

**REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT and DECLARATION OF RESTRICTIVE COVENANTS, is made this _____ day of _____, 1999, by and between _____ of _____, _____ of _____, MA, and its successors and assigns (hereinafter the "Developer"), _____ of _____, MA (the "Bank"), and the TOWN OF _____ (the "Municipality").

WHEREAS the Developer intends to construct a housing development known as _____ at _____, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project"); and

WHEREAS the Developer has been granted a Comprehensive Permit under Massachusetts General Law Chapter 40B and local regulations by the _____ Zoning Board of Appeals to construct _____, _____ of which will be sold to Low and Moderate Income Families; and

WHEREAS pursuant to the requirements of the Comprehensive Permit the Developer has obtained construction financing from the Bank through the Federal Home Loan Bank of Boston's New England Fund ("NEF") and has met the requirements of both the NEF and the Town of Barnstable's Guidelines for Developments financed by NEF (the "Guidelines").

NOW THEREFORE, in mutual consideration of the agreements and covenants contained herein, and other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, the parties agree as follows:

I. PROJECT SCOPE AND DESIGN

- A. The Project presently known as _____ located in _____ will consist of _____, _____ of which will be sold to eligible low and moderate income home buyers (the “Affordable Units” or the “Units”).
- B. The Developer agrees to construct the Project in accordance with Plans and Specification approved by the Municipality and the Bank. In addition, each Affordable Unit to be constructed as part of the Project must be indistinguishable from the market-rate units in the Project from the exterior, and must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hook-up, to be fully shown in the Plans and Specifications. Each Affordable Unit will contain either two bedrooms with a minimum area of 850 square feet or three or more bedrooms with a minimum area of 1200 square feet (four bedroom units must have a minimum area of 1400 square feet)
- C. The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit, the Project must also comply with all applicable local codes, ordinances, and by-laws.

- D. Each Affordable Unit must be affordable to and sold to households with a maximum income of 80% of Area Median Income (as defined by HUD), in accordance with the Comprehensive Permit and the Guidelines, to an Eligible Purchaser. An Eligible Purchaser is a purchaser who satisfies the criteria set forth in the Guidelines, as they now exist and may be amended the future.

- E. Upon issuance of a building permit for the Project, the Project will be submitted to the Massachusetts Department of Housing and Community Development (DHCD) for inclusion in the Subsidized Housing Inventory as that term is described in 760 CMR 31.04 (1).

II. RESALE RESTRICTIONS and COVENANTS OF PARTIES

A. DEED RIDER

1. The Deed Rider and any affordability criteria in this Agreement are covenants which run with the land in perpetuity.

2. At the time of sale of each Affordable Unit, and as a condition of the sale, the Developer and the Unit Purchaser shall execute a Deed Rider in the form of Exhibit B attached hereto and made a part of this Agreement. This Deed Rider shall be made a part of the deed from the Developer to the Unit Purchaser.

3. The Deed Rider shall require that at the time of the initial resale, and at all subsequent resales, a similar Deed Rider satisfactory in form and substance to the Municipality be

executed and attached and made part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Unit will be preserved in perpetuity.

4. The Deed Rider shall require the Unit owner at the time he/she desires to sell the Affordable Unit to notify the Municipality whereupon the Municipality, or its designate, will determine the Discounted Purchase Price by applying the Discount Rate, as defined below (under Affordability), to a current appraisal of the Affordable Unit.
5. Each Deed Rider shall also require the Unit Purchaser at the time he/she desires to sell the Unit to offer it to the Municipality at the Discounted Purchase Price. The Municipality or its delegate shall have the option, upon terms more particularly described in the Deed Rider, to either purchase the Affordable Unit or to find an Eligible Purchaser.

B. RESALE TO OTHER THAN ELIGIBLE PURCHASER

1. If upon the initial resale or any subsequent resale of an Affordable Unit the Municipality or its delegate are unable within one hundred twenty (120) days to find an Eligible Purchaser for the Unit and the Municipality elects not to exercise its right to purchase, the Municipality or its delegate must within thirty (30) days notify at least five (5) non-profits which may have an interest in purchasing the property, of the availability of the Unit. If within an additional thirty (30) days there is no non-profit willing to

purchase the Unit, the Unit Owner shall then have the right to sell to any person regardless of his/her income and at any price, free of any future Resale Restriction, provided that the difference between the actual resale price and the Discounted Purchase Price for which the Municipality or an Eligible Purchaser could have purchased the Unit (the “Windfall Amount”) shall be paid by the seller to the Municipality. The Municipality shall deposit all such Windfall Amounts from the sale of Affordable Units in the Municipality’s Low and Moderate Income Housing Fund.

C. PURCHASE BY MUNICIPALITY

1. In the event that the Municipality purchases an Affordable Unit pursuant to its right to do so contained in the Deed Rider then the Municipality shall within six (6) months of the date of registering the deed either (i) sell the Unit to an Eligible Purchaser at the same price for which it purchased the Unit plus any expenses incurred by the Municipality during this period of ownership, subject to a Deed Rider satisfactory in form and substance to the Municipality and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to the Municipality the method for selecting such Eligible Purchaser to be approved by the Monitoring Agent, or (ii) rent the Affordable Unit to a person who meets the income guidelines of the Local Initiative Program (LIP), upon terms and conditions satisfactory to the Monitoring Agent and otherwise in conformity with the requirements of the Guidelines.

2. If after purchasing the Affordable Unit the Municipality fails to sell or rent the Unit within the six (6) month period described above, or if at any time after the initial rental of the Affordable Unit by the Municipality as provided herein the Affordable Unit becomes vacant and remains vacant for more than ninety (90) days, the Unit shall be transferred to the Barnstable Housing Authority for inclusion in their rental housing program.

D. AFFORDABILITY

1. In accordance with the Deed Rider (Exhibit B), the Units must be sold to an Eligible Purchaser as defined by the Guidelines as the Guidelines now exist and may be amended in the future.
2. The maximum sales price for an Affordable Unit at subsequent resales will be determined by applying a Discount Rate, established at the initial sale, to the Unit's appraised value at the time of resale. This Discount Rate will be determined by the Municipality and will be applied to all subsequent resales. The Discount Rate is the percentage of the Unit's fair market value for which the Unit was actually sold. Fair market value for the purposes of calculating the Discount Rate will be determined by the Bank prior to the initial sale. The fair market value of the Affordable Unit at the time of resale will be determined by an appraisal performed by a licensed appraiser retained by the Seller.

E. SUBSIDIZED HOUSING INVENTORY

1. Each Unit will remain a Subsidized Housing Unit and continue to be included in the Subsidized Housing Inventory for as long as the following three conditions are met:
 - a) this Agreement remains in full force and effect and neither the Municipality nor the Developer are in default hereunder;
 - b) the Project and the Unit each continue to comply with this Agreement, and with the Guidelines as the same may be amended from time to time; and
 - c) either (i) a Deed Rider binding the then current owner of the Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Unit is either in compliance with the terms of the Deed Rider, or the Municipality or its delegate is in the process of taking such steps as may be required to enforce the then current owner's compliance with the terms of the Deed Rider, or (ii) the Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of this section.

III. DEVELOPER'S COVENANTS AND RESPONSIBILITIES

A. THE DEVELOPER HEREBY REPRESENTS, COVENANTS AND WARRANTS AS FOLLOWS:

1. The Developer
 - a) is a limited dividend organization meeting the criteria set out in *subsection E (below)*, duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State,
 - b) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and
 - c) has the full legal right, power and authority to execute and deliver this Agreement

2. The execution and performance of this Agreement by the Developer
 - a) 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 will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Project is bound, will not result in the creation or imposition of any prohibited encumbrance of any nature.

3. The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrance created pursuant to this Agreement, any loan relating to the Project the terms of which are approved by the Municipality, or other permitted encumbrances, including mortgages referred to below.

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

B. SALE OF UNITS

1. Except for sales of Units to home buyers as permitted by the terms of this Agreement, Developer will not sell, transfer, lease, exchange, mortgage, or otherwise encumber the Project without the prior written consent of the Municipality.

C. EMINENT DOMAIN OR DESTRUCTION OF PREMISES

1. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by home buyers or the Municipality should ownership be in that entity, the Developer agrees that

if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer will use its best efforts to repair and restore 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 the terms of this Agreement, subject to the approval of the Project's lenders, which lenders have been approved by the Municipality.

D. COMPLIANCE

1. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. The Municipality, or its designee shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement and with the Comprehensive Permit.

2. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privileges of estate are also deemed to be satisfied in full.

E. LIMITED DIVIDEND ORGANIZATION CRITERIA

1. The Developer agrees that Project development costs will be approved by the Municipality and Barnstable Housing Authority in its role as Monitor which approval shall not unreasonably be denied. The Developer further agrees that the aggregate profit from the Project net of related party expenses, including developer's fees, shall not exceed twenty percent (20%) of total development costs of the Project (the "Allowable Profit"). All profits from the Project in excess of the Allowable Profit (the "Excess Profit") shall be paid by the Developer to the Municipality to be deposited into the Municipality's Low and Moderate Income Housing Fund.
2. Upon issuance of final Certificates of Occupancy for all of the units, the Developer shall deliver to the Municipality and the Barnstable Housing Authority, in its role as Monitoring Agent, an itemized statement of total development costs together with a statement of gross income from the Project received by the Developer to date, in a form satisfactory to the Municipality (the "Certified Cost and Income Statement").
3. If all units at the Project have not been sold as of the date the Certified Cost and Income Statement is delivered to the Municipality, the Developer shall at least once every ninety (90) days thereafter until such time as all of the units are sold, deliver to the Municipality an updated Certified Cost and Income Statement.

4. For as long as the Developer complies with the requirements of this Section, the Developer shall be deemed to be a Limited Dividend Organization within the meaning of the Act.

IV. MUNICIPALITY COVENANTS AND RESPONSIBILITIES

- A. The Municipality agrees that all amounts constituting Excess Profit, Windfall Amount, or any amount paid to the Municipality by the Developer or the Unit Seller pursuant to the provisions of this Agreement shall be deposited in the Municipality's Affordable Housing Fund. This Affordable Housing Fund shall be an interest-bearing account used from time to time by the Municipality with approval of the Local Housing Partnership, for the purpose of reducing the cost of the Project's Affordable Units for Eligible Purchasers, and for the purposes of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Low to Moderate Income individuals and families elsewhere in the Municipality.
- B. The Municipality, and any delegate to which the Municipality might assign its rights and duties under this Agreement, agrees that it will use such means as provided in this Agreement and the attached Deed Rider to maintain the affordability of the Units, by means of exercising the right of first refusal, or by notifying, by means more fully described above, other non-profits of the availability of a Low to Moderate Income Unit. The Municipality further agrees that it or its delegate will continue to monitor the Units annually to ascertain

the status of the Unit's tenancy and compliance with all of the provisions of the Deed Restriction, and to offer to the Unit owner a referral for financial counseling or other such intervention when deemed appropriate.

V. MONITORING AGENT COVENANTS AND RESPONSIBILITIES

A. MONITORING AGENT

1. The Barnstable Housing Authority agrees to perform the duties of Monitoring Agent and to adhere to the responsibilities as defined in the Monitoring and Marketing Agreement entered between the Barnstable Housing Authority and the Developer (Exhibit C attached hereto and made a part hereof).

2. Within sixty (60) days after delivery by Developer to BHA of the Certified Cost and Income Statement (see Section III, subsection E, paragraph 2 above), BHA will submit to the Municipality its figures and analysis based upon the Statement (in a form agreed to by the Municipality).

VI. RECORDING OF AGREEMENT:

Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for Barnstable County or, if the Project consists in whole or in part of registered land, file this Agreement and any amendments hereto with the Registry District of the Barnstable Land Court (collectively hereinafter the "Registry of Deeds"), and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable,

the Developer shall immediately transmit to the Clearinghouse and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

VII. GOVERNING OF AGREEMENT:

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

VIII. NOTICE:

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

IX. HOLD HARMLESS:

The Developer hereby agrees to indemnify and hold harmless Municipality and/or its delegate from any and all actions or inactions by the Developer, its agents, servants or employees which result in claims made against Municipality and/or its delegate, including but not limited to awards, judgments, out-of-pocket expenses and attorney's fees necessitated by such actions.

X. ENTIRE UNDERSTANDING:

- A. This Agreement and its constituent Exhibits A, B and C, hereby made part of the Agreement, shall constitute the entire understanding between the parties and any amendments or changes hereto must be in writing, executed by the parties, and appended to this document.

- B. This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in MGLC 184, Section 31 and as that term is used in MGLC 184, Section 26, 31, 32, and 33. This Agreement is made for the benefit of DHCD, and DHCD shall be deemed to be the holder of the affordable housing restriction created by this Agreement. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest.

XI. TERM OF AGREEMENT

- 1. The term of this Agreement shall be perpetual.

XII. SUCCESSORS AND ASSIGNS:

- A. The Parties to this Agreement intend, declare, and covenant on behalf of themselves and any successors and assigns their rights and duties as defined in this Regulatory Agreement and the attached Monitoring and Marketing Agreement.

- B. The Developer intends, declares, and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the

term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns and inure to the benefit of the Municipality and its successors and assigns for the term of the Agreement.

XIII. DEFAULT:

If any default, violation or breach by the Developer of this Agreement is not cured to the satisfaction of the Monitoring Agent within thirty (30) days after notice to the Developer thereof, then the Monitoring Agent may send notification to the Municipality that the Developer is in violation of the terms and conditions hereof. The Municipality may exercise any remedy available to it. The Developer will pay all costs and expenses, including legal fees, incurred by the Monitoring Agent in enforcing this Agreement and the Developer hereby agrees that the Municipality and the Monitoring Agent will have a lien on the Project to secure payment of such costs and expenses. The Monitoring Agent may perfect such a lien on the Project by recording a certificate setting forth the amount of the costs and expense due and owing in the Registry of Deeds or the Registry of the District Land Court for Barnstable County. A purchaser of the Project or any portion thereof will be liable for the payment of any unpaid costs and expenses that were the subject of a perfected lien prior to the purchaser's acquisition of the Project or portion thereof.

XIV. MORTGAGEE CONSENT:

The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed a consent to this Agreement.

IN WITNESS WHEREOF, we hereunto set our hands and seals this__ day of____
____, 1999.

TOWN OF

BY:

THE DEVELOPER

BY: