

Name: \_\_\_\_\_ (MAP)  
MassHousing No. \_\_\_\_\_  
FHA No. \_\_\_\_\_

## DISPOSITION AGREEMENT

This DISPOSITION AGREEMENT (this “**Agreement**”) is entered into as of \_\_\_\_\_, 20\_\_, by and between MASSACHUSETTS HOUSING FINANCE 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 “**Enabling Act**”), having an address of One Beacon Street, Boston, Massachusetts 02108 (“**MassHousing**”), and \_\_\_\_\_, a Massachusetts \_\_\_\_\_, having an address \_\_\_\_\_ (the “**Owner**”). This Agreement is intended to be an affordable housing restriction as set forth in Massachusetts General Laws Chapter 184, Section 31.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MassHousing and Owner agree as follows:

**1. DEFINITIONS.** As used herein the following terms shall have the meanings ascribed to them below:

- (a) “**Annual Income**” - a family’s or person’s gross annual income less such reasonable allowances for dependents (other than spouse) and for medical expenses as MassHousing determines.
- (b) “**Annual Income Limit**” – eighty percent (80%) of the Median Gross Income for the Area.
- (c) “**Family**” - two or more persons who occupy the same dwelling or unit.
- (d) “**Low-Income Persons or Families**” - those persons and families whose annual income is equal to or less than the Annual Income Limit.
- (e) “**Median Gross Income for the Area**” - means the median income for any household of a given size, in the Primary Metropolitan Statistical Area which includes the location of the Development, most recently determined by the Department of Housing and Urban Development (“HUD”) under

[Development Address]

Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income determined under the method used by HUD prior to their termination.

- (f) **“Mortgage”** – the Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement of even date herewith from Owner to MassHousing, recorded and/or filed in the \_\_\_\_\_ District Registry of Deeds and/or Registry District of the Land Court (the **“Registry”**) concurrently herewith, including all amendments and modifications thereto.
- (f) **“Mortgage Note”** – the Note (Multistate) in the original principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of even date herewith from Owner to MassHousing, for which the Mortgage was given as security, including all amendments and substitute notes thereto.
- (g) **“Property,” “Land,” or “Development”** - that certain parcel of land, as more particularly described in Exhibit A attached hereto and incorporated herein by reference, known as “\_\_\_\_\_”, located at \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, together with the improvements thereon, comprising a \_\_\_\_\_-unit rental residential housing facility.

**2. RESTRICTIONS ON USE OF THE PROJECT.** For the term of this Agreement, hereinafter defined, Owner covenants and agrees, for itself and any successors and assigns, that it shall provide that not less than **twenty percent (20%)** of the total rental units (i.e., \_\_\_\_\_ (\_\_\_\_) units) within the Development be rented at all times to Low-Income Persons or Families at rentals, including the provision of heat, electricity and hot water, set on the basis of the use by Low-Income Persons or Families of not more than thirty percent (30%) of the Annual Income Limit for the unit rents by Low-Income Persons or Families or such greater portion of such persons’ or families’ annual income as required by laws, regulations, or guidelines applicable to any affordable housing program of an agency of the United States government, or the Commonwealth or any agency thereof, used or to be used in connection with the Development. Owner will not be in violation of this Section 2 if noncompliance with the terms of this Section 2 is due to a change in income of a Low-Income Person or Family following income certification if Owner leases each next available unit to a Low-Income Person or Family until compliance with this Section 2 is restored.

### **3. ENFORCEABILITY; AFFORDABILITY MONITORING.**

3.1 The covenants set forth in this Agreement shall run with the Land described in Exhibit A hereto; be binding upon Owner and any successors and assigns to the fullest extent permitted by law; be for the exclusive benefit of MassHousing; be enforceable solely by MassHousing, its successors and assigns in either law or equity; and survive the foreclosure of the Mortgage and be binding upon and enforceable against any purchaser at a foreclosure sale. Owner, for itself and its successors and assigns, agrees to execute and deliver to MassHousing, in form suitable for recording, any document that MassHousing requires to further ensure the enforceability of the terms and provisions of this Agreement. Upon the violation of the terms of this Agreement, MassHousing may pursue any available legal or equitable remedy against Owner notwithstanding the availability of any other remedy. As MassHousing has required Owner to enter into this Agreement due to MassHousing's public purpose of providing affordable housing, Owner agrees that specific performance is an appropriate remedy for violations of this Agreement and Owner agrees and stipulates that any violation of this Agreement will cause irreparable harm to MassHousing for which a remedy at law, including damages, shall not be adequate, such that MassHousing shall be entitled to injunctive relief without having to post a bond.

3.2 On or before June 30 of each year during the term hereof, Owner shall provide MassHousing with a written certification to the effect that Owner is in compliance with all affordability requirements contained in this Agreement. Owner shall provide MassHousing with such evidence as MassHousing may from time to time require to confirm the veracity of Owner's certification and/or compliance with the terms of this Agreement promptly following receipt of MassHousing's request for same. In addition, if the fifteen-year term of this Agreement has not expired at such time, if any, when the Mortgage has been prepaid or MassHousing is otherwise no longer holder of the Mortgage, Owner will pay MassHousing an annual monitoring fee for the remaining term of this Agreement, the amount of such monitoring fee to be reasonably determined by MassHousing (currently anticipated to be \$200.00 per annum for each unit required under this Agreement to be rented to Low-Income Persons or Families) and, if a HUD regulatory agreement is then in effect, payable only from "Surplus Cash" as defined therein.

**4. WAIVER AND RELEASE.** MassHousing and its successors and assigns, as sole beneficiary of this Agreement, may release Owner from its obligations under this Agreement, at any time, if MassHousing determines that such release will preserve affordable housing that would otherwise be converted to market rate housing, or if MassHousing otherwise finds that such release will further the specific purposes of the Enabling Act; any release of this Agreement must be in accordance with applicable law.

**5. TERM.** The terms and provisions of this Agreement shall remain in full force and effect until the later to occur of (a) the date that is **fifteen (15) years** from the date hereof or (b) the date upon which no obligation under the Mortgage remains unpaid (or otherwise unsatisfied).

**6. SEVERABILITY.** The provisions of this Agreement are severable, and if any of its provisions shall be declared invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

**7. LIMITED LIABILITY.** No partner (general or limited), manager, or member of Owner and no officer, director, trustee, member, manager, agent, or employee of Owner or of any partner, manager, or member thereof shall have any personal liability for any obligation by Owner arising hereunder and the MassHousing shall look only to Owner and its assets for such payment or performance.

*[Remainder of page intentionally left blank. Signature pages follow.]*

**OWNER SIGNATURE PAGE TO DISPOSITION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Disposition Agreement as an instrument under seal as of the date set forth above.

OWNER:

\_\_\_\_\_, a  
Massachusetts \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.  
\_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_, proved to me  
through satisfactory evidence of identification, being: [ ] a driver's license or other state  
or federal governmental document bearing a photographic image, [ ] the oath or  
affirmation of a credible witness known to me who knows the above signatory, or [ ] my  
own personal knowledge of the identity of the signatory, to be the person whose name  
is signed on the preceding or attached document, and acknowledged to me that he/she  
signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity,  
before me

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Attachment:**  
Exhibit A - Legal Description of Property

**MASSHOUSING SIGNATURE PAGE TO DISPOSITION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Disposition Agreement as an instrument under seal as of the date set forth above.

MASSHOUSING:

**MASSACHUSETTS HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
Karen E. Kelleher, General Counsel

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.  
\_\_\_\_\_, 20\_\_

Then personally appeared the above-named Karen E. Kelleher, General Counsel of the Massachusetts Housing Finance Agency, proved to me through satisfactory evidence of identification, being: [ ] a driver's license or other state or federal governmental document bearing a photographic image, [ ] the oath or affirmation of a credible witness known to me who knows the above signatory, or [ ] my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Attachment:**  
Exhibit A - Legal Description of Property

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY