



TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Agreement") is made and entered into as of the 15th day of October 2013 by and between the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), and Franconia Apartments LLC, a Massachusetts limited liability company, and its successors and assigns (the "Grantor") and Ajax Real Estate Holdings LLC (the "Ground Lessor"). The Ground Lessor joins in this Agreement for the purposes set forth in Section 13 below.

BACKGROUND

- A. DHCD, as successor to the former Executive Office of Communities and Development ("EOCD"), is authorized by Executive Order 291 signed by the Governor of the Commonwealth of Massachusetts to administer the State Housing Credit Ceiling as defined in Section 42 of the United States Internal Revenue Code of 1986 as amended, (the "Code") in connection with the allocation and administration of low-income housing tax credits (the "Low-Income Housing Tax Credit").
- B. DHCD has adopted a 2013 Low-Income Housing Tax Credit Allocation Plan (the "Allocation Plan") and certain Low-Income Housing Tax Credit Guidelines (the "Guidelines"), which govern the process and standards for allocation of the Low-Income Housing Tax Credit.
- C. DHCD is authorized pursuant to M.G.L. c.23B sec.3, M.G.L. c.62 sec.6I, and M.G.L. c.63 sec.31H (collectively, the "Massachusetts Act") to allocate, administer, and determine eligibility for a Massachusetts low-income housing tax credit ("State Credit").
- D. The Grantor is the developer of a 36 residential rental unit housing development located or to be located on the Project Land leased by the Grantor from the Ground Lessor pursuant to the Ground Lease, which housing development is known as or to be known as Franconia Apartments (the "Project").
- E. The Grantor has applied to DHCD for an allocation of Low-Income Housing Tax Credits to the Project.
- F. The Grantor has applied to and received from DHCD a binding commitment of State Credit and will receive in the future from DHCD an allocation of State Credit (subject to pertinent conditions) for the Project.
- G. The Grantor has represented to DHCD in Grantor's Low-Income Housing Tax Credit Application (collectively, the "Application") that a certain percentage of the units in the Project shall be both rent restricted and occupied by individuals or families whose income is a certain percentage or less of the area median gross income as determined in accordance with Section 42 of the Code,

and that the Grantor will maintain other restrictions on the use and occupancy of the Project, as set forth herein. Where reference is made herein to the Application, the term "Grantor" shall also mean any previous sponsor connected with the Project.

- H. DHCD has determined that, as of the date hereof, the Project would support a Low-Income Housing Tax Credit allocation, as set forth herein, provided that the units in the Project are placed in service in accordance with Section 42 of the Code and any other applicable requirements.
- I. The Code requires as a condition precedent to the allocation of the Low-Income Housing Tax Credit that the Grantor execute, deliver and record in the official land deed records of the county in which the Project is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and other applicable requirements by regulating and restricting the use and occupancy and transfer of the Project as set forth herein.
- J. As a condition precedent to determination of the Project as a Qualified Massachusetts Project, authorized and eligible for the State Credit, the Grantor must execute, deliver and record as an affordable housing restriction under M.G.L. c.184 with the registry of deeds in the county in which the Project is located a regulatory agreement for the State Credit.
- K. The Grantor, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project Land for the term stated herein and binding upon all subsequent owners of the Project Land for such term, and are not merely personal covenants of the Grantor.

SECTION 1. GENERAL

1.1 DHCD and the Grantor, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as set forth below.

1.2 This Agreement shall constitute an "extended low-income housing commitment" as defined in Section 42(h)(6)(B) of the Code with respect to each building included within the Project.

SECTION 2. DEFINITIONS

Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

Applicable Fraction:

The smaller of the "unit fraction" or the "floor space fraction," as these terms are defined in Section 42(c)(1) of the Code, which has been determined for the purposes of this Agreement to be 70%.

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Area: Springfield, MA HMFA

Code: The Internal Revenue Code of 1986 as amended and all regulations applicable thereto.

Compliance Period: The 15-year compliance period under Section 42 of the Code.

Gross Rent: The total amount received from a Low-Income Tenant as a rental payment, excluding any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance (with respect to such unit or occupants thereof) and including any utility allowance under Section 8 of the aforementioned act.

Ground Lease: The Ground Lease entered into by and between Ground Lessor as landlord, and the Grantor, as tenant, dated as of August 22, 2009, authorizing the Grantor to lease the Property, notice of which is recorded with the Hampden Registry of Deeds in Book _____, Page _____.

Income Certification: A certification as to income executed by a Low-Income Tenant of the Project.

Low-Income Tenant: The occupant(s) of a housing unit in the Project whose income on admission to the Project, as computed in accordance with the rules and regulations governing the Low-Income Housing Tax Credit, does not exceed 60 percent of the median gross income for the Area, adjusted for family size.

Low Income Unit: As defined in Section 5.1 below.

Low-Income Tenant Rental Period: The period beginning on the first day of the fifteen (15) year Compliance Period and extending through the date ending a period of an additional 30 years after the close of the Compliance Period (45 years total). If the Project consists of more than one building, this shall be determined for each building.

Project Land: The land described on Exhibit A attached hereto situated at 365 Annum Street, Springfield, Massachusetts. For Grantor's title see the notice of ground lease recorded with the Hampden Registry of Deeds in Book _____, Page _____.

Rent Restricted: The Gross Rent to be charged for a Low-Income Unit which does not exceed thirty percent (30%) of the income limitation applicable to such unit, adjusted for unit size (assuming that a unit which does not have a separate bedroom is occupied by one individual and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom).

State: The Commonwealth of Massachusetts.

Any term not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the Treasury regulations promulgated thereunder or under the Massachusetts Act and 760 CMR 54.00 et seq. promulgated thereunder (the "State Regulations").

SECTION 3. RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

3.1 Upon execution, the Grantor shall cause this Agreement and all amendments hereto to be recorded with the Hampden Registry of Deeds and shall pay all fees and charges incurred in connection therewith. Upon recording, the Grantor shall immediately transmit to DHCD evidence of the recording including the date and instrument number or book and page numbers. The Grantor agrees that DHCD will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Low-Income Housing Tax Credit or a Massachusetts Eligibility Statement constituting final allocation of the State Credit unless and until DHCD has received a certified copy of the recorded Agreement.

3.2 The Grantor intends, declares and covenants, on behalf of itself and all future owners and operators of the Project Land during the Low-Income Tenant Rental Period, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project Land and the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the Low-Income Tenant Rental Period, binding upon the Grantor's successors in title and all subsequent owners and operators of the Project Land, (ii) are not merely personal covenants of the Grantor, and (iii) shall bind the Grantor (and the benefits shall inure to DHCD and any past, present or prospective tenant of the Project) and its respective successors and assigns during the Low-Income Tenant Rental Period. The restrictions contained herein are intended to be construed as an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, and which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the full Low-Income Tenant Rental Period. The Grantor 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 deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the land. For the longer of the period the Low-Income Housing Tax Credit is claimed or the Low-Income Tenant Rental Period, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

SECTION 4. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE GRANTOR

The Grantor hereby represents, covenants and warrants to DHCD as follows:

4.1 The Grantor (i) is a limited liability company and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

4.2 The execution and performance of this Agreement by the Grantor (i) will not violate or, as applicable, have 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, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor 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.

4.3 The Grantor will, at the time of execution and delivery of this Agreement, have good and marketable leasehold title to the Project, including the Project Land, free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the general terms of which are approved by DHCD, or other permitted encumbrances).

4.4 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 Grantor, 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.

4.5 The Project constitutes or will constitute a qualified low-income building or qualified project, as applicable, as defined in Section 42 of the Code and Applicable Regulations.

4.6 Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project).

4.7 During the Low-Income Tenant Rental Period, all Low-Income Units shall be Rent Restricted and shall be leased, rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the Low-Income Units as set forth in Section 5.4 hereof) under the applicable election specified in Section 42(g) of the Code and as set forth in Section 5.1 of this Agreement. During the Low-Income Tenant Rental Period, the Gross Rent for a Low-Income Unit, other than at turnover, shall not be increased more often than once a year and no notice of change in rent to be charged for Low Income Units shall be given prior to providing the affected tenants with a thirty (30) day opportunity to comment on the increase. The Grantor shall provide, on a form and in a manner acceptable to DHCD, an annual notification to each Low Income Tenant indicating the manner in which the Gross Rents for Low-Income Units are determined.

4.8 The Grantor shall insure that all units occupied by Low-Income Tenants shall be of comparable quality to other units in the Project or if not comparable, the excess cost of the other units shall not exceed the percentage set forth in Section 42(d)(3) of the Code and the Grantor will file the election provided for therein. The Low-Income Units shall be, to the extent possible, dispersed evenly throughout the Project.

4.9 During the Low-Income Tenant Rental Period, each Low-Income Unit is and will remain suitable for occupancy and in compliance with all local health, safety and building codes.

