

DRAFT – FOR DISCUSSION

**INCLUSIONARY HOUSING PLAN
THE RESIDENCES AT RIVERSIDE**

The Station at Riverside is the redevelopment of a portion of the existing Massachusetts Bay Transportation Authority (MBTA) parking lot at the Riverside Station into a vibrant, transit-oriented mixed-use development including office, residential, retail and community uses. The Residences at Riverside (the “Project”) comprises the residential component of the redevelopment. The Project will include 290 apartments with related leasing and amenity spaces for the residents, approximately 5,000 square feet of retail, associated parking and related site improvements.

Consistent with the City of Newton’s goals, the Project has been designed such that 15% of the total units will be designated as affordable in accordance with the Newton Inclusionary Housing Ordinance Section 30-24(f) (the "Ordinance"). Criterion at Riverside, LLC (the “Developer”), an affiliate of BH Normandy Riverside, LLC, has prepared this Inclusionary Housing Plan, which sets forth information concerning the inclusionary housing units to be included in the Project. The enclosed materials¹ include:

- Exhibit 1. Description of the Inclusionary Units including:
 - a. Overview of the Project
 - b. Project unit mix
 - c. Outline of construction specifications and summary of amenities
 - d. Building floorplans indicating the locations of the Inclusionary Units (plans attached separately)

- Exhibit 2. Proposed Marketing and Resident Selection Plan

- Exhibit 3. Draft form of Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project Local Action Units

- Exhibit 4. City of Newton Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing

The Developer has agreed that pursuant to Section 30-24(f) (8) (c) and (d) of the Newton Inclusionary Housing Ordinance, prior to marketing the inclusionary housing units, the Developer will enter into an agreement with the Newton Planning and Development Department to use the listing of “Eligible Households” provided by the Newton Housing Authority, to the extent permitted by law, and to develop a supplemental list of “Eligible Households” that will be eligible to rent the inclusionary housing units.

The Developer has agreed that per Section 30-24(f) (8) (e) of the Ordinance, the project will be subject to a covenant to be recorded with the Middlesex South District Registry of Deeds that limits the rental of all

¹ All materials provided are in draft form and subject to review by the City of Newton as well as subject to change pending project review. Final materials will be submitted as part of the final Local Initiative Program Regulatory Agreement and Local Initiative Program Application for Local Action Units.

designated inclusionary housing units certified as Local Action Units under the DHCD LIP. The form of the covenant of the inclusionary housing units shall be the LIP Regulatory Agreement for Rental Developments, as approved by the City Solicitor, a draft of which is attached hereto as Exhibit 3, with such modifications as may be approved by the City Solicitor and the Developer. In the event of a conflict between this Plan and the Regulatory Agreement, the Regulatory Agreement shall control.

Per Section 30-24 (f)(8)(g), the Developer agrees to submit, on an annual basis, a Compliance Report certifying compliance with the provisions of this Plan and Section 30-24(f).

The Developer understands that the City intends to qualify inclusionary housing units developed under this Project for the Massachusetts Department of Housing and Community Development (DHCD) Subsidized Housing Inventory under the Local Initiatives Program (LIP). The LIP Guidelines, dated February 22, 2008, are attached hereto and made a part of this Plan (the "LIP Guidelines"). In the event of a conflict between the Newton Guidelines and this Housing Plan and LIP Guidelines, the Developer agrees to work with the City in good faith to revise this Housing Plan and to finalize the number of units in the Project and the number of units for which LIP qualification is sought, prior to filing with DHCD.

Exhibit 1

Description of the Inclusionary Units

A. Overview of the Project

The Proponent is committed to providing 15% of the total number of residential units at the Project as affordable units to households earning less than 80% of the area median income. As currently designed, the Project will have up to 290 units². Assuming 290 units are constructed, 44 units will be made available to eligible households in accordance with the Newton Inclusionary Housing Ordinance.

B. Project unit mix³

Unit Type	Beds/Unit	Unit SF	Affordable	Affordable Average Size	Market Rate	Market Rate Average Size	Total Units
S1	1	622	3		13		16
S2	1	680	0		2		2
Total Studios			3	622	15	630	18
A1	1	753	11		30		41
A2	1	730	13		23		36
A3	1	872	0		46		46
A4	1	777	0		32		32
A5	1	709	0		2		2
Total One Bedrooms			24	741	133	795	157
B1	2	1,193	11		29		40
B2	2	1,186	0		16		16
B3	2	1,100	3		5		8
B4	2	1,101	0		35		35
B5	2	1,143	1		3		4
Total Two Bedrooms			15	1171	88	1148	103
C1	3	1,350	2		10		12
Total Three Bedrooms			2	1350	10	1350	12
Grand Totals			44		246		290
Total Habitable Space			39,905		229,757		269,662

² Note that the floor plans include one additional unit to be used as a permanent two bedroom model apartment, only.

