

I. REGULATORY AGREEMENT AND AFFORDABLE HOUSING COVENANT

This Regulatory Agreement and Affordable Housing Covenant (the "Agreement") made this ___ day of _____, 2006 by _____, a _____ corporation, having an office address of _____ (the "Developer") and **The Town of Acton**, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting by and through its _____ with its offices at 472 Main Street, Acton, Massachusetts 01720 (the "Town").

BACKGROUND:

A. Developer proposes to construct a 296-unit rental development with related amenities and improvements initially to be known as "_____" (the "Development") on an approximately 35 acre- site more particularly described on Exhibit A attached hereto (the "Property"). The Development is also proposed to include 84 units in the Town of Westford. The Westford component of the Development is not governed or affected by this Agreement.

B. Developer received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals for the Town pursuant to M.G.L. Chapter 40B, §§20-23, authorizing the Development. The Comprehensive Permit was filed with the Acton Town Clerk on December 20, 2005 and was recorded with the Middlesex (S.D.) Registry of Deeds (the "Registry of Deeds") in Book _____, Page _____.

C. The Comprehensive Permit contains certain provisions with respect to the "low or moderate income" housing to be included as part of the Development..

D. Construction and/or permanent financing for the Development will be obtained from the Massachusetts Development Agency or another qualified subsidizing agency (the "Subsidizing Agency"). As a component of such financing, Developer will be entering into a separate Regulatory Agreement and other agreements with respect to the Development which, inter alia, will set forth certain restrictions as to low or moderate income housing to be provided as part of the Development as the same may be hereafter extended or amended (the "Subsidizing Agency Agreements").

NOW THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the Town hereby agree and covenant as follows:

1. To the maximum extent permitted by law, throughout the term of this Agreement, Developer shall reserve, as "low or moderate income housing" as that term is defined in M.G.L. c. 40B, §20, [**twenty percent (20%) / twenty five percent (25%)**] of the units in the Development. The units reserved for low or moderate income housing are sometimes referred to in this Development as the "Affordable Units."

2. For so long as the Subsidizing Agency Agreements are in effect, the Affordable Units shall be rented at rentals which are not greater than the maximum rentals permitted under the Subsidizing Agency Agreements (the “Maximum Rentals”). After the expiration of the MassDevelopment Agreements, but for so long as this Agreement is in effect, the Affordable Units shall continue to be rented at no greater than the Maximum Rentals, all as though the Subsidizing Agency Agreements were still in force and effect in accordance with the applicable regulations adopted by the Subsidizing Agency (or its successor agency), as the same may be amended from time to time, and any policy regulations promulgated thereunder with respect to rental projects in which the affordable units are restricted to tenants earning no more than **[fifty percent (50%) / eighty percent (80%)]** of the applicable area median income. If the Subsidizing Agency (or its successor agency) ceases to promulgate any such regulations, then the Maximum Rentals shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by Developer, in order to ensure the continued availability of the Affordable Units for the purposes specified herein and in the Comprehensive Permit for the entire term of this Agreement. In no event, however, shall the Maximum Rentals be less than those calculated in accordance with the Subsidizing Agency’s regulations or procedures as last in effect.

3. The Developer covenants, agrees and warrants that the Development will remain in compliance with all applicable federal and state health, safety, building, sanitary, environmental laws, codes, rules and regulations, including, without limitation, laws relating to the operation of housing for the disabled. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development shall comply with all similar local by-laws.

4. During the period (hereinafter, the “Subsidy Period”) that (i) the Subsidizing Agency Agreements are in force and effect and (ii) the Subsidizing Agency (or another entity selected by the Subsidizing Agency) is monitoring the compliance of the Development with respect to the provision of Affordable Units, the Developer shall provide a copy to the Town Administrator of any certifications made by the Developer to the Subsidizing Agency relative to the Developer’s compliance with the requirements to provide the Affordable Units and the Maximum Rentals. After the Subsidy Period, the Developer shall provide such annual certifications directly to the Town and the Town Monitoring Agent (as hereinafter defined) in substantially the form last used by the Subsidizing Agency during the Subsidy Period.

5. During the MassDevelopment Period, MassDevelopment shall have exclusive authority and jurisdiction for all monitoring and oversight functions with respect to the Affordable Units, including, without limitation, provision of the Affordable Units, monitoring eligibility for tenancy and calculation of affordable rentals.

