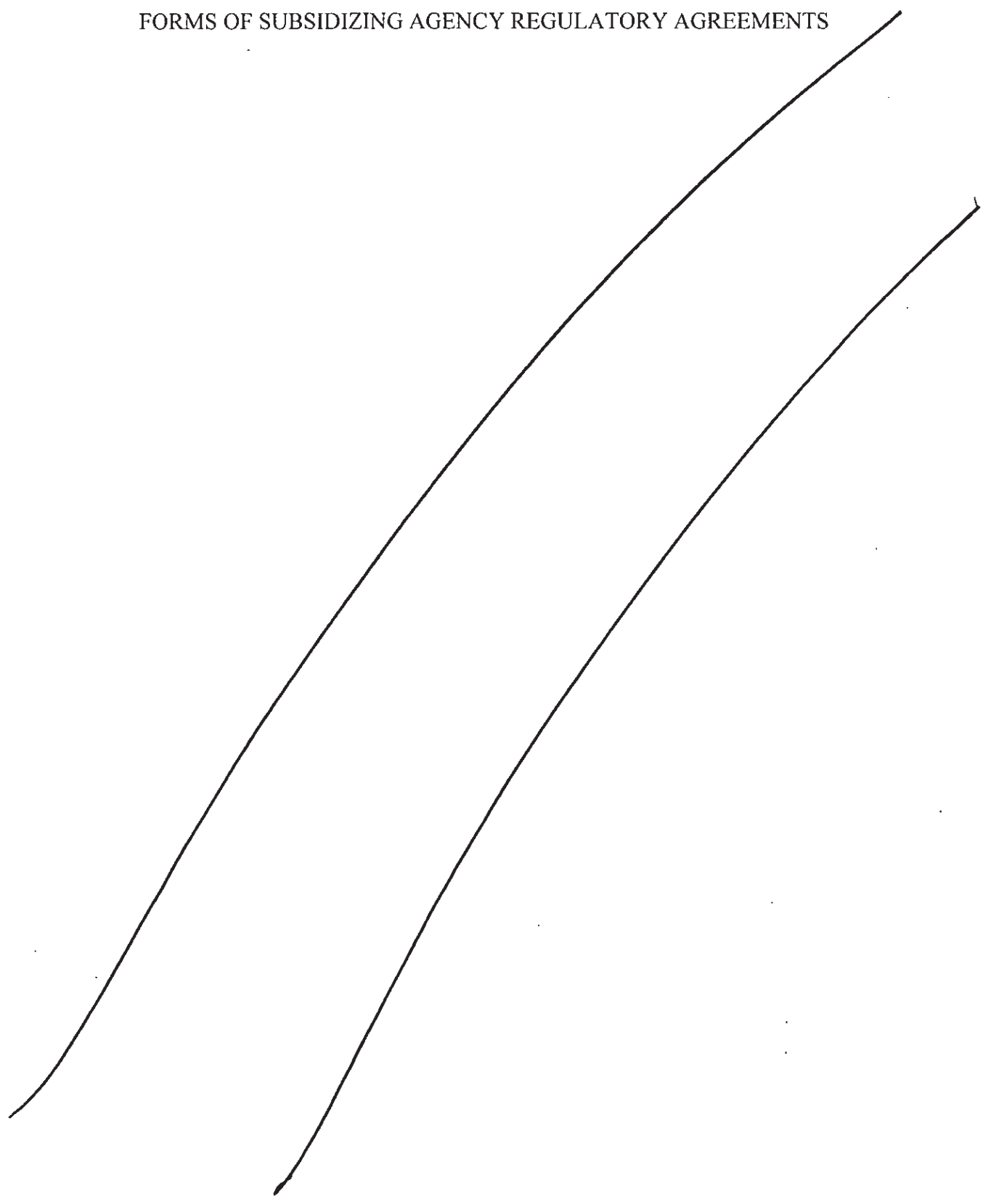


**EXHIBIT A****Property Description**

Those certain parcels of land in Acton, Middlesex County, Massachusetts, being shown as Lots 1 and 2 and the fee in Avalon Drive as shown on the plan entitled "The Woodlands at Laurel Hill, Comprehensive Permit, Acton and Westford, Massachusetts (Middlesex County), Record Plan, For: Woodlands at Laurel Hill, LLC," Scale 1"=40", dated October 19, 2005, and revised June 2, 2006, recorded with Middlesex South Registry of Deeds as Plan No. 1536 of 2006, and recorded with Middlesex North Registry of Deeds as Plan No. 2106 of 2006, *Plan Book 223 Plan 14.*

For our title see deed from Recreational Realty Trust, LLC, dated December 6, 2006, recorded in Middlesex South in Book 48626, Page 538, and recorded in Middlesex North in Book 20779, Page 58; deed from Russell G. LeDuke and Sally A. LeDuke dated December 6, 2006, recorded in Middlesex South in Book 48626, Page 548; and deed from E. James Ciccone, Jr., and Veronica Wythe n/k/a Veronica Ciccone dated December 1, 2006, recorded in Middlesex North in Book 20779, Page 68.

FORMS OF SUBSIDIZING AGENCY REGULATORY AGREEMENTS



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TAX REGULATORY AGREEMENT (40B)

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By and Among

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

and

AVALON ACTON, INC.

and

U.S. BANK, NATIONAL ASSOCIATION, as Trustee

\$45,000,000 Massachusetts Development Finance Agency  
Multifamily Housing Revenue Bonds  
(Avalon Acton Apartments), Series 2006  
Series 2006

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Dated as of December 1, 2006

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TAX REGULATORY AGREEMENT (40B)

THIS TAX REGULATORY AGREEMENT (40B) ("Regulatory Agreement") is made and entered into as of December 1, 2006, by and among MASSACHUSETTS DEVELOPMENT FINANCE AGENCY (the "Issuer"), a body politic and corporate organized and existing under the laws of The Commonwealth of Massachusetts (the "Commonwealth"), U.S. BANK, NATIONAL ASSOCIATION (the "Trustee"), a national banking association duly organized and existing under the laws of the United States of America, and AVALON ACTON, INC., a Maryland business corporation (the "Company").

WITNESSETH:

WHEREAS, the Issuer is organized under Chapter 23G, as amended, of the General Laws of the Commonwealth (the "Act") and is empowered under the Act to enter into contracts with respect to the financing of projects (as defined in the Act), which promote industrial, commercial and other economic development and other public purposes of the Act; and

WHEREAS, the Issuer has issued \$45,000,000 in aggregate principal amount of its Multifamily Housing Revenue Bonds (Avalon Acton Project), Series 2006 (the "2006 Bonds") for the purposes of financing the acquisition, construction and equipping of a 380-unit rental housing development (the "Project") located at 80-82 Nagog Park Drive, Acton, Massachusetts and 5, 7, 12 and 16 Durkee Lane, Westford, Massachusetts, which properties are contiguous and as described in Exhibit A hereto, which is intended to qualify as a "qualified residential rental project" within the meaning of Sections 142(a)(7) and 142(d) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Issuer, the Trustee and the Company have entered into a Financing Agreement dated as of December 1, 2006 (the "Agreement"), pursuant to which the Issuer will lend to the Company the proceeds of the 2006 Bonds, and the Company will agree, among other things, to make loan payments to the Issuer in amounts and at times sufficient, among other things, to pay when due the principal of and the redemption premium, if any, and interest on, the 2006 Bonds; and

WHEREAS, the Company has received a comprehensive permit from the Zoning Board of Appeals for the Town of Acton under Chapter 40B of the Massachusetts General Laws, which permit is recorded at the Middlesex South County Registry of Deeds in Book 47074 at Page 265, and a comprehensive permit from the Zoning Board of Appeals for the Town of Westford under Chapter 40B of the Massachusetts General Laws, which permit is recorded in the Middlesex North Registry of Deeds in Book 19668 at Page 262 (collectively, the "Comprehensive Permit"); and

WHEREAS, pursuant to the requirements of the Comprehensive Permit and this Regulatory Agreement, the Issuer, or its designated representative, will perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirement (as hereinafter defined) and compliance of the Company with the Limited Dividend Requirement (as hereinafter defined).



WHEREAS, the Company is a Limited Dividend Organization (as hereinafter defined);  
and

WHEREAS, the Agreement requires the execution and delivery of this Regulatory Agreement;

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and intending to be legally bound, the Issuer, Trustee and Company do hereby contract and agree as follows:

SECTION 1. Definitions. In addition to terms defined elsewhere in this Regulatory Agreement, unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Regulatory Agreement:

“Actually Outstanding” shall mean, with respect to the 2006 Bonds, those 2006 Bonds the principal and interest on which has not yet been fully paid, whether or not such bonds are deemed to be outstanding under the indenture pursuant to which they were issued.

“Adjusted Family Income” shall mean the adjusted gross income of all persons who reside in a single residential rental unit, calculated in the manner prescribed in Section 142(d)(2)(B) of the Code, and determined in accordance with Exhibit B attached hereto.

“Affordable Units” shall mean those units in the Project set aside for occupancy by Lower Income Tenants which shall consist of 76 units, representing not less than 20% of the units in the Project.

“Area” shall mean the Metropolitan Statistical Area in which the Project is located, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”).

“Assignment” shall mean the Assignment and Intercreditor Agreement, dated as of December 1, 2006, by and among the Issuer, the Trustee and Fannie Mae, and acknowledged, accepted and agreed to by the Borrower.

“Capital Source(s)” shall mean the financial entities, as lender(s) to or partner(s) of, the Owner, providing all or substantially all of the capital necessary to construct the Project, including, without limitation, any developer’s fee loaned or contributed to the Owner and equity from low income housing or historic rehabilitation tax credits.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and any final, temporary or proposed regulations applicable thereto or promulgated thereunder.

“Equity in the Project” shall mean the Owner’s initial equity, as determined in accordance with the Issuer’s equity policy (the “Equity Policy”) and, as certified to the Issuer in the Certified Development Cost Statement pursuant to Section 19 of this Agreement.

“Limited Dividend Organization” shall mean a corporation, partnership, limited liability company or other organization, other than a public agency, which by its governing articles of organization, operating agreement or partnership agreement prohibits distribution with respect to any one year of operation of more than 10% on said entity’s Equity in the Project.

“Lower-Income Tenants” shall mean and include individuals or families with Adjusted Family Income which does not exceed fifty percent (50%) of Median Income, adjusted for family size; provided that Adjusted Family Income shall be determined in a manner consistent with determinations of lower income families and area median gross income made under Section 8 of the United States Housing Act of 1937, as amended and the regulations promulgated thereunder. In no event, however, will the occupants of a unit be considered to be Lower-Income Tenants if all the occupants are full-time students (as defined in Section 151(c)(4) of the Code), no one of which is entitled to file a joint federal income tax return.

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

“Project” shall have the meaning given such term in the second WHEREAS clause to this Regulatory Agreement. The Project does not include the sewage treatment plant being built in part to service the Project, which facility is not owned by the Company.

“Qualified Project Period” shall mean the period beginning on the first day on which at least ten percent (10%) of the residential units in the Project are first occupied, and ending on the latest of (i) the date which is thirty (30) years after the date on which at least fifty percent (50%) of the residential units in the Project are first occupied; (ii) the first day on which no 2006 Bonds are Actually Outstanding; and (iii) the date of which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

“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).

“Tax Regulatory Agreement” shall mean the Tax Regulatory Agreement dated as of December 1, 2006 by and among the Issuer, the Borrower and the Trustee with respect to certain Federal tax matters relating to the Bonds.

SECTION 2. Rules of Construction. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, the words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Regulatory Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

Terms and phrases used in this Regulatory Agreement and not defined herein shall have the meanings assigned to those terms in the Agreement.

