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## AFFORDABLE HOUSING RESTRICTION and CHAPTER 40B REGULATORY AGREEMENT

**DATE: As of August 11, 2008**

GRANTOR:	447 Concord Road LLC
PROPERTY NAME:	447 Concord Road
TOTAL NUMBER OF UNITS:	14
TOTAL NUMBER OF RESTRICTED UNITS:	12
NUMBER OF HIGH MODERATE INCOME UNITS (110% AMI): <sup>1</sup>	0
NUMBER OF MODERATE INCOME UNITS (65% AMI):	1
NUMBER OF LOW INCOME UNITS (60% AMI):	7
NUMBER OF VERY LOW INCOME UNITS (50% AMI):	4
NUMBER OF EXTREMELY LOW INCOME UNITS (30% AMI):	0
NUMBER OF HOME ASSISTED UNITS:	11
PROPERTY ADDRESS:	447 Concord Road Bedford, Massachusetts

447 Concord Road, Bedford

TERM: In Perpetuity

This Affordable Housing Restriction and Chapter 40B Regulatory Agreement (this "Restriction") is granted by the undersigned Grantor, a Massachusetts limited liability company having a mailing address of c/o S-C Management Corp, 2 Brookline Place, Suite 206, Brookline, Massachusetts 02445, for the benefit of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development having a mailing address of 100 Cambridge Street, Suite 300, Boston, Massachusetts 02114-2524 ("DHCD"); Massachusetts Housing Partnership Fund Board, a Massachusetts public instrumentality and body politic and corporate, with an office at 160 Federal Street, 2nd Floor, Boston, Massachusetts 02110 ("MHP"); and the Town of Bedford, Massachusetts, acting by and through its Board of Selectmen, having an address at Town Hall, 10 Mudge Way, Bedford, Massachusetts 01730 (the "Town").

MHP is anticipated to be the first mortgage lender for the Project (as defined below). Upon the closing of the MHP First Mortgage Loan for the Project (as defined below), MHP, together with its successors and assigns, shall be the senior lender hereunder and a Holder of this Restriction. The

<sup>1</sup> Numbers in parentheses are the percentage of median income for the Area (AMI, as defined below), adjusted for family size, as determined from time to time by HUD (as defined below) pursuant to Section 8 of the United States Housing Act, as amended.

Grantor acknowledges that, notwithstanding the order of recording, this Restriction shall be senior to the MHP First Mortgage Loan, subject to the provisions of Section 17 below.

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## BACKGROUND

- A. The Grantor holds or will acquire a leasehold interest in the Property and intends to construct a 14-unit rental housing development, consisting of three residential buildings, at the Property (the "Project").
- B. The Project is subject to a Comprehensive Permit issued by the Town of Bedford (the "Municipality") recorded with Registry of Deeds (the "Registry") in Book 49794, Page 352 [as amended by any Amendment(s) recorded with said Registry], the ("Comprehensive Permit") pursuant to M.G.L. c. 40B, §§ 20-23 and regulations and guidelines promulgated thereunder as may be amended from time to time (collectively, the "Act", including, without limitation, the Comprehensive Permit Guidelines promulgated by the Department of Housing and Community Development of the Commonwealth of Massachusetts, hereinafter, the "Comp Permit Guidelines")
- C. DHCD, MHP and the Town have made a subordinate MassDocs Loan to the Grantor in the aggregate amount of \$2,545,705.00 (including a subordinate construction loan by MHP to the Grantor in the amount of \$1,050,000.00 pursuant to the MHP Subsidy Program), and MHP has issued a conditional commitment to make a permanent first mortgage loan to the Grantor in the original principal amount of up to \$1,246,000.00 (the "MHP First Mortgage Loan") to be reflected in a loan agreement (the "MHP Loan Agreement") and to be secured by a first priority mortgage on the Property (the "MHP First Mortgage"). The MHP subordinate loan and the MHP First Mortgage Loan are, as the context requires, individually and/or collectively referred to as the "MHP Loan" and all documents, instruments and agreements executed in connection therewith, as same may be modified, amended and/or restated are, individually, a "MHP Loan Document" and collectively, the "MHP Loan Documents".
- D. This Restriction is intended, among other things, to serve as the regulatory agreement for the Project as that term is defined in the Act and referenced in the Comprehensive Permit for the Project.
- E. The provisions set forth in §§18-26 hereof and Exhibit E hereto, as same may be substituted, amended, modified or restated are hereinafter referred to as the "Regulatory Provisions".
- F. Subject to, and on and after the MHP Loan Closing Date, for the duration of the MHP Monitoring Period, as defined herein, MHP will monitor affordability and compliance with the Regulatory Provisions; thereafter, the Town and/or its agents will assume the function of monitoring and enforcing compliance with the Comprehensive Permit and the requirements of the Act. In the event that the MHP First Mortgage Loan does not close, MHP shall not be deemed the subsidizing agency under the Act, and shall not monitor or enforce the Regulatory Provisions to the extent that they remain applicable.

- G.** As a condition of the Loan and of the Comprehensive Permit, Grantor agrees to impose this Restriction upon the Property as a covenant running with the land which Restriction shall be binding upon the Grantor and all subsequent owners of the Property, for the purposes of providing for the monitoring and enforcement of the limited dividend requirement, the affordable housing restrictions, the affirmative marketing requirements, and all other provisions set forth herein, for the period set forth herein.

## **RESTRICTIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby covenants as follows:

- 1. Definitions.** Capitalized terms used herein are defined herein and in Exhibit D attached hereto.
- 2. Use Restrictions.** The Property shall be reserved and used for the Permitted Uses and for no other purpose. The Restricted Units shall include at least 8 two-bedroom Units and 4 three-bedroom Units. Eleven of the Restricted Units shall be deemed to be assisted under the HOME Program ("HOME Assisted Units"). Such HOME Assisted Units may also constitute Restricted Units with respect to other programs hereunder. The Property also shall include at least one (1) Unit accessible to individuals with mobility impairments and at least one (1) additional Unit accessible to individuals with sensory impairments. Each Unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis. Each Unit shall meet the housing quality standards set forth in the regulations of HUD at 24 C.F.R. §982.401 or any successor thereto, the accessibility requirements at 24 C.F.R. Part 8 or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973) and, if applicable, the design and construction requirements of 24 C.F.R. §100.205 or any successor thereto (which implement the Fair Housing Act). The Restricted Units shall be of comparable quality to the other Units at the Property. The Restricted Units shall be dispersed evenly throughout the buildings comprising the Improvements. Throughout the term hereof, the Grantor shall maintain the Property and the Improvements in good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, rules and regulations of any governmental (or quasi-governmental) body with jurisdiction over matters concerning the condition of the Property.
- 3. Occupancy Restrictions.** The following restrictions shall apply during the period commencing with the first date on which any Units are occupied and continuing for the balance of the term of this Restriction.
  - A. Moderate Income Units.** At least 1 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Moderate Income Families ("Moderate Income Units"). The monthly rent charged to a Family occupying a Moderate Income Unit shall not exceed the lesser of Fair Market Rent or an amount equal to (x) one-twelfth of thirty percent (30%) of sixty-five percent (65%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Moderate Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds sixty-five percent (65%), but does

not exceed eighty percent (80%) of the Family-size Adjusted AMI, shall continue to be treated as a Moderate Income Family and the foregoing maximum rent shall continue to apply to such Family. A Family who resides in a Restricted Unit, who qualified as a Moderate Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder, must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.

**B. Low Income Units.** At least 7 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Low Income Families ("Low Income Units"). The monthly rent charged to a Family occupying a Low Income Unit shall not exceed the lesser of Fair Market Rent or an amount equal to (x) one-twelfth of thirty percent (30%) of sixty-five percent (65%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds sixty percent (60%), but does not exceed eighty percent (80%) of the Family-size Adjusted AMI, shall continue to be treated as a Low Income Family and the foregoing maximum rent shall continue to apply to such Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.

**C. Very Low Income Units.** At least 4 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Very Low Income Families ("Very Low Income Units"). The monthly rent charged to a Family occupying a Very Low Income Unit shall not exceed the lesser of Fair Market Rent or (x) one-twelfth of thirty percent (30%) of fifty percent (50%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Very Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds fifty percent (50%), but does not exceed eighty percent (80%), of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of

such Family's lease, be treated as a Low Income Family, and must pay as monthly rent the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of sixty percent (60%) of the Bedroom Adjusted AMI (minus, if applicable, an allowance established by the Holders for any utilities and services [excluding telephone] to be paid by the occupying Family) or (z) the comparable market rent for the Family's Unit. A Family who resides in a Restricted Unit, who qualified as a Very Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.

- D. Applicable Lease Term, Change of Status.** References in the foregoing provisions of the "then-current term of such Family's lease" shall refer to the term of the lease or occupancy agreement in effect on the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income or; as applicable, the term of the lease or occupancy agreement in effect at the time the Property regains the required number of income-qualified Families. If, with the Holders' consent, the Grantor does not require that a lease be signed for a Restricted Unit (e.g., a property providing short-term transitional housing), the provisions set forth above shall apply, except that the applicable date on which a Family's income-qualified status and/or applicable rent restriction is modified shall be the first day of the month that is at least thirty (30) days following the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income and the applicable date on which a Restricted Unit's status is modified shall be the first day of the month that is at least thirty (30) days following the date on which the Property regains the required number of income-qualified Families.
- E. Federal or State Rental Subsidy.** Except with respect to HOME Assisted Units, if a Restricted Unit or the Family occupying such Unit receives federal or state rental subsidy, then the Family's contribution towards rent shall be the contribution allowable under the federal or state rental subsidy program and the maximum rent (i.e., tenant contribution plus rental subsidy) shall be the rent allowable under the federal or state rental subsidy program. In the case of HOME Assisted Units, if a Restricted Unit receives federal or state project-based rental subsidy and the occupying Family qualifies as a Very Low Income Family and pays as a contribution towards rent not more than thirty percent (30%) of one-twelfth of the Family's Household Income, then the maximum rent (i.e., tenant contribution plus rental subsidy) shall be the rent allowable under the federal or state rental subsidy program.

**F. Next Available Unit Rule.** If at any time fewer than the required number of Units are leased, rented or occupied by Very Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Very Low Income Families until the required number of Units occupied by Very Low Income Families is again obtained. Subject to the foregoing, if at any time fewer than the required number of Units are leased, rented or occupied by Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Low Income Families until the required number of Units occupied by Low Income Families is again obtained. Subject to the foregoing, if at any time fewer than the required number of Units are leased, rented or occupied by Moderate Income Families, the next available Units shall all be leased, rented or otherwise made available to Moderate Income Families until the required number of Units occupied by Moderate Income Families is again obtained. The foregoing provisions shall be applied so as to maintain a mix of Restricted Units that is comparable in size, features and number of bedrooms to the originally designated Restricted Units (i.e., a Unit will not be considered an available Unit for purposes of this Paragraph if classification of such Unit as a Restricted Unit would cause the then current mix of Restricted Units to no longer be comparable to the original mix of Restricted Units described in Section 2 above and as shown on Exhibit C).

**4. Rent Schedule.** Projected initial monthly maximum rents and monthly allowances for utilities and services for all Restricted Units shall be as set forth in Exhibit B attached hereto. Notwithstanding the rent restrictions set forth in Section 3 above, the maximum monthly rent permitted to be charged for a Restricted Unit at any particular income level is not required to be lower than the maximum rent applicable at such income level pursuant to Exhibit B, regardless of changes in fair market rents or in median income over time (subject only to the restrictions applicable in the event of any federal or state subsidy, as set forth in Section 3 above). Rents for Restricted Units shall not be increased above applicable maximums without all Holders' prior written approval of a specific request by the Grantor for a rent increase, except for increases implemented in accordance with an annual schedule of maximum rents and allowances issued by DHCD. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by the Grantor to all affected Residents and notwithstanding any provision in a lease or occupancy agreement to the contrary, in the event of any increase in the rent payable by such Residents in connection with an increase in the income of such Residents, consistent with the terms hereof, the Residents shall have the right to terminate their lease or occupancy agreement by written notice to the Grantor delivered within such thirty-day period.

**5. Affirmative Fair Housing Marketing Plan and Resident Selection.**

**A. Submission and Adherence to Plan.** The Grantor shall provide the Holders with an affirmative fair housing marketing and resident selection plan (the "Plan") acceptable to all of the Holders, which shall comply in all respects with the Act, the Regulations, the Guidelines and the Comp Permit Guidelines, and shall operate the Project in accordance with the Plan throughout the Term. The Plan must comply with all applicable statutes, regulations and executive orders, with all Holders' affirmative marketing requirements, with all applicable fair housing requirements, and with DHCD's directives reflecting the agreement between DHCD and HUD in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved

resident selection policies and criteria shall be adhered to in every respect and any changes thereto shall be subject to the prior written approval of the Holders. Consistent with the foregoing, the Grantor, in renting the Restricted Units, will be allowed to give the maximum preference allowed by law to current residents of the Town, employees of the Town, employees of businesses located in the Town and households with children attending schools located in the Town, but only in conformity with the fair housing requirements of HUD, DHCD, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose.

**B. Nondiscrimination.** The Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the Units or in connection with the employment or application for employment of persons for the operation and management of the Units. The Grantor shall not discriminate against, or refuse to lease, rent or otherwise make available the Units to, a holder of a certificate or voucher under the Federal Rental Certificate Program or the Federal Rental Voucher Program or a holder of a comparable document evidencing participation in a HOME Program tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME Program tenant-based assistance document.

**C. Selection Policies.** The Plan shall include resident selection policies and criteria for the Restricted Units that:

- (i) Are consistent with the purpose of providing housing for a Moderate Income Family, a Low Income Family or a Very Low Income Family, as defined below and required herein;
- (ii) Are reasonably related to eligibility of prospective tenants under the Programs and to the prospective tenants' ability to perform the obligations of the Grantor's form lease;
- (iii) Give reasonable consideration to the housing needs of Families that would have preference under Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.); and
- (iv) Provide for (x) the selection of Residents from a written waiting list in the chronological order of their application, insofar as practicable, and (y) the prompt written notification to any rejected applicant of the grounds for any rejection.

**6. Lease Form.** The Grantor shall not include in any lease for a Restricted Unit any of the following provisions:

- A.** Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Grantor in a lawsuit brought in connection with the lease.
- B.** Agreement by the tenant that the Grantor may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the Unit after the tenant has

moved out of the Unit. The Grantor may dispose of such personal property in accordance with state law.

- C. Agreement by the tenant not to hold the Grantor or the Grantor's agents legally responsible for any action or failure to act, whether intentional or negligent.
- D. Agreement of the tenant that the Grantor may institute a lawsuit without notice to the tenant.
- E. Agreement by the tenant that the Grantor may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- F. Agreement by the tenant to waive any right to a trial by jury.
- G. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- H. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Grantor against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases for Restricted Units shall be consistent with the requirements set forth herein, shall be on a form reasonably approved by the Holders, shall be for terms of not less than one (1) year (unless a shorter term is specified by mutual agreement between the Resident and the Grantor, subject to the Holders' program requirements) and shall require tenants to provide information required for the Grantor to meet its reporting requirements hereunder. The Grantor may not terminate the tenancy or refuse to renew the lease of an occupant of a Restricted Unit except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; (iii) for completion of the tenancy period for transitional housing; or (iv) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by the Grantor's service on the tenant of a written notice specifying the grounds for the action.

**7. Transfer Restrictions.** The Grantor shall not sell, transfer, convey, rent (except for leases or occupancy agreements made in connection with the Permitted Uses that are substantially in the form approved by the Holders), encumber as security for financing, or in any other way exchange all or any portion of the Property nor shall the Grantor permit the sale, transfer or pledge of any direct or indirect interests in the Grantor, without the express written permission of the Holders. Without limiting the generality of the foregoing, the Permitted Encumbrances are hereby approved by the Holders.

**8. Term of Restrictions; Covenants to Run with Land.** Except with respect to the Regulatory Provisions set forth in Sections 18-25 below (as to which the term shall be perpetual), the term of this Restriction shall be 31 years and one month from the date hereof, provided that if the Project is not completed within 13 months after the date of this Restriction for any reason, any Holder shall have the right to extend the term hereof by recording in the Registry of Deeds a certificate of extension certifying the length of the delay in completing the Project, whereupon the term hereof shall automatically be extended by an amount of time equal to the length of such delay and



provided further that the term hereof shall automatically be extended for the period of the extension of any of the Loans to which this Restriction relates. Notwithstanding any provision to the contrary herein or in any of the other Loan Documents, this Restriction shall remain in full force for the full term set forth herein including any extension, notwithstanding any prepayment of the Loan. The restrictions contained herein shall run with the land, shall bind the successors and assigns of the Grantor, and shall inure to the benefit of the Holders and their successors and assigns as permitted herein. Notwithstanding the foregoing, upon satisfaction in full at the originally stated maturity date, as it may have been extended, of all obligations under a particular Loan, as determined by the appropriate Holder, the Grantor may request that the Holders modify this Restriction to eliminate the requirements imposed by or otherwise relating to such Loan set forth in this Restriction. The parties shall cooperate to prepare an appropriate amendment to this Restriction, which amendment shall be duly recorded with the Registry of Deeds by the Grantor at its cost and expense.

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

**10. Income Verification.** The Grantor represents, warrants and covenants that the determination of whether a Family occupying a Restricted Unit meets the income requirements set forth herein shall be made by the Grantor at the time of leasing of a Restricted Unit and thereafter at least annually on the basis of the current income of such Family. In initially verifying a Family's income, the Grantor shall examine the source documents evidencing annual income (e.g., wage statements, interest statements, unemployment compensation statements) for the Family.

**11. Reporting Requirements.**

**A. Annual Report.** Annually, no later than September 30, Grantor shall submit to DHCD, via the web-based annual reporting system, an annual report consisting of the following in a form approved by DHCD and containing such supporting documentation as DHCD shall reasonably require:

- (i) Annual adjusted income of each Family occupying a Restricted Unit.
- (ii) Monthly gross rents (rents plus utility allowances, if applicable) for all Restricted Units, such rents to be consistent with the schedule of maximum rents published annually by DHCD. The rent schedule shall include the maximum rents applicable to Restricted Units under Section 3 as well as the actual rents to be charged to over-income Families under Section 3.
- (iii) Data required by DHCD regulations promulgated pursuant to Chapter 334 of the Acts of 2006 and all applicable DHCD directives, guidelines and forms as may be amended from time to time. The Grantor shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms.

- (iv) Rental assistance data on all existing Residents of Restricted Units.
- (v) The Grantor's certification, made to the best knowledge and belief of the officer or individual signing such certification, that:
  - (a) The Property continues to be used for the Permitted Uses.
  - (b) The Property continues to contain the required number of Moderate Income Units, Low Income Units and Very Low Income Units and to comply with the rent and other restrictions applicable to such Restricted Units.
  - (c) Grantor has not transferred, pledged or encumbered any interest in the Property, except as specifically provided in, and in accordance and compliance with the terms of, this Restriction.
  - (d) Grantor has caused the Property to be maintained in a manner consistent with the Statute, Regulations and Guidelines and no children under six years old reside in or occupy the Property within the meaning of the Lead Paint Law or, if such children do reside in or occupy the Property, that the Property is in compliance with the Lead Paint Law.
  - (e) The information submitted pursuant to this Paragraph A. is true and accurate

**B. Confidentiality.** The Holders and the Grantor shall treat as confidential any of the foregoing information relating to a specific Resident or Unit in compliance with all applicable state and federal statutes and regulations, including M.G.L. c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but the Holders and the Grantor may release general statistical and other information about the Property, so long as the privacy rights and interests of the individual Residents are protected). The Holders and the Grantor shall not use any of the foregoing information in Paragraph A.(iii) for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause a Holder or Grantor to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

**C. Additional Reports.** Grantor shall prepare and submit to the Holders such additional reports as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.

