

Worcester Affordable Housing Trust Fund

Subsidized Housing Inventory, Marketing, and Lottery Requirements

If you receive funding from the Worcester Affordable Housing Trust Fund (AHTF), the affordable housing units you build or renovate must follow certain state rules. These rules are designed to make sure your units count toward Worcester's official list of affordable housing, known as the Subsidized Housing Inventory (SHI). To do this, your project must follow the guidelines from the Massachusetts Executive Office of Housing and Livable Communities (EOHLC).

What is the Subsidized Housing Inventory?

EOHLC's Chapter 40B Subsidized Housing Inventory (SHI) is the state's official count of affordable housing units. To be added to this list, your units must follow certain state rules. You should work with the City of Worcester's Housing Development Division to complete and submit a Local Initiative Program (LIP) Application for Local Action Units (LAUs).

Steps to Get SHI Approval:

1. **Submit Required Documents:** The developer/project owner (or a hired housing consultant) sends the City a completed LIP Application, a draft of the Regulatory Agreement (also called the Affordable Housing Restriction), and the Affirmative Fair Housing Marketing and Lottery Plan (explained below).
2. **City Review:** The City checks that the project follows land use board approvals, and that prices and rents are within allowed limits.
3. **Advertising and Lottery:** The City helps advertise and attends the lottery.
4. **Final Approval:** The Final Regulatory Agreement is submitted to the City for the City Manager's signature and sent to EOHLC for final signature.

What is a Regulatory Agreement?

This is a legal document that sets the rules for your affordable housing units. It limits who can rent or buy the units (they must be income-qualified) and ensures the rules are followed for as long as the units are meant to stay affordable. The developer must record this agreement with the Worcester County Registry of Deeds or Land Court before receiving the final AHTF payment or a Certificate of Occupancy—whichever comes first.

See Attachment A (for ownership projects) and Attachment B (for rental projects) for the Regulatory Agreement forms.

Marketing & Lottery Requirements

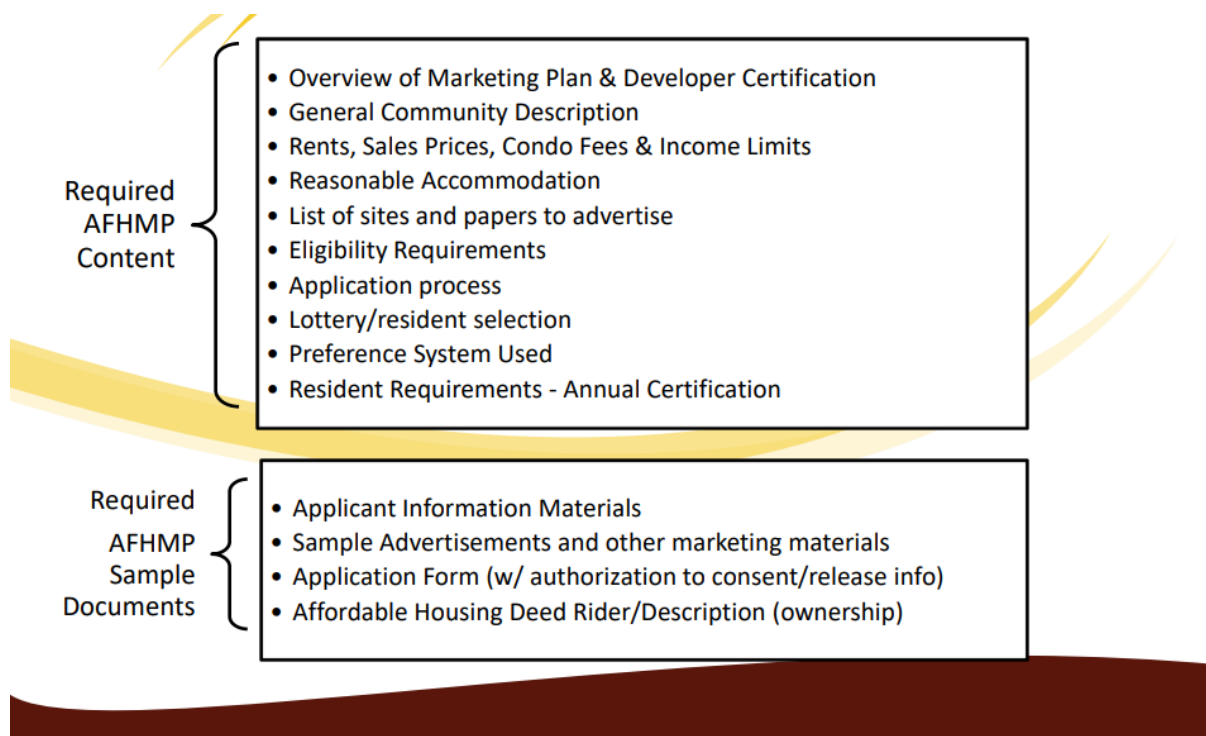
All affordable units that count towards the SHI must be marketed through an Affirmative Fair Housing Marketing Plan (AFHMP). The plan requirements are detailed in Section III of the EOHLC (formerly known as DHCD) *40B Guidelines*¹ relative to Affirmative Fair Housing and Resident Selection and the

¹ <https://www.mass.gov/doc/guidelines-gl-c40b-comprehensive-permit-projects-and-subsidized-housing-inventory/download>

*MA Fair Housing Marketing and Resident Selection Plan Guidelines.*² This plan ensures that everyone has an equal chance to apply for the units, regardless of race, ethnicity, disability, or other protected factors.

Key points:

- The AFHMP covers everything from outreach to selecting qualified renters or buyers.
- The plan must comply with the state's 40B Guidelines.
- The person or group running the lottery must have experience and be approved by EOHLC.
- Most project owners hire an outside expert to handle this process.
- The developer/owner pays for the marketing and works with the City's Housing Development Division to make sure everything is done correctly. **It is the developer/owner's (and lottery agent's) responsibility to follow state guidelines.**



See [MA Fair Housing Marketing and Resident Selection Plan Guidelines](#) and *Attachment C: Local Action Unit Application*.

² <https://www.mass.gov/files/documents/2016/07/oj/afhmp.pdf>

Attachment A

LOCAL INITIATIVE PROGRAM

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS FOR OWNERSHIP PROJECT

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 Executive Office of Housing and Livable Communities (“EOHLC”), pursuant to G.L. c. 23B §1 as amended by Chapter 7 of the Acts of 2023, the City/Town of _____ (“the Municipality”), and _____, a Massachusetts corporation/limited partnership/limited liability company, having an address at _____, and its successors and assigns (“Project Sponsor”).

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”);

WHEREAS, the Project Sponsor intends to construct a housing development known as _____ at a ____-acre site on _____ Street/Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the “Project”);

WHEREAS, such Project is to consist of a total number of _____ condominium units/detached dwellings (the “Units”) and _____ of the Units will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the “Low- and Moderate-Income Units”);

WHEREAS, **[For comprehensive permit projects add:** upon application of the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor, EOHLC made a determination of project eligibility pursuant to 760 CMR 56.04 and the Project Sponsor has received a comprehensive permit from the Zoning Board of Appeals of the Municipality, which permit is recorded/filed at the _____ Registry of Deeds/Registry District of the Land Court (the “Registry”) in Book _____, Page _____/as Document No. _____ (the “Comprehensive Permit”)] **[For Local Action Units add:** the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to EOHLC to certify that the units in the Project are Local Action Units (as that term is defined in the *Comprehensive Permit Guidelines* (the “Guidelines”)) published by EOHLC with the LIP Program; and

WHEREAS, in partial consideration of the execution of this Agreement, **[for comprehensive permit projects add:** EOHLC is issuing its final approval of the Project within the LIP Program pursuant to Section 19 of this Agreement, and has given and will give technical and other assistance to the Project] **[for Local Action Units add:** EOHLC 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, EOHLC, the Municipality, and the Project Sponsor hereby agree and covenant as follows:

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality (the “Plans and Specifications”) **[for comprehensive permit projects add:** and in accordance with all terms and conditions of the Comprehensive Permit]. 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 *Comprehensive Permit Guidelines* (the “Guidelines”)) published by EOHLC, 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:

one-bedroom units	-	700 square feet
two-bedroom units	-	900 square feet
three-bedroom units	-	1200 square feet
four-bedroom units	-	1400 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 persons with disabilities. **[For comprehensive permit projects add:** Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit,] the Project must also comply with all applicable local codes, ordinances and by-laws.

Each Low- and Moderate-Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family (i) 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 and (ii) whose assets do not exceed the limits specified in the Guidelines. A “Family” shall mean two or more persons who will live regularly in the Low- or 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/County.

2. Upon the occurrence of one of the events described in 760 CMR 56.03(2), the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 56.01. Only Low- and Moderate-Income Units will be counted as SHI Eligible Housing as that term is described in 760 CMR 56.01 for the purposes of the Act.

3. (a) At the time of sale of each Low- and Moderate-Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low- and Moderate-Income Unit to execute an Affordable Housing Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the “Deed Rider”). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low- and Moderate-Income Unit to offer the Low- and Moderate-Income Unit to the Municipality and to EOHLC at a discounted purchase price more particularly described therein. The Municipality and EOHLC shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low- and Moderate-Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low- and Moderate-Income Unit which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low- and Moderate-Income unit will be preserved each time that subsequent resales of the Low- and Moderate-Income unit occur. (The various requirements and restrictions regarding resale of a Low- and Moderate-Income Unit contained in the Deed Rider are hereinafter referred to as the (“Resale Restrictions”). If upon the initial resale or any subsequent resale of a Low- and Moderate-Income Unit, the Municipality and EOHLC are unable to find an Eligible Purchaser for the Low- and Moderate-Income Unit, and the Municipality and EOHLC each elect not to exercise its right to purchase the Low- and Moderate-Income Unit, then the then current owner of the Low- and Moderate-Income Unit shall have the right to sell the Low- and Moderate-Income Unit to any person, regardless of his income (an “Ineligible Purchaser”) at the Maximum Resale Price and subject to all rights and restrictions contained in the Deed Rider, and provided that the Unit is conveyed subject to a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Low- and Moderate-Income Unit which will be attached and made part of the deed from the Unit Purchaser to the Ineligible Purchaser.

(b) For each sale of a Low- and Moderate-Income Unit, EOHLC must approve the terms of the Eligible Purchaser’s mortgage financing as evidenced by EOHLC’s issuance of the Resale Price Certificate described in the Deed Rider.

(c) The Municipality agrees that in the event that it purchases a Low- and Moderate-Income Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Low- and Moderate-Income Unit, that the Municipality shall within six (6) months

of its acceptance of a deed of such Low- and Moderate-Income Unit, either (i) sell the Low- and Moderate-Income Unit to an Eligible Purchaser at the same price for which it purchased the Low- and Moderate-Income Unit plus any expenses incurred by the Municipality during its period of ownership, such expenses to be approved by EOHLC, subject to a Deed Rider satisfactory in form and substance to EOHLC and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to EOHLC, the method for selecting such Eligible Purchaser to be approved by EOHLC or (ii) rent the Low- and Moderate-Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to EOHLC and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low- and Moderate-Income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low- and Moderate-Income Unit by the Municipality as provided herein the Low- and Moderate-Income Unit becomes vacant and remains vacant for more than ninety (90) days, then such Low- and Moderate-Income Unit shall cease to be counted as SHI Eligible Housing, and shall no longer be included in the Subsidized Housing Inventory.

(d) Each Low- and Moderate-Income Unit will remain SHI Eligible Housing and continue to be included in the Subsidized Housing Inventory 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 Project Sponsor is in default hereunder; (2) the Project and Low- and Moderate-Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low- and Moderate-Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low- and Moderate-Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by EOHLC to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low- and Moderate-Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low- and Moderate-Income Unit is owned by EOHLC.

4. [For comprehensive permit projects where the Project Sponsor is a for-profit entity add:

(a) Effective August 7, 2007, EOHLC has adopted the policies, procedures, and forms for determining limited dividend compliance set forth in the MassHousing document entitled "Preparation of Cost Certification upon Completion of Homeownership 40B Project for Which MassHousing Serves as Project Administrator: Guidance to Developers and Municipalities" (the "MassHousing Guidance"). The MassHousing Guidance shall govern the cost certifications obligations of the Project Sponsor under this Agreement.

(b) The Project Sponsor shall be a limited dividend organization as defined by 760 CMR 56.01. Project Sponsor agrees that the aggregate profit from the Project which shall be payable to Project Sponsor or to the partners, shareholders or other owners of Project Sponsor or the Project shall not exceed twenty percent (20%) of total development costs of the Project, which development costs have been approved by EOHLC (the "Allowable Profit").]

(c) Within one hundred eighty (180) days after Substantial Completion of the Project (as that term is defined in the MassHousing Guidance) or, if later, within sixty (60) days of the date on which all units in the Project are sold, the Project Sponsor shall deliver to the Municipality and to EOHLC an itemized statement of total development costs together with a statement of gross income from the Project received by the Project Sponsor to date in form satisfactory to EOHLC (the “Certified Cost and Income Statement”) prepared and certified by a certified public accountant satisfactory to EOHLC. EOHLC requires the prequalification of the certified public accountant hired by the Project Sponsor as more particularly set forth in Article IV (D) of the Guidelines. If all units at the Project have not been sold within twenty-four (24) months of Substantial Completion, a sale price for the remaining unsold units shall be imputed in an amount equal to the average of the last three (3) arms-length sales of comparable units, and a final Certified Cost and Income Statement shall be required within sixty (60) days thereafter. Prior to EOHLC’s acceptance of the Certified Cost and Income Statement and for a period of 30 days after EOHLC provides the Municipality with its determination of compliance with the limited dividend requirement, the Municipality shall have the option of having the Certified Cost and Income Statement evaluated for accuracy (e.g., absence of material errors) applying the same standards as EOHLC by an independent auditor selected by the Municipality. EOHLC will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter make a final determination of the Project Sponsor’s compliance with the limited dividend requirement.

(d) .All profits from the Project in excess of the Allowable Profit (the “Excess Profit”) shall be paid by the Project Sponsor to the Municipality. The Municipality agrees that upon the receipt by the Municipality of any Excess Profit, the Municipality shall deposit any and all such Excess Profit into an affordable housing fund, if one exists in the Municipality, and otherwise into a fund established pursuant to G.L. c.44 §53A to be used by the Municipality for the purpose of reducing the cost of Low- and Moderate-Income Units to Eligible purchasers upon resale or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for persons and families of Low- and Moderate-Income elsewhere in the Municipality. The expenditure of funds from the Affordable Housing Fund shall be reported on an annual basis to EOHLC. For so long as the Project Sponsor complies with the requirements of this Section 4, the Project Sponsor shall be deemed to be a limited dividend organization within the meaning of the Act.]

[For comprehensive permit projects where the Project Sponsor is a non-profit entity add: Within one hundred eighty (180) days after Substantial Completion of the Project or, if later, within sixty (60) days of the date on which all the units in the Project are sold, the Project Sponsor shall complete and deliver to the Municipality and to EOHLC the section of the Local Initiative Program Application for Comprehensive Permit Projects entitled “Project Feasibility – Ownership Projects” (ownership pro forma, profit analysis, and cost analysis), documenting the actual development costs of and income from the Project, prepared and signed by the Chief Financial Officer of the Project Sponsor. Substantial Completion shall be deemed to have occurred when construction of the Project is sufficiently complete so that the Unit may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Low- and Moderate-Income Units.]

5. (a) Prior to marketing or otherwise making available for sale any of the Units, the Project Sponsor must obtain EOHLC's approval of a marketing plan (the "Marketing Plan") for the Low- and Moderate-Income Units. Such Marketing Plan must describe the buyer 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 and effective outreach to protected groups underrepresented in the municipality, including provisions for a lottery, consistent with 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, provided that any local preference shall apply only to the initial unit sales by the Project Sponsor. When submitted to EOHLC 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 buyer 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 EOHLC directives reflecting the agreement between EOHLC 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 MSA, the Project Sponsor must list all Low- and Moderate-Income Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center); other requirements for listing of units are specified in the Guidelines.** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor.

(b) The Project Sponsor may use in-house staff to draft and/or implement the Marketing Plan, provided that such staff meets the qualifications described in the Guidelines. The Project Sponsor may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the Guidelines. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low- and Moderate-Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by EOHLC which may be inspected at any time by EOHLC. All Marketing Documentation must be approved by EOHLC prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low- and Moderate-Income Units, EOHLC determines that the Project Sponsor, 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 Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by EOHLC.

6. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, religion, color, sex, sexual orientation, familial status, age, disability, marital status, national origin, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

7. (a) The Project Sponsor 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. EOHLC and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to EOHLC that each of the Low- and Moderate-Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low- and Moderate-Income Units which have been resold during the year have been resold in compliance with all of the terms and provisions of the Deed Rider then in effect with respect to each such Low- and Moderate-Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low- and Moderate-Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low- and Moderate-Income Unit.

8. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded/filed with the Registry, and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to EOHLC and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

9. The Project Sponsor hereby represents, covenants and warrants as follows:

(a) The Project Sponsor (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 Project Sponsor (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 Project Sponsor 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 Project Sponsor 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 EOHLC, or other permitted encumbrances, including mortgages referred in paragraph 10, 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 Project Sponsor, 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 or adversely affect its financial condition.

10. (a) Except for sales of Low- and Moderate-Income Units to Eligible Purchasers and sales of other Units to unit owners in the ordinary course of business as permitted by the terms of this Agreement, the Project Sponsor 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 EOHLC and the Municipality.

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

- A signed agreement stating that the transferee will assume in full the Project Sponsor’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 Project is in compliance with the affordability requirements of this Agreement.

(c) Consent to the proposed Sale shall be deemed to be given unless EOHLC or the Municipality notifies the Project Sponsor 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.

(d) The Project Sponsor shall provide EOHLC 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 the Project Sponsor; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in the Project Sponsor (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 the Project Sponsor's interest in the Project or any part of the Project.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any 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, EOHLC's consent under this Section 10 shall not be required with respect to the grant by the Project Sponsor 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.

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

11. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by a condominium association or trust not controlled by the Project Sponsor, (or if the Project consists of detached dwellings, by homebuyers) Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor 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 the terms of this Agreement, subject to the approval of the Project's lenders, which lenders have been approved by EOHLC and the Municipality.

12. 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.

13. 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:

EOHLC: Executive Office of Housing and Livable Communities
Attention: Local Initiative Program Director
100 Cambridge Street, Suite 300
Boston, MA 02114

Municipality:

Project Sponsor:

14. (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, the Project Sponsor and its successors and assigns, and EOHLC and its successors and assigns and the Municipality and its successors and assigns. EOHLC has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low- and Moderate-Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low- and Moderate-Income Unit at the Project which is owned by the Municipality or EOHLC as provided in Section 4 hereof, **[For comprehensive permit projects add: or (b) if a Comprehensive Permit is not granted to the Project Sponsor for the Project by either the Municipality's Board of Appeals (as that term is defined in the Regulations) or by the Housing Appeals Committee (as that term is used in the Act) within a period of eighteen months from the date of execution of this Agreement, or (c) if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect to such revocation have expired]**. 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.

(b) The Project Sponsor 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 Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of EOHLC and its successors and assigns for the term of the Agreement. Project Sponsor 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.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low- and Moderate-Income Units at the Project pursuant to the requirements of this Agreement shall also constitute 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. Such Resale Restrictions shall be for the benefit of both EOHLC and the Municipality and both EOHLC and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. EOHLC has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of EOHLC by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low- and Moderate-Income Units of the Project as required by the provisions of G.L. c. 184, §32.

15. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by EOHLC which EOHLC shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. (a) The Project Sponsor and the Municipality each covenant and agree to give EOHLC written notice of any default, violation or breach of the obligations of the Project Sponsor 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 EOHLC becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, EOHLC 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 "EOHLC Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of EOHLC within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the EOHLC Default Notice, then at EOHLC's option, and without further notice, EOHLC may terminate this Agreement, or EOHLC may apply to any state or federal court for specific performance of this Agreement, or EOHLC

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 EOHLC 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(a), 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 SHI Eligible Housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory. The foregoing sentence shall not apply to Low- and Moderate-Income Units that have been conveyed in compliance and remain in compliance with Section 3 of this Agreement.

17. The Project Sponsor 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 and Subordination of Mortgage to Regulatory Agreement attached hereto and made a part hereof.

18. EOHLC may delegate to the Municipality any of its oversight and enforcement responsibilities under this Agreement, with the agreement of the Municipality, by providing written notice of such delegation to the Project Sponsor and the Municipality.

[For comprehensive permit projects add:

19. (a) When executed by EOHLC, this Agreement shall constitute Final Approval of the Project as described in 760 CMR 56.04(7). EOHLC hereby reaffirms and incorporates by reference in this Agreement each of the findings with respect to project eligibility required by 760 CMR 56.04(1) made in the Site Eligibility Letter for the Project dated _____.] **[If the Project Sponsor is a for-profit entity add:** The Project Sponsor hereby explicitly acknowledges its obligation to comply with the cost examination requirements defined in 760 CMR 56.04(8).]

[If the Project Sponsor is a for-profit entity add:

(b) The Project Sponsor has provided financial surety in a form and in the amount required by the Guidelines to ensure completion of the cost examination to the satisfaction of the EOHLC and the distribution of excess funds as required at 760 CMR 56.04(8)(c). EOHLC will provide a copy of this Agreement to the Municipality's Board of Appeals as required by 760 CMR 56.04(7).]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

PROJECT SPONSOR

By: _____
Its:

EXECUTIVE OFFICE OF HOUSING AND
LIVABLE COMMUNITIES

By: _____
Its:

MUNICIPALITY

By: _____
Its:

Attachments: Exhibit A - Legal Property Description
Exhibit B - Prices & Location of Low & Moderate Income Units
Exhibit C - Form of Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this Regulatory Agreement must be attached to this Regulatory Agreement.

© EOHLC When used in the Local Initiative Program, this form may not be modified without the written approval of the Executive Office of Housing and Livable Communities.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

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 _____ [Project Sponsor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss.

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 Executive Office of Housing and Livable Communities, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
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

My Commission Expires:

**CONSENT AND SUBORDINATION OF MORTGAGE
TO REGULATORY AGREEMENT**

Reference is hereby made to a certain Mortgage dated _____ given by _____ to _____, recorded with the _____ Registry of Deeds at Book _____, Page _____ ("Mortgage").

The Undersigned, present holder of said Mortgage, hereby recognizes and consents to the execution and recording of this Agreement and agrees that the aforesaid Mortgage shall be subject and subordinate to the provisions of this Agreement, to the same extent as if said Mortgage had been registered subsequent thereto. The Undersigned further agrees that in the event of any foreclosure or exercise of remedies under said Mortgage it shall comply with the terms and conditions hereof.

[NAME OF LENDER]

By: _____
Its: _____

(If the Project has more than one mortgagee, add additional consent forms.)

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
My Commission Expires: _____

EXHIBIT A

Re:

(Project name)

(City/Town)

(Developer)

Property Description

EXHIBIT B

Re: _____
(Project name)

(City/Town)

(Developer)

Maximum Selling Prices, Initial Condominium Fees, and Percentage Interest Assigned to Low- and Moderate-Income Units

	<u>Sales Price</u>	<u>Condo Fee</u>	<u>% Interest</u>
One-bedroom units	\$ _____	\$ _____	_____
Two-bedroom units	\$ _____	\$ _____	_____
Three-bedroom units	\$ _____	\$ _____	_____
Four-bedroom units	\$ _____	\$ _____	_____

Location of Low- and Moderate-Income Units

The housing units which are Low- and Moderate-Income Units are those designated as lot/unit numbers _____ on:

- ☐ a plan of land entitled _____ recorded with the _____ Registry of Deeds in Book ____, Page ____.
- ☐ floor plans recorded with the Master Deed of the _____ recorded with the _____ Registry of Deeds in Book ____, Page ____.

Attachment B

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 Executive Office of Housing and Livable Communities ("EOHLC") pursuant to G.L. c.23B §1 as amended by Chapter 7 of the Acts of 2023, 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 EOHLC 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, EOHLC 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, EOHLC, 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 persons with disabilities. 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 EOHLC 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 EOHLC for compliance with the requirements of this Section. Rents for Low- and Moderate-Income Units shall not be increased without the Municipality’s and EOHLC’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 EOHLC fail to respond to such a submission within thirty (30) days of the Municipality’s and EOHLC’s receipt thereof, the Municipality and EOHLC 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 EOHLC fail to respond within thirty (30) days of the Municipality’s and EOHLC’s receipt thereof, the Developer may send EOHLC and the Municipality a notice of reminder, and if the Municipality and EOHLC fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and EOHLC 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 EOHLC 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 EOHLC.]

(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 EOHLC 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 EOHLC 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 EOHLC'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 EOHLC 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 EOHLC directives reflecting the agreement between EOHLC 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 EOHLC which may be inspected at any time by EOHLC. All Marketing Documentation must be approved by

EOHLC 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, EOHLC 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 EOHLC.

5. Non-discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, disability, 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. EOHLC 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 EOHLC 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 EOHLC, or other permitted encumbrances, including mortgages referred to in paragraph 17, below).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

9. Transfer Restrictions.

(a) 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 EOHLC and the Municipality.

(b) 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.

(c) Consent to the proposed Sale shall be deemed to be given unless EOHLC 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.

(d) The Developer shall provide EOHLC 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 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, EOHLC'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 EOHLC 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:

EOHLC: Executive Office of Housing and Livable Communities
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 EOHLC and its successors and assigns and the Municipality and its successors and assigns. EOHLC 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 EOHLC 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 EOHLC which EOHLC 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 EOHLC 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 EOHLC 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, EOHLC 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 "EOHLC Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of EOHLC 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 EOHLC Default Notice, then at EOHLC's option, and without further notice, EOHLC may either terminate this Agreement, or

EOHLC may apply to any state or federal court for specific performance of this Agreement, or EOHLC 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 EOHLC 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 EOHLC 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 EOHLC 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 and Subordination of Mortgage 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:

EXECUTIVE OFFICE OF HOUSING AND
LIVABLE COMMUNITIES

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
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 Executive Office of Housing and Livable Communities, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
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
My Commission Expires:

**CONSENT AND SUBORDINATION OF MORTGAGE
TO REGULATORY AGREEMENT**

Reference is hereby made to a certain Mortgage dated _____ given by _____ to _____, recorded with the _____ Registry of Deeds at Book _____, Page _____ (“Mortgage”).

The Undersigned, present holder of said Mortgage, hereby recognizes and consents to the execution and recording of this Agreement and agrees that the aforesaid Mortgage shall be subject and subordinate to the provisions of this Agreement, to the same extent as if said Mortgage had been registered subsequent thereto. The Undersigned further agrees that in the event of any foreclosure or exercise of remedies under said Mortgage it shall comply with the terms and conditions hereof.

[NAME OF LENDER]

By: _____
Its: _____

(If the Development has more than one mortgagee, add additional consent forms.)

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
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	\$ _____	\$ _____

Attachment C

LOCAL INITIATIVE PROGRAM APPLICATION FOR LOCAL ACTION UNITS

Introduction

The Local Initiative Program (LIP) is a state housing initiative administered by the Executive Office of Housing and Livable Communities (EOHLC) to encourage communities to produce affordable housing for low- and moderate-income households.

The program provides technical and other non-financial assistance to cities or towns seeking to increase the supply of housing for households at or below 80% of the area median income. LIP-approved units are entered into the subsidized housing inventory (SHI) pursuant to Chapter 40B.

Local Action Units (LAUs) are created through local municipal action *other than* comprehensive permits; for example, through special permits, inclusionary zoning, conveyance of public land, utilization of Community Preservation Act (CPA) funds, etc.

The Department shall certify units submitted as Local Action Units if they meet the requirements of 760 CMR 56.00 and the Local Initiative Program Guidelines, which are part of the Comprehensive Permit Guidelines and can be found on the EOHLC website at www.mass.gov/eohlc.

To apply, a community must submit a complete, signed copy of this application to:

**Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114**

**Attention: Alyxandra Sabatino, LIP/HOP Coordinator
Telephone: 617-573-1328
Email: alyxandra.sabatino@mass.gov**

Community Support Narrative, Project Description, and Documentation

Please provide a description of the project, including a summary of the project's history and the ways in which the community fulfilled the local action requirement.

Signatures of Support for the Local Action Units Application

Chief Executive Officer:

defined as the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter

Signature: _____

Print Name: _____

Date: _____

Chair, Local Housing Partnership: (as applicable)

Signature _____

Print Name: _____

Date: _____

Municipal Contact Information:

Chief Executive Officer:

Name: _____

Address: _____

Phone: _____

Email: _____

**Town Administrator/Town
Manager/Mayor:**

Name: _____

Address: _____

Phone: _____

Email: _____

City/Town Planner:

Name: _____

Address: _____

Phone: _____

Email: _____

Town Counsel:

Name: _____

Address: _____

Phone: _____

Email: _____

**Chair, Local Housing Partnership
(if any):**

Name: _____

Address: _____

Phone: _____

Email: _____

Community Contact Person:

Name: _____

Address: _____

Phone: _____

Email: _____

The Project:

Developer:	Name: _____
	Address: _____ _____
	Phone: _____
	Email: _____
Project Site:	Address: _____ _____

Is your municipality utilizing any HOME or CDBG funding for this project? Yes _____ No _____

Local tax rate per thousand \$ _____ For Fiscal Year _____

Site Characteristics: proposed or existing buildings by design, ownership type, and size.

<u>Project Style</u>	<u>Total Number of Units</u>	<u>Number of Units Proposed for Local Action Units Certification</u>
Detached Single-family house	_____	_____
Row house/townhouse	_____	_____
Duplex	_____	_____
Multifamily house (3+ family)	_____	_____
Multifamily rental building	_____	_____
Other (please specify)	_____	_____

Unit Composition

<u>Type of Unit</u> (Condo/Fee Simple/ Rental)	<u># of Units</u>	<u># of BRs</u>	<u># of Baths</u>	<u>Gross Square Feet</u>	<u>Livable Square Feet</u>	<u>Proposed Sales Prices/Rents</u>	<u>Proposed Condo Fee/ Utility Allowance</u>
Affordable:							
Market:							
Total:							

Please attach the following documents to your application:

1. Documentation of municipal action (e.g., copy of special permit, CPA funds, land donation, etc.)

2. Long-Term Use Restrictions (request documents before submission):

For ownership projects, this is the Regulatory Agreement for Ownership Developments, redlined to reflect any proposed changes, and/or the model deed rider.

For rental projects, this is the Regulatory Agreement for Rental Developments, redlined to reflect any proposed changes.

For HOME-funded projects, this is the HOME covenant/deed restriction. When attaching a HOME deed restriction to a unit, the universal deed rider cannot be used.

3. Documents of Project Sponsor's (developer's) legal existence and authority to sign the Regulatory Agreement:

- appropriate certificates of Organization/Registration and Good Standing from the Secretary of State's Office
- mortgagee consents to the Regulatory Agreement
- Trustee certificates or authorization for signer(s) to execute all documents
- Copy of Site Plan

4. For Condominium Projects Only: The Master Deed with schedule of undivided interest in the common areas in percentages set forth in the condominium master deed

5. For Rental Projects Only: A copy of the lease with lease addendum and Local Housing Authority's current Utility Allowances

6. MEPA (Massachusetts Environmental Policy Act) environmental notification form (ENF) for new construction only (request form before submission)

7. Affirmative Fair Marketing and Lottery Plan, including:

- ads and flyers with HUD Equal Housing Opportunity logo
- informational materials for lottery applicants
- eligibility requirements
- lottery application and financial forms
- lottery and resident selection procedures
- request for local preference and demonstration of need for the preference
- measures to ensure affirmative fair marketing, including outreach methods and venue list
- name of Lottery Agent with contact information

See Section III of the Comprehensive Permit Guidelines at: <http://www.mass.gov> (enter LIP 40b guidelines in Search field) for more information.

PLEASE contact our office if you have any questions: 617-573-1328.