In the event of any conflict or inconsistency between the terms hereof and the terms of the Tax Regulatory Agreement, the terms of the Tax Regulatory Agreement shall control during the term of the Tax Regulatory Agreement.

SECTION 3. Project Restrictions. The Company represents, warrants and agrees that, until the expiration of the Qualified Project Period:

- (a) At no time will either the Company or any Related Person occupy a unit in the Project other than units occupied or to be occupied by agents, employees or representatives of the Company reasonably required for the proper maintenance or management of the Project, and any building or structure containing a unit so occupied will contain at least four units not occupied by the Company or any Related Party;
- (b) The Project shall consist of a building or structure or proximate buildings or structures, (i) each containing one or more similarly constructed residential units which are to be used on other than a transient basis and any facilities which are functionally related and subordinate to such units within the meaning of Sections 142(a)(7) and 142(d) of the Code, and (ii) each unit of which is to be rented or available for rental (except as permitted to be occupied by Company agents, employees or representatives in (a) above) on a continuous basis to members of the general public in accordance with the requirements of Sections 142(a)(7) and 142(d) of the Code;
- (c) The Project shall consist of proximate buildings or structures (buildings or structures are proximate if they are all located on a single parcel of land or several parcels of land which are contiguous except for the interposition of a road, street, stream or similar property) owned for federal income tax purposes by the same person being financed pursuant to a common plan;
- (d) Each dwelling unit in the Project shall consist of separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family; and
- (e) Affordable Units will be substantially similar to all other units in the Project, and Lower-Income Tenants will enjoy equal access to all common facilities included in the Project.

SECTION 4. Rental Restrictions. The Issuer and Company hereby declare their understanding and intent that the Project be a "qualified residential rental project" as described in Sections 142(a)(7) and 142(d) of the Code and agree that:

- (a) Promptly after the first date on which 50% or more of the units in the Project are occupied, the Company shall prepare and execute a Certificate As To Qualified Project Period substantially in the form of Exhibit C attached hereto, and the Company shall cause such Certificate to be duly recorded in the Registry and shall provide a date-stamped copy of such recorded Certificate to the Issuer immediately thereafter.
- (b) Once each unit in the Project is available for occupancy, such unit will be rented or available for rental to the general public on a continuous basis during the Qualified Project Period and that during such Qualified Project Period:
  - (i) the Company will rent the Affordable Units to Lower-Income Tenants such that, at all times during the respective Qualified Project Period, not less than twenty percent (20%) of the completed residential units will be occupied by Lower-Income Tenants (the "Affordability Requirement") and the Issuer elects to apply the requirements of Section 142(d)(1)(A) of the Code to determine the status of the Project as a "qualified residential rental project" within the meaning of Section 142(d) of the Code;

The monthly rent charged to tenants of Affordable Units shall not exceed the lesser of:

- (1) The fair market rent for existing housing for comparable units in the Area as established by HUD under regulations promulgated at 24 C.F.R. §888.111 (or successor regulations), less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or
- (2) An amount equal to thirty percent (30%) of the monthly annual income of a Family whose gross income equals fifty percent (50%) of the Median Income, as determined by HUD, with adjustment for the number of bedrooms in the unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a unit under this clause (2), the Company shall subtract from the above amount an allowance for any utilities and services (excluding telephone) to be paid by the resident.

A "Family" is defined in 24 C.F.R. §5.403 (or any successor regulations).

Notwithstanding the foregoing, if (i) a tenant of an Affordable Unit is a holder of a rental voucher or certificate under the so-called Section 8 program or an equivalent federal or state rental assistance voucher program (each a "voucher program") and the Family pays a contribution

towards rent of not more than thirty percent (30%) of such Family's monthly annual income, then the maximum monthly rent (i.e., tenant contribution plus voucher or certificate rental subsidy) may equal the rent allowable under the applicable voucher program and (ii) an Affordable Unit receives federal or state project-based rental subsidy and the Family occupying such Affordable Unit pays a contribution towards rent of not more than thirty percent (30%) of such Family's monthly annual income, then the maximum monthly rent (i.e., tenant contribution plus project-based rental subsidy) may equal the rent allowable under the applicable project-based rental subsidy program. The maximum monthly contribution that may be paid by a Family under this paragraph shall subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the Family.

- (ii) the Company shall comply with all applicable federal, state and local laws, regulations, rules and ordinances prohibiting discrimination in the rental of residential property;
  - (iii) the Company shall submit to the Secretary of the United States Department of the Treasury (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether the Project continues to meet the requirements of Section 142(d) of the Code, and the Company acknowledges that failure to do so will subject the Company to penalties under Section 6652(j) of the Code; and
  - (iv) the Company shall prepare and submit to the Issuer and the Trustee on or before the last day of January, April, July and October of each year during the Qualified Project Period and within 30 days after any change (but only if material to the Company's continuing compliance with this Regulatory Agreement) in occupancy of a residential unit by a Lower-Income Tenant, a Certificate of Continuing Compliance in substantially the form attached hereto as Exhibit D.
- (c) The Company shall lease or enter into residency agreements for the occupancy of residential units in the Project to Lower-Income Tenants only pursuant to written leases or residency agreements, and each such lease or residency agreement shall be for a term of at least one year (or the remainder of the tenant's life, if less) in compliance with the requirements of the Act and shall contain a clause or addendum in substantially the form of Exhibit E attached hereto. The Company shall, upon initial occupancy and annually thereafter, obtain from each Lower-Income Tenant an Income Computation and Certification substantially in the form of Exhibit B hereto and shall obtain and maintain on file from each Lower-Income Tenant evidence reasonably sufficient to verify the Lower-Income Tenant's income and assets, including as may be necessary (i) a copy of such Lower-Income Tenant's most recently filed Federal income tax return, (ii) a verification from the Lower-Income Tenant's employer, if any, of the Lower-



Income Tenant's wages and other compensation, and (iii) verification of other sources of income, if any.

- d) For purposes of this Regulatory Agreement, each residential unit in the Project leased to or occupied by Lower-Income Tenants shall be treated as continuing to be leased to or occupied by Lower-Income Tenants, notwithstanding that the Adjusted Family Income of such Lower-Income Tenants, as of any subsequent determination date, may exceed the applicable limitation; provided however that such residential unit shall no longer be considered leased to or occupied by Lower-Income Tenants if the Adjusted Family Income of such tenants exceeds 140% of the applicable limitation and after such determination, but before the next determination, any residential unit of comparable or smaller size in the Project is occupied by new residents who are not Lower-Income Tenants. In addition, each residential unit in the Project which is leased to or occupied by Lower-Income Tenants shall continue to be considered leased to or occupied by Lower-Income Tenants after such residential unit is vacated by such Lower-Income Tenants until such time as such residential unit is reoccupied, other than for a temporary period not in excess of 31 days, at which time a redetermination of whether the residential unit is occupied by Lower-Income Tenants shall be made.
- (e) The Company hereby agrees that the Issuer shall not be liable for any losses, damages, costs, expenses or claims whatsoever arising from receipt of review by it (or by any person or entity acting on its behalf) of any certificates or reports as to compliance with the requirements of this Regulatory Agreement. The Company further agrees that the Issuer (or any person or entity acting on its behalf) shall not be obligated to review any such report or certificate, or to take any action as a result thereof, but without prejudice to the right of the Issuer to exercise its rights and remedies hereunder if any such report or certificate discloses non-compliance with the requirements hereof, or if the Issuer otherwise discovers such non-compliance. If the Issuer becomes aware of non-compliance by the Company with the requirements hereof, the Issuer shall promptly give written notice thereof to the Company and the Trustee.

SECTION 5. Transfer Restrictions: Covenants to Run With the Land.

- a) The Company covenants and agrees that the Company will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project prior to the expiration of the Qualified Project Period (a "Transfer") that the transferee of that portion assume in writing, in a form acceptable to the Issuer, all duties and obligations of the Company under this Agreement, including this Section 5 in the event of a subsequent Transfer before the expiration of the applicable Qualified Project Period. The Company shall deliver such written assumption agreement to the Issuer and the Trustee before the Transfer. Any conveyance, transfer or assignment by the Company of the Project not complying with this Section shall be null, void and without effect. The provisions of this Section 5(a) shall not apply to any transfer of the Project to

Fannie Mae or its designee upon foreclosure, by deed in lieu of foreclosure or comparable conversion of the Loan.

- (b) The Company shall cause this Regulatory Agreement to be recorded with the Registry and the covenants contained herein shall run with the land and shall bind the Company and its successors and assigns and all subsequent owners of any part of the Project or any interest therein, and the benefits shall inure to the Issuer and its successors and assigns, during the Qualified Project Period.

SECTION 6. Indemnification of Issuer and Trustee. The Company shall, to the fullest extent permitted by law, indemnify and hold harmless the Issuer and the Trustee and their officers, directors, employees and agents, from and against (a) any and all claims arising from any cause whatsoever in connection with this Regulatory Agreement; (b) any and all claims arising from any act or omission of the Company or any of its agents, servants, employees, or licensees in connection with this Regulatory Agreement; and (c) all costs, reasonable counsel fees, expenses, and liabilities incurred in connection with any such claim or proceeding brought with respect to any thereof. The indemnity provided for in this Section shall not limit any other indemnity given under the Agreement or any other document. If any action or proceeding is brought against the Issuer or the Trustee, as the case may be, or any of their respective officers, directors, officials or employees, with respect to which indemnity may be sought hereunder, the Company, upon notice thereof shall assume the investigation and defense thereof, including the employment of counsel acceptable to the Issuer or the Trustee, as the case may be, and shall be responsible for the payment of all expenses related thereto. The indemnified party shall have the right to employ separate counsel in any such action or proceeding and to participation in the defense thereof, and the Company shall be required to pay the fees and expenses of such separate counsel. The foregoing indemnity shall not apply to the extent any claim arises from or relates to the gross negligence or willful acts or omissions of the Issuer or the Trustee.

SECTION 7. Reliance. In performing their duties and obligations hereunder, the Issuer and the Trustee may conclusively rely upon statements and certificates of the Company or Lower-Income Tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Company pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel of their selection, respectively, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with the opinion of such counsel.

SECTION 8. Access to Development and to Books and Records. The Company will, upon reasonable request, permit the Issuer and the Trustee to have access to, and to inspect and copy, the Company's books and records with respect to the Project and to have access to the Project during normal business hours. Such rights may be exercised by a representative, employee or agent of, or counsel to, the party making the request.

SECTION 9. Term. The terms and provisions of this Regulatory Agreement shall become effective upon its execution and delivery. Except as otherwise provided in this Section, this Regulatory Agreement shall remain in full force and effect until the end of the Qualified Project Period. It is expressly agreed and understood that certain provisions hereof are intended

to survive the payment of the 2006 Bonds. The foregoing notwithstanding, this Regulatory Agreement and all restrictions hereunder shall terminate: (A) if there is delivered to the Issuer, the Company and the Trustee an opinion of nationally recognized bond counsel acceptable to the Issuer to the effect that failure to comply with this Regulatory Agreement will not cause interest on the 2006 Bonds to become includable in the gross income of the holders thereof for Federal income tax purposes, or (B) in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, condemnation or similar event, or a change in a federal law or an action of a federal agency after the date of issuance of the 2006 Bonds that prevents the Issuer from enforcing the terms of this Regulatory Agreement, but only if, within a reasonable period, either the 2006 Bonds are repaid or amounts received as a consequence of such event are used to provide a residential rental project that meets the terms of this Regulatory Agreement. Notwithstanding the foregoing, such requirements shall continue to apply to the Project subsequent to a foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at any time subsequent to such event, the obligor on the purpose investment (as defined in Section 1.148-l(b) of the Treasury Regulations) or a Related Person obtains an ownership interest in the Project or any part thereof for Federal tax purposes.

