

**URBAN CENTER HOUSING TAX INCREMENT FINANCING AGREEMENT
BETWEEN
THE TOWN OF FRAMINGHAM AND WP EAST ACQUISITIONS, LLC**

This Urban Center Housing Tax Increment Financing Agreement (“Agreement”) is made this ___ of February, 2017 by and between the Town of Framingham, a Massachusetts municipal corporation with offices at Memorial Hall, 150 Concord Street, Framingham, MA 01701 (the “Town”) and **WP EAST ACQUISITIONS, LLC** (“the Developer”) a Georgia limited liability company, with a usual place of business in Massachusetts at 91 Hartwell Avenue, Lexington, MA 02421 (the Town and the Developer may be referred to collectively hereafter as the “Parties”). The property described on **Exhibit A** is referred to hereafter as the “Property.”

RECITALS

1. By vote under Article 36 of the 2005 Annual Town Meeting on April 5, 2005, taken in accordance with G.L.c. 40, § 60 and the regulations promulgated thereunder as 760 C.M.R. 58.05-58.06, the Town (i) designated the Central Business District as its first Urban Center Housing Tax Increment Financing (“UCH-TIF”) Zone (“UCH-TIF Zone”) and (ii) adopted a plan (“UCH-TIF Plan”) for the UCH-TIF Zone.
2. The DHCD approved the Town’s UCH-TIF Zone and UCH-TIF Plan in accordance with G.L.c. 40, §60 (c) and 760 CMR 58.12.
3. An Article will be included in the warrant for the 2017 Special Town Meeting which convenes on February 28, 2017, to see if the Town will vote to: (a) approve a new proposed UCH-TIF Zone and new proposed UCH-TIF Plan, as required by DHCD, and (b) this Agreement between the Developer and the Town of Framingham for the Property, for authorization of any such certified projects, and take such other and further action as may be necessary or appropriate to carry out the purposes of such Article; or take any other action relative thereto.
4. The Developer is the Buyer of the Property under fully executed Purchase and Sale Agreements dated (a) June 23, 2016 with respect to the portion of the Property located at 55-75 Concord Street, 29 Kendall Street, 43 Kendall Street, 59 Kendall Street and 134 Howard Street in Framingham and (b) December __, 2016 with respect to 57 Kendall Street in Framingham.
5. The Developer proposes the construction of a residential apartment building consisting of no more than 200 units, of which twenty (20) of the housing units (the “Affordable Units”) to be created shall be considered affordable housing in accordance with the Town’s Inclusionary Housing Zoning Bylaw with associated parking, utilities, and site improvements with a retail component (the “Development”).
6. The Developer intends to file an application for the review of the Development in March, 2017, which to the extent permitted by applicable law, proposes to include, as part of the

Development, approximately 2,600 square feet of street level retail space situated on Concord Street

7. The Developer, and the Town desire to enter into this Agreement pursuant to G.L.c. 40, § 60 (a) effective January 1, 2017, and the regulations promulgated thereunder as 760 C.M.R. 58.00 et. seq. and G.L.c. 23B in accordance with the Commonwealth's Department of Housing and Community Development's ("DHCD's") Urban Center Housing Tax Increment Financing Program.
8. Increasing market-rate and affordable housing opportunities is an important public policy objective of the Town, particularly within the Town's Central Business District and UCH-TIF Zone. The Town strongly supports multifamily and mixed-use developments in the Central Business District through the redevelopment of existing downtown buildings, infill development, and new construction, to enhance its commercial/retail business with additional market rate and affordable housing opportunities, entertainment, and cultural venues to create a more vibrant and pedestrian-friendly downtown.
9. The Property is located within the new proposed UCH-TIF Zone, which is characterized by a predominance of commercial land uses, a high daytime or business population, a high concentration of daytime traffic and parking and a need for multi-unit residential properties as described in G.L.c. 40, § 60 (a)(i) effective January 1, 2017.
10. The Development will further the commercial and housing objectives outlined in the new proposed UCH-TIF Plan for Town's Central Business District. The Development will satisfy the goals of the UCH-TIF Program by providing 20 units of affordable housing.
11. By vote of the Board of Selectmen on February 7, 2017 the Town is authorized to enter into this Agreement with the Developer in the form hereof, contingent upon:
 - a. the DHCD's approval of this Agreement;
 - b. the DHCD's approval the UCH-TIF Plan and Zone; and
 - c. Town Meeting approval of the UCH-TIF Plan and this Agreement.
12. It is expressly agreed by the parties that the effective date of this Agreement is February ____, 2017.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follow:

A. Definitions:

Unless otherwise stated, defined terms within this Agreement shall have the meanings as set forth in G.L.c. 40, § 60 (a)(iii) and 760 C.M.R. 58.03.

B. Description of the Improvements By Developer:

1. The Property will be developed as apartments with, to the extent permitted by applicable law, approximately 2,600 square feet of street-level retail space, and the building and the property will be owned and operated by an affiliate of the Developer in its entirety. Upon taking title to the Property, such affiliate of the Developer will be deemed to be the Developer for all purposes of this Agreement. This Agreement, however, is conditioned on Developer or its affiliate taking title to the Property, and Developer shall have no liability hereunder unless and until Developer or its affiliate takes title to the Property.
2. The Developer seeks UCH-TIF exemption ("Exemption") from the Town to benefit the Development.

C. Description of Municipal Improvements and Special Assessments:

The Town seeks to acquire: **N/A.**

D. Terms of Tax Increment Financing Exemption:

1. The Exemption requested by the Developer is hereby granted by the Town in accordance with G.L.c. 40, § 60 and G.L.c. 59, § 5 for a period of fifteen (15) years, commencing on the first day of Year 1 (as defined below) and ending on the fifteenth (15th) anniversary thereof (such period, the "TIF Period"), and shall provide the Exemption from taxation as set forth herein.
2. The following exemption percentage and exemption schedule will apply towards the assessed value as determined by the Board of Assessors as set forth herein. The Exemption shall be calculated in accordance with G.L.c. 40, § 60(a)(iii)(1)-(2) effective January 1, 2017.
3. The Tax Increment Financing formula for the Development is set forth below and is established pursuant to G.L.c. 40, § 60 and regulated by the Commonwealth of Massachusetts Department of Revenue and shall be based on the applicable Percentage of Exemption set forth in the table below. The Tax Increment Financing Exemption formula shall apply to the incremental difference between (a) the assessed valuation of the Property calculated in the base year and (b) the increase to the assessed value of the Property that results from the Development during the TIF Period.

Year	Percentage of Annual Real Estate Tax Due	Percentage of Exemption
1 ¹	100%	0%
2	3%	97%

¹ "Year 1" shall commence on the first day of the fiscal year following the issuance of a building permit for the development of the Project.

3	4%	96%
4	5%	95%
5	6%	94%
6	10%	90%
7	11%	89%
8	17%	83%
9	22%	78%
10	27%	73%
11	37%	63%
12	42%	58%
13	47%	53%
14	51%	49%
15	56%	44%

4. The base valuation of the Property shall be the assessed value of the Property in the fiscal year in which this Agreement is entered. The Assessor confirms that as of January 1, 2017, the assessed value of the Property for fiscal year ending June 30, 2017 was \$2,613,100 in the aggregate. Of this, \$2,185,500 was taxable property; the balance was tax-exempt.

5. The base valuation of the Property shall not reflect the improvements constructed as part of the Development. The base valuation of the Property shall be adjusted by the Inflation Factors for subsequent years. The annual adjustments by the Inflation Factors shall be cumulative; the adjusted base valuation of the Property computed for any one fiscal year shall be subject to further adjustment by the Inflation Factor in computing adjusted base valuation of the Property for the next fiscal year. The Inflation Factor is a number not less than one (1) computed by the following formula: The UCH-TIF Zone includes a mix of residential and commercial uses.

(A) the total assessed value of all residential and commercial real property in the municipality, which is assessed at full and fair cash value for the then current fiscal year, less the new growth adjustment factor for the year attributable to such residential and commercial real property (as determined by the Commissioner of Revenue under G.L.c. 59, § 21C) by

(B) the total value of all such residential and commercial real property as assessed for the prior fiscal year.

6. The Exemption within this Agreement shall automatically terminate on the expiration of the TIF Period (the “Expiration Date”), except for claims related to defaults or alleged defaults under this Agreement occurring prior to the Expiration Date, after which time, the Developer or its successor in title shall pay the full amount of real estate taxes assessed on the Property.

7. Notwithstanding the Expiration Date of the Exemption stated herein, the Developer, for itself and its successors and assigns, acknowledges that it shall continue to meet the

affordability requirements of the Town's Inclusionary Housing Zoning Bylaw for a period of no less than thirty (30) years as required by G.L.c. 40, §60 (e).

8. This Agreement does not provide any exemption from personal property taxes with respect to the Property or the Development.
9. This Agreement does not waive the Developer's obligations under any special assessment or betterment that has been or may be levied by the Town or any constituent entity thereof against the Property.

E. Developer's Covenants and Agreements

1. The Exemption granted by the Town is in consideration of the recitals set forth at the beginning of this Agreement, and the Developer's covenants and agreements herein, by which the Developer hereby affirms that it shall:
 - a. commence construction within one (1) year after the issuance of a building permit for the Development and pursue completion thereof in a manner consistent with similar residential developers operating in the MetroWest area (the "Construction Obligation").
 - b. keep the Development in good order and repair and maintain the Development in a decent, safe, and sanitary condition, all in accordance with applicable laws and ordinances and all rules, regulations and requirements of governmental authorities having jurisdiction;
 - c. create and operate 20 units of affordable housing in accordance with this Agreement and any Affordable Housing Regulatory Agreement executed in connection with the Development, and maintain, for the duration of the term of the UCH-TIF Exemption as described in Paragraph D.3 of this Agreement, all remaining units as Class A residential rental units rented at market rates;
 - d. ensure that the Affordable Units are occupied by income-eligible households in accordance with the terms of this Agreement and any Affordable Housing Restriction executed in connection with the Development;
 - e. comply with all the Town's Inclusionary Housing Zoning Bylaw and applicable fair housing laws in the selection of tenants for the Development, including without limitation, the Affordable Units;
 - f. comply with all income certification requirements with respect to occupants of the Affordable Units, as set forth in Section E.2 below and the Affordable Housing Restriction executed in connection with the Development, if applicable;
 - g. cooperate in the Town's administration, monitoring and enforcement of this Agreement, including such access rights to the Property (subject to any applicable

leases) as are reasonably necessary to accomplish the same. The provisions of this Agreement shall not operate to circumscribe in any way, the access rights granted to the Town by the Developer pursuant to other agreements being entered into the parties as of the date hereof relating to the Development, and

- h. enforce the Town's occupancy limits, set in the State Building Code, and participate in the Town's Rental Unit Certification Program, enforced by the Town's Department of Public Health.
2. As provided in G.L. c. 40, §60 (f), the Developer shall certify to the Town and to the DHCD the incomes of the families or occupants upon initial occupancy of the Affordable Units designated in this Agreement. If the owner fails to provide certification or otherwise fails to comply with this Agreement, including failing to maintain the affordability of Affordable Units, the Town shall have the authority place a lien on the property in the amount of the real estate tax exemptions granted pursuant to the UCH-TIF agreement for any year in which the Developer is not in compliance with G.L. c. 40, §60 (f).
3. If with the approval of the DHCD, the Town determines that the Developer is unlikely to come into compliance with the affordability requirements of G.L. c. 40, §60 (f) and G.L. c. 40, §60 (a)(v)(3), the Town shall have the authority to place a lien on the Property in the amount of the total real estate tax exemption granted pursuant to this Agreement and shall record such lien with the Middlesex South District Registry of Deeds or Middlesex South Registry District of the Land Court, as applicable.
4. No less than thirty (30) calendar days prior to the Developer's conveyance of any interest in the Property, the Developer shall provide the Town with written notice (the "Transfer Notice") of the identity of the intended grantee or assignee of the Developer's interest (the "Proposed Transferee"); provided, however, that, except as set forth in the immediately following paragraph, (a) the Town shall have no right to approve the conveyance of the Property, and (b) this Agreement shall inure to the benefit of any grantee or assignee of Developer's interests in this Agreement.

Notwithstanding the foregoing, until such time that an unconditional certificate of occupancy is issued by the Building Department of the Town of Framingham for the Development and the Developer has entered into leases for eighty percent (80%) of the residential units in the Development as evidenced by a certified rent roll or leasing report delivered by the Developer to the Town (redacted to delete residents' names) (the date of delivery thereof being the "Occupancy Date"), prior to the Developer's conveyance of any interest in the Property,

- (i) the Developer shall provide the Town with the Transfer Notice of the Proposed Transferee no less than forty-five (45) calendar days prior to the Developer's conveyance of such interest in the Property to the Proposed Transferee, and

(ii) the Town (by action of its Board of Selectmen or City Council, in the event that the Town is converted to a city form of government) shall have within the forty-five (45) calendar day period following the Town's receipt of the Transfer Notice, in its sole, but reasonable discretion and after the completion of a due diligence evaluation of the prospective conveyance and the Proposed Transferee by a third-party consultant acceptable to the Town, the actual, out-of-pocket costs of which evaluation shall be borne by the Developer, the right to approve the conveyance of the Property to the Proposed Transferee; provided, however, that the Town shall be deemed to have approved such Proposed Transferee if the Board of Selectmen (or City Council, in the event that the Town is converted to a city form of government) fails to disapprove the proposed conveyance or the Proposed Transferee in writing within such forty-five (45) calendar day period. If the Town informs the Developer of its disapproval of a proposed conveyance to a Proposed Transferee in writing within such forty-five (45) calendar day period, but the Developer completes the conveyance of the Property to the Proposed Transferee despite such written disapproval, this Agreement shall not inure to the benefit of the Proposed Transferee and shall be null and void and of no further force or effect (provided, however, that for the avoidance of doubt, in the event that the Town disapproves the Proposed Transferee in writing within such forty-five (45) day period, the Developer may complete the conveyance of the Property to the Proposed Transferee without the benefit of this Agreement).

