



GREEN AFFORDABLE HOUSING PROGRAM

COVENANT

This covenant (this "Covenant"), entered into by Oxbow Partners LLC, a Massachusetts limited liability company (the "Developer"), relates to that certain Green Affordable Housing Program grant (the "Grant") from The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development ("DHCD") to Developer.

BACKGROUND:

The Developer received the Grant in the amount of Two Hundred Thousand Dollars (\$253,000) for installation of high-performance 'green' building features and renewable energy generation systems ("Renewable Energy Systems") in the sixteen-unit homeownership development known as the 89 Oxbow Road Condominium (the "Project").

DHCD received the Grant funds from the Massachusetts Technology Collaborative, a public instrumentality of the Commonwealth of Massachusetts with a business address of 75 North Drive, Westborough, Massachusetts ("MTC"). To evidence the Grant, the Developer has executed with DHCD a Grant Agreement (the "Grant Agreement") dated as of June 17, 2008.

As of the date of this Covenant, the Developer holds a fee simple interest in certain property located at 89 Oxbow Road, Wayland, Massachusetts, (the "Property"), on which the Developer has developed and constructed the Project. The Developer has created with respect to the Property, the 89 Oxbow Road Condominium (the "Condominium"), a condominium established by the Developer, as declarant, pursuant to Massachusetts General Laws 183A, by Master Deed dated of even date and recorded herewith (the "Master Deed") and Declaration of Trust dated of even date and recorded herewith (the "Declaration of Trust"). Capitalized terms used but not defined herein shall have the definition set forth in the Declaration of Trust.

As a condition of the Grant, the Developer has agreed to ensure that certain continuing obligations relating to the Renewable Energy Systems would be assumed by the Trust and the individual purchasers of each of the Condominium's sixteen homeownership units (each, a "Unit Owner") at the time of the creation of the Condominium by the execution and recording of this Covenant, as a covenant running with the land and binding upon the successors and assigns of the Developer.

Through the creation of the Condominium, the Trustees and Unit Owners have received material benefit from the Grant. Accordingly, the Developer is executing this Covenant, in which the Trustees and Unit Owners undertake certain obligations with respect to the Renewable Energy System.

AGREEMENTS

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

Deed Ref: 51328-45

BOST11521892.4

Edwardas Ansell Palmer & Doerge  
 111 Huntington Avenue  
 Boston, MA 02199

1. Benefit. Through the creation of the Condominium, the Trustees and Unit Owners have received the benefit of the installation of certain 'green' building features and of the Renewable Energy System, all without increase in the purchase price of the Unit Owners' respective Units.
2. Reporting of Energy Production. The Trustees shall read and report the renewable energy production from the Condominium's Renewable Energy System to the MTC's Production Tracking System ("PTS") on a monthly basis for a period of twenty (20) years commencing on the date on which Trustees first commence reporting to MTC, unless sooner excused in writing by MTC.
  - a. If the Renewable Energy System is equipped with an automated Data Acquisition System ("DAS"), the Trustees must utilize this system for reporting for the first five (5) years, maintaining a landline or a Voice Over Internet Phone system at the Project in order to do so. Thereafter the Trustees may elect to continue to use the DAS system at the Trust's own cost, or may elect to report the data manually, as provided in subsection b below. The Trustees shall be responsible for maintaining the DAS system in operating condition for the first five (5) years.
  - b. If the Renewable Energy System is not equipped with an automated DAS or, if it is, then after the first five years, the Trustees may read and report the monthly renewable energy production through visually reading the Renewable Energy System's production meter and then inputting the reading to MTC's PTS website.
3. Reporting of Utility Usage. For a period of two (2) years from the date hereof, the Trustees agree to provide DHCD with monthly information concerning energy and water usage in the Condominium. The Trustees will, and will cause the Unit Owners to, upon DHCD's written request, forward copies of invoices and bills evidencing such usage to DHCD. As to electricity usage at the Condominium, the Trustees may, as an alternative, give DHCD written consent to obtain such usage information directly from the electric utility company serving the Condominium.
4. Maintenance and Repair. The Trustees shall, for the period of twenty (20) years commencing on the date on which the Trustees first commence reporting to MTC under this Covenant, unless earlier released from such maintenance obligation in writing by MTC, maintain the Condominium's Renewable Energy System in good working order and condition such that the Condominium's Renewable Energy System produces energy in accordance with the Condominium's Renewable Energy System's approved design specifications. In the event that the Trustees determine, or are advised by MTC, that the Renewable Energy System is not or may not be functioning in accordance with such design specifications, the Trustees shall, as soon as practicable, investigate the cause of such malfunction and shall perform as Condominium common expenses all repairs and improvements, as necessary, to restore the Condominium's Renewable Energy System and to verify that such Renewable Energy System is operating in accordance with the approved design specifications. In the event that the Trustees fail to investigate and make such repairs within sixty (60) days after receipt of written notice from MTC, MTC may, upon reasonable prior notice and at MTC's own expense, enter the Condominium's

Common Areas and Facilities and make necessary repairs to the Renewable Energy System. Unless excused in writing by MTC, and regardless of whether MTC exercises its right to enter and make such repairs, the Trustees' failure to repair as provided herein shall be a default hereunder, subject to the Trustees' rights to cure provided in Section 10 below.

5. Access to Renewable Energy System. The Trustees shall allow representatives of DHCD and MTC access to the Project site and Condominium's Renewable Energy System, during normal business hours upon reasonable prior notice to the Trustees, to inspect, test and evaluate the condition of the Renewable Energy System, and, if necessary, to make repairs to the Renewable Energy System.
6. Assignment of RECs. The Trustees hereby assign to MTC all of the Condominium's right, title and interest in all Renewable Energy Certificates ("RECs") (and/or underlying generation attributes) produced by the installed Renewable Energy System supported by funds provided pursuant to the Program, and the Trustees agree to cooperate with MTC in taking all necessary steps to effectuate such assignment.
7. Repayment Obligation. Upon the occurrence of an Event of Default (as defined in Section 10 below), the MTC and/or DHCD shall have the right, by written notice to the Trustees, to require the Trustees to repay to DHCD the "unamortized portion" of the total Grant Amount. For purposes of this Covenant, the Grant Amount shall be amortized on a straight line basis over twenty years commencing on the date on which the Trustees first commence reporting to MTC pursuant to Section 2 above. The unamortized portion of the total Grant Amount to be repaid by the Trustees may, in the Trustees' discretion, be assessed to the Unit Owners as a Condominium common expense.
8. Term of Covenant. This Covenant shall be in effect from the date hereof through the earlier of (a) the twentieth (20<sup>th</sup>) anniversary of the date on which the Trustees first commence reporting to MTC pursuant to Section 2 above, or (b) the date on which such reporting is excused by MTC.
9. Enforceability of Covenant. This Covenant shall, to the fullest extent permitted by law, be binding upon the Developer, the Trustees and the Unit Owners and their respective successors and assigns only with respect to their respective periods of ownership of any interest in the Project or any unit, shall be for the exclusive benefit of DHCD and MTC, and shall be enforceable solely by DHCD or MTC, and their respective successors and assigns in either law or equity. Without limiting the foregoing, the Developer's obligations under this Covenant shall cease as of the date by which the Developer shall have sold all sixteen of the Condominium's units to Unit Owners unrelated to the Developer, and the Developer shall have no further obligations hereunder with respect to any matter first arising or occurring after such date.
10. Event of Default. It shall be an "Event of Default" under this Covenant if the Developer, the Trustees or any of the Unit Owners fails to perform any of its or their respective obligations, covenants, or agreements contained in this Covenant and such failure continues for thirty (30) days after written notice thereof from DHCD to the Developer,

the Trustees or any of the Unit Owners, as the case may be, provided, however, that if such default cannot be cured within said period of thirty (30) days by using all due diligence, then the Trustees shall have such additional reasonable period of time to cure such default as may be necessary, provided the Developer, Trustees or Unit Owner(s), as the case may be, shall have commenced to cure such default within said thirty day period, such cure shall have been diligently prosecuted by the Developer, Trustees or Unit Owner(s), as the case may be, thereafter to completion, and DHCD does not reasonably deem this Covenant jeopardized by such further delay.

11. Indemnification. To the fullest extent allowed by law, the Developer and the Trustees (and their respective officers, employees, servants, agents, designated volunteers, independent contractors, successors and assigns) shall indemnify, defend, and hold harmless DHCD and MTC (and each of their officers, employees, servants, agents, designated volunteers, independent contractors, successors and assigns) (collectively, the "Indemnified Parties") from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits and/or judgments caused by, arising out of, or relating to any act or failure to act of the Developer or the Trustees, but only arising or occurring during their respective periods of ownership of any interest in the Project, the Condominium, any units in the Condominium or the Declaration of Trust and relating to this Covenant, including, but not limited to, any damage to any public or private property, or any malfunction of equipment.
12. No Modification. No modification or waiver of any provision of this Covenant, nor consent to any departure by the Trustees therefrom shall in any event be effective unless the same shall be executed by MTC and DHCD in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. The Master Deed and Declaration of Trust shall be subject and subordinate to this Covenant and no provision of the Master Deed or Declaration of Trust that is inconsistent with the terms hereof or that purports to give the Trustees authority to modify or waive any provision hereof shall have any force or effect.

*[Balance of page intentionally left blank, signature pages to follow]*

IN WITNESS WHEREOF, the Developer has caused this Covenant to be executed, under seal, this 17<sup>th</sup> day of June, 2008.

DEVELOPER:

OXBOW PARTNERS LLC

By: [Signature]  
Name: Peter W. Smith  
Title: Manager

By: [Signature]  
Name: Kevin Maguire  
Title: Manager

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.,

June 17, 2008

Kevin Maguire  
Then personally appeared before me, the undersigned notary public, the above-named Peter W. Smith et al, the Managers of Ox Bow Partners LLC, proved to me through satisfactory evidence of identification, which was ~~a current driver's license~~ [a current U.S. passport] [my personal knowledge], to be the persons whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be ~~his~~ their free act and deed and the free act and deed of Ox Bow Partners LLC

[Signature]

Notary Public

My commission expires: 2/13/09



THOMAS G. SCHNORR  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires