

Middlesex South Registry of Deeds  
Electronically Recorded Document

This is the first page of the document - Do not remove

---

Recording Information

Document Number	: 240787
Document Type	: AGR
Recorded Date	: November 03, 2021
Recorded Time	: 08:23:15 AM
Recorded Book and Page	: 79061 / 384
Number of Pages(including cover sheet)	: 38
Receipt Number	: 2741126
Recording Fee	: \$105.00

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

The Apartments at Cold Brook Crossing LLC  
40R Affordable Housing Restriction Agreement

Property Address--16 North Rd  
Sudbury MA 01776

**AFFORDABLE HOUSING RESTRICTION AGREEMENT**  
**FOR 40R RENTAL PROJECT**

TOWN OF SUDBURY

**THE APARTMENTS AT COLD BROOK CROSSING LLC**

This Affordable Housing Restriction Agreement (the "Restriction") is made this <sup>22<sup>nd</sup></sup> day of ~~October~~ 2021 by and among The Apartments at Cold Brook Crossing LLC a Massachusetts limited liability company organized and existing in accordance with Massachusetts law, with an address of 2134 Sevilla Way Naples, FL 34109 and its successors and assigns (the "Owner"), the Town of Sudbury and its successors and assigns, or its designee ("the Municipality"), with a mailing address at 278 Old Sudbury Road Sudbury, MA 01776 and the Sudbury Housing Trust, having an office at 278 Old Sudbury Road Sudbury, MA 01776, and its successors and assigns, (the "Monitoring Agent") exclusively for the purpose of ensuring retention of housing for occupancy by Eligible Households (as defined in Section 10.(a)(v)).

RECITATIONS:

WHEREAS, the Smart Growth Zoning and Starter Home Zoning Districts Program was established pursuant to G.L. c. 40R (the "Massachusetts Act") and the Department of Housing and Community Development ("DHCD") is responsible for the administration, review, and reporting on the Smart Growth Zoning and Starter Home Zoning Districts Program pursuant to G.L. c. 40R, §12;

WHEREAS, DHCD promulgated regulations at 760 CMR 59.00 (the "Regulations") and issued its Guidance for M.G.L. c. 40R and 760 CMR 59.00: Smart Growth Zoning and Starter Home Zoning ("40R Guidelines"), which collectively establish the affordability and related requirements for the Project and this Restriction;

WHEREAS, the Municipality has adopted a Smart Growth Zoning Overlay District (the "Approved District") in Section 4700B of the Municipality's Zoning Bylaw (the "Bylaw") which DHCD has approved pursuant to G.L. c. 40R, § 4;

WHEREAS, the Owner intends to construct a housing development known as The Apartments at Cold Brook Crossing at a 5.95-acre site on Cold Brook Drive in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, the Project shall consist of a total number of one hundred one (101) rental units, (the "Units") of which twenty-six (26) will be rented at rents calculated in accordance with this Restriction to Eligible Households (the "Restricted Units");

WHEREAS, the Owner has received a plan approval decision for the Project from the

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

Municipality's approving authority under G.L. c. 40R, which decision is recorded at the Middlesex (South) County Registry of Deeds (the "Registry") in Book 75954, Page 250.

WHEREAS, pursuant to the requirements of the Bylaw, the Municipality has appointed the Monitoring Agent to ensure compliance with the affordability requirements of this Restriction;

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

1. Purposes. The purpose of this Restriction is to assure that the Restricted Units will be retained as affordable rental housing for occupancy by Eligible Households during the term of this Restriction.

2. Scope. The Owner intends, declares and covenants, on behalf of itself and its successors and assigns (i) that the covenants, agreements, and restrictions set forth in this Restriction regulating and restricting the use and occupancy of the Restricted Units and the transfer of the Project shall be and are covenants running with the land, encumbering the Project for the term of this Restriction, and are binding upon the Owner's successors in title, (ii) are not merely personal covenants of the Owner, (iii) shall bind the Owner and its successors and assigns and the benefits shall inure to the Municipality, the Monitoring Agent and to any past, present or prospective tenant of the Project, and (iv) the Municipality and the Monitoring Agent shall be deemed to be the holders of the affordable housing restrictions created by this Restriction.

The Owner acknowledges that, pursuant to the Massachusetts Act and the Regulations, the Municipality has adopted the Approved District, which requires that affordable housing restrictions be recorded with respect to any Restricted Units developed pursuant to the Massachusetts Act, the Regulations and the Bylaw and which authorizes the Municipality to allocate, administer, and determine eligibility for Restricted Units developed pursuant to the Massachusetts Act. The Owner also acknowledges that it has applied to and received from the Municipality approval under the terms of the Bylaw for the Project, and that, as a condition of approval of the Project pursuant to the Bylaw, the Owner must execute, deliver and record an affordable housing restriction under G.L. c. 184 with the Registry.

3. Duration Not Limited. This Restriction shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32, and 33. The Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that this Restriction runs with the land.

4. Term of the Restriction. Unless earlier-terminated pursuant to the provisions hereof, the term of this Restriction shall be in perpetuity. For the purposes hereof, the term "perpetuity" shall mean for so long as the Project is being used for multi-family housing pursuant

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

to the terms of the Plan Approval, but in no event shall the term of this Restriction expire prior to the date that is ninety-nine (99) years following the time when the construction of the Project is sufficiently complete so that all of the Units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Project (“Substantial Completion”). Within thirty (30) days of Substantial Completion, the Owner shall record at the Registry a written notice executed by both the Municipality and the Owner which sets forth the date on which Substantial Completion has occurred.

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

6. Permitted Use.

(a) The Project shall be primarily used for one hundred one (101) Units of rental housing, consisting of two four story buildings of which no fewer than twenty five percent(25%) will be Restricted Units. The total number of bedrooms in the Restricted Units shall be at least proportionate to the total number of bedrooms in all units in the Project. The Project shall include:

Fourteen (14) One-bedroom Restricted Units;  
Nine (9) Two-bedroom Restricted Units;  
Three (3) Three-bedroom Restricted Units; and  
Zero (0) Four-bedroom Restricted Units.

The Restricted Units must have the following minimum areas:

studio units	-	250 square feet
one bedroom units	-	700 square feet
two bedroom units	-	900 square feet
three bedroom units	-	1200 square feet
four bedroom units	-	1400 square feet

(b) Each of the Restricted Units shall “float” and shall not be fixed, as detailed below. The Restricted Units shall remain equitably integrated and dispersed throughout the Project to a degree that is consistent with the initial unit assignments identified in Exhibit B attached hereto, including by unit type and construction phase. Any Restricted Unit occupied by an Eligible Household (as defined in Section 10.(a)(v)) at the commencement of occupancy shall be deemed a Restricted Unit, so long as (i) such Unit continues to be rented to an Eligible Household pursuant to the terms hereof, and (ii) the tenant’s income does not exceed 140% of the maximum income permitted. If the income of a tenant in a Restricted Unit exceeds 140% of

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

the maximum income permitted hereunder at the time of annual eligibility determination, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant. The Owner shall not be in default hereunder so long as either (i) the income of a tenant in a Restricted Unit does not exceed 140% of the maximum income permitted or (ii) the Owner rents the next available unit with the same or greater number of bedrooms which is not a Restricted Unit to an Eligible Household. If the building in which the over-income tenant resides contains three or more Units with the same or greater number of bedrooms as the Restricted Unit occupied by such tenant, the Owner must rent the next such available Unit in such building; otherwise, the Owner must rent the next such available Unit in the Project. Such next available Unit shall be deemed to be a Restricted Unit when it is rented to an Eligible Household pursuant to the terms hereof.

(c) The Owner shall not permit the use of any Unit for any purpose other than rental housing and those uses which are permitted accessory uses under the Bylaw.

(d) The Owner agrees to construct the Project in accordance with plans and specifications approved by the Municipality. In addition, all Restricted Units to be constructed as part of the Project must be indistinguishable from other Units from the exterior.

(e) Each Unit shall contain complete living facilities including but not limited to a stove, refrigerator, kitchen cabinets, and bathroom and kitchen plumbing fixtures, all as more fully shown in the plans and specifications approved by the Municipality. The Restricted Units shall contain comparable facilities to the non-Restricted Units (e.g., if dishwashers and washer/dryer hookups are provided for the non-Restricted Units, such facilities must be provided for the Restricted Units). During the term of this Restriction, the Owner covenants, agrees, and warrants that the Project and each Restricted Unit will remain suitable for occupancy and in compliance with all applicable federal, state, and local health, safety, building, sanitary, environmental, and applicable laws, codes, rules, and regulations, including without limitation, applicable laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must also comply with all applicable local codes, ordinances, and by-laws. Without limiting the generality of the foregoing, each Unit shall meet the housing quality standards set forth, as applicable, in the regulations of United States Department of Housing and Urban Development ("HUD") at 24 C.F.R. §982.401 or any successor thereto, and the accessibility requirements at 24 C.F.R. Part 8, or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973), 28 C.F.R. Parts 35 and 36, as applicable, or any successor thereto (which implement the Americans with Disabilities Act, as amended), G.L. c. 151B and the Massachusetts Architectural Access Board regulations at 521 CMR 1.00 *et. seq.*, or any successor thereto, 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).

7. Tenant Selection and Occupancy.

(a) Nondiscrimination. The Owner, the Municipality and the Monitoring Agent shall not discriminate on the basis of race, religion, color, sex, sexual orientation, gender

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

identity, familial status, age, handicap, marital status, national origin, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of tenants, 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.

(b) Selection Policies. Prior to marketing or otherwise making available for rental any of the Units, the Owner must obtain DHCD's approval of a marketing plan (the "Tenant Selection Plan") for the Restricted Units. Such Tenant Selection Plan must describe the tenant selection process for the Restricted Units and must set forth a plan for affirmative fair marketing of Restricted Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines ("AFHMP Guidelines"). At the option of the Municipality, and provided that the Tenant Selection Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Tenant Selection Plan may also include a local preference for up to seventy percent (70%) of the Restricted Units, subject to all provisions of the AFHMP Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the Tenant Selection Plan should be accompanied by a letter from the chief executive officer of the Municipality which states that the tenant selection and local preference (if any) aspects of the Tenant Selection Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Tenant Selection Plan which are set forth as responsibilities of the Municipality in the Tenant Selection Plan. If the Chief Executive Officer of the Municipality fails to approve the tenant selection and local preference (if any) aspects of the Tenant Selection Plan for the Restricted Units above within thirty (30) days of the Municipality's receipt thereof, the Municipality shall be deemed to have approved those aspects of the Tenant Selection Plan. In addition, the Tenant Selection Plan must comply with the Regulations and DHCD's guidelines, including the 40R Guidelines and AFHMP Guidelines, and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. Owners shall list all Restricted Units with the Boston Fair Housing Commission MetroList (Metropolitan Housing Opportunity Clearing Center). All costs of carrying out the Tenant Selection Plan shall be paid by the Owner. The Owner may use in-house staff to draft and/or implement the Tenant Selection Plan, provided that such staff meets the qualifications described in AFHMP Guidelines. The Owner may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the AFHMP Guidelines. A failure to comply with the Tenant Selection Plan by the Owner or by the Municipality shall be deemed to be a default of this Restriction. The Owner agrees to maintain for five years following the initial rental of the last Restricted Unit and for five years following all future rentals, a record of all newspaper advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Tenant Selection Plan as approved by DHCD which may be inspected at any time by the Monitoring Agent and DHCD. All Marketing Documentation must be approved by DHCD prior

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

to its use by the Owner or the Municipality. The Owner and the Municipality agree that if at any time prior to or during the process of marketing the Restricted Units, the Owner, or the Municipality with respect to aspects of the Tenant Selection Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Tenant Selection Plan, the Owner or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by the Monitoring Agent or DHCD.

8. The Owner shall use its good faith efforts during the term of this Restriction to maintain all the Restricted Units within the Project at full occupancy as set forth in Section 6 hereof. In marketing and renting the Restricted Units, the Owner shall comply with the Tenant Selection Plan as approved by DHCD which are incorporated herein by reference with the same force and effect as if set out in this Restriction.

9. Occupancy agreements for Restricted Units shall meet the requirements of this Restriction. The Owner shall enter into a lease with each tenant of a Restricted Unit for a minimum term of one year. The lease shall provide that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease and shall also contain clauses, among others, wherein each resident of such Restricted Unit:

- (a) certifies the accuracy of the statements made in the application and income survey;
- (b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from the Owner, the Municipality, or the Monitoring Agent; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a substantial breach of a material provision of his or her lease;
- (c) agrees that at such time as the Owner, the Municipality, or the Monitoring Agent may direct, but at least annually, he or she will furnish to the Owner certification of then current family income, with such documentation as the Municipality or the Monitoring Agent shall reasonably require; and agrees to such charges as the Municipality or Monitoring Agent has previously approved for any facilities and/or services which may be furnished by the Owner or others to such resident upon his or her request, in addition to the utilities and services included in the rentals, as adjusted from time to time pursuant to Section 10; and
- (d) agrees to reside in the Restricted Unit as his or her principal residence.

10. Income and Rent Restrictions.

- (a) Additional Definitions.

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

- (i) A "Family" shall mean two or more persons who will live regularly in the Restricted Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual.
  - (ii) The "Area" is defined as the Boston - Cambridge -Quincy MA-NH Metropolitan Statistical Area.
  - (iii) "Annual Income" shall be the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family (other than children under the age of 18 years), including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual Income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with, 24 C.F.R.5.609 (or any successor regulations) using assumptions provided by HUD.
  - (iv) "Area Median Income" or "AMI" is defined as the median income for the Area, adjusted for family size, as determined by HUD regulations and guidance.
  - (v) An "Eligible Household" is defined as a Family whose Annual Income does not exceed 80% AMI.
- (b) General Rent Restriction. The monthly rent charged to a tenant of a Restricted Unit, including an allowance for any utilities and services required to be paid by the tenant, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, adjusted for a family size equal to the number of bedrooms in the Unit plus one, unless other affordable program rent limits approved by DHCD shall apply ("Maximum Monthly Rent"). Maximum Monthly Rents and utility allowances shall be adjusted annually as provided herein.
- (c) To the extent that one or more other rent restrictions also apply to the Project and the Restricted Units, the more restrictive rent restriction shall govern. For purposes of this Restriction, this subsection (c) shall be read so that the most restrictive of the restrictions shall apply for the longest period applicable.
- (d) If the rent for a Restricted Unit is subsidized by a state or federal subsidy program, then the rent payable to the Owner with respect to the Restricted Unit may be the amount permitted by such subsidy program, notwithstanding that such rent may exceed the amount specified in Section 10(b) above, provided that the tenant's share of rent does not exceed the maximum rental expense as provided in this Restriction.

11. Income Certifications. The Owner represents, warrants and covenants that the determination of whether a Family occupying a Restricted Unit meets the income requirements



The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

set forth herein shall be made by the Owner at the time of leasing of the Restricted Unit and thereafter at least annually on the basis of the then current income of such Family. In initially verifying a Family's income, the Owner shall examine the source documents evidencing Annual Income (e.g. wage statements, interest statements, unemployment compensation statements) for the Family. The Owner shall maintain as part of its Project records copies of all leases of Restricted Units and all initial and Annual Income certifications by tenants of the Restricted Units for a period of at least five (5) years after the date thereof, which shall be available for inspection by the Monitoring Agent, the Municipality and DHCD upon request. Tenants shall also be required to provide such information as the Monitoring Agent may reasonably request in order to ensure that they meet the income requirements set forth in this Restriction.

12. Rent Schedule. The initial Maximum Monthly Rents and allowances for utilities for all Restricted Units are set forth in Exhibit B attached hereto. Annually, the Owner shall submit to the Monitoring Agent (with a copy to DHCD and the Municipality) a proposed schedule of monthly rents and utility allowances for all Restricted Units. The rent schedule shall include the Maximum Monthly Rents applicable to Restricted Units under Section 10 above. Such schedule shall be subject to the approval of the Monitoring Agent for compliance with the requirements of Section 10. Except as set forth in the next paragraph of this Section 12, rents for Restricted Units shall not be increased above the amounts permitted under this Restriction and the Bylaw without the Monitoring Agent's prior written approval of either (a) a specific request by the Owner for a rent increase or (b) the next annual schedule of rents and allowances as set forth in this Section. In all cases, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Owner to all affected tenants. If an annual request for a new schedule of rents for the Affordable Units as set forth above is based on a change in the AMI figures published by HUD, and the Monitoring Agent fails to respond to such a submission within thirty (30) days of receipt thereof, the Monitoring Agent shall be deemed to have approved the submission. If a request for a new schedule of rents for the Affordable Units is made for any other reason, and the Monitoring Agent fails to respond within thirty (30) days of receipt thereof, the Developer may send the Monitoring Agent a notice of reminder, and if the Monitoring Agent fails to respond within thirty (30) days from receipt of such notice of reminder, the Monitoring Agent shall be deemed to have approved the submission.

Without limiting the foregoing, the Owner shall be entitled to a rent increase for Restricted Units to reflect an increase in AMI published by HUD between the date of this Restriction and the date that the Units begin to be marketed or otherwise made available for rental pursuant to Section 7 by making a submission as provided for in this Paragraph as follows; if the Monitoring Agent receives notice of and approves of the calculation as to such rent increase in accordance with this Section 12, the initial Maximum Monthly Rents and allowances for utilities for Restricted Units in Exhibit B shall be deemed to be modified accordingly. If the Monitoring Agent fails to respond to such a submission within thirty (30) days of the Monitoring Agent's receipt thereof, then the Monitoring Agent shall be deemed to have approved the submission and the rents for the Restricted Units may thereafter be increased by the Owner in accordance with such schedule, and in any event, approval of an initial rent rate increase based upon a change in the AMI as provided in this section shall not be unreasonably withheld. In the event of non-response as provided in this paragraph, the Owner shall be deemed to have complied with the requirements of this Section in all respects, provided that in no event shall the rent for a Restricted Unit exceed an amount permitted under Section 10, based on the then existing AMI.

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

13. Transfer Restrictions.

(a) Except for rental of Restricted Units to Eligible Households and rentals of other Units in the ordinary course of business as permitted by the terms of this Restriction, the Owner will not sell, transfer, lease or exchange (collectively, a "Sale") the Project or any portion thereof or any interest therein without the prior written consent of the Municipality, which consent shall be granted by the Municipality provided that: (1) the Owner secures from the transferee a written agreement, which in the case of any transfer other than a transfer of Beneficial Interests, shall be recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the sale, stating that the transferee will assume in full the Owner's obligations and duties under this Restriction, (2) the proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has no documented history of failures to abide by agreements with funding or regulatory agencies of the Commonwealth or the federal government and is not currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, and (3) the Project is in compliance with this Restriction at the time of the proposed Sale.

The Municipality shall, prior to granting such consent, give notice of the proposed transfer to the Monitoring Agent, who shall review the notice of proposed transfer and certify to the Municipality as to whether (a) the notice of transfer is complete in accordance with this Section and (b) the Owner is in compliance with its obligations under this Affordable Housing Restriction.

The Municipality shall consider a request for approval of any request for transfer required by this Section 13 in a commercially reasonable time, but in no event later than 30 days following submission by the Owner of the documents required by this Section 13. Failure to object to consent to transfer under this Section within such 30 days shall be deemed consent to such transfer. Consent to transfer may not be withheld by the Municipality for any reason other than incompleteness of the Notice of Transfer, or that the Owner or the transferee is not in compliance with its obligations under this Affordable Housing Restriction or that the proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has documented history of failures to abide by agreements with funding or regulatory agencies of the Commonwealth or the federal government and is not currently in violation of any agreements with such agencies beyond the time permitted to cure the violation.

(b) The Owner shall provide DHCD and the Municipality with thirty (30) days' prior written notice of the following:

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

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

The Apartments at Cold Brook Crossing

40R Affordable Housing Restriction Agreement

any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation or (iv) with respect to a trust, any interests as a beneficiary or trustee of such trust to receive income, losses, or a return on equity contributions made to such trust.

Notwithstanding the above, the Municipality's consent under this Section 13 shall not be required with respect to any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however, to the provisions of Section 18 hereof, or to the grant by the Owner of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender if (a) the aggregate loan to value ratio is equal to or less than 85% and (b) the aggregate debt service coverage shall be equal to or greater than 1.15. For the purpose of calculating the term "debt service coverage" the following definitions shall apply:

- (i) "Debt Service Coverage" shall mean the ratio on an annualized basis of: (A) Net Operating Income to (B) Debt Service on Loans.
- (ii) "Net Operating Income" shall mean gross rents on an annualized basis inclusive of the greater of actual or market vacancy, minus all Operating Expenses.
- (iii) "Operating Expenses" shall mean expenditures of all kinds made with respect to the operation of the Property for the previous twelve (12) month period (exclusive of extraordinary start up costs), including but not limited to management fees which for the purposes of this calculation shall be equal to the greater of (A) actual management fees, or (B) three percent (3%) based on gross income and the greater of (1) actual replacement reserves or (2) three percent (3%) of gross income less cash distributions paid. Operating Expenses shall expressly exclude: any debt service on loans, and expenditures made out of reserves previously created.
- (iv) "Debt Service on Loans" shall mean the aggregate payments of principal and interest that would have been payable under an assumed loan on an annualized basis in an amount equal to the outstanding principal balances of all loans to be secured by the Project at the inception of the relevant Calculation Period (which shall mean the 12 months prior to the date of the proposed security interest) bearing interest at the rate of interest payable on the proposed loan(s) on a direct reduction basis over thirty (30) years.

Provided, however, that no consent under this Section 13 shall be required for any grant by the Owner of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender, whether or not the loan to value ratio is less than 85% or the debt service ratio is less than 1.15 if such financing is pursuant to a program offered by or approved by HUD or the Massachusetts Housing Partnership Fund Board for multifamily housing financing, including any FHA MAP financing, or any successor financing program. Owner hereby agrees that it shall provide copies of any and all written notices received by Owner from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

14. Annual Compliance Report. Throughout the term of this Restriction, the Monitoring Agent agrees to prepare and deliver annually a report in a form specified by the Municipality (the "Annual Compliance Report") to the Municipality and DHCD (with a copy to the Owner) regarding the compliance of the Owner and the Project with requirements of this Restriction and the Bylaw. In the Annual Compliance Report, the Monitoring Agent shall annually certify in writing whether the Project continues to contain the minimum number of Restricted Units required by this Restriction; and whether the Project and the Restricted Units have been maintained in a manner consistent with this Restriction, including but not limited to the requirement to equitably integrate and disperse Restricted Units throughout the Project; and whether the Owner has evicted the tenants of any Restricted Units for any reason other than a substantial breach of a material provision of their lease. The Annual Compliance Report shall also indicate the extent of non-compliance with the relevant reporting and/or substantive requirements of this Restriction and, if any, shall describe efforts being made by the Owner to remedy such non-compliance. If the tenants of any Restricted Unit have violated their lease with respect to the clauses required under Section 9, the Annual Compliance Report shall include notice of any such violations, including without limitation to, notice of any subleases or other agreements that are in violation of the tenant's agreement to reside in the Restricted Unit under Section 9(d). The Owner shall timely provide the Monitoring Agent with such information as it may reasonably request in order to complete the Annual Compliance Report and any other reporting requirements hereunder. The Monitoring Agent shall deliver the Annual Compliance Report to the Municipality and DHCD within one hundred twenty (120) days of the end of each calendar year during the term of this Restriction.

15. Compliance with Statute and Regulations. The Owner agrees to comply and to cause the Project to comply with all requirements of G.L. c. 40R, the Regulations, DHCD's guidelines, and all other applicable laws, rules, regulations, and executive orders. The Municipality and the Monitoring Agent shall have access during normal business hours to all books and records of the Owner and the Project upon reasonable prior written notice to the Owner in order to monitor the Owner's compliance with the terms of this Restriction but without any unreasonable interference with the operations on the Property.

16. Enforcement and Monitoring. (a) The Municipality and the Monitoring Agent shall each, acting singly, have the power to monitor and enforce the requirements of this Restriction, the Massachusetts Act, and the Bylaw with respect to this Restriction. The Municipality shall retain and the Owner shall pay the costs of the Monitoring Agent for purposes of monitoring and enforcement of the Owner's obligations under this Restriction pursuant to a monitoring services agreement substantially in the form of Exhibit D attached hereto. The Monitoring Agent shall monitor the compliance of the Project with the requirements of this Restriction. The purpose of monitoring is to ensure that (both initially and on an ongoing basis) the income eligibility of the tenants of Restricted Units are properly and reliably determined, rental amounts of Restricted Units are properly computed, the Tenant Selection Plan conforms to all requirements and is properly administered and compliance with its terms continues, Eligible Households are properly chosen, and annual recertification of continued eligibility occurs in accordance with this Restriction.

(b) The Owner and the Monitoring Agent each covenant and agree to give the Municipality written notice of any default, violation or breach of the obligations of the Owner or the Monitoring Agent hereunder, (with a copy to DHCD and the other parties to this Restriction)

## The Apartments at Cold Brook Crossing

## 40R Affordable Housing Restriction Agreement

within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If the Municipality becomes aware of a default, violation, or breach of obligations of the Owner or the Monitoring Agent hereunder, the Municipality shall promptly give a notice of such default, breach or violation to the offending party (with a copy to DHCD and the other parties to this Restriction) (the "Municipal Default Notice"). If any default, violation or breach of any provision of this Restriction by the Owner or the Monitoring Agent with respect to this Restriction is not cured within thirty (30) days after the giving of the Municipal Default Notice, then the Municipality may with notice to DHCD terminate this Restriction, or the Municipality and/or Monitoring Agent apply to any state or federal court for specific performance of this Restriction, exercise any other remedy at law or in equity available to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the Municipality and/or the Monitoring Agent will have no adequate remedy at law), or take any other action as may be necessary or desirable to correct non-compliance with this Restriction, and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and/or the Monitoring Agent. The thirty (30) day cure periods set forth in this paragraph shall be extended for such period of time as may be necessary to cure such a default so long as the Owner or Monitoring Agent, as the case may be, is diligently prosecuting such a cure. Delay in curing a default will be excused if due to causes beyond the reasonable control of the defaulting party.

(c) The Owner covenants and agrees to reimburse to the Municipality and/or the Monitoring Agent all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Restriction is acknowledged by the Owner or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Restriction, the Municipality (and/or the Monitoring Agent) does not undertake any liability or obligation relating to the condition of the Property. No delay or omission on the part of the Municipality in enforcing the restrictions contained herein shall operate as a waiver of the right to enforce it, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or waiver of the same or of any other right on any future occasion.

17. Further Assurances. The Municipality and/or the Monitoring Agent is authorized to record and/or register any notices or instruments appropriate to assuring the enforceability of this Restriction; and the Owner on behalf of itself and its successors and assigns appoints the Municipality and/or the Monitoring Agent its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the Monitoring Agent each agree to submit any information, documents, or certifications requested by the Municipality which the Municipality shall deem necessary or appropriate to evidence continuing compliance of the Owner and the Monitoring Agent with the terms of this Restriction. The Owner and the Monitoring Agent also agree to submit any information, documentation, or certifications requested by the Municipality to enable it to provide to DHCD the annual update on the Approved District required by 760 CMR 59.07. Additionally, the Owner agrees to submit any information, documents, or certifications requested by the Monitoring Agent which the Monitoring Agent shall deem necessary or appropriate to evidence the continuing compliance of the Owner with the terms of this Restriction and to enable it to prepare the Annual Compliance Report required under Section 14 of this Restriction. The benefits of this Restriction shall be in gross and shall be assignable by the Municipality. The Owner and the Municipality intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of recording and/or registering of any

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement  
instrument evidencing such approval.

18. Foreclosure. The rights and restrictions contained in this Restriction shall survive and not lapse or terminate if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and it is therefore the intention of the parties that the provisions hereof shall survive foreclosure or deed in lieu of foreclosure and shall continue to run with and bind the Project.

19. Notices. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given (1) if hand delivered, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Owner:

The Apartments at Cold Brook Crossing LLC  
c/o Chris Claussen  
2134 Sevilla Way  
Naples, FL 34109  
cgclaussen@gmail.com

If to the Municipality:

TOWN OF SUDBURY  
278 Old Sudbury Road  
Sudbury, MA 01776  
[townmanager@sudbury.ma.us](mailto:townmanager@sudbury.ma.us)

If to the Monitoring Agent:

Sudbury Housing Trust  
278 Old Sudbury Road  
Sudbury, MA 01776  
HousingTrust@sudbury.ma.us

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

If to DHCD:

Department of Housing and Community Development  
Attention: Smart Growth Zoning Program Coordinator  
Division of Community Services  
100 Cambridge St., Suite 300  
Boston, MA 02114  
Email: [william.reyelt@mass.gov](mailto:william.reyelt@mass.gov) and [dhcdcommunityservices@mass.gov](mailto:dhcdcommunityservices@mass.gov)

or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice, and (2) if an electronic copy of such notice, request, or other communication made hereunder is simultaneously delivered by email to the party to be served, provided such party to be served has

(a) identified an email address in this Section 19 or (b) furnished in writing to the party seeking or desiring to serve notice a request to be provided an electronic copy of notices, request, or other communication made hereunder to an identified email 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, regardless of the date on which the recipient party receives a copy of such notice by electronic means.

20. Amendment. This Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the Municipality, and DHCD. Notwithstanding the foregoing, or anything else contained herein to the contrary, if at any time the Owner converts the subject Units from apartment rentals, to condominium units to be offered for sale, provided the Owner first obtains all required approvals from the Municipality and DHCD, it is agreed that this Restriction shall be replaced by a revised Restriction, approved by DHCD, suitable for use for condominium units being offered for sale. Any amendments to this Restriction must be in writing and executed by all of the parties hereto.

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

22. Severability. 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.

23. Mortgagee Consents. The Owner represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

Restriction and to the terms and conditions hereof and that all such mortgagees have executed the Consent and Subordination of Mortgage to Affordable Housing Restriction Agreement for 40R Rental Project attached as Exhibit B hereto and made a part hereof.

24. Casualty; Demolition; Change of Use.

(a) Subject to the rights of any lender holding a mortgage on the Project that meets the criteria set forth in Section 13(d), the Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use Commercially Reasonable efforts to repair and restore all or a portion of the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with this Restriction. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings of the Project are destroyed, if such destroyed buildings are not restored by the Owner, the Owner shall be required to maintain the same percentage of Restricted Units of the total number of units in the Project. For purposes hereof, "Commercially Reasonable" shall mean the extent of repair and restoration of the Project that is financially feasible for the Owner, taking into account the availability of financing, capital, and insurance proceeds of the Owner.

(b) The Owner shall not, without prior written approval of DHCD and the Municipality and an amendment to this Restriction, change the type, size, location, maximum rents or number of Restricted Units as identified in Exhibit B unless expressly permitted by the terms of this Restriction. The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project, or permit the use of the dwelling accommodations of the Project for any purpose except residences and any other uses permitted by the applicable zoning then in effect.

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

26. Representations. The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (i) is a Massachusetts 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) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Restriction.



The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

(b) The execution and performance of this Restriction by the Owner (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Restriction, any loan documents relating to the Project the terms of which are approved by the Municipality and the Monitoring Agent, or other permitted encumbrances, including mortgages referred to in Section 23).

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

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

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

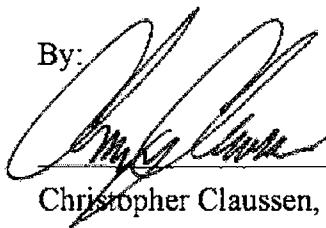
The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

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

**OWNER:**

The Apartments at Cold Brook Crossing  
LLC

By:



---

Christopher Claussen, Manager

**MUNICIPALITY:**

Town of Sudbury

By:

---

Chair  
Sudbury Select Board

**MONITORING AGENT:**

Sudbury Housing Trust

By:

---

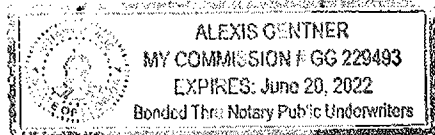
Chair, Sudbury Housing Trust

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

STATE OF FLORIDA

COLLIER COUNTY

On this 22 day of October 2021, before me, the undersigned notary public, Christopher Claussen personally appeared and proved to me through satisfactory evidence of identification, which was a valid State of Florida Driver's License, to be the person whose name is signed on the preceding document, as Manager of The Apartments at Cold Brook Crossing, LLC [form of organization], and acknowledged to me that he signed it voluntarily for its stated purpose.



[Signature]  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_ and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of for \_\_\_\_\_, a [form of organization] and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

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

**MUNICIPALITY:**

Town of Sudbury


By:

  
\_\_\_\_\_  
Chair  
Sudbury Select Board

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex County, ss.

On this 28<sup>th</sup> day of Sept 2021, before me, the undersigned notary public, personally appeared Jennifer Roberts, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, as Select Board chair for the City/Town of Sudbury MA and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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



**PATRICIA B. GOLDEN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
February 17, 2028

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

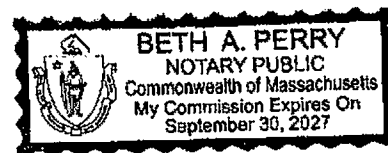
IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the date and year first written above.

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 23<sup>rd</sup> day of September, before me, the undersigned notary public, personally appeared Cynthia Howe, proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding document, as - of for -, a [form of organization] and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Beth Perry  
Notary Public  
Print Name Beth Perry  
My Commission Expires:



MONITORING AGENT:

Sudbury Housing Trust  
By: Cynthia Howe

[Signature]  
Chair, Sudbury Housing Trust

The Apartments at Cold Brook Crossing  
40R Affordable Housing Restriction Agreement

Attachments:

EXHIBIT A - Legal Property Description

EXHIBIT B - Initial Rent Schedule and Unit Assignments & Location of Restricted Units

EXHIBIT C - Consent and Subordination of Mortgage to Affordable Housing Restriction Agreement for 40R Rental Project

EXHIBIT D - Monitoring Services Agreement

EXHIBIT E - Certificate of Approval Affordable Housing Restriction G.L. c. 184, §32

EXHIBIT A

Legal Property Description

Lot S as shown on Plan 230 of 2021 (Sheets 1-3) recorded at Middlesex South Deeds, being further bounded and described as follows:

Beginning at a point on the northerly side of North Road located 42.28' northeasterly from a stone highway bound at land now or formerly of the Town of Sudbury;

thence along the Town of Sudbury land

N 00°00'00" E a distance of 521.49' to other land of the grantor;

thence along grantor's other land:

N 90°00'00" E a distance of 225.83';

S 87°20'24" E a distance of 59.72';

S 85°00'00" E a distance of 123.60';

with a curve turning to the left with an arc length of 107.06',

with a radius of 247.00',

S 13°42'06" E a distance of 323.81' to North Road;

thence along North Road S 65°17'54" W a distance of 318.22' to a stone highway bound;

thence with a curve turning to the right with an arc length of 191.88',

with a radius of 698.75' a stone highway bound;

thence S 81°01'54" W a distance of 119.93' to the point of beginning, having an area of approximately 244,359 square feet, 5.610 acres.

For title see deed of Quarry North Road LLC dated March 22, 2021 and recorded at Middlesex South Registry of Deeds in Book 77312, Page 59.

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

EXHIBIT B

Initial Maximum Rent and Utility Allowance Schedule

Description of Units	Contract/Gross Rent	Utility Allowance	Net/Effective Rent	No. of Units
<u>Studio</u>	N/A	N/A	N/A	N/A
<u>1 bedroom units</u>	\$2,021	\$124	\$1,897	14
<u>2 bedroom units</u>	\$2,274	\$188	\$2,086	9
<u>3 bedroom units</u>	\$2,526	\$175	\$2,351	3

Initial Location of Restricted Units

The housing units which are the initial Restricted Units are those designated as unit numbers at 437 Cold Brook Drive 101, 104, 202, 205, 207, 213, 303, 309, 311, 312, 402, 405, 410, 414 and at 435 Cold Brook Drive 102, 107, 112, 201, 203, 208, 308, 309, 312, 403, 407, 410, in the table that follows and details additional unit characteristics, and on a plan entitled The Apartments at Cold Brook Crossing Building Numbered Unit Plans date 1/29/21, attached hereto with a reduced-scale copy of said plan included herein with enhanced identification of the corresponding Restricted Units.

Initial Maximum rent and Utility Allowance Schedule may be modified prior to marketing or the units otherwise being made available for rental, and annually thereafter, in accordance with Section 12 of this Affordable Housing restriction.



