

Model of Affordable Housing Restriction  
Based on Approved and Executed AHR  
For One Boston Way



**AFFORDABLE HOUSING RESTRICTION AGREEMENT**  
**FOR 40R RENTAL PROJECT**

CITY OF NEWBURYPORT

This Affordable Housing Restriction Agreement (the "Restriction") is made as of the 11<sup>th</sup> day of March, 2021 by and among One Boston Way, LLC a Massachusetts limited liability company organized and existing in accordance with Massachusetts law, with an address of 231 Sutton Street, Suite 1B, North Andover, MA 01845 (the "Owner") and its successors and assigns, the City of Newburyport (the "Municipality"), with a mailing address at P.O. Box 550, Newburyport, MA 01950, its successors and assigns, or its designee, and MCO Housing Services, LLC (the "Monitoring Agent"), having an address at P.O. Box 372, Harvard, MA 01451, its successors and permitted assigns, or its designee, exclusively for the purpose of ensuring retention of housing for occupancy Eligible Households (as defined in Section 10.(a)(v)).

RECITATIONS:

WHEREAS, the Smart Growth Zoning District Program was established pursuant to G.L. c. 40R (the "Massachusetts Act") and the Department of Housing and Community Development ("DHCD") is responsible for the administration, review, and reporting on the Smart Growth Zoning Program pursuant to G.L. c. 40R, §12;

WHEREAS, DHCD promulgated regulations at 760 CMR 59.00 (the "Regulations") and issued its Guidance for M.G.L. c. 40R and 760 CMR 59.00: Smart Growth Zoning and Starter Home Zoning ("40R Guidelines"), which collectively establish the affordability and related requirements for the Project and this Restriction;

WHEREAS, the Municipality has adopted a Smart Growth Zoning Overlay District (the "Approved District") in Section XXIX of the Municipality's Zoning Ordinance (the "Ordinance") which DHCD has approved pursuant to G.L. c. 40R, § 4;

WHEREAS, the Owner intends to construct a housing development known as Newburyport Crossing at a 2.01-acre site on Boston Way in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, the Project shall consist of a total number of seventy six (76) rental units, (the "Units") of which nineteen (19) will be rented at rents calculated in accordance with this Restriction to Eligible Households (the "Restricted Units") and associated amenities;

WHEREAS, the Ordinance requires that two (2) of the Units in the Project shall contain three (3) or more bedrooms;

WHEREAS, the Owner has received a Plan Approval decision for the Project from the Municipality's Approving Authority under G.L. c.40R, which decision is recorded at the Essex South County Registry of Deeds (the "Registry") in Book 37130, Page 540 and as Modified in Book 37130 Page 552.

Property Address: One Boston Way, Newburyport, MA

WHEREAS, pursuant to the requirements of the Ordinance, the Municipality has appointed the Monitoring Agent to ensure compliance with the affordability requirements of this Restriction;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, the Municipality, the Owner, and the Monitoring Agent hereby agree and covenant as follows:

1. Purposes. The purpose of this Restriction is to assure that the Restricted Units will be retained as affordable rental housing for occupancy by Eligible Households during the term of this Restriction.

2. Scope. The Owner intends, declares and covenants, on behalf of itself and its successors and assigns (i) that the covenants, agreements, and restrictions set forth in this Restriction regulating and restricting the use and occupancy of the Restricted Units and the transfer of the Project shall be and are covenants running with the land, encumbering the Project for the term of this Restriction, and are binding upon the Owner's successors in title, (ii) are not merely personal covenants of the Owner, (iii) shall bind the Owner and its successors and assigns and the benefits shall inure to the Municipality, the Monitoring Agent and to any past, present or prospective tenant of the Project and (iv) the Municipality and the Monitoring Agent shall be deemed to be the holders of the affordable housing restrictions created by this Restriction.

The Owner acknowledges that, pursuant to the Massachusetts Act and the Regulations, the Municipality has adopted the Approved District, which requires that affordable housing restrictions be recorded with respect to any Restricted Units developed pursuant to the Massachusetts Act, the Regulations and the Ordinance and which authorizes the Municipality to allocate, administer, and determine eligibility for Restricted Units developed pursuant to the Massachusetts Act. The Owner also acknowledges that it has applied to and received from the Municipality approval under the terms of the Ordinance for the Project, and that, as a condition of approval of the Project pursuant to the Ordinance, the Owner must execute, deliver and record an affordable housing restriction under G.L. c.184 with the Registry.

3. Duration Not Limited. This Restriction shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32, and 33. The Owner hereby agrees that any and all requirements of the laws of The Commonwealth of Massachusetts to be satisfied in order for this Restriction 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 alternative, that an equitable servitude has been created to insure that this Restriction runs with the land.

4. Term of the Restriction. The term of this Restriction shall be for thirty (30) years following the time 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 ("Substantial Completion"). Within thirty (30) days of Substantial Completion, the Owner shall record at the Registry a written notice executed by both the Municipality and the Owner which sets forth the date on which Substantial Completion has occurred.

5. Subsequent Conveyances. 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 Restriction, provided, however, that the covenants, agreements, and restrictions 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 Restriction.

6. Permitted Use. The Project shall be primarily used for the rental of seventy six (76) Units, consisting of one four-story residential building of which no fewer than nineteen (19) are Restricted Units. The Project shall include:

- Four (4) Studio Restricted Units;
- Five (5) One-bedroom Restricted Units;
- Eight (8) Two-bedroom Restricted Units; and
- Two (2) Three-bedroom Restricted Units.