4.10 The Grantor shall not discriminate on the basis of race, religious creed, color, sex, age, marital status, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), gender identity, genetic information, veteran status, membership in the armed forces, ancestry, national origin, handicap, blindness, hearing impairment, or because a person possesses a trained guide dog as a consequence of blindness, hearing impairment or other handicap of such person or any other basis prohibited by law in the lease, use and occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. Without limiting the foregoing, the Grantor is expressly prohibited from refusing to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

4.11 Prior to occupancy of any unit in the Project, the Grantor shall adopt and implement (i) an affirmative fair marketing plan for all units and (ii) a tenant selection plan for the Low-Income Units, in both cases consistent with any standards and guidelines adopted by DHCD as then in effect and all applicable laws. Both the affirmative fair marketing and tenant selection plans shall be subject to review by DHCD, at DHCD's request from time to time during the Low-Income Tenant Rental Period.

4.12 The Grantor shall enter into a lease with each tenant of a Low-Income Unit (other than units that qualify as single-room occupancy units) which shall be for a minimum period of one (1) year and which shall provide that no tenant of a Low-Income Unit shall be evicted during the Low-Income Tenant Rental Period for any reason other than a substantial breach of a material provision of such lease. Without limiting the foregoing, the lease shall comply in all respects with applicable state, local, and federal law and the terms and conditions of this Agreement.

4.13 The Grantor may not sell, transfer or exchange less than all of the Project during the Low-Income Tenant Rental Period. Subject to the requirements of Section 42 of the Code and this Agreement, the Grantor may sell, transfer or exchange the entire Project at any time, but the Grantor shall (i) notify DHCD in writing of any sale, transfer or exchange of the Project; and (ii) notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project. The Grantor agrees that DHCD may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code and the requirements of this Agreement.

4.14 The Grantor shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the Low-Income Tenant Rental Period unless required by law.

4.15 If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Grantor (subject to the approval of the lenders that have provided the financing) will use commercially reasonable 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.

4.16 The Grantor 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 herein set forth and supersede any other requirements in conflict herewith.

4.17 The Grantor has obtained the consent of all current holders of existing mortgages on the Project to this Agreement either (i) in the form attached hereto as Exhibit B or (ii) pursuant to an intercreditor or subordination agreement dated on or about the date hereof providing for consent by all holders of existing mortgages on substantially the same terms as set forth in Exhibit B.

4.18 If the Project has received a Low-Income Housing Tax Credit allocation as a special needs project, the Grantor will maintain special needs services throughout the Low-Income Tenant Rental Period as represented in the Grantor's DHCD approved service plan which is incorporated herein.

Grantor shall indemnify and hold harmless DHCD from and against all liabilities, damages, losses, obligations, penalties, claims, demands, actions, costs and expenses (including without limitation attorneys and expert fees and costs) of any kind or nature directly or indirectly resulting from the breach of any of the foregoing representations, warranties or covenants or of any of the covenants contained elsewhere in this Agreement, including, without limitation, costs of defending or settling any claim arising therefrom against DHCD.

SECTION 5. OCCUPANCY RESTRICTIONS

5.1 No later than the end of the first year of the Compliance Period and continuing throughout the Low-Income Tenant Rental Period and in order to satisfy the requirements of Section 42 of the Code, other applicable requirements and the representations made in the Application, no less than 70 percent of the residential units in the Project shall be both rent-restricted and occupied by Low-Income Tenants.

5.2 The applicable fraction (as defined in Section 42(c)(1) of the Code), for each taxable year during the Low-Income Tenant Rental Period, will not be less than the Applicable Fraction. Initially, Low-Income Tenants shall occupy 36 units ("Low-Income Units"); 7 of which shall be three bedroom units; 24 of which shall be two bedroom units; and 5 of which shall be one

bedroom units. As further represented in Grantor's Application, no less than 4 of the Low-Income Units shall be occupied by Low-Income Tenants whose income is 30% or less of the median gross income of the Area. *[As of the date hereof, the Project has or is expected to have the benefit of a contract for ___ project-based vouchers under Section 8 of the United States Housing Act of 1937, as amended (the "Section 8 Contract"). If during the Low-Income Tenant Rental Period the Section 8 Contract is not renewed at the end of its term or is terminated or otherwise is no longer in full force and effect, DHCD will consider a request by the Grantor to reduce the number of Low-Income Units required to be occupied by Low-Income Tenants whose income is 30% or less of the median gross income of the Area. A decision by DHCD on such a request shall take into consideration the financial viability of the Project and shall be made in the sole reasonable discretion of DHCD.]*

5.3 As a condition to occupancy, each person who is intended to be a Low-Income Tenant shall be required to sign and deliver to the Grantor an Income Certification using a form, acceptable to DHCD, adopted for such use by the Grantor which meets the requirements of the Code and the Treasury regulations promulgated thereunder. The determination of whether a tenant meets the definition of a Low-Income Tenant shall be made by the Grantor at least annually on the basis of the current income of such tenant.

5.4 Any unit in the Project occupied by an individual or family who is a Low-Income Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Low-Income Tenant provided that (i) such unit continues to be rent-restricted and (ii) should such Low-Income Tenant's income subsequently exceed 140% of the applicable income limit set forth in Section 5.1 above, such tenant shall no longer be a Low-Income Tenant if any unit of comparable or smaller size is rented to a tenant who is not a Low-Income Tenant.

SECTION 6. CONVERSION RESTRICTIONS

The following conversion restrictions are applicable to the Project:

6.1 No tenant in the Project shall be evicted due to conversion to condominium or cooperative form of ownership unless and until said tenant has received the rights and benefits as set forth in Chapter 527 of the Acts of the Commonwealth of Massachusetts of 1983, as amended, or any successor act, as then currently in effect (the "Conversion Act") (notwithstanding any exemption provided in the third paragraph of Section 2 of the Conversion Act to the city or town in which the Project is located) and any applicable local laws and ordinances.

6.2 No tenant of a Low-Income Unit shall be evicted due to conversion to condominium or cooperative form of ownership nor shall a Low-Income Unit be converted to conventional rental housing (which shall mean housing having an annual rental greater than that permitted for Low-Income Units under the Low-Income Housing Tax Credit rules and regulations) unless and until the following restrictions have been met and completed with respect to such unit:

(a) the tenant of a Low-Income Unit so affected shall be given prior written notice of intent to convert to condominium or cooperative form of ownership or to convert to conventional rental housing (the "Notice Period") of at least four (4) years, such Notice Period beginning on a date no sooner than four

years prior to the expiration of the Low-Income Tenant Rental Period. Once such notice of intent to convert is provided to a tenant, in the event such tenant later vacates the unit, the new tenant is entitled to receive notice under this subsection for a period equal to the remaining time pursuant to the original notice of intent to convert. The notice of intent shall include notice of the tenant's rights and notice of the right of first refusal provided in paragraph (d) of this Section 6.2; the notice of intent shall also inform tenants that DHCD should be notified if the Grantor is not fulfilling its obligations under this Agreement; only tenants occupying Low-Income Units within the Project shall be entitled to receive the additional rights enumerated in this paragraph; DHCD shall be provided with a copy of the notice for review and approval before such notice is sent to the Low-Income Tenant;

(b) the Grantor shall give DHCD six months notice of its intent to convert a Project to condominiums or cooperatives; at the end of the conversion of the market rate units in a development to condominiums or cooperatives, the Grantor shall certify to DHCD its compliance with the conversion terms of this Agreement;

(c) every Low-Income Tenant given, or entitled to be given the notice of intent shall receive an extension of their lease or rental agreement, with substantially the same terms, subject to permissible rental increases, during the Notice Period;

(d) in the event the Grantor intends to convert the Project to a condominium or cooperative form of ownership, not later than two (2) years prior to the expiration of the Notice Period, an affected Low-Income Tenant shall receive a right of first refusal for purchase of such tenant's unit which right shall last for a period of not less than six (6) months; such right of first refusal shall be accompanied by a copy of the purchase and sale agreement for the unit; during this period, the unit shall be offered to the tenant at a discount of at least ten percent (10%) from the offering price for the unit; if the tenant of an affected unit chooses not to purchase the unit, the unit shall be offered for purchase to DHCD or its designee for an additional period of at least ninety (90) days at the same price the unit was offered to the tenant;

(e) all tenants given, or entitled to be given the notice of intent who are unable or choose not to exercise their right to purchase or to remain and to pay the conventional rental shall be entitled to relocation benefits in accordance with the Conversion Act.

SECTION 7. TERM OF AGREEMENT.

7.1 This Agreement and the restrictions set forth herein shall commence with the first day of the Compliance Period and shall extend through the date ending a period of an additional 30 years after the close of the Compliance Period (the "Low-Income Tenant Rental Period"). This term will be determined in accordance with the Code for each building in the Project. DHCD and the Grantor expressly acknowledge and agree that the Low-Income Tenant Rental Period covers and is in compliance with the requirement under the Massachusetts Act that a regulatory agreement for the State Credit be for a term not less than thirty (30) years from the expiration date of the Compliance Period. Except as hereinafter provided, this Agreement and the restrictions set forth herein shall not terminate or expire any earlier than the end of the Low-Income Tenant Rental Period. No later than one year prior to expiration of the Low-Income Tenant Rental Period, the Grantor shall provide DHCD with a written request to procure a qualified

contract, as such term is defined in the Code, in order to continue operation of the Low-Income Units as affordable following the expiration of this Agreement and the restrictions set forth herein. DHCD will have the one year period prior to the end of the Low-Income Tenant Rental Period to procure such a qualified contract.

7.2 Notwithstanding Section 7.1 above and except as provided in Section 7.3 below, this Agreement and the restrictions set forth herein shall terminate on the date the Project is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary of the United States Treasury or his or her designee determines that such acquisition is part of an arrangement with the Grantor, a purpose of which is to terminate this Agreement and the restrictions set forth herein. DHCD hereby agrees to execute any and all documents necessary to evidence the foregoing termination.

7.3 The tenant protections set forth in Section 42(h)(6)(E)(ii) of the Code shall survive for a period of three (3) years following a termination pursuant to Section 7.2 above and for such three-year period such tenant protections shall be binding upon any holder of a mortgage on the Project, or any successor or assign of such holder, who succeeds to all or any part of the Grantor's interest in, or otherwise acquires title to, the Project.

7.4 Notwithstanding Sections 7.1 and 7.2 above, this Agreement shall not terminate and shall remain in full force and effect to enable DHCD, and any other person with the right to enforce this Agreement pursuant to Section 9.6 of this Agreement, to enforce and/or monitor under Section 9 any remaining obligations under Section 7.3 above, and the Conversion Restrictions set forth in Section 6 above provided, however, in the event this Agreement has terminated pursuant to Section 7.2 above, it shall be assumed for purpose of giving notice pursuant to Section 6 that the Low-Income Rental Period has ended.

SECTION 8. CERTIFICATIONS

8.1 On the date of execution and delivery of this Agreement, the Grantor shall deliver to DHCD the following certifications or documents:

- (a) Evidence of transfer of ownership of the Project to the Grantor;
- (b) For projects requiring a waiver of the ten year holding requirement in order to obtain a credit for the acquisition of an existing building, a copy of the waiver obtained from the Internal Revenue Service;
- (c) Opinion of Grantor's Counsel as to Grantor's organization, execution, delivery and enforceability of Agreement; and organizational documents for the Grantor and Grantor's manager or general partner, if any, as follows:
 - (i) if a limited partnership, a copy of the partnership agreement; and two separate long form certificates of legal existence (identifying general partners and any amendments) from the Massachusetts Secretary of State;
 - (ii) if a corporation, a clerk's certificate with vote, certified articles of incorporation and by-laws and certificate of legal existence from the state of incorporation;

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- (iii) if a trust, a copy of the Declaration of Trust, a Trustee's Certificate and Direction of Beneficiaries;
 - (iv) if a limited liability company, a copy of the operating agreement; and a certificate of good standing from the Massachusetts Secretary of State; and
 - (v) any additional organizational documents as DHCD deems appropriate;
- (d) Original certification from the Grantor of the full extent of all federal, State and local subsidies which apply (or which the Grantor expects to apply) with respect to the Project;
 - (e) Original Release and Indemnification Agreement agreeing to release and indemnify DHCD from any claim, loss, demand or judgment as a result of the allocation of Low-Income Housing Tax Credit to the Project or the recapture of the Low-Income Housing Tax Credit by the Internal Revenue Service;
 - (f) Original certification from the Grantor pursuant to Massachusetts General Laws Chapter 62C Section 49A that the Grantor has complied with all laws of the Commonwealth related to taxes;
 - (g) Any and all other documents required by Section 42 of the Code or the applicable Treasury Regulations and any documents that DHCD may require.

8.2 The Grantor shall deliver to DHCD the following certifications or documents no later than the date for submission of the audited certification of costs pursuant to Section 11.1 below.

- (a) Audited certification of costs, an audited schedule of sources (including rental and/or operating subsidies) and uses (including reserves), and an audited schedule of low-income housing tax credit eligible basis as well as any supplementary schedules required by DHCD in the format provided by DHCD;
- (b) Original certification from the Grantor as to the actual date the Project is "placed in service" as that term is defined in the regulations or notices promulgated under Section 42 of the Code
- (c) Certificate(s) of occupancy from the municipality or other governmental authority having jurisdiction
- (d) Original certification from the Project's Architect that the Project is in compliance with all applicable federal and state statutes and regulations in regard to the operation of adaptable and accessible housing for the disabled
- (e) Letter of compliance from a certified inspector that all lead-based paint hazards have been removed from all units in the Project such that, upon occupancy, the Project will be in compliance with all applicable federal, state and local laws, codes and regulations including the Massachusetts Lead Poisoning Prevention and Control Laws, M.G.L. Chapter 111, Sections 190-199A and the regulations thereunder at 105 CMR 460.000 et seq.

SECTION 9. MONITORING AND ENFORCEMENT

9.1 The Grantor agrees to comply with any monitoring plan, guidelines, procedures, or requirements as may be adopted or amended from time to time by DHCD in accordance with requirements of the Code or regulations promulgated thereunder by the U.S. Department of the Treasury, Internal Revenue Service (the "Federal Regulations") and the requirements of the

Massachusetts Act and the State Regulations or in order to monitor compliance with the provisions of this Agreement. The Federal Regulations` and the State Regulations are collectively referred to as the "Applicable Regulations".

9.2 The Grantor covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code, the Massachusetts Act and applicable regulations or this Agreement. Moreover, Grantor covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of DHCD) to comply fully with the Code and with all applicable regulations, rules, rulings, policies, procedures, or other official statements promulgated or proposed by the United States Department of the Treasury, Internal Revenue Service, from time to time pertaining to Grantor's obligations under Section 42 of the Code, the Massachusetts Act, and affecting the Project.

9.3 The Grantor will permit, during normal business hours and upon reasonable notice, any duly authorized representative of DHCD (or its authorized delegate) to inspect any books and records of the Grantor regarding the Project that pertain to compliance with the Code, the Massachusetts Act, Applicable Regulations, and this Agreement. The Grantor further agrees to cooperate with any on-site inspection of the Project by DHCD (or its authorized delegate) during normal business hours and upon reasonable notice.

9.4 The Grantor will take any and all actions reasonably necessary and required by DHCD to substantiate the Grantor's compliance under the Code, the Massachusetts Act, Applicable Regulations, and this Agreement. The Grantor shall at least annually (or more frequently as required by DHCD) submit to DHCD a certification concerning program compliance in such form, including such documentation, and within such timeframe, as may be required by DHCD pursuant to any monitoring plan, guidelines, or procedure adopted or amended by DHCD. At DHCD's request, the Grantor will submit any other information, documents, forms or certifications which DHCD deems reasonably necessary to substantiate the Grantor's continuing compliance with the Code, the Massachusetts Act, Applicable Regulations, and this Agreement.

9.5 The Grantor covenants and agrees to inform DHCD by written notice of any violation of the Grantor's obligations hereunder within seven (7) business days of first discovering such violation. In accordance with the provisions of any monitoring plan, guidelines, or procedures as then may be in effect, DHCD covenants and agrees to inform the Grantor by written notice of any violation of the Grantor's obligations hereunder and to provide the Grantor a period of time in which to correct such violation. If any violation is not corrected to the satisfaction of DHCD within the period of time specified by DHCD in a notice, or within such further time as DHCD determines is necessary to correct the violation, but not to exceed any time limitation set by Applicable Regulations, then without further notice, DHCD may declare a default under this Agreement effective on the date of such declaration of default, and DHCD may apply to any court, state or federal, for specific performance of this Agreement, or any other remedies at law or in equity, or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. The foregoing is not intended to limit in any way DHCD's obligation to notify the Internal Revenue Service or the Massachusetts Department of Revenue, pursuant to Applicable Regulations, of a noncompliance on the part of the Grantor.

9.6 The Grantor acknowledges that the primary purpose for requiring compliance by the Grantor with the restrictions provided in this Agreement is to assure compliance of the Project and the Grantor with Section 42 of the Code, the Massachusetts Act and the Applicable Regulations, and by reason thereof, the Grantor in consideration for receiving Low-Income Housing Tax Credits for this Project hereby agrees and consents that DHCD and any individual who meets the income limitation applicable under Section 42 of the Code, the Massachusetts Act (whether a prospective, present or former occupant or the City of Springfield) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Grantor of its obligations under this Agreement in a court of competent jurisdiction. The Grantor hereby further specifically acknowledges that the beneficiaries of the Grantor's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Grantor shall reimburse DHCD for all costs and attorneys' fees incurred associated with such breach.

9.7 The Grantor hereby agrees that the representations and covenants set forth herein may be relied upon by DHCD and all persons interested in Project compliance under Section 42, the Massachusetts Act and the Applicable Regulations.

9.8 Notwithstanding anything in this Agreement to the contrary, in the event that the Grantor fails to comply fully with the covenants and agreements contained herein or with the Code, the Massachusetts Act, all Applicable Regulations, rules, rulings, policies, procedures, or other official statements promulgated by the Department of the Treasury, the Internal Revenue Service, the Massachusetts Department of Revenue or DHCD from time to time pertaining to the obligations of the Grantor as set forth therein or herein, DHCD may, in addition to all of the remedies provided by law or in equity, report such noncompliance to the Internal Revenue Service and/or to the Massachusetts Department of Revenue which could result in penalties and/or recapture of federal and/or state tax credit.

9.9 The Grantor agrees to pay an annual monitoring fee in such amount and by such method as may be selected by DHCD pursuant to the applicable provisions set forth in The Commonwealth of Massachusetts Allocation Plan for the Low-Income Housing Tax Credit, as such provisions may be amended or superseded in a subsequent year's Allocation Plan. DHCD reserves the right to charge a reasonable monitoring fee to perform compliance monitoring functions after the completion of the tax credit compliance period (as defined in Section 42 of the Code) for the remainder of the Low-Income Tenant Rental Period.

9.10 DHCD expressly reserves the right to continue monitoring, during the Low-Income Tenant Rental Period, for compliance with the provisions of this Agreement beyond any timeframe provided for monitoring in the Code, the Massachusetts Act or Applicable Regulations.

9.11 During the tax credit compliance period (as defined in Section 42 of the Code), the Grantor will retain records in accordance with the requirements of the Applicable Regulations, DHCD monitoring plan and/or guidelines. After the end of the compliance period, the Grantor will retain records adequate to demonstrate compliance with the terms and conditions of this Agreement, including, but not necessarily limited to, income and rent records pertaining to tenants.

SECTION 10. ANNUAL DATA COLLECTION

10.1 Annually, no later than September 30, the Grantor shall submit to DHCD, via the web-based annual reporting system, an annual report consisting of the following in a form approved by DHCD and containing such supporting documentation as DHCD shall reasonably require:

- (a) Annual adjusted income of each Family occupying a Low-Income Unit;
- (b) Monthly gross rents (rents plus utility allowances, if applicable) for all Low-Income Units, such rents to be consistent with the schedule of maximum rents published annually by DHCD;
- (c) Data required by DHCD regulations at 760 CMR 61.00, promulgated pursuant to Chapter 334 of the Acts of 2006 and all applicable DHCD directives, guidelines and forms as may be amended from time to time. The Grantor shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms; and
- (d) Rental assistance data on all existing residents of Low-Income Units.

10.2 DHCD and the Grantor shall treat as confidential any of the foregoing information relating to a specific resident or unit in compliance with all applicable state and federal statutes and regulations, including M.G.L. c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but DHCD and the Grantor may release general statistical and other information about the Property, so long as the privacy rights and interests of the individual residents are protected). DHCD and the Grantor shall not use any of the foregoing information in Section 10.1(c) for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause DHCD or the Grantor to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

10.3 The Grantor shall prepare and submit to DHCD such additional reports as DHCD may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs, including such tenant-level data as required pursuant to the Housing and Economic Recovery Act of 2008 (Public Law 110-289).

10.4 The Grantor shall maintain as part of its records (i) copies of all leases of Low-Income Units; (ii) all initial and annual income certifications by residents of Low-Income Units and (iii) such additional records as DHCD may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.

SECTION 11. TAX CREDIT ALLOCATION

11.1 The Grantor shall deliver to DHCD an audited certification of costs, an audited schedule of sources (including rental and/or operating subsidies) and uses (including reserves), and an audited schedule of low-income housing tax credit eligible basis as well as any

supplementary schedules required by DHCD in the format provided by DHCD as required by Section 8.2(a) of this Agreement at least 30 days prior to Grantor's request to DHCD for issuance of Internal Revenue Service Form 8609 constituting final allocation of the Low-Income Housing Tax Credit and a Massachusetts Eligibility Statement constituting final allocation of the State Credit. DHCD will thereafter notify the Grantor of DHCD's final determination of the Low-Income Housing Tax Credit allocation for the Project, which will be the minimum amount of Low-Income Housing Tax Credit necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the credit period. Such final determination will be specified in a written addendum to this Agreement, to be executed by both parties and recorded in the appropriate registry of deed or land court registry district by the Grantor.

SECTION 12. MISCELLANEOUS

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

12.2 All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

If to DHCD: Department of Housing and Community Development
 100 Cambridge Street, Suite 300
 Boston, MA 02114
 ATTENTION: Tax Credit Program Director

With a Copy to: Department of Housing and Community Development
 100 Cambridge Street, Suite 300
 Boston, MA 02114
 ATTENTION: Chief Counsel

If to Grantor: Franconia Apartments LLC
 c/o Springfield Housing Action Corporation
 31 East Street
 Springfield, Massachusetts 02100

DHCD shall use reasonable efforts to send courtesy copies of all notices sent to the Grantor to the Grantor's investor at the address set forth below, provided that any failure to send such a courtesy copy shall not affect the validity of any notice:

 Massachusetts Housing Investment Corporation
 70 Federal Street
 Boston, Massachusetts 02110
 Attention: Richard Becker, Director of Asset Management

DHCD and the Grantor, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

12.3 This Agreement may not be amended without the express written consent of DHCD and the Grantor. The Grantor agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and all applicable rules, regulations,

policies, procedures, rulings or other official statements pertaining to the Low-Income Housing Tax Credit.

12.4 This Agreement shall be governed by the laws of The Commonwealth of Massachusetts and, where applicable, the laws of the United States of America.

12.5 The obligations of the Grantor as set forth herein shall survive the allocation of the Low-Income Housing Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

SECTION 13. GROUND LEASE

13.1 The Grantor is the tenant under the Ground Lease of the Project Land from the Ground Lessor as landlord and fee owner.

13.2 On the date of execution and delivery of this Agreement, the Grantor shall deliver to DHCD a true and complete copy of the Ground Lease and the Notice of Ground Lease, together with all amendments thereto, and any other documents relating thereto as DHCD shall deem appropriate.

[SIGNATURES APPEAR ON FOLLOWING PAGE]



TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THE COMMONWEALTH OF MASSACHUSETTS ACTING
BY AND THROUGH THE DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT

By: _____

Its: _____

FRANCONIA APARTMENTS LLC

By: FRANCONIA APARTMENTS MM, INC., its
Managing Member

By: _____

Elsie Borden

Its: President

AJAX REAL ESTATE HOLDINGS LLC

By:

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this 15th day of October 2013, before me, the undersigned notary public, personally appeared _____, the _____ of the Department of Housing and Community Development of The Commonwealth of Massachusetts, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public



TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this 15th day of October 2013, before me, the undersigned notary public, personally appeared Elsie Borden, the President of Franconia Apartments MM, Inc., proved to me through satisfactory evidence of identification, which was (a current driver’s license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this 15th day of October 2013, before me, the undersigned notary public, personally appeared _____, 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 of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public

My commission expires:

EXHIBITS

- A. Legal Description of Property
- B. Form of Prior Recorded Lienholder Consent

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B: FORM OF PRIOR RECORDED LIENHOLDER CONSENT

PRIOR RECORDED LIENHOLDER CONSENT

Pursuant to the provision of that certain [Mortgage and Security Agreement] dated _____, 20__, between _____ (with its successors and assigns, the "Lender") and Franconia Apartments LLC (the "Grantor"), recorded with the Hampden Registry of Deeds, the Lender hereby consents to the recording in the Registry of that certain Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants, dated as of _____, 20__ by and between the Grantor and The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development (the "Regulatory Agreement"). Capitalized terms used herein and not otherwise defined have the meanings set forth in the Regulatory Agreement.

For good and valuable consideration, the receipt and sufficiency are hereby acknowledged, Lender agrees that if Lender or any successor or assign of Lender ever succeeds to, or acquires, all or any part of the Grantor's interest in the Project, Lender and any successor or assign of Lender shall be bound by the terms and provisions of Section 7.3 of the Regulatory Agreement, which requires pursuant to Section 42(h)(6)(E)(ii) of the Internal Revenue Code that during the three-year period following any termination of the Regulatory Agreement as a result of the Lender or any successor or assign of Lender succeeding to or acquiring such interest by foreclosure or deed in lieu of foreclosure, Lender and its successors and assigns shall not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit in the Project nor increase the gross rent with respect to any such unit unless otherwise permitted under Section 42 of the Code.

Executed under seal as of the _____ day of _____ 20__.

By: _____
Type Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____ 200__, before me, the undersigned notary public, personally appeared _____, _____ of _____, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged that he or she executed the foregoing instrument voluntarily for its stated purpose and that the foregoing instrument is his or her free act and deed and the free act and deed of _____.

Notary Public
My commission expires: