

REGULATORY AGREEMENT

For Comprehensive Permit Projects in Which Funding is Provided Through Other than a State Entity

This Regulatory Agreement (this "Agreement") is made as of the 24th day of September 2012, by and between the Massachusetts Housing Finance Agency acting as Subsidizing Agency as defined under the provisions of 760 CMR 56.02 (the "Subsidizing Agency"), and Kimloch Farm, LLC, a Massachusetts limited liability company, having an address at 390 Goodrich Street, Lunenburg, MA 01460, and its successors and assigns (the "Developer").

RECITALS

WHEREAS, the Developer intends to construct a housing development known as Kimloch Farms consisting of 8 for-sale condominium units (the "Project") which property is at a 6-acre site located at 120 Goldsmith Street in the Town of Littleton (the "Municipality"), more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Project is being financed with a \$812,500 construction loan from Fidelity Co-operative Bank (the "NEF Lender"), a non-governmental entity;

WHEREAS, the Massachusetts Housing Finance Agency acts as Subsidizing Agency for the Project, on behalf of DHCD, pursuant to Massachusetts General Laws Chapter 40B Sections 20-23 (the "Act"), the regulations at 760 CMR 56.00, and the Comprehensive Permit Guidelines issued pursuant thereto (collectively, the "Comprehensive Permit Rules"); and

WHEREAS, the Developer has received a comprehensive permit (as it may previously have been amended, the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with the Act, which permit is recorded at the Middlesex South County Registry of Deeds ("Registry") in Book 59734, Page 499, as amended by the terms of this Agreement; and

WHEREAS, pursuant to the requirements of the Comprehensive Permit Rules, twenty-five percent (25%) of the units in the Project (2 units) (the "Affordable Units") will be sold at prices specified in this Agreement to Eligible Purchasers (as defined herein) and will be subject to resale restrictions as set forth herein; and

WHEREAS, the Subsidizing Agency may delegate to an affordability monitoring agent (the "Affordability Monitoring Agent") certain administration, monitoring and

enforcement services regarding compliance of the Project with the Comprehensive Permit Rules during the period of affordability of the Affordable Units; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for initial sales and resales of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws and regulations.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subsidizing Agency and the Developer hereby agree as follows:

1. Definitions. Capitalized terms used and not defined herein shall have the same meaning as set forth in the Affordable Housing Restriction attached hereto as Exhibit B and incorporated herein by reference (the “Affordable Housing Restriction”). In addition to the defined terms in the Affordable Housing Restriction and the capitalized terms defined in the Recitals above, the following terms shall have the meanings set forth below:

Affordability Monitoring Services Agreement shall have the meaning set forth in Section 5 hereof.

Affordability Requirement shall mean the obligations of the Developer described in Section 3 hereof.

Allowable Profit shall have the meaning set forth in Section 4(a) hereof.

Cost Examination shall have the meaning set forth in Section 4(b) hereof.

DHCD shall mean the Department of Housing and Community Development.

Eligible Purchaser shall have the meaning set forth in the Affordable Housing Restriction attached hereto as Exhibit B, and, in addition, must also (i) be a First-Time Homebuyer, and (ii) own assets not in excess of the limit set forth in the Comprehensive Permit Rules.

Excess Profit shall have the meaning set forth in Section 4(e) hereof.

Event of Default shall have the meaning set forth in Section 10(a) hereof.

Limited Dividend Requirement shall mean the obligations of the Developer described in Section 4 hereof.

Limited Dividend Monitoring Services Agreement shall have the meaning set forth in Section 4 hereof.

Marketing Documentation shall have the meaning set forth in Section 3(c) hereof.

Marketing Plan shall have the meaning set forth in Section 3(c) hereof.

Maximum Initial Sale Price means the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income for an Appropriate Size Household could obtain mortgage financing as determined by the Subsidizing Agency using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program.

Plans and Specifications shall have the meaning set forth in Section 2 hereof.