**D. Records.** The Grantor shall maintain as part of its records (i) copies of all leases of Restricted Units; (ii) all initial and annual income certifications by Residents of Restricted Units and (iii) such additional records as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.

**E. Additional Reporting Requirements.** Additional reporting requirements are stipulated in the Loan Agreement.

**12. No Demolition.** The Grantor shall not demolish any part of the Improvements or substantially subtract from any real or personal property included within the Property except in conjunction with renovation or rehabilitation of the Units or construction of a new project on the

Property, in either case subject to the prior written consent of all Holders, which consent may be granted or withheld in a Holder's sole judgment.

**13. Casualty.** The Grantor represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Grantor (subject to the approval of the lender(s) providing financing) will use its best efforts to repair and restore the Units to substantially the same condition as existed prior to the event causing such damage or destruction, and the Grantor represents, warrants and agrees that the Units shall thereafter continue to operate in accordance with the terms of this Restriction.

**14. Inspection.** The Grantor hereby grants to each Holder and its duly authorized representatives the right to enter the Property (a) at reasonable times and in a reasonable manner for the purpose of inspecting the Property to determine compliance with this Restriction or any other agreement between the Grantor and such Holder and (b) after thirty (30) days' prior written notice, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Restriction. The notice referred to in clause (b) shall include a clear description of the course and approximate cost of the proposed cure.

**15. Enforcement.** Upon violation by the Grantor of any of the provisions of this Restriction that remains uncured for more than thirty (30) days after notice thereof from any Holder (or for such longer period not to exceed thirty (30) days as shall be reasonably required under the circumstances to cure such violation, provided that the Grantor has commenced the cure of such violation within the initial thirty (30) day period and is thereafter diligently pursuing the cure to completion), any Holder, at its option (without liability to any party for failure to do so), may apply to any court, state or federal, for specific performance of this Restriction or an injunction against any violation of this Restriction, or for such other relief as may be appropriate, since the injury arising from the default under any of the terms of this Restriction would be irreparable and the amount of damage would be difficult to ascertain and may not be compensable by money alone. In each such default notice, the Holder giving such notice shall specify the violation in question and the actions such Holder believes are necessary and feasible to remedy such violation. No waiver by a Holder of any breach of this Restriction shall be deemed a waiver of such breach by any other Holder or a waiver of any other or subsequent breach. No act or omission by any Holder, other than a writing signed by it waiving a breach by the Grantor in accordance with the next Section hereof, shall constitute a waiver thereof. Any Holder shall be entitled to recover from the Grantor all of such Holder's reasonable costs of an action for enforcement of this Restriction, including reasonable attorneys' fees (including the time of any in-house counsel of a Holder charged at the same rate as comparable outside attorneys). By its acceptance of this Restriction, no Holder undertakes any liability or obligation relating to the condition of the Property. Without limiting any other rights or remedies available to a Holder, any transfer of all or any other portion of the Property in violation of the provisions hereof, in the absence of a certification from all Holders approving, or waiving any restrictions with respect to, the same, all as set forth above, shall, to the maximum extent permitted by law, be voidable by any Holder, by suit in equity to enforce the restrictions hereof.

**16. Compliance Certification.** Upon written request therefor, a Holder shall provide a statement in form acceptable for recording certifying that the Grantor is in full compliance with

the provisions hereof as relate to that Holder, provided such Holder believes that the Grantor is so in compliance. Upon receipt of a written request therefor, if a Holder shall believe that the Grantor is not so in compliance, such Holder shall provide such a recordable certification specifying in detail the section or sections hereof with which such Holder believes the Grantor not to be in compliance. Any third party dealing with the Grantor may rely for all purposes on the truth and completeness of such a certification of a Holder.

**17. Senior Lender Foreclosure.**

- A.** Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given the Holders not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Property or to any purchaser of the Property from such mortgage holder, and such Property shall, subject to Paragraph B. below, thereafter be free from all such rights and restrictions.
- B.** The rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in lieu of foreclosure by (i) the Grantor, (ii) any person with a direct or indirect financial interest in the Grantor, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Property is subsequently acquired by a Related Party during the period in which this Restriction would have remained in effect but for the provisions of this Section, this Restriction shall be revived and shall apply to the Property as though it had never lapsed. Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate only to the extent it is financially infeasible to maintain the level of affordability required by this Restriction or some lesser level of affordability (i.e., fewer Restricted Units or Restricted Units affordable to Families with higher Household Incomes than those required by this Restriction). "Financially infeasible" shall mean (i) with respect to the operation of the Property, that the rent and other income from the Property is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Property and (ii) with respect to a sale of the Property, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Property, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. Financial infeasibility shall be determined by the senior mortgage holder in its reasonable discretion

after consultation with the Holders. The senior mortgage holder shall notify the Holders of the extent to which the rights and restrictions contained herein shall be terminated and the Grantor agrees to execute any documents required to modify this Restriction to conform to the senior mortgage holder's determination. The Grantor hereby irrevocably appoints any senior mortgage holder and each of the Holders, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Grantor should the Grantor fail or refuse to do so.

- C. In the event such mortgage holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Property plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the Holders in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Holders pursuant to this Section in connection with such proceeding, provided that in the event that such excess shall be so paid to the Holders by such mortgage holder, the Holders shall thereafter indemnify such mortgage holder against loss or damage to such mortgage holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such mortgage holder to the Holders in accordance herewith, provided that such mortgage holder shall give the prompt notice of any such claim and shall not object to intervention by the Holders in any proceeding relating thereto. The Holders shall share any such excess pro rata in proportion to the respective amounts of principal and interest (if any) then outstanding on their portions of the Loan and the liability of a Holder under the foregoing indemnity shall be limited to the amount of such excess received by it. To the extent the Grantor possesses any interest in any amount which would otherwise be payable to the Holders under this Paragraph, to the full extent permissible by law, the Grantor hereby assigns its interest in such amount to said mortgage holder for payment to the Holders.
- D. Notwithstanding the foregoing, the restrictions contained herein which are also contained in the Comprehensive Permit, as well as the rights and remedies of the parties with respect thereto, shall not lapse and shall apply to any mortgage holder or purchaser of Grantor's interest in the Property if Grantor's interest in the Property is acquired through foreclosure or similar remedial action under the provisions of any mortgage or upon the conveyance of Grantor's interest in the Property in lieu of foreclosure.
- E. This Restriction shall be senior to the MHP First Mortgage, if applicable, as same may be amended, modified or restated. Subject to paragraph D above, MHP, in its capacity as senior lender, may terminate, modify or subordinate the Restriction in accordance with and subject to the requirements set forth in Paragraphs A. through C. above. The Grantor agrees to execute any documents required so to terminate, modify or subordinate this Restriction. The Grantor understands and agrees that, in the event of foreclosure of the MHP First Mortgage and the exercise by MHP of the Power of Sale therein, the Property will be sold subject to the restrictions imposed hereby, unless MHP exercises its rights to terminate, modify or subordinate this Restriction prior to such sale. The Grantor hereby

irrevocably appoints MHP, or any agent designated by MHP, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Grantor should the Grantor fail or refuse to do so.

**18. Chapter 40B Regulatory Provisions:** The Grantor covenants and agrees to Sections 19 through 25 below as same may be substituted, amended, modified or restated (hereinafter, collectively the "Regulatory Provisions").

**19. Term and Effect of the Regulatory Provisions.** The Regulatory Provisions are effective immediately and shall be in effect in "perpetuity" meaning for so long as the Property is not in compliance with the established standards and requirements of the Town's Zoning Bylaw or the standards and requirements of any other board of survey, board of health, board of subdivision control appeals, planning board, building inspector, board of selectmen or other board having supervision of the construction of buildings or the power of enforcing building laws in the Town.

Notwithstanding the foregoing, in the event that MHP does not make the MHP First Mortgage Loan, the Regulatory Provisions insofar as they refer or relate to MHP, shall be null and void and of no force or effect without the need of any party to execute or record any additional document. In such event, the Grantor shall be obligated to identify a subsidizing agency in accordance with the Act, which may in its discretion choose to adopt and apply the Regulatory Provisions set forth herein, in which case said provisions shall remain applicable and an amendment to this Agreement shall replace "MHP" with the name of the subsidizing agency throughout the Regulatory Provisions.

On and after the MHP Loan Closing Date, MHP will monitor and enforce the Regulatory Provisions for the duration of the MHP Monitoring Period, notwithstanding any sale or refinance of the Property or payment or prepayment of the MHP First Mortgage Loan and the obligations secured by the MHP First Mortgage. Notwithstanding the foregoing, MHP may release and discharge the Regulatory Provisions of this Restriction prior to the expiration of the MHP Monitoring Period if a regulatory agreement satisfactory to MHP in its sole discretion, is recorded in the Registry of Deeds that, inter alia, provides for monitoring and enforcement of the requirements of the Comprehensive Permit and continued compliance by the Project with the Comprehensive Permit and the Act.

Upon expiration of the MHP Monitoring Period, the rights and obligations of MHP, its designee, successors and/or assigns hereunder with respect to the monitoring and enforcement of compliance with the terms hereof shall automatically terminate without the need of either party to execute or record any additional document.

MHP shall provide written notice to the Board of Selectmen of the Town of the upcoming expiration of the MHP Monitoring Period, at least six (6) months prior to such date, whereupon, the Town, its agents, successors and assigns, shall assume the rights and obligations to monitor and enforce compliance with the Act, and may, at its election, (a) assume the Regulatory Provisions set forth herein and adoption of MHP's Limited Dividend Policy as then in effect; (b) impose its own regulatory

provisions and limited dividend policy; and/or (c) require that the Grantor enter into a new or amended regulatory agreement in substitution of the Regulatory Provisions set forth herein.

In the event that the Regulatory Provisions of this Restriction are discharged or terminated, whether the Restricted Units continue to be included in the Department of Housing and Community Development Subsidized Housing Inventory pursuant to the Act shall be determined pursuant to the Act and rules and regulations then in effect, and such discharge or termination shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Grantor to comply with the provisions thereof.

**20. Grantor's Representations, Covenants and Warranties.** The Grantor hereby represents, covenants and warrants that it (i) is a limited liability company duly organized under the laws of the Commonwealth of Massachusetts and is qualified to transact business under the laws of the Commonwealth of Massachusetts; (ii) is and shall remain a sole purpose, single entity mortgagor; (iii) is and shall remain a Limited Dividend Organization; (iv) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (v) has the full legal right, power and authority to execute and deliver this Restriction.

**21. Use of Development Revenues.**

- A. All Development Revenues shall, if not held by MHP in one of its accounts, be deposited in an account held in the name of Grantor or a nominee for Grantor in a bank or banks, whose deposits are insured by the Federal Deposit Insurance Corporation or otherwise deposited in funds and accounts established hereunder (a "Development Bank Account"). MHP shall at all times be advised of the names of the accounts and the names of the banks. Development Revenues shall be used only in accordance with the provisions of this Restriction. Any person receiving Development Revenues other than as permitted by the Loan Documents shall immediately deposit such funds in a Development Bank Account, or failing to do so in violation of this Restriction, shall hold such funds in trust for the Property.
- B. Grantor shall apply Development Revenues in the following order of priority: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the MHP Loan Documents, if MHP is the senior lender, or otherwise under the loan documents of the senior lender; and (ii) payment of or adequate reserve for all reasonable and necessary expenses of the Property as identified in Subsection (c), below. Any amounts remaining after application of Development Revenue as provided above shall be applied as provided in Section 22 below.
- C. With respect to the application of Development Revenues as described above, Grantor agrees as follows:
  - (i) Payment for services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;
  - (ii) Reasonable and necessary expenses which may be payable pursuant to subsection 21(c)(i), above, shall be directly related to the operation, maintenance or management of the Property; and

(iii) Without MHP's prior written consent, Grantor may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except as expressly permitted herein.

- D. In operating the Property, Grantor shall not incur any liability, either direct or contingent, out of the ordinary course of the business of operating a development similar to the Property.
- E. Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein.

## 22. Limited Dividend Distributions

- A. Except as provided in subparagraph (h) below, no distributions may be made to the Grantor other than Limited Dividend Distributions. Except as provided in subparagraph (h) below, Limited Dividend Distributions may be made: (i) only following completion of the Fiscal Year; (ii) only once all currently payable amounts as identified in Section 21 (c) above are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after (x) submission by Grantor of the Annual Limited Dividend Financial Report pursuant to Paragraph 23(b) below and (y) Grantor receives written notice from MHP approving said report. Except with the prior written authorization of MHP, Limited Dividend Distributions cannot be derived or, except as provided in subparagraph (h) below, made from borrowed funds or from the sale of capital assets.
- B. No Limited Dividend Distributions may be made when: (i) a default or an Event of Default has occurred and is continuing under any MHP Loan Document or an event has occurred which, with the passage of time or giving of notice, would become an Event of Default under any MHP Loan Document; (ii) there has been failure to comply with MHP's notice of any reasonable requirement for proper maintenance of the Property; or (iii) prior to the discharge of the MHP Mortgage there is outstanding against all or any part of the Property any lien or security interest other than a lien securing the MHP Loan or a lien expressly permitted under the MHP Loan Documents.
- C. Subject to the provisions set forth above, Limited Dividend Distributions may only be made to Grantor from Excess Equity, provided that no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Grantor's Equity.
- D. For the purposes hereof the amount of "Grantor's Equity" shall be as set forth in Exhibit E annexed to this Restriction, which shall be subject to adjustment by MHP pursuant to its Limited Dividend Policy.
- E. In the event that the amount available for Limited Dividend Distribution in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Grantor's Fiscal Year pursuant to Section 22(c) above, such excess shall be deposited and administered in accordance with Section 22(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a) through (c) above, and pursuant to the Limited Dividend Policy, be distributed by MHP to the Grantor in amounts equal to the difference between the amount by which



Limited Dividend Distributions actually made in any prior of the immediately preceding three Fiscal Year[s] were less than the amount permitted to be distributed under Section 22(c) hereof for such Fiscal Year, plus simple interest in accordance with the Limited Dividend Policy. In the event that "Annual Equity" is insufficient to allow the Grantor to take its "Maximum Allowable Annual Limited Dividend" (as such terms are defined in Limited Dividend Policy), and there are funds in the Excess Equity Account, MHP shall distribute to Grantor an amount equal to the unpaid portion of the Maximum Allowable Annual Limited Dividend for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account nor will it exceed the amounts contributed into the Excess Equity Account within the previous three Fiscal Years.

- F.** Any amounts available for a Limited Dividend Distribution which may not be distributed in any year pursuant to the provisions of Section 22(c) above ("Excess Equity"), shall be deposited in the Excess Equity Account. No distributions may be made to Grantor from the Excess Equity Account except those permitted pursuant to Section 22(e) hereof. Upon the occurrence of an Event of Default under the MHP Loan Documents, MHP may apply any amounts in the Excess Equity Account to the payment of all or any portion of the obligations of the Grantor to MHP under the MHP First Mortgage Loan. Upon Grantor's request, amounts may also be withdrawn from the Excess Equity Account by MHP during the MHP Monitoring Period and applied for any purpose described in Section 21(b) hereof or for any purposes for which amounts in the Property's replacement reserve account may be applied, subject to a determination by MHP that the expenditure is necessary to address the Property's physical or financial needs and that no other funds are available to address such needs. To the extent that the MHP Monitoring Period extends beyond satisfaction in full of the MHP First Mortgage Loan, MHP may, in its sole discretion, during the remaining MHP Monitoring Period, make amounts available from the Excess Equity Account to: (a) pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date; (b) reduce rents charged to tenants of Restricted Units; and/or (c) provide relocation and transitional assistance to tenants of Restricted Units.

Upon the expiration of the MHP Monitoring Period, any balance remaining in the Excess Equity Account shall become MHP's funds free from any restrictions contained herein and may be used by MHP for any purposes permitted under MHP's organizing statute, provided, however, that upon the written request of the Town, given to MHP at least thirty (30) days prior to the expiration of the MHP Monitoring Period, and the identification of a specific use of such funds for affordable housing in the Town, such funds shall be provided by MHP to the Town.

- G.** All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Grantor under the MHP Loan Documents and the Grantor hereby pledges and grants to MHP a continuing security interest in said funds. Furthermore, the Grantor recognizes and agrees that (i) possession of said funds by MHP constitutes a bona fide pledge of said funds to MHP for security purposes, (ii) to the extent required by applicable law, this Restriction, in combination, as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Grantor further acknowledges and agrees that, notwithstanding any

nomenclature or title given to the Excess Equity Account by the bank or other financial institution at which the Excess Equity Account is held, or the fact that the Grantor's tax identification number is used with respect to the Excess Equity Account, MHP, and not the Grantor, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by MHP directing the disposition of funds in the Excess Equity Account, without further consent of the Grantor; and MHP, and not the Grantor, shall have the exclusive right to withdraw funds from the Excess Equity Account.

- H. Notwithstanding anything to the contrary contained in this Restriction, a distribution resulting from the proceeds of a sale or refinancing of the Property shall not be regulated by this Restriction. A sale or refinancing shall not result in a new evaluation of Grantor's equity. Per Section 1(c) of the Limited Dividend Policy, a re-evaluation of Grantor's Equity shall occur no more frequently than once every five (5) years, and only pursuant to the methodology set forth in said Section 1(c) .

**23. Information.**

- A. The Grantor covenants and agrees to secure and maintain on file for inspection and copying by MHP such information, reports and certifications as MHP may reasonably require in writing in order to insure that the Occupancy Restrictions contained herein are being complied with. The Grantor further covenants and agrees to submit to MHP annually, or more frequently if required in writing by MHP, reports detailing such facts as MHP reasonably determines are sufficient to establish compliance with the Regulatory Provisions contained herein, copies of leases for all Restricted Units, and a certification by the Grantor that, to the best of its knowledge, the Regulatory Provisions contained herein are being complied with. The Grantor further covenants and agrees promptly to notify MHP if the Grantor discovers noncompliance with any of the Regulatory Provisions hereunder.
- B. In addition to the financial information required to be furnished by the Grantor to MHP pursuant to the MHP Loan Agreement and Section 23(a) above, unless otherwise agreed by MHP in writing, the Grantor shall furnish to MHP, within ninety (90) days of the end of its Fiscal Year, an Annual Limited Dividend Financial Report. To the extent that any of the MHP Loan Documents requires the Grantor to submit annual audited financial statements to MHP, the Annual Limited Dividend Financial Report shall also be audited; to the extent that the MHP Loan Documents require the Grantor to submit annual reviewed financial statements to MHP, the Annual Limited Dividend Financial Report shall also be reviewed; to the extent that the MHP Loan Documents require the Grantor to submit annual compiled financial statements to MHP, the Annual Limited Dividend Financial Report shall also be compiled; to the extent that the MHP Loan Documents provide for the Grantor to submit internally prepared financial statements, the Annual Limited Dividend Financial Report may be internally prepared provided that it is certified as accurate by the Grantor's chief financial officer. MHP's agreement to waive or modify the requirement of an audited Annual Limited Dividend Financial Report for a given year shall not be deemed to constitute a waiver or modification of the requirement of an audited Annual Limited Dividend Financial Report in any subsequent year. Should the Grantor fail in any given year to comply with its obligations under this subparagraph, the Grantor acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of

any Limited Dividend Distributions to which it might otherwise be entitled for such year pursuant to Sections 22(c) and/or 22(e) above.

#### **24. Monitoring**

- A.** MHP shall monitor the Grantor's compliance with the Regulatory Provisions at no cost to the Grantor for the period commencing upon the closing of the MHP Loan Closing Date and terminating on the earlier of (i) the maturity of the MHP First Mortgage Loan or (ii) prepayment of the MHP First Mortgage Loan. In the event that the MHP First Mortgage Loan is paid prior to maturity, the MHP Monitoring Period shall nevertheless continue to the date that is thirty (30) years from the date of the MHP Loan Closing Date.
- B.** During the Fee-Based Monitoring Period, MHP, its designee or assignee shall continue to monitor the Grantor's compliance with all or a portion of the ongoing Regulatory Provisions of this Restriction. As partial compensation for its services in monitoring compliance with this Restriction, on or about commencement of the Fee-Based Monitoring Period, MHP shall invoice the Grantor for the annual monitoring services fee (calculated in accordance with subparagraphs (c) and (d) below) due to be paid by the Grantor to MHP for the portion of the calendar year remaining after commencement of the Fee-Based Monitoring Period. Thereafter, for each calendar year of the Fee-Based Monitoring Period, MHP shall, after publication of the CPI-U, invoice the Grantor for the annual monitoring services fee due for such calendar year. The Grantor shall pay such invoice in full within thirty (30) days of the date of the invoice. The Grantor's failure or refusal to pay the monitoring fee to MHP in a timely manner shall constitute an Event of Default hereunder.
- C.** The base monitoring fee is \$150.00 per Restricted Unit per year (the "Base Fee"). The annual invoice shall state the monitoring services fee calculated by multiplying the most recent Adjusted Base Fee, defined below, by the total number of Restricted Units. The Base Fee shall be adjusted annually (commencing with the year following the MHP Loan Closing Date), following publication of the CPI-U for the immediately preceding calendar year by the Bureau of Labor Statistics yielding, for each year, an "Adjusted Base Fee". MHP shall furnish the Grantor annually with a Notice of Adjusted Base Fee (designated, by way of example: "Adjusted Base Fee: Year 2009"), beginning in the year following the MHP Loan Closing Date. The initial adjustment to the Base Fee shall be calculated by multiplying the Base Fee by the lesser of (a) 110% or (b) (1+ CPI-U) for the immediately preceding calendar year. Adjustments to the Adjusted Base Fee for each subsequent year shall be made by multiplying the most recent Adjusted Base Fee (as set forth in MHP's most recent Notice of Adjusted Base Fee) by the lesser of (a) 110% or (b) (1 + CPI-U) for the immediately preceding calendar year.
- D.** If the Bureau of Labor Statistics should cease to publish such the CPI-U in its present form and calculated on the present basis, a comparable price index or a price index reflecting changes in the cost of living determined in a similar manner shall be chosen at the sole discretion of MHP, with notice to the Grantor. The level of the CPI-U or comparable price index as of any day relevant to the application of any part of this Section dealing with an "adjustment" shall be that published by the Bureau of Labor Statistics for the immediately preceding calendar year.

- E. The Grantor acknowledges that in performing its monitoring services hereunder MHP is not acting as agent or fiduciary for the Municipality and any waiver by MHP of any requirement hereunder shall not be binding upon the Municipality and shall not be deemed a waiver of any obligation of the Grantor under the Comprehensive Permit.
- F. MHP may, from time to time, engage the service of a third party monitoring agent for purposes of monitoring the Grantor's performance under this Restriction. In such event, such monitoring agent shall have authority to act in all matters relating to the MHP's obligations under this Restriction and such monitoring agent shall not be held liable for any action taken or omitted under this Restriction so long as it shall have acted in good faith and without gross negligence.

**25. Enforcement.**

- A. Upon default, violation or breach of any of the provisions of this Restriction by the Grantor, MHP may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Restriction, or for such other relief as may be appropriate, since the injury to MHP arising from the default under any of the terms of this Restriction would be irreparable and the amount of damages cannot be ascertained and/or compensated by money alone; and MHP may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Restriction; or may terminate this Restriction.
- B. The Grantor shall pay all fees and expenses, including reasonable attorneys' fees and costs of MHP in the event enforcement action is taken against the Grantor hereunder (including court costs and the time of any in-house counsel or charged at the same rate as comparable outside attorneys). MHP shall be entitled to seek recovery of fees and expenses incurred in enforcing this Restriction and to assert a lien on the Property.
- C. The Grantor hereby grants to MHP or its designee or agent the right to enter upon the Property at reasonable times and upon reasonable notice for the purpose of monitoring and enforcing the terms of this Restriction or of taking all actions with respect to the Property which the Lender may determine to be necessary or appropriate to prevent, remedy or abate any violation of this Restriction.
- D. No act or omission by MHP other than a writing signed by it waiving a breach by the Grantor shall constitute a waiver thereof.

**26. Notices.** Any notice, request or other communication which any party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized national overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed, in the case of the Grantor, to the Grantor's address set forth above and, in the case of one or more Holders, to the address(es) of such Holder(s) as set forth above. Any party may change its notice address by furnishing in writing to all other parties hereto a notice of such new notice address. A notice sent by certified or registered mail shall be deemed given three days after mailing; a notice sent by overnight courier shall be deemed given one day

after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt.

**27. Successors and Assigns; No Third-Party Beneficiaries.** This Restriction shall be binding upon the Grantor and its successors and assigns, and shall burden the Property as specified herein. This Restriction shall also be binding upon the Holders, and shall inure to the benefit of their successors and assigns, provided that a Holder shall not voluntarily assign its rights hereunder unless (a) such Holder believes in good faith that it is no longer reasonably capable of performing its duties hereunder, and (b) such assignment shall be to a governmental body or an entity of a similar character and purposes to such Holder which is reasonably capable of performing such duties hereunder.

**28. Severability; Construction.** All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Restriction invalid, unenforceable or not entitled to be recorded, registered or filed under applicable law. If any provision or part hereof shall be affected by such holding, the validity of other provisions of this Restriction and of the balance of any provision held to be invalid, illegal or unenforceable, in part only, shall in no way be affected thereby, and this Restriction shall be construed as if such invalid, illegal, or unenforceable provision or part hereof had not been contained herein. In the event of any actual or potential inconsistency between the terms of this Restriction and any of the Statute and/or the Regulations, such terms shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the Statute, the Regulations and this Restriction, in the foregoing order of priority, shall control.

**29. Governing Law.** This Restriction shall be governed by the laws of The Commonwealth of Massachusetts. Inasmuch as the restrictions contained herein have been imposed upon the Property in part to satisfy requirements of various governmental bodies referred to herein, including, without limitation, DHCD, the restrictions contained herein are intended to be construed as a restriction held by a governmental body with the benefit of Section 26 of Chapter 184 of the Massachusetts General Laws as existing as of the date hereof, 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 full term thereof.

**30. Recording.** The Grantor, at its cost and expense, shall cause this Restriction and any amendment hereto to be duly recorded with the Registry of Deeds (and if necessary or appropriate, re-recorded), shall pay or cause to be paid all recording, filing, or other taxes, fees and charges and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Holders and their successors and assigns to enforce this Restriction.

**31. Further Assurances.** Each Holder is authorized to record or file any notices or instruments appropriate to assuring the enforceability of this Restriction; and the Grantor on behalf of itself and its successors and assigns appoints each Holder its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agrees to execute any such instruments upon request.

The benefits of this Restriction shall be in gross and shall be assignable by any Holder. The Grantor and the Holders intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

**32. Counterparts.** This Restriction may be executed in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one instrument. In making proof of this Restriction, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Restriction is sought.

**33. Incorporation of Exhibits and Riders.** Any and all exhibits and riders attached hereto or otherwise referenced herein are hereby incorporated by reference, the same as if each were fully set forth herein.

**34. Amendment; Waiver.** This Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of all Holders.

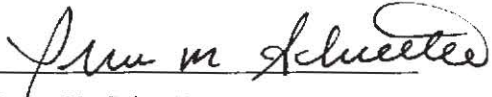
**35. Ground Lessor Assent.** The Grantor is the tenant under a Ground Lease of the Property from Town (the "Ground Lessor") as landlord and fee owner, dated July 25, 2005, as amended by First Amendment of Lease dated July 28, 2008, notice of which is to be recorded with the Registry of Deeds herewith. The Ground Lessor hereby joins in the grant of this Restriction and agrees, for itself and its successors and assigns, to be bound by all of the terms and conditions hereof for the term of this Restriction, whether or not said Ground Lease is terminated for any reason, to the same extent as if the Ground Lessor were the named Grantor hereunder.

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No documentary stamps are required as this Restriction is not being purchased by the Holders.  
Executed under seal as of the date set forth above.

447 CONCORD ROAD LLC

By: R & I REALTY CORP., its Managing Member

By: 

Irma M. Schretter

Its: President

The undersigned Ground Lessor hereby joins in the grant of the foregoing Restriction.

TOWN OF BEDFORD

By:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

- EXHIBIT A Property Description
- EXHIBIT B Projected Initial Rent Schedule
- EXHIBIT C Initial Affordability Matrix
- EXHIBIT D Additional Definitions
- EXHIBIT E MHP Limited Dividend Policy

No documentary stamps are required as this Restriction is not being purchased by the Holders.

Executed under seal as of the date set forth above.

447 CONCORD ROAD LLC

By: R & I REALTY CORP., its Managing Member

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

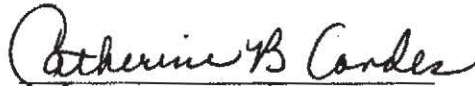
Irma M. Schretter

Its: President

The undersigned Ground Lessor hereby joins in the grant of the foregoing Restriction.

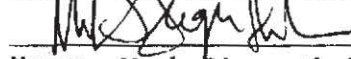
TOWN OF BEDFORD

By:



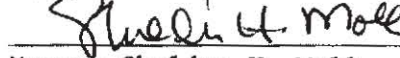
Name: Catherine B. Cordes

Title: Chair, Selectmen



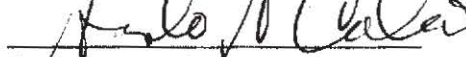
Name: Mark Siegenthaler

Title: Clerk, Selectmen



Name: Sheldon H. Moll

Title: Selectman



Name: Angelo A. Colao

Title: Selectman

Name: \_\_\_\_\_

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

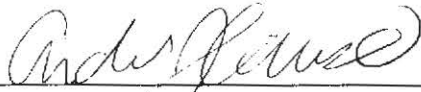
- EXHIBIT A Property Description
- EXHIBIT B Projected Initial Rent Schedule
- EXHIBIT C Initial Affordability Matrix
- EXHIBIT D Additional Definitions
- EXHIBIT E MHP Limited Dividend Policy



**COMMONWEALTH OF MASSACHUSETTS**

Suffolk County, ss,

On this 8<sup>th</sup> day of August, 2008, before me, the undersigned notary public, personally appeared Irma M. Schretter, the President of R & I Realty Corp., proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.



Notary Public

My commission expires:

9/29/2011

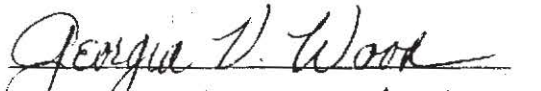


ANDREA JEAN CARUSO  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
September 29, 2011

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX County, ss.

On this 11<sup>th</sup> day of August, 2008, before me, the undersigned notary public, personally appeared SELECTMEN OF BEDFORD, MA the SELECTMEN of BEDFORD, MA, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

  
Notary Public GEORGIA V. WOOD  
My commission expires: 7-31-2009

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**EXHIBIT A : PROPERTY DESCRIPTION**

A certain parcel of land located in the Commonwealth of Massachusetts, County of Middlesex, Town of Bedford. Situated on the northerly side of Concord Road, said parcel is shown on a "ALTA/ASCM Title Insurance Plan in Bedford, MA dated July 18, 2008, by Rober Survey," more particularly bounded and described as follows.

Beginning at a point on the northerly sideline of Concord Road, said point being the most southwesterly corner of the parcel; thence running

N18°18'33"W	774.62' by the Bedford & Concord Town Line to a point; thence turning and running
N74°31'04"E	325.39' by land now or formerly the Town of Bedford to a stone bound; thence turning and running
S30°40'38"E	294.25' by land now or formerly of Lora Goldenberg and Robert Murphy to a stone bound; thence turning and running
S49°14'06"W	173.55' by land now or formerly of Hye Sun & Jung Hoe Ku to a stone bound; thence turning and running
S04°45'39"W	154.22' partially by land now or formerly of Hye Sun & Jung Hoe Ku and partially by land now or formerly of the Trustee of Concord Trust to an iron pipe; thence running
S04°32'05"W	60.15' to an iron pipe; thence running
S02°35'44"E	181.37' to a point, said last 2 courses by land now or formerly of the Trustee of Concord Trust; thence turning and running
S52°30'37"W	100.28' by the northerly sideline of Concord Road to the Point of Beginning.

CONTAINING 4.235 ± ACRES.

**EXHIBIT B : PROJECTED INITIAL RENT SCHEDULE**

(Rents include utility allowance)

UNIT TYPE	INCOME LEVEL				
	EXTREMELY LOW INCOME	VERY LOW INCOME	LOW INCOME	MODERATE INCOME	HIGH MODERATE INCOME
SRO	\$338.00	\$563.00	\$717.00	\$717.00	\$1,239.00
STUDIOS	\$451.00	\$751.00	\$956.00	\$956.00	\$1,652.00
1-BR	\$483.00	\$804.00	\$1,026.00	\$1,026.00	\$1,769.00
2-BR	\$580.00	\$965.00	\$1,233.00	\$1,233.00	\$2,123.00
3-BR	\$669.00	\$1,115.00	\$1,415.00	\$1,415.00	\$2,454.00
4-BR	\$746.00	\$1,243.00	\$1,559.00	\$1,559.00	\$2,736.00

**EXHIBIT C : INITIAL AFFORDABILITY MATRIX**

NUMBER/SIZE OF UNITS REQUIRED BY	INCOME CATEGORY				
	HIGH MODERATE INCOME	MODERATE INCOME (65% AMI)	LOW INCOME	VERY LOW INCOME	EXTREMELY LOW INCOME
HOME	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 6 2-BR 2 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 2 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR
MHP SUBSIDY	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 6 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 2 2-BR 2 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR
BEDFORD HOME	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 6 2-BR 2 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 2 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR
BEDFORD CPA	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 6 2-BR 2 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 2 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR
COMPOSITE	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 6 2-BR 1 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR 2 2-BR 2 3-BR ___ 4-BR	___ SRO ___ STUDIO ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR

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**EXHIBIT D : ADDITIONAL DEFINITIONS**

Following are additional definitions used in this Affordable Housing Restriction:

"Annual Limited Dividend Financial Report" shall mean an annual report to be prepared by the Grantor on a form prescribed by MHP pursuant to MHP's Limited Dividend Policy.

"Area" shall mean Boston-Cambridge-Quincy, MA-NH HMFA.

"Base Fee" shall mean the Base Fee adopted by MHP and further defined in Section 24(c) of this Restriction in connection with determining the annual monitoring services fees for monitoring the Grantor's compliance with this Restriction during the Fee-Based Monitoring Period.

"Bedroom Adjusted AMI" applicable to a Unit shall mean the median income for the Area, with adjustments for the number of bedrooms in such Unit, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended. For purposes of adjustments for the number of bedrooms in a Unit, a Unit that does not have a separate bedroom is assumed to be occupied by one individual and a Unit with one or more separate bedrooms is deemed assumed to be occupied by 1.5 individuals for each bedroom (with the total number of individuals rounded up).

"CPI-U" shall mean the Consumer Price Index for Urban Consumers, further distinguished as the index for "Selected Areas, Northeast-Urban, Size A" published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by MHP as appropriately adjusted.

"Development Revenues" shall mean all rental income, receipts and other revenue derived from the operation of the Property other than revenues derived from any sales, financing, or other capital transaction.

"Excess Equity" shall mean Annual Equity as calculated in accordance with the Annual Limited Dividend Financial Report in excess of the Maximum Allowable Annual Limited Dividend (all as defined in the Limited Dividend Policy).

"Excess Equity Account" shall mean an interest-bearing account maintained by the MHP for the benefit of the Property during the term hereof containing Development Revenues which exceed the Limited Dividend Distribution (as defined below) in a given year or years."

"Fair Market Rent" shall mean the fair market rent in the Area for a comparably-sized dwelling as established by HUD under regulations promulgated at 24 C.F.R. §888.11 (or successor regulations), minus a monthly allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family.

"Family" shall have the meaning set forth in 24 C.F.R. §5.403 (or any successor regulation). Notwithstanding the foregoing, a household comprised of a full-time student or students shall not qualify as a Family except as permitted under the federal low-income housing tax credit program pursuant to Section 42(i)(3)(D) of the Internal Revenue Code of 1986, as amended.

"Family-size Adjusted AMI" shall mean the median income for the Area, adjusted for family size, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended.

"Fee-Based Monitoring Period" shall mean the period commencing on the earlier of (i) prepayment of the MHP First Mortgage Loan or (ii) maturity of the MHP First Mortgage Loan, and continuing until the expiration of the MHP Monitoring Period.

"Fiscal Year" The fiscal year of the Grantor ending December 31.

"Grantor" shall mean the Grantor named on the first page hereof or any successor or assign thereof permitted under Section 8 of this Restriction, including any party holding ownership interests in or with respect to the Property.

"Grantor's Equity" shall mean \$864,860.00, as the same may be adjusted from time to time, as determined by and in accordance with the Limited Dividend Policy defined below.

"Guidelines" shall mean the HOME Guidelines.

"Holder" shall mean each of DHCD and AHT, or, as applicable, each successor or assign of the foregoing and "Holders" shall mean all of the foregoing parties, collectively.

"HOME Guidelines" shall mean the guidelines issued by DHCD regarding the HOME Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"HOME Program" shall mean the federal HOME Investment Partnerships Program under which DHCD and the Town make loans available to sponsors of certain types of affordable housing.

"HOME Regulations" shall mean 24 C.F.R. Part 92.

"Household Income" shall mean a Family's adjusted annual income determined in the manner set forth in 24 C.F.R. §5.609 (or any successor regulations).

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

"Improvements" shall mean the building or buildings on the Property presently containing, or after completion of the planned construction to contain, the number of Units indicated on the first page hereof, and all other authorized buildings, structures and improvements located on the Property from time to time, all equipment and fixtures therein, and any authorized repair, improvement, reconstruction, restoration, renovation, or replacement of a capital nature thereto or otherwise on the Property.

"Limited Dividend Policy" shall mean MHP's policy, so captioned, dated December, 2006, a copy of which is attached hereto as Exhibit E.

"Limited Dividend Distribution" shall mean the aggregate annual distributions permitted to be made to the Grantor from Excess Equity as calculated pursuant to the Annual Limited Dividend Financial Report.

"Limited Dividend Organization" shall mean any applicant which proposes to sponsor housing under the Act and is not a public agency or non-profit corporation, and is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to limit the dividend on the invested equity to no more than that allowed by the Limited Dividend Policy.

"Loan" shall mean collectively, the loans for the Project being provided to the Grantor under the Programs.

"Low Income Family" shall mean a Family whose Household Income is less than or equal to sixty percent (60%) of the Family-size Adjusted AMI.

"MHP Loan Closing Date" shall mean the date on which the MHP First Mortgage Loan closes and the MHP First Mortgage is recorded via assignment of the senior mortgage on the Property.

"MHP First Mortgage" shall mean the Mortgage and Security Agreement or Assignment of Mortgage and Security Agreement in favor of MHP with respect to the Project, securing repayment of the MHP First Mortgage Loan.

"MHP Monitoring Period" shall mean the period commencing on the MHP Loan Closing Date and ending on the later of (a) the date on which the MHP First Mortgage is discharged and (b) the date which is thirty (30) years from the commencement date, unless the MHP Monitoring Period is terminated earlier in accordance with Paragraph 19 of this Restriction.

"MHP Subsidy Program" shall mean the MHP second mortgage loan program, established for the purposes of facilitating the creation and preservation of affordable housing, under which MHP makes loans to sponsors of certain types of affordable housing.

"Moderate Income Family" shall mean a Family whose Household Income is less than or equal to sixty-five percent (65%) of the Family-size Adjusted AMI.

"Over-income Rent" shall mean, for a particular over-income Family, a monthly rent equal to the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of the Family's Household Income as recertified annually or (z) the comparable market rent for the Family's Unit.

"Permitted Encumbrances" shall mean those encumbrances on the Property identified in the mortgage granted to the Holders of even or near date herewith.

"Permitted Uses" shall mean use of the Improvements for the number of rental Units indicated on the first page hereof, including the number of Restricted Units indicated on the first page hereof. Such Permitted Uses shall include activities and/or services of a nature to benefit the Residents of the Restricted Units.

"Programs" shall mean the HOME Program, the MHP Subsidy Program and the Bedford CPA Funds Program.

"Property" shall mean that certain parcel or parcels of land located at the Property Address indicated on the first page hereof and more particularly described in Exhibit A attached hereto, together with all Improvements thereon.

"Registry of Deeds" shall mean the Middlesex South Registry of Deeds.

"Regulations" shall mean the HOME Regulations."

"Residents" shall mean the lawful occupants of the Units.

"Restricted Unit" shall mean a Unit required by the terms hereof to be rented to a Moderate Income Family, a Low Income Family or a Very Low Income Family.

"Sponsor" shall mean S-C Management Corp.



"SRO Unit" shall mean a single-room (zero bedroom) Unit intended for occupancy by a single eligible Resident and that contains neither food preparation nor sanitary facilities.

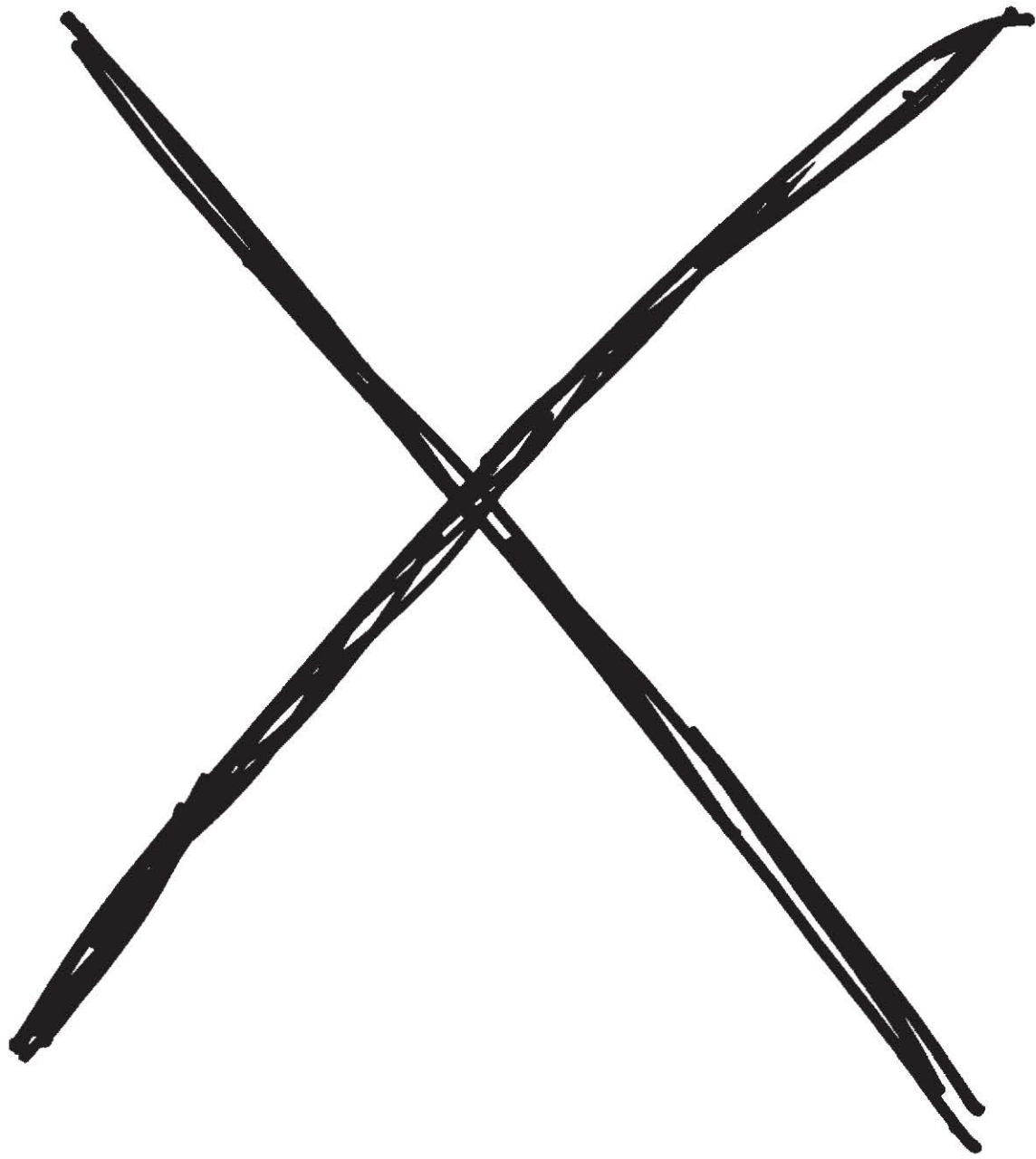
"Studio Unit" shall mean a single-room (zero bedroom) Unit intended for occupancy by a single eligible Resident that contains food preparation and/or sanitary facilities.

"Unit" shall mean any residential unit located on the Property.

"Very Low Income Family" shall mean a Family whose Household Income is less than or equal to fifty percent (50%) of the Family-size Adjusted AMI.

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**EXHIBIT E : MHP LIMITED DIVIDEND POLICY**



# MASSACHUSETTS HOUSING PARTNERSHIP

## LIMITED DIVIDEND POLICY

August 2008

This document addresses MHP's policy regarding the limited dividend requirements for Chapter 40B projects for which MHP is serving as the subsidizing agency. General provisions of this Policy are covered in Section 1, while Sections 2 and 3, respectively, cover the calculation of the Maximum Allowable Annual Limited Dividend (MAALD) for projects using low-income housing tax credits and for those not using low-income housing tax credits.

### Section 1.

#### 18. General Provisions applicable to all Chapter 40B Projects

##### a. Maximum Allowable 40B Developer Fee

MHP limits the maximum development fee in 40B projects to the sum of 5% of acquisition cost plus the DHCD Maximum Allowable Developer Fee, as defined in Section 2 below. In this calculation, the acquisition cost ("Allowable Acquisition Cost") can be no greater than the value of the land based on current zoning prior to the issuance of a Comprehensive Permit plus an amount of carrying costs deemed reasonable. The specific calculations are described in Sections 2 and 3 of this Policy.

MHP will require, prior to the closing of its permanent loan, the completion of a satisfactory cost certification for the project, which establishes the project's Adjusted Total Development Cost (as defined in Section 2 below), with itemization showing acquisition cost, hard costs, hard cost contingency drawn, developer fee, developer overhead, and soft costs itemized according to MHP's requirements.

##### b. Maximum Allowable Annual Limited Dividend as a function of Borrower's Equity:

As the subsidizing agency for a 40B Project, MHP must determine the Maximum Allowable Annual Limited Dividend (herein, "MAALD") available to the Borrower in the years following the completion and occupancy of the property being developed (herein, the "Property"). Broadly described, the MAALD is 10% of Borrower's Equity, which is calculated according to the formulas outlined on **Exhibit A** (showing the calculation for projects using Low-Income Housing Tax Credits) and **Exhibits B-1 and B-2** (showing the calculations, using, respectively, the Cost-Based Approach and the Value-Based Approach, for projects not using Low-Income Housing Tax Credits). These formulas are based on the value of the property being developed prior to the issuance of the Comprehensive Permit, so the Borrower must agree to have MHP engage,

at the Borrower's expense, an appraisal by an appraiser of MHP's choice, of the value of the property being developed as it exists, excluding any value relating to the possible issuance of a Comprehensive Permit (the "As-Is Market Value").

c. Re-Evaluation of Borrower Equity:

Borrower Equity may be re-established not more than once every five (5) years. The initial evaluation of Borrower Equity will occur at the time of execution of the project's Regulatory Agreement, which is generally concurrent with the closing of permanent financing. The re-evaluation of Borrower Equity may not occur until, at the earliest, the end of the fifth year after the execution of the project's Regulatory Agreement (the "Fifth Anniversary"). Upon the Fifth Anniversary and every five (5) years thereafter, at the Borrower's expense and election, MHP will commission an updated appraisal to determine whether there has been a change in the estimated market value of the Property. Borrower's Equity shall be adjusted to reflect (a) the appraised market value subject to applicable use restrictions minus (b) the outstanding Loan amount and the amounts of any subordinated debt provided to cover the costs of the project. The new MAALD will be 10% times adjusted Borrower's Equity.

d. Limited Dividend Distributions:

Pursuant to the Chapter 40B Regulatory Agreement to be entered into by the Borrower and MHP (the "Regulatory Agreement"), the Borrower is required to provide MHP, within ninety (90) days of its fiscal year end, audited financial statements and a completed version of MHP's Annual Limited Dividend Financial Report (ALDFR), to be provided by MHP to the Borrower. In the event that MHP agrees in writing to waive or modify the requirement of audited financial statements for a given year, the Borrower shall furnish to MHP, within ninety (90) days of its fiscal year end, internally prepared financial reports certified as accurate by the Borrower's chief financial officer and a completed version of the ALDFR. MHP's agreement to waive or modify the requirement of audited financial statements for a given year shall not be deemed to constitute a waiver or modification of the requirement of audited financial statements in any subsequent year. Should the Borrower fail to submit timely the ALDFR to MHP in any given year, the Borrower shall be deemed to have waived and relinquished any limited dividend distribution(s) to which it might otherwise have been entitled for such year.

The annual limited dividend distribution may be taken from cash flow in the year in which the cash flow is received (such cash flow to be called "Annual Equity"). To the extent that, in a given year, the Annual Equity, as calculated in accordance with the ALDFR, exceeds the MAALD, a check in such amount shall be forwarded to MHP to be deposited in a bank account established pursuant to the Regulatory Agreement (the "Excess Equity Account").

For projects **without any local, state or federal capital subsidies**, if in any preceding fiscal year, Annual Equity was insufficient to allow for all or a portion of the maximum limited dividend distribution for such fiscal year, Borrower shall be entitled to take its limited dividend distribution for such preceding fiscal year or years, plus up to 5% simple interest thereon, in the current fiscal year. For projects **with any local, state or federal capital subsidies**, if in any of the three preceding fiscal years, Annual Equity was insufficient to allow for all or a portion of the maximum limited dividend distribution for such fiscal year, Borrower shall be entitled to take its limited dividend distribution for such fiscal year or years, plus up to 5% simple interest thereon, in the current fiscal year.

If Annual Equity for the current fiscal year is insufficient to allow the Borrower to take its MAALP, and there are funds in the Excess Equity Account, MHP shall distribute to the Borrower an amount equal to the unpaid portion of the maximum limited dividend distribution for such fiscal year, provided, however, that in no event shall the amount so distributed exceed the amount available in the Excess Equity Account nor will it exceed the amounts contributed into the Excess Equity Account within the previous three fiscal years.

Repayment(s) of any developer's fee loans made to the project will be treated as a limited dividend distribution and shall only be paid upon a written notice that MHP has approved the current ALDFR.

e. Monitoring:

MHP will commence monitoring the Borrower's compliance with the Regulatory Agreement beginning on the date of execution of the Regulatory Agreement, at no cost to the Borrower. Commencing upon the earlier of prepayment of the Loan or its maturity, and continuing until expiration of the term of the Regulatory Agreement, MHP or its designee will continue to monitor the Borrower's compliance with the Regulatory Agreement. During this time period, MHP will be compensated annually based on the compensation schedule described in the Regulatory Agreement. The Borrower will receive an annual invoice for MHP's monitoring services fee which will be indexed annually consistent with the U.S. Department of Labor's Bureau of Statistics Consumer Price Index for Urban Consumers beginning with the first available Index following the loan closing date. The Borrower should refer to the Regulatory Agreement for additional information on the calculation of the monitoring fee. The Borrower is required to pay the annual monitoring fee invoice in full within thirty (30) days of the date of the invoice. Failure or refusal to pay timely the annual monitoring services invoice shall constitute an event of default under the loan documents, and a breach of the Regulatory Agreement and shall result in a forfeiture of any limited dividend distribution to which the Borrower would otherwise have been entitled for such year.

**Section 2.**  
**MHP's Limited Dividend Policy For 40B Projects Using Low-Income Housing Tax Credits**

Please refer to **Exhibit A** for an illustration of MHP's Calculation of Limited Dividend Policy for 40B Projects Using Low-Income Housing Tax Credits.

MHP requires a three-step calculation:

- Step 1. Calculation of **Maximum Allowable 40B Developer Fee**
- Step 2. Calculation of **Total Borrower Equity**
- Step 3. Application of **10% Limited Dividend**

**Step 1 -- Calculation of Maximum Allowable 40B Developer Fee**

The **Maximum Allowable 40B Developer Fee** is the sum of 5% of Allowable Acquisition Cost plus the DHCD Maximum Allowable Developer Fee. To determine this figure, follow these procedures under Step 1:

- a. first determine Allowable Acquisition Cost, by:
  - (i) obtaining an appraised value for the property. This value must reflect the value of the land under current zoning prior to the issuance of a Comprehensive Permit under Chapter 40B ("As-Is Market Value"). (*NOTE: MHP will engage an appraiser for the determination of this figure, at the Borrower's expense.*)
  - (ii) adding to that value a figure for "Reasonable Carrying Costs" (RCC). See Note #1 to Exhibit A for a definition of RCC and its maximum allowable amount.

This equals Allowable Acquisition Cost.

- b. then multiply Allowable Acquisition Cost by 5%.
- c. then calculate DHCD Maximum Allowable Developer Fee
  - (i) First, calculate Adjusted Total Development Cost ("Adjusted TDC"). To do this, subtract from that figure which is the sum of hard costs, soft costs and Allowable Acquisition Cost ("Total Development Cost") the following:
    - (1) Allowable Acquisition Cost, as calculated above
    - (2) Developer Fee
    - (3) Developer Overhead
    - (4) Development Consulting Fees
    - (5) Capitalized Reserves

This equals Adjusted TDC.

- (ii) Now calculate DHCD Maximum Allowable Developer Fee, which is the sum of the following:

- (1) 15% of the first \$3,000,000 of Adjusted TDC
- (2) 12.5% of next \$2,000,000 of Adjusted TDC, and
- (3) (if Adjusted TDC is greater than \$5,000,000) 10% of the difference between Adjusted TDC and \$5,000,000.

This sum is the *DHCD Maximum Allowable Developer Fee*.

- d. Now calculate **Maximum Allowable 40B Developer Fee** by adding together the following figures: 5% of Allowable Acquisition Cost *plus* DHCD Maximum Allowable Developer Fee.

This equals *Maximum Allowable 40B Developer Fee*.

**Step 2 -- Calculation of Total Borrower Equity**

In order to calculate Total Borrower Equity, adjust the figure just calculated in Step 1 as follows:

- a. *add* cash equity invested by developer, including tax-credit equity
- b. *add* as-is market value, if any, that exceeds purchase price
- c. *add* deferred portion of Maximum Allowable 40B Developer Fee
- d. *subtract* that figure which is the sum of paid developer fee, paid developer overhead and development consulting fees.
- e. *add* the figure which results from the sum of "a" through "d" in Step 2 to Maximum Allowable 40B Developer Fee calculated in Step 1.

This equals *Total Borrower Equity*.

**Step 3 -- Application of 10% Limited Dividend Calculation**

- a. Multiply Total Borrower Equity by 10%.

This equals *Maximum Allowable Annual Limited Dividend (MAALD)*.

**Section 3.**  
**MHP's Limited Dividend Policy For 40B Projects Not Using Low-Income Housing Tax Credits**

The Borrower has a choice of selecting between two methods for calculating the Limited Dividend – the Cost-Based Approach, which is illustrated in **Exhibit B-1** and the Value-Based Approach, which is illustrated in **Exhibit B-2**. Each approach is discussed separately below.

**Cost-Based Approach (see Exhibit B-1)**

Under this approach, MHP requires a three-step calculation:

- Step 1. Calculation of **Maximum Allowable 40B Developer Fee**
- Step 2. Calculation of **Total Borrower Equity**
- Step 3. Application of **10% Limited Dividend**

**Step 1 -- Calculation of *Maximum Allowable 40B Developer Fee***

- a. Calculate Adjusted TDC, by subtracting from Total Development Costs (which includes Allowable Acquisition Cost, as defined in Section 2) the following:
  - (i) developer fee
  - (ii) developer overhead
  - (iii) development consulting fees
  - (iv) capitalized reserves
- b. then multiply Adjusted TDC by 25%.

This equals the *Maximum Allowable 40B Developer Fee*.

**Step 2 -- Calculation of *Total Borrower Equity***

- a. *add* cash equity invested by developer
- b. *add* deferred portion of Maximum Allowable 40B Developer Fee
- c. *add* as-is market value of land, if any, that exceeds purchase price
- d. *subtract* that figure which is the sum of paid developer fee, paid developer overhead and development consulting fees.
- e. *add* the figure which results from the sum of "a" through "d" in Step 2 to Maximum Allowable 40B Developer Fee calculated in Step 1.

This equals *Total Borrower Equity*.



**Step 3 – Application of 10% Limited Dividend Calculation**

- a. Multiply Total Borrower Equity by 10%.

**This equals Maximum Allowable Annual Limited Dividend (MAALD) under the Cost-Based Approach.**

**Value-Based Approach (see Exhibit B-2)**

Under this approach, MHP requires a three-step calculation:

- Step 1. Determination of **As-Complete Appraised Value**
- Step 2. Calculation of **Borrower Equity**
- Step 3. Application of **10% Limited Dividend**

**Step 1 -- Determine the As-Complete Appraised Value, taking into account all use restrictions**

MHP will engage an appraiser, at the Borrower's expense, to provide an appraisal estimating the As-Complete Value of the project, based on its value as a complete and operating property (this will be required no matter which approach to calculating limited dividend is used). This valuation will take into account all the restrictions imposed by the Comprehensive Permit, including those relating to the set-aside of certain units for long-term affordability.

**Step 2: Calculation of Adjusted Borrower Equity**

Deduct from the As-Complete Appraised Value the outstanding amount(s) of all debt on the property, as of the date of the execution of the Regulatory Agreement. All hard and soft debt, including public subsidies, should be included in the amount deducted.

The result is **Borrower Equity**.

**Step 3: Application of 10% Limited Dividend Calculation**

Multiply Borrower Equity by 10%.

**This equals Maximum Allowable Annual Limited Dividend (MAALD) under the Value-Based Approach.**