

Middlesex South Registry of Deeds  
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**Middlesex South Registry of Deeds**  
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REGULATORY AND USE AGREEMENT  
[Comprehensive Permit Rental- Non-Profit Developer]

**LOCAL INITIATIVE PROGRAM**

This Regulatory Agreement (the "Agreement") is made this 4<sup>th</sup> day of August, 2020 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to G.L. c. 23B, §1, as amended by Chapter 19 of the Acts of 2007, the **Town of Lexington** (the "Municipality") and the Lexington Housing Assistance Board, Inc., an independently chartered Massachusetts not for profit **corporation**, having an address at 1620 Massachusetts Avenue, Lexington Massachusetts 02421, and its successors and assigns ("Developer").

RECITALS

WHEREAS, the Developer is constructing a housing development known as "Wright Farm at an approximately 16,954 Square Foot site located at 241 Grove Street, Lexington MA 02420 in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Development"); and

WHEREAS, DHCD has promulgated regulations at 760 CMR 56.00 (as may be amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23 of the Massachusetts General Laws (as may be amended from time to time, the "Act") and pursuant thereto, has issued its Comprehensive Permit Guidelines (the "Guidelines" and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules"); and

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

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

WHEREAS, said Board of Appeals issued a comprehensive permit for the Development by decision filed with the Municipality's Town Clerk on December 28, 2018, which was recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 72320, Page 202 (the "Comprehensive Permit"); and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of one rental unit, of which One hundred percent (100%) (i.e., all units) (the "Affordable Units") will be rented to Low or Moderate Income Persons and Families (as defined herein) at rents specified in this Agreement and will be subject to this Agreement; and

241 Grove Street Lexington, MA 02420

WHEREAS, the parties intend that this Agreement shall use as a "Use Restriction" as defined in and required by Section 56.05(13) of the Regulations; and

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

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

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

### DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

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

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

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

Annual Income shall be determined in the manner set forth in 24 CFR 56.09 (or any successor regulation).

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

Area Median Income ("AMI") shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

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

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

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

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

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

Cost Certification shall have the meaning given such term in Section 20 hereof.

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

Development Revenues shall mean all amounts paid from revenues, income and other receipts of the Development, not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer.

Event of Default shall mean a default in the observance of any covenant under this Agreement existing after the expiration of any applicable notice and cure periods.

Family shall have the same meaning as set forth in 24 CFR, §54.03 (or any successor regulations).

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

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development or to Low or Moderate Income Tenants.

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

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

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

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

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

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

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

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

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

Substantial Completion shall have the meaning given such term in Section 20 hereof.

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

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

**CONSTRUCTION AND OBLIGATIONS**

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications") and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit. All Affordable Units to be constructed as part of the Development must be similar in exterior appearance to other units in the Development and shall be evenly dispersed throughout the Development. In addition, all Affordable Units must contain complete living facilities including, but limited to, a stove, kitchen cabinets, plumbing fixtures and sanitary facilities, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules and regulations, including, without limitation, all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

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

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

\_\_\_\_\_ of the Affordable Units shall be one-bedroom units;

\_\_\_\_\_ of the Affordable Units shall be two-bedroom units; and  
\_\_\_\_\_ of the Affordable Units shall be three-bedroom units.

  X   The only unit is a 4 bedroom unit

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

Studio	500 square feet
One bedroom	600 square feet
Two Bedroom	800 square feet
Three bedroom	950 square feet
Four bedroom	1,200 square feet
Per 2020 schedule, subject to change	

**USE RESTRICTION/RENTALS AND RENTS**

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. In fulfilling the foregoing requirement, Developer will accept referrals of tenants from the Public Housing Authority in the Municipality and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Tenant Selection Plan. The foregoing provisions shall not relieve Developer of any obligations it may have under the provisions of other documents and instruments it has entered into with respect to any applicable Housing Subsidy Program; provided, however, that DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Affordable Unit plus one. If rents of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) If, after initial occupancy, the income of a tenant in an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Development shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or

(ii) the Developer rents the next available unit at the Development as an Affordable Unit in conformance with Section 3(a) of this Agreement or otherwise demonstrates compliance with Section 3(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

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

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

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

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

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

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

(i) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws, which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law, but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as DHCD shall require.

#### **TENANT SELECTION AND OCCUPANCY**

4. Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.



5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement and the Local Initiative Program. The Developer shall enter into a lease with each tenant for a minimum term of one (1) year. The lease shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Developer, the Municipality or DHCD and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as Developer, the Municipality or DHCD may direct, but at least annually, he or she will furnish to the Developer certification of then-current family income, with such documentation as the Municipality or DHCD shall reasonably require; and agrees to such charges as the Municipality or DHCD has previously approved for any facilities and/or services which may be furnished by Developer or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above.

6. Omitted.

7. Omitted.

#### **MANAGEMENT OF THE DEVELOPMENT**

8. Developer shall maintain the Development in good physical condition in accordance with DHCD's requirements and standards and requirements and standards of the Lender, ordinary wear and tear and casualty excepted. Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and further, DHCD has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

#### **CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS**

9. Except for rental of Units to Low or Moderate Income Tenants as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a "Sale") or (except as permitted under Section (d) below) mortgage the Property without the prior written consent of DHCD and the Municipality.

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

- A signed agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow

and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;

- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Development is in compliance with the affordability requirements of this Agreement.

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

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

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

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Project or any party of the Project.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive

income, losses, or a return on equity contributions made to such company or corporation.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender made at no greater than the prevailing rate of interest or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof.

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

10. Omitted.

### **BOOKS AND RECORDS**

All records, accounts, books, tenant lists, applications, waiting lists, documents and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of Developer which is unrelated to the Development and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of DHCD or the Municipality. Failure to keep such books and accounts and/or make them available to DHCD or the Municipality, will be an Event of Default hereunder if such failure is not cured to the satisfaction of DHCD within thirty (30) days after the given of notice to the Developer. The Developer agrees to comply and to cause the Development to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders.

11. Omitted.

12. Omitted.

### **FINANCIAL STATEMENTS AND OCCUPANCY REPORTS**

13. At the request of DHCD or the Municipality, Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development as it pertains to the Developer's compliance with the requirements of this Agreement.

### **NO CHANGE OF DEVELOPMENT'S USE**

Except to the extent permitted in connection with a change to the Comprehensive Permit approved in accordance with the Regulations or as set forth in Section 28 below, Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to the Agreement, change the type or number of Affordable Units. Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit.

### **NO DISCRIMINATION**

14. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap or marital status or any other basis prohibited by law in the lease, use or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, familial status or any other basis prohibited by law and providing for nondiscrimination and equal opportunity in housing, including without limitation, in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provision shall be a proper basis for the Municipality or DHCD to take any corrective action it may deem necessary.

### **DEFAULTS; REMEDIES**

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

(b) If DHCD elects to terminate this Agreement as the result of an uncured breach, violation or default hereof, then whether the Affordable Units continue to be included in the SHI maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD according to the rules and regulations then in effect.

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

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

### **MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY**

16. DHCD intends to monitor the Developer's compliance with the requirements of this Agreement. DHCD shall have the right to engage a third party (the 'Monitoring Agent') to monitor compliance with all of a portion of the ongoing requirements of this Agreement. In carrying out its obligations the Monitoring Agent shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. Developer hereby agrees that the Monitoring Agent shall have the same rights and be owed the same duties as DHCD under this Agreement and shall act on behalf of DHCD hereunder to the extent that DHCD delegates its rights and duties by agreement with the Monitoring Agent. DHCD hereby delegates its rights and duties as Monitoring Agent to the Municipality, and the Municipality agrees to act as Monitoring Agent.

17. Omitted.

18. The Municipality shall have the right to engage a third party (the "Affordability Monitoring Agent") to monitor compliance with all or a portion of the ongoing affordability requirements of this Agreement which Municipality is responsible for overseeing hereunder. In carrying out its obligations as an Affordability Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. The Municipality shall notify the Developer and DHCD in the event the Municipality engages an Affordability Monitoring Agent and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Affordability Monitoring Agent an annual monitoring fee in an amount reasonably agreed upon by the Municipality and the Developer payable within thirty (30) days of the end of each fiscal year by the Developer and (ii) the Developer hereby agrees that the Affordability Monitoring Agent shall have the same rights and be owed the same duties as the Municipality under this Agreement and shall act on behalf of the Municipality hereunder to the extent that the Municipality delegates its rights and duties by written agreement with the Affordability Monitoring Agent.

### **CONSTRUCTION AND FINAL COST CERTIFICATION**

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

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

one hundred eighty (180) days after Substantial Completion of the Development or, if later, within sixty (60) days of the date on which all the units in the Development are occupied, the Project Sponsor shall complete and deliver to the Municipality and to DHCD Sections 3 and 4 of the One Stop Affordable Housing Finance Application (“Sources and Uses of Funds” and “Operating Pro Forma”) documenting the actual development costs of and income from the Development, prepared and signed by the Chief Financial Officer of the Developer. As used herein, the term “Substantial Completion” shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

20. Omitted.

### TERM

21. This Agreement shall bind and the benefits shall inure to, respectively, Developer and its successors and assigns and DHCD and its successors and assigns and the Municipality and its successors and assigns, in perpetuity (the “Term”). Upon expiration of the Term, this Agreement and the rights and obligations of the parties hereunder shall automatically terminate without the need of any party executing any additional document.

### LENDER FORECLOSURE

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

### INDEMNIFICATION/LIMITATION ON LIABILITY

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

23. DHCD and the Municipality shall not be held liable for any action taken or omitted under this Agreement so long as they shall have acted in good faith and without gross negligence.

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

### CASUALTY

25. Subject to the rights of the Lender, Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use,

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

### **DEVELOPER'S REPRESENTATIONS AND WARRANTIES**

26. The Developer hereby represents and warrants as follows:

(a) The Developer (i) is an independently chartered not for profit Massachusetts corporation, qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of the 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 Developer is a party or by which it or the Development is bound and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement and any other documents executed in connection with the Construction Loan or other encumbrances permitted by DHCD).