5. Except as set forth in Section E.4 above, the provisions of this Agreement shall run with the land and shall benefit and be binding upon any subsequent owner(s) of the Property.

F. Default

1. In addition to any other grounds for default as to other requirements of this Agreement, Developer will be in default of its obligations under this Agreement if the Town determines that Developer has failed to meet or comply with any of the requirements of **Paragraph E** above, and the Town further determines that such failure continues or remains uncured for thirty (30) days (or such longer time as may be reasonably necessary to effect a cure so long as Developer is diligently pursuing such cure, but not to exceed an additional sixty (60) days beyond the original thirty (30) day cure period without the Town's written advance approval, to be provided in the Town's sole discretion) after the date of written notice, provided by the Town to Developer and to any secured creditor with a lien on the Property who previously provided written notice of such lien to the Town in accordance with the notice provisions below. The Town shall also permit any such secured creditor with the opportunity to cure any such default within the same period of time permitted to the Developer. Upon the Town's determination that any default by Developer has continued or remained uncured for such period after the date of such written notice, unless such default is subsequently waived by the Town or cured by the Developer, the Town may take any one or a combination of the following actions:
2. Revoke its certification of the Project for eligibility for a Tax Increment Financing Exemption.

3. Require that Developer provide a detailed plan to the Town within thirty (30) days of the Town's written request explaining in detail how Developer will achieve compliance with this Agreement.
4. Require that Developer reimburse the Town the full amount of the total Tax Increment Financing Exemption received under this Agreement during the shorter of (i) the period between Developer's receipt of a notice of default hereunder and the Town's exercise of its right under this Section 4, or (ii) the immediately preceding one year period. The parties hereby agree that the Town shall be entitled to such reimbursement and that such reimbursement shall be made to the Town within thirty (30) of the Town's written request. If payment is not made in full within thirty (30) days, interest shall accrue at the rate of 1.5% per month until such time repayment is made.
5. Terminate the Exemption benefits described in Paragraph 2 of Section A, commencing as of the fiscal year in which the Town has determined Developer to be in default or, if such Tax Increment Financing Exemption benefits have already been received by Developer for the fiscal year in which the Town has determined Developer to be in default, commencing as of the fiscal year immediately following that fiscal year.
6. If the Developer or its successor or assignee fails to perform the Construction Obligation, the Town shall be entitled, in the Town's total and exclusive discretion, to: (i) terminate this Agreement and all existing and future Exemption benefits; (ii) receive reimbursement from Developer for all or any portion of any savings that Developer has accrued to such date under this Agreement; and (iii) revoke the Tax Increment Financing Exemption.
7. Notwithstanding the assignment of Developer's interest in this Agreement, Developer shall remain primarily liable for the performance of this Agreement.
8. Neither the Developer nor its successors or assigns shall apply for abatement of any real estate tax for Year 1 through Year 10 unless the assessed value on which such real estate tax is based is more than ten percent (10%) greater than the "Projected Assessed Value" for the applicable year as shown on **Exhibit B** attached hereto. The Developer and/or its successors or assigns shall not be prevented from applying for an abatement of any real estate tax in Years 11 through 15 of this Agreement. The Town reserves all rights to oppose any application for abatement filed by the Developer or its successor(s) at any time. The parties further agree that if the Property or any portion thereof shall be subdivided, partitioned into multiple parcels, or combined to form new parcels, the tax abatement prohibition set forth in this paragraph shall apply only to the parcel on which the Development is located.

G. Affordable Housing:

1. According to the Subsidized Housing Inventory ("SHI") maintained by DHCD for housing units qualifying under G.L.c. 40B, the Town has 2,867 subsidized housing units in the SHI. Of these, 2,066 are publicly owned and managed by the Framingham Housing Authority, and 801 are in privately owned developments. The publicly owned

and managed by the Framingham Housing Authority has 646 elderly/disabled units, 24 special needs and 386 family units. The Town's 2,867 subsidized units constitute 10.45% of its 27,443 year-round housing units, and therefore the town has reached the 10% goal established under G.L.c. 40B.

2. Between December 11, 2014 and December 16, 2016, three units of affordable housing were lost or removed from the Town's SHI through the transfer of ownership or expiration of restrictions on properties that no longer have permanent affordability provisions.
3. By vote under Article 27 of the 2016 Annual Town Meeting on April 28, 2016, the Town amended Section V. of the Town's Zoning Bylaw to adopt its Inclusionary Housing Bylaw as part of its ongoing public process to formulate a Housing Policy that will seek to address unmet needs for more low-to-moderate income housing for families, elders, local workforce and the disabled; and to increase and maintain a diverse housing stock throughout Town to ensure that high quality and affordable housing is available to households and individuals at all economic and social levels.

The Development will create no more than 200 units of which 20 units shall be affordable housing units in compliance with the Town's Inclusionary Zoning By-Law, and the remainder of which shall, for the duration of the term of the UCH-TIF Exemption as described in Paragraph D.3 of the this Agreement, be Class A residential rental units rented at market rates. "The One Stop2000 Pro Forma Affordable Housing Finance Application [Version 1.21] is on file with the Town's Office of Community and Economic Development".

4. In accordance with the requirements of G.L.c. 40, § 60(b) (i) effective January 1, 2017, the Developer has satisfied the following affordability thresholds as a condition of the granting of an UCH-TIF exemption: the Development will satisfy the requirements of the Town's Inclusionary Zoning By-Law.
5. On or before the first day of March of each year, the Town, through its Department of Community and Economic Development, shall submit to the DHCD copies of certifications of household income of tenant households in Affordable Housing within the UCH-TIF Zone. The Town shall include with its annual certifications an annual report about its UCH-TIF Program for the prior year containing such material information as may be specified by the DHCD without imposing an undue burden on the municipality. Annual reports shall include such information as the number of new housing units created, both affordable and market rate, the completion of other development projects described in the UCH-TIF Plan, including new commercial development, an account of special assessments against parcels with UCH-TIF Agreements, and the amount of new tax revenue generated in the UCH-TIF Zone.
6. The Town may at any time revoke its UCH-TIF Plan. Should the Town revoke its UCH-TIF Plan, it shall immediately cease the execution of any additional UCH-TIF

Agreements pursuant to 760 CMR 58.07. Such revocation shall not affect this Agreement.

H. Affordable Housing Rental Regulatory Agreement:

1. This Agreement contemplates that all of the housing created hereunder shall remain rental units. The Developer understands and agrees that it shall, if required to do so, enter into an Affordable Housing Rental Regulatory Agreement to effectuate the intent of this Agreement which shall also be executed by the Town, the DHCD, and other necessary parties and that contemporaneously with the issuance of a building permit for the Development, the Developer shall record or cause to be recorded, the Affordable Housing Rental Regulatory Agreement in the form attached to this Agreement as **Exhibit C** with the Middlesex South District Registry of Deeds or Registry District of the Land Court, as applicable, and shall provide a recorded copy thereof to the Town. The Affordable Housing Rental Regulatory Agreement shall be forever senior in lien priority to all financing liens encumbering the Property or any portion thereof.

I. Additional Provisions

1. **Notice.** All notices, requests and demands which any party is required or may desire to give to the other party pursuant to this Agreement must be in writing delivered to each party at the addresses set forth below.

As to the Town:	As to the Developer:
Town of Framingham Memorial Hall, 150 Concord Street Framingham, MA 01702 Attn.: Arthur D. Robert Director of Community and Economic Development Telephone: (508) 532-5455 Email: apr@framinghamma.gov	Wood Partners, LP 91 Hartwell Avenue Lexington, MA 02421 Attn.: Jim Lambert, Director Telephone: (781) 541-5822 Email: Jim.Lambert@woodpartners.com

With copies to:

Town Counsel:	Counsel for Developer:
Petrini & Associates, P.C. 372 Union Avenue Framingham, MA 01702 Attn.: Christopher J. Petrini, Esq. Telephone: (508) 665-4310 Email: cpetrini@framinghamma.gov and cpetrini@petrinilaw.com	Nutter McClennen & Fish LLP 155 Seaport Blvd. Boston, MA 02210 Attn: James Ward, Esq. Telephone: (617) 439-2818 Email: jward@nutter.com

Either party may designate a different address where notice may be given to the other parties as provided herein. Each notice, request and demand hereunder shall be deemed given or made as follows: if sent by hand delivery, upon delivery; or if sent by certified mail, return receipt requested, or by nationally recognized overnight delivery service, upon receipt or refusal.

2. **Further Assurances.** At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party to carry out the purposes of this Agreement, so long as no such document or instrument shall modify the rights and obligations nor increase the liability of the parties set forth herein.
3. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Town, and of the Developer, including any secured creditor taking title pursuant to foreclosure or deed in lieu thereof. The Developer agrees that it shall provide copies of this Agreement to any successor creditor.
4. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws. Any claim or action arising under this Agreement shall be tried in a court of competent jurisdiction sitting in Middlesex County or Boston, Massachusetts.
5. **Entire Understanding.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and current understandings and agreements with respect to the same, whether written or oral.
6. **Headings.** Headings are for convenience and reference only and in no way define or limit the provisions of this Agreement.
7. **Severability.** All provisions contained in this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement. If any provision of this Agreement shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this Agreement shall be deemed to be amended to the minimum extent necessary to provide the parties with the benefits and obligations set forth herein.
8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute and be construed as one and the same instrument.
9. **Recitals.** The Recitals set forth on Pages 1-2 hereof are incorporated herein by reference, as if fully re-stated herein.

10. **Estoppel Certificates.** Upon written request of either party made upon at least ten business days' notice, the other party shall provide a certificate certifying to the best of its knowledge, that (if true) (i) this Agreement is in full force and effect, (ii) this Agreement has not been amended, except as may be set forth in such certificate, (iii) the requesting party is not in default of this Agreement (or if it is default, specifying the nature of the default), and (iv) such other factual matters as the requesting party may reasonably request.

11. **Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of the UCH-TIF Plan, the provisions of this Agreement shall be dispositive.

WITNESSETH the execution and delivery of this Agreement by the Town and the Developer as an instrument under seal as of February ____, 2017.

DEVELOPER
WP EAST ACQUISITIONS, LLC

By:
Its authorized signatory

TOWN OF TOWN BOARD OF SELECTMEN:

Cheryl Tully-Stoll

Laurie Lee

Charles J. Sisitsky

César A. Monzón

Jason A. Smith

APPROVED AS TO FORM:

Christopher J. Petrini, Town Counsel

EXHIBIT A
PROPERTY DESCRIPTION

“Tract 1” – 134-136 Howard Street/148 Howard Street:

Real property in the Town of Framingham, County of Middlesex, Commonwealth of Massachusetts, described as follows:

Parcel of land situated on the Northerly side of a certain Howard Street, Framingham, Middlesex County, Massachusetts, and bounded and described as follows:

Southerly by Howard Street, sixty and 0/10 (60.0) feet;

Westerly by other land now or formerly of John J. Prindiville, Jr., et als., and by land now or formerly of the George A. Giles Company, one hundred sixteen and 63/100 (116.63) feet;

Northerly by land now or formerly of Patrick J. Butler, sixty and 27/100 (60.27) feet; and

Easterly again by land now or formerly of Patrick J. Butler, one hundred eleven and 03/100 (111.03) feet.

There is also conveyed a right to use in common with others a way situated on the Westerly boundary of the above described premises and bounded and described as follows:

Southerly by Howard Street, fifteen and 0/10 (15.0) feet;

Easterly by the Westerly bound of the above-described premises, sixty-six and 41/100 (66.41) feet;

Northerly by a portion of Lot A, as shown on a plan of land entitled, “Plan of Property George A. Giles Company, St. George Realty Co., Framingham, Mass.”, J. J. Valkenburgh, C. E., Scale 1” = 20’ November 18, 1919, as recorded in the Middlesex South District Registry of Deeds, Plan Book 280, Page 24, fifteen (15) feet; and

Westerly by land now or formerly of John J. Prindiville, Jr., et als., sixty-seven and 78/100 (67.78) feet.

And

The Northerly side of Howard Street in Framingham, the land on bounded and described as follows:

Beginning at the Southeasterly corner thereof at land now or formerly of Della M. Guertin; thence running

Westerly by Howard Street One Hundred Thirty-Three (133) feet to land now or formerly of

Annie Isaacson and Elizabeth Weitzler; thence

Northerly by said Isaacson and Weitzler land One Hundred Ten and 25/100 (110.25) feet to land formerly of Partrick J. Butler; thence

Easterly by land of said Butler and land of said Guertin, One Hundred Thirty-Three (133) feet, more or less; thence

Southerly by land of said Guertin Ninety-Eight and 33/100 (98.33) feet to the point of beginning.

Being the premises known as 148 Howard Street, Framingham.

“Tract 2” – 29 Kendall Street:

Lot #2:

Southerly by Howard Street, as shown on said plan, one hundred thirty and 16/100 (130.16) feet;

Westerly by Lot # 1, as shown on said plan, two hundred twenty-eight and 92/100 (228.92) feet;

Northerly by Kendall Street, as shown on said plan, seventy-four and 14/100 (74.14) feet;

Easterly by land of Ronald Isaacson and David Weitzler, Trustees of A & E Realty Trust, as shown on said plan, as shown on said plan, forty-six and 83/100 (46.83) feet; and

Easterly by land of Annie Isaacson and Elizabeth Weitzler, as shown on said plan, one hundred sixteen and 50/100 (116.50) feet.

Lot #2 contains 22.614 square feet according to said plan.

So much of the granted premises as lies within the boundaries of parcel Three and parcel Four as described in a deed from Charles V. Primpas and Louis V. Primpas, Trustees of the Primpas Brothers Trust to the Arthur Ashley Williams Foundation dated December 18, 1968 and recorded with the Middlesex South District Registry of Deeds in Book 11618, Page 615 is subject to the restriction that said parcels or any structure now or hereafter placed thereon, or any part thereof, will not, for a period of ten (10) years after December 8, 1967 to be used for the operation of a so-called movie theater or any other type of theater whatsoever (including, without limitation, a theater for so called “live” performances or entertainment.

Meaning and intending to convey and hereby conveying all of the premises conveyed to the Arthur Williams Foundation by Charles V. Primpas and Louis V. Primpas, Trustees of the Primpas Brothers Trust by deed dated December 18, 1968 and recorded with the Middlesex South District Registry of Deeds in Book 11618, Page 615.

In witness whereof the said Arthur Ashley Williams Foundation has caused its corporate seal to

be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Hayden R. Wood, its Chairman of the Trustees and Clement T. Lambert, its Treasurer, this the 162 day of December, 1976.

“Tract 3” – 43 and 59 Kendall Street:

The land on the Southerly side of Kendall Street in Framingham, with the buildings thereon, bounded and described as follows:

Parcel 1.

Beginning at a stone bound at the Northwesterly corner thereof on the Southerly side of Kondall Street and at land formerly of Susan F. Giles, and thence running

Easterly on said street Sixty (60) feet to a stone bound at Parcel 2, herein conveyed; thence turning and running

Southerly by said Parcel 2, Ninety-Nine and 80/100 (99.80) feet to a stone bound at land formerly of Emily J. Lewis; thence

Westerly on said Lewis land Sixty (60) feet to a bound at said Gil__ land; thence

Northerly on said Gil__ land One Hundred and 40/100 (100.40) feet to the point of beginning.

Parcel 2. Beginning at the Northwesterly corner thereof, being the Northeasterly corner of Parcel, thence running Easterly by Kendall Street Fifty-Two and 50/100 (52.50) feet to land of Della M. Guertin; thence turning and running

Southerly Ninety-Nine and 30/100 (99.30) feet by said Guertin land to other land of Patrick J. Butler, thence turning and running

Westerly Fifty-Two and 50/100 (52.50) feet to the Southeasterly corner of Parcel 1; thence turning and running

Northerly by the Easterly side of Parcel 1. Ninety-Nine and 80/100 (99.80) feet to the point of beginning.

Being shown as Lot 26 on plan entitled “ Plan of Land in Town of Framingham, Mass. Owned by W. H. Walsh, E. L. Hearn and J. R. Entwistl_” recorded with said Registry of Deed, in Book of Plans 104, Plan 44.

Parcel 3. Beginning at the Northwesterly corner thereof, at land of Della M. Guertin; thence running

Easterly by Kendall Street Sixty-Four and 40/100 (64.40) feet to other land of said Guertin;

thence turning and running

Southerly by said Guertin land, Ninety-Eight and 90/100 (98.90) feet; thence turning and running

Westerly Seventy-Five and 71/100 (75.71) feet to the South-easterly corner of land said Guertin; thence turning and running

Northerly by said Guertin land Ninety-Eight and 80/100 (98.80) feet to the point of beginning.

“Tract 4” – 55-75 Concord Street

Lot #1:

Westerly by Concord Street, as shown on said plan, one hundred forty-three and 25/100 (143.25) feet;

Northerly by land of Kendall Realty Company, as shown on said plan, one hundred fifty and 00/100 (150.00) feet;

Westerly by said land of Kendall Realty Company, as shown on said plan, one hundred one and 01/100 (101.01) feet;

Northerly by Kendall Street, as shown on said plan, ten and 00/100 (10.00) feet;

Easterly by Lot #2, as shown on said plan, two hundred twenty-eight and 92/100 (228.92) feet; and

Southerly by Howard Street, as shown on said plan, one hundred sixty and 59/100 (160.59) feet.

Lot #1 contains 22.705 square feet, according to said plan.

57 Kendall Street

The land in Framingham, Middlesex County, Massachusetts, being Lot 24 on a certain “Plan of Land in the Town of Framingham, owned by W.H. Walsh, E.L. Hearn and J.R. Entwistle,” which plan is recorded with the Middlesex South District Registry of Deeds in Book of Plans 104, Plan 44, now known as and numbered 57 Kendall Street, and bounded and described as follows:

Northerly: by Kendall Street, fifty-two and one-half (52 and 1/2) feet;

Easterly: by Lot 23, ninety-eight and 8/10 (98.8) feet;

Southerly: by land formerly of one Parker, fifty-two and one-half (52 and ½) feet; and

Westerly: by land now or formerly of John W. Gorman, ninety-nine and 3/10 (99.3) feet.

Meaning and intending to convey and hereby conveying the same premises conveyed to Ralph P. Gorman as Trustee of the Anne-Ral Investment Trust by Emery J. Guertin and Ralph P. Guertin, as Trustees of the Guertin Realty Trust by Deed dated December 30, 1992, and recorded with the South Middlesex Registry of Deeds in Book 2278 at Page 358.

EXHIBIT B
PROJECTED ASSESSED VALUE

Year	Projected Assessed Value
1	N/A
2	\$10,960,755
3	\$29,959,397
4	\$36,535,850
5	\$36,901,209
6	\$37,270,221
7	\$37,642,923
8	\$38,019,352
9	\$38,399,546
10	\$38,783,541

EXHIBIT C
AFFORDABLE HOUSING RENTAL REGULATORY AGREEMENT

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/an ____-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 (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, refrigerator, 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. If the rent for a Low and Moderate Income Unit is subsidized by a state or federal rental subsidy program, then the rent applicable to the Low and Moderate Income Unit may be limited to that permitted by such rental subsidy program, provided that the tenant’s share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

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. If an annual request for a new schedule of rents for the Low and Moderate Income Units as set forth above is based on a change in the Area median income figures published by HUD, and the Municipality and DHCD fail to respond to such a submission within thirty (30) days of the Municipality’s and DHCD’s receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission. If an annual request for a new schedule of rents for the Low and Moderate Income Units is made for any other reason, and the Municipality and DHCD fail to respond within thirty (30) days of the Municipality’s and DHCD’s receipt thereof, the Developer may send DHCD and the Municipality a notice of reminder, and if the Municipality and DHCD fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and DHCD shall be deemed to have approved the submission.

Without limiting the foregoing, the Developer may request a rent increase for the Low and Moderate Units to reflect an increase in the Area median income published by HUD between the date of this Agreement and the date that the Units begin to be marketed or otherwise made available for rental pursuant to Section 4 below; if the Municipality and DHCD approve such rent increase in accordance with this subsection, the Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units in Exhibit B of the Agreement shall be deemed to be modified accordingly.

(c) **[For developments with “floating” units add:** 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.] **[For developments with “fixed” units add:** 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 unit will be deemed a Low and Moderate Income Unit so long as the unit continues to be rent-restricted and the tenant’s income does not exceed 140% of the maximum income permitted. If the tenant’s income exceeds 140% of the maximum income permitted at the time of annual income determination, the unit will be deemed a Low and Moderate Income Unit until the tenant’s one-year lease term expires. When the over-income tenant voluntarily vacates the unit and when the unit is again rented to an Eligible Tenant, the unit will be deemed a Low and Moderate Income Unit and included in the Subsidized Housing Inventory upon the Municipality’s application to DHCD.]

(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 and applicable to the initial rent-up only. 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. Except for rental of Units to Low or Moderate Income Tenants as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease, or exchange the Project or any portion thereof or interest therein (collectively, a “Sale”) or (except as permitted under Section (d) below) mortgage the Property without the prior written consent of DHCD and the Municipality.

(a) A request for consent to a Sale shall include:

- A signed agreement stating that the transferee will assume in full the Developer’s obligations and duties under this Agreement, together with a certification by the attorney or title company that it will be held in escrow and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the Sale;
- The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth owned by such entities;
- A certification from the Municipality that the Development is in compliance with the affordability requirements of this Agreement.

(b) Consent to the proposed Sale shall be deemed to be given unless DHCD or the Municipality notifies the Developer within thirty (days) after receipt of the request that either

- The package requesting consent is incomplete, or
- The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, or
- The Project is not being operated in compliance with the affordability requirements of this Agreement at the time of the proposed Sale.

(c) The Developer shall provide DHCD and the Municipality with thirty (30) day's 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).
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Project or any party of the Project.

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.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender made at no greater than the prevailing rate of interest or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 14 hereof.

Developer hereby agrees that it shall provide copies of any and all written notices received by Developer from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

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, without prior written approval of DHCD and the Municipality and an amendment to this Agreement, change the type or number of Low and Moderate Income Units. 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 the dwelling

accommodations of the Project for any purpose except residences and any other uses permitted by the applicable zoning then in effect;

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 shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns. 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. Lender Foreclosure. The rights and restrictions contained in this Agreement shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Project.

15. Further Assurances. The Developer 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

DEVELOPER

By: _____

Its:

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

By: _____

Its:

MUNICIPALITY

By: _____

Its Chief Executive Officer

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

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 _____, 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 agrees that in the event of any foreclosure or exercise of remedies under the mortgage it shall comply with the terms and conditions hereof.

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 Allowance</u>
Studio units	\$ _____	\$ _____
One bedroom units	\$ _____	\$ _____
Two bedroom units	\$ _____	\$ _____
Three bedroom units	\$ _____	\$ _____
Four bedroom units	\$ _____	\$ _____

3491385.7

2017.02.15 Wood Partners UCH-TIF Agreement Proposed Final (600-369)