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Name: ArborPoint at Woodland Station

MassHousing No.: 05-001-N

FHA No.: 023-98122



2007 00229834

Bk: 50539 Pg: 432 Doc: AGR  
Page: 1 of 28 12/31/2007 11:20 AM**REGULATORY AGREEMENT**

**Dated As Of:** December 21, 2007

**Borrower's Name and Address:** Woodland Station LLC  
c/o National Development  
2310 Washington Street  
Newton, MA 02462

**Name and Location of Development:** ArborPoint at Woodland Station  
1940 Washington Street  
Newton, Massachusetts

**Initial Replacement Reserve Requirement:** \$4,875 per month

**Borrower's Equity:** \$22,140,663

REGULATORY AGREEMENT between **WOODLAND STATION LLC**, a Massachusetts limited liability company ("Borrower") and **MASSACHUSETTS HOUSING FINANCE AGENCY** (the "Agency"), a body politic and corporate, organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts as amended (the "Act").

IN CONSIDERATION of the first mortgage loan ("First Mortgage Loan"), secured by the First Mortgage (hereinafter defined) which the Agency has agreed to advance to Borrower in connection with the residential housing development identified above (the "Development"), Borrower covenants and agrees that, in connection with ownership and operation of the Development, it will comply with the following:

**DEFINITIONS**

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning given such terms in the First Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents, of even date herewith (the "First Mortgage"), from Borrower, as mortgagor, to the Agency, as mortgagee, or in any applicable Subsidy Contracts as defined in the First Mortgage. As used in this Agreement the terms, "Adjusted Rental," "Below-Market Rental," "Housing Subsidy Programs," "Market Rental" and "Rentals" shall have the same meaning as in Section 6 of the Act and the Rental Determination Regulations adopted by the Agency

FIDELITY NATIONAL TITLE  
133 FEDERAL STREET  
BOSTON MA 02110

1940 WASHINGTON STREET, NEWTON

on May 12, 1998, as the same may be amended from time to time, and any policy determinations promulgated thereunder (said Regulations and policy determinations are herein called the "Rent Regulations"), and the term "annual income" shall have the same meaning as in Section 1(e) of the Act.

In connection with the making of the First Mortgage Loan, the Agency has made a second mortgage loan (the "Second Mortgage Loan") from its priority development funds. The Second Mortgage Loan is evidenced by the PDF Second Mortgage Note, dated as of the date hereof, from the Borrower to the Agency (the "Second Mortgage Note") in the original principal amount of \$3,450,000 and secured by a Second Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents, of even date herewith (the "Second Mortgage"), from Borrower, as mortgagor, to the Agency, as mortgagee. For the purposes hereof, the term "Mortgage Debt" shall mean all Obligations as defined in the First Mortgage and the Second Mortgage, the term "Mortgages" shall mean collectively the First Mortgage and the Second Mortgage, the term "Mortgage Loans" shall mean collectively the First Mortgage Loan and the Second Mortgage Loan, and the term "Notes" shall mean the First Mortgage Note and the Second Mortgage Note. For the purposes of Rider A attached hereto, the term "Mortgage" and "Mortgage Debt" shall refer only to the First Mortgage and the Obligations under the First Mortgage.

## **RENTALS AND RENTS**

2. (a) The Borrower shall rent units within the Development during the term hereof to low-income persons or families as defined in and upon the terms and conditions as set forth in the Residential Compliance Agreement, dated as of the date hereof (the "Compliance Agreement"), between the Borrower and the Agency and otherwise in accordance with the terms and provisions hereof, including any Rider attached hereto. For the purposes hereof, low-income persons and families subject to the foregoing restrictions are herein referred to as "Low-Income Persons or Families". In fulfilling the foregoing requirement, Borrower will accept referrals of tenants from the Public Housing Authority in the city or town in which the Development is located, and will not unreasonably refuse occupancy to any prospective tenants so referred. The foregoing provisions shall not relieve Borrower of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program.

(b) Rentals in the Development shall be established as shown on the Rental Schedule attached as Appendix A hereto subject to change from time to time in accordance with: the terms and provisions hereof; the provisions contained in the Rent Regulations, as amended from time to time; the terms and provisions of the Compliance Agreement; and any applicable Housing Subsidy Program. The Rent Regulations are incorporated herein by reference with the same force and effect as if set out in the full text of this Agreement and Borrower hereby acknowledges receipt thereof.

(c) Borrower shall obtain income certifications reasonably satisfactory in form and manner to the Agency at least every two (2) years for all tenants who are Low-Income Persons or Families ("Low Income Tenants"), or more frequently if required by the Compliance Agreement or any applicable Housing Subsidy Program. Said income certifications shall be kept by the Management Agent appointed pursuant to Section 9 hereof and made available to the Agency upon

request.

## **TENANT SELECTION AND OCCUPANCY**

3. Borrower shall use its best efforts during the term of this Agreement to maintain the Development at full occupancy, provided that Borrower shall comply with applicable Housing Subsidy Programs and other legal restrictions affecting the Development. Borrower shall comply with Borrower's Tenant Selection Plan, as approved by the Agency. The Borrower's Tenant Selection Plan, as approved by the Agency is incorporated herein by reference with the same force and effect as if set out in full text in this Agreement.

4. All occupancy agreements shall be expressly subordinated to the Mortgages. With respect to units not required hereunder or under the Compliance Agreement to be rented at Adjusted Rentals ("Restricted Units"), Borrower may use a residency agreement or lease form published by the Greater Boston Real Estate Board or other reasonably equivalent form approved by the Agency. Occupancy agreements for Restricted Units shall be in a form approved in the reasonable discretion of the Agency, subject to any requirements of any applicable Housing Subsidy Program, and, unless otherwise approved by the Agency, shall contain clauses, among others, wherein each resident of such units:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Borrower or the Agency; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his occupancy; and

(c) agrees that at such time as Borrower or the Agency may direct, he or she will furnish to Borrower certification of then current family income, with such documentation as the Agency shall require; and agrees to such charges as the Agency has previously approved for any facilities and/or services which may be furnished by Borrower or others to such resident upon his or her request, in addition to the facilities and services, if any, included in the Rentals, as amended from time to time pursuant to Section 2 above.

## **LOAN PREPAYMENT - TENANT PROTECTIONS**

5. (a) Borrower shall deliver a written notice to all Low Income Tenants of its election to prepay the Notes in full prior to the maturity thereof (the "Prepayment Notice") at the same time that it shall provide such notice to the Agency as required by the Notes. The Prepayment Notice shall inform all Low Income Tenants of the tenant protections described in this Section 5.