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

### **MISCELLANEOUS CONTRACT PROVISIONS**

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

28. Developer warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

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

30. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

31. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

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

### NOTICES

33. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

Lexington Housing Assistance Board, Inc.  
1620 Massachusetts Avenue  
Lexington MA 02421  
Attention: Robert Burbidge, President and Chair  
Fax: 781-862-4290

If to DHCD:

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

If to the Municipality:

James J. Malloy  
Town Manager  
Town Office Building  
1625 Massachusetts Ave  
Lexington, MA 02420  
Fax: 781-861-2921

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.



A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

### **RECORDING**

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

### **GOVERNING LAW**

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

### **DELEGATION BY DHCD**

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the date and year first written above.

**DEVELOPER:**

**The Lexington Housing Assistance Board, Inc.**

By: *Robert Burbidge*  
Robert Burbidge,  
Its: President and Chair

DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT'S  
SUBSIDIZING AGENCY AS AFORESAID



By: *Alan King*  
Its: Deputy Associate Director

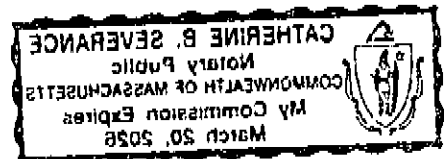
**MUNICIPALITY:**

**TOWN OF LEXINGTON**

By: *James J. Malloy*  
Its: Town Manager

**Attachments:**

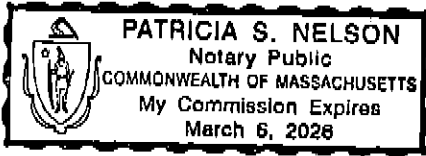
- Exhibit A - Legal Description
- Appendix A - Rent Schedule



COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

On this 19<sup>th</sup> day of May, 2020 before me, the undersigned notary public, personally appeared Robert Burbidge, known or ~~proved to me through satisfactory evidence of identification, which was~~ fame, to be the person whose name is signed on the preceding document, as President and Chair of the Lexington Housing Assistance Board, Inc. [Developer] and acknowledged to me that he signed it voluntarily for its stated purpose as President and Chair

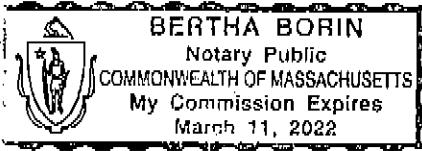


Patricia S. Nelson  
Notary Public  
Print Name: Patricia S. Nelson  
My Commission Expires: 3/6/2026

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Suffolk, ss.

On this 4<sup>th</sup> day of August, 2020, before me, the undersigned notary public, personally appeared Ailana Murphy, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, as Deputy Associate Director for the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development and acknowledged to me that he/she signed it voluntarily for its stated purpose.

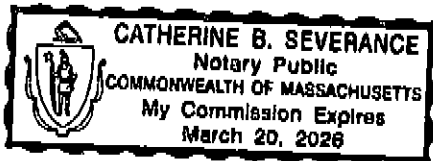


Bertha Borin  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

On this 19<sup>th</sup> day of May, 2020, before me, the undersigned notary public, personally appeared James J. Malby, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding document, as Town Manager for the City/Town of Lexington and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Catherine B. Severance  
Notary Public  
Print Name: Catherine B. Severance  
My Commission Expires: 3/20/26

**EXHIBIT A**

**LEGAL DESCRIPTION**

**The land with improvements thereon located in Lexington, Massachusetts shown as "Parcel 2-A" on that certain plan entitled "Plan of Land Located in Lexington, Massachusetts (Middlesex County) Prepared For Town of Lexington" (the "Plan"), prepared by Meridian Associates, dated February 2, 2018 and recorded with the Middlesex South Registry of Deeds as Plan 274 of 2019 (the "Premises").**

**See deed from the Town of Lexington to the Lexington Housing Assistance Board, Inc., recorded with the Middlesex South Registry of Deeds in Book 74027, Page 176.**

A handwritten signature or set of initials, possibly 'S', located in the bottom right corner of the page.

**APPENDIX A**  
**RENT SCHEDULE (INITIAL)**

Re: Wright Farm \_\_\_\_\_  
 Development Name

Lexington \_\_\_\_\_  
 City/Town

The Lexington Housing Assistance Board, Inc. \_\_\_\_\_  
 Developer

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

	<u>Rents</u>	<u>Utility Allowances</u>
Studio Units	\$ _____	\$ _____
One-bedroom Units	\$ _____	\$ _____
Two-bedroom Units	\$ _____	\$ _____
Three-bedroom Units	\$ _____	\$ _____
Four-bedroom Units	\$ 2408.75 _____	\$ 384 _____
	<u>Per 2019 schedule</u>	<u>Per 2020 schedule</u>
	<u>Subject to change</u>	<u>Subject to change</u>