#### SECTION 10. Enforcement.

- (a) Upon discovery by or notification to the Issuer or the Trustee of any default in the performance or observance of any covenant, agreement or obligation of the Company set forth in this Regulatory Agreement, the Issuer or the Trustee shall promptly notify the Company in writing of the existence and nature of such default. If the Company defaults in the performance or observance of any covenant, agreement or obligation of the Company set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the Issuer or the Trustee to the Company, with a copy of such notice to the others, then the Issuer or the Trustee may declare that the Company is in default hereunder and may take any one or more of the following steps, at its option:
  - (i) by mandamus or other suit, action or proceeding at law or in equity, require the Company to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;
  - (ii) have access to and inspect, examine and make copies of all of the books and records of the Company pertaining to the Project;
  - (iii) take whatever other action at law or in equity may appear necessary or desirable to enforce the obligations, covenants and agreements of the Company hereunder; or
  - (iv) subject to the provisions of the Assignment, to recover any monetary damages suffered by the Issuer, the Trustee, or the owners from time to time of the Bonds as a consequence of any event of default;

provided that in the case of a default that is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 60-day period, and if the Company commences the same within such 60-day period and thereafter diligently and continuously prosecutes the same to completion the time within which the Company may cure shall be extended for such period as may be reasonably necessary in the Issuer's or the Trustee's discretion to cure the same with due diligence (but in no event more than 90 days).

- (b) The Company hereby acknowledges and agrees that money damages will not be an adequate remedy at law for a default by the Company arising from a default hereunder, and therefore the Company agrees that the remedy of specific performance shall be available to the Issuer or the Trustee in any such case, but, subject to the provisions of the Assignment, without prejudice to the availability of monetary damage remedies.
- (c) The Trustee shall have the right, but not the obligation, in accordance with this Section and the provisions of the Trust Agreement, without the consent or approval of the Issuer, to exercise any or all of the Issuer's rights or remedies hereunder, and the Issuer hereby irrevocably appoints the Trustee attorney-in- fact for the purpose of enforcement of this Regulatory Agreement. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. The Company agrees to pay, indemnify and hold the Issuer and the Trustee harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees and expenses that may be incurred by the Issuer and the Trustee in enforcing or attempting to enforce this Regulatory Agreement following any default herein on the part of the Company, whether the same shall be enforced by suit or otherwise, and the reasonable fees and expenses of counsel in connection with any opinion to be rendered hereunder.
- (d) No remedy conferred herein or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.
- (e) If the Issuer or Trustee has instituted any proceeding to enforce any right or remedy under this Regulatory Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer, then and in every such case the Company, the Issuer and the Trustee shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Issuer and the Trustee shall continue as though no such proceedings has been instituted.



- (f) No delay or omission of the Issuer or the Trustee to exercise any right or remedy provided hereunder upon a default (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such event of default or acquiescence therein. Every right and remedy given by this Section 10 or by law to the Issuer or the Trustee may be exercised from time to time, and as often as may be deemed expedient by the Issuer or the Trustee, as the case may be.
- (g) If any default, violation or breach by the Company under this Regulatory Agreement is not cured to the satisfaction of the Issuer within thirty (30) days after notice to the Company thereof, then the Issuer may send notification to the Company that it is in violation of the terms and conditions of this Regulatory Agreement. The Issuer may exercise any remedy available to it. The Company shall pay all costs and expenses, including reasonable legal fees, incurred by Issuer in enforcing this Agreement.

SECTION 11. Governing Law. This Regulatory Agreement shall be governed by the internal laws of The Commonwealth of Massachusetts except to the extent that laws of the United States of America may prevail.

SECTION 12. Amendments. This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto, and only upon receipt of an opinion of nationally recognized bond counsel acceptable to the Issuer that such amendment or revision will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the 2006 Bonds.

SECTION 13. Notices. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

If to the Issuer:

160 Federal Street, 7th Floor  
 Boston, Massachusetts 02110  
 Attention: General Counsel  
 Telephone: (617) 330-2000  
 Facsimile: (617) 330-2001

If to the Company:

Avalon Acton, Inc.  
 c/o AvalonBay Communities, Inc.  
 2900 Eisenhower Avenue, 3rd Floor  
 Alexandria, VA 22314  
 Attn: Sr. Vice President--General Counsel  
 Telephone: (703) 317-4639  
 Facsimile: (703) 329-9130



With a copy to:

AvalonBay Communities, Inc.  
1000 Bridgeport Avenue, Suite 258  
Shelton, CT 06484  
Attn: Joanne M. Lockridge  
Telephone: (203) 926-2326  
Facsimile: (203) 926-2304

With a copy to:

Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110  
Attn. Paige A. Manning, Esq.  
Telephone: (617) 574-4038  
Facsimile: (617) 574-7685

If to the Trustee:

U.S. Bank, National Association  
1 Federal Street  
Boston, MA 02110  
Telephone: (617)  
Facsimile: (617)

SECTION 14. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

SECTION 15. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

SECTION 16. Limitation of Issuer Liability. It is understood and agreed by the Company that no covenant of the Issuer herein shall give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers. It is further understood and agreed that no covenant or agreement of any member of the Issuer, or any officer, agent, employee or representative of the Issuer or the Trustee, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof, whether by virtue or any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

SECTION 17. Change in Use. The Company understands and acknowledges that Section 150(b)(2) of the Code provides that if the requirements for a "qualified residential rental project" are not met under Section 142(d) of the Code with respect to the Project, no deduction shall be allowed for interest paid on the 2006 Bonds which accrues during the period beginning

on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date the Project meets the requirements.

SECTION 18. Monitoring Requirements. The Issuer may, from time to time, engage the service of a third party monitoring agent for purposes of monitoring the Company's performance under this Agreement with respect to the Affordability Requirement and the Limited Dividend Requirement. In such event, such monitoring agent shall have authority to act in all matters relating to the Affordability Requirement and Limited Dividend Requirement pursuant this Agreement. In the event the Issuer engages the service of a monitoring agent, such monitoring agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

SECTION 19. Limited Dividend Requirement. The Company agrees that throughout the term of this Regulatory Agreement, distribution of return to the Company or to the members, partners, shareholders, or other owners of the Company or the Project shall not exceed ten percent (10%) of the Company's Equity in the Project per year (the "Limited Dividend Requirement"), as determined from financial statements approved by the Issuer, as described below (the "Allowable Profit") in accordance with the Issuer's Equity Policy. Upon issuance of a final certificate of occupancy for the Project or upon the issuance of final Certificates of Occupancy for all of the units in the Project, the Company shall deliver to the Issuer an itemized statement of total development costs together with the Capital Sources for the Project in form satisfactory to the Issuer (the "Certified Development Cost Statement") prepared and certified by a certified public accountant satisfactory to the Issuer. The Issuer shall determine the Owner's Equity in the Project based on the Certified Development Cost Statement and information included in the Issuer's Equity Policy.

After all of the units in the Project have been rented, the Company shall initially, and at least once every year thereafter, deliver to the Issuer an itemized statement of income and expenditures for the previous calendar year in form satisfactory to the Issuer (the "Certified Income and Expense Statement") prepared and certified by a certified public accountant satisfactory to the Issuer. The Allowable Profit shall be distributed to the Company or to the members, partners, shareholders, or other owners of the Company only in accordance with the Issuer's Equity Policy. The Certified Income and Expense Statement shall include a statement and certification as to amount of the Allowable Profit distributed to the Company or to the members, partners, shareholders, or other owners of the Company for the prior calendar year.

Notwithstanding anything to the contrary contained in this Regulatory Agreement, in the event the Issuer's Equity Policy at any time in the future permit a higher permitted rate of distribution or recalculation of the Owner's Equity more often than currently permitted, the Company shall be entitled to the benefit of such changes. In no event shall any distributions made in connection with the repayment of any mortgage loan in full or with the sale or other transfer of the Project be deemed a distribution for purposes of this Regulatory Agreement.

SECTION 20. Fannie Mae Rider. The Fannie Mae Rider attached to this Regulatory Agreement is, by this reference, deemed a part of this Regulatory Agreement. In the event of a conflict between the terms of this Regulatory Agreement (other than the Fannie Mae Rider) and the terms of the Fannie Mae Rider, the terms of the Fannie Mae Rider shall control.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Company have caused this Agreement to be signed under seal by their fully authorized representatives, all as of the date first written hereinabove.

**MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY**

By: \_\_\_\_\_  
President and Chief Executive Officer, Executive Vice  
President and Chief Operating Officer, Treasurer and  
Executive Vice President of Finance & Administration  
and Chief Financial Officer, Secretary and General  
Counsel, Executive Vice President for Legislative Affairs,  
Executive Vice President for Finance Programs, Executive  
Vice President for Real Estate, Executive Vice President  
Military Initiatives, Executive Vice President for Devens  
Operations and Senior Vice President, Investment  
Banking  
Hereunto duly authorized

**AVALON ACTON, INC.**

By: \_\_\_\_\_  
Name: Joanne M. Lockridge  
Title: Senior Vice President  
Hereunto Duly Authorized

**U.S. BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:  
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself or herself to be an officer of the Massachusetts Development Finance Agency, and that he or she as such officer, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his or her name as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself to be an authorized signatory of Avalon Acton, Inc. and that he, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his name as such authorized signatory.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself for herself to be an authorized signatory of U.S. Bank, National Association, and that he or she as such authorized signatory, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his or her name as such authorized signatory.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A  
LEGAL DESCRIPTION

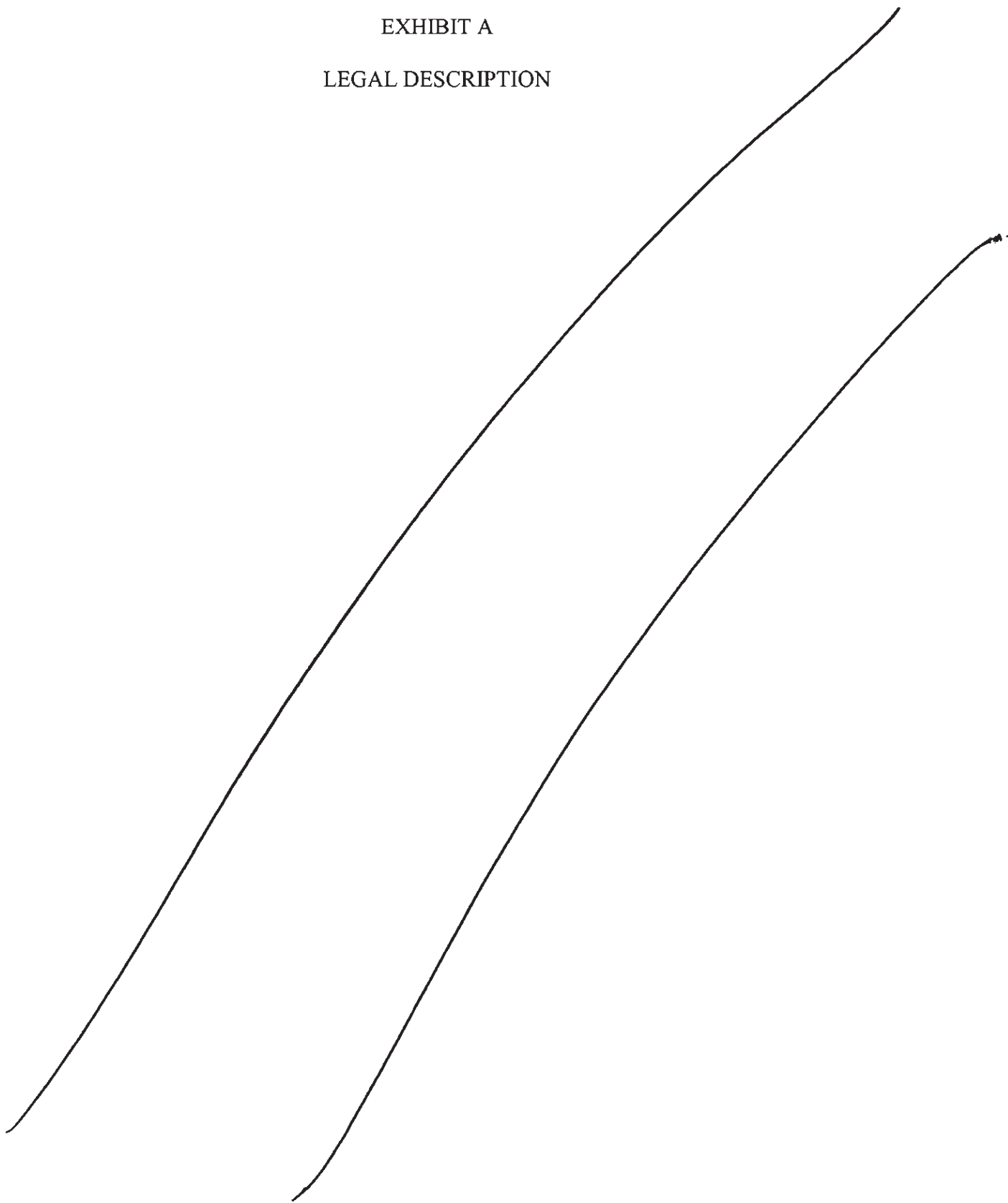


EXHIBIT B

INCOME COMPUTATION AND CERTIFICATION  
Lower Income Tenants  
(to be revised per current regulations, as necessary)

Project: Avalon Acton  
Address: 80-82 Nagog Park Drive  
Acton, MA  
5, 7, 12 and 16 Durkee Lane  
Westford, MA  
Company: Avalon Acton, Inc.

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

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



## Income Computation

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

In computing the anticipated income:

**INCLUDE:**

- all wages and salaries, overtime pay, commission, fees, tips and bonuses and other compensation for personal services, before payroll deductions;
- net income from the operation of a business or profession (without deducting expenditures for business expansion or amortization of capital indebtedness);
- interest, dividends and other net income of any kind from real or personal property;
- the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
- the maximum amount of welfare assistance available to the above persons;
- periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and
- all regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is the head of the household or spouse.

**EXCLUDE:**

- temporary, nonrecurring or sporadic income (including gifts);
- amounts which are specifically for or in reimbursement of medical expenses;
- income from employment of children (including foster children) under age 18;
- lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;
- amounts of student financial assistance paid directly to the student or the educational institution;

- special pay to a serviceman head of a family who is away from home and exposed to hostile fire;
- foster child or foster adult care payments; income of a live-in aide; amounts under training program funded by HUD; amounts received by a disabled person that are disregarded for purposes of Supplemental Security Income eligibility because they are set aside under a Plan to Attain Self Sufficiency (PASS);
- amounts received by participants in publicly assisted program specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937;
- any resident service stipend [(not to exceed \$200 per month)] received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development;
- compensation from state or local employment training programs and training of a family member as resident management staff;
- repatriation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- earnings in excess of \$480 for each full time student 18 years old or older (excluding the head of household and spouse) and adoption assistance payments in excess of \$480 per adopted child;
- amounts received as deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;
- amounts received as refunds or rebates for property taxes paid on the dwelling unit; and
- amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

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

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

(c) \$\_\_\_\_\_ is the amount of such income which is included in item 1

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

YES [ ] NO [ ]

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

YES [ ] NO [ ]

4. I/We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on the 1999 Bonds issued to finance the apartment for which application is being made. We consent to the disclosure of such information to the Issuer of such 1999 Bonds, the holders of such 1999 Bonds and any trustee acting on their behalf.

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

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

Subscribed and sworn to before me this day of \_\_\_\_\_, \_\_\_\_\_.

(Notary Seal)

\_\_\_\_\_  
Notary Public in and for The  
Commonwealth of Massachusetts My  
Commission Expires:

FOR COMPLETION BY COMPANY ONLY

1. Calculation of eligible tenant income:

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

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

(a) the amount entered in 2(b) of the income computation above less the amount entered in 2(c) of the income computation above;

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

(c) zero: \$ \_\_\_\_\_

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

4. The amount entered in 3 is less than or equal to [60]% of Median Income for the area in which the Project is located, as defined under the Agreement ("Lower Income Tenant").

5. Number of apartment unit assigned:

6. This apartment unit was last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was [more than] [not more than] [60]% of Median Income in the area in which the Project is located, as defined under the Tax Regulatory Agreement.

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

AVALON ACTON, INC.

Dated: \_\_\_\_\_  
\_\_\_\_\_

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

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

\*Delete inapplicable clause.

EXHIBIT C

CERTIFICATE AS TO QUALIFIED PROJECT PERIOD

WHEREAS, Avalon Acton, Inc., a Maryland business corporation (the "Company") is the present owner of the rental housing project (the "Project") minced through the issuance of tax-exempt bonds by the Massachusetts Development Finance Agency (the "Issuer") located on the following described land (the "Land") in the County of \_\_\_\_\_ and the Commonwealth of Massachusetts, to-wit:

[insert legal description]

WHEREAS, the Company, the Issuer and U.S. Bank, National Association, as trustee, entered into a Tax Regulatory Agreement dated as of December 1, 2006 (the "Agreement") recorded on \_\_\_\_\_, 200\_\_, in the office of the Registry of Deeds for \_\_\_\_\_ County, Document No. \_\_\_\_\_ and

WHEREAS, the Agreement contains certain covenants and restrictions which run with the land and are binding upon the Company, its successors and assigns at all times during a Qualified Project Period, as therein defined, unless and until such covenants and restrictions are amended, terminated or deleted as provided in the Agreement; and

WHEREAS, the terms and provisions of the Agreement require the filing of an instrument to be executed by the Issuer, and the Company in substantially the form of this Certificate;

NOW THEREFORE, the Company hereby certifies and declares that:

SECTION 1. \_\_\_\_\_, was the date of commencement of the Qualified Project period.

SECTION 2. The first date on which fifty percent (50%) or more of the units in the Project were occupied was \_\_\_\_\_, 200\_\_, and the date which is thirty (30) years thereafter is \_\_\_\_\_, 200\_\_.

SECTION 3. The final Maturity Date of the 2006 Bonds is \_\_\_\_\_.

SECTION 4. The date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates, as provided in [describe any HAP contract, if applicable], is \_\_\_\_\_, 200\_\_, unless said Contract is terminated, in which event the earlier date of termination of said assistance shall be established by an amendment to this Certificate executed by the Issuer and the Company.





## EXHIBIT D

CERTIFICATE OF  
CONTINUING PROGRAM COMPLIANCE

Date: \_\_\_\_\_, 200\_\_

The following information with respect to the Project located in Acton and Westford, Massachusetts (the "Project"), is being provided by Avalon Acton, a Maryland business corporation (the "Company") to the Massachusetts Development Finance Agency and U.S. Bank, National Association, as trustee pursuant to that certain Tax Regulatory Agreement dated as of December 1, 2006 (the "Agreement") with respect to the Project. Capitalized terms, unless defined herein, shall have the same meaning as in the Agreement.

1. \_\_\_\_\_ (fill in number) residential units are available for occupancy
2. \_\_\_\_\_ (fill in number) residential units are occupied
3. The Company has obtained an "Income Computation and Certification" in the form provided as Exhibit B to the Agreement, from each Tenant named below, the income stated therein has been verified as required by the Agreement and each such Certificate is being maintained by the Company in its records with respect to the Project. Attached hereto is a copy of the most recent such Certificate for each such Tenant who signed such a Certificate since \_\_\_\_\_, 200\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed by the Company.
4. In renting the residential units in the Project, the Company has not given preference to any particular group or class of persons (except for persons who qualify as Lower-Income Tenants), and none of the units listed below as occupied by Lower-Income Tenants have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes.
5. An appropriate Income Computation and Certification has been obtained from each Lower-Income Tenant upon initial occupancy of a dwelling unit) and none of the units listed below as occupied by Lower-Income Tenants have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes.
6. All of the residential units in the Project have been rented pursuant to written leases or residency agreements complying with the requirements of Section 4(c) of the Agreement, and the term of each lease or residency agreement is for a term at least equal to the shorter of the tenant's life and one year, in compliance with the requirements of the Act.
7. The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Company that would indicate that any of the information provided herein, or in any Certificate obtained from the Tenants named herein, is inaccurate or incomplete in any respect.
8. The following residential units (identified by unit number) are presently vacant but have been designated for occupancy by "Lower-Income Tenants", as such term is defined in the Regulatory Agreement and are being held vacant and available for that purpose (for a total of units).

Unit Number

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. The following residential units have been re-designated as units for Lower Income Tenants since \_\_\_\_\_, 200\_\_\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed by the Company:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

10. The following residential units are considered to be occupied by Lower-Income Tenants based on the information set forth below:

Unit Number	Name of Tenant Residing in the Unit	Family Size	% Median Income, Adjusted Family Income	Date of Initial Occupancy (or date of most recent income certification)
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				

Based on the foregoing, \_\_\_\_\_ (fill in number) of the residential units (\_\_\_\_% of all residential units) are currently occupied by Lower-Income Tenants.

IN WITNESS WHEREOF, I have hereunto affixed my signature under seal, on behalf of the Company, on \_\_\_\_\_, 200\_\_.

AVALON ACTON, INC.

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

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

## EXHIBIT E

## Required Lease or Residency Agreement Provisions for Project

Section \_\_\_\_\_ . TENANT TO FURNISH INFORMATION ABOUT INCOME.

- A. Information to be Furnished. Tenant agrees to provide to Landlord an annual certificate regarding Tenant's income. The certificate shall be provided each year and shall be on a form provided by Landlord. Tenant also agrees, at the request of the Landlord, to provide to Landlord copies of Tenant's federal income tax returns and any other information or certificates requested by Landlord. Landlord agrees to request the income tax returns and information only for the purpose of complying with the rules and regulations of the Department of Treasury or the Internal Revenue Service relating to tax-exempt financing of qualified residential rental housing projects.
- B. Landlord May Disclose Financial Information. Tenant agrees that the certificates, income tax returns and other information provided by Tenant may be disclosed by Landlord to the Department of Treasury, the Internal Revenue Service or any other person as may be required to satisfy Landlord's obligations relating to the tax-exempt financing for the [leased] [occupied] premises.
- C. Failure to Provide Information is Default by Tenant. Tenant agrees that any failure to provide information which Tenant is required to provide under Section A above shall be a default by Tenant of its agreements under the [Lease] [Residency Agreement]. Tenant also agrees that if any of the certificates, tax returns, or information provided by Tenant are untrue, Tenant shall be in default under this [Lease] [Residency Agreement]. In the event of any such default, Landlord shall have the right to exercise any right or remedy described in Section \_\_\_\_ of this [Lease] [Residency Agreement].

**FANNIE MAE RIDER  
TO REGULATORY AGREEMENT**

**THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT ("Rider")** is attached to and forms a part of the Tax Regulatory Agreement ("**Regulatory Agreement**"), dated as of December 1, 2006, by and among Avalon Acton, Inc. ("**Borrower**"), its successors and assigns, the Massachusetts Development Finance Agency ("**Issuer**") and U.S. Bank, National Association ("**Trustee**"), as Trustee.