(b) For a period of one year after the date of prepayment ("Year 1")(the date of prepayment is hereinafter referred to as the "Prepayment Date"), as permitted by the terms of the

Notes, Borrower may not increase the Rentals payable by any tenant who is a Low-Income Person or Family on the Prepayment Date (a "Protected Low-Income Tenant"), except for Rental increases which would have been permitted by the terms and provisions of the applicable Housing Subsidy Program or the Agency's Rent Regulations if such prepayment had not occurred.

(c) For a period of two years after Year 1 ("CPI Index Period"), the Rentals for units occupied by Protected Low-Income Tenants may not be increased more than once annually by the greater of: (i) the consumer price index (applicable to the area in which the Development is located) times the Adjusted Rental in effect as of the Prepayment Date; or (ii) such higher amount as the Agency shall approve. In no event may Borrower increase Rentals for such units in excess of any limitations contained in a Housing Subsidy Program which remains in effect after the Prepayment Date.

(d) For three years after CPI Index Period (the "Transition Period"), Borrower shall provide Relocation Assistance, as defined herein, for any Protected Low-Income Tenant who voluntarily terminates his or her lease during the Transition Period as a result of Rental increases. For the purposes hereof, the term "Relocation Assistance" shall mean reasonable assistance in locating a comparable affordable unit, including the payment of any broker's fees and the payment of reasonable moving expenses within a thirty (30) mile radius of the Development.

(e) Upon prepayment, Borrower agrees to continue to use the form of occupancy agreement for all Protected Low-Income Tenants until the expiration of the periods described in (b) and (c), above. Thereafter, Borrower may require that all Protected Low-Income Tenants enter into the lease form used for tenants in the market-rental units or a lease substantially in the form published by the Greater Boston Real Estate Board, provided that any new occupancy agreement shall provide the Protected Low-Income Tenants with the benefits of subsection (d), above.

(f) The provisions of this Section 5 shall survive the termination of any other provisions of this Agreement as a result of prepayment until the expiration of the periods described in subsections (b), (c), and (d), above.

(g) Protected Low-Income Tenants shall have a right to enforce the protections provided them in this Section 5.

## **USE OF DEVELOPMENT REVENUES**

6. (a) All Rentals, income, and other receipts derived from the Development (herein, "Development Revenues") shall, if not held by the Agency in one of its accounts, be deposited in the name of Borrower or a nominee for Borrower in a bank or banks, whose deposits are insured by the Federal Deposit Insurance Corporation or otherwise deposited in funds and accounts established hereunder. The Agency shall at all times be advised of the names of the accounts and the names of the banks. Development Revenues shall be used only in accordance with the provisions of this Agreement. Any person receiving funds of the Development other than as permitted by the Contract Documents shall immediately deposit such funds in a Development bank account, or if failing to do so in violation of this Agreement, shall hold such funds in trust for the Development.

(b) Except as provided in Section 7(f) below, the Agency agrees that during the term of the Mortgages and until all Obligations have been repaid in full, all development reserves, escrows and accounts will be Borrower's sole property, but shall be subject to the Contract Documents, Agency rules, regulations, controls and escrow arrangements. In an Event of Default under the Mortgages, the Agency may, pursuant to the terms and provisions thereof, apply or authorize the application of any and all Development Revenues, including any balances, funds or accounts hereunder, for the purposes provided in Sections 22 ("Acceleration of Debt") and Section 23 ("Additional Rights of Lender") of the Mortgages.

(c) Borrower shall apply Development Revenues in the following order of priority: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the First Mortgage Note and the Contract Documents relating thereto; (ii) payment of or adequate reserve for all reasonable and necessary expenses of the Development as identified in Subsection (d), below; (iii) deposit of all amounts required to be deposited in the Replacement Reserve (as hereinafter defined); (iv) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Second Mortgage Note and the Contract Documents relating thereto and (v) payments of operating expense loans made by the partners, managers or members of Borrower for Development expenses, provided that Borrower shall have obtained prior written Agency approval for such loans and shall have supplied the Agency with such evidence as the Agency may reasonably request as to the application of the proceeds of such operating expense loans to Development expenses. Any amounts remaining after application of Development Revenue as provided above shall be applied as provided in Section 6(g) and Section 7 below.

(d) With respect to the application of Development Revenues as described above, Borrower agrees as follows:

(i) Payment for services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(ii) Payment for any capital items shall be made or reimbursed only from the Replacement Reserve (as hereinafter defined), unless otherwise approved by the Agency, which approval shall not be unreasonably withheld or delayed;

(iii) Reasonable and necessary expenses which may be payable pursuant to subsection 6(c)(ii), above, shall be directly related to the operation, maintenance or management of the Development, other than a portion of management fees which shall be payable as provided in subparagraph (e) below; and

(iv) Without the Agency's prior written consent, Borrower may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except as expressly permitted herein and any such assignment, transfer, security interest, disposition, or encumbrance made in violation of this provision shall be void.

(e) In developing and operating the Development, Borrower shall not incur any liability, either direct or contingent, out of the ordinary course of business.

(f) All amounts payable from Development Revenues to any manager or member of the Borrower or any affiliate thereof under the Operating Agreement of the Borrower or any partnership agreement of any member of the Borrower shall be payable solely from amounts available as distributions under Section 7 hereof; provided, that the foregoing provision shall not apply to any management fees payable under a management contract approved by the Agency under Section 9 hereof.

## **DISTRIBUTIONS**

7. (a) Distributions may be made: (i) quarterly within the Development's fiscal year subject to compliance with the Agency's written policy for the payment of quarterly distributions; and (ii) only once all currently payable amounts as identified in Section 6 (c) above are paid as evidenced by such certificates or other evidence as may be reasonably required by the Agency indicating that no such obligations are more than thirty (30) days past due. Except with the prior written authorization of the Agency, distributions cannot be derived or made from borrowed funds or from the sale of capital assets.

(b) No distributions may be made when: (i) a default has occurred and is continuing under any Contract Document or some event has occurred that, with the passage of time, would become an Event of Default under any Contract Document; (ii) when there has been failure to comply with the Agency's notice of any reasonable requirement for proper maintenance of the Development; or (iii) when there is outstanding against all or any part of the Mortgaged Property any lien or security interest on the Development assets other than a lien securing the Mortgage Debt under the Contract Documents or a lien expressly permitted under the Contract Documents. In an Event of Default under the Mortgages, the Agency may apply any amounts available for distribution to the payment of any Obligations as defined in the Mortgages.

(c) Subject to the provisions set forth above, distributions may be made to Borrower, provided that no distribution for any fiscal year may exceed that percentage of Borrower's Equity (as hereinafter defined) in the Development, which from time to time is permitted under the Act, and which, at the time of execution hereof, is ten percent (10%). The ten percent (10%) standard shall apply throughout the term hereof, except that if the Agency establishes a higher rate at a later date as permitted by the Act, Borrower may increase its equity distribution to the then permitted rate of distribution, subject to conditions established by the Agency in accordance with its Equity Policy or other policies or regulations with respect thereto (herein, the "Agency's Equity Policies").

(d) For the purposes hereof and in accordance with Section 5(d) of the Act, the amount of "Borrower's Equity" shall be as set forth on the first page of this Agreement. "Borrower's Equity" shall be adjusted upon completion of cost certification with respect to the construction or repairs to be financed in part from the Mortgage Loans. Thereafter, upon Borrower's written request, the amount of "Borrower's Equity" shall be adjusted not more frequently than once in every five (5) year period, subject to the Act and such conditions as set forth in the Agency's Equity Policies (other than

a restriction that would limit the frequency of any such adjustment).

(e) In the event that amounts available for distribution in a fiscal year exceed the distributions permitted for such fiscal year pursuant to Section 7(c) above, the amount of any such excess may be applied to pay, with interest at 5% per annum, the amount by which distributions made in any of the preceding fiscal years were less than the amount permitted to be paid under Section 7(c) hereof for such fiscal years, subject to the provisions of subsections (a) through (c) above.

(f) Any amounts available for distribution which may not be distributed in any year pursuant to the provisions of Section 7(c) above ("Excess Equity"), shall be deposited in an interest bearing account established by the Agency hereunder pursuant to Section 6(c) of the Act (the "Excess Equity Account") and maintained by the Agency in trust for the benefit of the Development during the term hereof. No distributions may be made to Borrower from the Excess Equity Account, except those permitted pursuant to Section 7(e) hereof. If an Event of Default exists under the Mortgages, the Agency may apply any amounts in the Excess Equity Account to the payment of any Obligations as defined in the Mortgages. Upon Borrower's request, amounts may also be withdrawn from the Excess Equity Account by the Agency during the term hereof and applied to any purpose described in Section 6(c)(i)-(iv) hereof or for any purposes for which amounts in the Replacement Reserve (as hereinafter defined) may be applied, subject to a determination by the Agency that the expenditure is necessary to address the Development's physical or financial needs and that no other funds are available to address such needs. Upon Prepayment (as defined in the Notes), or upon the maturity of the Notes, the Agency, upon the request of the Borrower, may in its sole discretion make amounts available from the Excess Equity Account to: extend the affordability of units available to Low-Income Persons and Families; to reduce Rentals to Low-Income Persons and Families; or to provide relocation and transitional assistance to Low-Income Persons and Families. Upon the expiration of the term hereof, any balance remaining in the Excess Equity Account shall become the Agency's funds free from any restrictions contained herein and may be used by the Agency for any of its purposes under the Act.

(g) Borrower shall comply with the provisions of any applicable Housing Subsidy Program with respect to the application of Rentals, including the creation and maintenance of "excess rental" or similar accounts. The provisions of this Section 7 shall be subject to the requirements of any such Housing Subsidy Program and the provisions of any applicable regulations of the Agency with respect thereto.

## **REPLACEMENT RESERVE**

8. (a) Borrower has established and will continue to maintain a reserve fund for replacements (the "Replacement Reserve") in an escrow account controlled by the Agency in an amount per month of \$4,875 commencing with the first day of the month following the expiration of sixty days after the issuance of certificates of occupancies for all of the units within the Development (the "Replacement Reserve Commencement Date") based upon the percentage of units actually occupied over the total number of units adjusted to take into account the actual date of occupancy of units. If the Mortgage Loans closing shall occur after the Replacement Reserve Commencement

Date, then the Borrower shall pay to the Agency at the Mortgage Loans closing the amount to be deposited into the Replacement Reserve calculated from the Replacement Reserve Commencement Date. Borrower hereby agrees that the replacement reserve amount specified above shall be increased each year by 3%. The replacement reserve amount may be further adjusted by the Agency based on a capital needs assessment which shall be completed at Borrower's expense. The interest earned on the account, shall remain in the Replacement Reserve for the benefit of the Development.

(b) Disbursements from the Replacement Reserve may be made only after receiving prior consent in writing from the Agency, which consent will not be unreasonably withheld or delayed.

## **MANAGEMENT OF THE DEVELOPMENT**

9. (a) Borrower shall maintain the Development in good physical and financial condition in accordance with the Agency's requirements and standards and the requirements and standards of any applicable Housing Subsidy Program. Borrower shall provide for the management of the Development in a manner reasonably satisfactory to the Agency and consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Furthermore, Borrower shall at all times use its best efforts to ensure that all management services are performed as efficiently and effectively as possible in a manner that, consistent with the requirements of any applicable Housing Subsidy Program, maximizes the Development's "Net Operating Income," as such term is defined by the Agency, provided that nothing herein shall require Borrower to fail to provide necessary resident services or to compromise the physical integrity and long term viability of the Development.

(b) Borrower must execute a management contract substantially in the form prescribed by the Agency and subject to the Agency's prior written approval. Borrower shall not enter into any management contract other than as approved by the Agency. Any management contract entered into by Borrower shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon thirty (30) days notice by Borrower if such termination is requested by the Agency and be terminable immediately by the Agency if Borrower fails to implement such request by the Agency. Upon receipt of such request or notice of termination, Borrower shall immediately make arrangements reasonably satisfactory to the Agency for continuing proper management of the Development. Any Event of Default under the Contract Documents shall be cause for termination of the management contract by the Agency.

(c) Failure by Borrower to terminate the management contract as requested pursuant to this section shall be an Event of Default under the Contract Documents. In the event that, subsequent to thirty (30) days after the termination of the management contract by Borrower (whether or not such termination is pursuant to the provisions of this section), Borrower has not made arrangements reasonably satisfactory to the Agency for continuing proper management of the Development, the Agency shall have the right to designate a new management agent for the Development.

## **LIMITED LIABILITY**



10. This Agreement incorporates by reference the limited recourse provisions contained in the Mortgages.

#### **CHANGE IN COMPOSITION OF OWNER ENTITY**

11. Except as provided in the last paragraph of this Section 11, the following actions shall be subject to the Agency's prior written approval, which shall not be unreasonably withheld:

- (a) any change, substitution or withdrawal of any general partner or manager of Borrower;
- (b) the conveyance, assignment, transfer, or relinquishment of twenty-five percent (25%) or more of the Beneficial Interests (herein defined) in Borrower; or
- (c) the conveyance, assignment or transfer of any right to manage or receive the rents and profits of the Development.

In addition, the assumption by any transferee or assignee of any obligations of the transferor or the assignor under the Contract Documents shall be accomplished by an instrument in writing satisfactory to the Agency. For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

Any transfer of a membership interest or limited partnership interest in the Borrower to a trust or other similar arrangement for the benefit of family members or related persons of the party owning such interest shall not be deemed to be a transfer of a "Beneficial Interest" hereunder subject to prior written notice to the Agency and, to the extent required, 2530 clearance having been obtained.

The Borrower agrees that it will not sell or permit the transfer of its membership interests to Fannie Mae or Freddie Mac and nothing herein shall require the Agency to approve any such sale of transfer of membership interests in the Borrower. Otherwise, in connection with the syndication of membership interests in the Borrower in order to obtain capital contributions for the use of the Low-Income Tax Credits under Section 42 of the Internal Revenue Code of 1986, as amended, the Borrower may sell or permit the transfer of membership interests to equity investors subject to providing the Agency with thirty (30) days prior written notice and obtaining any 2530 clearance which may be required. To the extent that the Borrower shall restate, amend or otherwise replace its Operating Agreement in connection with any such syndication, the restatement, amendment or replacement shall be subject to the Agency's review and approval which shall not be unreasonably withheld or delayed.

If in connection with any such syndication, the Borrower desires to transfer the Development

to a new borrower for purposes of effectuating the syndication, such transfer may only be made to a single purpose, sole asset borrower and shall otherwise be subject to the Agency's prior written approval which shall not be unreasonably withheld or delayed. In connection therewith, the Agency may require such transfer documents, assumption of Contract Documents, opinions of counsel and other evidence of the legal capacity of the new borrower to undertake its obligations under the Contract Documents upon such transfer.

The Agency agrees that Sovereign Bank may take a security interest in the membership interests of the Borrower in connection with the issuance of an Operations Letter of Credit in favor of the Agency as required by the Development Fund Agreement, dated as of the date hereof, between the Borrower and the Agency. In connection therewith, Sovereign Bank may realize on such security interest and take such membership interest or assign it to its affiliates upon providing fifteen (15) days prior written notice to the Agency specifying the occurrence of the event giving rise to such election and subject to any 2530 clearance which may be required from HUD. Upon the satisfaction of such conditions, the Agency may rely on such appointment in treating the new member as the member of Borrower.

Except for transfers otherwise provided herein, all transfers under this Section shall be subject to the Agency's Transfer of Ownership Policy adopted by its Board of Directors at its August 14, 2007 meeting.

12. Borrower agrees that in the event of retirement, death or mental incapacity of a general partner, manager or member, the business of Borrower will be continued by the remaining general partners, managers, or members, or with such additional general partners, managers or members as approved by the Agency.

## **BOOKS AND RECORDS**

13. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Development shall at all times be kept separate and identifiable from any other business of Borrower which is unrelated to the Development, and shall be maintained, as required by regulations or guidelines issued by the Agency from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Agency. Failure to keep such books and accounts and/or make them available to the Agency will be an Event of Default pursuant to Section 22 of the Mortgages.

## **ANNUAL FINANCIAL REPORT**

14. Within ninety (90) days following the end of each fiscal year of the Development, Borrower shall furnish the Agency with a complete annual financial report for the Development based upon an examination of the books and records of Borrower containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of the Agency which include: (i) financial statements submitted in Agency format; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under

Section 7 above. A duly authorized agent of Borrower must approve such submission in writing.

## **FINANCIAL STATEMENTS AND OCCUPANCY REPORTS**

15. At the request of the Agency, Borrower shall furnish quarterly financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development.

## **SOLE PURPOSE, SINGLE ASSET ENTITY**

16. Borrower hereby declares that it is, and shall remain, a sole purpose, single asset mortgagor.

## **NO CHANGE OF DEVELOPMENT'S USE**

17. Borrower shall not, without prior written approval of the Agency, change the type or number of residential units, permit the use of the dwelling accommodations of the Development for any purpose except residences or permit commercial use greater than that originally approved by the Agency, if any.

## **NO DISCRIMINATION**

18. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap or marital status in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development. Borrower or its management company shall, with respect to the Development, take affirmative measures to advertise for employment or contracts for goods and services, hire and promote employees, and enter into contract for goods and services in order to ensure compliance with Borrower's obligations under the Equal Opportunity Contract for Occupancy and Minority Business Development, executed by Borrower and the Agency in connection with the Mortgage Loans.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, or familial status, and providing for nondiscrimination and equal opportunity in housing. Failure or refusal to comply with any such provisions shall be a proper basis for the Agency to take any corrective action it may deem necessary including, but not limited to, the rejection of future applications for mortgage loans and the refusal to enter into future contracts of any kind with which Borrower or its partners, members, managers, shareholders, trustees, or beneficiaries are identified.

## **PAYMENTS UNDER MORTGAGES**

19. Borrower agrees to make all payments due under the Mortgages and with respect to the

Mortgage Debt in accordance with the terms and provisions of the Contract Documents.

## **MORTGAGED PROPERTY**

20. Attached hereto as Appendix B is a legal description of the land on which the Mortgaged Property is located.

## **MISCELLANEOUS CONTRACT PROVISIONS/TERM**

21. This Agreement may not be modified or amended except with the written consent of the Agency or its successors and assigns and Borrower or its successors and assigns.

22. This Agreement shall bind, and the benefits shall inure to, respectively, Borrower and its successors and assigns, and the Agency and its successors and assigns, so long as the Mortgages continues in effect, whether or not the Agency shall continue to be the Mortgagee under the Mortgages. Subject to the provisions of Section 5 above, this Agreement shall become a nullity upon payment and discharge of the Mortgage Debt.

23. Borrower warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

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

## **NOTICES**

25. Any Notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Borrower:

Woodland Station LLC  
c/o National Development  
2310 Washington Street  
Newton, MA 02462  
Attention: Thomas M. Alperin  
Fax: (617) 965-7361

with copies by regular mail or such hand delivery  
[or facsimile transmission] to:

Woodland Station LLC  
c/o National Development  
2310 Washington Street  
Newton, MA 02462  
Attention: Richard P. Schwartz  
Fax: (617) 507-58725

and

Nutter McClennen & Fish LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Attention: Robert A. Fishman, Esq.  
Fax: (617) 310-9204

If to Lender:

Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, Massachusetts 02108  
Attention: General Counsel  
Fax: (617) 854-1029

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

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

## **CAPTIONS**

26. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

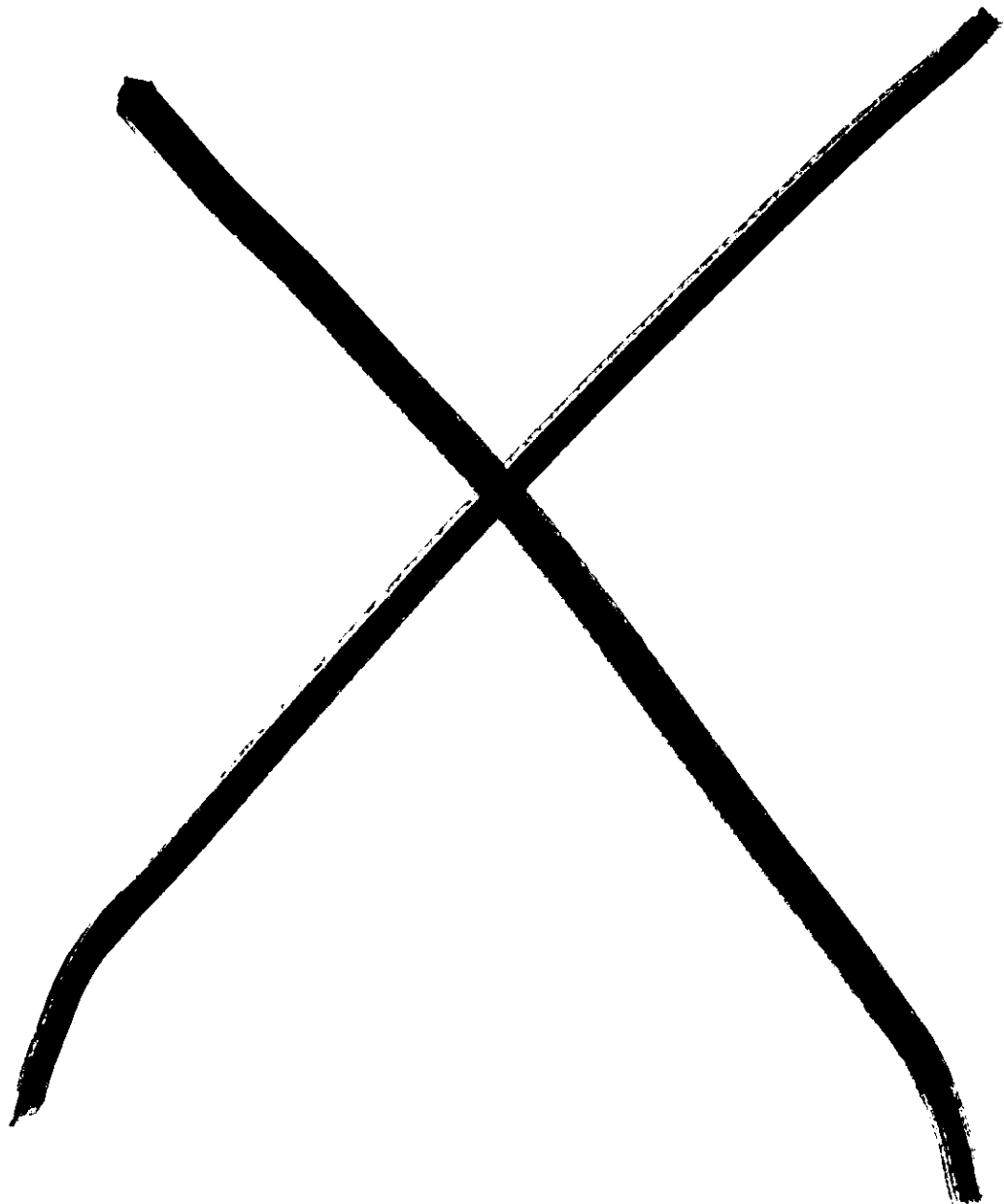
## **GENDER AND PLURALS**

27. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the

singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

#### **RISK SHARING**

28. Attached hereto is Rider A which constitute a part of this Agreement and the agreements contained therein shall be in addition to and not in derogation of any other terms and conditions contained herein and shall continue in full force and effect for the duration of the Mortgage Debt and Mortgages.



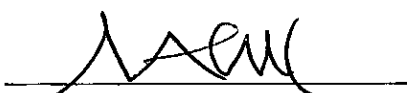
IN WITNESS WHEREOF, the parties have caused these present to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

**BORROWER:**

**WOODLAND STATION LLC,**  
a Massachusetts limited liability company

By: ND Woodland Station LLC, a Massachusetts  
limited liability company,  
its Managing Member and Authorized Signatory

By: NDNE Real Estate, Inc., its Manager

By:   
Name: Stephen A. Kinsella  
Title: Treasurer

**MASSACHUSETTS HOUSING  
FINANCE AGENCY**

By:  <sup>680</sup>  
Laurie R. Wallach, General Counsel

Attachments:

Rider A – Risk Sharing Rider

Appendix A - Rent Schedule

Appendix B - Legal Description of Property

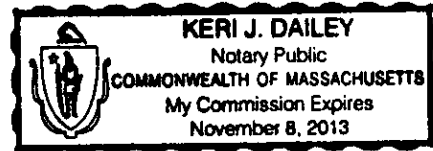
## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 21<sup>st</sup> day of December, 2007, before me, the undersigned notary public, personally appeared Laurie R. Wallach, the General Counsel of the Massachusetts Housing Finance Agency, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966, as amended, proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Before me:

By: Keri J. Dailey  
Notary Public:  
My Commission Expires:





## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 20<sup>th</sup> day of December, 2007, before me, the undersigned notary public, personally appeared before me the above-named Stephen A. Kerville the Treasurer of NDNE Real Estate, Inc., the manager of ND Woodland Station LLC, the Managing Member of Woodland Station LLC who proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free act and deed and the free act and deed of such limited liability company.

Before me:

Kathryn L. Childs  
 Notary Public:

My Commission Expires: KATHRYN L. CHILDS  
 Notary Public  
 Commonwealth of Massachusetts  
 My Commission Expires March 1, 2013



Rider A  
to  
Regulatory Agreement

Re: Provisions of 24 CFR § 266.505(b)

The undersigned, the Borrower named in the Regulatory Agreement to which this Rider is attached (herein, together with this Rider, the "Regulatory Agreement"), hereby agrees with the Massachusetts Housing Finance Agency (the "Agency") as follows:

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning given such terms in the Regulatory Agreement.
2. The agreements contained in this Rider shall be in addition to and not in derogation of any other terms and conditions contained in the Regulatory Agreement and shall continue in full force and effect for the duration of the Mortgage Debt and Mortgage. Attached to the Regulatory Agreement as Appendix B is a description of the property subject to the Mortgage.
3. The Regulatory Agreement shall be binding upon the Borrower and upon any of its successors and assigns and upon the Agency and any of its successors for so long as the Mortgage shall remain insured by the Secretary of Housing and Urban Development ("HUD") under the provisions of Section 542(c) of the Housing and Community Development Act of 1992 and 24 CFR Part 266 (the "Risk Sharing Program") or HUD holds a debenture from the Agency issued in connection with a claim arising from the insured Mortgage. So long as the Mortgage shall remain insured under the Risk Sharing Program, the Agency may not assign the Regulatory Agreement.
4. The Agency is obligated under the provisions of 24 CFR 266.505(a)(3) to enforce the provisions of the Regulatory Agreement and take actions against the Borrower for violation of the provisions of the Regulatory Agreement. Such actions, subject to the giving of any applicable notice and the expiration of any applicable grace period, may include the declaration of a default under the Regulatory Agreement and application to any court for specific performance of the terms of the Regulatory Agreement.
5. The Borrower shall make all payments due under the Mortgage and with respect to the Mortgage Debt in accordance with the terms and provisions of the Contract Documents.
6. The Borrower has established and will continue to maintain the Replacement Reserve under the Regulatory Agreement for future capital needs of the Development.
7. The Borrower shall maintain the Development as affordable housing, as defined in 24 CFR § 266.5 as follows:

[ x ] Not less than 20% of the units shall be rented during the term hereof to low-income persons or families whose annual income is less than or equal to 50% of the

area median income as determined by HUD and who shall pay as their share of Adjusted Rental not more than thirty percent (30%) of fifty percent (50%) of such area median income; or

[ ] Not less than 40% of the units shall be rented during the term hereof to low-income persons or families whose annual income is less than or equal to 60% of the area median income as determined by HUD and who shall pay as their share of Adjusted Rental not more than thirty percent (30%) of sixty percent (60%) of such area median income

8. The Borrower shall continue to use the dwelling units within the Development for their original purpose as set forth in the Regulatory Agreement.

9. The Borrower shall comply with such other requirements as established by the Agency and set forth in the Regulatory Agreement.

10. The Borrower shall maintain the Development in good physical and financial condition in accordance with the Agency's requirements and standards and the requirements and standards of any applicable Housing Subsidy Program.

11. The Borrower shall maintain complete books and records established solely for the Development in accordance with the requirements of the Regulatory Agreement and shall provide the Agency at the times and in the manner provided in the Regulatory Agreement with an annual audited financial statement based on these books and records and performed in accordance with standards for financial audits of the U.S. General Accounting Office's government auditing standards issued by the Comptroller of the United States.

12. The Borrower shall comply with the Affirmative Fair Housing Marketing Plan in effect with respect to the Development and all other fair housing and equal opportunity requirements.

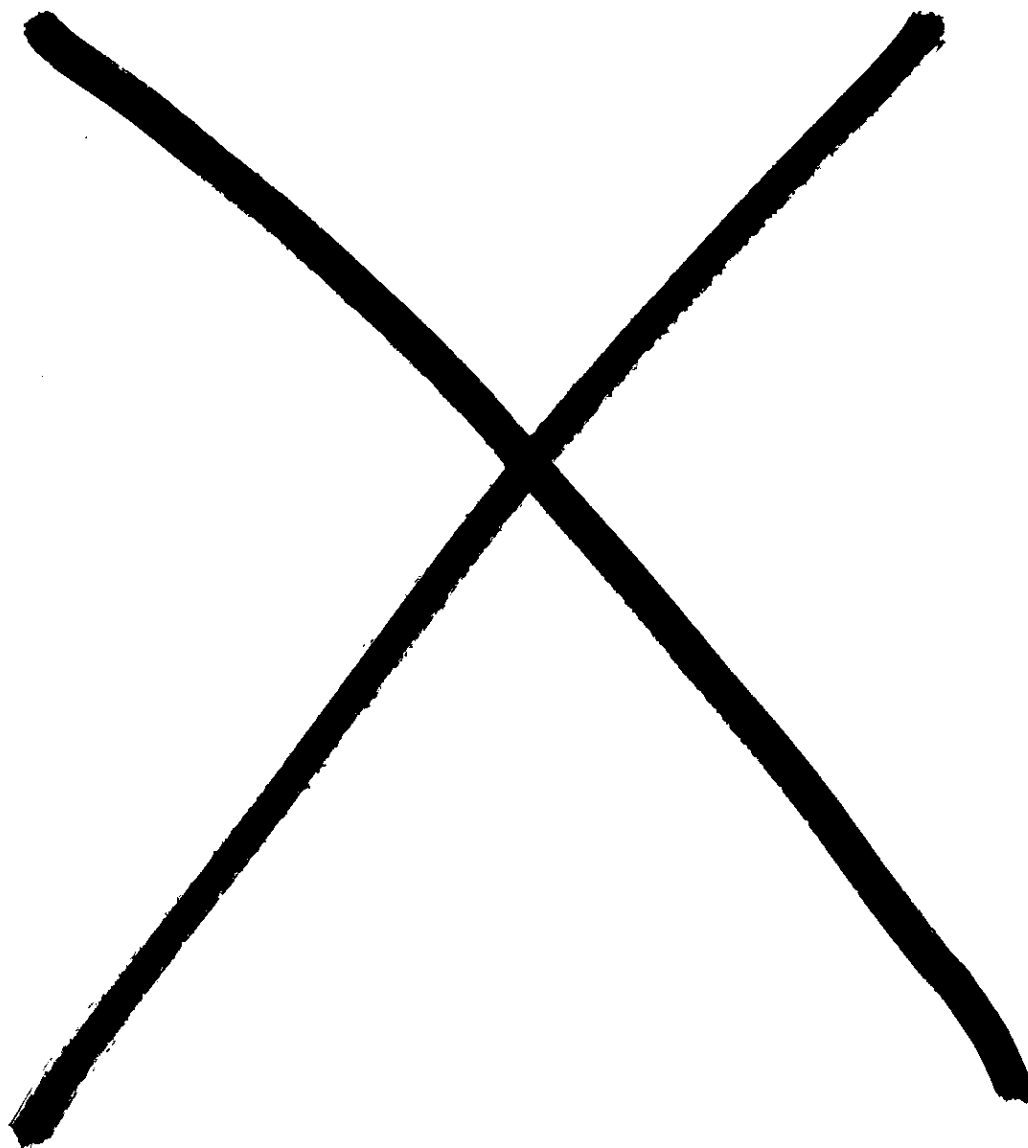
13. The Borrower shall operate as a single asset mortgagor.

14. The Borrower shall make all Development books and financial records including those required to be maintained by the terms of the Regulatory Agreement available to HUD's Inspection General and/or the General Accounting Office for review with appropriate notification.

15. The Borrower shall permit HUD officials or employees to inspect the Development upon the request of the Federal Housing Commissioner.

16. The Borrower shall otherwise comply with all regulations and requirements under the Risk Sharing Program, as found at 24 C.F.R. Part 266, for as long as the Mortgage is insured by HUD.

[Signatures To This Rider A Attached on Following Page.]




IN WITNESS WHEREOF, the Borrower and the Agency have caused these present to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

**BORROWER:**

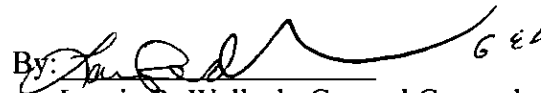
**WOODLAND STATION LLC,**  
a Massachusetts limited liability company

By: ND Woodland Station LLC, a Massachusetts  
limited liability company,  
its Managing Member and Authorized Signatory

By: NDNE Real Estate, Inc., its Manager

By:   
Name: Stephen A. Kinsella  
Title: Treasurer

**MASSACHUSETTS HOUSING  
FINANCE AGENCY**

By:   
Laurie R. Wallach, General Counsel

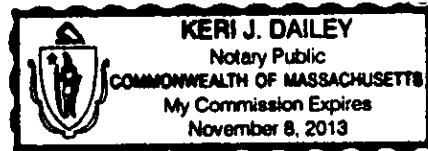
## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 21<sup>ST</sup> day of December, 2007, before me, the undersigned notary public, personally appeared Laurie R. Wallach, the General Counsel of the Massachusetts Housing Finance Agency, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966, as amended, proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Before me:

By: Keri J. Dailey  
Notary Public:  
My Commission Expires:



## COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this <sup>th</sup> 20 day of December, 2007, before me, the undersigned notary public, personally appeared before me the above-named Stephen A. Kinsella ~~Treasurer~~ of NDNE Real Estate, Inc., the manager of ND Woodland Station LLC, the Managing Member of Woodland Station LLC who proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free act and deed and the free act and deed of such limited liability company.

Before me:

Kathryn L. Childs  
Notary Public:

My Commission Expires:

KATHRYN L. CHILDS  
Notary PublicCommonwealth of Massachusetts  
My Commission Expires March 1, 2013

**APPENDIX A  
RENT SCHEDULE**

<b>RENT SCHEDULE:</b>				
	<b>Number</b>	<b>Contract Rent</b>	<b>Utility Allowance</b>	<b>Total Gross Rent</b>
<b>Low- Income (Rental Assisted):</b>				
1BR/1Bath	4	\$1,024	\$129	\$1,153
2BR/2Bath	4	\$1,162	\$191	\$1,353
3BR/2Bath	0	\$0	\$0	\$0
<b>Low-Income (Below 50% AMI):</b>				
0BR/1Bath	0	\$0	\$0	\$0
1BR/1Bath	13	\$659	\$129	\$788
2BR/2Bath	13	\$755	\$191	\$946
3BR/2Bath	2	\$844	\$249	\$1,093
<b>Market Rate (Unrestricted)</b>				
Studio	0	\$0	\$0	\$0
1BR/1Bath	60	\$2,066	\$0	\$2,066
2BR/2/2.5Bath	77	\$2,622	\$0	\$2,622
3BR/2.5Bath	7	\$3,410	\$0	\$3,410
<b>Total:</b>	<b>180</b>			



**APPENDIX B  
LEGAL DESCRIPTION**

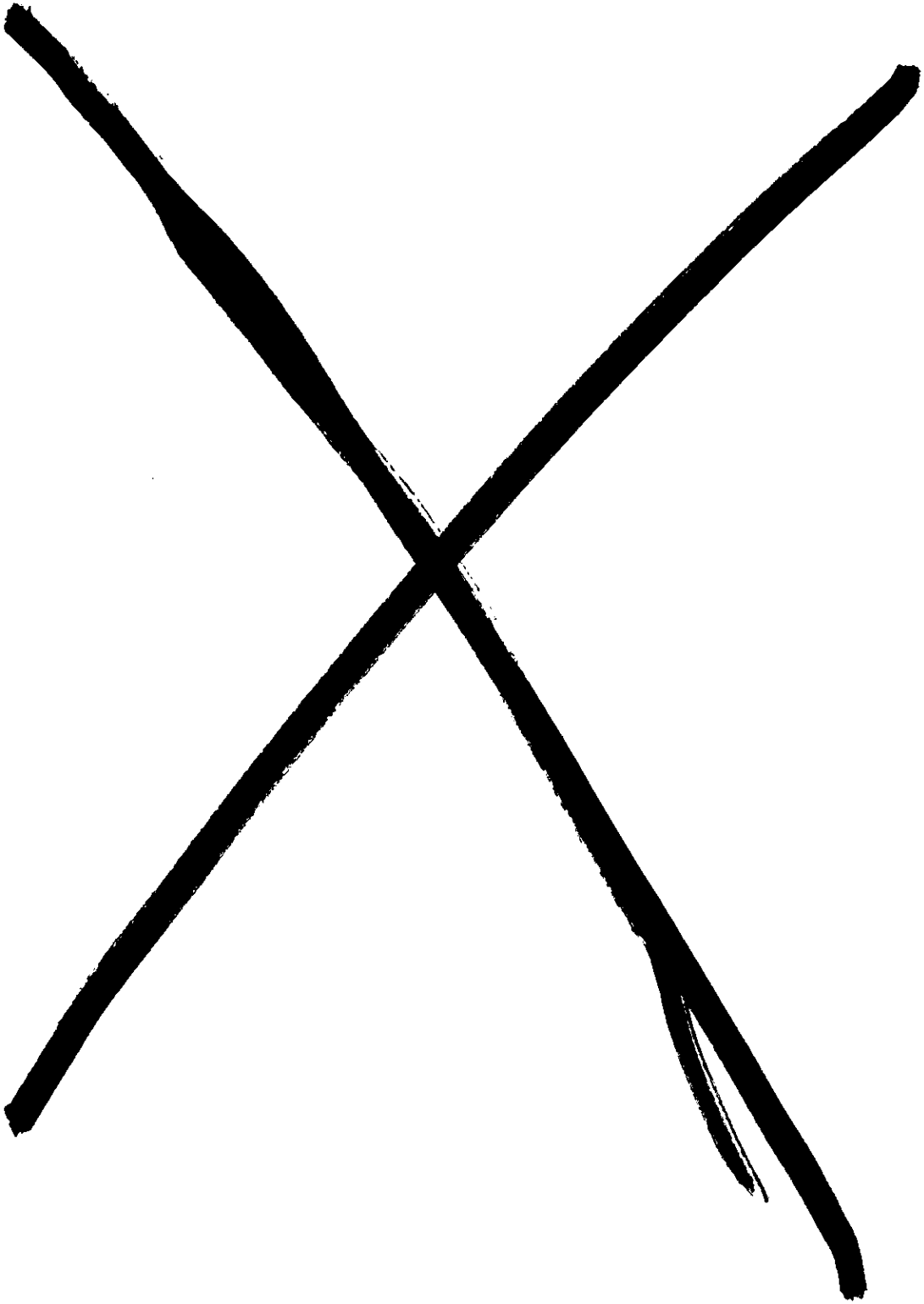


Exhibit A

## Legal Description

A certain parcel of land situated in the City of Newton, Middlesex County, Massachusetts shown as "Proposed Lease Area" on a plan of land entitled "Plan of Land in Newton, Massachusetts to be Leased by the M.B.T.A. to Woodland Station LLC", dated March 23, 2004, by Welch Associates Land Surveyors, Inc., recorded with the Middlesex South Registry of Deeds with the Notice of Lease in Book 43930, Page 364.

Said parcel of land is situated on the southerly side of Washington Street and is more particularly described as follows:

Beginning at a point on the southerly side of Washington Street; thence

S 33°55'26" E, a distance of ninety five and 17/100 (95.17') feet; thence

N 57°21'45" E, a distance of one hundred seventeen and 00/100 (117.00') feet; thence

S 35°20'23" E, a distance of twenty three and 48/100 (23.48') feet; thence

S 62°30'44" W, a distance of thirty two and 41/100 (32.41') feet; thence

S 38°44'33" E, a distance of fifty nine and 46/100 (59.46') feet; thence

S 51°15'27" W, a distance of twenty and 00/100 (20.00') feet; thence

S 38°44'33" E, a distance of ninety five and 36/100 (95.36') feet; thence

S 39°51'52" E, a distance of eleven and 64/100 (11.64') feet; thence

S 24°07'14" E, a distance of seventy nine and 84/100 (79.84') feet; thence

S 57°47'04" E, a distance of one hundred fifty and 60/100 (150.60') feet; thence

S 35°20'23" E, a distance of thirty five and 62/100 (35.62') feet; thence

S 43°54'00" E, a distance of one hundred seventy seven and 09/100 (177.09') feet; thence

S 55°01'04" E, a distance of two hundred thirty seven and 73/100 (237.73') feet; thence

S 46°11'54" W, a distance of two hundred twenty eight and 65/100 (228.65') feet; thence

N 43°50'13" W, a distance of seven hundred thirty seven and 61/100 (737.61'); thence

NORTHWESTERLY, more or less, by a curve to the right, having an arc length of twenty six and 55/100 (26.55') feet, a radius of two hundred fifty and 00/100 (250.00') feet, a chord bearing of N 40°47'41" W, and a chord length of twenty six and 54/100 (26.54'); thence

N 37°45'09" W, a distance of ninety one and 83/100 (91.83') feet; thence

NORTHWESTERLY, more or less, by a curve to the right, having an arc length of fifty three and 55/100 (53.55') feet, a radius of forty and 85/100 (40.85') feet, a chord bearing of N 01°23'44" W, and a chord length of forty nine and 80/100 (49.80') feet; thence

N 36°09'35" E, a distance of twenty three and 05/100 (23.05') feet; thence

NORTHEASTERLY, more or less, by a curve to the left, having an arc length of sixty eight and 89/100 (68.89') feet, a radius of fifty five and 00/100 (55.00') feet, a chord bearing of N 02°13'30" E, and a chord length of sixty four and 47/100 (64.47') feet; thence

N 33°39'24" W, a distance of twenty six and 29/100 (26.29') feet; thence

N 56°19'11" E, a distance of thirty and 89/100 (30.89') feet to the point of beginning.

All of said measurements are as shown on the above referenced plan.

Said parcel of land contains three and 863/1000 (3.863) acres of land, more or less.

Together with the following appurtenant rights for Tenant's benefit: (1) the appurtenant rights set forth on Exhibit A-1 attached hereto (which is also Exhibit A-1 to the Lease), subject to the terms and conditions set forth therein; and (2) the easement rights appurtenant to the insured leasehold estate affecting land presently owned by Brae Burn Country Club described in the Deed and Grant of Easements by and among Woodland Station LLC, the MBTA and Brae Burn Country Club dated May 26, 2005, recorded with the Middlesex South Registry of Deeds in Book 45340, Page 358, and shown as Water Easement and Sewer Easement on the Easement Plan attached as Exhibit A-2 hereto, subject to the terms and conditions set forth in said instrument.

All capitalized terms not otherwise defined shall have the same meaning as provided in the Ground Lease.

#### EXHIBIT A-1

The Insured Premises consists of the Lease Area described on Exhibit A and also the following appurtenant rights for Tenant's benefit affecting the following areas shown on the plan attached as Exhibit A hereto: (a) the non-exclusive right in common with Landlord to use the Access Road for all purposes needed for Tenant's Residential Project including, without limitation, installing and connecting to utilities therein; (b) the right to install underground pipes under Landlord's Other Property to discharge stormwater drainage into the existing swales along the railroad tracks; (c) the non-exclusive right to use an area to be maintained as a buffer area between Tenant's Residential Project and Landlord's Other Property; (d) the non-exclusive right to use Landlord's Other Property to plant trees, bushes and other site amenities, including signage identifying Tenant's Residential Project and a below ground sewer pumping station; and (e) the non-exclusive right to use that portion of Landlord's Other Property which is shown on the Easement Plan (attached hereto as Exhibit A-2) that is labeled "Access and Utility Area" on said Easement Plan (hereinafter said land shall be referred to as the "Access and Utility Area") for the following purposes: (i) access on foot and by vehicle to and from the Leased Premises including, without limitation, access to and egress from the garage which is part of Tenant's Residential Project; (ii) to install, operate, use, maintain, repair and replace utilities therein including, without limitation, sewer lines and water lines with all appurtenances thereto (such lines being hereinafter referred to, respectively, as the "Sewer Line" and "Water Line"); (iii) except in the event of an emergency, to enter the Access and Utility Area at all reasonable times in the exercise of the foregoing rights; (iv) to construct a road beginning at the end of the Access Road and ending at the Brae Burn property (the "Maintenance Road") as shown on the Easement Plan; and (v) to install utilities requested by Brae Burn and approved by the MBTA (the "Additional Utilities"). Tenant also shall have such temporary construction easements and temporary and/or permanent slope easements affecting Landlord's Other Property as shown on Exhibit A hereto as may be required for Tenant's Residential Project. Subject to advance review and approval by Tenant, Landlord may install an identification sign for Landlord's Other Property on the Insured Premises in a mutually agreed location using Landlord's standard sign graphics and with a design and materials consistent with the quality and appearance of Tenant's Residential Project. Tenant shall have the right, at all times and from time to time, to enter upon said appurtenant areas to install, maintain, repair, replace, relocate and use the foregoing facilities for the purposes described above.

All of the above easements herein granted are expressly granted with the obligation on the part of the party exercising such easements rights: (a) to repair, at its own cost, any damage arising from such exercise by such party of any rights or easements; (b) to provide reasonable advance written notice to the

other party prior to commencing such excavation, (c) to provide evidence of compliance with the applicable insurance requirements of the Lease prior to exercising such right, (d) in the case of excavation, to restore, at its own cost, the surface of the affected property to the same condition thereof as immediately prior to such excavation as is reasonably possible and perform such excavation only at such time and in such manner as to avoid unreasonable interruption in the other party's use and enjoyment of the affected property (including, without limitation, Landlord's Mass Transportation Activities) and (e) to comply with all applicable laws, statutes, regulations and ordinances now or hereafter in effect.

*For C. P. [Signature]*  
Attest: [Signature] J. Register