Resale Price Certificate means the certificate in recordable form issued by the Subsidizing Agency and recorded with the first deed of each Affordable Unit from the Developer to the initial Eligible Purchaser, which certificate sets forth the Resale Price Multiplier to be applied on the resale of such Affordable Unit, according to the terms of the Affordable Housing Restriction for such unit, for so long as the restrictions set forth in the Affordable Housing Restriction continue, and any subsequent certificate issued by the Affordability Monitoring Agent in accordance with the terms of the Affordable Housing Restriction.

Substantial Completion shall have occurred for purposes of this Agreement when the construction of the Project is sufficiently complete so that all of the units 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 Project.

Term shall have the meaning set forth in Section 14(a) hereof.

Total Development Costs means the total budget for the acquisition and construction of the Project (including both hard and soft costs and such other sums as the Subsidizing Agency may determine constitute the Developer's contribution to the Project, but not including any fee paid to the Developer), as approved by Subsidizing Agency pursuant to the Comprehensive Permit Rules, this Regulatory Agreement, and the Limited Dividend Monitoring Services Agreement, using the standards of the Subsidizing Agency applicable to comprehensive permit projects, and as finally determined by the Subsidizing Agency in accordance with the Comprehensive Permit Rules.

2. Construction Obligations. (a) The Developer agrees to construct the Project in accordance with plans and specifications approved by the Subsidizing Agency and the Municipality (the "Plans and Specifications"), in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit, and in accordance with the information describing the Project provided by the Developer to the Subsidizing Agency in its Application for Final Approval. All Affordable Units to be constructed as part of the Project must be similar in exterior appearance to other units in the Project and shall be evenly dispersed throughout the Project. In addition, all Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Project must fully comply with the State Building Code and with all applicable state and federal

building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. 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. The Affordable Units shall be constructed on a schedule that provides substantially for the construction of one (1) Affordable Unit for every three (3) market rate units constructed. In no event shall any five (5) market rate units be constructed without completion of one Affordable Unit.

(b) The Subsidizing Agency shall monitor compliance with the construction obligations set forth in this section in such manner as the Subsidizing Agency may deem reasonably necessary. In furtherance thereof, the Developer shall provide to the Subsidizing Agency (i) evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications; and (ii) such information as the Subsidizing Agency may reasonably require concerning the expertise, qualifications and scope of work of any construction monitor proposed by the NEF Lender, and if such information is acceptable to the Subsidizing Agency, the Developer shall provide to the Subsidizing Agency prior to commencement of construction a certification from the NEF Lender concerning construction monitoring in a form acceptable to the Subsidizing Agency. Such certification shall also include a representation that the NEF Lender will maintain certain minimum funding levels to meet the subsidy requirements of the Act.

3. Affordability Requirement. (a) The Developer shall sell the Affordable Units only to Eligible Purchasers at no greater than the Maximum Initial Sale Price. There shall be Affirmative Fair Marketing and the Developer shall comply with the lottery procedures set forth in the Comprehensive Permit Rules prior to the selection of an Eligible Purchaser. At the time of sale of each Affordable Unit by the Developer, the Developer shall execute and shall as a condition of the sale cause the purchaser of the Affordable Unit to execute an Affordable Housing Restriction in the form of Exhibit B attached hereto and incorporated herein by reference. Such Affordable Housing Restriction shall be attached to and made a part of the deed from the Developer to the initial purchaser of the Affordable Unit and each subsequent deed of such unit so that the affordability of the Affordable Unit will be preserved each time a resale of the Affordable Unit occurs.

(b) Prior to the publication of any Marketing Documentation for the Affordable Units, the Developer shall request the Subsidizing Agency to calculate the Maximum Initial Sale Price for each Affordable Unit and shall advertise the price so calculated in marketing the Affordable Units. Prior to the delivery of the first deed for each Affordable Unit, the Developer shall notify the Subsidizing Agency of the actual purchase price for each Affordable Unit (which shall in no event be greater than the Maximum Initial Sale Price calculated by the Subsidizing Agency), and the Subsidizing Agency shall issue a Resale Price Certificate to the Developer calculating the Resale Price Multiplier. The Developer shall as a condition of the sale cause the purchaser to record the Resale Price Certificate immediately after the first deed of each Affordable Unit.

(c) Prior to marketing or otherwise making available for sale any of the Units, the Developer must obtain the Subsidizing Agency's approval of a marketing plan (the "Marketing Plan") for the Affordable Units to be administered under the supervision of the Affordability Monitoring Agent. After such approval, the Marketing Plan may not be amended without the Subsidizing Agency's consent. The Marketing Plan must describe the buyer selection process for the Affordable Units, including any lottery or similar procedure for choosing among Eligible Purchasers, and must provide for Affirmative Fair Marketing of Affordable Units. If required under the Comprehensive Permit and approved by the Subsidizing Agency, the Marketing Plan may also include a preference for local residents, which in no event may exceed more than seventy percent (70%) of the Affordable Units; provided that, in the event a local resident preference is established, use of the preference shall not violate applicable fair housing laws and regulations. All costs of carrying out the Marketing Plan with respect to outreach, location and selection of the initial Eligible Purchasers shall be paid by the Developer; thereafter, such costs shall be paid from the Resale Fee (as defined in the Affordable Housing Restriction). The Developer agrees to maintain for at least five (5) years following the sale of the last Affordable Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and all Affirmative Fair Marketing efforts (collectively "Marketing Documentation") as described in the Marketing Plan. The Marketing Documentation may be inspected at any time by the Affordability Monitoring Agent, the Subsidizing Agency and the Municipality. If at any time prior to or during the initial process of marketing the Affordable Units, the Subsidizing Agency determines that the Developer or the Affordability Monitoring Agent has not adequately complied with the approved Marketing Plan, the Developer or Affordability Monitoring Agent, as the case may be, shall take such additional corrective measures as shall be specified by the Subsidizing Agency.

4. Limited Dividend Requirement. (a) The Developer agrees that the aggregate profit from the Project which shall be payable to the Developer or to the partners, shareholders or other owners of Developer or the Project shall not exceed twenty percent (20%) of Total Development Costs (the "Allowable Profit"), which development costs have been approved by the Subsidizing Agency pursuant to the Comprehensive Permit Rules, this Regulatory Agreement, and the Limited Dividend Monitoring Services Agreement attached hereto as Exhibit C and incorporated herein by reference (the "Limited Dividend Monitoring Services Agreement"). Notwithstanding the foregoing, the Subsidizing Agency shall have the sole right to approve the Cost Examination and to determine the Allowable Profit. For so long as the Developer complies with the requirements of this section, the Developer shall be deemed to be a limited dividend organization within the meaning of the Act.

(b) Within one hundred-eighty (180) days after Substantial Completion of the Project, or, if later, within ninety (90) days of the date on which all units in the Project are sold, the Developer shall deliver to the Subsidizing Agency an itemized statement of Total Development Costs together with a statement of gross income from the Project received by the Developer to date in the format provided in the Subsidizing Agency's Cost Examination Program applicable to the Project along with all other documents required by the Cost Examination Program (the "Cost Examination"). The Cost Examination must be prepared and certified by a certified public accountant (satisfactory to the Subsidizing Agency) in

accordance with the attestation standards established by the American Institute of Certified Public Accountants. If all units in the Project have not been sold as of the date the Cost Examination is delivered to the Subsidizing Agency, the Developer shall at least once every ninety (90) days thereafter until such time as all of the Units are sold, deliver to the Subsidizing Agency an updated Cost Examination. If all units 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) arm's-length sales of comparable units, and a final Cost Examination shall be required within ninety (90) days thereafter. The Subsidizing Agency may allow additional time for submission of the Cost Examination if significant issues are determined to exist which prevent the timely submission of the Cost Examination, and may in certain circumstances (such as a halt in construction for a significant period of time) require submission of an interim Cost Examination within ninety (90) days of written notice to the Developer.

(c) All related party transactions resulting in Project costs or income must be disclosed in the Cost Examination, and documentation must be provided identifying, where applicable, what portion of costs were paid to non-related third parties (e.g., subcontractors) and what portion were retained by related parties. In the event that any unit sales are made to related parties, the amount of income to be included in the Cost Examination for such sales shall be the greater of (i) the actual sales price of the unit, and (ii) the average sales price of the highest three (3) arm's-length sales of comparable units.

(d) If any unit is sold prior to the date the final Cost Examination is approved by the Subsidizing Agency, the Developer shall upon the request of the Subsidizing Agency provide evidence reasonably satisfactory to the Subsidizing Agency that any profit distributed to the Developer or to the partners, shareholders or other owners of Developer or the Project on such sale, combined with reasonably projected total profits from the Project, will not exceed the Allowable Profit.

(e) All profits from the Project in excess of the Allowable Profit, as finally determined by the Subsidizing Agency (the "Excess Profit"), shall be paid by the Developer to the Municipality promptly after such determination.

5. Affordability Monitoring Agent. At the request of the Subsidizing Agency, the Developer shall retain one or more Affordability Monitoring Agents for purposes of administration, monitoring and enforcement under this Agreement pursuant to an agreement substantially in the form of the Affordability Monitoring Services Agreement attached hereto as Exhibit D and incorporated herein by reference (the "Affordability Monitoring Services Agreement"). All notices and reports required to be submitted under this Agreement shall be submitted simultaneously to the specified entity and to the Affordability Monitoring Agent. The Affordability Monitoring Services Agreement may be terminated by the Subsidizing Agency or the Affordability Monitoring Agent as provided in the Affordability Monitoring Services Agreement. In the event of such termination, a successor monitoring agent shall be selected in accordance with the provisions of the Affordability Monitoring Services Agreement, and thereafter such successor shall be the Affordability Monitoring Agent for the Project.

6. Developer's Representations, Covenants and Warranties. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a limited liability company duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of said Commonwealth, (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, and any other documents executed in connection with the loan from the NEF Lender, or other encumbrances permitted by the Subsidizing Agency).

(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.

7. No Discrimination. There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing, and the Developer shall not discriminate in the selection of buyers for the units in the Project on the basis of race, color, religion, sex, national origin, genetic information, ancestry, sexual orientation, age, familial status, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or physical or mental disability; 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.

8. Restrictions on Transfers and Junior Encumbrances. Except for sales of units to homebuyers as permitted by the terms of this Agreement, Developer shall not sell, convey, transfer, ground lease, lease, exchange, pledge, assign, mortgage or otherwise transfer its interest, or any portion of its interest, in the Project or any portion of the Project without the prior written consent of the Subsidizing Agency. In the event the Subsidizing Agency grants such approval, the Developer agrees, prior to any transfer of ownership of the Project or any

portion thereof or interest therein, to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

9. Casualty. 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 Developer (or if the Project consists of detached dwellings, by homebuyers), Developer 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 shall 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 Subsidizing Agency.

10. Defaults; Remedies. (a) Any default, violation, or breach of obligations of the Developer hereunder shall constitute an Event of Default hereunder (an "Event of Default") if such default, violation, or breach is not cured to the satisfaction of the Subsidizing Agency within thirty (30) days after the Subsidizing Agency or the Affordability Monitoring Agent gives notice to the Developer. At any time after the occurrence of an Event of Default, at the Subsidizing Agency's option, and without further notice, the Subsidizing Agency may apply to any state or federal court for specific performance of this Agreement, or the Subsidizing Agency 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, including without limitation drawing upon the additional security described in Section 11 below. The Affordability Monitoring Agent shall have the same rights as the Subsidizing Agency to exercise remedies hereunder.

(b) The Developer shall pay all fees and expenses (including legal fees) of the Subsidizing Agency and the Affordability Monitoring Agent incurred in connection with enforcement of the Developer's obligations hereunder. The Developer hereby grants to the Subsidizing Agency and the Affordability Monitoring Agent a lien on the Project, junior to the lien securing the loan from the NEF Lender, to secure payment of such fees and expenses. The Subsidizing Agency and the Affordability Monitoring Agent may perfect a lien on the Project by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry. A purchaser of the Project or any portion of the Project shall be liable for the payment of any unpaid costs and expenses which were the subject of a recorded/filed certificate prior to the purchaser's acquisition of the Project or any portion thereof.

(c) The Subsidizing Agency and the Affordability Monitoring Agent 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.

(d) The Developer agrees to submit any information, documents or certifications requested by the Subsidizing Agency or the Affordability Monitoring Agent that either shall

deem necessary or appropriate to evidence the continuing compliance of the Developer with the terms of this Agreement.

11. Additional Security. As required by 760 CMR 56.04(7)(c), the Developer shall secure to the Subsidizing Agency adequate financial surety to ensure completion of the Cost Examination and to ensure distribution of any Excess Profit. In furtherance of the Developer's obligations hereunder to construct the Project in accordance with the Plans and Specifications, to comply with the Affordability Requirement and otherwise to comply with its obligations under this Agreement, the Developer shall deliver to the Subsidizing Agency such additional security as the Subsidizing Agency may deem reasonable in form and amount ("Additional Security"). The Subsidizing Agency may waive the requirement for such Additional Security in its sole discretion.

12. 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.

13. Notices. (a) 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 (or its successor) may from time to time designate by written notice:

The Subsidizing Agency:

Massachusetts Housing Finance Agency
One Beacon Street
Boston, Massachusetts 02108
Attention: Director of Comprehensive Permit Programs

Developer:

Kimloch Farm, LLC
390 Goodrich Street
Lunenburg, Massachusetts 01462

Affordability Monitoring Agent:

Lynne D. Sweet
LDS Consulting Group, LLC
233 Needham Street
Newton, Massachusetts 02464

(b) The Developer shall notify the Subsidizing Agency and the Affordability Monitoring Agent promptly upon the occurrence of the following events: (i) the date of satisfaction of all conditions to funding the loan from the NEF Lender; (ii) issuance of the building permit for the Project or any portion thereof; (iii) Substantial Completion; (iv) sale of the first unit in the Project; (v) sale of the first Affordable Unit; (vi) sale of the last Affordable Unit; and (vii) sale of the last unit in the Project.

14. Term. (a) The term of this Agreement (the “Term”) shall continue until the date the Affordability Monitoring Agent and the Subsidizing Agency have determined that the Developer has complied with the Affordability Requirement and the Limited Dividend Requirement, including all substantive and reporting requirements hereunder. The recording of a discharge of this Agreement executed by the Subsidizing Agency shall evidence the end of the Term.

(b) The Developer intends, declares and covenants on behalf of itself and its successors and assigns that this Agreement and the covenants, agreements and restrictions contained herein (i) shall be and are covenants running with the land, encumbering the Project for the Term, 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 the Subsidizing Agency and its successors and assigns for the Term. 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.

(c) This Agreement and the use and resale restrictions contained in each of the Affordable Housing Restrictions which are to encumber each of the Affordable Units at the Project pursuant to the requirements of this Agreement shall constitute an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws. Such restrictions shall be for the benefit of the Municipality and the Affordability Monitoring Agent, and the Municipality and the Affordability Monitoring Agent shall be deemed to be the holders of the affordable housing restriction created by the restrictions in each of the Affordable Housing Restrictions.

15. Subsidized Housing Inventory. The Affordable Units shall be included in the Subsidized Housing Inventory as that term is described in 760 CMR 56.03(2) in accordance with rules and regulations issued by DHCD, as amended from time to time.

16. Recording. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, 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 the Subsidizing Agency and the Affordability Monitoring Agent evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

17. Intent and Effect. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Subsidizing Agency, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable homeownership opportunities for eligible families who are often denied such opportunities for lack of financial resources.

18. Miscellaneous. (a) The rights and obligations of the Subsidizing Agency under this Agreement shall continue for the Term, regardless of whether the loan from the NEF Lender is still outstanding.

(b) Neither the Subsidizing Agency nor the Affordability Monitoring Agent shall be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

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

(d) This Agreement shall not be amended without written consent of the Developer and the Subsidizing Agency.

(e) If at any time during the Term there is no Affordability Monitoring Agent, the Subsidizing Agency shall have all the rights and obligations set forth herein as rights and obligations of the Affordability Monitoring Agent.

19. Conflict. In the event of any conflict or inconsistency (including without limitation more restrictive terms) between the terms of the Comprehensive Permit, any other document relating to the Project and the terms of this Agreement, the terms of this Agreement shall control.

The Subsidizing Agency has consistently stated that any conditions in the Comprehensive Permit that address the Subsidizing Agency's core programmatic matters (including the Subsidizing Agency's regulatory documents and review of compliance with the limited dividend requirements), rather than traditional matters of local concern (including public health, safety, land use, and construction), are outside the authority of the Zoning Board of Appeals and therefore have no binding force on the Developer, Subsidizing Agency, or any other entity. This position has been confirmed by the Massachusetts Supreme Judicial Court. *Amesbury v. Housing Appeals Committee*, 457 Mass 748 (2010). Specifically, conditions including "requirements that went to matters such as, *inter alia*, project funding, regulatory documents, financial documents, and the timing of sale of affordable units in relation to market rate units," are *ultra vires* of a Zoning Board of Appeals' authority under G.L. c. 40B § 21. *Amesbury v. Housing Appeals Comm.*, 457 Mass 748, 758 (2010).

Therefore, the following portions of the Comprehensive Permit have no binding force:

(a) That part of Condition B(1) which purports to govern the location of the Affordable Units.

(b) Conditions B(2) and B(3) which purport to govern the initial sales price of the Affordable Units, the income of Eligible Purchasers, the form of the Affordable Housing Restriction and Resale Price Certificate.

(c) Condition B(4) which purports to govern the choice of the lottery agent and the Marketing Plan.

(d) Condition B(5) which purports to govern the form and substance of this Agreement. The Municipality may, however, condition the issuance of a building permit upon recording of this Agreement.

(d) Condition B(6) which purports to govern the timing of construction and occupation of Affordable Units in relation to market rate units.

(e) Condition E(1) which purports to govern the limitation on dividends and profits and the cost examination process.

(f) Condition F(1)a which purports to govern the choice of the Affordability Monitoring Agent.

[Remainder of page intentionally left blank.]

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

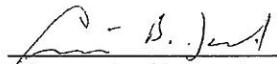
KIMLOCH FARM, LLC, as Developer as aforesaid

By: 

Name: William D. Chisholm

Title: Manager

**MASSACHUSETTS HOUSING FINANCE
AGENCY**, as Subsidizing Agency as aforesaid

By: 

Gina B. Dailey, Director of Comprehensive Permit
Programs

Exhibit A – Legal Description

Exhibit B – Form of Affordable Housing Restriction

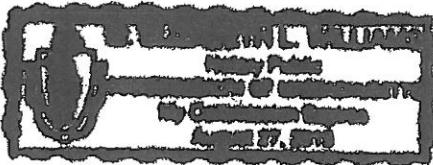
Exhibit C – Form of Limited Dividend Monitoring Services Agreement

Exhibit D – Form of Affordability Monitoring Services Agreement

COMMONWEALTH OF MASSACHUSETTS

Worcester County, ss.

On this 22 day of September, 2012, before me, the undersigned notary public, personally appeared William Chisholm, the _____ of _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be their free act and deed and the free act and deed of _____.



Elizabeth L. Weller
Notary Public
My commission expires: 8/27/2015

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this 24th day of September, 2012, before me, the undersigned notary public, personally appeared Gina B. Dailey, Director of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency, as Subsidizing Agency as aforesaid, proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of Massachusetts Housing Finance Agency.

Kimberly Leone
Notary Public
My commission expires: 8/3/2013

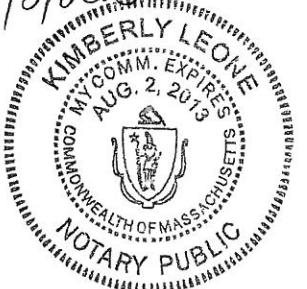


EXHIBIT A

Legal Description

A certain parcel of land known as 116 Goldsmith Street, Littleton, Massachusetts and shown as Lot 1 on a Plan entitled "Plan of Land in Littleton, Massachusetts Prepared for Westchester Corp. P. O. Box 672 Acton MA 01720 Date: Rev. July 28, 2005 Prepared by Foresite Engineering Associates, Inc. and recorded with the Middlesex South Registry of Deeds as Plan No. 63 of 2010 Sheet 2 of 2.

For title, see deed from On the Rail Farm Co., INC. to Kimloch Farm, LLC recorded with the Middlesex South Registry of Deeds in Book 59734, Page 497.