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## DECLARATION OF AFFORDABLE HOUSING COVENANTS

**Woodland Station LLC**, a Massachusetts limited liability company with an address c/o National Development at 2310 Washington Street Newton, MA 02462 (the "Owner") the holder of a leasehold interest in property known as **Arborpoint at Woodland Station** at 1940 Washington Street, Newton, Middlesex County Massachusetts under a Lease dated April 6, 2004 Notice of which is recorded in Middlesex County (Southern District) Registry of Deeds in Book 43930 Page 364 (the "Lease") hereby covenants and agrees for itself, its successors, and assigns, that the parcel described in Exhibit A attached hereto (hereinafter the "Property") shall, during the term of the Lease be subject to the following restrictions for the benefit of the **City of Newton**, acting by and through its Director of Planning and Development, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "City") or its successors.

The consideration for this Declaration of Affordable Housing Covenants is the granting by the City of Newton of a Comprehensive Permit in Zoning Board of Appeals Case # 20-04 recorded with Middlesex County (Southern District) Registry of Deeds in Book 44639 Page 1 (the "Comprehensive Permit") allowing the Owner to construct a housing development now known as **Arborpoint at Woodland Station** (the "Project").

The terms of this Covenant authorized by Massachusetts General Laws, Chapter 184, §§26, 31-33 and otherwise by law, are as follows:

1. **Purpose.** The purpose of this Covenant is to ensure that 20% of the dwelling units within the Project (36 units) will be occupied by individuals of low and moderate income pursuant to the requirements of Section 142(d)(1)(A) of the Internal Revenue Code. The determination of whether individuals satisfy such requirements shall be pursuant to rules or regulations adopted and applied by the Massachusetts Housing Finance Agency or its successors from time to time or any other governmental entity regulating the rents of the Project. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws, which has the benefit of Section 32 of, said Chapter 184.
2. **Covenants.** The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the City, and its successors.
3. **Term.** Both Owner and City intend that these covenants, agreements, and restrictions shall be in effect for the term of the Lease, and any extension thereof, or until the sooner of (a) release of such covenants, agreements and restrictions by the holder hereof in accordance with the provisions of G.L. c. 184 sec. 32; or (b) such time as the Project no longer requires the zoning relief of the Comprehensive Permit to comply with applicable law. The Owner acknowledges that the City intends to seek approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33. The City of Newton is a governmental body as defined in G.L. c. 184 sec. 26.
4. **Owner's Covenants and Representations.** During the term of this Covenant as defined in paragraph 3, (hereinafter "affordability period") the Owner, its successors and assigns shall comply with the following requirements:

Return to:

Alan Schlesinger  
Schlesinger & Buchbinder, LLP  
1200 Walnut St.  
Newton, MA 02461

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|------------------------------|----------------|
| MARGINAL REFERENCE REQUESTED |                |
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- A. At least 20% of the dwelling units within the Project (currently 36 units) will be occupied by individuals of low and moderate income pursuant to the requirements of Section 142(d)(1)(A) of the Internal Revenue Code (the "Code"). The determination of whether individuals satisfy such requirements shall be pursuant to rules or regulations adopted and applied by the Massachusetts Housing Finance Agency or its successors from time to time or any other governmental entity regulating the rents of the Project ("MassHousing").
- B. Rent for such units including an allowance for utilities paid directly by the tenant, may not exceed 30% of the income of the renting household adjusted as permitted under Section 42(g)(2)(E) of the Code, except as may be permitted or required by a subsidy program with which the Owner or tenant participates, such as the Section 8 program or as otherwise permitted by MassHousing.
- C. A household whose income meets the income limits at the time of initial occupancy of such units, but whose income eventually exceeds 50% of the area median income, may remain in the unit if permitted by Massachusetts Housing Finance Agency or any other governmental agency regulating occupancy of the Project, provided that the rent is adjusted so that the "over-income" household is paying not less than 30% of their adjusted monthly gross income for rent and a utilities allowance or such other amount as may be determined by any governmental agency providing subsidy, mortgage financing or otherwise regulating the Project. As soon as the "over-income" household vacates the Project, the Owner must re-rent the unit to an income-eligible household.
- D. The Owner represents warrants and covenants that the determination of whether a resident meets the income requirements set forth herein shall be made by Owner at the time of the leasing of the unit and thereafter at least annually on the basis of the current income of such resident in accordance with then-applicable governmental guidelines and regulations. The Owner shall maintain as part of its records, copies of all leases governing the rental of the unit as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s) of the unit. At the request of the City, the Owner shall provide copies of records documenting the annual and monthly gross and adjusted income of each resident occupying the unit. For residents who have Section 8 certificates, the Owner may rely on the housing assistance payment contract from the applicable housing authority in lieu of income verification by the Owner.
- E. During the term of Owner's Extended Low-Income Housing Agreement and Declaration of Restrictive Covenants by and between the Massachusetts Housing Finance Agency ("Agency") and Owner ("Housing Agreement"), Owner shall provide City with a copy of any certifications or other documentation required to be submitted to the Department of Housing and Community Development ("DHCD") or the Agency to evidence compliance with the terms of the Housing Agreement, such copies to be sent contemporaneously with Owner's original submission to DHCD or the Agency, as applicable. The Owner agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City to inspect any books and records of the Owner regarding compliance with the terms of this Declaration and the Comprehensive Permit. Upon termination of the Housing Agreement during the term of this Declaration, Owner shall provide, on an annual basis to the City, copies of records documenting the annual and monthly gross and adjusted income of each resident, and the rents charged to each household, occupying the unit. For residents who have Section 8 certificates, the Owner

may rely on the housing assistance payment contract from the applicable housing authority in lieu of income verification by the Owner.

- F. Except with the specific written and recorded consent of the City, this Declaration shall be superior and not subordinated to any mortgage or other voluntary encumbrance placed on the Property by the Owner after the date hereof provided, however, that during the term of any financing by MassHousing of the Project, the City's rights hereunder shall be subject and subordinate to MassHousing's rights under its loan documents with respect to the Project so long as MassHousing shall recognize in any mortgage placed on the Project that this Declaration shall survive any foreclosure or exercise of MassHousing's remedies under its loan documents.
- G. The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed, if the Owner with the consent of its lenders elects to repair and restore the Project, the Project if so restored shall thereafter continue to operate in accordance with the terms of this Covenant.
- H. Any use of the Property or activity thereon, which is inconsistent with the purpose of this Covenant, is expressly prohibited.

5. **Condition of Property.** By its acceptance of this Covenant, the City does not undertake any liability or obligation relating to the condition of the Property.

6. **Instruments to Enforce Covenant.** The City is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant; and the Owner on behalf of itself and its successors and assigns appoints the City its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the City intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

8. **Covenants to be Referenced in Deed.** These restrictive covenants shall be contained or referenced in any deed of conveyance or assignment of the Lease of the subject Project or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

9. **Notices.** All notices required under this Covenant shall be deemed to have been received if mailed, postage prepaid to the following:

For the City:

Director of Planning & Development  
City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

For Owner:

General Counsel  
National Development  
2310 Washington Street  
Newton, MA 02462

**10. Enforcement.**

- A. The rights hereby granted shall include the right of the City to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, (it being agreed that the City will have no adequate remedy at law). The Owner covenants and agrees to reimburse City all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.
- B. Without limitation on any other rights or remedies of the City, its successors and assigns, the City shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:
  - (i) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
  - (ii) voiding of any rental arrangement that violates this Covenant;
  - (iii) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant;
  - (iv) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.

**11. Certificate.** Any party may rely on a certificate signed by the Owner and the City as to any facts relative to this Covenant.

**12. Governing Law.** This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

-- Signatures Next Page --

IN WITNESS WHEREOF the said **Woodland Station LLC**, has caused this instrument to be signed, acknowledged and delivered in its name and behalf this 23 day of August 2007.

Woodland Station LLC

By: ND Woodland Station LLC, Managing Member

By: NDNE Real Estate, Inc., Manager

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

Date

8/23/07

Its:

**Theodore R. Tye**  
**Executive Vice President**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

August 23, 2007

On this 23 day of August, 2007, before me, the undersigned notary public, personally appeared the above-named Theodore R. Tye proved to me through satisfactory evidence of identification, which were is known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Exec. VP of NDNE Real Estate, Inc. Manager of ND Woodland Station, LLC on behalf of Woodland Station LLC.



Karen E. Hardy


Notary Public

My Commission expires: 7/18/08

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**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Description of Ground Lease

The land, buildings and other improvements thereon known as and located at 1940 Washington Street Newton, Middlesex County Massachusetts further described in that certain Land Lease between Massachusetts Bay Transportation Authority, as Landlord and Woodland Station LLC, as tenant, dated April 6, 2004, as amended, notice of which is recorded with Middlesex County (Southern District) Registry of Deeds in Book 43930, page 364, as amended by First Amendment to Land Lease dated May 26, 2005 and Second Amendment to Land Lease dated May 27, 2005.

  
Attest Middlesex S. Register