

Name: _____ (MAP)
MassHousing No. _____
FHA No. _____

MASSHOUSING REGULATORY AGREEMENT

This MASSHOUSING REGULATORY AGREEMENT (this "**Agreement**"), dated as of _____, 20__, is made by and between MASSACHUSETTS HOUSING FINANCE AGENCY, a body politic and corporate, organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts, as amended (the "**Enabling Act**"), having an address of One Beacon Street, Boston, Massachusetts 02108 ("**MassHousing**"), and _____, a Massachusetts _____, having an address _____ (the "**Owner**").

RECITALS

WHEREAS, Owner is the owner of the property located at _____ (the "**Development**"), as more particularly described on Exhibit A attached hereto;

WHEREAS, the Owner is indebted to MassHousing pursuant to a certain Note (Multistate) in the original principal amount of \$_____ (the "**Mortgage Note**"), which Mortgage Note is secured by a certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (the "**Mortgage**") encumbering the Development, from Owner, as mortgagor, to MassHousing, as mortgagee.

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

1. SUBORDINATION TO HUD REGULATORY AGREEMENT. This Agreement shall be subject and subordinate to the U.S. Department of Housing and Urban Development Regulatory Agreement for Multifamily Projects entered into by Owner and United States Department of Housing and Urban Development ("**HUD**"), dated as of the date hereof and recorded herewith (the "**HUD Regulatory Agreement**") and, notwithstanding the priority of recording, the HUD Regulatory Agreement shall be deemed to have been recorded prior to the recording hereof. For the avoidance of

[Development Address]

doubt, the parties hereto expressly acknowledge and agree that, in the event that any of the covenants, terms, and conditions of this Agreement directly conflict with those of the HUD Regulatory Agreement, the covenants, terms, and conditions of the HUD Regulatory Agreement shall control and prevail.

2. USE OF DEVELOPMENT; RENTALS AND RENTS; HAP CONTRACT.

(a) Owner shall rent _____ (___) residential apartments (“**Affordable Units**”) in the Development to low-income persons or families (“**Low-Income Persons or Families**”) as set forth in the Disposition Agreement between Owner and MassHousing, dated as of the date hereof and recorded herewith (the “**Disposition Agreement**”), upon the terms and conditions set forth in the Disposition Agreement and this Agreement. In fulfilling the foregoing requirement, Owner will accept referrals of tenants from the public housing authority in the city or town in which the Development is located and will not unreasonably refuse occupancy to any prospective tenant so referred. Rentals in the Development shall be established and subject to change, in accordance with the terms and provisions of MassHousing’s Enabling Act, MassHousing’s Rental Determination Regulations, the Disposition Agreement, this Agreement, and any other state or federal housing subsidy program providing rental or other subsidy to the Development (such other programs, “**Housing Subsidy Programs**”). Owner shall not, without prior written approval of MassHousing, change the type or number of Affordable Units or permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by MassHousing. Owner shall obtain income certifications (in a form reasonably satisfactory to MassHousing) at least every two (2) years for all tenants who are Low-Income Persons or Families or more frequently if required by any applicable Housing Subsidy Program; these income certifications shall be retained by or on behalf of Owner and available to MassHousing upon request. The foregoing provisions shall not relieve Owner of any other obligations it may have under any applicable Housing Subsidy Program.

(b) *[If Section 8 with MHFA Contract Administration; otherwise replace with “Intentionally Omitted.”]* _____ (_____) units within the Development are assisted by a project-based Section 8 Housing Assistance Payments Contract under which MassHousing acts as contract administrator (the “**HAP Contract**”). Upon expiration of the HAP Contract, Owner will extend the HAP Contract for the longest term and the maximum number of units permitted by HUD, and Owner will continue to request and, if made available accept, extensions or renewals of such HAP Contract with respect to such units so long as such assistance is made available upon terms that are the same as, or more advantageous than, the terms under which such assistance is provided to the Development as of the date hereof.

3. TENANT SELECTION AND OCCUPANCY.

(a) Owner will use its best efforts to maintain the Development at full occupancy, consistent with Owner's compliance with applicable Housing Subsidy Programs and other legal restrictions affecting the Development. Owner will comply with the Tenant Selection Plan prepared by Owner and approved by MassHousing, as modified with the approval of MassHousing. Owner's approved Tenant Selection Plan is incorporated herein by reference with the same force and effect as if set out in this Agreement.

(b) Occupancy agreements for the Affordable Units will be in a form approved by MassHousing or HUD, subject to any requirements of any applicable Housing Subsidy Program, and, unless otherwise approved by MassHousing, will contain clauses, among others, wherein each adult resident of an Affordable Unit:

- (1) certifies the accuracy of the statements made in the application and income survey;
- (2) agrees that the family income, family composition and other eligibility requirements, are substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Owner or MassHousing; and that his or her failure or refusal to comply with a request for information with respect thereto will be a violation of a substantial obligation of his or her occupancy; and
- (3) agrees that at such time as Owner or MassHousing may direct, he or she will furnish to Owner certification of then current family income, with supporting documentation as MassHousing reasonably requires; and agrees to such charges as MassHousing has previously approved for any facilities and/or services that may be furnished by Owner or others to the resident upon his or her request, in addition to the facilities and services, if any, included in the rentals for such Affordable Units.

4. LIMITED DIVIDENDS.

(a) In order to satisfy the Enabling Act requirements regarding limited distributions, this Section 4 applies to the distribution ("**Distribution**") of any amounts to Owner or its affiliates (including, without limitation, partners, managers and members of Owner), which Distributions may be made after Owner has, in each fiscal year: (1) made all payments required to be made under the Mortgage and Mortgage Note; (2) paid, or adequately reserved for, all reasonable and necessary expenses of the Development; (3) deposited all amounts required to be deposited in any required replacement reserve for the Development; and (4) satisfied any operating expense loans made by the partners, managers or members of Owner for Development

expenses, which project expense loans shall have received the prior written approval of MassHousing.

(b) Distributions may be made (1) only at the end of Owner's fiscal year; and (2) only once all of the due and payable obligations of the Development described in Section 4(a) above have been paid, as evidenced by a certificate provided by an independent accountant indicating that no such obligations are more than thirty (30) days past due. Distributions cannot be derived or made from borrowed funds or from the sale of capital assets unless permitted by HUD under the HUD Regulatory Agreement and authorized in advance in writing by MassHousing.

Notwithstanding clause (1) above, if Owner is permitted under the HUD Regulatory Agreement and the Program Obligations (as defined therein) to calculate Surplus Cash (as defined therein) as of the last day of the sixth month of its fiscal year and to receive a distribution with respect thereto, Owner may elect, upon prior written notice to MassHousing, to receive a Distribution at such time as well as at the end of Owner's fiscal year, provided that (x) such Distribution must otherwise comply with this Section 4 (with Section 4(a) interpreted as referring to such sixth-month fiscal period) and (y) if the amount of such Distribution exceeds the amount permitted for such fiscal year under Section 4(d), based on Owner's audited financial statements for such year, Owner must return any excess received to the appropriate Development account. For the avoidance of doubt, the annual amount permitted to be Distributed with respect to any fiscal year is limited to the amount set forth in Section 4(d), whether made pursuant to one Distribution or two Distributions.

(c) No Distributions may be made (1) when an event of default has occurred and is continuing under this Agreement or the Mortgage; (2) when there has been failure to comply with MassHousing's notice of any reasonable requirement for proper maintenance of the Development; or (3) when there is outstanding against all or any part of the Development any lien or security interest on Development assets other than a lien expressly permitted under this Agreement or the Mortgage. In an event of default under this Agreement, MassHousing may apply any amounts available for distribution to the payment of any obligations under this Agreement.

(d) Subject to the provisions set forth above, Distributions may be made to Owner and its affiliates, provided that no Distribution (or Distributions, in aggregate) for any fiscal year may exceed ten percent (10%) of Owner's equity in the Development ("**Borrower's Equity**"), which Borrower's Equity is determined initially to be \$_____. The ten percent (10%) standard will apply throughout the term hereof, except that if MassHousing establishes a higher rate at a later date as permitted by the Enabling Act, Owner may increase its equity distribution to the then-permitted rate of distribution, subject to conditions established by MassHousing with respect thereto. Owner is allowed to adjust the amount of Borrower's Equity as provided by the Enabling Act and under MassHousing's Equity Policy as in effect as of the date hereof (or, at Owner's election, under any Equity Policy subsequently established by MassHousing). In the event that amounts available for Distribution in a fiscal year exceed the

Distributions permitted for such fiscal year pursuant to this Section 4(d), the excess amount may be applied by Owner to pay, without interest, the amount by which Distributions made in any of the three (3) preceding fiscal years were less than the amount permitted to be paid under this Section 4(d) hereof for such fiscal year (a “**Look-Back Distribution**”), subject to the provisions of Sections 4(a)-(c) above.

(e) After Owner has made its Distribution (including, for the avoidance of doubt, any Look-Back Distribution) under Section 4(d) above, any amounts remaining available for distribution that may not be distributed in such year pursuant to the provisions of this Section 4 (“**Annual Excess Revenues**”) shall be deposited in an interest-bearing account established by MassHousing hereunder pursuant to Section 6(c) of the Enabling Act (the “**Excess Revenues Account**”) and maintained by MassHousing in trust for the benefit of the Development. No amounts may be released from the Excess Revenues Account without the prior written consent of MassHousing. MassHousing agrees it will not unreasonably withhold or delay its consent to the release of any amounts held therein, upon the written request of Owner, to be applied to the following purposes: (1) providing a direct and material benefit to tenants who are Low-Income Persons or Families, (2) reducing rental to tenants who are Low-Income Persons or Families, (3) any purposes for which the replacement reserve held for the Development may be used and for which other funds are not available, (4) extending the affordability of the Development, or (5) providing relocation and transitional assistance to Low-Income Persons or Families upon the prepayment or maturity of the loan evidenced and secured by the Mortgage Note. Upon the payment in full of such loan, any balance remaining in the Excess Revenues Account shall be applied for the benefit of the Low-Income Persons or Families at the Development in a manner reasonably acceptable to Owner and MassHousing.

(f) Owner will comply with the provisions of any applicable Housing Subsidy Program with respect to the application of rents, including the creation and maintenance of “excess rental” or similar accounts. The provisions of this Section 4 shall be subject to the requirements of any such Housing Subsidy Program and the provisions of any applicable MassHousing regulations with respect thereto.

5. REPLACEMENT RESERVE.

(a) Owner has established and will continue to maintain a reserve fund for replacements as required under the HUD Regulatory Agreement.

(b) If during the Term of this Agreement, the HUD Regulatory Agreement is no longer in effect, the Owner will continue to maintain the replacement reserve in an escrow account controlled by MassHousing (as it exists at such time, the “**MH Replacement Reserve**”), with any additional deposit and monthly funding amounts as agreed to by Owner and MassHousing at such time based on a capital needs assessment for the Development (which shall be completed at Owner’s expense). The monthly funding amounts for the MH Replacement Reserve shall increase by three

percent (3%) each year, and MassHousing may further adjust the MH Replacement Reserve amount from time to time and otherwise in compliance with the Enabling Act. Disbursements from the MH Replacement Reserve will be made in accordance with MassHousing's procedures for disbursement of funds from replacement reserve accounts.

6. MANAGEMENT OF THE DEVELOPMENT.

(a) Owner will maintain the Development in good physical and financial condition in accordance with the requirements and standards of MassHousing and of any applicable Housing Subsidy Program. Owner will provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multifamily rental housing.