³ Unit mix and affordable distribution is subject to change, but will be in full compliance with the Newton Inclusionary Housing Ordinance.

Rental rates will be calculated prior to project occupancy based on market conditions. For the inclusionary housing units, in accordance with Section 30-24(1)(b)(i), rent (including a utility allowance) will not exceed 30% of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom. By way of example only, the table below shows a calculation of potential rental rates for inclusionary housing units in 2012 for studios, one, two and three bedroom units:

Unit Type	Household Size	Annual Income of Eligible Household 2012 at 80% AMI	Monthly Income of Eligible Household- 2010 at 80% AMI	Maximum Rental Rate (30% of Monthly Income of Eligible Household - including utility allowance)
Studio	1	\$45,100	\$3,758	\$1,128
One Bedroom	1.5	\$48,325	\$4,027	\$1,208
Two Bedroom	3	\$58,000	\$4,833	\$1,450
Three Bedroom	4.5	\$67,680	\$5,640	\$1,692

The inclusionary units will be rented such that the mean income of households in the inclusionary units, as of lease commencement, does not exceed 65% of the area median income (adjusted for household size) as provided in Section 30-24 (f)(1)(v) of the Ordinance.

C. Outline of construction specifications and summary of amenities

Construction of all inclusionary units will be fully built out prior to their occupancy. Inclusionary units will be dispersed throughout the Project and sited in no less desirable locations than the market rate units. The exteriors of all inclusionary units will be indistinguishable in design and of equivalent materials to the exteriors of the market rate units in the Project. In addition, the inclusionary units will meet the following criteria:

The materials used and the quality of construction, including heating, ventilation, and air conditioning systems, will be equivalent to the market rate units in the development. However, in accordance with Section 30-24(f)(6)(c), the Developer reserves the right to include certain amenities, including without limitation so-called designer or high end appliances and fixtures in the market rate units only.

The specific amenities and product finish specifications for the inclusionary and market rate units have not yet been finalized. As the Project design is finalized, specific amenities and product finish specifications for the inclusionary units will be submitted to the Planning and Development Department for review.

D. Floorplans indicating the locations of the Inclusionary Units

In accordance with Section 30-24 (f)(6), inclusionary housing units will be dispersed throughout the development and sited in no less desirable locations than the market rate units. All Inclusionary Housing Units will contain, at a minimum, the larger of 60% of the floor area of the corollary market rate unit or minimum square footages as set forth in the Ordinance and the DHCD regulations. None of the Inclusionary Housing Units will contain more than 2,000 square feet of habitable space.

Residences at Riverside
Inclusionary Unit
Distribution

08.24.12



- Key:
- Studio
 - One Bed
 - Two Bed
 - Three Bed

Level 1



- Key:
- Studio
 - One Bed
 - Two Bed
 - Three Bed

Level 2



- Key:
- Studio
 - One Bed
 - Two Bed
 - Three Bed

Level 3



- Key:
- Studio
 - One Bed
 - Two Bed
 - Three Bed

Level 4

Exhibit 2**Marketing and Resident Selection Plan**

Criterion at Riverside, LLC (the “Developer”) or its designee will act as the Project’s lottery agent (the “Lottery Agent”) and the City of Newton or its designee will act as the monitoring agent. Lottery and Monitoring Agents shall utilize the City of Newton’s *Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing* (“Newton Fair Housing Guidelines”), a copy of which is attached as Exhibit 4, and incorporated herein. Implementation of the Tenant Selection Plan is based on two fundamental principles: Equal Opportunity and Due Process.

EQUAL OPPORTUNITY

The Lottery Agent will not discriminate against applicants on the basis of race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance, or the requirement of such programs. The Lottery Agent will maintain a non-discriminatory hiring policy for employees.

DUE PROCESSTraining

All persons involved with the processing of housing applications for the inclusionary units will receive training in the observation of and compliance with Executive Order 11063, Massachusetts General Laws 1518, the Civil Rights Act of 1964, and Title VI. The purpose of the training is to ensure that all employees enforce the policy of non-discrimination and fair housing.

Documentation

All information used to evaluate applicants for the inclusionary units will be in writing. This includes application forms, verifications, credit checks, letters of support, interview notes, etc. All applications, advertisements and management materials will include equal opportunity language and the fair housing logo.

Appeals

Rejected applicants will receive written notification containing the reasons for their rejections and may appeal, in writing, to the Lottery Agent within five days of receiving the rejection notice. All rejection notices will contain phone numbers for complaints to the Massachusetts Commission against Discrimination and the U.S. Department of Housing and Urban Development.

Once an appeal is requested in writing to the Lottery Agent, a hearing will be scheduled to occur within ten (10) days. The hearing will be conducted by a member of the Lottery Agent who has not participated in the selection decision. All new information presented by the applicant must be in writing and be otherwise verifiable. The hearing officer’s decision will be rendered in writing within ten (10) days of the conclusion of the hearing and will be final.

ELIGIBILITYIncome

As set forth in the City of Newton's Inclusionary Housing Ordinance for rental units, the inclusionary units will be made available to applicants with a household income that is no greater than eighty percent (80%) of the area median income for the Boston metropolitan statistical area published by the U.S. Department of Housing and Urban Development (HUD), as adjusted for household size (the "Area Median Income"). Inclusionary Units will be rented such that the mean income of Eligible Households living in the Project is no more than 65% of the area median income as described above. Income shall be determined as defined in the LIP Guidelines.

Household/Apartment Size

The bedroom mix for Inclusionary Units will be equal to the bedroom mix of the market rate units. Applicants will be eligible for units appropriate to the size of their household. Households must have at least one (1) person per bedroom and no more than two (2) persons per bedroom.

PRIORITY HOUSING NEEDS CATEGORIES

In addition to the minimum eligibility requirements above, a lottery system will be used to select renters. To the extent permitted by law, this selection process will be governed by the City's Newton Fair Housing Guidelines. Notwithstanding the foregoing, in the event there are insufficient potential renters meeting the local preference criteria (as established in the Local Preference Policy) wishing to rent the Local Preference Units, the Local Preference Units shall become General Preference Units. The Developer agrees to use a listing of Eligible Households provided by the Newton Housing Authority. Further, in the event there are insufficient potential renters meeting the eligibility criteria to rent the inclusionary housing units after two (2) rounds of Lottery, then the units may be rented to market-rate households, but will revert to Inclusionary Units once vacated by the market-rate tenant.

APPLICATIONS AND MARKETING

The Inclusionary Housing Units shall be marketed and offered for rental in accordance with the LIP Guidelines and the Newton Fair Housing Guidelines. In the event of a conflict between the Newton Fair Housing Guidelines and the LIP Guidelines, the LIP Guidelines shall control. In all events, the marketing and rental of the Inclusionary Housing Units shall be further subject to the provisions of applicable law.

ANNUAL COMPLIANCE REPORT

Per Section 30-24 (f)(8)(g), the Developer agrees to submit, on an annual basis, a Compliance report on compliance with the provisions of this Plan and Section 30-24(f).

LOCAL INITIATIVE PROGRAM

**REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FOR
RENTAL PROJECT
Local Action Units**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this _____ day of _____, 20__ by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the City/Town of _____ ("the Municipality"), and _____, a Massachusetts [corporation/limited partnership/limited liability company], having an address at _____, and its successors and assigns ("Developer").

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 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP") and *Comprehensive Permit Guidelines: M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory* have been issued thereunder (the "Guidelines");

WHEREAS, the Developer intends to construct a rental housing development known as at a ___ acre site on _____ 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 of _____ rental dwellings (the "Units") and _____ of the Units will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Low and Moderate Income Units");

WHEREAS, the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Developer have made application to DHCD to certify that the units in the Project are Local Action Units (as that term is defined in the Guidelines) within 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 Developer hereby agree and covenant as follows:

1. Construction. The Developer agrees to construct the Project in accordance with plans and specifications approved by the Municipality and DHCD (the "Plans and Specifications"). 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 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;
 _____ of the Low and Moderate Income Units shall be two bedroom units;
 _____ 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:

studio units	-	250 square feet
one bedroom units	-	700 square feet
two bedroom units	-	900 square feet
three bedroom units	-	1200 square feet
four bedroom units	-	1400 square feet

During the term of this Agreement, the Developer covenants, agrees, and warrants that the Project and each Low and Moderate Income Unit will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must comply with all similar local codes, ordinances, and by-laws.

2. Affordability. (a) Throughout the term of this Agreement, each Low and Moderate Income Unit will be rented for no more than the rental rates set forth herein to an Eligible Tenant. An Eligible Tenant 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 ("HUD"). A "Family" shall mean two or more persons who will live regularly in the Low and 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 _____ MSA/HMFA/Non-Metropolitan County.

(b) The monthly rents charged to tenants of Low and Moderate Income Units shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a Family whose gross income equals eighty percent (80%) of the median income for the Area, with adjustment for the number of bedrooms in the Unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a Low and Moderate Income Unit under this clause, the Developer shall include an allowance for any utilities and services (excluding telephone) to be paid by the resident. Annual income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD. The initial maximum monthly rents and utility allowances for the Low and Moderate Income Units are set forth in Exhibit B attached hereto.

Annually as part of the annual report required under Subsection 2(e) below, the Developer shall submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Low and Moderate Income Units in the Project. Such schedule shall be subject to the approval of the Municipality and DHCD for compliance with the requirements of this Section. Rents for Low and Moderate Income Units shall not be increased without the Municipality’s and DHCD’s prior approval of either (i) a specific request by Developer for a rent increase or (ii) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days’ prior written notice by Developer to all affected tenants.

(c) If, after initial occupancy, the income of a tenant of a Low and Moderate Income Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) the Developer rents the next available unit at the Development as a Low and Moderate Income Unit in conformance with Section 2(a) of this Agreement, or otherwise demonstrates compliance with Section 2(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in a Low and Moderate Income Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(e) Throughout the term of this Agreement, the Developer shall annually determine whether the tenant of each Low and Moderate Income Unit remains an Eligible Tenant. This determination shall be reviewed by the Municipality and certified to DHCD as provided in section 2(g), below.

(f) The Developer shall enter into a written lease with each tenant of a Low and Moderate Income Unit which shall be for a minimum period of one year and which provides that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease.

(g) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be Low and Moderate Income Unit as provided in sections 2 (a) and(c), above; and that the Project and the Low and Moderate Income Units have been maintained in a manner consistent with the Regulations and Guidelines and this Agreement.

3. Subsidized Housing Inventory. (a) The Project will be included in the Subsidized Housing Inventory upon the occurrence of one of the events described in 760 CMR 56.03(2). **[If 25% or more of the Units are Low and Moderate Income Units add: All of the Units] [If less than 25% of the Units are Low and Moderate Income Units add: Only Low and Moderate Income Units]** will be deemed low and moderate income housing to be included in the Subsidized Housing Inventory.

(b) Units included in the Subsidized Housing Inventory will continue to be included in the Subsidized Housing Inventory in accordance with 760 CMR 56.03(2) 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 Developer are in default hereunder; (2) the Project and each of the Low and Moderate Income Units continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) each Low and Moderate Income Unit remains a Low and Moderate Income Unit as provided in section 2(c), above.

4. Marketing. Prior to marketing or otherwise making available for rental any of the Units, the Developer 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 tenant selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, 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 Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant 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 NAACP, Boston Chapter v. Kemp. **If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Developer must list all Low and Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity**

Clearing Center), at Boston City Hall, Fair Housing Commission, Suite 966, One City Hall Plaza, Boston, MA 02201 (671-635-3321). All costs of carrying out the Marketing Plan shall be paid by the Developer. A failure to comply with the Marketing Plan by the Developer or by the Municipality shall be deemed to be a default of this Agreement. The Developer agrees to maintain for five years following the initial rental of the last Low and Moderate Income Unit and for five years following all future rentals, a record of all newspaper advertisements, 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 Developer or the Municipality. The Developer 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 Developer, 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 Developer or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

5. Non-discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, sexual orientation, familial status, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of tenants; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

6. Inspection. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement.

7. Recording. Upon execution, the Developer 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 Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer 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.

8. Representations. The Developer hereby represents, covenants and warrants as follows:

- (a) The Developer (i) is a _____ 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 Developer (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 Developer 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 Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to 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 to in paragraph 17, 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 Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

9. Transfer Restrictions.

- (a) The Developer shall provide DHCD and the Municipality with thirty (30) days' prior written notice of the following:
 - (i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or
 - (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

For purposes hereof, the term “Beneficial Interest” shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

(b) Prior to any transfer of ownership of the Project or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that transferee will assume in full the Developer's obligations and duties under this Agreement.

10. Casualty; Demolition; Change of Use (a) The Developer represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer (subject to the approval of the lender(s) which has provided financing) 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 this Agreement.

(b) The Developer shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental Unit for any purpose other than rental housing during the term of the Agreement unless required by law.

11. Governing Law. 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.

12. Notices. 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 Street, 3rd Floor
 Boston, MA 02114

Municipality:

Developer:

13. Term. (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, the rental restrictions, and other requirements provided herein shall be perpetual.

(b) The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns and enure to the benefit of DHCD and the Municipality and their successors and assigns for the term of the Agreement. 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 privity of estate are also deemed to be satisfied in full.

14. Senior Lender Foreclosure. (a) Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Project by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Project in lieu of foreclosure, and provided that the holder of such mortgage has given the Municipality and DHCD not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Project in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action and the Municipality or DHCD has failed within such sixty (60) days to locate a purchaser for the Project who is capable of operating the Project for the uses permitted under this Agreement and who is reasonably acceptable to such mortgage holder, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Project or to any purchaser of the Project from such mortgage holder, and the Project shall, subject to Paragraph (b) below, thereafter be free from all such rights and restrictions. Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate only to the extent it is financially infeasible to maintain the level of affordability required by this Agreement or some lesser level of affordability (i.e., fewer Local Action Units or Local Action Units affordable to persons or families with higher annual incomes than those required by this Agreement.) "Financially infeasible" shall mean (i) with respect to the operation of the Project,

that the rent and other income from the Project is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Project and (ii) with respect to a sale of the Project, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Project, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. Financial infeasibility shall be determined by the senior mortgage holder in its reasonable discretion after consultation with the Municipality and DHCD. The senior mortgage holder shall notify the Municipality and DHCD of the extent to which the rights and restrictions contained herein shall be terminated and the Developer agrees to execute any documents required to modify this Agreement to conform to the senior mortgage holder's determination. The Developer hereby irrevocably appoints any senior mortgage holder and each of the Municipality and DHCD, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Developer should the Developer fail or refuse to do so.

(b) The rights and restrictions contained herein shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure by (i) Developer, (ii) any person with a direct or indirect financial interest in Developer, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Project is subsequently acquired by a Related Party during the period in which this Agreement would have remained in effect but for the provisions of this Section, this Agreement shall be revived and shall apply to the Project as though it had never lapsed.

(c) In the event such holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Project is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Project plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the Municipality in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Municipality pursuant to this Section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Municipality by such holder, the Municipality shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Municipality in accordance herewith, provided that such holder shall give the Municipality prompt notice of any such claim and shall not object to intervention by the Municipality in any proceeding relating thereto). To the extent the Developer possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the full extent permissible by law, the Developer hereby assigns its interest in such amount to said holder for payment to the Municipality.

15. Further Assurances. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem

necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. Default. (a) The Developer and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Developer 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 Developer or the Municipality hereunder without receiving a Default Notice from Developer 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 Developer 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 16, 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.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided herein is to create and maintain long-term affordable rental housing, and by reason thereof the Developer agrees that DHCD or the Municipality or any prospective, present, or former tenant shall be entitled for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce the specific performance by the Developer of its obligations under this Agreement in a state court of competent jurisdiction. The Developer further specifically acknowledges that the beneficiaries of its obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Developer shall reimburse DHCD for all costs and attorney's fees associated with such breach.

17. Mortgagee Consents. The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

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

Developer

By:

its _____

Department of Housing and
Community Development

By:

its _____
(Associate Director)

Municipality

By:

its _____
(Chief Executive Officer)

Attachments: Exhibit A - Legal Property Description
Exhibit B - Rents for Low and Moderate Income Units

LSlip\l-ra-r.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 20

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 the _____ [Developer], 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 SUFFOLK, ss. _____, 20__

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 _____,ss. _____, 20__

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 _____, 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

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 _____

(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.)