Each of the Restricted Units shall “float” and shall not be fixed, as detailed below. The Restricted Units shall remain equitably integrated and dispersed throughout the Project to a degree that is consistent with the initial unit assignments identified in Exhibit B attached hereto, including by unit type and construction phase. Any Restricted Unit occupied by an Eligible Household (as defined in Section 10.(a)(v)) at the commencement of occupancy shall be deemed a Restricted Unit, so long as (i) such Unit continues to be rented to an Eligible Household pursuant to the terms hereof, and (ii) the tenant’s income does not exceed 140% of the maximum income permitted. If the income of a tenant in a Restricted Unit exceeds 140% of the maximum income permitted hereunder at the time of annual eligibility determination, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant. The Owner shall not be in default hereunder so long as either (i) the income of a tenant in a Restricted Unit does not exceed 140% of the maximum income permitted or (ii) the Owner rents the next available unit in the same building as such Restricted Unit with the same or greater number of bedrooms which is not a Restricted Unit to an Eligible Household. Such next available unit shall be deemed to be a Restricted Unit when it is rented to an Eligible Household pursuant to the terms hereof.

The Owner shall not permit the use of any Unit for any purpose other than rental housing and those related uses which are permitted under the Ordinance, including accessory uses and Live-Work use.

The Owner agrees to construct the Project in accordance with plans and specifications approved by the Municipality. In addition, all Restricted Units to be constructed as part of the Project must be indistinguishable from other Units from the exterior.

Each Unit shall contain complete living facilities including but not limited to a stove, refrigerator, kitchen cabinets, and bathroom and kitchen plumbing fixtures, all as more fully shown in the plans and specifications approved by the Municipality. The Restricted Units shall contain comparable facilities to the non-Restricted Units (e.g., if dishwashers and washer/dryer hookups are provided for the non-Restricted Units, such facilities must be provided for the Restricted Units). During the term of this Restriction, the Owner covenants, agrees, and warrants that the Project and each Restricted Unit will remain suitable for occupancy and in compliance with all applicable federal, state, and local health, safety, building, sanitary, environmental, and other laws,

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codes, rules, and regulations, including without limitation, laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must comply with all similar local codes, ordinances, and by-laws. Without limiting the generality of the foregoing, each Unit shall meet the housing quality standards set forth, as applicable, in the regulations of United States Department of Housing and Urban Development (“HUD”) at 24 C.F.R. §982.401 or any successor thereto, and the accessibility requirements at 24 C.F.R. Part 8, or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973), 28 C.F.R. Parts 35 and 36, as applicable, or any successor thereto (which implement the Americans with Disabilities Act, as amended), G.L. c. 151B and the Massachusetts Architectural Access Board regulations at 521 CMR 1.00 *et. seq.*, or any successor thereto, and, if applicable, the design and construction requirements of 24 C.F.R. §100.205 or any successor thereto (which implement the Fair Housing Act).

7. Tenant Selection and Occupancy.

(a) Nondiscrimination. The Owner, the Municipality and the Monitoring Agent shall not discriminate on the basis of race, religion, color, sex, sexual orientation, gender identity, familial status, age, handicap, marital status, national origin, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the lease, use and occupancy of the Units or in connection with the employment or application for employment of persons for the operation and management of the Units.

(b) Selection Policies. Prior to marketing or otherwise making available for rental any of the Units, the Owner must obtain DHCD’s approval of a marketing plan (the “Tenant Selection Plan”) for the Restricted Units. Such Tenant Selection Plan must describe the tenant selection process for the Restricted Units and must set forth a plan for affirmative fair marketing of Restricted Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in DHCD’s Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines (“AFHM Guidelines”). At the option of the Municipality, and provided that the Tenant Selection Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Tenant Selection Plan may also include a preference for local residents for up to seventy percent (70%) of the Restricted Units, subject to all provisions of the AFHM Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the Tenant Selection Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality which states that the tenant selection and local preference (if any) aspects of the Tenant Selection Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Tenant Selection Plan which are set forth as responsibilities of the Municipality in the Tenant Selection Plan. The Tenant Selection Plan must comply with the Regulations and DHCD’s guidelines, including the 40R Guidelines and AFHM Guidelines, and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. **If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Owner must list all Restricted Units with the Boston Fair Housing Commission Metro List (Metropolitan Housing Opportunity Clearing Center).** All costs of carrying out the Tenant Selection Plan shall be paid by the Owner. The Owner may use in-house staff to draft and/or implement the Tenant Selection Plan, provided that such staff meets the qualifications described in AFHM Guidelines.

The Owner may contract for such services provided that any such contractor must be experienced and qualified under the standards set forth in the AFHM Guidelines. A failure to comply with the Tenant Selection Plan by the Owner or by the Municipality shall be deemed to be a default of this Restriction. The Owner agrees to maintain for five years following the initial rental of the last Restricted Unit and for five years following all future rentals, a record of all newspaper advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Tenant Selection Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Owner or the Municipality. The Owner and the Municipality agree that if at any time prior to or during the process of marketing the Restricted Units, DHCD determines that the Owner, or the Municipality with respect to aspects of the Tenant Selection Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Tenant Selection Plan, that the Owner or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

8. The Owner shall use its good faith efforts during the term of this Restriction to maintain all the Restricted Units within the Project at full occupancy as set forth in Section 6 hereof. In marketing and renting the Restricted Units, the Owner shall comply with the Tenant Selection Plan which are incorporated herein by reference with the same force and effect as if set out in this Restriction.

9. Occupancy agreements for Restricted Units shall meet the requirements of this Restriction. The Owner shall enter into a lease with each tenant of a Restricted Unit for a minimum term of one year. The lease shall provide that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease and shall also contain clauses, among others, wherein each resident of such Restricted Unit:

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

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

(c) agrees that at such time as the Owner, the Municipality, or the Monitoring Agent may direct, but at least annually, he or she will furnish to the Owner certification of then current family income, with such documentation as the Municipality or the Monitoring Agent shall reasonably require; and agrees to such charges as the Municipality or Monitoring Agent has previously approved for any facilities and/or services which may be furnished by the Owner or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above; and

(d) agrees to reside in the Restricted Unit as his or her principal residence.

10. Income and Rent Restrictions.

(a) Additional Definitions.

(i) A “Family” shall mean two or more persons who will live regularly in the Restricted Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual.

(ii) The “Area” is defined as the **Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area.**

(iii) Annual Income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD.

(iv) “Area Median Income” or “AMI” is defined as the median income for the Area, adjusted for family size, as determined by HUD regulations and guidelines.

(v) An “Eligible Household” is defined as a Family whose Annual Income does not exceed 80% AMI.

(vi) “Monitoring Agent” means MCO Housing Services, LLC.

(b) General Rent Restriction. The monthly rent charged to a tenant of a Restricted Unit, including an allowance for any utilities and services required to be paid by the tenant, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household (calculated at 80% of AMI), adjusted for a family size equal to the number of bedrooms in the Unit plus one, unless other affordable program rent limits approved by DHCD shall apply (“Maximum Monthly Rent”). Maximum Monthly Rents and utility allowances shall be adjusted annually as provided herein.

(c) To the extent that one or more other rent restrictions also apply to the Project and the Restricted Units, the more restrictive rent restriction shall govern. For purposes of this Restriction, this subsection (c) shall be read so that the most restrictive of the restrictions shall apply for the longest period applicable.

(d) If the rent for a Restricted Unit is subsidized by a state or federal subsidy program, then the rent payable to the Owner with respect to the Restricted Unit may be the amount permitted by such subsidy program, provided that the tenant’s share of rent does not exceed the maximum rental expense as provided in this Restriction.

11. Income Certifications. The Owner represents, warrants and covenants that the determination of whether a Family occupying a Restricted Unit meets the income requirements set forth herein shall be made by the Owner at the time of leasing of the Restricted Unit and thereafter at least annually on the basis of the then current income of such Family. In initially verifying a Family’s income, the Owner shall examine the source documents evidencing Annual Income (e.g. wage statements, interest statements, unemployment compensation statements) for the Family.

The Owner shall maintain as part of its Project records copies of all leases of Restricted Units and all initial and Annual Income certifications by tenants of the Restricted Units, which shall be available for inspection by the Monitoring Agent, the Municipality and DHCD. Tenants shall also be required to provide such information as the Monitoring Agent may reasonably request in order to ensure that they meet the income requirements set forth in this Restriction.

12. Rent Schedule. The initial Maximum Monthly Rents and allowances for utilities for all Restricted Units are set forth in Exhibit B attached hereto. Annually, as part of the annual reports required under Section 14, the Owner shall submit to the Monitoring Agent (with a copy to DHCD and the Municipality) a proposed schedule of monthly rents and utility allowances for all Restricted Units. The rent schedule shall include the Maximum Monthly Rents applicable to Restricted Units under Section 10 above. Such schedule shall be subject to the approval of the Monitoring Agent for compliance with the requirements of Section 10. Except as set forth in the next paragraph of this Section 12, rents for Restricted Units shall not be increased above the amounts permitted under this Restriction and the Ordinance without the Monitoring Agent's prior written approval of either (a) a specific request by the Owner for a rent increase or (b) the next annual schedule of rents and allowances as set forth in this Section. In all cases, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Owner to all affected tenants.

Without limiting the foregoing, the Owner may request a rent increase for Restricted Units to reflect an increase in AMI published by HUD between the date of this Restriction and the date that the Units begin to be marketed or otherwise made available for rental pursuant to Section 7; if the Monitoring Agent approves such rent increase in accordance with this Section 12, the initial Maximum Monthly Rents and allowances for utilities for Restricted Units in Exhibit B shall be deemed to be modified accordingly. If the Monitoring Agent fails to respond to such a submission within thirty (30) days of the Monitoring Agent's receipt thereof, then the Monitoring Agent shall be deemed to have approved the submission and the rents for the Restricted Units may thereafter be increased by the Owner in accordance with such schedule. The Owner shall be deemed to have complied with the requirements of this Section in all respects, provided that in no event shall the rent for a Restricted Unit exceed an amount permitted under Section 10.

13. Transfer Restrictions. Except for rentals of Restricted Units to Eligible Households as permitted by the terms of this Restriction and rentals of other Units in the ordinary course of business, the Owner will not sell, transfer, ground lease, or exchange the Project or any portion of or interest in the Project (except for easements, restrictions and similar matters granted in the ordinary course of business, so long as the same do not prohibit or materially interfere with the use of the premises for the Project or by operation of law or effectively transfer control of the Project) (collectively a "Sale") or, except as permitted under Section (d) below), mortgage the Property without the prior written consent of the Municipality.

(a) A request for consent to a Sale shall include:

1. A signed agreement stating that the transferee will assume in full the Owner's obligations and duties under this Restriction, together with a certification by the attorney or title company that it will be held in escrow and, in the case of any transfer other than a transfer of Beneficial Interests, recorded in the Registry with the deed and/or other recorded documents effecting the Sale;



2. The name of the proposed transferee and any other entity controlled by or controlling or under common control with the transferee, and names of any affordable housing developments in the Commonwealth of Massachusetts owned by such entities;
3. A certification from the Monitoring Agent that the Project is in compliance with the affordability requirements of this Restriction.

(b) Consent to the proposed Sale shall be deemed to be given unless the Municipality notifies the Owner within thirty (30) days after receipt of the request that either

1. The package requesting consent is incomplete; or
2. The proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has a documented history of serious or repeated failures to abide by agreements of affordable housing funding or regulatory agencies of the Commonwealth of Massachusetts or the federal government or is currently in violation of any agreements with such agencies beyond the time permitted to cure the violation; or
3. The Project is not being operated in compliance with the affordability requirements of this Restriction at the time of the proposed Sale.

(c) The Owner shall provide the Monitoring Agent and the Municipality with thirty (30) day's prior written notice of the following:

1. any change, substitution or withdrawal of any general partner or manager of the Owner ; or
2. the conveyance, assignment, transfer, or relinquishment of the Beneficial Interests (herein defined) in the Owner, together with any prior conveyances, assignments, transfers, or relinquishments, that results in a change of control with respect to the day-to-day decision making over the Project, which includes decisions regarding the appointment of a management agent, if applicable, the sale or refinancing of the Project, and the affordability requirements for the Project (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Restriction); or
3. the sale, mortgage, conveyance, transfer, ground lease, or exchange of the Owner's interest in the Project or any part of the Project (except for easements, restrictions and other similar matters, so long as the same do not prohibit or materially interfere with the use of the premises for the Project).

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

(d) Notwithstanding the above, the Municipality's consent under this Section 13 shall not be required with respect to (i) the grant by the Owner of any mortgage or other

security interest in or with respect to the Project to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender if at the time such loan is made: (1) the loan to value ratio is at or under 85%; and (2) the debt service coverage ratio is at or above 1.15; (ii) the grant by the Owner of any mortgage or other security interest in or with respect to the Project to a state or federal agency, such as Massachusetts Housing Finance Agency, Massachusetts Development Finance Agency, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, U.S. Department of Housing and Urban Development, Federal Emergency Management Agency, U.S. Small Business Administration or other state or federal housing agency or funding program or the affiliates of any of the foregoing; (iii) the grant by the Owner of any mortgage or other security interest in or with respect to the Project to a utility company or any agency or lender providing funding for energy conservation improvements and/or the installation or upgrading of utilities; (iv) the grant by the Owner of any mortgage or other security interest in or with respect to the Project to a 501(c)(3) non-profit organization for the benefit of providing tenant improvements and/or subsidies for affordable housing under a state or federal program; or (v) any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Project by deed in lieu of foreclosure), subject, however to the provisions of Section 18 hereof.

The Owner hereby agrees that it shall provide to the Municipality and the Monitoring Agent copies of any and all written notices received by the Owner from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

14. Annual Compliance Report. Throughout the term of this Restriction the Monitoring Agent agrees to prepare and deliver annually a report in a form specified by the Municipality (the "Annual Compliance Report") to the Municipality and DHCD regarding the compliance of the Owner with reporting requirements within the provisions of the Ordinance and compliance of the Project with the affordability requirements thereof, including but not limited to the requirement to equitably integrate and disperse Restricted Units throughout the Project. In the Annual Compliance report, the Monitoring Agent shall annually certify in writing whether the Project continues to contain the minimum number of Restricted Units required by this Restriction; and whether the Project and the Restricted Units have been maintained in a manner consistent with this Restriction; and whether the Owner has evicted the tenants of any Restricted Units for any reason other than a substantial breach of a material provision of their lease. The Annual Compliance Report shall also indicate the extent of non-compliance with the relevant reporting and/or substantive requirements of this Restriction and, if any, shall describe efforts being made by the Owner to remedy such non-compliance. If the tenants of any Restricted Unit have violated their lease with respect to the clauses required under Section 9, the Annual Compliance Report shall include notice of any such violations, including without limitation to, notice of any subleases or other agreements that are in violation of the tenant's agreement to reside in the Restricted Unit under Section 9(e). The Monitoring Agent shall deliver the Annual Compliance Report to the Municipality and DHCD within one hundred twenty (120) days of the end of each calendar year during the term of this Restriction.

15. Compliance with Statute and Regulations. The Owner agrees to comply and to cause the Project to comply with all requirements of G.L. c.40R, the Regulations, DHCD guidelines, and all other applicable laws, rules, regulations, and executive orders. The Municipality and the Monitoring Agent shall have access during normal business hours to all books and records

of the Owner and the Project in order to monitor the Owner's compliance with the terms of this Restriction.

16. Enforcement and Monitoring. (a) The Municipality and the Monitoring Agent shall each, acting singly, have the power to monitor and enforce the requirements of this Restriction, and the Massachusetts Act and the Ordinance with respect to this Restriction. The Monitoring Agent shall monitor the compliance of the Project with the affordability requirements of the Ordinance. The purpose of monitoring is to ensure that (both initially and on an ongoing basis) the income eligibility of the tenants of Restricted Units are properly and reliably determined, rental amounts of Restricted Units are properly computed, the Tenant Selection Plan conforms to all requirements and is properly administered and compliance with its terms continues, Eligible Households are properly chosen, and annual recertification of continued eligibility occurs in accordance with this Restriction and the Ordinance.

(b) The Owner and the Monitoring Agent each covenant and agree to give the Municipality written notice of any default, violation or breach of the obligations of the Owner or the Monitoring Agent hereunder, (with a copy to the other parties to this Restriction) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If the Municipality becomes aware of a default, violation, or breach of obligations of the Owner or the Monitoring Agent hereunder without receiving a Default Notice from the Owner or the Monitoring Agent, the Municipality shall give a notice of such default, breach or violation to the offending party (with a copy to the other parties to this Restriction) (the "Municipal Default Notice"). If any such default, violation or breach by the Owner or the Monitoring Agent with respect to this Restriction is not cured within thirty (30) days after the giving of the Default Notice by the Owner or the Monitoring Agent, or if no Default Notice is given, then within thirty (30) days after the giving of the Municipal Default Notice, then the Municipality and/or Monitoring Agent may apply to any state or federal court for specific performance of this Restriction, exercise any other remedy at law or in equity available to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Project to its condition prior to any such violation (it being agreed that the Municipality and/or the Monitoring Agent will have no adequate remedy at law), or take any other action as may be necessary or desirable to correct non-compliance with this Restriction, and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and/or the Monitoring Agent.

(c) The Owner covenants and agrees to reimburse to the Municipality and/or the Monitoring Agent all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Restriction is acknowledged by the Owner or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Restriction, the Municipality (and/or the Monitoring Agent) does not undertake any liability or obligation relating to the condition of the Project. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected. No delay or omission on the part of the Municipality in enforcing the restrictions contained herein shall operate as a waiver of the right to enforce it, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or waiver of the same or of any other right on any future occasion.

17. Further Assurances. The Municipality and/or the Monitoring Agent is authorized to record and/or register any notices or instruments appropriate to assuring the enforceability of this Restriction; and the Owner on behalf of itself and its successors and assigns appoints the Municipality and/or the Monitoring Agent its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the Monitoring Agent each agree to submit any information, documents, or certifications requested by the Municipality which the Municipality shall deem necessary or appropriate to evidence continuing compliance of the Owner and the Monitoring Agent with the terms of this Restriction. The benefits of this Restriction shall be in gross and shall be assignable by the Municipality. The Owner and the Municipality intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of recording and/or registering of any instrument evidencing such approval.

18. Foreclosure. The rights and restrictions contained in this Restriction shall survive and shall not lapse or terminate if the Project is acquired through foreclosure or deed in lieu of foreclosure or similar action, and it is therefore the intention of the parties that the provisions hereof shall survive foreclosure or deed in lieu of foreclosure and shall continue to run with and bind the Project.

19. Notices. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given (1) if hand delivered, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Owner:

One Boston Way, LLC  
231 Sutton Street, Suite 1B  
North Andover, Massachusetts 01845  
Email: Newburyportcrossing@gmail.com

With a copy to:

Eckert, Seamans, Cherin & Mellott, LLC  
Attention: Robert W. Levy, Esq.  
Two International Place, 16<sup>th</sup> Floor  
Boston, MA 02110  
Email: rlevy@eckertseamans.com

If to the Municipality:

City of Newburyport  
P.O. Box 550  
60 Pleasant Street

Newburyport, Massachusetts 01950  
Email: mayor@cityofnewburyport.com

If to the Monitoring Agent:

MCO Housing Services, LLC  
P.O. Box 372  
Harvard, MA 01451  
Email: maureen@mco housingservices.com

If to DHCD:

Department of Housing and Community Development  
Attention: Smart Growth Zoning Program Coordinator  
Division of Community Services  
100 Cambridge St., Suite 300  
Boston, MA 02114  
Email: William.reyelt@mass.gov and dhcdcommunityservices@mass.gov

or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice, and (2) if an electronic copy of such notice, request, or other communication made hereunder is simultaneously delivered by electronic mail to the party to be served, provided such party to be served has (a) identified an email address in this Section 19 and/or (b) furnished in writing to the party seeking or desiring to serve notice a request to be provided in electronic copy of notices, request, or other communication made hereunder to an identified electronic mail address. A notice sent by certified or registered mail shall be deemed given three (3) days after mailing; a notice sent by overnight courier shall be deemed given one day after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt, regardless of the date on which the recipient party receives a copy of such notice by electronic means.

20. Amendment. This Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the Municipality, the Monitoring Agent and DHCD. Notwithstanding the foregoing, or anything else contained herein to the contrary, if at any time the Owner converts the subject Units from apartment rentals, to condominium units to be offered for sale, provided the Owner first obtains all required approvals from the Municipality, and DHCD, it is agreed that this Restriction shall be replaced by a revised Restriction, approved by DHCD, suitable for use for condominium units being offered for sale. Any amendments to this Restriction must be in writing and executed by all of the parties hereto.

21. Governing Law. This Restriction shall be governed by the laws of The Commonwealth of Massachusetts.

22. Severability. The invalidity of any clause, part, or provision of this Restriction shall not affect the validity of the remaining portions hereof.

23. Mortgagee Consents. The Owner represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Restriction

{K0871512.2}

and to the terms and conditions hereof and that all such mortgagees have executed the Consent and Subordination of Mortgage to Affordable Housing Restriction Agreement for 40R Rental Project attached as Exhibit C hereto and made a part hereof.

24. Casualty; Demolition; Change of Use.

(a) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner (subject to the approval of the lender(s) which has provided financing for the Project) will 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 this Restriction, subject to the approval of the Project's lenders.

(b) The Owner shall not, without prior written approval of DHCD and the Municipality and an amendment to this Restriction, change the type or number of Restricted Units. The Owner 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 the dwelling accommodations of the Project for any purpose except residences and any other uses permitted by the applicable zoning then in effect.

25. Recording. Upon execution, the Owner shall immediately cause this Restriction and any amendments hereto to be recorded with the Registry, and the Owner shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Owner shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of this Restriction.

26. Representations. The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (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 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 Restriction.

(b) The execution and performance of this Restriction by the Owner (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 Owner 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 Owner will, at the time of execution and delivery of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Restriction, any loan documents relating to the Project, or other encumbrances, including mortgages referred to in Section 23 and other matters such as easements, restrictions, covenants and reservations, so long as the same do not prohibit the use of the premises for the Project).

(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 Owner, 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 Restriction) or would materially adversely affect its financial condition.

No documentary stamps are required as this Restriction is not being purchased by the Municipality.

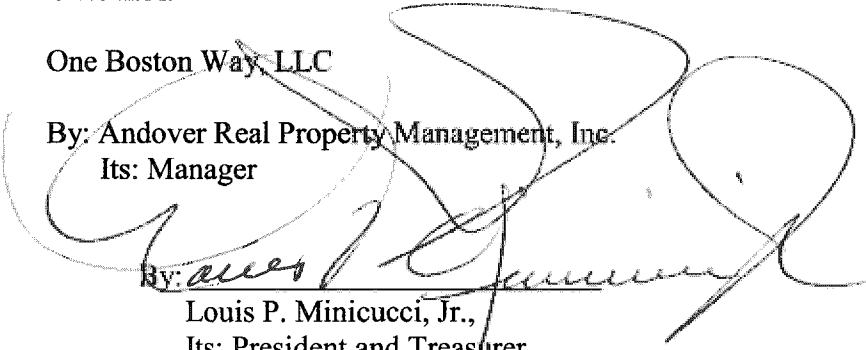
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IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the date and year first written above.

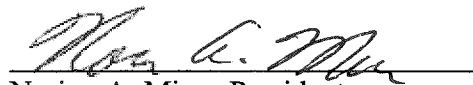
**OWNER:**

One Boston Way, LLC

By: Andover Real Property Management, Inc.  
Its: Manager

By:   
Louis P. Minicucci, Jr.,  
Its: President and Treasurer

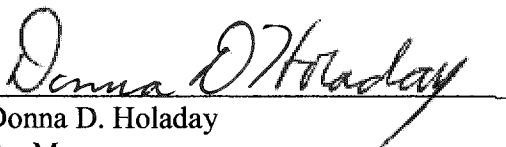
By: Mirra Boston Way Management, Inc.  
Its: Manager

By:   
Norino A. Mirra, President

By:   
Natalie Wright, Treasurer

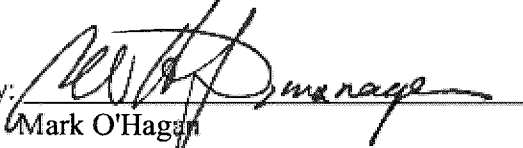
**MUNICIPALITY:**

City of Newburyport

By:   
Donna D. Holaday  
Its: Mayor

**MONITORING AGENT:**

MCO Housing Services, LLC

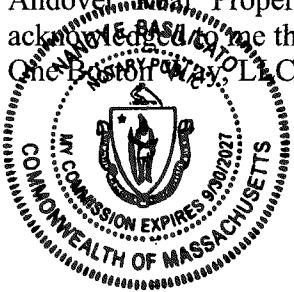
By:   
Mark O'Hagan  
Its: Manager



COMMONWEALTH OF MASSACHUSETTS

Essex County, ss.

On this 18 day of February, 2021, before me, the undersigned notary public, personally appeared Louis P. Minicucci, Jr., 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 document, as President and Treasurer of Andover Real Property Management, Inc., the Manager of One Boston Way, LLC and acknowledged to me that he signed it voluntarily for its stated purpose as the free act and deed of One Boston Way, LLC.

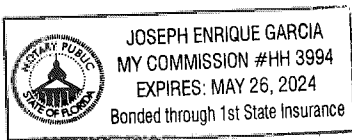


Nancy E. Basilicato  
Notary Public  
My Commission Expires: 9/30/2027

STATE OF FLORIDA

Pinellas <sup>56</sup>  
~~Collier~~ County, ss.

On this 16 day of February, 2021, before me, the undersigned notary public, personally appeared Norino A. Mirra, 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 document, as President of Mirra Boston Way Management, Inc., the Manager of One Boston Way, LLC and acknowledged to me that he signed it voluntarily for its stated purpose as the free act and deed of One Boston Way, LLC.



Joseph E. Garcia  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss.

On this 18 day of February, 2021, before me, the undersigned notary public, personally appeared Natalie Wright, 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 document, as Treasurer of Mirra Boston Way Management, Inc., the Manager of One Boston Way, LLC and acknowledged to me that she signed it voluntarily for its stated purpose as the free act and deed of One Boston Way, LLC.



Nancy E. Basilicato  
Notary Public  
My Commission Expires: 9/30/2027

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss.

On this 11<sup>th</sup> day of March, 2021, before me, the undersigned notary public, personally appeared Donna D. Holaday, 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 document, as Mayor for the City of Newburyport and acknowledged to me that she signed it voluntarily for its stated purpose as the free act and deed of City of Newburyport.

*Kathleen Sullivan*

Notary Public

My Commission Expires:



**KATHLEEN SULLIVAN**  
Notary Public

Commonwealth of Massachusetts  
My Commission Expires  
June 17, 2027

COMMONWEALTH OF MASSACHUSETTS

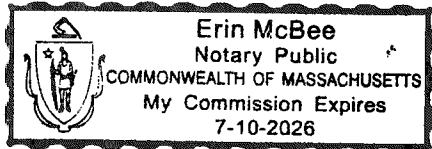
Worcester County, ss.

On this 25 day of February, 2021, before me, the undersigned notary public, personally appeared Mark O'Hagan, 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 document, as Manager of MCO Housing Services, LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the free act and deed of MCO Housing Services, LLC.

*Erin McBee*

Notary Public *Erin McBee*

My Commission Expires: 7-10-2026



**Attachments:**

**EXHIBIT A - Property Description**

**EXHIBIT B - Initial Rent Schedule and Unit Assignments & Location of Restricted Units**

**EXHIBIT C - Consent and Subordination of Mortgage to Affordable Housing Restriction Agreement for 40R Rental Project**

**EXHIBIT D - Certificate of Approval Affordable Housing Restriction G.L. c. 184, §32**

EXHIBIT A

Legal Property Description

A CERTAIN PARCEL OF LAND LOCATED IN NEWBURYPORT, ESSEX COUNTY, MASSACHUSETTS SHOWN AS LOT 1 ON PLAN BOOK 241, PLAN 30 AS FILED WITH THE ESSEX COUNTY REGISTRY OF DEEDS, SOUTH DISTRICT AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF THE SUBJECT PARCEL LOCATED ON THE EASTERLY SIDELINE OF BOSTON WAY, THENCE RUNNING

N 04°55'53" W ALONG THE SIDELINE OF BOSTON STREET A DISTANCE OF 215.00' TO A POINT; THENCE TURNING AND RUNNING

ALONG THE SIDE LINE OF BOSTON WAY NORTHERLY WITH A CURVE TURNING TO THE LEFT HAVING AN ARC LENGTH OF 87.44' AND A RADIUS OF 3041.90'; THENCE TURNING AND RUNNING

ALONG THE SIDELINE OF BOSTON WAY N 06°34'42" W A DISTANCE OF 100.00' TO A POINT; THENCE TURNING AND RUNNING

NORTHEASTERLY WITH A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 68.28' AND HAVING A RADIUS OF 35.00' TO THE SOUTHERLY SIDELINE OF PARKER STREET; THENCE TURNING AND RUNNING

ALONG THE SIDELINE OF PARKER STREET S 74°48'30" E DISTANCE OF 108.12' TO A POINT; THENCE TURNING AND RUNNING

ALONG THE SIDELINE OF PARKER STREET S 72°46'52" E A DISTANCE OF 24.36' TO A POINT; THENCE TURNING AND RUNNING

S 17°46'46" E A DISTANCE OF 399.88' TO A POINT; THENCE TURNING AND RUNNING

S 85°04'07" W A DISTANCE OF 255.90' TO THE POINT OF BEGINNING,

HAVING AN AREA OF 87,623.6± SQUARE FEET, 2.01± ACRES.

EXHIBIT B

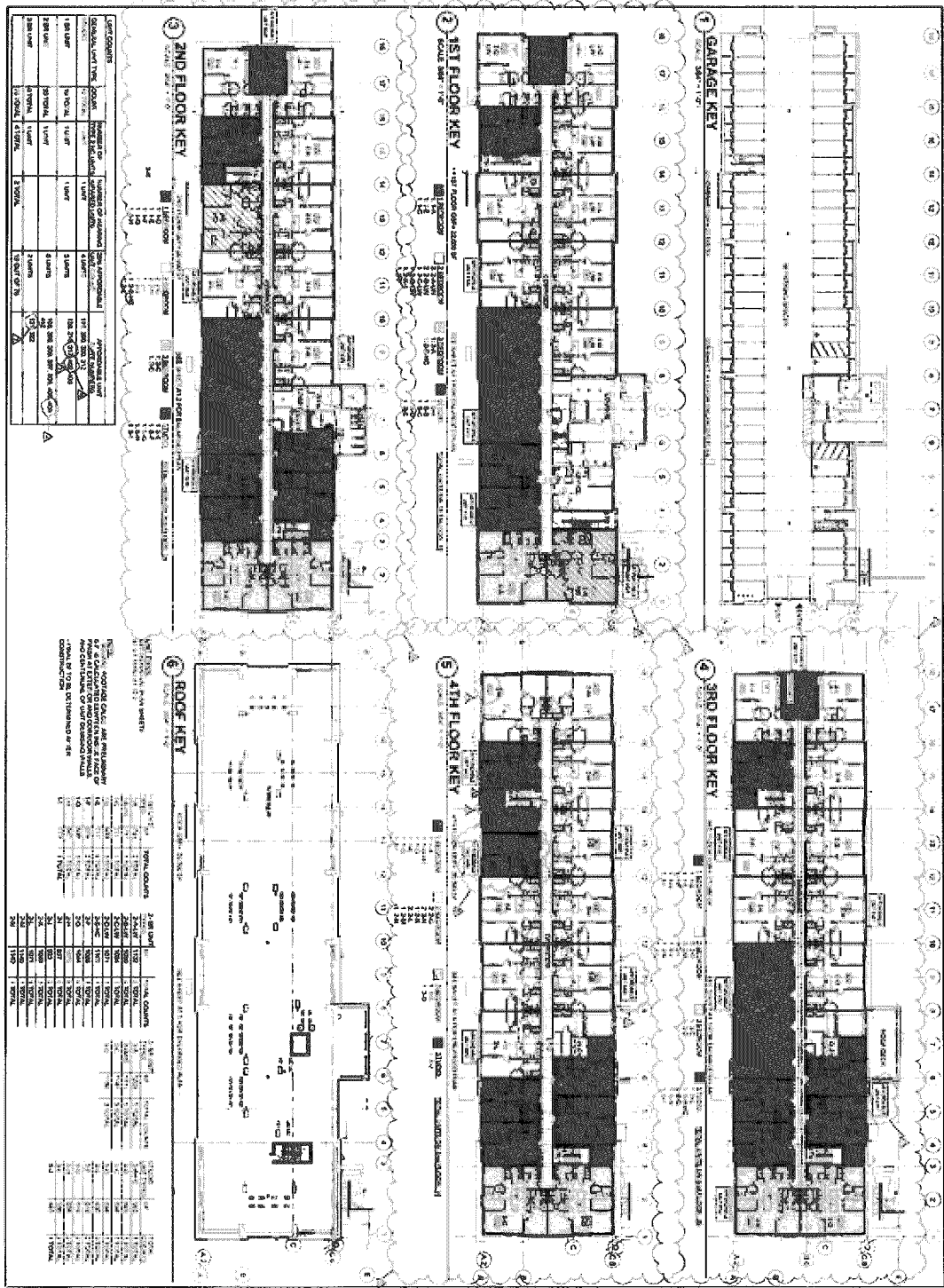
Initial Maximum Rent and Utility Allowance Schedule

Description of Units	Contract Rent	Utility Allowance	No. of Units
Studio	\$1,561.00	\$130.00	4
1 bedroom units	\$1,785.00	\$163.00	5
2 bedroom units	\$2,007.00	\$209.00	8
3 bedroom units	\$2,229.00	\$259.00	2

Adjustments to Maximum Monthly Rent to be calculated at thirty percent (30%) of eighty percent (80%) of AMI.

Initial Location of Restricted Units

The housing units which are the initial Restricted Units are those designated as unit numbers 108, 116, 120, 121, 200, 208, 209, 218, 300, 312, 306, 307, 317, 322, 402, 405, 406, 409, 412 and on a plan entitled One Boston Way Reference Plans, Sheet A0.2, issue date 11-12-18, as updated/revised 8-24-20 and is attached hereto.



GRID COORDINATE	NUMBER OF JOISTING	NUMBER OF JOISTING	APPROXIMATE UNIT
GRID LINE	PER LINE	PER LINE	PER LINE
1-10	1	1	1
1-11	1	1	1
1-12	1	1	1
1-13	1	1	1
1-14	1	1	1
1-15	1	1	1
1-16	1	1	1
1-17	1	1	1
1-18	1	1	1
1-19	1	1	1
1-20	1	1	1
1-21	1	1	1
1-22	1	1	1
1-23	1	1	1
1-24	1	1	1
1-25	1	1	1
1-26	1	1	1
1-27	1	1	1
1-28	1	1	1
1-29	1	1	1
1-30	1	1	1
1-31	1	1	1
1-32	1	1	1
1-33	1	1	1
1-34	1	1	1
1-35	1	1	1
1-36	1	1	1
1-37	1	1	1
1-38	1	1	1
1-39	1	1	1
1-40	1	1	1
1-41	1	1	1
1-42	1	1	1
1-43	1	1	1
1-44	1	1	1
1-45	1	1	1
1-46	1	1	1
1-47	1	1	1
1-48	1	1	1
1-49	1	1	1
1-50	1	1	1
1-51	1	1	1
1-52	1	1	1
1-53	1	1	1
1-54	1	1	1
1-55	1	1	1
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1-57	1	1	1
1-58	1	1	1
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1-61	1	1	1
1-62	1	1	1
1-63	1	1	1
1-64	1	1	1
1-65	1	1	1
1-66	1	1	1
1-67	1	1	1
1-68	1	1	1
1-69	1	1	1
1-70	1	1	1
1-71	1	1	1
1-72	1	1	1
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1-85	1	1	1
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1-88	1	1	1
1-89	1	1	1
1-90	1	1	1
1-91	1	1	1
1-92	1	1	1
1-93	1	1	1
1-94	1	1	1
1-95	1	1	1
1-96	1	1	1
1-97	1	1	1
1-98	1	1	1
1-99	1	1	1
1-100	1	1	1

2ND FLOOR KEY			
GRID COORDINATE	NUMBER OF JOISTING	NUMBER OF JOISTING	APPROXIMATE UNIT
GRID LINE	PER LINE	PER LINE	PER LINE
2-10	1	1	1
2-11	1	1	1
2-12	1	1	1
2-13	1	1	1
2-14	1	1	1
2-15	1	1	1
2-16	1	1	1
2-17	1	1	1
2-18	1	1	1
2-19	1	1	1
2-20	1	1	1
2-21	1	1	1
2-22	1	1	1
2-23	1	1	1
2-24	1	1	1
2-25	1	1	1
2-26	1	1	1
2-27	1	1	1
2-28	1	1	1
2-29	1	1	1
2-30	1	1	1
2-31	1	1	1
2-32	1	1	1
2-33	1	1	1
2-34	1	1	1
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2-37	1	1	1
2-38	1	1	1
2-39	1	1	1
2-40	1	1	1
2-41	1	1	1
2-42	1	1	1
2-43	1	1	1
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2-66	1	1	1
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2-70	1	1	1
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2-75	1	1	1
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2-81	1	1	1
2-82	1	1	1
2-83	1	1	1
2-84	1	1	1
2-85	1	1	1
2-86	1	1	1
2-87	1	1	1
2-88	1	1	1
2-89	1	1	1
2-90	1	1	1
2-91	1	1	1
2-92	1	1	1
2-93	1	1	1
2-94	1	1	1
2-95	1	1	1
2-96	1	1	1
2-97	1	1	1
2-98	1	1	1
2-99	1	1	1
2-100	1	1	1

**project name:**  
ONE BOSTON WAY  
1 Boston Way  
Newburyport, MA

**sheet title:**  
Reference Plans

**consultant:**

**architect:**  
GSO Associates, LLC  
146 Main Street  
North Andover, MA 01845  
Tel: 978-688-5422  
www.gso-associates.com

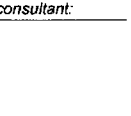


EXHIBIT C

**CONSENT AND SUBORDINATION OF MORTGAGE  
TO AFFORDABLE HOUSING RESTRICTION  
AGREEMENT FOR 40R RENTAL PROJECT**

Reference is hereby made to a certain Mortgage from One Boston Way, LLC to Rockland Trust Company, dated November 4, 2020, and recorded with Essex South Registry of Deeds in Book 39144, Page 235 (“Mortgage”).

The Undersigned, present holder of said Mortgage, hereby recognizes and consents to the execution and recording of this Restriction and agrees that the aforesaid Mortgage shall be subject and subordinate to the provisions of this Restriction, to the same extent as if said Mortgage had been registered subsequent thereto. The Undersigned further agrees that in the event of any foreclosure or exercise of remedies under said Mortgage it shall comply with the terms and conditions hereof.

Rockland Trust Company

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF ESSEX, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of Rockland Trust Company, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of Rockland Trust Company, Massachusetts trust company.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:  
My commission expires: \_\_\_\_\_

EXHIBIT D

Certificate of Approval  
Affordable Housing Restriction  
G.L. c. 184, §32

The undersigned Undersecretary of the Massachusetts Department of Housing and Community Development hereby certifies that the Affordable Housing Restriction made and declared by One Boston Way, LLC and recorded with the Essex South Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, with respect to land in the City of Newburyport described in deed recorded with the Essex South Registry of Deeds at Book 37130 , Page 532, is hereby declared to be in the public interest and is approved pursuant to the provisions of Massachusetts General Laws chapter 184, section 32.

Date:

COMMONWEALTH OF MASSACHUSETTS

By: \_\_\_\_\_  
\_\_\_\_\_, Associate Director,  
authorized signatory for \_\_\_\_\_, Undersecretary  
of the Department of Housing and Community Development

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My commission expires: \_\_\_\_\_