(b) Owner will ensure that any management agreement for the Development contains the following provision: "This Management Agreement is subject to termination by MassHousing, upon ninety (90) days' written notice to HUD and Owner, if (1) the management agent fails to use its reasonable best efforts to rent the Affordable Units to Low-Income Persons and Families (as set forth in the MassHousing Regulatory Agreement and Disposition Agreement, and in accordance with the procedures set forth in the Tenant Selection Plan), or (2) the Development is not kept in a decent, safe and sanitary condition, unless (in either instance) before the expiration of such 90-day period, either (a) the Owner demonstrates that the problems identified in MassHousing's notice have been cured or (b) HUD directs MassHousing not to so terminate or commences action to bring about cure. MassHousing is an intended third-party beneficiary of this provision and shall be entitled to enforce it at law or in equity."

7. ANNUAL FINANCIAL REPORT. Owner will supplement the annual financial statement of Owner relating to the Development that is provided to MassHousing under Section 15(d) of the Mortgage with simultaneous submission to MassHousing of the following: (a) an audited report of the calculation of the amount available for Distribution under Section 4 above, and (b) Owner's written approval of the annual financial statement submitted to MassHousing under Section 15(d) of the Mortgage and of the supplemental report required under this Section 7, such approvals to be provided in a form reasonably required by MassHousing.

8. REQUIRED DATA COLLECTION INFORMATION. In compliance with regulations promulgated by the Department of Housing and Community Development ("DHCD") pursuant to Chapter 334 of the Acts of 2006, as the same may be amended from time to time (familarly known as the "Assisted Housing Data Collection Act"), and all applicable DHCD guidelines and directives with respect thereto, as the same may be amended from time to time, Owner will submit to DHCD annually, in the format and by the applicable deadline reflected therein, all data relating to the Development required to be reported to DHCD thereunder.

9 NO DISCRIMINATION.

(a) There shall be no discrimination upon the basis of race, color, religion, sex, national origin, genetic information, ancestry, sexual orientation, age, familial status, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or physical or mental disability in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development. If Owner has entered into an Equal Opportunity Contract for Occupancy and Minority Business Development with MassHousing, Owner and its management company shall comply with Owner's obligations under such contract.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, genetic information, ancestry, sexual orientation, age, familial status, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or physical or mental disability, and providing for nondiscrimination and equal opportunity in housing. Failure or refusal to comply with any such provisions shall be a proper basis for MassHousing to take any corrective action it may deem necessary.

(c) Owner will take reasonable steps to ensure that persons with limited English proficiency have meaningful access to the Development's programs and services (including application for occupancy). In furtherance of this requirement, Owner will develop and maintain a Language Access Plan in accordance with HUD guidelines ("Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons," published at 72 Fed. Reg. 2732 (January 22, 2007), as the same may be supplemented, amended or otherwise modified from time to time).

(d) Owner has modified, or will modify as soon as reasonably practicable, at least one (1) unit to meet the accessible unit standards of the Americans with Disabilities Act and the Massachusetts Architectural Access Board.

10. NOTICES. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, addressed as follows:

If to Owner: _____

Attn: _____

with copies by regular mail or hand delivery to:

Attn: _____

If to MassHousing: Massachusetts Housing Finance Agency
One Beacon Street
Boston, Massachusetts 02108
Attention: General Counsel

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

11. DMH/DDS. Owner will set aside three percent (3%) of all subsidized units, pro-rated among low-income and moderate units as applicable, for residents referred by the Department of Mental Health (DMH) and/or the Department of Developmental Services (DDS) according to the Interagency Agreement on Massachusetts Housing Finance Agency Set-Asides (Parity Agreement) between DMH and DDS. All such referrals must pass the usual management screening and comply with any eligibility requirements under the Tenant Selection Plan approved for the Development by MassHousing. In return, DMH and DDS have agreed to offer any services necessary to maintain acceptable tenancies and to offer alternative housing should such tenancies fail, as more specifically set forth in the MassHousing/DMH/DDS/EOHHS Set-Aside Agreement. Should MassHousing determine that DMH or DDS has failed to meet its obligations, MassHousing will suspend or terminate the obligations imposed with respect to the Development under this Section 11.

12. TERM. This Agreement shall bind, and the benefits shall inure to, respectively, Owner and its successors and assigns, and MassHousing and its successors and assigns, until the date on which the Mortgage is discharged (the period from the date of this Agreement to the date on which the Mortgage is discharged, the “Term”). Upon expiration of the Term, this Agreement, and the rights and obligations of MassHousing

and Owner under this Agreement, shall automatically terminate without the need of either party executing any additional document.

13. REMEDIES; LIMITED LIABILITY.

(a) Upon Owner's breach of any representation, warranty, covenant or agreement in this Agreement, MassHousing may pursue any available legal or equitable remedy against Owner notwithstanding the availability of any other remedy. As MassHousing has required Owner to enter into this Agreement due to MassHousing's public purpose of providing affordable housing, Owner agrees that specific performance is an appropriate remedy for violations of this Agreement and Owner agrees and stipulates that any violation of this Agreement will cause irreparable harm to MassHousing for which a remedy at law, including damages, shall not be adequate, such that MassHousing shall be entitled to injunctive relief without having to post a bond.

(b) The execution of this Agreement shall impose no personal liability upon Owner or the parties listed in the Section 50 Addendum to the HUD Regulatory Agreement, and in the event of a default hereunder, MassHousing shall look solely to the Mortgaged Property (as defined in the Mortgage) in satisfaction of such default and will not seek or obtain any deficiency or personal judgment against Owner or those parties listed in the Section 50 Addendum to the HUD Regulatory Agreement.

14. MISCELLANEOUS CONTRACT PROVISIONS.

(a) This Agreement may not be modified or amended except with the written consent of MassHousing or its successors and assigns and Owner or its successors and assigns.

(b) Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth in this Agreement and supersede any other requirements in conflict therewith. The provisions of this Section 14(b) do not apply to the HUD Regulatory Agreement or to the "Program Obligations" as defined therein.

(c) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(d) Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

(e) This Agreement may be executed in any number of counterparts, each to be an original, but all of which shall constitute one and the same instrument, and it shall be sufficient if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

[Remainder of page intentionally left blank. Signature pages follow.]

OWNER SIGNATURE PAGE TO REGULATORY AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Regulatory Agreement as an instrument under seal as of the date set forth above.

OWNER:

_____, a
Massachusetts

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.
_____, 20__

Then personally appeared the above-named _____,
_____ of _____, proved to me
through satisfactory evidence of identification, being: [] a driver's license or other state
or federal governmental document bearing a photographic image, [] the oath or
affirmation of a credible witness known to me who knows the above signatory, or [] my
own personal knowledge of the identity of the signatory, to be the person whose name
is signed on the preceding or attached document, and acknowledged to me that he/she
signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity,
before me

Notary Public
My Commission Expires:

Attachments:
Exhibit A – Legal Description

MASSHOUSING SIGNATURE PAGE TO REGULATORY AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Regulatory Agreement as an instrument under seal as of the date set forth above.

MASSHOUSING:

MASSACHUSETTS HOUSING FINANCE AGENCY

By: _____
Karen E. Kelleher, General Counsel

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.
_____, 20__

Then personally appeared the above-named Karen E. Kelleher, General Counsel of the Massachusetts Housing Finance Agency, proved to me through satisfactory evidence of identification, being: [] a driver's license or other state or federal governmental document bearing a photographic image, [] the oath or affirmation of a credible witness known to me who knows the above signatory, or [] my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

Notary Public
My Commission Expires:

Attachments:
Exhibit A – Legal Description

EXHIBIT A

Legal Description