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____,ss. _____, 20__

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:

EXHIBIT A

Re:

(Project name)

(City/Town)

(Developer)

Property Description

EXHIBIT B

Re:

(Project name)

(City/Town)

(Developer)

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

	<u>Rents</u>	<u>Utility Allowances</u>
Studio units	\$ _____	\$ _____
One bedroom units	\$ _____	\$ _____
Two bedroom units	\$ _____	\$ _____
Three bedroom units	\$ _____	\$ _____
Four bedroom units	\$ _____	\$ _____

NEWTON FAIR HOUSING COMMITTEE

Newton Housing & Community Development Program
Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459.
Phone 617-796-1146. TDD/TTY 617-796-7089

Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing

The Newton Fair Housing Committee recommends the adoption of the following uniform policies for the use of selection preferences for that affordable housing which is subject to the oversight of the City of Newton, either through funding or by regulation. The Uniform Guidelines are intended for use in affordable rental and homeownership programs that utilize a lottery at initial distribution of the units and upon resale. Local resident selection preference policies should be as uniform as program constraints will allow across Newton's programs that distribute funding or regulate affordable housing, including but not limited to: Community Development Block Grant Program, HOME Program, Community Preservation Act Program, Inclusionary Zoning Ordinance, and Chapter 40B.

1. Non-Discrimination.

The use of the local selection preference shall not have the purpose or effect of delaying, denying, or excluding participation in a housing program based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance, or the requirements of such programs.

2. Requirements of Other Programs.

Many programs, such as low-income housing tax credits, the approval procedures in effect under the Comprehensive Permit Guidelines (the 40B Guidelines), the HOME program, and others permit local resident selection preferences subject to program-specific limitations. These recommendations are to apply only where not in conflict with other applicable state or federal program requirements, or with fair housing or civil rights requirements.

3. Criteria for Local Preference.

Preference shall be given for qualified applicants as follows. First preference for initial occupancy shall be given to applicants who are being displaced as a result of the construction, alterations, or rehabilitation involving the unit in question, and are qualified for the unit in terms of household size, income, and if relevant for the unit, disability, as provided below, unless such preference would be unallowable under the rules of a source of funding for the project.

Following that, preference shall go to any other qualified applicants who fall within any of the following equally weighted categories:

- (a) Individuals or families who live in Newton.
- (b) Households with a family member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton.
- (c) Households with a family member who attends a public school in Newton.

As set forth above, preference for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall, for first occupancy, be assigned to displaced applicants needing the features of the unit. All other applicants shall be assigned in the following order of priority: (a) first to households having preference under one or more of the three categories listed above that include a family member needing the features of the unit; (b) then to households without a preference that include a family member needing the features of the unit; (c) then to other households based on the preferences described above; and (d) then to other qualified applicants.

4. Numerical Limitations.

The local preference may be used for up to 70% of the affordable dwelling units to be distributed, or such lower share as may be required by other applicable authorities.

5. Mitigating Potential Discriminatory Outcomes.

When the local preference is utilized, the developer or owner should use the procedures required by the 40B Guidelines in effect as of July 30, 2008. Under the 40B Guidelines, the owner or developer uses a lottery to select applicants from two pools: (1) a pool of applicants with preferences and (2) a pool of applicants without preferences. Any discriminatory effects are mitigated by adding minority applicants without preferences to the local preference pool until the percentage of racial and ethnic minorities in the local preference pool reflects the corresponding percentages in the Boston metropolitan statistical area.¹ Additional mitigation may be required to assure that a preference for households that work in the community does not discriminate against or have the effect of excluding disabled and elderly households in violation of fair housing laws.

6. Affirmative Fair Housing Marketing.

When the local preference is used, the developer or owner should engage in affirmative fair housing marketing. Marketing should be based on the procedures such as those established under the 40B Guidelines. Marketing should meet the following minimum standards:

(a) Outreach. Marketing should reach out to those groups protected by fair housing laws. Marketing should be conducted in the print, radio and other media serving families with children, people with disabilities, and those racial and ethnic groups in the Boston metropolitan area not represented in comparable numbers in Newton. At minimum, available units should be listed with the MetroList administered by the Boston Fair Housing Commission.

(b) MassAccess. Units modified or designed as accessible units for people with disabilities should be registered with the MassAccess Registry.

(c) Application Procedures. The owner or developer should use fair methods for accepting applications, such as accepting applications over a period of weeks, accepting applications by mail, and use of lotteries to establish waiting lists.

¹ The procedures are described in detail in Chapter III of the “Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory” in effect as of July 30, 2008. A copy of the 40B Guidelines is available at: <http://www.mass.gov/dhcd/Temp/06/40Bgdlines.doc>

(d) Selection Preferences. Local residency preferences must not be advertised as they may discourage non-local potential applicants.