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement or the Indenture, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Project.** The obligations of the Borrower and any subsequent owner of the Project under the Regulatory Agreement shall not be secured by or constitute a lien on, or security interest in, the Project. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Loan Documents. Upon a conveyance or other transfer of title to the Project by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan, the Person who acquires title to the Project pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18 and, from and after the date on which such Person acquires title to the Project, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18, shall automatically terminate and be of no force and effect; provided that Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18 shall also terminate and be of no force or effect under the circumstances set forth in Section 9 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Project (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Project subject to:

(a) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under the Regulatory Agreement.

The Borrower and each subsequent owner of the Project shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Project. All

such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Project.

6. **Sale or Transfer.** All restrictions on sale or transfer of the Project or of any interest in the Borrower, consents of the Issuer or the Trustee, transfer agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan, provided that such subsequent purchaser is not barred or suspended from participating in the financing programs. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Loan Documents which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall apply to a transfer to Fannie Mae upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan by Fannie Mae, or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan. Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Security Instrument and the other Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

(c) Upon any default by the Borrower under the Regulatory Agreement, the Assignment shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** Unless the Assigned Rights (as that term is defined in the Assignment) are transferred to the Trustee pursuant to Section 5.1 of the Assignment, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, the Credit Provider and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes.



11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Loan Servicer at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

DB Mortgage Services, LLC  
 One Beacon Street, 14<sup>th</sup> Floor  
 Boston, Massachusetts 02108  
 Attention: Director of Loan Servicing—Fannie Mae  
 Telephone: (617) 523-0066  
 Facsimile: (617) 558-1507  
 Re: Multifamily Housing Revenue Bonds  
 (Avalon Acton Apartments), Series 2006

And to: Deutsche Bank Berkshire Mortgage, Inc.  
 4550 Montgomery Avenue, Suite 1150  
 Bethesda, Maryland 20814  
 Attention: Director of Loan Servicing—Fannie Mae  
 Telephone: (301) 718-2000  
 Facsimile: (301) 718-2010

With a copy to: Ballard Spahr Andrews & Ingersoll, LLP  
 601 13<sup>th</sup> Street, NW, Suite 1000 South  
 Washington, DC 20005  
 Attention: Mary Jo George  
 Telephone: (202) 661-2208  
 Facsimile: (202) 661-2299  
 Re: Multifamily Housing Revenue Bonds  
 (Avalon Acton Apartments), Series 2006

13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
 3900 Wisconsin Avenue, NW  
 Drawer AM  
 Washington, DC 20016-2899  
 Attention: Director, Multifamily Asset Management  
 Telephone: (301) 204-8008  
 Facsimile: (301) 280-2065  
 RE: Massachusetts Development Finance Agency Multifamily  
 Housing Revenue Bonds, (Avalon Acton Apartments), Series 2006,  
 Avalon Acton Apartments, DB Mortgage Services, LLC

[For courier use 4000 Wisconsin Avenue, N.W. and delete Drawer AM]

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2899  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369  
RE: Massachusetts Development Finance Agency Multifamily Housing  
Revenue Bonds, (Avalon Acton Apartments), Series 2006, Avalon Acton  
Apartments, DB Mortgage Services, LLC

[For courier use 4000 Wisconsin Avenue, N.W. and delete Drawer AM]

ISSUER'S INITIALS: \_\_\_\_\_

BORROWER'S INITIALS: \_\_\_\_\_

TAX REGULATORY AGREEMENT

By and Among

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

and

AVALON ACTON, INC.

and

U.S. BANK, NATIONAL ASSOCIATION, as Trustee

\$45,000,000

Massachusetts Development Finance Agency  
Multifamily Housing Revenue Bonds  
(Avalon Acton Apartments), Series 2006

Dated as of December 1, 2006

Please Record and Return to: Michael A. Vaccari, Esq.  
Nixon Peabody LLP  
437 Madison Avenue  
New York, New York 10022

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## TAX REGULATORY AGREEMENT

THIS TAX REGULATORY AGREEMENT (the "Regulatory Agreement") is made and entered into as of December 1, 2006, by and among MASSACHUSETTS DEVELOPMENT FINANCE AGENCY (the "Issuer"), a body politic and corporate organized and existing under the laws of The Commonwealth of Massachusetts (the "Commonwealth"), U.S. BANK, NATIONAL ASSOCIATION, as trustee (the "Trustee"), a national banking association, and AVALON ACTON, INC., a Maryland business corporation (the "Borrower").

### WITNESSETH:

WHEREAS, the Issuer is organized under Chapter 23G, as amended, of the General Laws of the Commonwealth (the "Act") and is empowered under the Act to enter into contracts with respect to the financing of projects (as defined in the Act), which promote industrial, commercial and other economic development and other public purposes of the Act; and

WHEREAS, the Issuer has issued \$45,000,000 in aggregate principal amount of its Multifamily Housing Revenue Bonds (Avalon Acton Issue), Series 2006 (the "Bonds") for the purposes, among others, of financing and refinancing the acquisition, construction and equipping of a 380 unit residential housing development located at 80-82 Nagog Park Drive, Acton, Massachusetts and 5, 7, 12 and 16 Durkee Lane, Westford, Massachusetts, which properties are contiguous and as more particularly described in Exhibit A hereto (the "Project"), and which is intended to qualify as a "qualified residential rental project" within the meaning of Sections 142(a)(7) and 142(d) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Issuer, the Borrower and the Trustee have entered into a Trust Indenture dated as of December 1, 2006 (the "Trust Agreement") pursuant to which the Issuer will issue the Bonds, and pursuant to a Financing Agreement dated as of December 1, 2006 (the "Financing Agreement", and collectively with the Trust Agreement, the "Agreement") the Issuer will lend to the Borrower the proceeds of the Bonds (the "Loan"), and the Borrower will agree, among other things, to make loan payments to the Issuer in amounts and at times sufficient, among other things, to pay when due the principal of and the redemption premium, if any, and interest on, the Bonds; and

WHEREAS, the Financing Agreement requires the execution and delivery of this Regulatory Agreement;

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and intending to be legally bound, the Issuer, Trustee and Borrower do hereby contract and agree as follows:

SECTION 1. Definition. In addition to terms defined elsewhere in this Regulatory Agreement, unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Regulatory Agreement:

“Actually Outstanding” shall mean, with respect to the Bonds and any other issue of tax-exempt obligations issued to finance or refinance the Project, the Bonds and such other obligations the principal and interest on which has not yet been fully paid, whether or not the Bonds or such other obligations are deemed to be outstanding under the indenture or trust or other governing legal instrument pursuant to which they were issued.

“Adjusted Family Income” shall mean the adjusted gross income of all persons who reside in a single residential rental unit calculated in the manner prescribed in Section 142(d)(2)(B) of the Code, and determined in accordance with Exhibit B attached hereto.

Affordable Units shall mean those units in the Project set aside for occupancy by Lower-Income Tenants which shall consist of 76 units, representing not less than 20% of the units in the Project.

“Area” shall mean the Metropolitan Statistical Area in which the Project is located, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”).

“Assignment” shall mean the Assignment and Intercreditor Agreement, dated as of December 1, 2006, by and among the Issuer, the Trustee and Fannie Mae, and acknowledged, accepted and agreed to by the Borrower.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and any final, temporary or proposed regulations applicable thereto or promulgated thereunder. For purposes hereof, references to specific sections of the Code shall be deemed to refer to any replacement or successor provisions as the same may exist from time to time.

“Lower-Income Tenants” shall mean and include individuals or families with Adjusted Family Income which does not exceed fifty percent (50%) of Median Income, adjusted for family size; provided that Adjusted Family Income shall be determined in a manner consistent with determinations of lower income families and area median gross income made under Section 8 of the United States Housing Act of 1937, as amended, and the regulations promulgated thereunder. In no event, however, will the occupants of a unit be considered to be Lower-Income Tenants if all the occupants are full-time students (as defined in Section 151(c)(4) of the Code), no one of whom is entitled to file a joint federal income tax return under Section 6013 of the Code.

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

“Project” shall have the meaning given such term in the second WHEREAS clause to this Regulatory Agreement. The Project does not include the sewage treatment plant being built in part to service the Project, which facility is not owned by the Company.

“Qualified Project Period” shall mean the period beginning on the first day on which at least ten percent (10%) of the residential units in the Project are first occupied, and ending on the



latest of (i) the date which is thirty (30) years after the date on which at least fifty percent (50%) of the residential units in the Project are first occupied; (ii) the first day on which no tax-exempt obligations issued to finance or refinance the Project (including the Bonds) are Actually Outstanding; and (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

“Registry” shall mean the Middlesex South County Registry of Deeds and the Middlesex North County Registry of Deeds.

“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).

“Tax Regulatory Agreement” means the Tax Regulatory Agreement (40B) dated as of December 1, 2006 by and among the Issuer, the Trustee the Borrower relating to certain matters under Chapter 40B of the Massachusetts General Laws.

SECTION 2. Rules of Construction. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa the words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Regulatory Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

Terms and phrases used in this Regulatory Agreement and not defined herein shall have the meanings assigned to those terms in the Agreement.

In the event of any conflict or inconsistency between the terms hereof and the terms of the Tax Regulatory Agreement, the terms of this Regulatory Agreement shall control during the term of this Regulatory Agreement.

SECTION 3. Project Restrictions. The Borrower represents, warrants and agrees that, until the expiration of the Qualified Project Period:

(a) At no time will either the Borrower or any Related Person occupy a unit in the Project other than units occupied or to be occupied by agents, employees or representatives of the Borrower reasonably required for the proper maintenance or management of the Project, and any building or structure containing a unit so occupied will contain at least four units not occupied by the Borrower or any Related Party;

(b) The Project shall consist of a building or structure or proximate buildings or structures (buildings or structures are proximate if they are all located on a single parcel of land or several parcels of land which are contiguous except for the interposition of a road, street, stream or similar property; parcels are contiguous if their boundaries meet at one or more points), (i) each containing one or more similarly constructed residential units (including the amenities within such units) and any facilities which are functionally related and subordinate to such units within the meaning of Sections 142(a)(7) and 142(d) of the Code, and (ii) each unit of which is to be rented or available for rental (except as permitted to be occupied by Borrower agents, employees or representatives in (a) above) on a continuous basis to members of the general public in accordance with the requirements of Sections 142(a)(7) and 142(d) of the Code;

(c) The Project shall consist of a building or structure or proximate buildings or structures owned for federal income tax purposes by the same person and being financed pursuant to a common plan;

(d) Each dwelling unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family;

(e) Affordable Units will be substantially similar to all other units in the Project, and Lower-Income Tenants will enjoy equal access to all common facilities included in the Project;

(f) No portion of the Project and none of the units in the Project will, at any time during the term of this Agreement, be used on a transient basis, or as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or retirement home. Use on a transient basis shall mean the rental of units for an initial lease term of less than six months; and

(g) All facilities are: (i) located on the same premises; (ii) solely for the benefit of tenants at the Project (except for certain amenities located at the Project, which are being financed with a source of funds other than proceeds of the Bonds); and (iii) of a character and size commensurate with the needs of such tenants.

SECTION 4. Rental Restrictions. The Issuer and Borrower hereby declare their understanding and intent that the Project be a "qualified residential rental project" as described in Sections 142(a)(7) and 142(d) of the Code and agree that:

(a) Promptly after the first date on which 50% of the residential units in the Project are occupied, the Borrower shall prepare and execute a Certificate As To Qualified Project Period substantially in the form of Exhibit C attached hereto, and the Borrower shall cause such Certificate to be duly recorded and/or registered, as applicable, in the Registry and shall provide a date-stamped copy of such recorded Certificate to the Issuer immediately thereafter.

(b) Once each unit in the Project is available for occupancy, such unit will be rented or available for rental to the general public on a continuous basis during the Qualified Project Period and that during such Qualified Project Period:

(i) the Borrower will rent the Affordable Units to Lower-Income Tenants such that, at all times during the Qualified Project Period, at least twenty percent (20%) of the completed residential units will be occupied by Lower-Income Tenants (the "Affordability Requirement") and the Issuer elects to apply the requirements of Section 142(d)(1)(A) of the Code to determine the status of the Project as a "qualified residential rental project" within the meaning of Section 142(d) of the Code;

(ii) the Borrower shall comply with all applicable federal, state and local laws, regulations, rules and ordinances prohibiting discrimination in the rental of residential property;

(iii) the Borrower shall submit to the Secretary of the United States Department of the Treasury (at such time and in such manner as the Secretary shall prescribe) an annual certification (currently IRS Form 8703) as to whether the Project continues to meet the requirements of Section 142(d) of the Code, and the Borrower acknowledges that failure to do so will subject the Borrower to penalties under Section 6652(j) of the Code; and

(iv) the Borrower shall prepare and submit to the Issuer and the Trustee on or before the first day of January, April, July and October of each year during the Qualified Project Period and within 30 days after any change (but only if material to the Borrower's continuing compliance with this Regulatory Agreement) in occupancy of a residential unit by a Lower-Income Tenant, a Certificate of Continuing Compliance in substantially the form attached hereto as Exhibit D.

(c) The Borrower shall lease or enter into residency agreements for the occupancy of residential units in the Project to Lower-Income Tenants only pursuant to written leases or residency agreements, and each such lease or residency agreement shall be for a term of at least one year (or the remainder of the tenant's life, if less) in compliance with the requirements of the Act and shall contain a clause or addendum in substantially the form of Exhibit E attached hereto. The Borrower shall, upon initial occupancy and annually thereafter, obtain from each Lower-Income Tenant an Income Computation and Certification substantially in the form of Exhibit B hereto and shall obtain and maintain on file from each Lower-Income Tenant evidence reasonably sufficient to verify the Lower-Income Tenant's income and assets, including as may be necessary (i) a copy of such Lower-Income Tenant's most recently filed Federal income tax return (ii) a verification from the Lower-Income Tenant's employer, if any of the Lower-Income Tenant's wages and other compensation, and (iii) verification of other sources of income, if any.

(d) For purposes of this Regulatory Agreement, each residential unit in the Project leased to or occupied by one or more Lower-Income Tenants shall be treated as continuing to be leased to or occupied by Lower-Income Tenants notwithstanding that the Adjusted Family Income of such Lower-Income Tenant(s) as of any subsequent determination date, may exceed the applicable limitation, provided, however, that such residential unit shall no longer be considered leased to or occupied by Lower-Income Tenants if the Adjusted Family Income of such tenant(s) exceeds 140% of the applicable limitation and after such determination, but before the next determination, any residential unit of comparable or smaller size in the Project is occupied by one or more new residents who are not Lower-Income Tenants. In

addition, each residential unit in the Project which is leased to or occupied by one or more Lower-Income Tenants shall continue to be considered leased to or occupied by Lower-Income Tenants after such residential unit is vacated by such Lower-Income Tenant(s) until such time as such residential unit is reoccupied, other than for a temporary period not in excess of 31 days, at which time a redetermination of whether the residential unit is occupied by Lower-Income Tenants shall be made.

(e) The Borrower hereby agrees that the Issuer shall not be liable for any losses, damages, costs, expenses or claims whatsoever arising from receipt or review by it (or by any person or entity acting on its behalf) of any certificates or reports as to compliance with the requirements of this Regulatory Agreement. The Borrower further agrees that the Issuer (or any person or entity acting on its behalf) shall not be obligated to review any such report or certificate, or to take any action as a result thereof, but without prejudice to the right of the Issuer to exercise its rights and remedies hereunder if any such report or certificate discloses non-compliance with the requirements hereof, or if the Issuer otherwise discovers such non-compliance. If the Issuer becomes aware of non-compliance by the Borrower with the requirements hereof, the Issuer shall promptly give written notice thereof to the Borrower and the Trustee.

#### SECTION 5. Transfer Restrictions Covenants to Run With the Land

(a) The Borrower covenants and agrees that the Borrower will cause or require as a condition precedent to any conveyance, transfer, assignment or other disposition of all or any portion of the Project prior to the expiration of the Qualified Project Period (each, a "Transfer"), that the transferee of that portion assume in writing, in a form acceptable to the Issuer, all duties and obligations of the Borrower under this Regulatory Agreement, including this Section 5, in the event of a subsequent Transfer before the expiration of the applicable Qualified Project Period. The Borrower shall deliver such written assumption agreement to the Issuer and the Trustee before the Transfer. Any conveyance, transfer or assignment by the Borrower of all or any portion of the Project not complying with this Section shall be null, void and without effect. The provisions of this Section 5(a) shall not apply to any transfer of the Project to Fannie Mae or its designee upon foreclosure, by deed in lieu of foreclosure or comparable conversion of the Loan.

(b) The Borrower shall cause this Regulatory Agreement to be recorded with the Registry and the covenants contained herein shall run with the land and shall bind the Borrower and its successors and assigns and all subsequent owners of any part of the Project or any interest therein, and the benefits shall inure to the Issuer and its successors and assigns, during the Qualified Project Period.

SECTION 6. Indemnification of Issuer and Trustee. The Borrower shall, to the extent permitted by law, indemnify and hold harmless the Issuer and the Trustee and their respective officers, directors, employees and agents, from and against (a) any and all claims arising from any cause whatsoever in connection with this Regulatory Agreement; (b) any and all claims arising from any act or omission of the Borrower or any of its officers, directors, managers, members, agents, servants, employees, or licensees in connection with this Regulatory Agreement; and (c) all costs, reasonable counsel fees, expenses, and liabilities incurred in



connection with any such claim or proceeding brought with respect to any thereof. The indemnity provided for in this Section shall not limit any other indemnity given under the Agreement or any other document. If any action or proceeding is brought against the Issuer or the Trustee, as the case may be, or any of their respective officers, directors, employees or agents, with respect to which indemnity may be sought hereunder, the Borrower, upon notice thereof, shall assume the investigation and defense thereof, including the employment of counsel acceptable to the Issuer or the Trustee, as the case may be, and shall be responsible for the payment of all expenses related thereto. The indemnified party shall have the right to employ separate counsel in any such action or proceeding and to participate in the defense thereof, and the Borrower shall be required to pay the fees and expenses of such separate counsel. The foregoing indemnity shall not apply to the extent any claim arises from or relates to the gross negligence or willful neglect of the Issuer or the Trustee.

SECTION 7. Reliance. In performing their duties and obligations hereunder, the Issuer and the Trustee may conclusively rely upon statements and certificates of the Borrower or Lower-Income Tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel of their selection, respectively, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder In good faith and in conformity with the opinion of such counsel.

SECTION 8. Access to Development and to Books and Records. The Borrower will, upon reasonable request, permit the Issuer and the Trustee to have access to, and to inspect and copy, the Borrower's books and records with respect to the Project and to have access to the Project during normal business hours. Such rights may be exercised by a representative, employee or agent of, or counsel to, the party making the request.

SECTION 9. Term. The terms and provisions of this Regulatory Agreement shall become effective upon its execution and delivery. Except as otherwise provided in this Section, this Regulatory Agreement shall remain in full force and effect until the end of the Qualified Project Period. It is expressly agreed and understood that certain provisions hereof are intended to survive the payment of the Bonds. The foregoing notwithstanding, this Regulatory Agreement and all restrictions hereunder shall terminate: (A) if there is delivered to the Issuer, the Borrower and the Trustee an opinion of nationally recognized bond counsel acceptable to the Issuer to the effect that failure to comply with this Regulatory Agreement will not cause interest on the Bonds or any other tax-exempt obligations issued to finance or refinance the Project to become includable in the gross income of the holders thereof for Federal income tax purposes, or (B) in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, condemnation or similar event, or a change in a federal law or an action of a federal agency after the date of issuance of the Bonds that prevents the Issuer from enforcing the terms of this Regulatory Agreement, but only if, within a reasonable period, either the Bonds and any other tax-exempt obligations issued to finance or refinance the Project are repaid or amounts received as a consequence of such event are used to provide a qualified residential rental project that meets the terms of this Regulatory Agreement. Notwithstanding the foregoing, such requirements shall continue to apply to the Project subsequent to a foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at

any time subsequent to such event, the obligor on the purpose investment (as defined in Section 1.148-1(b) of the Treasury Regulations) or a Related Person obtains an ownership interest in the Project or any part thereof for Federal tax purposes.

SECTION 10. Enforcement.

(a) Upon discovery by or notification to the Issuer or the Trustee of any default in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, the Issuer or the Trustee shall promptly notify the Borrower in writing of the existence and nature of such default. If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the Issuer or the Trustee to the Borrower, with a copy of such notice to the others (it being agreed, however, that Borrower's obligations hereunder shall not be affected by any late or non-delivery of such notice to the others), then the Issuer or the Trustee may declare that the Borrower is in default hereunder and may take any one or more of the following steps, at its option:

(i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(ii) have access to and inspect, examine and make copies of any or all of the books and records of the Borrower pertaining to the Project;

(iii) take whatever other action at law or in equity may appear

necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder; or

(iv) subject to the provisions of the Assignment, to recover any monetary damages suffered by the Issuer, the Trustee, or the owners from time to time of the Bonds or any other tax-exempt obligations issued to finance or refinance the Project as a consequence of any event of default;

provided that in the case of a default that is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 60-day period, and if the Borrower commences the same within such 60-day period and thereafter diligently and continuously prosecutes the same to completion, the time within which the Borrower may cure shall be extended for such period as may be reasonably necessary in the Issuer's or the Trustee's discretion to cure the same with due diligence (but in no event more than 90 days).

(b) The Borrower hereby acknowledges and agrees that money damages will not be an adequate remedy at law for a default by the Borrower arising from a default hereunder, and therefore the Borrower agrees that the remedy of specific performance shall be available to the Issuer or the Trustee in any such case, but, subject to the provisions of the Assignment, without prejudice to the availability of monetary damage remedies.

(c) The Trustee shall have the right, but not the obligation, in accordance with this Section 10 and the provisions of the Agreement, without the consent or approval of the Issuer, to exercise any or all of the Issuer's rights or remedies hereunder, and the Issuer hereby irrevocably appoints the Trustee attorney-in-fact for the purpose of enforcement of this Regulatory Agreement. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. The Borrower agrees to pay, indemnify and hold the Issuer and the Trustee harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees and expenses that may be incurred by the Issuer and the Trustee in enforcing or attempting to enforce this Regulatory Agreement following any default herein on the part of the Borrower, whether the same shall be enforced by suit or otherwise, and the reasonable fees and expenses of counsel in connection with any opinion to be rendered hereunder.

(d) No remedy conferred herein or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(e) If the Issuer or Trustee has instituted any proceeding to enforce any right or remedy under this Regulatory Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer or the Trustee, then and in every such case the Borrower, the Issuer and the Trustee shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Issuer and the Trustee shall continue as though no such proceedings has been instituted.

(f) No delay or omission of the Issuer or the Trustee to exercise any right or remedy provided hereunder upon a default (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such event of default or acquiescence therein. Every right and remedy given by this Section 10 or by law to the Issuer or the Trustee may be exercised from time to time, and as often as may be deemed expedient by the Issuer or the Trustee, as the case may be.

(g) The Borrower shall pay all costs and expenses, including reasonable legal fees, incurred by Issuer in enforcing this Regulatory Agreement.

SECTION 11 Governing Law. This Regulatory Agreement shall be governed by the internal laws of The Commonwealth of Massachusetts except to the extent that laws of the United States of America may prevail.

SECTION 12. Amendments. This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto, and only upon receipt of an opinion of nationally recognized bond counsel acceptable to the Issuer that such amendment or revision will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds and any other tax-exempt bonds issued to finance or refinance the Project.



SECTION 13. Notices. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

If to the Issuer:  
160 Federal Street, 7<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: General Counsel  
Telephone: (617) 330-2000  
Facsimile: (617) 330-2001

If to the Borrower:

Avalon Acton, Inc.  
c/o AvalonBay Communities, Inc.  
2900 Eisenhower Avenue, 3rd Floor  
Alexandria, VA 22314  
Attn: Sr. Vice President--General Counsel  
Telephone: (703) 317-4639  
Facsimile: (703) 329-9130

With a copy to:  
AvalonBay Communities, Inc.  
1000 Bridgeport Avenue, Suite 258  
Shelton, CT 06484  
Attn: Joanne M. Lockridge  
Telephone: (203) 926-2326  
Facsimile: (203) 926-2304

With a copy to:  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110  
Attn. Paige A. Manning, Esq.  
Telephone: (617) 574-4038  
Facsimile: (617) 574-7685

If to the Trustee:

U.S. Bank, National Association  
1 Federal Street  
Boston, MA 02110  
Telephone: (617)  
Facsimile: (617)

SECTION 14 Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

SECTION 15. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

SECTION 16. Limitation of Issuer Liability. It is understood and agreed by the Borrower that no covenant of the Issuer herein shall give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers. It is further understood and agreed that no officer, director, agent, employee or representative of the Issuer or the Trustee shall be subject to any personal liability or accountability by reason of the execution hereof, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise. This Section 16 shall not limit the Issuer's and Borrower's rights to indemnification set forth in Section 6 hereof in any other document.

SECTION 17. Change in Use. The Borrower understands and acknowledges that Section 150(b)(2) of the Code provides that if the requirements for a "qualified residential rental project" are not met under Section 142(d) of the Code with respect to the Project, no deduction shall be allowed for interest paid on the Bonds which accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date the Project meets the requirements.

SECTION 18. Monitoring Requirements. The Issuer may, from time to time, engage the service of a third party monitoring agent for purposes of monitoring the Borrower's performance under this Regulatory Agreement. In such event, such monitoring agent shall have authority to act in all matters relating to this Regulatory Agreement. In the event the Issuer engages the service of a monitoring agent, such monitoring agent shall not be held liable for any action taken or omitted under this Regulatory Agreement so long as it shall have acted in good faith and without gross negligence.

SECTION 19. Fannie Mae Rider. The Fannie Mae Rider attached to this Regulatory Agreement is, by this reference, deemed a part of this Regulatory Agreement. In the event of a conflict between the terms of this Regulatory Agreement (other than the Fannie Mae Rider) and the terms of the Fannie Mae Rider, the terms of the Fannie Mae Rider shall control.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this Regulatory Agreement to be signed under seal by their fully authorized representatives, all as of the date first written hereinabove.

**MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY**

By: \_\_\_\_\_  
President and Chief Executive Officer, Executive Vice President and Chief Operating Officer, Treasurer and Executive Vice President of Finance & Administration and Chief Financial Officer, Secretary and General Counsel, Executive Vice President for Legislative Affairs, Executive Vice President for Finance Programs, Executive Vice President for Real Estate, Executive Vice President Military Initiatives, Executive Vice President for Devens Operations and Senior Vice President, Investment Banking  
Hereunto duly authorized

**AVALON ACTON, INC.**

By: \_\_\_\_\_  
Name: Joanne M. Lockridge  
Title: Senior Vice President  
Hereunto Duly Authorized

**U.S. BANK, NATIONAL ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself or herself to be an officer of the Massachusetts Development Finance Agency, and that he or she as such officer, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his or her name as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself to be an authorized signatory of Avalon Acton, Inc. and that he, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his name as such authorized signatory.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF SUFFOLK

On this day, the \_\_\_\_ of December, 2006, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who acknowledged himself for herself to be an authorized signatory of U.S. Bank, National Association, and that he or she as such authorized signatory, being authorized to do so, executed the foregoing Tax Regulatory Agreement for the purposes therein contained by signing his or her name as such authorized signatory.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

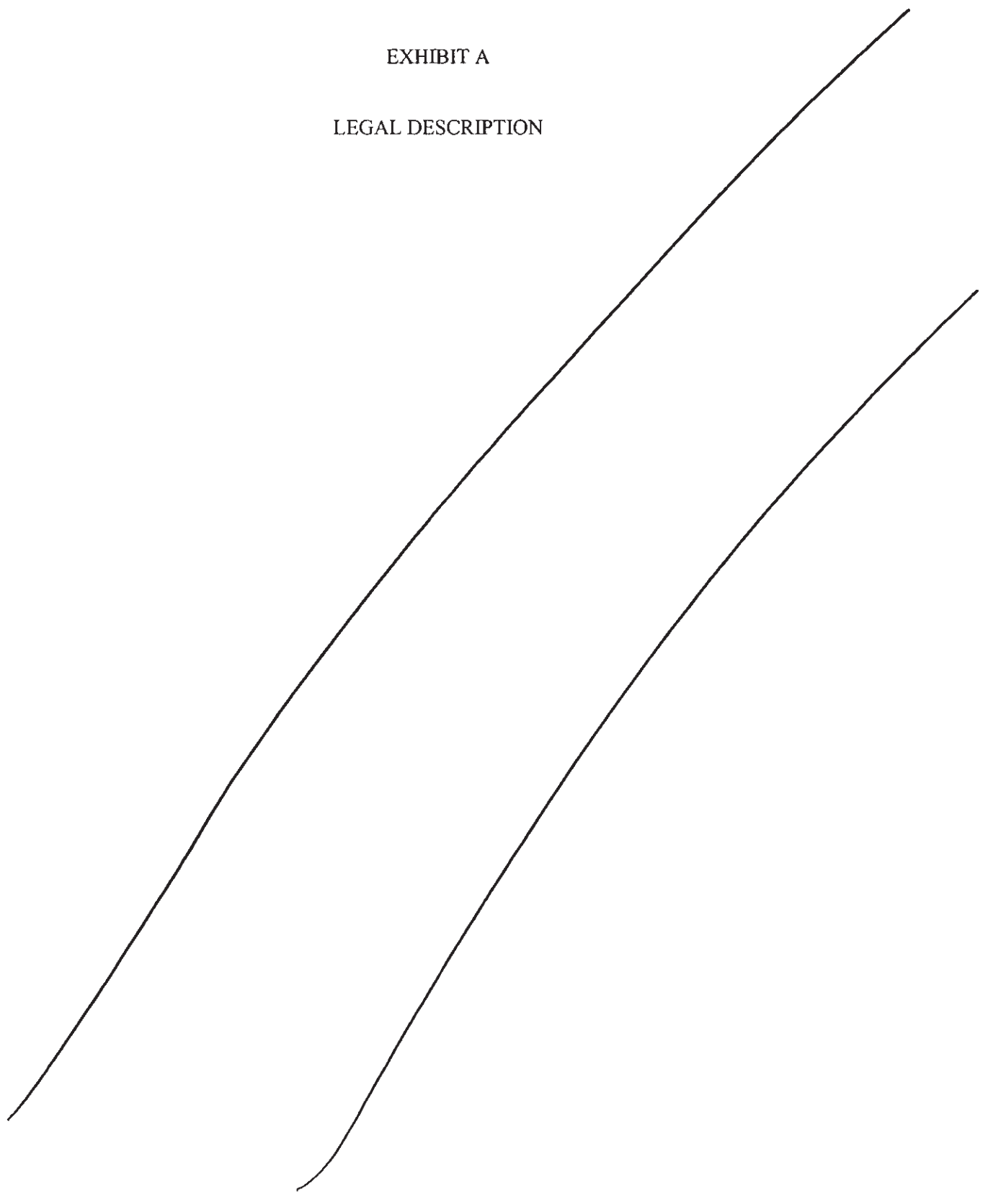


EXHIBIT B

INCOME COMPUTATION AND CERTIFICATION

Lower-Income Tenants

(to be revised per current regulations, as necessary)

Project: Avalon Acton  
 Address: 80-82 Nagog Park Drive  
 Acton, MA  
 5, 7, 12 and 16 Durkee Lane  
 Westford, MA  
 Borrower: Avalon Acton, Inc.

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

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

## Income Computation

The anticipated income of all of the above persons during the 12-month period beginning this date, is:

\$ \_\_\_\_\_.

In computing the anticipated income:

## INCLUDE:

- all wages and salaries, overtime pay, commission, fees, tips and bonuses and other compensation for personal services, before payroll deductions,
- net income from the operation of a business or profession (without deducting expenditures for business expansion or amortization of capital indebtedness);
- interest, dividends and other net income of any kind from real or personal property;
- the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- payments in lieu of earnings, such as unemployment and disability compensation, workmens' compensation and severance pay;
- the maximum amount of welfare assistance available to the above persons;
- periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and
- all regular pay, special pay and allowances of a member of the armed forces (whether or not living in the dwelling) who is the head of the household or spouse.

## EXCLUDE:

- temporary, nonrecurring or sporadic income (including gifts),
- amounts which are specifically for or in reimbursement of medical expenses;
- income from employment of children (including foster children) under age 18;
- lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;
- amounts of student financial assistance paid directly to the student or the educational institution;
- special pay to a serviceman head of a family who is away from home and exposed to hostile fire;
- foster child or foster adult care payments; income of a live-in aide; amounts under training program funded by HUD; amounts received by a disabled person that are disregarded for purposes of Supplemental Security Income eligibility because they are set aside under a Plan to Attain Self Sufficiency (PASS);
- amounts received by participants in publicly assisted program specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937;
- any resident service stipend received by a resident for performing a service for the owner on a part-time basis that enhances the quality of life in the development;
- compensation from state or local employment training programs and training of a family member as resident management staff
- repatriation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- earnings for each full time student 18 years old or older (excluding the head of household and spouse) and adoption assistance payments;
- amounts received as deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;
- amounts received as refunds or rebates for property taxes paid on the dwelling unit; and



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

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

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

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

YES [ ] NO [ ]

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

YES [ ] NO [ ]

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

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

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

Subscribed and sworn to before me this day of \_\_\_\_\_, \_\_\_\_\_

(Notary Seal)

\_\_\_\_\_  
Notary Public in and for The Commonwealth of  
Massachusetts

My Commission Expires: \_\_\_\_\_

FOR COMPLETION BY AVALON ACTON, INC. ONLY

1. Calculation of eligible tenant income:

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

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

(a) the amount entered in 2(b) of the income computation above less the amount entered in 2(c) of the income computation above;

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

(c) zero: \$ \_\_\_\_\_

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

4. The amount entered in 3 is less than or equal to 50% of Median Income for the area in which the Project is located, as defined under the Regulatory Agreement ("Lower Income Tenant").

5. Number of apartment unit assigned:

6. This apartment unit was last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was \*[more than] [not more than]\* 50% of Median Income in the area in which the Project is located, as defined under the Tax Regulatory Agreement.

\*Delete inapplicable clause.

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

Dated: \_\_\_\_\_

AVALON ACTON, INC.