The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

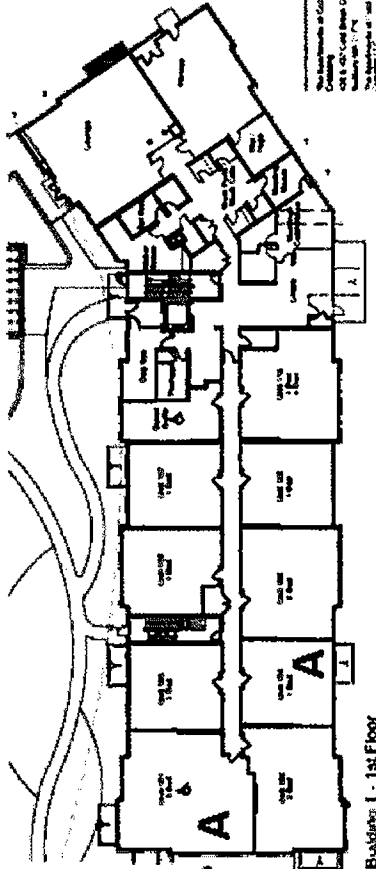
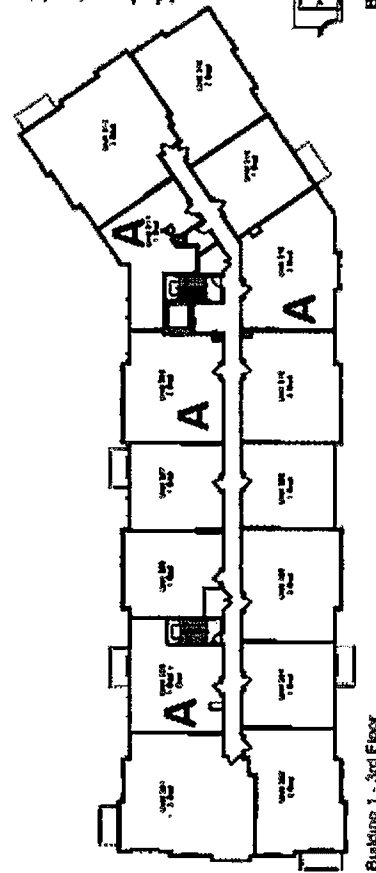
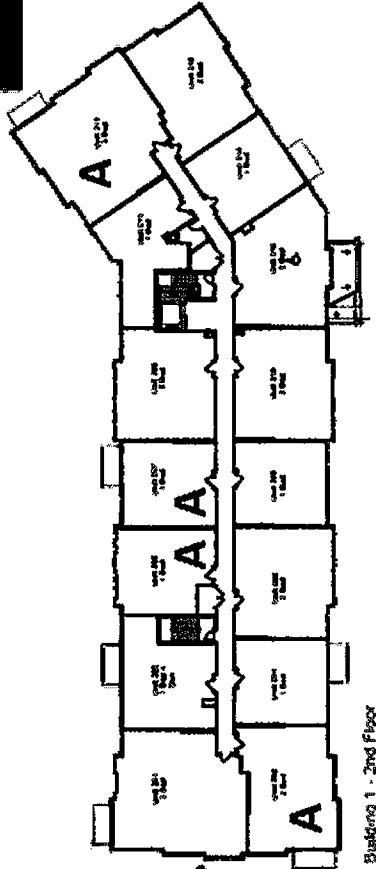
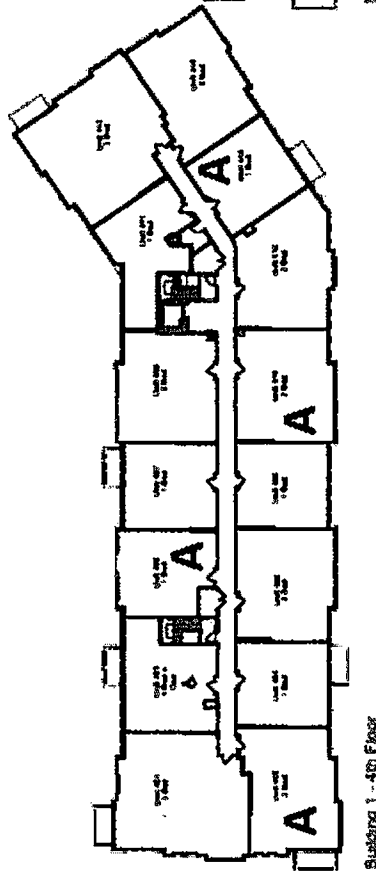
**EXHIBIT B**

<b>The Apartments at Cold Brook Crossing, Sudbury, MA 01776</b>									
	<b>Unit #</b>	<b>Floor Level</b>	<b>Bedrooms</b>	<b>Bathrooms</b>	<b>Unit Size</b>	<b>Model #/Type</b>	<b>Accessible</b>	<b>Den</b>	<b>Balcony</b>
<b>Building 1 (437 Cold Brook Drive)</b>	101	One	3	2	1,512	113	Yes	No	Yes
	104	One	1	1	803	114	No	No	Yes
	202	Two	2	2	1,149	T15	No	No	Yes
	205	Two	1	1	781	T09	No	No	No
	207	Two	1	1	815	T07	No	No	Yes
	213	Two	3	2	1,534	T01	No	No	Yes
	303	Three	1	1	973	T11	No	Yes	Yes
	309	Three	2	2	983	T05	No	No	No
	311	Three	1	1	832	T03	Yes	No	No
	312	Three	2	2	1,112	T06	No	No	No
	402	Four	2	2	1,149	T15	No	No	Yes
	405	Four	1	1	781	T09	No	No	No
	410	Four	2	2	1,104	T08	No	No	No
	414	Four	1	1	795	T04	No	No	Yes
<b>Building 2 (435 Cold Brook Drive)</b>	102	One	3	2	1,536	101	Yes	No	Yes
	107	One	2	2	951	110	No	No	No
	112	One	1	1	1,034	111	No	Yes	Yes
	201	Two	2	2	1,087	T02	No	No	Yes
	203	Two	1	1	795	T04	No	No	Yes
	208	Two	1	1	815	T07	No	Yes	No
	308	Three	1	1	815	T07	No	Yes	No
	309	Three	1	1	793	T10	No	No	No
	312	Three	2	2	1,058	T11	No	No	Yes
	403	Four	1	1	795	T04	No	No	Yes
	407	Four	2	2	1,104	408	Yes	No	No
410	Four	1	1	781	T09	No	No	Yes	

EXHIBIT B

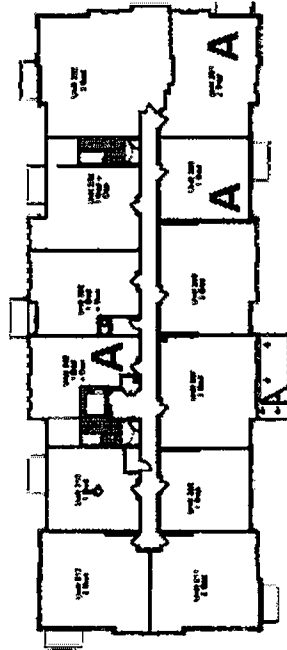
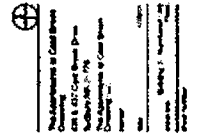
[Redacted text block]

A = Affordable/Restricted Unit

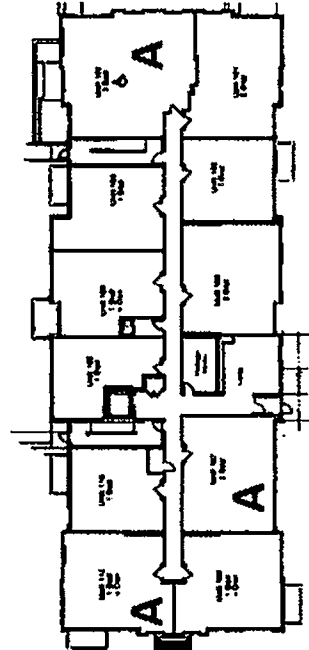


Scale: 1/8" = 1'-0"  
Drawing No. 100-100-0000  
Date: 10/1/00  
By: [Redacted]  
Check: [Redacted]

EXHIBIT B

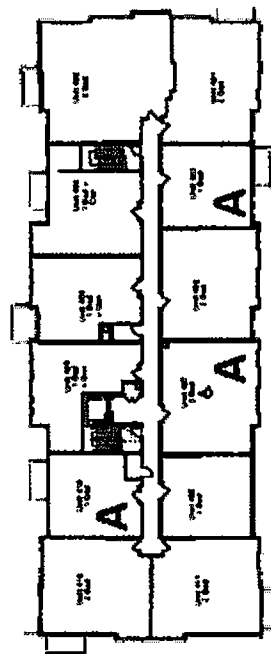


Building 2 - 2nd Floor

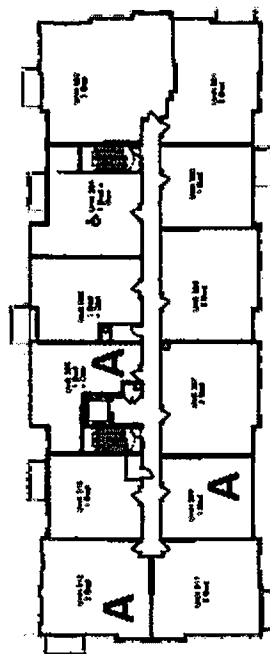


Building 2 - 1st Floor

**A = Affordable/Restricted Unit**



Building 2 - 4th Floor



Building 2 - 3rd Floor

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

EXHIBIT C

**CONSENT AND SUBORDINATION OF MORTGAGE  
TO AFFORDABLE HOUSING RESTRICTION  
AGREEMENT FOR 40R RENTAL PROJECT**

Reference is hereby made to a certain Mortgage dated April 13, 2021 given by Bank of New England to The Apartments at Cold Brook Crossing, recorded with the South Middlesex Registry of Deeds at Book 77505, Page 386 ("Mortgage").

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

This subordination shall not in any way affect or impair the right to hold under said Mortgage as security for the sum remaining due thereon, or to sell under the power of sale in said Mortgage contained, the premises therein conveyed.

Bank of New England

By:   
Its: President

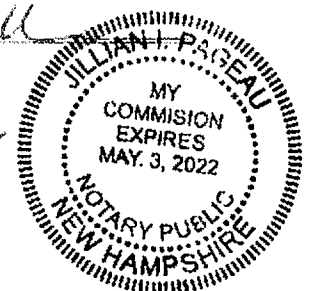
COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Rockingham, ss.

August 23, 2021

On this 23 day of August, 2021 before me, the undersigned notary public, personally appeared William F. Sagle, proved to me through satisfactory evidence of identification, which were License, to be the person whose name is signed on the preceding document and acknowledged to me that he/she signed it voluntarily for its stated purpose, as [Title] of [Bank], a [form of organization President of (e.g., limited partnership, limited liability company, corporation)]. Bank of New England.

Jillian I. Pageau  
Notary Public  
Print Name: Jillian I. Pageau  
My Commission Expires: 5.3.22



The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

EXHIBIT D

**40R RENTAL MONITORING SERVICES AGREEMENT**

This 40R Rental Monitoring Services Agreement (“Agreement”) is made as of the 22<sup>nd</sup> day of October, 2021, by and among The Apartments at Cold Brook Crossing LLC, and its successors and assigns (together, the “Owner”) having an address of 2134 Sevilla Way Naples, FL 34109, the Town of Sudbury, and its successors and assigns, or its designee, acting by and through its Town Manager ( the “Municipality”), and Sudbury Housing Trust, having an address at 278 Old Sudbury Road Sudbury, MA 01776, and its successors and permitted assigns, or its designee (the “Monitoring Agent”).

RECITALS

WHEREAS, the Owner has commenced construction of a one hundred one (101) unit rental development which will be constructed pursuant to a continuous buildout, consisting of two (2) residential buildings and certain accessory structures, on a property which is located 435 and 437 Cold Brook Drive, in the Municipality, as such property and the proposed improvements thereon (the “Project”) is more particularly shown on Exhibit A attached hereto; and

WHEREAS, the Department of Housing and Community Development (“DHCD”) promulgated regulations at 760 CMR 59.00 (the “Regulations”) and issued its Guidance for M.G.L. c. 40R and 760 CMR 59.00: Smart Growth Zoning and Starter Home Zoning (“40R Guidelines”), which collectively establish the affordability and related requirements for the Project and the Affordable Housing Restriction Agreement for 40R Rental Project, dated \_\_\_\_\_, 20\_\_, recorded at the \_\_\_\_\_ County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the “40R Restriction”); and

WHEREAS, as part of the Melone Smart Growth Overlay District (hereinafter, the “District”) approved at the Annual Town Meeting on May 7, 2019, the Project shall consist of a total number of one hundred one (101) rental units, (the “Units”) of which twenty-six (26) will be rented to eligible households (the “Restricted Units”) at rents specified in the 40R Restriction; and

WHEREAS, pursuant to the requirements of the District and the 40R Restriction, the Restricted Units will be rented to Eligible Households (as defined in the 40R Restriction) and the Monitoring Agent has been selected by the Municipality to perform monitoring and enforcement services regarding compliance of the Project with the 40R Restriction during its term; and

WHEREAS, the Restricted Units shall be identified by individual unit numbers for each phase of the Project prior to the issuance of a certificate of occupancy for such phase.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Monitoring Services. From the date hereof, the Monitoring Agent shall both monitor and enforce the Project’s compliance with the requirements of the 40R Restriction, as more fully described herein.
  - a. Affordability Requirement.
    - (1) Throughout the term of this Agreement, the Monitoring Agent shall ensure that the Restricted Units constructed as part of the Project are approved by the Municipality and rented for no more than the rental rates set forth in the

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

40R Restriction to Eligible Households. The Monitoring Agent shall also ensure that the rental rates charged by the Owner are approved or otherwise deemed approved by the Monitoring Agent pursuant to the 40R Restriction.

(2) Upon execution, the Owner shall immediately cause this Agreement and any amendments hereto to be recorded with the appropriate registry of deeds, and the Owner shall pay all fees and charges incurred in connection therewith. The Monitoring Agent shall ensure that the 40R Restriction is recorded by the Owner with the appropriate registry of deeds.

- b. Annual Reports. Throughout the term of this Agreement, the Monitoring Agent agrees to annually prepare and deliver the Annual Compliance Report (as defined in the 40R Restriction) to the Municipality and DHCD regarding the Owner's and the Project's compliance requirements under the 40R Restriction. The Annual Compliance Report shall include the contents required by the 40R Restriction and shall be delivered to the Municipality and DHCD within one hundred and twenty (120) days of the end of each calendar year.
- c. Supplemental Monitoring Services. The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Project and the Owner with the 40R Restriction. The services hereunder shall not include any construction monitoring. The services hereunder shall include follow-up discussions with the Owner, if appropriate, after an event of noncompliance.
- d. Monitoring Services Fee. The Monitoring Agent shall receive a fee of \$ 300 per Restricted Unit from the Owner at the time of execution of this Agreement to be used, *inter alia*, for its monitoring services hereunder. In addition, the Owner shall pay the Monitoring Agent an additional fee in the amount of \$200 per Restricted Unit for each subsequent year thereafter, payable within thirty (30) days after receipt by the Owner of the Monitoring Agent's Annual Compliance Report. Such annual fee shall constitute payment in full for the services of the Monitoring Agent for the period covered by the applicable Annual Compliance Report. If this Agreement is terminated pursuant to Section 1(f) herein, then the annual fee payable hereunder shall be pro rated based on the number of days from the beginning of the applicable year through the termination date.
- e. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the 40R Restriction or a failure by the Owner to take appropriate actions to cure a default under the 40R Restriction, the Monitoring Agent shall have the right, with the prior consent of the Municipality, to take appropriate enforcement action against the Owner including, without limitation, legal action to compel the Owner to comply with the requirements of the 40R Restriction. The 40R Restriction provides for payment by the Owner of reasonable costs and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Owner hereunder. The Monitoring Agent shall be entitled to seek recovery of all reasonable costs and expenses incurred in enforcing the 40R Restriction against the Owner and to assert a lien on the Project to secure payment by the Owner of such fees and expenses.
- f. Default Under This Agreement.

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

- (1) If any default, violation or breach by the Owner under this Agreement is not cured to the satisfaction of the Monitoring Agent within thirty (30) days after notice to the Owner thereof, then the Monitoring Agent or the Municipality may exercise any remedy at law or in equity available. No such failure to cure a default, however, will be deemed to exist if the Owner has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the Owner.
- (2) The Owner shall pay all reasonable costs and expenses, including legal fees, incurred by the Monitoring Agent and the Municipality in enforcing this Agreement, and, in the event of any action by the Monitoring Agent or the Municipality against the Owner, the Monitoring Agent or the Municipality shall be entitled to seek an attachment against the Owner's property including, without limitation, its interest in the Project. The Monitoring Agent or the Municipality may perfect a lien on the Project by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry. A purchaser of the Project or any portion of it shall be liable for the payment of any unpaid costs and expenses which were the subject of a recorded/filed certificate prior to the purchaser's acquisition of the Project or portion thereof; provided, however, a mortgagee foreclosing on all or any portion of the Project, or a purchaser at any foreclosure sale, shall have no liability for any such costs or expenses.
- (3) In the case of default by the Monitoring Agent under this Agreement, the Municipality may (1) terminate this Agreement and/or the Monitoring Agent with sixty (60) day notice to all parties; or (2) apply to any state or federal court for specific performance of this Agreement; or (3) exercise any other action as may be necessary or desirable to correct such default by the Monitoring Agent under this Agreement.

- g. Term. The term of this Agreement shall be the longest period customarily allowed by law but shall be no less than thirty (30) years. Notwithstanding the foregoing sentence, in no event shall the term of this Agreement exceed the duration of the 40R Restriction.
- h. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.
- i. Successor Monitoring Agent/Further Delegation.

(1) Should the Monitoring Agent be dissolved or become incapable of fulfilling its obligations during the term of this Agreement, the Municipality shall have the right to appoint a successor to serve as the Monitoring Agent for the remaining term of this Agreement. The Monitoring Agent shall give the Municipality and the Owner at least six (6) months written notice prior to any such dissolution or incapacity in order to allow the Municipality to appoint a successor to assume the rights and obligations of the Monitoring Agent under this Agreement and the 40R Restriction. In the event of termination of the Monitoring Agent, the Municipality shall promptly appoint a new successor monitoring agent to serve as the Monitoring Agent for the remaining term of this Agreement.

(2) The Monitoring Agent shall not delegate all or any portion of the obligations hereunder without the prior written approval of the Municipality. If the

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

Monitoring Agent performs any functions of the Owner, including, but not limited to performing marketing tasks, that would be subject to oversight by the Monitoring Agent, the Monitoring Agent must delegate oversight of such functions to the Municipality or an entity approved by the Municipality unless otherwise permitted in writing by the Municipality.

- j. Indemnity. The Owner agrees to indemnify and hold harmless the Monitoring Agent and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent or the Municipality by reason of its relationship with the Project under this Agreement and not involving the Monitoring Agent or the Municipality acting in bad faith or with gross negligence.
- k. Applicable Law. This Agreement, and the application or interpretation hereof, shall be governed by the laws of The Commonwealth of Massachusetts.
- l. Binding Agreement. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns.
- m. Headings. All paragraph headings in this Agreement are for the convenience of reference only and are not intended to qualify the meaning of the paragraph.
- n. Municipality's Right to Enforcement and Reliance. The Municipality shall be entitled to enforce this Agreement and may rely on the benefits of this Agreement.
- o. Entire Agreement. With the exception of the 40R Restriction, this Agreement supersedes all prior agreements between the parties with respect to the Project, whether oral or written including, without limitation, all correspondence between the parties and between counsels for their respective parties. This Agreement, together with the 40R Restriction, constitutes the sole and entire agreement between the parties hereto with respect to the subject matter thereof, and the rights, duties, and obligations of the parties with respect thereto. In executing this Agreement, the Monitoring Agent acknowledges that the Monitoring Agent is not relying on any statement, representation, warranty, covenant or agreement of any kind made by the Owner or the Municipality or any employee or agent of any of the foregoing, except for the agreements set forth herein. This Agreement may not be modified or amended except with the written consent of the Municipality, Monitoring Agent, and DHCD.
- p. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder, hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

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



The Apartments a Cold Brook Crossing

435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

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

**OWNER:**

The Apartments at Cold Brook Crossing LLC

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

Name: Christopher Claussen  
Its: Manager

**MUNICIPALITY:**

Town of Sudbury

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

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

Its: \_\_\_\_\_

**MONITORING AGENT:**

Sudbury Housing Trust

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

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

Its: \_\_\_\_\_

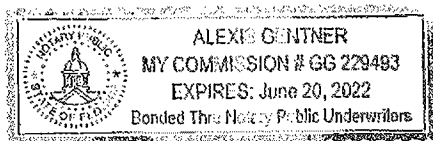
The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

STATE OF FLORIDA

COLLIER COUNTY

On this 22 day of October 2021, before me, the undersigned notary public, personally appeared Christopher Claussen, proved to me through satisfactory evidence of identification, which was FL DL to be the person whose name is signed on the preceding document, as Manager of The Apartments at Cold Brook Crossing LLC a [form of organization] and acknowledged to me that he/she signed it voluntarily for its stated purpose.



*[Handwritten Signature]*

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_ and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of for \_\_\_\_\_, a [form of organization] and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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

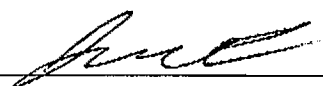
The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

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

**MUNICIPALITY:**

Town of Sudbury

By: 

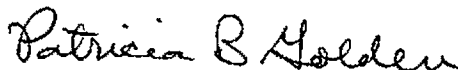
Name: Jennifer Roberts

Its: Chair

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 28<sup>th</sup> day of Sept, 2021, before me, the undersigned notary public, personally appeared Jennifer Roberts, proved to me through satisfactory evidence of identification, which was personal knowledge to be the person whose name is signed on the preceding document, as select Board chair for the City/Town of Sudbury MA and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public

Print Name:

My Commission Expires:



**PATRICIA B. GOLDEN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
February 17, 2028

The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

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

**MONITORING AGENT:**

Sudbury Housing Trust

Sign: *[Signature]*

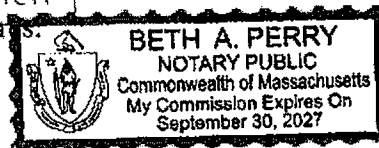
Print: Cynthia Howe

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 23<sup>rd</sup> day of September, 21, before me, the undersigned notary public, personally appeared Cynthia Howe, proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_ and acknowledged to me that he/she signed it voluntarily for its stated purpose.

*Beth Perry*  
Notary Public  
Print Name: Beth Perry  
My Commission Expires: \_\_\_\_\_



The Apartments a Cold Brook Crossing  
435 & 437 Cold Brook Drive Sudbury

40R Affordable Housing Restriction

EXHIBIT A

**Description of the Property**

Lot S as shown on Plan 230 of 2021 (Sheets 1-3) recorded at Middlesex South Deeds, being further bounded and described as follows:

Beginning at a point on the northerly side of North Road located 42.28' northeasterly from a stone highway bound at land now or formerly of the Town of Sudbury;

thence along the Town of Sudbury land

N 00°00'00" E a distance of 521.49' to other land of the grantor;

thence along grantor's other land:

N 90°00'00" Ea distance of 225.83';

S 87°20'24" Ea distance of 59.72';

S 85°00'00" Ea distance of 123.60';

with a curve turning to the left with an arc length of 107.06',

with a radius of 247.00',

S 13°42'06" Ea distance of 323.81' to North Road;

thence along North Road S 65°17'54" W a distance of 318.22' to a stone highway bound;

thence with a curve turning to the right with an arc length of 191.88',

with a radius of 698.75' a stone highway bound;

thence S 81°01'54" W a distance of 119.93' to the point of beginning, having an area of approximately 244,359 square feet, 5.610 acres.

For title see deed of Quarry North Road LLC dated March 22, 2021 and recorded at Middlesex South Registry of Deeds in Book 77312, Page 59.

EXHIBIT E

**Certificate of Approval**  
**Affordable Housing Restriction G.L. c. 184, §32**

The undersigned Undersecretary of the Massachusetts Department of Housing and Community Development hereby certifies that the Affordable Housing Restriction Agreement for 40R Rental Project Town of Sudbury The Apartments at Cold Brook Crossing made and declared by The Apartments at Cold Brook Crossing LLC and recorded herewith, which is in the form previously accepted by and on file with DHCD, is hereby declared to be in the public interest and is approved pursuant to the provisions of Massachusetts General Laws chapter 184, section 32.

Date: October 25, 2021  
By: [Signature]

Director, authorized  
signatory for Jennifer  
Maddox, Undersecretary of  
the Department of Housing  
and Community  
Development

Commonwealth of Massachusetts

Suffolk, ss.

Date: October 25 2021

On this 25<sup>th</sup> day of October, 2021 before me, the undersigned notary public, personally appeared Louis Martin, proved to me through satisfactory evidence of identification, which was personal knowledge, for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to methat s/he signed it voluntarily for its stated purpose.

[Signature]  
Notary Public  
Print Name: Christopher Jee  
My commission expires: 9/2/27

