

Third-Party Affordability Monitoring Handbook

for

MassHousing 40B Homeownership Projects

(Updated May 31, 2016)



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Introduction

This document is intended to provide guidance for third-party Affordability Monitoring Agents (the “Monitoring Agent”) retained by a Developer at the request of MassHousing (in their role as Subsidizing Agency), to enforce the Affordability Requirements of homeownership projects permitted pursuant to Massachusetts General Laws Chapter 40B. It is not intended to replace or supersede any portion of Massachusetts General Laws Chapter 40B, 760 CMR 56.00, or the Department of Housing and Community Development’s Comprehensive Permit Guidelines (“The 40B Guidelines”) or any provisions of the Regulatory Agreement for a specific 40B Project. Instead, it is intended to provide a *basic* roadmap for individuals and organizations serving as third-party Affordability Monitoring Agents for 40B homeownership projects for which MassHousing serves as the Subsidizing Agency.

The duties of a 40B Monitoring Agent can be summarized as follows:

- 1) *Review the Affirmative Fair Housing Marketing Plan (AFHMP)* – Identify necessary revisions and/or corrections. Recommend approval or disapproval to MassHousing;
- 2) *Monitor Initial Sales* – Work closely with the Developer and/or their Lottery Agent to ensure that Affordable Units included in a 40B Project are sold to Income Eligible Households and are subject to a long-term Affordable Housing Restriction;
- 3) *Monitor Resales* - Ensure that all Resales (including those resulting from foreclosures) comply with 40B regulations, the terms of the Affordable Housing Restriction; and the AFHMP.
- 4) *Annual Reporting* - Prepare and submit an Annual Compliance Report to the Subsidizing Agency and the Municipality regarding compliance of the Project with the Affordability Requirement;
- 5) *Supplemental Monitoring Services* - Ensure ongoing compliance by Affordable Unit owners with Chapter 40B and the terms of the Affordable Housing Restriction, including requests for refinancing, capital improvements, leasing and resale; and
- 6) *Enforcement* - Take necessary enforcement action in response to violations of the Regulatory Agreement and Affordable Housing Restriction.

Each of these items will be explained in more detail in the following sections of this Handbook.

Throughout this document, references are provided to the relevant sections of the 40B Guidelines and the most recent versions of the MassHousing Regulatory Agreement and its attachments (Affordability Monitoring Services Agreement and Affordable Housing Restriction). That said, there are variations in regulatory documents for some projects (particularly older ones) so it is important to refer to project-specific documents. Additionally, references are made to sample forms that can be adapted for use by Monitoring Agents. Model forms can be found at Appendix B, and are also located at the MassHousing website.

INITIAL SALES PERIOD

In the life of a 40B Project, the Initial Sales period extends for the entire time in which the Affordable Units in the Project are being marketed and sold directly by the Developer to the initial Eligible Buyer. It is important to note that it is entirely possible for a Project to have some units that are being built and sold for the first time, while others are being “re-sold” by their initial owners to subsequent Eligible Buyers. Initial Sales are complete **only** when all of the Affordable Units in a 40B Project have been sold by the Developer for the first time to an initial buyer.

Throughout the Initial Sales period the Monitoring Agent works closely with the Developer and/or their designated Lottery Agent to ensure compliance with the terms of the Regulatory Agreement and the Comprehensive Permit Regulations. Once all units in a Project are sold, however, the Monitoring Agent assumes primary responsibility for compliance.

During the Initial Sales period, the Developer or their Lottery Agent has direct responsibility for marketing the Affordable Units and locating Eligible Buyers. The Monitoring Agent, in turn, is responsible for confirming that each Affordable Units has been sold to an Eligible Buyer in compliance with the Affordability Requirement for that specific unit and in accordance with the Comprehensive Permit Regulations.

The Affordability Monitoring Services Agreement

In accordance with the Regulatory Agreement and Comprehensive Permit Rules, before a Project can receive Final Approval from MassHousing the Developer must retain one or more Monitoring Agents “to perform administration, monitoring and enforcement services regarding compliance of the Project with the Comprehensive Permit Rules during the term of Affordability of the Affordable Units.”

The choice of Monitoring Agent must be approved by MassHousing based on experience, qualifications, level of training and capacity. Monitoring Agents should have a strong working knowledge of the 40B Guidelines, and applicable HUD regulations. MassHousing keeps a list of approved Monitoring Agents, but will consider candidates that are not pre-approved based on a review of their qualifications. Those interested in being included on the list of approved Affordability Monitoring Agents should contact the 40B Program staff at MassHousing.

The roles and responsibilities of the Monitoring Agent and the Developer are set forth in the Affordability Monitoring Services Agreement (the “Monitoring Agreement”), which is signed by the Developer, the Monitoring Agent and MassHousing. It is important to note that some of the older Monitoring Agreements are also signed by the Municipality. The Monitoring Agreement also sets forth the fee that will be paid by the Developer to the Monitoring Agent for services rendered relative to the Initial Sales of Affordable Units, as well as the fee that will be paid to the Monitoring Agent by future owners of the Affordable Units at the time of Resale (the “Resale Fee”).

Resale Fee *It is important to note that while the standard Affordable Housing Restriction required by MassHousing since 2007 (also known as the Universal Deed Rider, or Fannie Mae Deed Rider) limits the Resale Fee to “no more than 2.5% of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier”, some older Monitoring Agreements may specify a different (generally lower) amount.*

In terms of timing, the Monitoring Agreement should be signed after the Comprehensive Permit is approved, but before Final Approval is issued by MassHousing. The Monitoring Agreement is typically attached to and made part of the Regulatory Agreement, and is recorded with the Regulatory Agreement at the Registry of Deeds. The term of the Monitoring Agreement for a specific Project lasts as long as there is any unit in the development that is subject to an Affordable Housing Restriction. If, as in most cases, the Affordable Housing Restriction requires that one or more units remains affordable in perpetuity, the Monitoring Agent (or their successor) is obligated to remain involved as long as the Affordable Unit exists.

The Monitoring Services Agreement can be terminated “at will” by the Monitoring Agent or by MassHousing with sixty (60) days notice. The Monitoring Agreement can also be terminated immediately by MassHousing should the Monitoring Agent become incapable of fulfilling their obligations. In these cases, MassHousing is responsible for appointing a new Monitoring Agent. If the Developer or the Municipality has identified a successor Monitoring Agent, or if the Monitoring Agent chooses to delegate any of its obligations to another party, the new Monitoring Agent must be approved by MassHousing.

Best Practice *Monitoring Agent/Developer MOU (Form 1)*

Along with the Monitoring Agreement, some Monitoring Agents and Developers enter into a Memorandum of Understanding (MOU). This allows both parties to further refine the scope of work and clearly articulate expectations on matters such as payment rates, schedules, and deliverables (See Appendix B, Form 1).

Best Practice *Create Project File/Record*

At the time that the Monitoring Agreement is signed, the Monitoring Agent should create project file (electronic or paper) including a copy of the recorded Regulatory Agreement (including Affordability Monitoring Services Agreement); a copy of recorded Comprehensive Permit; the AFHMP; the address and unit number of every affordable unit in the development, and contact information for the Developer and Lottery Agent.

Review Affirmative Fair Housing Marketing and Resident Selection Plan (Form 2)

All 40B Projects must have an Affordable Fair Housing Marketing and Resident Selection Plan (AFHMP), which maps out the process for marketing Affordable Units within a 40B Project, and identifying and selecting Eligible Buyers. One of the most important responsibilities of the Monitoring Agent is to review the AFHMP and ensure compliance with its provisions throughout the direction of a 40B Project.

The Developer, or a Lottery Agent working on behalf of the Developer, is responsible for preparing the AFHMP. The Developer is also responsible for all costs associated with initial marketing and buyer selection. Section III of the 40B Guidelines outlines requirements for the preparation and administration of the AFHMP. The Guidelines specify that the AFHMP must be implemented for the full term of the Affordability Requirement, which in most cases extends in perpetuity. The AFHMP should, therefore address not just the Initial Sales of Affordable Units, but should also include information about the Resale process for the entire term of Affordability.

Typically, before approving an AFHMP, MassHousing will ask the Monitoring Agent to review it and make a recommendation as to whether it should be approved or modified. Because it is the Monitoring Agent's responsibility to ensure compliance with the AFHMP, they should be completely familiar with its contents, and should be ready to serve as a resource to MassHousing, the Developer and the Lottery Agent throughout its implementation.

Reference: 40B Guidelines Section III (2) and Regulatory Agreement 3 (c)

Establish Maximum Initial Sales Price

Comprehensive Permit Regulations and MassHousing's Regulatory Agreement state that the Maximum Initial Sales Price for an Affordable Unit must be calculated by the Subsidizing Agency (MassHousing). The sales price of Affordable Units must be established at the time of initial marketing. Thereafter, the price cannot be increased for buyers selected through the lottery process, even if interest rates or HUD income guidelines change. The exception to this rule is for phased projects, in which case the Maximum Initial Sales price would be established at the time of marketing for each phase. **For all subsequent Resales, it is the responsibility of the Affordability Monitoring Agent to establish the Sales Price.**

MassHousing generally refers to the standards set forth in the DHCD Guidelines for the Local Initiative Program (LIP) for establishing the Maximum Initial Sales Price for an affordable unit. Initial purchase prices are established so that appropriately-sized households earning 70% of area median income (AMI) are not required to spend more than 30% of their gross income on total housing costs. HUD publishes annually the Area Median Income (AMI) for all of the Metropolitan Statistical Areas (MSA's), which you can easily access at the HUD website.

DHCD has also developed a calculator that can be used to plug in variables to come up with a Maximum Allowable Housing Cost, which, in turn, determines the Maximum Initial Sales Price.

Sample Calculation of Purchase Price Limits (from DHCD 40B Guidelines):

Sales Price	\$156,600
5% Down payment	\$7,8308
Mortgage	\$148,770
<u>Interest rate</u>	5.00%
Amortization	30
Monthly P&I Payments	\$798.63
<u>Tax Rate</u>	\$13.40
monthly property tax	\$170
Hazard insurance	\$52
PMI	\$97
Condo/HOA fees (if applicable)	\$125
Monthly Housing Cost	\$1,1243
Necessary Income:	\$44,894
Household Income:	
# of Bedrooms	2
Sample Household size	3
<u>80% AMI/"Low-Income" Limit</u>	\$58,500
Target Housing Cost (80%AMI)	\$1,463/month
10% Window	\$51,188
Target Housing Cost (70%AMI)	\$1,280 /month

Assumptions made in this initial calculation include 1) a 30-year fixed-rate mortgage, 2) maximum 5% down payment and 3) an interest rate approximately .25 % above the prevailing rate as listed on Freddie Mac's latest interest rate survey. Other factors to take into account include monthly property tax, insurance, and condo or homeowner fees when applicable. With all of this factored in, monthly housing cost cannot exceed 30% of the monthly income of a household earning 70% of the area median income.

Reference: 40B Guidelines VI-B (6) b; Regulatory Agreement 3(b)

Determine Buyer Eligibility (Form 3)

Once the lottery has been conducted and buyers have been selected, the Lottery Agent should review the eligibility of household selected and provide all material documenting eligibility to the Monitoring Agent. The Monitoring Agent is responsible for providing verification that the buyer is fully eligible to purchase the Affordable Unit. It is very important that the prospective buyer's eligibility be determine **before** they enter into a Purchase and Sale, in order to avoid penalties that could ensue should the buyer be determined ineligible.

MassHousing uses the eligibility criteria set forth in the LIP Guidelines as follows:

Income Limits: Household income may not exceed 80% of the Area Median Income (or whatever percent is specified in the Comprehensive Permit and

Asset Limits: Household assets may not exceed the following limits established by DHCD in the 40B Guidelines:

- For age-restricted homeownership Projects, household assets shall not exceed \$275,000 in value, including equity in a dwelling (to be sold).
- For non-age restricted homeownership units, household assets shall not exceed \$75,000 in value.

First-Time Homebuyer Requirement Eligible Purchasers may not have owned a home within three years preceding their application. For exceptions to this rule please refer to the 40B Guidelines, Section II (3) b.

Occupancy Must intend to occupy the unit as their principal residence

Third Party Monitoring Agents working on behalf of MassHousing must follow the HUD requirements and guidance established pursuant to 24 CFR 5.609, Chapter 5.

Note: Unlike for affordable rental units created under Chapter 40B, for homeownership units there is no process for “recertification” or later confirmation of eligibility. For that reason, MassHousing does not allow oral forms of verification. Additionally, if the Monitoring Agent feels that documentation provided suggests that the past, current or anticipated income reported is not accurate, they can request ask for additional verification including a notarized affidavit describing the amount and source of all income.

Following review of buyer eligibility, the Monitoring Agent should document income and asset verification in a Certificate of Buyer Eligibility, or preliminary letter of approval which is provided to the prospective buyer and the Lottery Agent. Documents required to determine that a household is an Income Eligible Household should be current within 60 days of the purchase closing date.

Reference: 40B Guidelines Sections II (A), III (G), VI (5)

Financing Requirements

Prior to the sale of a unit the Monitoring Agent must review the eligibility of the loan for compliance with the DHCD Guidelines. Closing of the sale will be contingent on the Monitoring Agent’s approval of the buyer’s financing which must meet the following standards (from the LIP Program):

- Down payment must be at least 3% of the purchase price, at least half of which must come from the buyer’s funds;
- Loan must be from an institutional lender;
- Loan must have a fixed interest rate through the full term of the mortgage that is a current fair market interest rate;
- The loan can have no more than two points;
- Monthly housing costs (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) may not exceed 38% of monthly income for a household earning 80% of area median income, adjusted for household size;
- Non-household members may not be permitted as co-signers of the mortgage.

References: 40B Guidelines VI (E)

Resale Price Certificate

Before the final sale of an Affordable Unit, the Developer or Lottery Agent will contact MassHousing to request a Resale Price Certificate which identifies the unit and sets forth the Resale Price Multiplier to be applied when it is sold to a new owner. The Resale Price Certificate

is issued by MassHousing and sent directly to the Monitoring Agent, with a copy sent to the Lottery Agent. (For subsequent sales the Resale Price Certificate is issued by the monitoring Agent). A separate Resale Price Certificate is required for each Affordable Unit sold, and must be recorded at the time of sale along with the deed.

References: Regulatory Agreement, Definitions; Affordable Housing Restriction, Definitions

Final Sale and Closing (Form 4)

Following a review of all documents for compliance with the Affordability Requirement, the Monitoring Agent shall issue a Certificate of Compliance (Form 4) certifying that the sale of the Affordable Unit was in compliance with the Comprehensive Permit Rules, and the Affordability Requirement. The Certificate of Compliance should be provided to the closing attorney, and the Monitoring Agent should keep a copy for their own records.

At the time of closing the sale of an Affordable Unit the closing attorney will record the deed, the Affordable Housing Restriction, the Certificate of Compliance and the Resale Price Certificate. Within ten days after the closing, the Attorney should provide the Monitoring Agent with copies of all documents and evidence that all deeds and deed riders have been recorded.

References: Affordability Monitoring Services Agreement 1 (a); 40B Guidelines VI E (1) b

Initial Sales Data Report (Form 5)

Following the completion of all Initial Sales for a 40B development, the Monitoring Agent should provide a summary report to MassHousing, the Developer and the Municipality confirming substantive compliance with the Marketing Plan and Affordability Requirement for the period of Initial Sales. This report will also serve to notify the Municipality of the Monitoring Agent's role, from this point onward, as the enforcer of all applicable terms of the Regulatory Agreement, the Deed Rider and the 40B Rules.

References: Affordability Monitoring Services Agreement 1 (a)

Initial Sales Events/Timeline

Event	Who is Responsible	When Does it Typically Occur
Monitoring Services Agreement	-Developer engages Affordability Monitor -MassHousing approves Monitoring Agent	-After the Comprehensive Permit is issued by the Municipality; -Before Final Approval for the Project is granted by MassHousing
Preparation/Approval of AFHMP	-Developer or their consultant prepares AFHMP -Monitoring Agent reviews, provide recommendation to MassHousing -MassHousing formally approves	-Submitted as a part of the Final Approval Application -Must be approved before marketing commences
Local Preference	-Municipality requests -Monitoring Agent may review and make a recommendation to MassHousing -MassHousing approves/disproves	-Request <i>should</i> be submitted within three months after the issuance of the Comprehensive Permit - <i>Must</i> be submitted before Final Approval is issued, typically as a part of the AFHMP
Affordable Sales Price	- Developer or MassHousing (at Developer's request) -Approved by MassHousing	-Submitted as a part of the Final Approval Application - Before marketing commences
<i>Marketing Initial Eligibility Review Lottery, Buyer Selection</i>	Developer/Consultant (Lottery Agent)	-No more than six months before marketing
Review/Approve Buyer Eligibility	-Lottery Agent provides complete packages to Monitoring Agent -Monitoring Agent Reviews -Monitoring Agent Notifies Lottery Agent and MassHousing	-After Lottery -Before Purchase and Sale is signed -No more than 60 days before closing (can be updated)
Resale Price Certificate	-Developer Requests -MassHousing issues (for Initial Sales) -Monitoring Agent Reviews	-Prior to closing (up to 60 days)
Generate Deed and Affordable Housing Restriction.	-Developer (consultant or attorney) generates -Monitoring Agent Reviews	-Prior to closing
Send copy of closing package to Monitoring Agent	Lottery Agent	-Prior to closing
Receive/Review "Closing Package" Deed, Affordable Housing Restriction, RPC, Financing. -Issue Certificate of Compliance; send (with original Resale Price Certificate) to Closing Attorney	Monitoring Agent	-Prior to closing
Record all Documents	Closing Attorney	-After closing
Check that all docs have been recorded	Monitoring Agent	-Within 7 days After closing
Provide Subsidizing Agency with "Initial Sales Data and Compliance Report"	Monitoring Agent	-When ALL affordable units have sold for the first time

SUPPLEMENTAL MONITORING SERVICES

Once the Initial Sales are complete, the Monitoring Agent assumes primary responsibility for ensuring that Affordable Units remain in compliance with the terms set forth in the Affordable Housing Restriction and the Comprehensive Permit Rules in general. The most important task in this regard is managing the resale process to ensure that the Affordable Units are sold to eligible buyers in conformance with the terms of the Affordable Housing Restriction. Monitoring Agents are also responsible for reviewing and approving all homeowner requests relative to refinancing, and capital improvements of Affordable Units, and for overseeing incidents of foreclosure or threatened foreclosure.

Throughout the Supplemental Monitoring Phase the Monitoring Agent plays a critical role as the primary point of contact between the Affordable Unit owner, the Municipality and the Subsidizing Agency. To that end, it is the Monitoring Agent's responsibility to keep in touch with the owners of the Affordable Units, to remind them of the terms of the Affordable Housing Restriction, and to provide annual reporting to the Municipality and MassHousing on project status. Finally, the Monitoring Agent is also charged with the job of enforcing the terms of the Affordable Housing Restriction should an incidence of non-compliance be brought to their attention.

Best Practice: Always look at the Affordable Housing Restriction! *The guidance in this Handbook reflects the most recent versions of the Regulatory Agreement and Affordable Housing Restriction. In light of the fact that many of the projects being monitored pre-date current regulations, however, it is critical to consult the deed and associated Affordability Housing Restriction for each particular unit.*

Resales

The Affordability Monitoring agent is responsible for ensuring that Affordable Units are conveyed in accordance with the 40B Rules and the terms of the Affordable Housing Restriction for the property. The resale process can be summarized as follows:

1. Owner provides Municipality and Monitoring Agent with "Conveyance Notice" indicating that they are intending to sell the property
2. Monitoring Agent calculates Maximum Resale Price, and issues Resale Price Certificate (if requested/required)
3. Monitoring Agent markets the unit (with cooperation from Owner) and locates an Eligible Buyer in accordance with the AFHMP guidelines
4. Monitoring Agent confirms buyer eligibility, reviews Affordable Housing Restriction
5. Monitoring Agent provides Owner and closing attorney with Compliance Certificate
6. Closing attorney records deed, Affordable Housing Restriction, Resale Price Certificate (if required) and Compliance Certificate; provides Monitoring Agent with copies of all material.

References: 40B Guidelines Section III (G) and VI (E) 3; Regulatory Agreement, Section 1 (a) (ii); Affordable Housing Restriction Section 4

Conveyance Notice

When a property owner wishes to sell their Affordable Unit they are required to notify the Monitoring Agent and the Municipality in writing (“The Conveyance Notice”). This notice should include a copy of the unit deed, the owner’s name and contact information for the person responsible for showing and answering questions about the home. The Monitoring Agent has up to 90- days after receipt of the Conveyance Notice to close on a sale to an Eligible Buyer, the Monitoring Agent or the Municipality. This period can be extended as provided in the Affordable Housing Restriction, to arrange for details of the closing, to locate an eligible purchaser, or for lack of cooperation on the part of the seller.

The Affordable Housing Restriction used by MassHousing requires that the Owner must cooperate with the Monitoring Agent in finding an Eligible Buyer for the property. If the owner does NOT act cooperatively, including a failure to agree to reasonable terms in the Purchase and Sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the lack of cooperation continues. If the Monitoring Agent determines that the owner is not acting cooperatively, they must notify the owner in writing of the length of the extension needed.

Best Practice: Inform Seller of their responsibilities in writing

Once notified that the owner plans to sell the unit, the Monitoring Agent should inform them of the following responsibilities:

- *To provide necessary documents and information to determine the resale price;*
- *To provide reasonable up-front costs for marketing the unit, including listing it on MLS or working with another broker.*
- *To repair damage to the home;*
- *To provide access to the home to potential buyers, appraisers and inspectors;*
- *To prepare the Purchase and Sale Agreement. It is strongly recommended that the owner hire a lawyer to prepare the P&S.*
- *To keep the Monitoring Agent informed about the time and date of the closing; and provide the Monitoring Agent with copies of documents after the closing.*

Calculating Maximum Resale Price (Form 6)

The Monitoring Agent should calculate the Resale Price as soon after receiving the Conveyance Notice from the seller as possible. The allowable sale price is defined as the “Maximum Resale Price” in the Deed Rider. It is calculated by multiplying the **current** AMI by the Resale Price Multiplier identified in the Affordable Housing Restriction. The Maximum Resale Price can never be more than the amount which is affordable to an Eligible Purchaser earning 80% of the area median income, or an alternate amount set forth in the Affordable Housing Restriction. The sale price should generally also never be less than the purchase price paid for the unit, unless the seller agrees to accept a lower price.

If Capital Improvements have been previously approved by the Monitoring Agent they may be added to the Resale Price, subject to normal rates of depreciation. **The Maximum Resale Price must be approved by the Monitoring Agent before the unit is put onto the market.**

If the purchase price paid for the Property by the buyer includes an adjustment for Capital Improvements (or other appropriate correction), a new Resale Price Multiplier will be calculated by the Monitoring Agent and a new Resale Price Certificate reflecting the new Resale Price Multiplier will be issued .

References: Affordable Housing Restriction, Definitions; 40B Guidelines, VI-E (3)

Marketing the Unit/Locating an Eligible Buyer

Marketing for resale of the unit should be done in accordance with the provisions made in the Affordable Fair Housing Marketing Plan for the Project. At a minimum, units must be listed on CHAPA's MassAccess site, and MAHA's homeownership lottery sites. The Monitoring Agent may also request that the Owner hire a broker to help identify a buyer.

The process for determining the eligibility of the buyer is the same as during the period of Initial Sales. If more than one Eligible Purchaser is located, the Monitoring Agent should conduct a lottery or a similar procedure, with preference being given to Appropriate-Sized Households. If an Eligible Purchaser is located within the 90-day period but is unable to secure a mortgage, the Monitoring Agent can extend the time to find a buyer by another 60 days.

In lieu of an Eligible Buyer, the Monitoring Agent, the Municipality or a designee of the Municipality also has the right to purchase the property at the Maximum Resale Price within the 90-day time-frame. In the event that the unit is sold to the Monitoring Agent or the Municipality it will remain subject to the existing Affordability Restriction.

If an Eligible Purchaser fails to purchase the property within the timeframes above, the Owner may sell the Property to an Ineligible Purchaser at the Maximum Resale Price, provided that the property is conveyed subject to the same Affordability Restriction. If more than one Ineligible Purchaser is identified, the Monitoring Agent should give preference to an appropriate sized household earning between 80% and 120% of Area Median Income.

References: Affordable Housing Restriction, 4 (b); 40B Guidelines, VI-E (3) f(3)

Restriction on Final Sale **(Form 7)**

Before the final sale of the property is considered to be valid, the Monitoring Agent must prepare a Compliance Certificate stating that the sale of the Property was in compliance terms of the Affordable Housing Restriction. Specifically, this Certificate shall state that 1) the property was sold for an amount equal to or less than the Maximum Resale Price, 2) the buyer was determined to be eligible in accordance with the Comprehensive Rules and the terms of the Affordable Housing Restriction and 3) a new Affordable Housing Restriction in a form acceptable to the Monitoring Agent was recorded along with the Deed at the time of sale. The Certificate, which must be signed by the Monitoring Agent, should include the property address, the name of the seller and the buyer, and the Maximum Resale Price, and should be recorded with the other relevant documents at closing.

Within ten days of the closing, the Owner or their closing attorney should provide the Monitoring Agent a copy of the Deed for the Property and Affordable Housing Restriction, along with evidence of recording.

References: Affordable Housing Restriction, 6; 40B Guidelines III (G) 2 (b)

Affordable Unit Foreclosures (Form 8)

For all properties subject to the uniform Affordable Housing Restriction required by MassHousing since 2006, the process for handling foreclosures is fairly clear. For those properties **not** subject to the uniform Affordable Housing Restriction the process is handled on a case-by case basis depending on the provisions of the deed and associated restrictions. Many of the Affordable Units created prior to 2006 are not subject to provisions that would require affordability to survive foreclosure. *For this reason, an essential first step for the Monitoring Agent upon receiving a notice of foreclosure is to review the terms of the property deed and any associated Affordable Housing Restrictions.*

The Monitoring Agent should contact the Owner threatened with foreclosure as soon as they become aware of the situation and guide them towards resources designed to assist them in either avoiding foreclosure through refinancing or a negotiation with the lender, or to work with the bank to receive approval for a short sale. For example, depending on the source of the loan, many owners are eligible to receive assistance from the HAFA (Home Affordable Foreclosure Alternative Program). In other instances, it is possible that the Municipality where the unit is located has funds available through its Housing Trust or Community Preservation Fund to either purchase the home, or assist the distressed owner. If the Affordable Unit **is** subject to the uniform Affordable Housing Restriction, the following procedure is required:

Notice of Foreclosure

At least 120 days prior to a foreclosure sale, or acceptance of a deed in lieu of foreclosure, the holder of record of any mortgage on a property (the Mortgagee), typically a bank, must send a copy of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagees.

Possible Foreclosure Outcomes

The Affordable Housing Restriction outlines the following options for addressing foreclosure

1. Municipal Option

The uniform Affordable Housing Restriction states that in cases of foreclosure the Municipality or its designee has the first right to purchase the property. If the Municipality chooses to pursue this option, they must do so within 120 days of receipt of the Notice of Foreclosure. In the event that the Municipality opts to purchase the property, the price must be equal to the greater of (i) the sum of the outstanding principal balance of all of the money owed by the Owner on all mortgages on the property, plus all future advances, accrued interest and reasonable cost and expenses of foreclosure owed to the holders of such mortgages (referred to as the “Mortgage Satisfaction Amount”) and (ii) the Maximum Resale Price. This number, the actual amount paid for the property, is referred to as the “Applicable Foreclosure Price.”

Under this option, the Municipality agrees to buy the property in its “as-is” condition. The Municipality also agrees that the property will be subject to an Affordable Housing Restriction identical in form and substance to the one that applied to the property at the time of foreclosure, with two important exceptions. First, the Affordable Housing

Restriction will state that during the term of ownership by the Municipality the property does not have to be owner-occupied. Second, the Maximum Resale Price included in the Deed shall be recalculated based on the price that the Municipality paid for the property (the Applicable Foreclosure Price).

2. Mortgagee Accepts Deed in Lieu of Foreclosure

If after a period of 120 days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and the Mortgagee, the Mortgagee (typically a bank) acquires the property, it can be conveyed subject to a Affordable Housing Restriction identical in form and substance to the one that applied to the property at the time of foreclosure, but subject to the same exceptions applicable if the Municipality acquires the property; (1) the deed will state that during the term of ownership by the Mortgagee the property does not have to be owner-occupied, and (2) the Maximum Resale Price included in the Deed shall be recalculated based on the Applicable Foreclosure Price.

3. Mortgagee Sells Property to “Ineligible Purchaser”

If , after a period of 120 days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and the Mortgagee, an Eligible Buyer fails to purchase the property within the period specified in the Affordable Housing Restriction (typically 90 days), it can be sold to an “Ineligible Purchaser.” In this case, the property will be conveyed subject to a Affordable Housing Restriction identical to the one that applied to the property at the time of foreclosure, with the exception that, (1) during the period in which it is owned by an Ineligible Purchaser the unit does not have to be owner-occupied, and (2) The Maximum Resale Price shall be calculated based on the price paid for the property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price.

4. Mortgagee Sells Property to Eligible Buyer

If, after a period of 120 days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and the Mortgagee, an Eligible Buyer acquires the property, it shall be conveyed subject to an Affordable Housing Restriction identical in form and substance to the one in place at the time of foreclosure.

Issuance of Certificate of Compliance

Once the unit is sold, the Monitoring Agent must issue a Certificate of Compliance to the foreclosing Mortgagee stating that the conveyance of the property was done in accordance with the Affordable Housing Restriction. This certificate should be recorded at the time of sale, and can be provided in the future as conclusive evidence that the property was conveyed in accordance with the Affordable Housing Restriction.

References: Affordable Housing Restriction, Section 7

Death of Unit Owner

A transfer by will or executor or owner of the administrator’s estate to the owner’s spouse will not trigger the resale or transfer restrictions in the Deed Rider provided that:

The executor or administrator within 90 days of his/her appointment has given DHCD notice of the transfer and the owner's spouse intends to continue to use the unit as a principal residence. Any other person who is heir, legatee, or devisee of the unit owner must demonstrate to the Monitoring Agent that they are an Eligible Purchaser, as defined in the Deed Rider, otherwise they must transfer the unit in accordance with the Deed Rider.

Capital Improvements (Form 9, Form 10)

The uniform Affordable Housing Restriction defines **Approved Capital Improvements** as “the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.” Restated, this can be defined as necessary maintenance improvements, not covered by a condominium or homeowner's association fee that, if not done, would compromise the structural integrity of the house. Improvements such as the installation of central air conditioning, outdoor decks, additions or finishing of unfinished spaces, garages, landscaping, and other items identified by the owner that could be considered upgrades or luxury improvements cannot be added to the resale price when the property is sold.

Owners seeking approval for proposed Capital Improvements should contact the Monitoring Agent in writing with a full description of the work to be done, an estimate of the cost, and an explanation of why the work is a capital improvement. Capital Improvements must be approved by the Monitoring Agent in writing on a case by case basis in order for them to be considered for inclusion in the Resale price. At the time that the unit is sold, the Monitoring Agent can add the cost of Approved Capital Improvements to the value of the home, taking into account normal depreciation, as long as the resale price would be affordable to an Eligible Buyer earning the amount specified in the Affordable Housing Restriction (for example 50%, 70% or 80% AMI). If a condominium or homeowner's association has a special assessment, the Monitoring Agent can address the cost to the homeowner on a case-by-case situation.

Acceptable Capital Improvements

- New roof
- Replacement of windows due to wear and tear
- The replacement of siding, shingles, or clapboard due to damage or wear and tear
- Exterior painting due to deterioration
- Heating or plumbing replacement
- Structural deficiencies such as termite or other pest damage, water damage, or other maintenance as required
- Septic tank replacement
- Appliance Replacement (stove, dishwasher, refrigerator)
- Other improvements identified by the owner and approved by the Monitoring Agent

Monitoring Agents should require that requests to include the cost of a capital improvement into the resale value of the property be made in writing *prior* to the initiation of the work. This letter should include:

- A description of the work to be done
- An estimate of the cost
- An explanation why the work is a capital improvement

Following the completion of work, the Owner should provide copies of all paid invoices to document the actual cost of the project. Monitoring Agents should approve all Capital Improvements in writing, and provide a copy of the letter approving such changes to the Owner and include a copy into the property file. If possible, a schedule of depreciation for the proposed improvement should also be included. A model Certificate of Approval for Capital Improvements is included in the forms attached to this document.

References: Affordability Monitoring Services Agreement 1(c); Affordable Housing Restriction, Definitions (“Approved Capital Improvements”)

Refinancing (Form 11, Form 12)

All requests to refinance or obtain a second mortgage must be approved by the Monitoring Agent before the Owner can close on a new loan. The goal in considering such a request is to make sure that 1) the monthly costs of the unit remain affordable as set forth in the Affordable Housing Restriction and 2) the Owner is able to afford their monthly payments. In general, the only refinancing requests that should be considered are those that would serve to lower the monthly cost of the unit such as a reduction in the interest rate of the loan. Homeowners interested in refinancing should provide the Monitoring Agent with a request in writing and including detailed contact information, the reason for refinancing, the full name of the lending institution and the name and contact information for the loan officer. Along with this information, the Owner should provide the Monitoring Agent with the following material:

1. A copy of the complete loan application
2. A copy of the commitment letter from the lender
3. A copy of the Good Faith Estimate (The Good Faith Estimate is provided by the lender and should provide information on the estimated closing costs.)
4. A copy of the Affordable Housing Restriction
5. An appraisal report (this is typically only required for those properties with other than the Universal Affordable Housing Restriction)
6. Information on the monthly condominium fee (if applicable), the town’s current tax rate per thousands and monthly homeowner’s insurance amount.

Second Mortgages

Guidelines for a second mortgage refinance are similar to those for the first mortgage:

- Must be a fully-amortizing fixed-rate mortgage with no prepayment penalty or balloon payment.
- Must have a current fair market interest rate (no more than 2 percentage points above the currently prevailing rate).

- For a first mortgage refinance: Have a loan amount no greater than between 97% and of the maximum resale price or the resale price affordable to a household earning at or below 80% of the area median income, whichever is lower.
- For a second mortgage: The combined amount of the first and second mortgage may not exceed 97% of the maximum resale price or the re-sale price affordable to a household earning at or below 80% of the area median income, whichever is lower.
- In reviewing request for refinancing or a second mortgage, homeowners should be discouraged from loans with high closing costs, a higher interest rate than on the existing loan, or loans that roll unsecured debt into the mortgage.

References: Affordable Housing Restriction Section 3; 40B Guidelines, VI (E)

Enforcement (Form 13, Form 14)

The responsibility for enforcement of the Affordability Requirement and compliance with the terms of the Affordable Housing Restriction remains with the Monitoring Agent throughout the life of the Project and it represents one of the more challenging aspects of the monitoring role. Incidents of non-compliance are often noted first by the Municipality or an abutting homeowner.

Specific restrictions applicable to Affordable Units include:

- Buyer must be Eligible at the time of purchase (first-time homeowner, income eligible, approved financing)
- Unit must be owner occupied (cannot be rented to a third party)
- Capital Improvements must be pre-approved by Monitoring Agent
- Refinancing must be pre-approved by Monitoring Agent

The Regulatory Agreement spells out the rights of the Monitoring Agent relative to enforcement of the Affordability Requirement, including the right, with the prior consent of the Subsidizing Agency, to take legal action against a Developer or against the owner of an Affordable Unit. The Affordable Housing Restriction also clearly states that its terms are legally enforceable by the Monitoring Agent, along with the Municipality and DHCD. In practice, however, many incidences of non-compliance can be addressed with a letter or a phone call to the Developer, a unit owner, or the Municipality. Monitoring Agents should reach out to Affordable Unit owners on an annual basis to remind them of the terms of the Affordable Housing Restriction, and provide them with updated contact information should they have questions related to enforcement and compliance.

Monitoring Agents are encouraged to contact MassHousing to discuss issues related to non-compliance and enforcement as needed. While MassHousing as the Subsidizing Agency is not obligated to compensate or reimburse the Monitoring Agent for costs associated with enforcement, we will work with the Monitoring Agent to identify appropriate solutions to the fullest extent possible.

References: Affordability Monitoring Agreement, Section 3; Affordable Housing Restriction, 11

Annual Reporting and Tracking Requirements (Form 15)

The Monitoring Agreement requires that the Monitoring Agent submit an Annual Compliance Report to the Municipality and MassHousing for each of the projects that they are monitoring. A request for the Annual Report will be sent to the Monitoring Agent by MassHousing. In general, more information is required for Projects in the Initial Sales period than for those in the Supplemental Monitoring period. This report should note any areas of non-compliance with the terms of the Regulatory Agreement and the Affordability Requirement, along with a status update on key Project events.

References: Affordability Monitoring Services Agreement, 1(b)

Appendix A: DEFINITIONS

Affordability Monitoring Services Agreement (Monitoring Agreement)

An agreement between the Developer, the Subsidizing Agency (MassHousing) and the Monitoring Agent outlining their respective roles and responsibilities relative to enforcement of the Affordability Requirement for the Project as set forth in the Regulatory Agreement.

Affordability Requirement

The requirement of the Developer that Affordable Units be sold to Eligible Buyers in accordance with 40B Regulations and the terms of the Affordable Housing Restriction.

Affordable Housing Restriction (Deed Restriction, Deed Rider)

A restriction incorporated in and made part of the deed for each Affordable Unit setting forth the rights and restrictions to which each affordable unit is subject, and which shall be enforceable by the Municipality and the Monitoring Agent. The Affordability Restriction is signed by the Seller and the Buyer.

Affordable Housing Fund

A fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers, or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 33, Section 53A, et. Seq.

Affordability Requirement

The requirement that Affordable Units included in a Project shall only be sold to Eligible Purchasers at no greater than the Maximum Sale Price in accordance with the Comprehensive Permit Rules and the terms of the Affordable Housing Restriction. The Monitoring Agent is responsible for enforcing compliance with the Affordability Requirement during the period of Initial Sales and for all subsequent Resales.

Affordable Unit

A unit of housing subject to an Affordable Housing Restriction.

Annual Report

A report prepared annually by the Monitoring Agent and delivered to the Subsidizing Agency and Zoning Enforcement Officer of the Municipality each year including information about the compliance of a Project with the Affordability Requirement to which it is subject. During the period of Initial Sales the Annual Report should include information on the status of the Project including number of Affordable Units built, sold, occupied and resold.

Applicable Foreclosure Price

The greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of notes secured by mortgages senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued

interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the “Mortgage Satisfaction Amount” and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the property by the owner.)

Appropriate-Sized Household

A household with a number of members equal to the number of bedrooms plus one.

Approved Capital Improvement

The reasonable cost of extraordinary capital improvements made to the Affordable Unit by the Owner, provided that the Monitoring Agent shall have given written authorization for incurring the cost of the improvement prior to the cost being incurred, and that the original cost of such improvement shall be discounted over the course of its useful life.

Area Median Income (AMI)

The most recently published median income for the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Project, as determined by HUD.

Base Income Number

The Area Median Income (AMI) for a four-person household.

Compliance Certificate

A certificate obtained and recorded, signed and acknowledged by the Monitoring Agent at the time of sale of an Affordable Unit, referring to the Property, the owner, and the selected purchaser, which states that the proposed conveyance to the selected purchaser is in compliance with the terms of the Affordable Housing Restriction.

Comprehensive Permit

A permit for the development of housing including some or all low or moderate income housing issued by a local board or committee (typically a local Zoning Board of Appeals) pursuant to M.G.L. c. 40B Sections 20-23 and 760 CMR 56.00.

Comprehensive Permit Requirements

Massachusetts General Laws Chapter 40B Section 20-23, and the regulations at 760 CMR 56.00 and the Comprehensive Permit Guidelines issued pursuant thereto.

Conveyance Notice

A written notice provided by the Owner to the Monitoring Agent and the Municipality, which states that they want to sell, dispose of, or otherwise convey the Property.

The Department of Housing and Community Development (DHCD)

DHCD is the state agency responsible for developing 40B policy and regulations. DHCD also serves as the Affordability Monitoring Agent for all 40B projects and Local Action Units (LAU's) approved under the Local Initiative Program. DHCD periodically issues new or revised regulations that can impact Affordability Monitoring processes.

Developer

A public agency, non-profit organization or limited dividend organization that has applied for and received a Comprehensive Permit for a Project including Low or Moderate Income Housing and its successors and assigns.

DHCD Guidelines

The most recent version of the Comprehensive Permit Guidelines prepared by DHCD

Eligible Buyer

An individual or household certified by the Monitoring Agent to have met all of the eligibility requirements set forth in the Affordable Housing Restriction and applicable Program Guidelines to buy an Affordable unit, including limits on income and assets, suitability of financing, etc.

Foreclosure Notice

A notice from the holder of record of any mortgage on a property in the event of default for which the Mortgage Holder intends to commence foreclosure proceedings or similar remedial actions pursuant to its mortgage.

HUD

The United States Department of Housing and Urban Development.

Income Eligible Household

A household of one or more persons whose income does not exceed the percentage of Area Median Income specified in the Affordable Housing Restriction, and in no case exceeds 80% of AMI.

Ineligible Purchaser

A household or individual that does not meet the income and/or asset limits, or has unsuitable financing, as required to be eligible to purchase an Affordable Unit.

Initial Sales

The first sale of each of the Affordable Units in a Project which are required to be sold to Eligible Buyers.

Initial Sales Data

Information provided by the Developer or Lottery Agent to the Monitoring Agent relative to the Initial Sales of Affordable Units necessary for the Monitoring Agent to determine compliance of the Project with the Affordability Requirement. This can include Marketing Documentation; income, asset and age certifications; deeds, and Affordable Housing Restrictions.

Lottery Agent

A qualified individual or agency hired by the Developer to conduct resident selection for the Affordable Units during the period of Initial Sales, including the development of an Affirmative Fair Housing Marketing Plan, marketing of the units, administering the initial

lottery process and determining the qualification of potential buyers or tenants. In some cases the Developer performs the functions of the Lottery Agent for their own project.

Low or Moderate Income Housing

A unit of housing whose occupancy is subject to an Affordable Housing Restriction that limits occupancy to Income-Eligible Households.

Marketing Documentation

A record of all newspaper ads, outreach letters, translations, leaflets, and all Affirmative Fair Marketing efforts as described in the Marketing Plan.

Marketing Plan

This is a document describing a process for identifying and selecting Eligible Purchasers for Affordable Units. The Marketing Plan must provide for Affirmative Fair Marketing of Affordable Units in accordance with current Department Guidelines.

Maximum Initial Sales Price

The purchase price of an Affordable Unit for which a credit-worthy Eligible Purchaser earning that percentage of Area Median Income for an Appropriate Size Household specified in the Affordable Housing Restriction could obtain mortgage financing using Department Guidelines.

Maximum Resale Price

The sum of i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus ii) the Resale Fee and any necessary marketing expenses (including the broker's fees) as may have been approved by the Monitoring Agent, plus iii) Approved Capital Improvements, if any, provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser could obtain mortgage financing (such purchase price as determined by the Monitoring Agent using the same methodology used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the owner unless the Owner Agrees to accept a lower price.

Monitoring Agent

The Monitoring Agent is a qualified individual or agency retained by the Developer at the request of the Subsidizing Agency (MassHousing) for the purposes of administration, monitoring and enforcement of the Affordability Requirement for a Project pursuant to the Affordability Monitoring Services Agreement.

Municipality

The city or town where the project will be located, and whose local board (typically a Zoning Board of Appeals) issues the Comprehensive Permit for the Project.

Project

A development involving the construction or substantial rehabilitation of units of Low or Moderate Income Housing permitted by a Comprehensive Permit issued by a local Board of Appeals.

Regulatory Agreement

An agreement between the Developer, the Subsidizing Agency (MassHousing) and the Municipality which memorializes the rights and responsibilities of each party relative to the development of housing pursuant to a Comprehensive Permit in accordance with the Comprehensive Permit Rules. A completed and executed Regulatory Agreement is required prior to the issuance of a Building Permit for work on the proposed housing developed.

Resale

“Resales” refers to all subsequent sales of Affordable Units that occur after the Initial Sale by the Developer.

Resale Fee

The fee paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of the Affordable Housing Restriction, including supervision of the Resale process. For projects for which MassHousing serves as the Subsidizing Agent, the Resale Fee shall equal no more than 2.5% of the Base Income Number (at the time of Resale) multiplied by the Resale Price Modifier.

Resale Price Certificate

A Certificate that sets forth the Resale Price Multiplier to be applied on the Resale of the Affordable Unit in accordance with the terms of the Affordable Housing Restriction. The Resale Price Certificate must be issued by MassHousing at the time of sale of the Initial Sale of the Affordable Unit; subsequent Resale Price Certificates are issued by the Monitoring Agent.

Subsidy

A Subsidy is assistance provided by a Subsidizing Agency for the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, or other supportive services.

Subsidizing Agency

The Subsidizing Agency is an agency of state or federal government that provides a subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the Department may appoint a state agency to administer the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00. **MassHousing serves as the Subsidizing Agency for all 40B Projects which receive loans from the New England Fund or the Federal Home Loan Bank of Boston.**

Appendix B: Sample Monitoring Forms

(The following forms are samples. Word Version are available to download on the MassHousing website Please use Monitoring Agent letterhead.)

- Form 1 Developer/Monitoring Agent MOU
- Form 2 AFHMP Checklist
- Form 3 Eligibility for Purchase Certificate-Income and Asset Verification
- Form 4 Certificate of Compliance-Initial Sales
- Form 4(a) Cover letter to closing attorney to accompany Certificate of Compliance
- Form 5 Initial Sales Data and Compliance Report
- Form 6 Resale Price Certificate-Resales
- Form 7 Certificate of Compliance-Resales
- Form 8 Notice of Foreclosure
- Form 9 Capital Improvement Policy
- Form 10 Capital Improvements--Determination of Eligibility
- Form 11 Refinancing Policy
- Form 12 Request to Refinance-Determination of Eligibility
- Form 13 Request for Affordable Unit Homeowner Yearly Certification
- Form 14 Affordable Unit Homeowner Yearly Certification
- Form 15 Annual Monitoring Report

Form 1 Sample Developer/Monitoring Agent MOU

Date:

(Developer Name and Address)

(Lottery Agent Name and Address)

Dear _____:

(Name of Monitoring Agent) is pleased to have been engaged to be the Affordability Monitoring Agent for (Name of Development). In order for us to do the best job possible, we will need you to provide us with the following documents as soon as possible:

1. Fully executed Monitoring Services Agreement
2. Complete contact information for Developer and Lottery Agent
3. Copy of Recorded Comprehensive Permit
4. Copy of Recorded Regulatory Agreement
5. Affirmative Fair Housing Marketing Plan (AFHMP)
6. Sample Affordable Housing Restriction (Deed Rider)

Once we have approved the AFHMP and marketing has begun, we will need the following information for **each** applicant selected to purchase an affordable unit, so that we can verify their eligibility.

7. Completed lottery applications for each selected purchaser, including income and asset documentation;
8. Unit address, number of bedrooms and sale price
9. Proposed Purchase and Sale Agreement and Affordability Restriction
10. Condominium or Homeowner Association Documents, including schedule of beneficial interests
11. Loan commitment letter and lender contact information
12. Contact information for closing attorney

Following review of item's 7-11 (above) we will provide you with a Certificate of Buyer Compliance.

Once the affordable unit has sold, we will need recorded copies of the following documents:

13. Deed and Affordable Housing Restriction
14. Certificate of Buyer Compliance
15. Resale Price Certificate (to be obtained from MassHousing by the Developer after buyer eligibility has been determined and before closing)

Please let me know if you have any further questions,

Monitoring Agent

Form 2
Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP)
Key Review Points

City/Town: _____	Reviewer: _____	
Project Name: _____	Date of Review: _____	
Address: _____		
RENTAL <input type="checkbox"/>	OWNERSHIP <input type="checkbox"/>	BOTH <input type="checkbox"/>

Note: The checklist below is intended to assist with AFHMP review but does not replace the requirements of the DHCD AFHMP guidelines, available at <http://www.mass.gov/hed/docs/dhcd/hd/fair/afhmp.pdf> (see also section III of the DHCD Comprehensive Permit Guidelines at <http://www.mass.gov/hed/docs/dhcd/legal/comprehensivepermitguidelines.pdf>). The AFHMP guidelines must be consulted in their entirety.

DEVELOPER/CONTRACTOR INFORMATION:

Are the developer staff and contractor qualifications consistent with the Guidelines? YES
NO
Did developer/contractor representative(s) certify that the AFHMP is consistent with the Guidelines?
YES NO

MARKETING:

Will the application period run for at least 60 days? YES NO

Will advertisements be placed in local and regional newspapers? YES NO
If YES, which newspapers: _____

Will advertisements be placed in newspapers that serve minority groups and other protected classes? YES NO
If YES, which newspapers: _____

Will advertisements run at least two times over a 60-day period? YES NO

Are sample ads included? YES NO

Is marketing comparable in local, regional and minority newspapers? YES NO
If NO, explain: _____

Are outreach notices to be sent to local fair housing commissions? YES NO
To other local/regional religious institutions, housing authorities, social service agencies, nonprofits, etc.?
YES NO
If YES, where: _____

Is the outreach appropriate to the type of housing proposed (e.g., marketing to senior centers for elderly housing)?

YES NO Explain: _____

Are applications made available at public, wheelchair accessible locations including one that has some night hours?

YES NO

Does the advertisement and other marketing include a telephone number, including a TTY/TTD phone number, to call to request an application via mail? YES NO

Does the advertisement and other marketing indicate that applications may be submitted by mail, fax or e-mail?

YES NO

Does marketing include non-English publications? YES NO

If YES, which languages: _____

What is the basis for determining the languages? Explain: _____

Will available Metro Boston Area affordable units be reported to Metrolist? YES NO

Will available affordable and available accessible units be listed with MassAccess (CHAPA's Housing Registry)?

YES NO

Will available affordable ownership units be listed with MassAccess? YES NO

Will available affordable ownership units be listed with MAHA's lottery website? YES
NO

Are Fair Housing logo and slogan included in all marketing materials? YES NO

Do applicant materials include a statement of the housing provider's obligation to not discriminate in the selection of applicants? YES NO

Do applicant materials state that persons with disabilities may request reasonable accommodations in rules, policies, practices or services or reasonable modifications in the housing? YES NO

Do informational materials provide notice of free language assistance to applicants, translated or to be translated into the languages of LEP populations anticipated to apply? YES NO

Does marketing refrain from describing characteristics of desirable applicants/residents (e.g., "for four persons only", "active lifestyle community," "empty nesters")? YES NO

If NO, explain: _____

Does marketing convey unlawful preferences or limitations (e.g., only white models)? YES
NO

If YES, explain: _____

Does marketing include reference to local residency preferences? YES NO [NOTE: not permitted]

Does marketing indicate resident selection by lottery or other random selection procedure? YES
 NO

RESIDENT SELECTION:

Are copies of a sample application and information packets for potential applicants included and acceptable?
YES NO

Are info sessions scheduled to allow for maximum opportunity to attend (i.e., evenings, weekends, accessible location)? YES NO

Are the eligibility criteria consistent with the Guidelines? YES NO

Is resident selection based on a lottery? YES NO
If NO, is it based on a fair and equitable procedure (i.e., not “first come, first served”) approved by the subsidizing agency? YES NO Explain: _____

If a lottery to be utilized, will the lottery be held at a public, wheelchair accessible location? YES
 NO

Are the lottery procedures consistent with the Guidelines? YES NO

Is the community choosing to implement a local selection preference? YES NO
If YES, is the need for the local preference demonstrated consistent with the Guidelines? YES
 NO
Explain: _____

[NOTE: 70% local preference is maximum permitted but percentage must be justified based on documented local need]

Does the demonstrated need correspond to the housing type and eligibility criteria of the project? (e.g., wait list at another rental development used to demonstrate need is for apartments to be rented at similar rents and for residents at similar income levels) YES NO Explain: _____

Are all the proposed preference types consistent with the Guidelines? YES NO

Are the geographic boundaries of the local preference area smaller than the municipal boundaries? YES NO [NOTE: not permitted]

Does the AFHMP include efforts to address potential discriminatory effects of a local selection preference (e.g., will minority applicants be moved into the local selection pool to ensure it reflects the racial/ethnic balance of the region and/or other efforts consistent with the Guidelines)? YES NO Explain: _____

Is the working preference the only local preference? YES NO
If YES, are persons with disabilities and/or 62 years of age or older that live in the community given the benefit of the preference? YES NO

Are there durational requirements for living or working in the community? YES NO
[NOTE: Not permitted]

Are local preference units subject to different or more beneficial terms (e.g., reduced prices) than other affordable units? YES NO
If YES, explain: _____

Are household size restrictions and preferences consistent with the Guidelines? YES NO

Does the AFHMP provide persons with disabilities in need of accessible units first preference for such units?

YES NO

Does the AFHMP address adaptable units consistent with the Guidelines? YES NO

Does the AFHMP provide for criminal background checks consistent with the Guidelines (e.g., not imposed prior to the lottery and consistent with DHCD model CORI policy)? YES NO

Does the AFHMP require any deposits or fees to be paid? YES NO

If YES, are they consistent with the Guidelines? YES NO

WAIT LISTS

After the lottery, are households that are not awarded a unit placed on a wait list in the order that they were drawn from the *general* pool? YES NO

For rental projects, is the procedure for ordering new applicants upon re-opening of the wait list based upon a random selection procedure after a minimum application period of no less than 10 business days?

YES NO

If NO, explain: _____

Is there a procedure for wait lists that do not close, and does it address persons with disabilities consistent with the Guidelines? YES NO Explain: _____

Does the ongoing affirmative and general marketing/outreach materials provide explicit notice of the availability of reasonable accommodations in the application process and a corresponding telephone number?

YES NO

For ownership projects, does the AFHMP include a method for ensuring continued compliance w/ the Guidelines upon resale? YES NO

OVERALL COMMENTS

FORM 3
Sample Eligibility for Purchase Certificate--Income and Asset Verification

Date:

To: Lottery Agent
Re: Affordable Housing Lottery for [Name of Project]
Property Address:
Purchaser:

Income and Asset Verification

[Name of Monitoring Agent] has reviewed the information for this lottery winner and has established that their income is below the maximum limit of [\$XX,000], 80% of median income, adjusted for a household of [X] for the area of [municipality where home is located], and that their assets are within the established limit. It is a condition of this Certificate that the deed for the approved purchaser has the Affordable Housing Restriction attached to it and made part of that deed.

The signature below represents evidence that [Name of Monitoring Agent] for [Name of Project] has reviewed and certified that this applicant is eligible based on program and income guidelines and information submitted. If more than ninety (90) days elapses between the execution of this Certificate and the final purchase of the unit, a new Certificate must be issued and the lottery winner's income and assets verified.

Closing Instructions

No earlier than 60 days prior to closing, the lottery agent will need to request a Resale Price Certificate from MassHousing. In this request, the Lottery Agent should provide 1) unit sales price, 2) address and unit number, 3) number of bedrooms, and 3) recording information for the Regulatory Agreement. MassHousing will send the Resale Price Certificate to the Lottery Agent (with a copy to the Monitoring Agent). The Resale Price Certificate will be used to complete the required fields in the Deed Rider.

When this applicant is ready to close on their mortgage loan (and at least two weeks prior to the closing date), please submit the following closing documents to (Name of Monitoring Agent) for review and approval:

- A copy of the signed Purchase and Sale Agreement
- A copy of the loan commitment letter
- A copy of the completed Deed Rider
- A copy of the completed Resale Price Certificate
- Contact information for the closing attorney

Following review of these documents, (Monitoring Agent) a Certificate of Compliance will be sent to (Lottery Agent) and MassHousing, and the closing attorney, who is responsible for ensuring that it gets recorded along with the Deed, Deed Rider, and Resale Price Certificate.

Sincerely,

Name of Monitoring Agent

cc: MassHousing, Purchaser

FORM 4

Sample Certificate of Compliance-Initial Sale of Affordable Unit

Property Address and Unit #: _____ (as more fully described in the Purchaser Deed)

Development Name _____

Seller: _____

Buyer: _____

Pursuant to the terms of the Regulatory Agreement among Mass Housing Finance Agency, as Subsidizing Agency, and [Name of Developer] dated _____, and recorded with the _____ Registry of Deeds (the "Registry") in Book _____, Page _____ (the "Regulatory Agreement," with capitalized terms used but not defined herein having the same definition as set forth in the Regulatory Agreement and Affordable Housing Restriction) the undersigned Monitoring Agent hereby certifies that the sale of the above-referenced Property in the above-referenced Development to the Purchaser is in compliance with the Comprehensive Permit Rules and the Affordability Requirement as set forth in the Regulatory Agreement, including:

1. Calculation of the Maximum Initial Sale Price;
2. Compliance with the Approved Marketing Plan and lottery process;
3. Selection of the Eligible Purchaser, including determination of compliance with Program Guidelines relative to income and asset limits and first-time homebuyer verification;
4. The Purchaser's execution of an Affordable Housing Restriction as specified in the Regulatory Agreement attached to and forming a part of the Purchaser's Deed; and
5. Mortgage Commitment in accordance with Program Guidelines.

Executed under seal this ___ day of _____, 20__

Monitoring Agent Name/Title

Commonwealth of Massachusetts

County of _____

On this ___ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Name:

My Commission Expires:

Form 5 Initial Sales Data and Compliance Report

Name/Contact Information of Monitoring Agent: _____

Project Name/Address _____

Units _____ # Affordable Units _____

Developer Contact Info _____

Lottery Agent Contact Info _____

Affirmative Fair Housing Marketing Plan Approval
 Date _____

Initial Sales Data:

Unit Address	Sales Price	AFHMP Compliance	Date Certificate of Buyer Eligibility Issued	Date Certificate of Compliance Issued

I certify that I have reviewed the Initial Sales Data for the project identified above and have determined substantive compliance of this project with the Affordability Requirement in accordance with program requirements, including substantive compliance with the approved Affirmative Fair Housing and Marketing Plan.

 Name/Title Date

Form 6: Sample Resale Price Certificate

(to be created by Monitoring Agent for Resales ONLY)

Resale Price Certificate

Project Name: _____

Project Address: _____

Unit Number/Property Address: _____

Initial Sales Price: \$ _____

Base Income Number \$ _____

Resale Price Multiplier: _____

This Resale Price Certificate has been issued by the Monitoring Agent for the above Project.

By: _____
Monitoring Agent

Notary Block

Form 7

Sample Certificate of Compliance-Resales

Re: [Property Address]

The undersigned Monitoring Agent hereby certifies as follows with respect to a certain Affordable Housing Restriction annexed to and made part of that certain Deed, dated _____, recorded with the _____Registry of Deeds in Book_____, Page_____ with respect to the Property having an address of [Property Address] (The “Seller’s Affordable Housing Restriction”):

1. The Property referred to herein is the Property described in the Seller’s Affordable Housing Restriction.
2. [Name of Purchaser] is the (check one) Eligible Purchaser _____, Ineligible Purchaser_____ of the Property.
3. The Maximum Resale Price for the Property is \$_____. The consideration to the paid by the Purchaser to the Grantee for the purchase of the Property is \$_____.
4. The Resale Price Multiplier is _____.
5. The conveyance of the Property by the Seller to the Purchaser is in compliance with the rights, restrictions, covenants, and agreements contained in the Affordable Housing Restriction.
6. The Purchaser of the Property has executed an Affordable Housing Restriction with respect to the Property, which is identical in form and substance to the Seller’s Affordable Housing Restriction.
7. Upon conveyance of the Property by the Grantee to the Purchaser, the recording of the Affordable Housing Restriction executed by the Purchaser, and the recording of this Certificate of Compliance, the rights, restrictions, agreements, and covenants contained in the Seller’s Affordable Housing Restriction shall be null and void.
8. All defined terms used herein shall have the definition set forth in the Seller’s Affordable Housing Restriction unless otherwise defined herein.

Name:

Commonwealth of Massachusetts

County of _____

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Name: _____

My Commission
Expires: _____

Form 8 Sample Notice of Foreclosure

Date:

Dear Homeowner:

(Name of Monitoring Agent) is the monitoring agent for your property located at (Development name and address), and, as such, we are listed as a party of interest in your Affordable Housing Restriction. We have recently received notice of foreclosure. If you do not take any action, you will likely lose your home. I am writing to offer assistance on this matter.

Depending on your situation, I may be able to refer you to a foreclosure prevention specialist who can try to help you. Or, if you cannot remain in your home, I can work with you to try to sell the property to a new eligible purchaser. As difficult as it is, if you must leave your home it will be better for you in the long run than to lose it to foreclosure. This process, however, takes time, and should not be left to the last minute.

It is important that you respond as soon as possible in order to allow us enough time to assist you. Please contact me right away so that we can discuss any available options.

Sincerely,

Monitoring Agent

Form 9 Sample Capital Improvements Policies and Procedures
Chapter 40B Homeownership Units Capital Improvements Policies and Procedures

Dear Affordable Housing Homeowner:

Capital improvements must be approved by [Name of Monitoring Agent] in order to be considered for addition to the resale price of your home. The Comprehensive Permit Rules define capital improvements as “necessary maintenance improvements, not covered by a condominium or homeowner’s association that if not done would compromise the structural integrity of the property.

Acceptable Capital Improvements

- New roof
- Replacement of windows due to wear and tear or damage
- The replacement of siding, shingles, or clapboard due to damage or wear and tear
- Exterior painting due to deterioration
- Heating or plumbing replacement
- Structural deficiencies such as termite or other pest damage, water damage, or other maintenance as required
- Septic tank replacement
- Appliance replacement (stove, dishwasher, refrigerator)
- Other improvements identified by the owner and approved by [Name of Monitoring Agent]. The cost of improvements such as the installation of outdoor decks, flooring (except in the case of replacement due to damage or long-term wear) additions, garages, landscaping, and other items that could be defined as upgrades or luxury improvements cannot be added to the resale price when a property is sold.

If a condominium or homeowner’s association imposes a special assessment, we will take the cost to the homeowner into consideration on a case by case basis, and additional documentation may be required. If the homeowner is purchasing materials and completing the project on their own, only the cost of the materials will be taken into consideration. Please be advised that the time of resale we will take into consideration the current value of the improvement based on a standard depreciation schedule. For example, if a new heating system is installed for \$5,000, and the owner sells the property ten years later, the full \$5,000 will not be added to the resale price. To have a proposed capital improvement approved, please send a letter to [Name of Monitoring Agent] including a description of the work to be done; an estimate of the cost; and an explanation of why the work is a necessary capital improvement. If the request is approved, we will require a copy of the paid invoice after the completion of the work.

Monitoring Agent

Form 10 Sample Determination of Eligibility of Request for Capital Improvement

Date: _____

Name of Homeowner _____

Address of Home: _____

[Name of Monitoring Agent] has approved your request to consider the following proposed capital improvement as eligible for inclusion in the maximum resale price:

You have estimated the cost of this work at \$ _____.

At the time of resale the value of this work will be determined based on the standard rate of depreciation.

Name of Monitoring Agent

Commonwealth of Massachusetts

County of _____

On this ___ day of _____, 20___, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding instrument, and acknowledged the foregoing instrument to be his/her free act and deed, in such capacity.

Name:
My Commission Expires:

Form 11: Sample Refinancing Policy

[Date]

Dear [Homeowner]:

Thank you for contacting us to inquire about the process to refinance your affordable home. As the Monitoring Agent, we must review and approve all requests to refinance in writing before you may close on a new loan.

Submittal Requirements

To begin the review process, please provide us with a letter requesting approval to refinance or obtain a second mortgage. The letter should state the full address of the property, the amount of the refinance or second mortgage requested, a phone number where you can be reached during the day, the full name of the lending institution and the name and contact number for the loan officer.

You will also need to submit the following:

1. A copy of your complete loan application to the lending institution.
2. A copy of the commitment letter from the lender, outlining the terms of the loan.
3. A copy of the Good Faith Estimate provided by the lender outlining estimated closing costs.

We may also require the following, depending on your particular situation:

- A copy of the Affordable Housing Restriction (also referred to as the Deed Rider). The Affordable Housing Restriction is the document signed at closing which was recorded with your deed that describes the resale and refinance provisions for your particular property.
- A complete copy of an appraisal report for the property, completed by a certified residential appraiser within the last 120 days. The home should be appraised as a market-rate property.
- Information on your monthly condominium fee (if any), your town's current tax rate per thousand, and your monthly homeowner's insurance amount.

Refinancing Requirements

Your proposed new first or second mortgage should meet the following guidelines:

- For first mortgage refinancing the loan amount cannot exceed 97% of the Maximum Resale Price, as determined by MassHousing.
- For a second mortgage financing, the combined amount of the first and second mortgages may not exceed 97% of the Maximum Resale Price, as determined by MassHousing.
- Must be a fully-amortizing, fixed-rate mortgage with a down payment of at least 3%, at least half of which must come from the buyer's own funds.
- Must be made by an institutional lender.
- Must have a current fair market interest rate.
- Must not have more than 2 points
- May not be co-signed by non-household members, including relatives.

We may deny your request to refinance, or require that you consult with a non-profit credit counselor if the benefit of the loan is unclear. Examples of this may include loans with high closing costs, a higher interest rate than you currently hold, or loans that roll in unsecured debt into your mortgage. Additionally, we strongly suggest that you compare rates and loan costs from several lenders.

Sincerely,

Monitoring Agent

Form 12

Sample Determination of Eligibility to Refinance Certificate

Date:

Name of Property Owner:

Property Address:

This letter is to inform you that [Monitoring Agent] has approved your request to refinance your property located at [property address] with [name of bank/lender] and hereby approves said refinance for a loan amount no greater than _____, and with an interest rate no higher than _____%.

Monitoring Agent

Form 13: Sample Affordable Unit Homeowner Yearly Certification

Date:

Dear Affordable Unit Owner

(Name of Monitoring Agent) is the Monitoring Agent for your affordable home. The purpose of this letter is to review and summarize your obligations as the owner, as described in more detail in the Affordable Housing Restriction that you signed when you purchased the property and which was recorded with your deed:

1. You will keep this home as your primary residence; you must live in this home. It is not permissible to rent it or allow a third party to use it without approval from [Name of Monitoring Agent].
2. You cannot refinance the home without prior approval from (Name of Monitoring Agent)
3. If you decide to improve your property we strongly suggest that you contact us before getting started. You cannot add the value of improvements to your home without prior approval from [Name of Monitoring Agent].
4. If you decide to sell the home, you will notify us of your intention.
5. [Name of Monitoring Agent] will determine the resale price according to a formula stated in your Affordability Restriction.
6. [Name of Monitoring Agent] will work with you to find an eligible buyer within the timeframe specified in your Affordable Housing Restriction.

In summary, you must contact us for approval to sell, lease or refinance your property, or make capital improvements.

We have attached our yearly Affordable Homeowner Certification Form for you to complete and return. We have included a self-addressed, stamped return envelope.

Please contact us if you have any questions, and thank you for your cooperation on this matter.

Name/Title

Date

Form 14 (to be completed by Homeowner)
Affordable Unit Homeowner Yearly Certification

As owner(s) of the property at _____ (the
“Home”) the undersigned hereby certifies as to the following:

1. The Home is my primary residence;
2. I/We have not leased, refinanced, put up for sale or made capital improvements to the Home other than as follows, as approved by [Name of Monitoring Agent]:

3. Our primary telephone number and e-mail contact information is as follows:

Signed under the pains and penalties of perjury, this ___ day of _____ 20__.

By: _____
Homeowner’s Name

Form 15 Annual Compliance Report
(Please Complete One Form per Project)

Monitoring Agent _____
Name of Development _____
Development Address _____
Total Number of Units _____ Number of Affordable Units _____
Affirmative Fair Housing Marketing Plan Approved: Yes ___ No ___ if yes, date _____ 20___
Initial Sales Complete? Yes ___ No ___ if yes, date: _____ 20___
Initial Sales Compliance Report Submitted to MassHousing No ___ Yes _____

(Date)

For Projects in Period of Initial Sales Only:

Developer: Name _____ Contact Info _____
Lottery Agent: Name _____ Contact Info _____
Total Number of Affordable Units Sold To Date _____
Construction Status (*number of market/affordable units built, estimated date of completion*):

Supplemental Monitoring Activity for this Project in the Past Year

Number of Affordable Units Currently for Sale/Resale _____
Number of Resales _____
Number of Capital Improvements _____
Number of Refinances _____
Number of Foreclosures _____

Please describe any documented areas of non-compliance with project's Affordability Requirement and corresponding enforcement actions taken or required:

I certify that in the past year I have ensured to the extent practicable the compliance of the owners of the Affordable Units in the project identified above with the requirements of the Affordable Housing Restriction.

Date

Name and Title