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Development: Bedford Village  
MassHousing No. 71-030  
FHA No. 023-98379  
Execution



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AGREEMENT AS TO SUBORDINATE LOANS

This Agreement as to Subordinate Loans (this "Agreement") is made as of **June 15, 2018**, by and among the **MASSACHUSETTS HOUSING FINANCE AGENCY**, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts, as amended (the "Senior Lender" or the "Agency"), **BEDFORD VILLAGE PRESERVATION ASSOCIATES LIMITED PARTNERSHIP**, a Massachusetts limited partnership (the "Borrower"); **MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD**, ("MHP") as agent for THE COMMONWEALTH OF MASSACHUSETTS, acting by and through its **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT** ("DHCD"), under the Capital Improvement and Preservation Trust Fund Statute, M.G.L. c. 121G for itself and as agent ("Agent Lender") for the **TOWN OF BEDFORD** (the "Town"), a municipal corporation duly existing under the laws of the Commonwealth of Massachusetts; and **PRESERVATION OF AFFORDABLE HOUSING LLC**, a Massachusetts limited liability company (the "Sponsor");

The Agency, with respect to the 13A Preservation Loan (as defined below); MHP, as agent for DHCD with respect to the CIPF Loan, and as agent for the Town with respect to the CPA Loan and Sponsor with respect to the Sponsor Loan (as all such terms are defined below), are sometimes referred to herein collectively as the "Subordinate Lenders," and each, individually, as a "Subordinate Lender." The Senior Lender and the Subordinate Lenders are sometimes referred to herein collectively as the "Lenders," and each, individually, as a "Lender."

Notwithstanding any other provision to the contrary contained herein, the parties hereto expressly acknowledge and agree that Sponsor shall be deemed a Subordinate Lender under this Agreement, and the Deferred Developer Fee Loan and Deferred Developer Fee Loan Documents shall be deemed to be, respectively, a Subordinate Loan and Subordinate Loan Documents (as all such terms are defined below), solely for the purposes of Sections 1.1 (Senior Lender Consent) and Articles II (Subordinate Loans) and III (Priority) hereof, and Sponsor shall have no rights under any other provision hereof (unless and only to the extent expressly set forth therein).

Property 12 Bedford Village, Bedford, MA

## RECITALS

A. The financing described herein will support the rehabilitation and operation of the **96-unit** residential rental development known as "**Bedford Village**" (the "Development") located at **12 Bedford Village, Bedford, Massachusetts**, as more particularly described in Exhibit A attached hereto (the "Property"). The Borrower holds a **fee simple** interest in the Development and a **leasehold interest** in the Property.

D. The Senior Lender has made a loan commitment to provide construction and permanent financing for the Development. Pursuant to such loan commitment, the Senior Lender will, subject to certain terms and conditions, make a first-priority mortgage loan to the Borrower, to be insured by the Secretary of Housing and Urban Development ("HUD") under the Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans (the "Risk Sharing Program"), in an original principal amount of **\$6,594,658.00** (the "First Loan"), and a second-priority construction bridge mortgage loan in an original principal amount of **\$7,100,000.00** (the "Bridge Loan," and together with the First Loan, the "Senior Loan"), evidenced by the mortgage notes (collectively, the "Senior Notes") and secured by the mortgages (collectively, the "Senior Mortgages") and related loan documents listed on Schedule A attached hereto (respectively, as set forth on Schedule A, the "First Loan Documents" and the "Bridge Loan Documents" and collectively, the "Senior Loan Documents"). Pursuant to the loan commitment, MassHousing will also make a third-priority mortgage loan in the original principal amount of **\$4,500,000.00** (the "13A Preservation Loan") and MassHousing, in such capacity, the "13A Preservation Lender").

E. The Senior Lender has further agreed to permit the Borrower to obtain certain subordinate construction and permanent financing with respect to the Development, subject to certain terms and conditions, and the Borrower has assumed certain obligations incurred in connection with the construction and permanent financing of the Development, including the following subordinate loans:

- (i) the 13A Preservation Loan described above, as evidenced by the promissory note and secured by the mortgage and related loan documents as described on the attached Schedule B (the "13A Preservation Loan Documents"); and
- (ii) the loans under the MassDocs program in the aggregate original principal amount of **\$8,500,000**, comprising (a) a loan from MHP under the Capital Improvement and Preservation Fund program in the original principal amount of **\$5,500,000** (the "CIPF Loan"); and (b) a loan from the Town under the Bedford Community Preservation Act (CPA) fund program in the original principal amount of **\$3,000,000** (the "CPA Loan"), as evidenced, respectively, by the promissory notes and as collectively evidenced and secured by the mortgage and related loan documents as described on the attached Schedule B (the "MassDocs Loan Documents");
- (iii) the loan from the Sponsor in the original principal amount of **\$479,815** (the "Sponsor Loan"), as evidenced by the promissory note and secured by the

mortgage and related loan documents as described on the attached Schedule B (the "Sponsor Loan Documents"); and

- (iv) the loan from the Sponsor in the original principal amount of \$1,161,374 (the "Developer Fee Loan"), as evidenced by a Development Services Agreement and secured by the leasehold mortgage and related loan documents as described on the attached Schedule B (the "Developer Fee Loan Documents").

which loans are referred to collectively as the "Subordinate Loans" and each, individually, as a "Subordinate Loan." The loan documents for the Subordinate Loans, as described on the attached Schedule B, are referred to collectively as the "Subordinate Loan Documents."

F. In addition to the financing described above, the Development will benefit from the use of certain federal low-income tax credits under Section 42 of the Internal Revenue Code of 1986, as amended. In connection with its approval of the use by the Borrower of low-income tax credits under Section 42 of the Code, DHCD has required that the Borrower execute and record a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants, of contemporaneous date and recorded in the Registry herewith (the "Tax Credit Regulatory Agreement").

Each Lender is relying on the financing provided by each other Lender to ensure that sufficient funds are available for the financing of the Development. Accordingly, the parties hereto have entered into this Agreement to set forth certain mutual understandings and agreements with respect to the financing each Lender will provide for the Development, and with respect to the coordinated exercise of certain rights and remedies under the Senior Loan Documents and the Subordinate Loan Documents.

NOW, THEREFORE, the parties hereto agree, notwithstanding any provision to the contrary set forth in the Senior Loan Documents or the Subordinate Loan Documents:

## ARTICLE I PERMANENT LOAN FINANCING

From and after the closing on the Senior Loan and for so long as the Senior Loan remains outstanding and the Senior Loan Documents, or any of them, remains in effect, the following provisions shall apply:

1.1 Senior Lender Consent. The Senior Lender consents to the Subordinate Loans and the Subordinate Loan Documents, provided and on the condition that the Subordinate Loans and the Subordinate Loan Documents shall be fully subordinate in all respects to the Senior Loan and the Senior Loan Documents, subject to the terms and provisions of this Agreement.

1.2 Amendment of Senior Loan Documents. The Senior Lender agrees that it shall not agree to any amendment to the Senior Loan Documents that increases the principal amount of the Senior Loan, and/or increases the interest rate or extends the stated maturity date thereof (other than as may be expressly permitted under the Senior Loan Documents), without the prior

written consent of each Subordinate Lender whose Subordinate Loan is then outstanding; provided, however, that any amounts payable by the Borrower which by the terms of the Senior Loan Documents shall be added to the principal amount payable thereunder without amendment thereof shall not be deemed an amendment of the Senior Loan Documents for the purposes hereof. Notwithstanding the foregoing, the Senior Lender may extend the term of the note evidencing the Bridge Loan without the prior written consent of each Subordinate Lender whose Subordinate Loan is then outstanding.

1.3 Defaults Under Senior Loan Documents. The Senior Lender agrees to provide each Subordinate Lender with a copy of (i) the Multifamily Default Status Report (HUD 92426) initially filed with HUD under the Risk Sharing Program with respect to any default under the First Loan Documents, and (ii) any default notice delivered to the Borrower under any of the Senior Loan Documents (as applicable, the “Initial Default Notice”). The Senior Lender further agrees that it shall not commence any foreclosure proceedings or accept a deed in lieu of foreclosure from the Borrower with respect to the Senior Loan for a period of sixty (60) days following the delivery of such Initial Default Notice (the “Cure Period”). During such Cure Period, the Senior Lender agrees to consult with each Subordinate Lender as to any actions the Senior Lender may elect to take with respect to such default. The Senior Lender further agrees to consult with each Subordinate Lender prior to filing any Partial Payment of Claim or Initial Claim under the Risk Sharing Program with respect to the First Loan and to provide each Subordinate Lender with copies of any Partial Payment of Claim or Initial Claim it may file with HUD under the Risk Sharing Program with respect to the First Loan.

1.4 Subordinate Lender Cure Proposals. The Senior Lender agrees that it shall reasonably consider any proposal for the cure of such default made by a Subordinate Lender which the Senior Lender receives prior to the commencement of foreclosure proceedings under the Senior Loan Documents or the filing of any Partial Payment of Claim with HUD under the Risk Sharing Program with respect to the Senior Loan. Such proposals may include a request to permit foreclosure under a Subordinate Mortgage. Any such proposals by a Subordinate Lender must include provision for the following:

- (a) cure of the outstanding defaults under the Senior Loan Documents; and
- (b) receipt of any approvals required by HUD to such proposal under the Risk Sharing Program (if applicable).

The Senior Lender shall not be required to consider any proposal or request that it determines would adversely affect its security for the Senior Loan, adversely interfere with its ability to file a Partial Payment of Claim or Initial Claim under the Risk Sharing Program with respect to the Senior Loan, or would not be permitted under its bond [and/or note] documents applicable to any bonds [and/or notes] (including any refunding bonds) or any other funding source that funded all or any portion of the Senior Loan or any other MassHousing Loan.

1.5 Foreclosure of Senior Loan; Affordable Housing Restriction.

- (a) The Senior Lender agrees that in connection with any default under the

Senior Loan, it shall not enter into an arrangement with (i) the Borrower; or (ii) any partner(s), manager(s) or member(s) of the Borrower; or (iii) any person who has a direct or indirect financial interest in any such partner(s), manager(s) or member(s) or controls or is controlled by such partner(s), manager(s) or member(s); or (iv) any person related by blood, adoption or marriage to any person described in (i) – (iii) above; or (v) any person who is or at any time was a business associate of a person described in (i) – (iii) above; or (vi) any entity in which any of the foregoing have a direct or indirect financial interest (collectively, the “Related Parties” and each, individually, a “Related Party”), which agreement contemplates foreclosure by the Senior Lender under the Senior Mortgages, or any of them, with a sale back of the Mortgaged Property (as defined in the Senior Loan Documents) under the Senior Loan Documents to the Borrower or any Related Party for the purpose of extinguishing any affordable housing restriction instrument described on Schedule B (the “Affordable Housing Restriction,” which term, if there are more than one restriction, shall apply to all such restrictions collectively, and to any such restriction). For the purposes of this paragraph, an affidavit, duly recorded and executed under the penalties of perjury, by any purchaser from the Senior Lender at a foreclosure sale or by deed in lieu of foreclosure, stating that (x) such purchaser has notified the Senior Lender and the Subordinate Lenders in writing of the identity of such purchaser, and its organizational structure and ultimate beneficial owners on HUD Form 2530 or its equivalent, (y) a period of at least thirty (30) days has elapsed since such notice was given, and (z) such purchaser has not received written notice from the Senior Lender or any Subordinate Lender that it has actual knowledge that such purchaser is a Related Party, shall be conclusive evidence that such purchaser is not a Related Party, unless the Senior Lender has actual knowledge that such purchaser is a Related Party. Furthermore, if the Development is subsequently acquired by a Related Party during the period during which the Affordable Housing Restriction would have remained in effect but for the provisions of this Section, such Affordable Housing Restriction shall be revived and shall apply to the Development as though it had never lapsed. Each Subordinate Lender who is a party to the Affordable Housing Restriction acknowledges and agrees that the provisions of Section 1.3 (Defaults Under Senior Loan Documents), Section 1.4 (Subordinate Lender Cure Proposals) and Section 1.5 (Foreclosure of Senior Loan; Subordinate Lender Affordable Housing Restriction) hereof satisfy the requirements contained in the Affordable Housing Restriction with respect to the Senior Lender’s obligations with respect to the Senior Loan.

(b) The Senior Lender agrees that any Subordinate Lender who is a party to the Affordable Housing Restriction may, with sixty (60) days’ prior written notice to the Senior Lender, take action against the Borrower to enforce such Affordable Housing Restriction; provided, however, such action may not include acting as mortgagee-in-possession, accepting a deed in lieu of foreclosure, or commencing foreclosure proceedings under such Subordinate Lender’s Subordinate Loan Documents or otherwise interfering with the priority of payments of amounts due the Senior Lender under the Senior Loan Documents, except as expressly approved by the Senior Lender pursuant to Section 1.4 (Subordinate Lender Cure Provisions).

1.6 Excess Foreclosure Proceeds. In the event the Senior Lender conducts a foreclosure or other proceeding enforcing its rights under the Senior Loan Documents and the Mortgaged Property is sold for a price in excess of the sum of the outstanding principal balances of the Senior Notes, plus all future advances, accrued interest and all reasonable costs and expenses the holder(s) thereof is (or are) entitled to recover pursuant to the terms of such Senior

Loan Documents, such excess shall be paid to the Subordinate Lender(s), for application to the Subordinate Loan(s) in the order of priority set forth in Article III below, in accordance with their respective amounts of assistance provided to the Development, in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Subordinate Lender(s) pursuant to this Section in connection with such proceeding; provided, however, that in the event such excess shall be so paid to the Subordinate Lender(s) by such holder, the Subordinate Lender(s) shall thereafter indemnify such holder(s) against any and all loss or damage to such holder(s) resulting from any claim made by the mortgagor(s) of such Senior Mortgages, to the extent that such claim is based upon the payment of such excess by such holder(s) to the Subordinate Lender(s) in accordance herewith, provided that such holder(s) shall give the Subordinate Lender(s) prompt notice of any such claim and shall not object to intervention by the Subordinate Lender(s) in any proceeding relating thereto.

## ARTICLE II SUBORDINATE LOANS

2.1 Senior Loan Subordination Provisions. Each Subordinate Lender further agrees covenants and agrees that if and for so long as the Massachusetts Housing Finance Agency is the Senior Lender and the Senior Mortgage and/or any other Senior Loan Documents remains outstanding and in force and effect, the Subordinate Loan Documents of such Subordinate Lender shall be subject to the following conditions, notwithstanding any contrary provision of the Subordinate Loan Documents of such Subordinate Lender (provided, however, that this Section shall not confer any rights upon the Borrower, whether as third-party beneficiary or otherwise, or permit the Borrower to challenge the validity of any remedies exercised by the Subordinate Lender thereunder):

(a) The Subordinate Mortgage and the other Subordinate Loan Documents are subordinate to the prior mortgage lien of the Senior Lender, its successors and assigns, in all respects, and the Lender expressly waives its right to commence lien enforcement or foreclosure proceedings hereunder without the prior written approval of the Senior Lender with respect thereto;

(b) All rights (including assignment of leases and rents and rights with respect to insurance proceeds and condemnation awards) given to a Subordinate Lender shall be subordinate to the Senior Lender's rights and the Senior Mortgage;

(c) The Subordinate Mortgage and the other Subordinate Loan Documents are subject and subordinate to any and all advances and/or re-advances made, and expenses incurred, with interest thereon, as permitted by the Senior Lender's Mortgage and the other Senior Loan Documents;

(d) Each Subordinate Lender shall be bound by any determination by the Senior Lender to release insurance proceeds and condemnation awards for restoration;

(e) Each Subordinate Lender must follow the lead of the Senior Lender in giving non-disturbance agreements to tenants;

(f) No Subordinate Lender may acquire, by subordination (for example, by payment of real estate taxes) or otherwise, any lien, estate, right or other interest in the Development that is, or may be, prior in right to that of the Senior Lender.

(g) Each Subordinate Lender shall give the Senior Lender contemporaneous written notice of any default issued by such Subordinate Lender under its Subordinate Loan Documents.

(h) If a Subordinate Lender brings a foreclosure proceeding permitted hereunder, no action shall be taken that would terminate any of the leases without the prior written consent of the Senior Lender.

(i) The purchaser of the Development at a foreclosure sale permitted hereunder shall be subject to the approval of the Senior Lender, which shall not be unreasonably withheld, and, to the extent applicable, the Secretary of Housing and Urban Development. Any such approved purchaser shall be required by the Subordinate Lender as a condition of sale to assume the Borrower's obligations under the Senior Mortgage and the other Senior Loan Documents.

(j) If the Senior Lender forecloses under the Senior Mortgage, all rents, issues and profits from the Development shall first go to the Senior Lender.

The foregoing provisions shall inure to the benefit of the Senior Lender and its successors and assigns (including the entities described in Section 5.3 hereof).

2.2 Subordinate Lender Exercise of Remedies. Each Subordinate Lender further acknowledges and expressly agrees that such Subordinate Lender shall waive any and all rights to and shall not commence lien enforcement or foreclosure proceedings under its Subordinate Mortgage without the prior written approval of Senior Lender with respect thereto.

2.3 Amendment of Subordinate Loan Documents. Each Subordinate Lender agrees that it shall not agree to any amendment to its Subordinate Loan Documents that (a) increases the principal amount of its Subordinate Loan, and/or increases the interest rate or extends the stated maturity date thereof (other than as may be expressly permitted under such Subordinate Loan Documents), without the prior written consent of each Subordinate Lender whose Subordinate Loan is then outstanding and junior in priority to the foregoing Subordinate Lender's Subordinate Loan (provided, however, that any amounts payable by the Borrower which by the terms of the foregoing Subordinate Lender's Subordinate Loan Documents shall be added to the principal amount payable thereunder without amendment thereof shall not be deemed an amendment of such Subordinate Loan Documents for the purposes hereof); or (b) would materially adversely affect the enforceability of the Affordable Housing Restriction, or the security interest created pursuant to the MassDocs Loan Documents then outstanding without the prior written consent of the MassDocs Participating Lenders. In addition, each Subordinate Fee Lender agrees to provide each other Subordinate Lender with a copy of any default notice delivered to Borrower under its Subordinate Loan Documents.

ARTICLE III  
PRIORITY

3.1 Priority of Loans and Loan Documents. Notwithstanding any contrary or inconsistent provision in any of the Subordinate Loan Documents:

(a) From and after the date hereof, and notwithstanding any provisions to the contrary in, or the actual order of recording and/or perfection of, the various mortgages and other documents between the Borrower and the Lenders, or any of them, or granted by the Borrower to the Lenders, or any of them, the respective priority of the Loans, and the respective priority of the Senior Loan Documents and the Subordinate Loan Documents, as the same may from time to time be amended or otherwise modified in accordance with the terms of this Agreement, in all respects, including, without limitation, payment, lien and bankruptcy, is and shall be:

First Priority:	First Loan, as evidenced and secured by the First Loan Documents
Second Priority:	Bridge Loan, as evidenced and secured by the Bridge Loan Documents
Third Priority:	Tax Credit Regulatory Agreement
Fourth Priority:	Affordable Housing Restriction
Fifth Priority: <i>(Co-equal and shared, pari passu)</i>	CIPF and CPA Loans, as evidenced and secured by the MassDocs Loan Documents; and the 13A Preservation Loan, as evidenced by the 13A Preservation Loan Documents
Sixth Priority:	Sponsor Loan, as evidenced and secured by the Sponsor Loan Documents
Seventh Priority	Developer Fee Loan, as evidenced and secured by the Developer Fee Loan Documents

(b) The parties hereto agree to execute, deliver and record such instrument(s) as may be reasonably necessary or desirable to evidence or effectuate the provisions of this Section.

(c) Any payment received by a Subordinate Lender in connection with its Subordinate Loan after such Subordinate Lender's receipt of an Initial Default Notice from the Senior Lender shall be held in trust for the Senior Lender. All payments received by a Subordinate Lender in the ordinary course in connection with its Subordinate Loan may, provided that such Subordinate Lender has not received an Initial Default Notice from the Senior Lender (and subject always to the rights of the Senior Lender under the Senior Loan Documents), be accepted and applied in accordance with the note or other loan document pursuant to which such payments were made.



3.2 Pari Passu Subordinate Lenders. Notwithstanding any contrary or inconsistent provision in any of the Subordinate Loan Documents:

(a) The respective liens of (i) the 13A Preservation Lender, with respect to the 13A Preservation Loan; and (ii) the MassDocs Participating Lenders, with respect to their respective Loans (collectively referred to herein as the "Pari Passu Subordinate Lenders" and each, individually, a "Pari Passu Subordinate Lender"), on the Mortgaged Property created by their respective Subordinate Loan Documents and any other assets of Borrower or any other party taken as security for their respective loans, shall be of equal, *pari passu* priority, to the same extent as if all such Subordinate Loans were secured by a single mortgage granted jointly and severally to all of the Pari Passu Subordinate Lenders.

(b) Absent any Initial Default Notice from the Senior Lender, all payments received by any Pari Passu Subordinate Lender (i) after its receipt of notice of an event of default under the Subordinate Loan Documents of any other Pari Passu Subordinate Lender (whether by the exercise of remedies or otherwise), or (ii) as a result of a voluntary prepayment, eminent domain award or casualty proceeds (if not applied to restoration of the Mortgaged Property and its continuation in compliance with the Affordable Housing Restriction), or as the result of foreclosure by any party, insurance awards, bankruptcy or other insolvency distributions, deeds or other transfers in lieu of foreclosure, or in any other manner, shall (subject always to the rights of the Senior Lender under the Senior Loan Documents) be shared by the Pari Passu Subordinate Lenders in the same ratio as the then-outstanding balance of each of the Pari Passu Subordinate Loans, adjusted to include any accrued and unpaid interest and applicable penalties and/or other charges, bear to the aggregate amount of said outstanding balances. There shall be no objections by the Pari Passu Subordinate Lenders to prepayments of the Borrower's obligations to the Pari Passu Subordinate Lenders, so long as the Senior Lender has given its written consent to such prepayment; the existence, intent, and purpose of the Development are not materially adversely affected thereby; the Affordable Housing Restriction remains in full force and effect for its or their stated terms; and any prepayment is made to all such Pari Passu Subordinate Lenders in the same ratio as described above.

(c) The Pari Passu Subordinate Lenders will each make reasonable efforts to consult with the other Pari Passu Subordinate Lenders as to matters affecting their respective rights as lien holders. Each Pari Passu Subordinate Lender will execute, deliver and record such additional instruments as may be necessary or desirable in order to effectuate the provisions of this Section.

3.3. Agreement of Lenders Regarding IRC Section 42 and Tax Credit Regulatory Agreement. Each Lender hereby acknowledges and consents to the recording of the Tax Credit Regulatory Agreement. Notwithstanding any provision to the contrary contained herein or in any of its Loan Documents, each Lender acknowledges and agrees that if such Lender, or any successor or assign of such Lender, ever succeeds to all or any part of Borrower's interest in, or otherwise acquires title to, the Development, such Lender, and any successor or assign of such Lender, shall be bound by the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended (the "Code"), as such provision is incorporated into the Tax Credit

Regulatory Agreement. In connection therewith, each of the Lenders expressly acknowledges and agrees that for a period of three (3) years following any termination of the Tax Credit Regulatory Agreement pursuant to Section [7.2] thereof, the tenant protections set forth in Section [7.3] thereof shall survive and shall be binding upon the respective Lenders and any successor or assign thereof who succeeds to all or any part of Borrower's interest in, or otherwise acquires title to, the Development.

3.4 Sharing of Excess Principal Advances. The CIPF Promissory Note and the CPA Promissory Note (as referenced in the MassDocs Loan Documents) each contain a provision with respect to repayment of Excess Principal Advances (as defined therein). Repayments of Excess Principal Advances shall be shared pro rata by MHP and the Town and applied against the CIPF Loan and CPA Loan, respectively, in accordance with the ratio of the outstanding principal amount owed to each of them to the total aggregate outstanding principal balance owed to both of them.

#### ARTICLE IV CONSTRUCTION

4.1 Development Budget; Construction Documents. The Borrower and each Lender has approved the Sources and Uses of Funds and the budget documentation reflecting cash flow during construction for the Development, as attached to the Construction Loan Agreement described in Schedule A, which detail the usage and timing of funds provided to the Development from loan and equity sources (collectively, the "Development Budget"). The Plans and Specifications for the rehabilitation of the Development (the "Plans and Specifications") have been prepared by The Architectural Team, Inc. (the "Architect") and approved by the Borrower and each Lender. The Development will be rehabilitated by Keith Construction, Inc. (the "Contractor"), under a Construction Contract dated June 1, 2018 between the Borrower and the Contractor (the "Construction Contract"), which has been approved by each Lender. The Borrower represents and certifies that the Equity Investor and each other partner of Borrower whose consent thereto is required under the Borrower's Partnership Agreement (as described in the respective Loan Documents) has duly approved the Development Budget, the Plans and Specifications and the Construction Contract.

4.2 Initial Disbursement. On the date hereof (the "Initial Funding Date"), pursuant to an initial disbursement request submitted by the Borrower and approved by each of the Lenders prior to the date hereof, each Subordinate Lender shall disburse its share of its Subordinate Loan funds as shown on the Development Budget (*less* any retainage as provided in the applicable Subordinate Loan Documents) (collectively, the "Initial Disbursement"). All amounts making up the Initial Disbursement shall either be transferred to the Senior Lender by wire transfer for disbursement to the Borrower in accordance with the Loan Agreement or applied by the Subordinate Lender directly by check or wire transfer as agreed to by the Borrower with the written consent of the Senior Lender in connection with the funding of the Initial Disbursement. Any wire transfers to the Senior Lender for the account of Borrower shall be sent to such account as directed by the Senior Lender.

#### 4.3 Requisitions.

(a) Requisitions for funds, regardless of funding source, shall be prepared by the Borrower and/or Contractor using the Senior Lender's Form 2448 (Hard Cost Requisition) or the Senior Lender's Form 2403 (Soft Cost Requisition). The Borrower shall also submit with the Senior Lender's requisition forms any additional forms or certifications, including any backup materials, that may be required by any Subordinate Lender who is being requested to fund a requisition. The Senior Lender, in reviewing the requisition, will not be required to check or verify the information contained in any other Lender's requisition materials, nor will the Senior Lender be required to identify or track, on a line-item basis, the use of funds disbursed by any of the Subordinate Lenders.

(b) Requisitions submitted by the Borrower shall be made in accordance with the Development Budget, and processed as follows:

- (i) *Monthly Requisition Meetings.* A draft or "pencil" Hard Cost Requisition shall be prepared monthly by the Contractor and distributed for review by the Architect, the Contractor, the Borrower, the Senior Lender and the Subordinate Lenders at a monthly meeting held at the job site, at which time the parties will seek to reach agreement on the percentage of completion and amounts requisitioned for various trade items set forth in the proposed requisition. The Borrower shall advise the Lenders as to the date and time of such meetings. Representatives of each may attend such meetings and offer comments and/or request changes to proposed requisitions.
- (ii) *Preparation and Submission of Requisitions.* Based upon agreements reached at the above meeting, the Contractor shall prepare and forward to the Architect, for approval and transmittal to the Borrower, the monthly Hard Cost Requisition, together with all certifications and documents required by the Senior Lender or any Subordinate Lender from whom funds are being requisitioned. Upon receipt of the approved Hard Cost Requisition from the Architect, the Borrower shall prepare a Soft Cost Requisition, together with all certifications and documents required by any Subordinate Lender from whom funds are being requisitioned. The Hard and Soft Cost Requisitions shall be submitted to the Senior Lender, with copies provided to the Subordinate Lenders. The submitted requisitions shall be accompanied by a cover letter from the Borrower specifying the sources and amounts required to fund the enclosed Requisition(s).
- (iii) *Objections to Approval of Requisitions.* If any of the Subordinate Lenders objects to the approval of a requisition by the Senior Lender, such objecting party shall notify the Senior Lender, the Borrower, the remaining Subordinate Lenders of its objection within five (5) business days of its submission to the Senior Lender and the Subordinate Lenders. The Borrower and the Senior Lender agree to promptly and reasonably

consult with the objecting party regarding such objection and seek a mutual resolution. The Borrower agrees that it shall take any such actions, including those against the Contractor, Architect or any other person, as necessary and appropriate to resolve any construction defects or other issues giving rise to such objection. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to approve and fund a requisition. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to refuse to fund its portion of a requisition approved by the Senior Lender and it shall immediately notify the parties hereto in writing of any such refusal.

(iv) *Requisition Approval and Disbursement of Funds.* Following satisfactory completion of its review, but not less than five (5) business days following submission of an acceptable requisition to the Senior Lender and absent any objection by a Subordinate Lender, the Senior Lender shall notify the Borrower, with copies to the Subordinate Lenders, of its approval of the Hard and Soft Cost Requisitions. The share of the approved amount to be borne by a Subordinate Lender shall be as stated in the requisitions as so approved by the Senior Lender and not objected to by such Subordinate Lender as provided in subparagraph (iii) above. Each Subordinate Lender agree to provide the Senior Lender, within ten (10) business days of funding, such documents as reasonably necessary to evidence disbursement of its funds as required by such approved requisition. In the event the Senior Lender elects not to approve a requisition, either in whole or in part, it shall notify the Borrower, the Subordinate Lenders in writing not less than ten (10) business days following of submission of the requisition.

4.4 Retainage. The Borrower shall submit to the Senior Lender and the Subordinate Lenders in writing any request for a reduction or release of retainage under the Construction Contract. Such requests shall be submitted not less than ten (10) business days prior to submission of the Hard Cost Requisition seeking payment of the reduced or released retainage amounts. If a Subordinate Lender shall not have disapproved such release or reduction within ten (10) business days after the submission of the Borrower's request, such release or reduction shall be deemed approved by that Subordinate Lender, provided that a Subordinate Lender shall not be required to release any of its loan funds held as retainage unless it shall expressly approve such release. If any of the Subordinate Lenders objects to the reduction or release of retainage, the objecting party shall so notify the Senior Lender, the Borrower and the remaining Subordinate Lenders. The Borrower and the Senior Lender agree to promptly and reasonably consult with the objecting party regarding such objection and seek a mutual resolution. The Borrower agrees that it shall take any such actions, including those against the Contractor or Architect, as necessary and appropriate to resolve any construction defects or other issues giving rise to such objection. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to agree

to a reduction or release of retainage. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to (i) refuse to reduce or release that portion of its loan proceeds held as retainage despite any approval of such request by the Senior Lender, or (ii) reduce or release that portion of its loan proceeds held as retainage despite any denial of such request by the Senior Lender.

4.5 Change Orders. All Change Orders shall be subject to the review and approval of the Senior Lender pursuant to the Senior Loan Documents. Any Change Order submitted by the Borrower to the Senior Lender shall simultaneously be submitted to the Subordinate Lenders, together with any supporting documentation provided the Senior Lender. The Subordinate Lenders may request additional supporting documentation from the Borrower as each may reasonably determine necessary to evaluate such Change Order. The Borrower agrees to provide the Subordinate Lenders and the Senior Lender such additional supporting documentation promptly upon any such request. If a Subordinate Lender shall not have disapproved such Change Order within ten (10) business days following submission, such Change Order shall be deemed approved by that Subordinate Lender. If any of the Subordinate Lenders objects to a Change Order, the objecting party shall so notify the other parties hereto in writing. The Borrower and the Senior Lender agree to promptly and reasonably consult with the objecting party regarding such objection and seek a mutual resolution. If the Borrower, the Senior Lender and the objecting party shall be unable to resolve such objection, the Senior Lender shall have the right, but not the obligation, to approve and fund the Change Order. Each of the Subordinate Lenders shall, at all times and pursuant to the terms of its respective Subordinate Loan Documents, have the right to (i) deny approval and funding of a Change Order from its loan proceeds, despite any approval of such request by the Senior Lender, or (ii) approve and use its loan proceeds to fund a Change Order despite any denial of such change order by the Senior Lender; provided, however, that a Subordinate Lender may not fund any Change Order not approved by the Senior Lender if such funding would, in the Senior Lender's judgment, jeopardize the availability of the low income tax credits authorized for the Development under Section 42 of the Internal Revenue Code of 1986, as amended, applying the provisions of Section 42(h)(4)(B) thereof, for use in connection with the Development. Notwithstanding the aforementioned right to deny Change Orders, the Subordinate Lenders expressly acknowledge and agree that a Subordinate Lender may not declare a default by the Borrower for failure to obtain approval of a Change Order, and that remedies by a Subordinate Lender in connection with a denied Change Order are limited to the withholding of Subordinate Loan proceeds associated therewith and to withhold the release of any retainage amount held by the Subordinate Lender.

## ARTICLE V MISCELLANEOUS

5.1 Notices. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, addressed as follows:

If to the Borrower: Bedford Village Preservation Associates Limited Partnership  
c/o Preservation of Affordable Housing, Inc.  
40 Court Street, Suite 700  
Boston, MA 02108  
Attention: General Counsel

with a copy to: Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, Massachusetts 02110  
Attention: Daniel M. Rosen

and with a copy to the Borrower's Equity Investor:

Massachusetts Housing Equity Fund XXIV LLC,  
c/o Massachusetts Housing Equity Fund, Inc.  
21 Custom House Street, 8<sup>th</sup> Floor  
Boston, MA 02110  
Attention: Director of Asset Management

Middlesex Savings Bank  
c/o Massachusetts Housing Investment Corporation  
21 Custom House Street, 8<sup>th</sup> Floor  
Boston, MA 02110  
Attention: Director of Asset Management

with a copy to: Nolan Sheehan Patten LLP  
101 Federal Street, 18<sup>th</sup> Floor  
Boston, MA 02110  
Attention: Brian C. Patten, Esquire

If to the Senior Lender or the 13A Preservation Lender:

Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, MA 02108  
Attention: General Counsel

If to the Agent Lender:

Massachusetts Housing Partnership  
160 Federal Street  
Boston, MA 02110  
Attention: Deputy Director

with a copy to: KJP Partners LLP  
175 Federal Street, Suite 1440  
Boston, MA 02110  
Attention: Kurt James, Esquire

If to the Sponsor: Preservation of Affordable Housing LLC  
40 Court Street, Suite 700  
Boston, MA 02108  
Attention: General Counsel

with a copy to: Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, Massachusetts 02110  
Attention: Daniel M. Rosen

(a) A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

(b) Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

5.2 Borrower Execution of Agreement. The Borrower is executing this Agreement for the sole purpose of evidencing its consent to the terms hereof and the agreements made between the Senior Lender and the Subordinate Lenders evidenced hereby. The liability of the Borrower or its successors or assigns arising under this Agreement shall be limited solely to the Borrower's interest in the Development, and no partner, manager, member, officer, director or employee of the Borrower, or of its successors or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal or individual liability with respect to any obligation or liability hereunder, nor shall such person or entity be liable hereunder for any consequential or punitive damages or in any equitable proceeding or order beyond the extent of its interest in the Development. This Agreement shall not be deemed to confer any rights or defenses upon the Borrower not set forth in the applicable Loan Documents, and the Borrower shall not have the right (whether as third party beneficiary or otherwise) to endorse any of the obligations of the Lenders to each other hereunder.

5.3 Successors and Assigns. This Agreement shall bind any successors and assigns of the Senior Lender under the Senior Loan Documents and of each Subordinate Lender under their respective Subordinate Loan Documents. This Agreement shall inure to the benefit of the Agency, the Secretary of Housing and Urban Development, as insurer of the senior mortgage instrument securing the First Loan and the following, as the Agency's successors and assigns of

the Senior Mortgages, or any of them, securing the Senior Loans, or any of them: (i) any trustee or provider of the financing source issued to fund the mortgage loan secured by the Agency's Mortgage or any debt which refinances such financing source; (ii) any successor agency or instrumentality of The Commonwealth of Massachusetts which succeeds to the functions of the Agency; and (iii) any state, federal or other public or quasi-public agencies dedicated to the creation, preservation and maintenance of affordable housing for low or moderate income residents of The Commonwealth of Massachusetts. No provision of this Agreement shall be construed to confer any rights upon the Borrower, whether as third-party beneficiary or otherwise.

5.4 Other Contract Terms. This Agreement is delivered and made in, and its construction and performance shall be governed by and enforced in accordance with, the laws of The Commonwealth of Massachusetts. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. The obligations of the parties hereunder shall be joint and several. This Agreement may not be modified except by written instrument signed by each party affected thereby. This Agreement may be executed in any number of counterparts, each to be an original, but all of which shall constitute one and the same instrument, and it shall be sufficient if any party hereto signs and such counterpart, so long as each of the parties hereto executes at least one such counterpart.

*[The remainder of this page is intentionally blank. Signature pages follow.]*



[Bedford Village: Agreement as to Subordinate Loans – Borrower Signature Page & Notary]

IN WITNESS WHEREOF, the parties have caused this Agreement as to Subordinate Loans to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

BORROWER:  
BEDFORD VILLAGE PRESERVATION ASSOCIATES  
LIMITED PARTNERSHIP, a Massachusetts limited  
partnership

By: POAH Bedford Village, LLC, its general partner

By: Preservation of Affordable Housing, Inc., its sole  
member

By: *Aaron Gornstein*  
Name: Aaron Gornstein  
Title: President  
and Chief Executive Officer

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this 24<sup>th</sup> day of May, 2018, before me, the undersigned notary public Aaron Gornstein personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or  identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as President for Preservation of Affordable Housing, Inc., an Illinois non-profit corporation, as manager for POAH Bedford Village, LLC, a limited liability company, as general partner for Bedford Village Preservation Associates Limited Partnership, a limited partnership, as the voluntary act of the partnership.



**STEPHANIE KAY WOOD**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
June 19, 2020


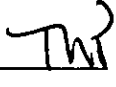
*Stephanie Kay Wood*  
Notary Public  
My Commission Expires: 6/19/2020

Attachments:

- Exhibit A – Legal Description of Property
- Schedule A - Senior Loan Documents
- Schedule B – Subordinate Loan Documents

[Bedford Village: Agreement as to Subordinate Loans – Senior Lender Signature Page & Notary]


**SENIOR LENDER:**  
MASSACHUSETTS HOUSING FINANCE  
AGENCY

By:    
Name: Beth M. Elliott  
Title: General Counsel

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this 13 day of June, 2018, before me, the undersigned notary public, Beth M. Elliott personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or  identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as General Counsel of the Massachusetts Housing Finance Agency, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts, as amended.

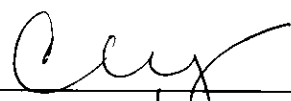
  
Notary Public  
My Commission Expires: 7/10/2020



**KIMBERLY LEONE**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
July 10, 2020

[Bedford Village: Agreement as to Subordinate Loans – Agent Lender Signature Page & Notary]

SUBORDINATE LENDER – AGENT LENDER:  
MASSACHUSETTS HOUSING PARTNERSHIP  
FUND BOARD, AS AGENT FOR THE  
COMMONWEALTH OF MASSACHUSETTS  
ACTING BY AND THROUGH THE  
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT UNDER THE  
CAPITAL IMPROVEMENT AND  
PRESERVATION TRUST FUND STATUTE,  
M.G.L. C. 121G AND THE TOWN OF BEDFORD

By:   
Name: CHARLEEN TYSON  
Title: Chief Financial  
ADMINISTRATIVE  
OFFICER

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this 14<sup>th</sup> day of June, 2018, before me, the undersigned notary public, Charleen Tyson personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [ ] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as CFAO of Massachusetts Housing Partnership Fund Board.

Vanessa M. Okonkwo  
Notary Public  
My Commission Expires: May 22, 2020

[Bedford Village: Agreement as to Subordinate Loans - Sponsor Signature Page & Notary]

**SUBORDINATE LENDER - SPONSOR:**  
**PRESERVATION OF AFFORDABLE HOUSING LLC**

By: *Preservation of Affordable Housing, Inc., its sole member*

By: *W. Bart Lloyd*

Name: **W. Bart Lloyd**  
Title: **Managing Director, Acquisitions and General Counsel**

**COMMONWEALTH OF MASSACHUSETTS**

County of Suffolk, ss.

On this 14<sup>th</sup> day of June, 2018, before me, the undersigned notary public, W. Bart Lloyd personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he][~~she~~] signed it voluntarily for its stated purpose, as Managing Director for Preservation of Affordable Housing LLC, a Massachusetts limited liability company, as the voluntary act of the company.

\* Preservation of Affordable Housing, Inc., as sole member of

*Stephanie Kay Wood*  
Notary Public  
My Commission Expires: 6/19/2020



**STEPHANIE KAY WOOD**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
June 19, 2020

EXHIBIT A  
LEGAL DESCRIPTION

The land with the buildings and improvements situated thereon, on Dunster Road in Bedford, Massachusetts shown on A Compiled Plan of Land in Bedford, Mass. dated Jan. 24, 1974 by Albert A. Miller and Wilbur C. Nylander, Civil Eng'rs & Surveyors recorded with said Registry as Plan No. 892 at the end of Record Book 12680, containing, according to said plan, 10.38 acres more or less, and being bounded and described as follows:

Northeasterly and Northerly by Dunster Road, by two courses measuring 269.11 feet and 480.89 feet;

Easterly by land now or formerly of Donovan 147.00 feet more or less;

Southerly by land now or formerly of McKenna 102.33 feet; Easterly by land now or formerly of McKenna, Tortino and Kaiser 345.00 feet;

Southeasterly and Southerly by seven courses measuring from east to west 225.00 feet more or less, 291.00 feet more or less, 169.00 feet more or less, 257.00 feet more or less, 11.00 feet more or less, 340.23 feet more or less, and 59.40 feet;

Westerly by land of the Town of Bedford by two courses measuring 146.22 feet and 97.09 feet; and

Northerly again by land now or formerly of McGann and of Maynide, Inc. by three courses measuring 17.00 feet, 501.00 feet more or less and 214.00 feet more or less.

SCHEDULE A  
SENIOR LOAN DOCUMENTS

**Senior Loan Documents - Senior Loan**

1. First Mortgage Note in the original principal amount of \$6,594,658 from the Borrower to the Agency
2. First Fee and Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents, from the Borrower to the Agency
3. Residential Compliance Agreement between the Agency and the Borrower
4. Regulatory Agreement between the Agency and the Borrower
5. Construction Loan Agreement between the Agency and the Borrower
6. Development Fund Agreement between the Agency and the Borrower
7. Assignment of Architect's Contract from the Borrower to the Agency
8. Assignment of Construction Contract from the Borrower to the Agency
9. UCC-1 Financing Statement

**Senior Loan Documents - Bridge Loan\***

1. Bridge Mortgage Note in the original principal of \$7,100,000 from the Borrower to the Agency
2. Bridge Fee and Leasehold Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents, from the Borrower, as mortgagor, to the Agency, as mortgagee

*[\*Certain of the Senior Loan Documents also evidence and secure the Second Loan.]*

**SCHEDULE B**  
**SUBORDINATE LOAN DOCUMENTS**

**13A Preservation Loan Documents\***

1. 13A Preservation Mortgage Note in the original principal of \$4,500,000 from the Borrower to the Agency
2. 13A Preservation Fee and Leasehold Mortgage, Financing Statement (Fixture Filing), Security Agreement, and Assignment of Leases and Rents, from the Borrower, as mortgagor, to the Agency, as mortgagee

\*NOTE: The 13A Preservation Loan is also evidenced and secured by certain of the Senior Loan Documents listed above.

**MassDocs Loan Documents**

1. Capital Improvement and Preservation Fund (CIPF) Promissory Note in the principal amount of \$5,500,000 from the Borrower to MHP
2. Bedford CPA Program Promissory Note in the principal amount of \$3,000,000 from the Borrower to Town
3. MassDocs Fee and Leasehold Mortgage, Security Agreement and Conditional Assignment of Leases and Rents from the Borrower to MHP, as Agent Lender
4. MassDocs Loan Agreement between the Borrower and MHP, as Agent Lender
5. MassDocs Affordable Housing Restriction from the Borrower and Ground Lessor in favor of MHP, DHCD and Town
6. Lender Advisor Agreement among Borrower, MHP, The Town and the lender advisor

**Sponsor Loan Documents**

1. Promissory Note in the principal amount of \$479,815 from the Borrower to the Sponsor
2. Leasehold from the Borrower to the Sponsor

**Developer Fee Loan Documents**

1. Development Services Agreement by and between the Borrower and the Sponsor
2. Leasehold Mortgage from the Borrower to the Sponsor