

**MASTER AFFORDABLE HOUSING RESTRICTION AGREEMENT**

**ARBORPOINT MEADOW WALK**

Arborpoint Circle, Lynnfield, Massachusetts

This MASTER AFFORDABLE HOUSING RESTRICTION AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and among Meadow Walk Residential LLC, c/o National Development, 2310 Washington Street, Newton Lower Falls, Newton, Massachusetts 02462 (hereinafter, the "Developer"), the Town of Lynnfield, acting by and through its Board of Selectmen (the "Town") and [ADD NAME OF ADMINISTERING AGENCY PER THE BYLAW] (the "Administering Agency").

**BACKGROUND:**

A. The Developer intends to construct up to one hundred and eighty (180) residential housing units, said housing to consist of rental apartments (hereinafter, the "Project"). The Project is to be developed on a site containing approximately 10.9 +/- acres in area and which is located within the Multi-Family Residential Subdistrict of the Planned Village Development District situated off of Walnut Street in Lynnfield, Massachusetts, more particularly described in Exhibit A attached to and made a part of this Agreement (hereinafter, the "Property").

B. The Developer has received approval to permit the development of the Project pursuant to a Planned Village Development District (hereinafter, the "PVDD") from Town Meeting for the Town on April 30, 2007 and, as required by M.G.L. Chapter 40R, the rezoning to PVDD has received approval from the Massachusetts Department of Housing and Community Development ("DHCD") on August 24, 2007, and from the Attorney General for the Commonwealth of Massachusetts on June 20, 2007.

C. Pursuant to the provisions of Section 9.5.11 of the approved Planned Village Development District Bylaw (hereinafter, the "PVDD Bylaw"), 25% of the aggregate rental residential units (the "Affordable Housing Units") developed as part of the Project shall be designated as housing units for which the purchase price or rent is established in accordance with the local, state, or federal guidelines to ensure that such units will be purchased or rented by a person or household with income at or below the levels established by state statutes and regulations (hereinafter, such qualifying units are collectively and individually referred to as the "Affordable Housing Units" or "Affordable Housing Unit").

D. Pursuant to G.L. c. 40R (the "Act"), regulations have been promulgated at 760 CMR 59.00 (the "Regulations") which, together with the PVDD Bylaw, establish the affordability requirements for the Project.

E. Pursuant to the requirements of the PVDD Bylaw, an "Administering Agency" must be selected to perform monitoring and enforcement services on behalf of the Town for the Affordable Housing Units, regarding compliance of the Project with this Master Affordable

Housing Restriction Agreement and with the related Rental Monitoring Services Agreement. Any subsequent replacement of the Administering Agency shall be done by the Town, provided, that at the Developer's request, the Town shall terminate the Administering Agency for cause.

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

1. Affordable Housing Obligations. Subject to the provisions below, the Developer agrees that twenty-five percent (25%) of the residential units developed as part of the Project (the "Affordable Housing Obligation") shall be designated as housing units for which the rent is established in accordance with the Regulations to ensure that such unit will be rented by an Eligible Household (as defined in Section 4 below) expending not more than the permitted monthly housing costs, each set in accordance with the Regulations and this Agreement. To the maximum extent permitted under applicable law, and subject to Section 5 hereof, Lynnfield residents shall be given preference with respect to the occupancy of any units created or funded pursuant to this Section, with the local preference criteria to be determined by the Board of Selectmen or its agent. **[DISCUSS]**

2. Unit Designation. The Developer has included as part of this Agreement the Rental Monitoring Services Agreement, attached hereto as Exhibit B, which identifies the Affordable Housing Units for each building within the Project. The Rental Monitoring Services Agreement includes: (1) the units to be designated as Affordable Housing Units for the applicable building; (2) the proposed schedule for delivery of the Affordable Housing Units; and (3) the initial rent rates for the Affordable Housing Units that allow the units to qualify as Affordable Housing Units for the Town. The Town has approved the Affordable Housing Unit Designation set forth in Exhibit B.

3. Unit Construction. Affordable Housing Units shall be constructed in accordance with plans and specifications approved by the Town and so that all Affordable Housing Units are indistinguishable from other dwelling units in the Project from the exterior, and contain complete living facilities including, but not limited to, a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup. Details on the unit location, square footage and number of bedrooms for the Affordable Housing Units are detailed in the Rental Monitoring Services Agreement attached hereto as Exhibit B.

Affordable Units must have the following minimum areas:

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

The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations including, without limitation, all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. The Project must also comply with all applicable local codes, ordinances and by-laws.

During the term of this Agreement, the Developer covenants, agrees, and warrants that each Affordable Housing 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 and that the Affordable Housing Units shall comply with all similar local codes, ordinances, and by-laws.

4. Rental Affordable Units. (a) Throughout the term of this Agreement, the Affordable Housing Units constructed as part of the Project will be rented for no more than the rental rates set forth herein to an Eligible Household. An Eligible Household 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”) (the “Maximum Income”). A “Family” shall mean two or more persons who live regularly in the Affordable Housing Unit as their primary residence and who are related by blood, marriage or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The “Area” is defined as the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area as determined by HUD.

(b) **[The monthly rents charged to tenants of Affordable Housing Units shall not exceed an amount equal to thirty percent (30%) of the Maximum Income of a Family whose gross income equals seventy percent (70%) of the median income for the Area, with adjustment for the number of bedrooms in the Affordable Housing Unit, as provided by HUD (the “Maximum Monthly Rent”). In determining the Maximum Monthly Rent that may be charged for an Affordable Housing Unit under this clause, the Developer shall include an allowance for any utilities and services (excluding telephone) to be paid by the resident. Adjusted income shall be as defined in 24 C.F.R. 5.611 (or any successor regulation) using assumptions provided by HUD. Family size shall be equal to the number of bedrooms in the unit plus one, unless other affordable rent limits allowed by DHCD shall apply. As of the date of this Agreement, the Maximum Monthly Rents and utility allowances for the Affordable Housing Units shall be no greater than as set forth in Exhibit B attached hereto. Maximum Monthly Rents and utility allowance shall be adjusted annually as provided herein. ]**

**[OR]**

(b) **[The monthly rent payment for an Affordable Housing Unit, including utilities and parking, shall not exceed thirty percent (30%) of the Maximum Income permissible for an Eligible Household, assuming a Family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by DHCD shall apply (the “Maximum Monthly Rent”). Maximum Monthly Rents and utility allowance shall be adjusted annually as provided herein.]**

(c) Annually as part of the annual compliance report required under Subsection 5(d) **[WRONG REFERENCE – WHAT IS CORRECT?]** below, the Developer shall submit to the Administering Agency a proposed schedule of monthly rents and utility allowances for all Affordable Housing Units in the Project. Such schedule shall be subject to the approval of the Administering Agency for compliance with the requirements of this Section. Rents for Affordable Housing Units shall not be increased without the prior approval from the Administering Agency of either (i) a specific request by the 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 the Developer to all affected tenants.

(d) Throughout the term of this Agreement, the Developer shall annually determine whether the tenant of each Affordable Housing Unit remains an Eligible Household. This determination shall be reviewed by the Administering Agency. Any Affordable Housing Unit occupied by an Eligible Household at the commencement of occupancy shall be deemed an Affordable Housing Unit so long as (i) such unit continues to be rent restricted, and (ii) the tenant's income does not exceed 140% of the Maximum Income. If the tenant's income exceeds 140% of the Maximum Income at the time of annual eligibility determination, his/her unit shall be deemed an Affordable Housing Unit until the next available unit with comparable finishes and the same or greater number of bedrooms which is not an Affordable Housing Unit is vacated. Such next available unit shall be rented to an income Eligible Household. The Administering Agency shall provide the Town with an annual compliance report, the cost of which shall be paid or caused to be paid by the Developer, within thirty (30) days of receipt of an invoice.

(e) The Developer shall enter into a written lease with each tenant of an Affordable Housing 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.

(f) The Town shall provide information to DHCD on the PVDD in the form of an annual update pursuant to 760 CMR 59.07.

(g) All of the Units (if at least 25% of the Units are Affordable Housing Units) in the Project will be deemed low and moderate income housing and 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 Town nor the Developer are in default hereunder; (2) the Project and each of the Affordable Housing Units continue to comply with the Regulations as the same may be amended from time to time; and (3) each Affordable Housing Unit remains an Affordable Housing Unit as provided in Sections 4(b) and 4(d) above.

5. Marketing. (a) Prior to initial marketing or otherwise making available for rental any of the Affordable Housing Units, the Developer must obtain the approval of the Administering Agency and DHCD of a marketing plan (the "Marketing Plan") for the Affordable

Housing Units. The Marketing Plan must describe the tenant selection process and must set forth a plan for affirmative marketing of the Affordable Housing Units to minority households in accordance with the Regulations. The Marketing Plan may, at the option of the Town, also include a preference for local residents as described in Section 1 above for up to seventy percent (70%) of the Affordable Housing Units **[provided the Town demonstrates the need for such local preference?]** **[OPEN/DISCUSS]**. All subsequent rentals shall be from a list of applicants in accordance with the Marketing Plan. The Marketing Plan must comply with the Regulations, 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, 721 F. Supp. 361 (1989). If the Project is located in the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, the Developer must list all Affordable Housing 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 Administering Agency shall be deemed to be a default of this Agreement. All marketing documentation must be approved by DHCD prior to its use by the Developer or the Administering Agency.

(b) The Developer shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin or any other basis prohibited by law in the selection of the tenants for the Affordable Housing Units. The Developer shall affirmatively market the Affordable Housing Units to minority households through direct outreach efforts to local churches, social service and civic organizations as well as local and area wide newsprint media where minority households are most likely to be contacted. This outreach effort must continue for a period of at least 60 days prior to the selection of tenants for the Affordable Housing Units.

(c) The Developer, or its designee, agrees to maintain for at least five (5) years following the rental of the Affordable Housing Units, a record of all newspaper ads, outreach letters, translations, leaflets and any other outreach efforts which may be inspected by the Administering Agency, the Town, or DHCD as may be required by the Regulations.

6. Compliance with Regulations. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and all other applicable laws, rules, regulations, and executive orders. The Town and DHCD shall have access during normal business hours to all books and records of the Developer and the Project as may be necessary to monitor the Developer's compliance with the terms of this Agreement. The Developer agrees to execute and record, at the Town's request, an affordable housing restriction and/or regulatory agreement, which shall either replace or supplement this Agreement, which shall each be acceptable to DHCD in form and substance for purposes of qualifying any housing units toward the Town's so-called subsidized housing inventory under Chapter 40B of the Massachusetts General Laws, provided that the restrictions on the rent price of the Affordable Housing Units and the other material restrictions and other obligations hereunder do not change under such replacement or supplemental restriction or regulatory agreement.

7. Recording. Upon execution of this Agreement, the Developer shall immediately cause this Agreement to be recorded or filed with the Essex South Registry of Deeds (the "Registry"). Upon recording and/or filing, as applicable, the Developer shall immediately transmit to the Town, DHCD, and the Administering Agency evidence of such recording and/or filing.

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

- (a) The Developer (i) is a limited liability company duly organized under the laws of the State of Delaware, and is qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own properties and assets and to carry on its business as now being conducted, and (iii) has 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, (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 Project free and clear of any lien or encumbrance, with the exception of the encumbrances created pursuant to this Agreement and any lien of any institutional lender providing financing for the Project, or other encumbrances acceptable to the institutional lender providing financing to the Project.
- (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. Governing Law/Amendments/Severability. The laws of the Commonwealth of Massachusetts shall govern this Agreement. Any amendments to this Agreement must be in writing and executed by all of the parties to this Agreement, provided, that, if any amendment affects only an owner of a portion of the Property and not any other owner comprising the Developer or such other owner's portion of the Property, then such amendment need not be executed by such other owner provided it receives notice of the amendment. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

10. Monitoring Agents. The Town shall retain, and the Developer shall be responsible for, the annual fee of the Administering Agency for purposes of monitoring the Developer's performance under this Agreement with respect to Affordable Housing Units pursuant to the Rental Monitoring Services Agreement attached hereto as Exhibit B. All notices and reports pertaining to the Affordable Housing Units and required to be submitted under this Agreement shall be submitted directly to the Administering Agency and to the Town. The Administering Agency shall have authority to act in all matters relating to the Affordable Housing Units under this Agreement.

11. 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 to this Agreement at the addresses set forth below, or to such other place as a party may from time to time designate by written notice with a copy to the Administering Agency, as applicable:

Developer:

Meadow Walk Residential LLC  
c/o National Development  
2310 Washington Street  
Newton Lower Falls, MA 02462  
Attention: Edward Marsteiner

Administering Agency:

\_\_\_\_\_

Attention:

Town:

Town of Lynnfield  
Board of Selectmen  
55 Summer Street  
Lynnfield, MA 01940  
Attention: Town Administrator

DHCD:

Department of Housing and  
Community Development  
Attention: Local Initiative Program Director  
100 Cambridge Street, 3<sup>rd</sup> Floor  
Boston, MA 02114

12. Term. The term of this Agreement shall be the longest period customarily allowed by law but shall be no less than thirty (30) years. Such term shall commence when the first certificate of occupancy for the Project is issued.

13. Affordable Housing Restriction. (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 the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created by this Agreement. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual, except as set forth in Section 12 above.

(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 in this Agreement 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 for the benefit of the Town for the term of the Agreement; provided, however, that the Developer and each successive owner of all or any portion of the Property shall be liable only for the obligations accruing during the period of their respective ownership of the Property or a portion thereof. The Developer agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(c) The Developer or its successors or assigns will have the right at any time after thirty (30) years from the date hereof, if this Agreement is then in effect, to convert some or all of the Affordable Housing Units to units for sale for a purchase price and, subject to other applicable restrictions, in accordance with local, state, and federal guidelines, to ensure that such units will continue to be deemed "Affordable Housing Units" for the purposes of this Agreement. In such event, the Developer shall request that the Town and DHCD approve such revisions to this Agreement as are appropriate to effectuate such conversion, such approval not to be unreasonably withheld or delayed.

14. Default. If any default, violation or breach by the Developer under this Agreement with respect to the Affordable Housing Units is not cured to the satisfaction of the Administering Agency within sixty (60) days after notice to the Developer thereof, then the Administering Agency or the Town may exercise all remedies available at law or in equity. No such failure to cure a default, however, will be deemed to exist if the Developer has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the Developer as the case may be. The first mortgagee of the Developer shall receive reasonable notice and opportunity to cure before such remedies are exercised.



The Developer shall pay all reasonable costs and expenses, including legal fees, incurred by the Administering Agency and the Town in enforcing this Agreement, and, in the event of any action by the Administering Agency or the Town against the Developer, the Administering Agency or the Town shall be entitled to seek an attachment against the Developer's property including, without limitation, its interest in the Project. The Administering Agency or the Town may perfect a lien on the Project by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry. A purchaser of the Project or any portion of it shall be liable for the payment of any unpaid costs and expenses which were the subject of a recorded/filed certificate prior to the purchaser's acquisition of the Project or portion thereof; provided, however, a mortgagee foreclosing on all or any portion of the Project or a purchaser at any foreclosure sale shall have no liability for any such costs or expenses.

15. Mortgagee Consent. **[NOTE/REMEMBER TO OBTAIN]** The Developer represents and warrants that it has obtained the consent or subordination of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions of this Agreement and that all such mortgagees have executed a consent or subordination to this Agreement which shall be recorded/filed herewith.

16. Responsibility of Administering Agency. The Administering Agency shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

(a) The Developer shall retain the Administering Agency for purposes of administration, monitoring and enforcement of the obligations under this Agreement in connection with the Affordable Housing Units pursuant to an agreement substantially in the form of the Rental Monitoring Services Agreement attached hereto as Exhibit B. All notices and reports required to be submitted under this Agreement in connection with the Affordable Housing Units shall be submitted simultaneously to the Administering Agency.

17. Indemnification. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Administering Agency and the Town against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Administering Agency and the Town by reason of its relationship to the Project under this Agreement and not involving the Administering Agency acting in bad faith or with gross negligence.

18. Amendments. This Agreement shall not be amended without the written consent of the Developer, the Administering Agency, the Town (and DHCD, but only if those portions of Sections 4, 5, 6, or 13 involving DHCD are affected).

[signatures begin on next page]

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

DEVELOPER:

Meadow Walk Residential LLC

By: \_\_\_\_\_

Name:

Title:

TOWN:

LYNNFIELD BOARD OF SELECTMEN

By: \_\_\_\_\_

\_\_\_\_\_, Chairman

ADMINISTERING AGENCY

By: \_\_\_\_\_

Name:

Title:

DEPARTMENT OF HOUSING AND COMMUNITY  
DEVELOPMENT

By: \_\_\_\_\_

Director

Joining herein solely for purposes of Sections 4,  
5, 6, and 13 hereof.

COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned notary public, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of Meadow Walk Residential LLC proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned notary public, personally appeared \_\_\_\_\_, as Chairman for the Board of Selectmen, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned notary public, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of **[ADMINISTERING AGENCY]**, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

On this \_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned notary public, personally appeared \_\_\_\_\_, as Director of the Department of Housing and Community Development, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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