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

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

EXHIBIT C

CERTIFICATE AS TO QUALIFIED PROJECT PERIOD

WHEREAS, Avalon Acton, Inc., a Maryland business corporation (the "Borrower") is the present owner of the rental housing project (the "Project") financed, *inter alia*, through the issuance of tax-exempt bonds by the Massachusetts Development Finance Agency (the "Issuer") located on the following described land (the "Land") in the County of Suffolk and The Commonwealth of Massachusetts, to-wit:

[insert legal description]

WHEREAS, the Borrower, the Issuer and U.S. Bank, National Association, as Trustee, entered into a Tax Regulatory Agreement dated as of December 1, 2006 (the "Agreement") recorded on \_\_\_\_\_ 2006 in the office of the Registry of Deeds (and/or filed with the Suffolk County Registry District of the Land Court, as applicable) for Suffolk County, Instrument No. \_\_\_\_\_ Document No. \_\_\_\_\_; and

WHEREAS, the Agreement contains certain covenants and restrictions which run with the land and are binding upon the Borrower, its successors and assigns at all times during a Qualified Project Period, as therein defined, unless and until such covenants and restrictions are amended, terminated or deleted as provided in the Agreement; and

WHEREAS, the terms and provisions of the Agreement require the filing of an instrument to be executed by the Issuer, and the Borrower in substantially the form of this Certificate;

NOW THEREFORE, the Borrower hereby certifies and declares that:

SECTION 1. \_\_\_\_\_, \_\_\_\_\_ was the date of commencement of the Qualified Project Period, the date on which ten percent (10%) of the units in the Project were occupied.

SECTION 2. The first date on which fifty percent (50%) of the units in the Project were occupied was \_\_\_\_\_, 20\_\_, and the date which is fifteen (15) years thereafter is \_\_\_\_\_, 20\_\_.

SECTION 3. The final Maturity Date of the Bonds are is \_\_\_\_\_, 20\_\_.

SECTION 4. The date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates, as provided in [describe any HAP contract, if applicable] is \_\_\_\_\_ 20\_\_, unless said Contract is terminated, in which event the earlier date of termination of said assistance shall be established by an amendment to this Certificate executed by the Issuer and the Borrower.

SECTION 5. The date of termination of the Qualified Project Period (the latest of the dates set forth in paragraphs 2, 3 or 4 hereof), unless and until this Certificate is amended, is \_\_\_\_\_, 20\_\_.

Dated under seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**AVALON ACTON, INC.**

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

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

COMMONWEALTH OF MASSACHUSETTS

: ss

COUNTY OF

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Avalon Acton, Inc. and that he/she as such \_\_\_\_\_, being authorized to do so, executed the foregoing Certificate as to Qualified Project Period, for the purposes therein contained by signing the name of said Borrower by himself/herself as such

IN WITNESS WHEREOF, I hereunto set my hand and official said.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

(SEAL)

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Date: \_\_\_\_\_, 20\_\_

The following information with respect to the Project located in Boston, Massachusetts (the "Project") being provided by Avalon Acton, Inc., a Maryland business corporation (the "Borrower") to the Massachusetts Development Finance Agency and U.S. Bank, National Association, as Trustee, pursuant to that certain Tax Regulatory Agreement dated as of December 1, 2006 (the "Agreement") with respect to the Project. Capitalized terms, unless defined herein, shall have the same meaning as in the Agreement.

1. \_\_\_\_\_ (fill in number) residential units are available for occupancy
2. \_\_\_\_\_ (fill in number) residential units are occupied
3. The Borrower has obtained an "Income Computation and Certification" in the form provided as Exhibit B to the Agreement, from each Tenant named below, the income stated therein has been verified as required by the Agreement and each such Certificate is being maintained by the Borrower in its records with respect to the Project. Attached hereto is a copy of the most recent such Certificate for each such Tenant who signed such a Certificate since \_\_\_\_\_, 20\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed by the Borrower.
4. In renting the residential units in the Project, the Borrower has not given preference to any particular group or class of persons (except for persons who qualify as Lower-Income Tenants), and none of the units listed below as occupied by Lower-Income Tenants have been rented for occupancy entirely by full-time students (as defined in the Agreement), no one of which is entitled to file a joint return for federal income tax purposes.
5. An appropriate Income Computation and Certification has been obtained from each Lower-Income Tenant upon initial occupancy of a dwelling unit and none of the units listed below as occupied by Lower-Income Tenants has been rented for occupancy entirely by full-time students (as defined in the Agreement), no one of which is entitled to file a joint return for federal income tax purposes.
6. All of the residential units in the Project have been rented pursuant to written leases or residency agreements complying with the requirements of Section 4(c) of the Agreement, and the term of each lease or residency agreement is for a term at least equal to the shorter of the tenant's life and one year, in compliance with the requirements of the Act.
7. The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Borrower that would indicate that any of the information provided herein, or in any Certificate obtained from the Tenants named herein, is inaccurate or incomplete in any respect.
8. The following residential units (identified by unit number) are presently vacant but the vacating tenants were "Lower-Income Tenants", as such term is defined in the Agreement and the units have not been occupied by any new tenants (other than for a temporary period not in excess of 31 days) and are being held vacant and available for "Lower-Income Tenants" (for a total of \_\_\_\_\_ units).

Unit Number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. The following residential units are considered to be occupied by Lower-Income Tenants based on the information set forth below:

Unit Number	Name of Tenant Residing in the Unit	Family Size	% Median Income, Adjusted Family Income	Date of Initial Occupancy (or date of most recent income certification)
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				
(11)				
(12)				
(13)				
(14)				
(15)				
(16)				
(17)				
(18)				

Based on the foregoing, \_\_\_\_\_ (fill in number) of the residential units ( \_\_\_\_\_ %) of all residential units) are currently occupied by Lower-Income Tenants.

Units identified with an "\*" have income above 140% of the applicable limit, but are still treated as occupied by Lower-Income Tenants because after such determination, but before the next determination, all residential units of comparable or smaller size in the Project were occupied by one or more new residents who are Lower-Income Tenants.

IN WITNESS WHEREOF, I have hereunto affixed my signature under seal, on behalf of the Borrower, on \_\_\_\_\_ 20\_\_\_\_.

**AVALON ACTON, INC.**

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

## EXHIBIT E

## REQUIRED LEASE OR RESIDENCY AGREEMENT PROVISIONS FOR PROJECT

Section \_\_\_\_ . TENANT TO FURNISH INFORMATION ABOUT INCOME.

- A. Information to be Furnished. Tenant agrees to provide to Landlord an annual certificate regarding Tenant's income. The certificate shall be provided each year and shall be on a form provided by Landlord. Tenant also agrees, at the request of the Landlord, to provide to Landlord copies of Tenant's federal income tax returns and any other information or certificates requested by Landlord. Landlord agrees to request the income tax returns and information only for the purpose of complying with the rules and regulations of the Department of Treasury or the Internal Revenue Service relating to tax-exempt financing of qualified residential rental housing projects.
- B. Landlord May Disclose Financial Information. Tenant agrees that the certificates, income tax returns and other information provided by Tenant may be disclosed by Landlord to the Department of Treasury, the Internal Revenue Service or any other person as may be required to satisfy Landlord's obligations relating to the tax-exempt financing for the [leased] [occupied] premises.
- C. Failure to Provide Information is Default by Tenant. Tenant agrees that any failure to provide information which Tenant is required to provide under Section A above shall be a default by Tenant of its agreements under the [Lease] [Residency Agreement]. Tenant also agrees that if any of the certificates, tax returns, or information provided by Tenant are untrue, Tenant shall be in default under this [Lease] [Residency Agreement]. In the event of any such default, Landlord shall have the right to exercise any right or remedy described in Section of this [Lease] [Residency Agreement].



**FANNIE MAE RIDER  
TO REGULATORY AGREEMENT**

**THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT ("Rider")** is attached to and forms a part of the Tax Regulatory Agreement ("**Regulatory Agreement**"), dated as of December 1, 2006, by and among Avalon Acton, Inc. ("**Borrower**"), its successors and assigns, the Massachusetts Development Finance Agency ("**Issuer**") and U.S. Bank, National Association ("**Trustee**"), as Trustee.

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement or the Indenture, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Project.** The obligations of the Borrower and any subsequent owner of the Project under the Regulatory Agreement shall not be secured by or constitute a lien on, or security interest in, the Project. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Loan Documents. Upon a conveyance or other transfer of title to the Project by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan, the Person who acquires title to the Project pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18 and, from and after the date on which such Person acquires title to the Project, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18, shall automatically terminate and be of no force and effect; provided that Sections 3, 4, 5, 6, 9, 11, 13, 17 and 18 shall also terminate and be of no force or effect under the circumstances set forth in Section 9 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Project (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Project subject to:

(a) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under the Regulatory Agreement.

The Borrower and each subsequent owner of the Project shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Project. All

such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Project.

6. **Sale or Transfer.** All restrictions on sale or transfer of the Project or of any interest in the Borrower, consents of the Issuer or the Trustee, transfer agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan, provided that such subsequent purchaser is not barred or suspended from participating in the financing programs. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Loan Documents which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall apply to a transfer to Fannie Mae upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan by Fannie Mae, or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan. Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Security Instrument and the other Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

(c) Upon any default by the Borrower under the Regulatory Agreement, the Assignment shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** Unless the Assigned Rights (as that term is defined in the Assignment) are transferred to the Trustee pursuant to Section 5.1 of the Assignment, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, the Credit Provider and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Loan Servicer at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

DB Mortgage Services, LLC  
 One Beacon Street, 14<sup>th</sup> Floor  
 Boston, Massachusetts 02108  
 Attention: Director of Loan Servicing—Fannie Mae  
 Telephone: (617) 523-0066  
 Facsimile: (617) 558-1507  
 Re: Multifamily Housing Revenue Bonds  
 (Avalon Acton Apartments), Series 2006

And to: Deutsche Bank Berkshire Mortgage, Inc.  
 4550 Montgomery Avenue, Suite 1150  
 Bethesda, Maryland 20814  
 Attention: Director of Loan Servicing—Fannie Mae  
 Telephone: (301) 718-2000  
 Facsimile: (301) 718-2010

With a copy to: Ballard Spahr Andrews & Ingersoll, LLP  
 601 13<sup>th</sup> Street, NW, Suite 1000 South  
 Washington, DC 20005  
 Attention: Mary Jo George  
 Telephone: (202) 661-2208  
 Facsimile: (202) 661-2299  
 Re: Multifamily Housing Revenue Bonds  
 (Avalon Acton Apartments), Series 2006

13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
 3900 Wisconsin Avenue, NW  
 Drawer AM  
 Washington, DC 20016-2899  
 Attention: Director, Multifamily Asset Management  
 Telephone: (301) 204-8008  
 Facsimile: (301) 280-2065  
 RE: Massachusetts Development Finance Agency Multifamily  
 Housing Revenue Bonds, (Avalon Acton Apartments), Series 2006,  
 Avalon Acton Apartments, DB Mortgage Services, LLC

[For courier use 4000 Wisconsin Avenue, N.W. and delete Drawer AM]

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2899  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369  
RE: Massachusetts Development Finance Agency Multifamily Housing  
Revenue Bonds, (Avalon Acton Apartments), Series 2006, Avalon Acton  
Apartments, DB Mortgage Services, LLC

[For courier use 4000 Wisconsin Avenue, N.W. and delete Drawer AM]

ISSUER'S INITIALS: \_\_\_\_\_

BORROWER'S INITIALS: \_\_\_\_\_

REGISTRY OF DEEDS  
SOUTHERN DISTRICT  
ATTEST:  
*Luzerne C. Brune*  
REGISTER