From and after the MassDevelopment Period, the Town shall have the right to monitor the Developer’s compliance with its obligation to provide the Affordable Units in accordance with the terms of this Agreement and the Comprehensive Permit. The Town shall retain a monitoring agent (the “Town Monitoring Agent”), the identity of which shall be reasonably acceptable to the Developer, to monitor the compliance of the Development with the

requirements contained in this Agreement and the Comprehensive Permit that (i) the Developer is providing the Affordable Units, and (ii) that the Affordable Units are being rented for no more than the Maximum Rentals. The Developer shall be responsible for all fees due to the Monitoring Agent. The Town shall have no responsibility for payment of any fee to Monitoring Agent hereunder. It is expressly understood and agreed that there will be no limitation on distributions after the Subsidy Period.

6. In accordance with the terms of the Comprehensive Permit, to the maximum extent permitted by law and by the requirements of the Subsidizing Agency, households having an Acton Connection (as such term is defined in the Comprehensive Permit shall have first preference for the rental of 70% of the Affordable Unit, all in accordance with the terms of Condition R.4(b) of the Comprehensive Permit.

7. This Agreement shall be fully subject and subordinate to the Subsidizing Agency Agreements and the terms and conditions thereof while the Subsidizing Agency Agreements remain in effect, all as though this Agreement were recorded after the recording of all of the Subsidizing Agency Agreements. In the event of any conflict or inconsistency between the terms hereof and the terms of the Subsidizing Agency Agreements, and provided that such conflict is not inconsistent with the basic intent of this Agreement to preserve the Affordable Units as “low or moderate income housing” for the entire term hereof, the terms of the MassDevelopment Agreements shall control. The execution and recording of this Agreement and the Subsidizing Agency Regulatory Agreement shall satisfy in full the requirements of the Comprehensive Permit relative to the requirement for a Regulatory Agreement for the Development. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Comprehensive Permit, the terms of this Agreement shall control.

8. 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.

9. 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 addressee set forth below, or to such other place as a party may from time to time designate by written notice:

To Developer:

With copies to:

and

To Town:

Town of Acton
Town Hall
472 Main Street
Acton, Massachusetts 01720
Attn: _____

With a copy to:

Stephen D. Anderson, Esq.
Anderson & Krieger LLP
43 Thorndike Street
Cambridge, Massachusetts 02141

10. 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 the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created by this Agreement. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall remain for so long as the Development exists on the Property.

11. Developer intends, declares and covenants on behalf of itself and its successors and assigns, and the parties hereto agree (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Development for the term of this Agreement, and are binding upon Developer's successors in title, (ii) are not merely personal covenants of Developer, and (iii) shall bind Developer, its successors and assigns for the term of the Agreement, and shall inure to the benefit of the parties hereto and their respective successors and assigns. 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. Developer shall cause this Agreement to be recorded in the Registry of Deeds (or, if the Property consists of registered land, to be filed in the Middlesex (S.D.) Registry District of the Land Court). Developer shall pay all fees and charges incurred in connection with such recording or filing.

12. Subject to the provisions of Section 5 above restricting the Town's right to enforce any provisions of this Agreement relative to the Affordable Units while the Subsidizing Agency Agreements are in effect, if any default, violation or breach by Developer is not cured within thirty (30) days after notice to Developer thereof (or such longer period of time as is reasonably necessary to cure such a default so long as Developer is diligently and continuously prosecuting such a cure), then the Town may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require Developer to perform its obligations under this Agreement; or (b) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Developer under this Agreement. In no event shall the Developer ever be liable to the Town for any monetary damages for any alleged breach or default under this Agreement.

13. Recognizing that each party may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, either party on the request of the other party made from time to time, will promptly furnish to the requesting party a statement of the status of any matter pertaining to this Agreement, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Agreement.

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

DEVELOPER:

By: _____
Its
Hereunto duly authorized

TOWN:

TOWN OF ACTON

By: _____
Its
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss

On this _____ day of _____, 2006 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 _____, a _____ corporation, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX ,ss.

On this _____ day of _____, 2006 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 Chairman of the Board of Selectmen for the Town of Acton, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires