

**Accessory old
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS**

THIS REGULATORY AGREEMENT and DECLARATION OF RESTRICTIVE COVENANTS, is made this _____ day of _____, 200_, by and between _____ of _____, MA, and its successors and assigns (hereinafter the "Owner"), and the TOWN OF BARNSTABLE (the "Municipality"), a political subdivision of the Commonwealth;

WHEREAS the Owner has been granted a Comprehensive Permit recorded herewith under Massachusetts General Law Chapter 40B and local regulations by the Zoning Board of Appeals to permit the creation of an accessory apartment in an owner occupied dwelling which will be rented to a Low or Moderate Income Person/ Family (hereinafter "Designated Affordable Unit"); and

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 terms of this Agreement and Covenant regulate the property located _____, as further described in Exhibit "A" hereto annexed.

B. The Project located at _____ will consist of one accessory apartment unit which will be rented to an eligible low or moderate income individual or family (the "Designated Affordable Unit" or the "Unit").

C. The Owner agrees to construct the Project in accordance with the terms of the comprehensive permit, Appeal No. _____ and any plans submitted therewith and all applicable state, federal and municipal laws and regulations. (A copy of the comprehensive permit is annexed hereto as Exhibit "B").

II. THE OWNER'S COVENANTS AND RESPONSIBILITIES:

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

- 1 In receiving the comprehensive permit to create the Designated Affordable unit, the Owner agreed that the Designated Affordable Unit shall be set aside in perpetuity for the public purpose of providing safe and decent housing to persons of low income (herein defined as 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and that the Designated Affordable Unit shall be deemed to be impressed with a public trust.
2. The Designated Affordable Unit shall be rented in perpetuity to a household with a maximum income of 80% of Area Median Income or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
3. The Designated Affordable Unit will be retained as permanent, year round rental dwelling units with at least one-year leases.
4. The Owner has the full legal right, power and authority to execute and deliver this Agreement.
5. The execution and performance of this Agreement by the Owner 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 Owner is a party or by which it or the Owner is bound, will not result in the creation or imposition of any prohibited encumbrance of any nature.
6. The Owner, at the time of execution and delivery of this Agreement, has good, clear record title to the premises.
7. 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 Agreement) or would materially adversely affect its financial condition.

B. COMPLIANCE

The Owner 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.

C. LIMITATION ON PROFITS

1. The Owner agrees to limit his/her profit by renting the Designated Affordable Unit in perpetuity to a household with a maximum income of 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

2. The Owner shall deliver to the Municipality and to the Monitoring Agent, as designated by the Town Manager, on or before _____ of each year, proof that the Designated Affordable Unit is rented, the tenant's income verification, a copy of the lease agreement and the rent charged for the unit or units. Such information shall also be forwarded to the Monitoring Agent within 30 days of the occupation of the dwelling unit or units by a new tenant. The Owner shall notify the Monitoring Agent, as designated by the Town Manager, within thirty (30) days of the date that a tenant has vacated the Designated Affordable Unit.

IV. MUNICIPALITY COVENANTS AND RESPONSIBILITIES

1. The MUNICIPALITY, through the monitoring agent designated by the Town Manager agrees to perform the duties of verifying that the Designated Affordable Unit is being rented in perpetuity to a household with a maximum income of 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and that rent (including utilities) shall not exceed the rents established by the

Department of Housing and Urban Development (HUD) for a household whose income is 80% of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

V. RECORDING OF AGREEMENT:

Upon execution, the OWNER or municipality 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 Owner shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Owner shall immediately transmit to the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

VI 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 Owner hereby agrees to indemnify and hold harmless Municipality and/or its delegate from any and all actions or inactions by the Owner, 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 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 for the public purpose of providing safe affordable housing and shall be deemed to be, and by these presents are, granted by the Owner to run in perpetuity in favor of and be held by the Municipality as any other permanent restriction held by a governmental body as that term is used in MGLC 184, Section 26 which shall run with the land described in Exhibit "A" hereto annexed and shall be binding upon the Owner and all successors in title . This Agreement is made for the benefit of the Municipality and the Municipality shall be deemed to be the holder of the restriction created by this Agreement. The Municipality has determined that the acquiring of such a restriction is in the public interest. The Municipality shall not be subject to the defense of lack of privity of estate. The covenants and restrictions contained in this Agreement shall be deemed to affect the title to the property described in Exhibit "A".

XI. TERM OF AGREEMENT:

The term of this Agreement shall be perpetual, provided, however, that the Owner of a Designated Affordable Unit may voluntarily cancel the granted Comprehensive Permit and the terms and restrictions imposed herein. Such cancellation shall only take effect after: 1) expiration of the lease terms entered into between the Owner and Tenant occupying said unit and 2) notification by the Owner of said dwelling to the Zoning Board of Appeals of his/her desire to cancel the Comprehensive permit upon a date certain and the recording of said notice at the Barnstable County Registry of Deeds or Barnstable County Registry of the Land Court as the case may be, thus rendering said Comprehensive Permit void. Upon the cancellation of the comprehensive permit, the property which is the subject matter of this restrictive covenant shall revert to the use permitted under zoning and the restrictive covenant shall be rendered void.

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 comprehensive permit.

B. The Owner 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 Owner's successors in title, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner, 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 Owner of 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 may send notification to the Municipality that the Owner is in violation of the terms and conditions hereof. The Municipality may exercise any remedy available to it. The Owner will pay all costs and expenses, including legal fees, incurred by the Monitoring Agent in enforcing this Agreement and the Owner 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 Owner 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 _____, 200_.

TOWN OF BARNSTABLE

BY:

Signature

Printed:

OWNER

BY:

—

Signature

Printed: _____

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COMMONWEALTH OF MASSACHUSETTS

County of Barnstable, ss:

_____, 2001

Then personally appeared the above-named _____, Town Manager for the Town of Barnstable and acknowledged the foregoing instrument to be his/her free act and deed, before me.

Notary Public

Printed: _____

My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable, ss:

_____, 2001.

Then personally appeared the above-named _____, as OWNER and acknowledged the foregoing instrument to be his/her free act and deed, before me.

Notary Public

Printed: _____

My Commission Expires: _____