

3/12/07 (18)

Christine Joyce

From: John Murray
Sent: Friday, March 09, 2007 3:28 PM
To: Christine Joyce
Cc: Manager Department
Subject: FW: Acton/40B - Blanchard

From: Daniel C. Hill [mailto:dhill@AndersonKreiger.com]
Sent: Friday, March 09, 2007 3:26 PM
To: Don Johnson
Cc: John Murray; Steven Graham; Garry Rhodes; Stephen Anderson
Subject: Acton/40B - Blanchard

Don:

Attached is Regulatory Agreement for the Board of Selectmen's review and execution in the above matter. This form has been reviewed and approved by us, the applicant's counsel, and by DHCD. A cover letter is also attached. This is the same form that we used for the Davis Place project.

Please let me know if you have any questions.

Regards, Dan

Daniel C. Hill, Esq.
Anderson & Kreiger, LLP
One Canal Park, Suite 200
Cambridge, MA 02141
Direct Dial: 617-621-6523
Direct Fax: 617-621-6623
Main number: 617-621-6500
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ANDERSON & KREIGER LLP

Daniel C. Hill
dhill@andersonkreiger.com
617-621-6523

March 9, 2007

BY ELECTRONIC MAIL

Mr. Don Johnson
Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Re: Blanchard Place Comprehensive Permit Project

Dear Don:

Enclosed for the Board of Selectmen's review and execution is a Regulatory Agreement, governing the developer's affordable housing and limited dividend obligations for the above-referenced comprehensive permit project.

As you know, this project was permitted by the Zoning Board of Appeals with the endorsement of the Board of Selectmen under the Department of Housing and Community Development's Local Initiative Program ("LIP"). The Regulatory Agreement and the Deed Rider attached thereto reflect changes that we made to DHCD's standard forms to strengthen the Town's enforcement authority.

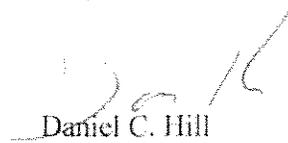
Please note that the execution of the Regulatory Agreement must be notarized on page 10, but need only be signed by the chairman of the Board on page 9, authorized by vote of the full Board. DHCD requires that the Agreement be executed in triplicate, and that a copy of the minutes from the meeting of the Board of Selectmen, evidencing that the Board authorized the chairman to sign the Regulatory Agreement.

Once these documents have been fully executed, you should return the Regulatory Agreement and minutes from the meeting to the developer's attorney, Steve Graham, who will then arrange for its execution by DHCD and recording at the Registry of Deeds. You should also ask Attorney Graham to return Registry-stamped copies of all recorded documents to the Town, with a copy to me.

Mr. Don Johnson
March 9, 2007
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If you have any questions, please contact me.

Very truly yours,



Daniel C. Hill

DCH/ld
Enclosures
cc: Garry Rhodes (by email and mail)
Steve Graham, Esq.

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LOCAL INITIATIVE PROGRAM
REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FOR
OWNERSHIP PROJECT

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this _____ day of _____, 2007, by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to Chapter 204 of the Acts of 1996, the City/Town of Acton ("the Municipality"), and Blanchard Place, LLC a Massachusetts corporation/limited partnership, having an address at 411 Mass. Ave., Suite 304, Acton, Massachusetts., and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 45.00 (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Project Sponsor intends to construct a housing development known as Blanchard Place at a 2.9 acre site on Prospect Street/Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number 12 condominium units/detached dwellings (the "Units") and $\frac{3}{4}$ of the Units will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the "Low and Moderate Income Units");

WHEREAS, the Chief Elected Official of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to DHCD to certify that the Project is a valid Comprehensive Permit Project (as that term is defined in the Regulations) within the LIP Program and therefore that the Project Sponsor is qualified to apply to the Municipality's Board of Appeals (as that term is defined in the Regulations) for a comprehensive permit pursuant to the Act (the "Comprehensive Permit"), or have made application to DHCD to certify that the units in the Project are Local Initiative Units (as that term is defined in the Regulations) with the LIP Program; and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

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, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows (the provisions in brackets apply only to Comprehensive Permit Projects):

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality and DHCD (the "Plans and Specifications") [and in accordance with all terms and conditions of the Comprehensive Permit]. In addition, all Low and Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the LIP Guidelines for Communities ("Guidelines")), and must contain complete living facilities including but not

limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

- _____ of the Low and Moderate Income Units shall be one bedroom units;
- _____ 1 _____ of the Low and Moderate Income Units shall be two bedroom units;
- _____ 2 _____ of the Low and Moderate Income Units shall be three bedroom units; and,
- _____ of the Low and Moderate Income Units shall be four bedroom units.

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

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

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.

Each Low and Moderate Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development. A "Family" shall mean two or more persons who will live regularly in the Low or Moderate Income 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. The "Area" is defined as the Boston-Cambridge-Quincy, MA-NH MSA MSA/PMSA/Non-Metropolitan County.

2. Upon issuance of a building permit for the project, the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 31.04(1). Only Low and Moderate Income Units will be counted as Subsidized Housing Units for the purposes of the Act.

3. (a) At the time of sale of each Low and Moderate Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low and Moderate Income Unit to execute an Affordable Housing Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the "Deed Rider"). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low and Moderate Income Unit to offer the Low and Moderate Income Unit to the Municipality and to DHCD at a discounted purchase price more particularly described therein. The Municipality and DHCD shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low and Moderate Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low and Moderate Income unit will be preserved each time that subsequent resales of the Low and Moderate Income unit occur. (The various requirements and restrictions regarding resale of a Low and Moderate Income Unit contained in the Deed Rider are hereinafter referred to as the ("Resale Restrictions"). If upon the initial resale or any subsequent resale of a Low and Moderate Income Unit, the Municipality and DHCD are unable to find an Eligible Purchaser for

the Low and Moderate Income Unit, and the Municipality and DHCD each elect not to exercise its right to purchase the Low and Moderate Income Unit, then the then current owner of the Low and Moderate Income Unit shall have the right to sell the Low and Moderate Income Unit to any person, regardless of his income (an "Ineligible Purchaser") at the Maximum Resale Price and subject to all rights and restrictions contained in the Deed Rider, and provided that the Unit is conveyed subject to a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low and Moderate Income Unit which will be attached and made part of the deed from the Unit Purchaser to the Ineligible Purchaser. The Municipality agrees that in the event that it purchases a Low and Moderate Income Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Low and Moderate Income Unit, that the Municipality shall within six (6) months of its acceptance of a deed of such Low and Moderate Income Unit, either (i) sell the Low and Moderate Income Unit to an Eligible Purchaser at the same price for which it purchased the Low and Moderate Income Unit plus any expenses incurred by the Municipality during its period of ownership, such expenses to be approved by DHCD, subject to a Deed Rider satisfactory in form and substance to DHCD and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to DHCD, the method for selecting such Eligible Purchaser to be approved by DHCD or (ii) rent the Low and Moderate Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to DHCD and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low and Moderate income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low and Moderate Income Unit by the Municipality as provided herein the Low and Moderate Income Unit becomes vacant and remains vacant for more than ninety (90) days, then such Low and Moderate Income Unit shall cease to be counted as a Subsidized Housing Unit, and shall no longer be included in the Subsidized Housing Inventory.

(b) Each Low and Moderate Income 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: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor are in default hereunder; (2) the Project and Low and Moderate Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low and Moderate Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low and Moderate Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by DHCD to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low and Moderate Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low and Moderate Income Unit is owned by DHCD.

4. Project Sponsor agrees that the aggregate profit from the Project which shall be payable to Project Sponsor or to the partners, shareholders or other owners of Project Sponsor or the Project shall not exceed twenty percent (20%) of total development costs of the project, which development costs have been approved by the Municipality and by DHCD (the "Allowable Profit"). Upon issuance of a final Certificate of Occupancy for the Project or upon the issuance of final Certificates of Occupancy for all of the Units, the Project Sponsor shall deliver to the Municipality and to DHCD an itemized statement of total development costs together with a statement of gross income from the Project received by the Project Sponsor to date in form satisfactory to the Municipality and DHCD (the "Certified Cost and Income Statement") prepared and certified by a certified public accountant satisfactory to the Municipality and to DHCD. 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 and to DHCD, the Project sponsor shall at least once every ninety (90) days thereafter until such time as all of the Units are sold, deliver to the Municipality and to DHCD an updated Certified Cost and Income Statement. The Project Sponsor shall provide any back-up and supporting documentation, including, but not limited to, cancelled checks, invoices, receipts, and financial statements, reasonably requested by the Municipality or DHCD for all Project costs and income sources. All Project-related transactions between the Project Sponsor and its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners, shareholders, managers, or other owners, or to the relatives of the same ("Related Party Transactions") resulting in Project costs or income must be disclosed in the Cost and Income Statement, and documentation must be provided identifying, where applicable,

what portion of costs were paid to non-related third parties (e.g., subcontractors) and what portion were retained by Related Parties. The Project Sponsor agrees that the Municipality, acting by and through its Board of Selectmen or its designee, shall have the power to enforce the profit limitation provisions of this Agreement. All notices and reports required to be submitted under this Agreement to DHCD shall be submitted simultaneously to the Municipality. The Project Sponsor shall pay a monitoring services fee of \$5,000 to the Municipality to cover its expenses in reviewing the Project's Sponsor's compliance under this Agreement. All profits from the Project in excess of the Allowable Profit (the "Excess Profit") shall be paid by the Project Sponsor to the Municipality. The Municipality agrees that all amounts constituting Excess profit shall be deposited in the Affordable Housing Fund (as hereinafter defined). For so long as the Project Sponsor complies with the requirements of this Section 4, the Project Sponsor shall be deemed to be a limited dividend organization within the meaning of the Act.

5. The Municipality agrees that upon the receipt by the Municipality of any Windfall Amount [Excess Profit.] or any amount paid to the Municipality pursuant to the provisions of, Section 3 of the Deed Rider (the "Additional Windfall Amounts"), the Municipality shall deposit any and all such Windfall Amounts, [Excess Profit.] or Additional Windfall Amounts into an interest bearing account established with an institutional lender approved by DHCD (the "Affordable Housing Fund"). Sums from the Affordable Housing Fund shall be expended from time to time by the Municipality for the purpose of reducing the cost of Low and Moderate Income Units to Eligible purchasers upon resale or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for persons and families of low and moderate income elsewhere in the Municipality. The expenditure of funds from the Affordable Housing Fund shall be made only with the approval of DHCD, such approval not to be unreasonably withheld.

6. Prior to marketing or otherwise making available for sale any of the Units, the Project Sponsor must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the buyer selection process for the Low and Moderate Income Units and must set forth a plan for affirmative marketing of Low and Moderate Income Units to minority households as more particularly described in the Regulations and Guidelines. At the option of the Municipality, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Elected Official of the Municipality (as that term is defined in the Regulations) which states that the buyer selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and 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 *N.A.A.C.P., Boston Chapter v. Kemp*. **If the Project is located in the Boston Standard Metropolitan Statistical Area, the Project Sponsor must list all Low and Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, P.O. Box 5996, Boston, MA 02114-5996 (617-635-3321).** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low and Moderate Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

7. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, or any other basis prohibited by law in the selection of buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

8. (a) The Project Sponsor 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. DHCD and the Chief Elected official of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) [If the Comprehensive Permit is granted by the Housing Appeals Committee (as defined in the Act) the Chief Elected Official shall reconfirm his support for the Project in a manner satisfactory to DHCD at the time the Comprehensive Permit is granted.]

(c) Throughout the term of this Agreement, the Chief Elected Official shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low and Moderate Income Units which have been resold during the year have been resold in compliance with all of the terms and provisions of the Deed Rider then in effect with respect to each such Low and Moderate Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low and Moderate Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low and Moderate Income Unit.

9. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located 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 Land Court for the County where the Project is located (collectively hereinafter the "Registry of Deeds"), and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor 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 Agreement.

10. The Project Sponsor hereby represents, covenants and warrants as follows:

- (a) The Project Sponsor (i) is a limited liability company duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (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 Agreement.
- (b) The execution and performance of this Agreement by the Project Sponsor (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 Project Sponsor 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 Project Sponsor 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 encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred in paragraph 19, below).

- (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 Project Sponsor, 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.

11. Except for sales of Units to home buyers as permitted by the terms of this Agreement, Project Sponsor will not sell, transfer, lease, exchange or mortgage the Project without the prior written consent of DHCD and the Municipality.

12. 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 a condominium association or trust not controlled by the Project Sponsor, (or if the Project consists of detached dwellings, by homebuyers) Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor 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 DHCD and the Municipality.

13. 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.

14. 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:

DHCD: Department of Housing and Community Development
Attention: Local Initiative Program Director
100 Cambridge St., Suite 300
Boston, MA 02114

Municipality:
Town of Acton
c/o Board of Selectmen
Acton Town Hall
472 Main Street
Acton, MA 01720

Project Sponsor:
Blanchard Place, LLC
411 Mass. Ave., Suite 304
Acton, MA 01720

15. (a) 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 G.L. c. 184, § 31 and as that term is used in G.L. c. 184, § 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. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 3 hereof, or (b) the Project is acquired by foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives DHCD and the Municipality not less than sixty (60) days prior written notice of the mortgagee's intention to foreclose upon the Project or to accept an instrument in lieu of foreclosure, or (c) [if a Comprehensive Permit is not granted to the Project Sponsor for the Project by either the Municipality's Board of Appeals (as that term is defined in the Regulations) or by the housing Appeals Committee (as that term is used in the Act) within a period of eighteen months from the date of execution of this Agreement, or] (d) [if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect to such revocation have expired]. If this Agreement terminates because of a foreclosure or the acceptance of an instrument in lieu of foreclosure as set forth in clause (b) of this paragraph, the Municipality agrees that if at the time of such termination there is one or more Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions or there is one or more Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 3 hereof, the Municipality shall enter into a new Regulatory Agreement with DHCD with respect to such Low and Moderate Income Units which shall be satisfactory in form and substance to DHCD.

(b) The Project Sponsor 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 Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and its successors and assigns for the term of the Agreement. Project Sponsor 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 privity of estate are also deemed to be satisfied in full.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low and Moderate Income Units at the Project pursuant to the requirements of this Agreement shall also constitute 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. Such Resale Restrictions shall be for the benefit of both DHCD and the Municipality and both DHCD and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of DHCD by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low and Moderate Income Units of the Project as required by the provisions of G.L. c. 184, § 32.

16. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD or the Municipality which DHCD or the Municipality shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement. In the event of serious or repeated violations of the substantive or reporting requirements of this Agreement or a failure by the Project Sponsor to take appropriate actions to cure a default under this Agreement, the Municipality and/or DHCD shall have the right to take appropriate enforcement action against the Project Sponsor, including, without limitation, legal action to compel the Project Sponsor to comply with the requirements of this Agreement. The Project Sponsor shall pay the fees and expenses (including legal fees) of the Municipality and/or DHCD in the event enforcement action is taken against the Project Sponsor under this Agreement and grants to the Municipality and DHCD a lien on the Project, junior to the lien securing a first mortgage to an institutional lender, to secure payment of such fees and expenses.

17. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 18, then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed Low and Moderate Income Housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

18. The Project Sponsor 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 the Consent to Regulatory Agreement attached hereto and made a part hereof.

Executed as a sealed instrument as of the date first above written.

Project Sponsor

BLANCHARD PLACE, LLC

By: _____
J. James D'Agostine, III
its Manager

Department of Housing and
Community Development

By: _____
its Director

Municipality

By: _____
its _____
(Chief Elected Official)

LSEFD-ra

Attachments: Exhibit A - Legal Property Description
Exhibit B - Prices & Location of Low & Moderate Income Units
Exhibit C - Form of Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this Regulatory Agreement must be attached to this Regulatory Agreement.

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.

g:\docstact\49b-blanchard\mlip-ownership-ra-fannie Mae (2.13.07).doc

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss. _____, 2007

On this _____ day of _____, 2006, before me, the undersigned notary public, personally appeared J. James D'Agostine, III, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as Manager of the Blanchard Place, LLC [Project Sponsor], and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss. _____, 200__

On this _____ day of _____, 20__ , before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, 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 OF Middlesex, ss. _____, 200__

On this _____ day of _____, 20__ , before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the City/Town of Acton, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

CONSENT TO REGULATORY AGREEMENT

Re: Blanchard Place
(Project name)
Acton
(City/Town)
Blanchard Place, LLC
(Project Sponsor)

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book _____, Page _____, hereby consents to the execution and recording of this Agreement and to the terms and conditions hereof.

(name of lender)

By: _____

its _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200__

On this _____ day of _____, 20__ , before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of _____ Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

(If the Project has more than one mortgagee, add additional consent forms. Execution of the consent form by a mortgagee is only necessary if the mortgage has been recorded prior to the Regulatory Agreement.)

EXHIBIT A

Re: Blanchard Place
(Project Name)
Acton
(City/Town)
Blanchard Place, LLC
(Project Sponsor)

Property Description

The land in Acton, Middlesex County, Massachusetts, with the buildings thereon, as situated on the easterly side of Prospect Street, and being shown as Lot 1 on a plan entitled, "Blanchard Place, A Proposed Comprehensive Permit Project in Acton, Massachusetts, Record Plan. Prepared for Blanchard Place, LLC by Foresite Engineering Associates, Inc.," dated February 7, 2006, last revised 7/31/06, and recorded with Middlesex South District Registry of Deeds as Plan 227 of 2007, which lot is bounded and described as follows:

Beginning at the most southerly corner of said Lot 1 on the easterly side of Prospect Street at a concrete bound at land now or formerly of Congregation Beth Elohim;

Thence running Northwesterly $08^{\circ} 49' 34''$ East thirty-eight and $28/100$ (38.28) feet by the easterly side of Prospect Street;

Thence running Northerly fifty-three and $00/100$ (53.00) feet by the easterly side of Prospect Street;

Thence running North $82^{\circ} 29' 00''$ East thirty-three and $00/100$ (33.00) feet by the land now or formerly of Town of Acton;

Thence running North $03^{\circ} 00' 00''$ West thirty-three and $00/100$ (33.00) feet by the land of said Town of Acton;

Thence running South $82^{\circ} 29' 00''$ West thirty-three and $00/100$ (33.00) feet by the land of said Town of Acton;

Thence running North $03^{\circ} 50' 00''$ West seventy-eight and $40/100$ (78.40) feet to a proposed concrete bound by the easterly side of Prospect Street;

Thence running North $82^{\circ} 51' 34''$ East forty-nine and $44/100$ (49.44) feet by land now or formerly of Sean T. and Marcia A. Towey to a drill hole;

Thence running North $73^{\circ} 00' 59''$ East eighty-three and $67/100$ (83.67) feet by the land of said Towey to a drill hole;

Thence running North $77^{\circ} 32' 22''$ East two hundred thirty-three and $93/100$ (233.93) feet by the land of said Towey;