



Massachusetts
Housing Partnership Fund



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Letter: J. Daniel Woodyshek
10 Downey Place
Norfolk, MA 01748

CHAPTER 40B REGULATORY AND AFFORDABLE HOUSING AGREEMENT FOR LIMITED DIVIDEND ORGANIZATIONS

This Chapter 40B Regulatory and Affordable Housing Agreement For Limited Dividend Organizations ("Agreement") is entered into this 3rd day of April, 2015 by and between 373 COMMONWEALTH RESIDENCE LLC, a Massachusetts limited liability company having a mailing address of 220 North Main Street, Suite 105, Natick, Massachusetts 01760 (the "Borrower"), and the MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD, a Massachusetts body politic and corporate with its principal place of business at 160 Federal Street, Boston, Massachusetts 02110 (the "Lender").

RECITALS

- A. The Borrower is the owner of certain real property known and numbered as 373 Commonwealth Residences, Wayland, Massachusetts, being more particularly described on Exhibit A attached hereto (the "Mortgaged Property"), on which the Borrower intends to construct a housing development known as "Commonwealth Residences" consisting of fifty-two (52) units of residential rental housing (the "Housing Development").
- B. The Mortgaged Property is subject to and has the benefit of an amended comprehensive permit, issued by the Town of Wayland, acting by and through its Zoning Board of Appeals (the "Municipality") pursuant to M.G.L. c. 40B, §§ 20-23 and regulations promulgated thereunder (the "Act") dated February 18, 2009 and recorded with the Middlesex South Registry of Deeds in Book 64783, Page 1 (the "Comprehensive Permit").
- C. The Lender is a subsidizing agency under the Act and has agreed to make a permanent mortgage loan to the Borrower in the original principal amount of \$13,300,000.00 (the "Loan") as provided in a certain Commitment Letter dated December 23, 2014 as amended by letter dated April 3, 2015.
- D. The Lender requires, as a condition to making the Loan, that the Borrower enter into this Agreement in order to create certain covenants running with the Mortgaged Property for the purpose of ensuring that the Affordable Housing Units (as defined below) are rented to Families (as defined below) who meet the income and other eligibility criteria set forth in this Agreement for the period set forth herein.
- E. The Borrower has agreed to enter into this Agreement imposing covenants running with the Mortgaged Property as a condition of the Loan, which Agreement shall be binding upon the Borrower and all subsequent owners of the Mortgaged Property, for the purposes of providing for the monitoring and enforcement of the limited dividend requirement, the affordable housing restrictions and the affirmative marketing requirements for the period set forth herein.

Please return to:
Judith S. Jacobson, Deputy Director & General Counsel
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

271-373 Commonwealth Rd Wayland

AGREEMENT

For good and valuable consideration, and with the intent of being legally bound, the parties hereto agree as follows:

1. Paragraphs A through E set forth in the Recitals section above are incorporated herein by reference as if fully re-stated.
2. Definitions.
 - (a) Affordable Housing Unit: An 80% AMI Unit.
 - (b) AMI: The median income for the area in which the Mortgaged Property is located, adjusted for household size, as determined by HUD.
 - (c) Annual Limited Dividend Financial Report: An annual report to be prepared by the Borrower on a form prescribed by the Lender pursuant to Lender's Limited Dividend Policy.
 - (d) Base Fee: The Base Fee adopted by the Lender and further defined in Section 14(c) of this Agreement in connection with determining the annual monitoring services fees for monitoring the Borrower's compliance with this Agreement during the Fee-Based Monitoring Period.
 - (e) Borrower's Equity: \$4,740,910.00, as the same may be adjusted from time to time, as determined by and in accordance with Lender's Limited Dividend Policy defined below. The parties acknowledge that Borrower's Equity is based on projected project costs and will be updated on or before the Loan Closing Date to reflect actual costs or as-complete appraised value, as Borrower shall select.
 - (f) CPI-U: The Consumer Price Index for Urban Consumers, further distinguished as the index for "Selected Areas, Northeast-Urban, Size A" published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by the Lender appropriately adjusted.
 - (g) Default. As defined in Section 15(a).
 - (h) Development Revenues: All rental income, receipts and other revenue derived from the operation of the Mortgaged Property other than revenues derived from any sales, financing, or other capital transaction.
 - (i) DHCD: The Massachusetts Department of Housing and Community Development or any successor agency overseeing the implementation of the Act.
 - (j) 80% AMI Unit: A unit that is rented to and occupied by, or is available for rent to and occupancy by, a Family with income at or below eighty percent (80%) of AMI (the "Occupancy Requirements").
 - (k) Event of Default. As defined in Section 15(a).
 - (l) Excess Equity: Annual net cash flow as calculated in accordance with the Annual Limited Dividend Report in excess of the MAALD (as defined below).
 - (m) Excess Equity Account: An interest-bearing account maintained by the Lender for the benefit of the Mortgaged Property during the Limited Dividend Term (as defined below) containing Excess Equity.
 - (n) Family : One or more individuals occupying a unit in accordance with the definition adopted by HUD for the so-called Section 8 program under the United States Housing Act of 1937, as amended, and the regulations promulgated thereunder (the "Section 8 Program"). Notwithstanding the foregoing, a household comprised of a full-time student or students shall not qualify as a Family except as permitted under the Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(i)(3)(D).

- (o) Fee-Based Monitoring Period: The period commencing on the earlier of (i) prepayment of the Loan or (ii) maturity of the Loan, and continuing until the expiration of the Term.
- (p) Fiscal Year: The fiscal year of the Borrower ending December 31.
- (q) HUD: The United States Department of Housing and Urban Development.
- (r) Lender's Limited Dividend Policy: The Lender's policy, so captioned, dated September 2013, which is fully incorporated herein by reference. Notwithstanding anything in this Agreement to the contrary, in the event of any conflict between the terms of this Agreement and the terms of the Limited Dividend Policy, the terms of this Agreement shall control.
- (s) Limited Dividend Distribution: The aggregate annual distributions permitted to be made to the Borrower from time to time as calculated pursuant to the Annual Limited Dividend Financial Report or as otherwise permitted pursuant to this Agreement.
- (t) Limited Dividend Organization: Any applicant which proposes to sponsor housing under the Act and is not a public agency or non-profit corporation, and is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to limit the dividend on the invested equity to no more than that allowed by the Lender's Limited Dividend Policy during the Limited Dividend Term. Lender acknowledges that Borrower qualifies as a Limited Dividend Organization by executing this Agreement and performing its obligations hereunder.
- (u) Limited Dividend Term: The period commencing on the date of this Agreement and ending on the date that shall be fifteen (15) years from the date that the Mortgaged Property begins to generate Development Revenues, as such date shall be certified in writing by Borrower to Lender. The parties agree to execute a supplemental instrument in recordable form setting forth the precise Limited Dividend Term once the same is established.
- (v) Loan Closing Date: The date the Lender funds the Loan to the Borrower. The parties acknowledge that the deadline for the closing of the Loan is May 1, 2017, unless extended by the Lender in writing.
- (w) Loan Documents: As defined in the loan agreement to be entered into between Borrower and Lender (including, without limitation, this Agreement, but only during the period that the Loan is outstanding). During the period that the Loan is outstanding, in the event of any conflict between the terms of the other Loan Documents and this Agreement, the terms of the other Loan Documents shall control. Notwithstanding the use of the terms "Borrower" and "Lender" in this Agreement, the parties acknowledge and agree that this Agreement may remain in effect during the Fee-Based Monitoring Period, and at that time Lender and Borrower shall no longer have the relationship of borrower and lender, but Lender shall act solely in its capacity as the enforcer of this Agreement pursuant to 760 CMR 56.05(13).
- (x) MAALD: The maximum allowable annual limited dividend as determined in accordance with Lender's Limited Dividend Policy.
- (y) Mortgage: The Mortgage and Security Agreement to be recorded with respect to the Mortgaged Property.
- (z) Mortgage Debt: All sums due or required to be paid pursuant to the Loan Documents.
- (aa) Municipality: The Town of Wayland, acting by and through its Zoning Board of Appeals.
- (bb) Occupancy Requirements. As defined in Section 6(b).
- (cc) Registry: The Middlesex South Registry of Deeds.
- (dd) Term: The period commencing on the date this Agreement is recorded at the Registry and ending on the later of (a) the date on which the Mortgage is discharged or (b) the date which is thirty (30) years from the Loan Closing Date, unless earlier terminated in accordance with Section 4 hereof, subject however, to the provisions hereof relative to the Limited Dividend Term.

3. Affordable Housing Restrictions. The Borrower intends, declares and covenants that, during the Term of this Agreement, this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Mortgaged Property (i) shall be and are covenants running with the Mortgaged Property, encumbering the Mortgaged Property for the Term of this Agreement, binding upon the Borrower, the Borrower's successors in title and all subsequent owners and operators of the Mortgaged Property; (ii) are not merely personal covenants of Borrower; and (iii) shall inure to the benefit of the Lender and its respective successors and assigns during the Term of this Agreement. The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the full Term hereof. Unless the covenants contained herein have been released by the Lender in writing, they shall survive and be effective for the Term of this Agreement regardless of whether any obligations owed to the Lender or to any assignees of the Lender in connection with the Loan have been fully paid and/or performed. The Borrower acknowledges that regardless of the duration of the Term of this Agreement, the Affordable Housing Units shall, pursuant to the Comprehensive Permit, remain affordable in "perpetuity", meaning for so long as the Housing Development is maintained and occupied on the Mortgaged Property as contemplated by the Comprehensive Permit. The Lender shall provide written notice to the Chief Executive Officer of the Municipality of the expiration of the Term of this Agreement at least six (6) months prior thereto.

4. Term and Effective Date.

(a) This Agreement shall become effective upon the recording of this Agreement with the Registry, and shall continue for the Term, notwithstanding any sale or refinance of the Mortgaged Property or payment or prepayment of the Loan and the obligations secured by the Mortgage. Notwithstanding the foregoing, the Lender may release and discharge this Agreement prior to the expiration of the Term if a regulatory agreement sufficient for the Mortgaged Property to comply with the requirements of the Act, its implementing regulations and DHCD guidance, as reasonably determined by Lender, is recorded in the Registry that, inter alia, provides for monitoring and enforcement of the requirements of the Comprehensive Permit and continued compliance by the Project with the Comprehensive Permit and the Act. Prior to any such release and discharge, notice of such regulatory agreement shall be sent to the Municipality, which may review any such regulatory agreement for compliance with the Act and the Comprehensive Permit. If, within twenty (20) days of receipt of any such regulatory agreement, the Municipality notifies Lender in writing that it believes such regulatory agreement does not comply with the Act or the Comprehensive Permit, Lender shall, in good faith, make all reasonable efforts to address the Municipality's concerns. Upon expiration of the Term of this Agreement, the rights and obligations of the Lender, its designee, successors and/or assigns hereunder with respect to the monitoring and enforcement of compliance with the terms hereof shall automatically terminate without the need of either party to execute or record any additional document. Notwithstanding anything to the contrary contained herein, any provision of this Agreement (the "Limited Dividend Provisions") relative to the limitation of the use or distribution of Development Revenues, and any reporting or enforcement rights with respect thereto (including without limitation, the provisions of Sections 11, 12 and 13(b) below) shall bind, and the benefits shall inure to, respectively, Borrower and Lender and their respective successors and assigns, only until the expiration of the Limited Dividend Term and the satisfaction of all obligations herein applicable during the Limited Dividend Term, upon which the Limited Dividend Provisions shall be of no further force and effect.

(b) In the event that the Loan does not close prior to the Loan Closing Date, as the same may be extended by Lender in writing, or in the event that Borrower at any time elects not to accept the Loan, but Borrower has constructed or still intends to construct the Housing Development, then (i) Borrower shall be

required to obtain a replacement subsidy as may be required under the Act as expeditiously as is reasonably practical; and (ii) Borrower shall execute and record a replacement regulatory agreement with the entity providing such replacement subsidy. Simultaneously with the recording of the replacement regulatory agreement, Borrower and Lender shall execute and record a release and termination of this Agreement. The Borrower's failure to comply with this Section 4(b) shall be a default of this Agreement; provided, however that Borrower shall not be in default so long as it is using commercially reasonable efforts to obtain a replacement subsidy.

(c) In the event that Borrower or its successor in title elects not to construct the Housing Development on the Mortgaged Property pursuant to the Comprehensive Permit, then Borrower or its successor may notify Lender in writing that it intends not to exercise its rights under the Comprehensive Permit, and within thirty (30) days after receipt of such written notice, Lender shall execute, deliver and record a termination of this Agreement.

5. Priority of Agreement. This Agreement is senior to the Mortgage and to any other mortgage encumbering the Mortgage Property. In the event of foreclosure of the Mortgage or deed in lieu of foreclosure, the Lender may, at its option, unilaterally discharge this Agreement or subordinate this Agreement to the Mortgage, and the Borrower agrees to execute any documents required by Lender to so discharge or subordinate this Agreement. Furthermore, the Borrower understands and agrees that, in the event of foreclosure of the Mortgage and the exercise by the Lender of the Power of Sale therein, the Mortgaged Property will be sold subject to the restrictions imposed hereby unless the Lender exercises its rights to discharge or subordinate this Agreement prior to such sale. Notwithstanding the foregoing, the Lender shall not take any actions to discharge or terminate this Agreement if such actions would cause the units in the Housing Development to not comply with the Act or the Comprehensive Permit issued thereunder. Borrower acknowledges that any discharge or termination of this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Borrower to comply with the provisions thereof.

6. Restrictions. This section specifies a Family's eligibility to occupy an Affordable Housing Unit and the maximum rent that such a Family may be charged.

(a) The Borrower shall ensure that all Affordable Housing Units shall be of comparable quality to the other units in the Mortgaged Property (provided that the interior finishes of the Affordable Housing Units may differ from the market-rate units), and shall be dispersed evenly throughout the Mortgaged Property as required by the Comprehensive Permit and as shown on the floor plans attached and incorporated into the Comprehensive Permit. The Affordable Housing Units shall include one (1) studio apartment, six (6) one-bedroom units, five (5) two-bedroom units, and one (1) three-bedroom unit. The Borrower shall use commercially reasonable efforts to ensure that the Affordable Housing Units are, at all times, fully occupied and shall require that tenants occupy the Affordable Housing Units as their domiciles and principal residences.

(b) Income Restrictions. At least thirteen (13) of the housing units in the Mortgaged Property shall be Affordable Housing Units meeting the Occupancy Requirements. Notwithstanding the foregoing, if at the time the Borrower commences marketing the Affordable Housing Units for rental, the rents for such Affordable Housing Units are not at least ten percent (10%) below market rents as determined by Lender, the maximum income limit for Families renting Affordable Housing Units shall be reduced with a corresponding decrease in the initial maximum rents so that such rents are at least ten percent (10%) below market. Such maximum income limit shall become the Occupancy Requirement and remain effective for the Term.

A Family's annual income will be the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family (other than children under the age of 18 years), including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income shall be determined in a manner consistent with either (i) the Section 8 Program or (ii) such other methodology approved by Lender; annual income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with the regulations promulgated under the Section 8 Program (or any successor regulations) or in any other manner approved by Lender.

As a condition to occupancy, each potential tenant of an Affordable Housing Unit shall be required to sign and deliver to the Borrower an income certification using a form adopted for such use by the Borrower with the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed.

If, after initial occupancy, the income of a tenant of an Affordable Housing Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Borrower shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) the Borrower rents the next available unit at the Mortgaged Property as an Affordable Housing Unit in conformance with the Occupancy Requirements, or otherwise demonstrates compliance with the Occupancy Requirements.

(c) Rent Restrictions. The annual rental expense for each Affordable Housing Unit, including the provision of heat, electricity, water and hot water, shall not exceed thirty percent (30%) of the applicable income limit for the Affordable Housing Unit, adjusted for household size, assuming that a unit which does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. However, the maximum annual rent for any Affordable Housing Unit shall not fall below the rent level set at the time that the Mortgaged Property is first occupied in accordance with this Agreement. Notwithstanding the above, if an Affordable Housing Unit has a subsidy commitment through the Section 8 Program, or any comparable rental assistance program, then the maximum rent shall be that permitted by the Section 8 Program, or the comparable program.

If, after initial occupancy, the income of a tenant in an Affordable Housing Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(d) Subsidized Housing Inventory. It is the intent of Borrower and Lender that all of the units in the Housing Development shall be included in the Subsidized Housing Inventory maintained by DHCD in accordance with current DHCD policies and DHCD regulations implementing the Act, but in no event shall Borrower be in breach or default under this Agreement due to any change in such policies or regulations which affect the counting of units.

7. Affirmative Marketing and Tenant Selection.

(a) The Borrower shall not discriminate on the basis of race, color, creed, religious creed, sex, age, handicap, marital status, sexual orientation, national origin or any other basis prohibited by law in the lease, use or occupancy of units at the Mortgaged Property, or in the employment or application for employment of persons for the operation and management of the Mortgaged Property. Prior to the Housing Development's construction loan closing and marketing any of the rental units at the Housing Development for rental the Borrower shall submit to Lender and Municipality, and obtain the Lender's and Municipality's

written approval of, an affirmative fair housing marketing and resident selection plan conforming to the requirements of the Act, its implementing regulations and applicable DHCD guidance, such approval not to be unreasonably withheld or delayed. Once approved, the affirmative fair housing marketing and resident selection plan shall be incorporated herein by reference as if fully set forth herein. Borrower shall notify Lender in writing at least thirty (30) days prior to commencing marketing of the rental units at the Housing Development. The Borrower's affirmative fair housing marketing and resident selection plan shall be implemented for the full Term of this Agreement and must at all times during the Term comply with all requirements of the Act and guidelines established by DHCD. The Borrower must, during the Term of this Agreement, demonstrate that it is qualified to implement the affirmative fair housing marketing and resident selection plan in accordance with applicable DHCD guidance. The affirmative fair housing marketing and resident selection plan shall be updated during the Term as required by applicable DHCD guidance. The Borrower shall advertise the availability of Affordable Housing Units in one or more newspapers that serve minority groups and other groups protected under fair housing laws and vacancies will be listed with fair housing organizations in such area. The Borrower shall select tenants for the Mortgaged Property in a fair and impartial manner, based on objective criteria made known to such tenants upon request. Written applications will be accepted and time stamped upon receipt, so that such applications may be considered in the order in which they were received; and a waiting list of applicants not accepted as tenants will also be established.

(b) Consistent with the foregoing Section 7(a), the Borrower, in renting the Affordable Housing Units, will be allowed to give the maximum preference allowed by law, for up to seventy percent (70%) of such units, to current residents of the Municipality, employees of the Municipality, employees of businesses located in the Municipality and households with children attending school in the Municipality (a "Local Preference"); provided that (i) Borrower shall only implement such a Local Preference in conformity with the fair housing requirements of HUD, DHCD, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose; and (ii) Municipality has provided to Borrower and Lender the information required to justify such a Local Preference in accordance with applicable laws, regulations and policies of Lender and DHCD.

8. Management and Maintenance of the Mortgaged Property. For so long as the Loan is outstanding, the Borrower shall manage and maintain the Mortgaged Property in the condition required by the applicable provisions of the Loan Documents pertaining to management, operation and condition of the Mortgaged Property. During the Fee-Based Monitoring Period, the Borrower shall maintain the Housing Development in good physical condition in accordance with DHCD's requirements, the Comprehensive Permit and standards and the requirements of any subsequent mortgage lender, ordinary wear and tear and casualty excepted. The Borrower covenants, agrees and warrants that the Mortgaged Property and the Affordable Housing Units at all times shall be suitable for occupancy and in compliance with all applicable laws including, without limitation, health, safety and building codes. The Borrower hereby grants to the Lender and its duly authorized representatives the right to enter the Mortgaged Property and the Affordable Housing Units at reasonable times and upon reasonable notice for the purpose of inspecting the Mortgaged Property and the Affordable Housing Units to determine compliance and with this Agreement and to enforce the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

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

(a) The Borrower (i) is a limited liability company duly organized under the laws of Massachusetts, and is qualified to transact business under the laws of the Commonwealth of Massachusetts; (ii) is and shall remain a sole purpose, single entity mortgagor; (iii) is and shall remain a Limited Dividend

Organization during the Limited Dividend Term; (iv) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (v) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Borrower (i) will not violate and has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate and has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Borrower is a party or by which it or the Mortgaged Property is bound, and (iii) will not result and has not resulted in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Borrower will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Mortgaged Property or an enforceable leasehold interest in the Mortgaged Property free and clear of any lien or encumbrance senior to this Agreement other than encumbrances approved by Lender in writing, such approval not to be unreasonably withheld, conditioned or delayed.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Borrower, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

10. Change in Composition of Borrower; Change in Use of Mortgaged Property; and Transfer of Mortgaged Property.

(a) During the period that the Loan is outstanding, the Borrower shall not, without the prior written consent of the Lender and modification to the Comprehensive Permit, change the type or number of residential units, or permit the use of the dwelling accommodations of the Mortgaged Property for any purpose except residential units and appurtenant uses, if any, permitted by the Comprehensive Permit (collectively, a "Use Change"). During the Fee-Based Monitoring Period, Borrower shall provide Lender with prompt notice of any amendment to the Comprehensive Permit effectuating a Use Change. So long as the Mortgaged Property is used for multi-family housing pursuant to the Comprehensive Permit, no Use Change shall result in the Mortgaged Property not meeting the requirements of the Act relative to the provision of Affordable Housing Units. In the case of casualty to all or a portion of the Mortgaged Property, Borrower shall not be required to restore any such casualty (except to the extent mandated by the Loan Documents), but if Borrower partially restores the Housing Development, the Borrower shall provide the appropriate percentage of Affordable Housing Units and unit mix based on the total number of units after such restoration. During the period that the Loan is outstanding, the Borrower shall not, without the prior written consent of the Lender, sell or otherwise transfer its interest or any part thereof in the Mortgaged Property, except to the extent permitted under any of the Loan Documents. In the event the Lender grants such consent when it is required, prior to any transfer of ownership of the Mortgaged Property or any portion thereof or interest therein, the Borrower agrees to secure from the transferee a written agreement stating that transferee will assume in full the Borrower's obligations and duties under this Agreement.

(b) During the Fee-Based Monitoring Period, the Borrower shall provide Lender with thirty (30) days prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager or agent of Borrower; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Borrower; or
- (iii) any sale, conveyance, transfer, ground lease, exchange, pledge, assignment or mortgage of the Housing Development, whether direct or indirect, that materially affects the Borrower's obligations under this Agreement.

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

(c) The Mortgaged Property shall not be converted to a condominium or cooperative form of ownership, without modification of the Comprehensive Permit by the Municipality and, while the Loan is outstanding, the prior written consent of the Lender. During the Fee-Based Monitoring Period, if Borrower wishes to convert the Mortgaged Property to a condominium or cooperative form of ownership, Lender consent shall not be required, provided that Borrower obtains a replacement subsidizing agency in connection with such conversion to the extent that the Lender is unwilling to continue as the subsidizing agency upon such conversion.

11. Use of Development Revenues.

(a) During the Limited Dividend Term, all Development Revenues shall, if not held by the Lender in one of its accounts, be deposited in an account held in the name of Borrower or a nominee for Borrower in a bank or banks, whose deposits are insured by the Federal Deposit Insurance Corporation or otherwise deposited in funds and accounts established hereunder (a "Development Bank Account"). The Lender shall at all times be advised of the names of the accounts and the names of the banks. Development Revenues shall be used only in accordance with the provisions of this Agreement. Any person receiving Development Revenues other than as permitted by this Agreement shall immediately deposit such funds in a Development Bank Account, or failing to do so in violation of this Agreement, shall hold such funds in trust for the Mortgaged Property.

(b) During the Limited Dividend Term, Borrower shall apply Development Revenues in the following order of priority: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage Debt; and (ii) payment of or adequate reserve for all reasonable and appropriate expenses of the Mortgaged Property as identified in Subsection (c), below. Any amounts remaining after application of Development Revenue as provided above shall be applied as provided in Section 12 below.

(c) With respect to the application of Development Revenues as described above, Borrower shall be allowed to use Development Revenues to pay for any and all taxes, impositions, services, supplies, or materials or other costs or liabilities incurred in the ownership, operation, management, maintenance and improvement of the Mortgaged Property, provided:

(i) Payment for any and all services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(ii) Reasonable and necessary expenses which may be payable pursuant to subsection 11(c)(i), above, shall be directly related to the operation, maintenance or management of the Mortgaged Property; and

(iii) Without the Lender's prior written consent, Borrower may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except as expressly permitted herein.

(d) In operating the Mortgaged Property during the Limited Dividend Term, except with regard to (i) Limited Dividend Distributions, or (ii) proceeds of any sale, financing or other capital transaction not subject to provisions of this Agreement relative to Limited Dividend Distributions, Borrower shall not use any Development Revenues to pay any liability, either direct or contingent, that is not related to the Mortgaged Property or the Housing Development.

(e) Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein.

12. Limited Dividend Distributions

(a) Timing and Conditions. Except as provided in subparagraph (h) below, during the Limited Dividend Term no distributions may be made to the Borrower other than Limited Dividend Distributions. Except as provided in subparagraphs (c), (e) and (h) below, Limited Dividend Distributions may be made: (i) only following completion of the Fiscal Year; (ii) only once all currently payable amounts as identified in Section 11 (c) above are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after submission by Borrower of the Annual Limited Dividend Financial Report pursuant to Paragraph 13(b) below and receipt by Borrower of written notice from Lender approving said report (such approval to be given, or any alleged deficiency identified, within thirty (30) days after Lender's receipt of a complete Annual Limited Dividend Report).

(b) Restrictions on Distributions. During the Limited Dividend Term no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Borrower's Equity. For so long as the Loan is outstanding, no Limited Dividend Distributions may be made when: (i) a default or an event of default has occurred and is continuing under any Loan Document; (ii) where there has been failure to comply with the Lender's notice of any reasonable requirement for proper maintenance of the Mortgaged Property; or (iii) there is outstanding against all or any part of the Mortgaged Property any lien or security interest other than a lien securing the Loan or a lien expressly permitted under the Loan Documents. During the Fee-Based Monitoring Period, no Limited Dividend Distributions may be made when: (i) a Default or an Event of Default has occurred and is continuing under this Agreement; or (ii) where there has been failure to comply with the Lender's notice of any reasonable requirement for proper maintenance of the Mortgaged Property.

(c) Monthly Limited Dividend Distributions. Notwithstanding anything to the contrary in this Agreement, Limited Dividend Distributions may be made to Borrower at any time during a Fiscal Year, and as often as monthly, based on an operating budget for the Housing Development prepared by Borrower and

approved by Lender. In the event Borrower's Annual Limited Dividend Financial Report demonstrates that the aggregate amount so distributed to Borrower during the applicable Fiscal Year exceeds ten percent (10%) of Borrower's Equity, then not later than ten (10) business days after receipt of Lender's notification to the Borrower, Borrower shall deposit into the Excess Equity Account a sum equal to the difference between the amount actually distributed and the maximum allowable Limited Dividend Distribution for the applicable Fiscal Year.

(d) Recalculation of Borrower's Equity. For the purposes hereof the amount of "Borrower's Equity" shall be as set forth in Section 2(e) of this Agreement, as the same may be adjusted from time to time, as determined by and in accordance with Lender's Limited Dividend Policy. The parties acknowledge that Borrower's Equity is based on projected project costs and will be updated on or before the Loan Closing Date to reflect actual costs or as-complete appraised value, as Borrower shall elect. Thereafter, Borrower's Equity may be adjusted from time to time pursuant to the Lender's Limited Dividend Policy; provided, however, that if the Lender's Limited Dividend Policy later is amended to allow for more frequent adjustments to Borrower's Equity, the Borrower shall be allowed to make adjustments to Borrower's Equity at such times as are allowed under the amended Limited Dividend Policy.

(e) Excess Equity. In the event that the amount available for Limited Dividend Distribution in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Borrower's Fiscal Year pursuant to Section 12(b) above, such excess shall be deposited and administered in accordance with Section 12(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a) through (c) above, and pursuant to the Lender's Limited Dividend Policy, be distributed by the Lender to the Borrower in amounts equal to the difference between the amount by which Limited Dividend Distributions actually made in any prior Fiscal Year were less than the amount permitted to be distributed under Section 12(b) hereof for such Fiscal Year, plus simple interest in accordance with the Lender's Limited Dividend Policy. In the event that annual net cash flow as determined in pursuant to the Annual Limited Dividend Financial Report is insufficient to allow the Borrower to take its MAALD, and there are funds in the Excess Equity Account, Lender shall distribute to Borrower an amount equal to the unpaid portion of the MAALD for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account.

(f) Excess Equity Account. Any Excess Equity shall be deposited in the Excess Equity Account. No distributions may be made to Borrower from the Excess Equity Account except those permitted pursuant to Section 12(e) hereof. For so long as the Loan is outstanding, upon the occurrence of an event of default under the Loan Documents, the Lender may apply any amounts in the Excess Equity Account to the payment of all or any portion of the Mortgage Debt. During the Fee-Based Monitoring Period, the Lender may, in its sole discretion, make amounts available from the Excess Equity Account to pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date. Upon Borrower's request, amounts may also be withdrawn from the Excess Equity Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage, or during the Fee-Based Monitoring Period, any mortgage on the Mortgaged Property; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Housing Development as reasonably determined by Borrower; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by Borrower to be sufficient to meet anticipated capital needs of the Housing Development which may be held by Lender or a lending institution reasonably acceptable to Lender and which reserves shall be used for capital expenditures for the Housing Development reasonably determined to be necessary by the Borrower; (iv) payment of operating expense loans made by the partners, managers or members of Borrower for expenses of the Housing Development, provided that Borrower shall have obtained prior written approval for such loans from the Lender (or, during the Fee-Based

Monitoring Period, from the holder of the mortgage loan encumbering the Mortgaged Property and if there is no mortgage, from Lender) and shall have supplied the applicable lender with such evidence as the applicable lender may reasonably request as to the application of the proceeds of such operating expense loans to the Housing Development; or (v) for any other purposes, subject to a determination by the Lender (or during the Fee-Based Monitoring Period, from the holder of the mortgage loan encumbering the Mortgaged Property and if there is no mortgage, from Lender) that the expenditure if necessary to address the Housing Development's physical or financial needs and that no other Housing Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Borrower shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld or delayed; it being agreed by Lender that if the Borrower can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for other comparable housing developments in the Commonwealth of Massachusetts, Lender shall approve such request. Further, in no event shall such review or approval be required by Lender to the extent such capital expenditures or reserves are mandated by the holder of any mortgage loan encumbering the Mortgaged Property during the Fee-Based Monitoring Period.

Further, Lender agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Equity Account, upon the written request of the Borrower that: (i) provide a direct and material benefit to tenants in the Affordable Housing Units; or (ii) reduce rentals to tenants in the Affordable Housing Units.

In the event that Lender's approval is requested pursuant to this Section 12(f) for expenditures out of the Excess Equity Account, and Lender fails to respond within thirty (30) days of Lender's receipt thereof, then Lender shall be deemed to have approved the request, and Lender shall have no further rights to object to, or to place conditions upon, the same.

In any event, cash available for distribution in any year in excess of twenty percent (20%) of Borrower's Equity, subject to payment of accumulated and unpaid Limited Dividend Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by Lender as provided herein, or as otherwise directed by Lender. Upon the expiration of the Limited Dividend Term, any balance remaining in the Excess Equity Account shall, if deemed necessary by Lender to address current or future physical needs at the Housing Development, be deposited in the Housing Development's replacement reserve account or, if not deemed necessary by the Lender for such purpose, distributed to the Municipality for the purpose of developing and/or preserving affordable housing.

(g) Lender's Interest in Excess Equity. All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Borrower under the Loan Documents and the Borrower hereby pledges and grants to Lender a continuing security interest in said funds. Furthermore, the Borrower recognizes and agrees that (i) possession of said funds by the Lender constitutes a bona fide pledge of said funds to the Lender for security purposes, (ii) to the extent required by applicable law, this Agreement, in combination, as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Borrower further acknowledges and agrees that, notwithstanding any nomenclature or title given to the Excess Equity Account by the bank or other financial institution at which the Excess Equity Account is held, or the fact that the Borrower's tax identification number is used with respect to the Excess Equity Account, the Lender, and not the Borrower, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by the Lender directing the disposition of funds in the Excess Equity Account, without further consent of the Borrower; and

the Lender, and not the Borrower, shall have the exclusive right to withdraw funds from the Excess Equity Account.

(h) Distributions from Certain Capital Events. Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Mortgaged Property shall not be deemed to be a Limited Dividend Distribution, and shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Borrower's Equity. In clarification of the preceding sentence, upon any refinancing, the amount of Borrower's Equity shall remain the same, notwithstanding the fact that the amount of the mortgage loan secured by the Mortgaged Property may change. Per Lender's Limited Dividend Policy, a re-evaluation of Borrower's Equity shall occur no more frequently than once every five (5) years, and only pursuant to the methodology set forth in said policy.

13. Information.

(a) The Borrower covenants and agrees to secure and maintain on file for inspection and copying by the Lender such information, reports and certifications as the Lender may reasonably require in writing in order to insure that the Occupancy Requirements contained herein are being complied with. The Borrower further covenants and agrees to submit to the Lender annually, or more frequently if required in writing by the Lender, reports detailing such facts as the Lender reasonably determines are sufficient to establish compliance with the restrictions contained hereunder, copies of leases for all Affordable Housing Units, and a certification by the Borrower that, to the best of its knowledge, the restrictions contained herein are being complied with. The Borrower further covenants and agrees promptly to notify the Lender if the Borrower discovers noncompliance with any restrictions hereunder.

(b) In addition to the financial information required to be furnished by the Borrower to the Lender pursuant to the Loan Documents and Section 13(a) above, the Borrower shall furnish to the Lender, during the Limited Dividend Term, within ninety (90) days of the end of its Fiscal Year, an audited Annual Limited Dividend Financial Report. The Lender's agreement to waive or modify the requirement of an audited Annual Limited Dividend Financial Report for a given year shall not be deemed to constitute a waiver or modification of the requirement of an audited Annual Limited Dividend Financial Report in any subsequent year. Should the Borrower fail in any given year to comply with its obligations under this subparagraph, the Borrower acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of any Limited Dividend Distributions to which it might otherwise be entitled for such year pursuant to Sections 12(c) and/or 12(e) above.

(c) Annually, during the Term, no later than September 30, the Borrower shall submit to DHCD, via the web-based annual reporting system located at <https://hedhsgdevannualreport.azurewebsites.net/>, or as otherwise instructed, an annual report containing the following in a form approved by DHCD and containing such supporting documentation as DHCD shall require:

- (i) Data required by DHCD regulations at 760 CMR 61.00 promulgated pursuant to Chapter 334 of the Acts of 2006 (the "Data Collection Act") and all applicable DHCD directives, guidelines and forms as may be amended from time to time and such data fields as are contained in the web-based system. The Borrower shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms.
- (ii) The Borrower shall submit such additional reports to DHCD as deemed necessary to ensure compliance with the Data Collection Act and the regulations promulgated thereunder.

- (iii) A certification by the Borrower or the Borrower's managing agent that the information submitted pursuant to this Subparagraph (c) is true and accurate.

The Lender and the Borrower shall treat as confidential any of the foregoing information relating to a specific tenant or Affordable Housing Unit in compliance with all applicable state and federal statutes and regulations, including, without limitation, M.G.L c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but the Lender and Borrower may release general statistical and other information about the Mortgaged Property, so long as the privacy rights and interests of the individual tenants are protected). The Lender and the Borrower shall not use any of the information obtained and/or furnished pursuant to Subparagraph (c) for any purpose described in the federal Fair Credit Reporting Act (15 U.S.C. §1681a(d)(1)) and Section 603(d)(1) of Public Law No. 91-508 or in any manner that would cause a lender or borrower to be considered a "consumer reporting agency" under the federal Fair Credit Reporting Act (15 U.S.C. §1681a(f) and 603(f) of Public Law No. 91-508).

14. Monitoring.

(a) For the period commencing on the date this Agreement is recorded, and continuing until the earlier of (i) the maturity of the Loan or (ii) repayment of the Loan, the Lender shall monitor the Borrower's compliance with this Agreement at no cost to the Borrower.

(b) For the duration of the Fee-Based Monitoring Period, the Lender, its designee or assignee shall continue to monitor the Borrower's compliance with all or a portion of the ongoing requirements of this Agreement. As partial compensation for its services in monitoring compliance with this Agreement, on or about commencement of the Fee-Based Monitoring Period, the Lender shall invoice the Borrower for the annual monitoring services fee (calculated in accordance with subparagraphs (c) and (d) below) due to be paid by the Borrower to the Lender for the portion of the calendar year remaining after commencement of the Fee-Based Monitoring Period. Thereafter, for each calendar year of the Fee-Based Monitoring Period, the Lender shall, after publication of the CPI-U, invoice the Borrower for the annual monitoring services fee due for such calendar year. The Borrower shall pay such invoice in full within thirty (30) days of the date of the invoice. The Borrower's failure or refusal to pay the monitoring fee to the Lender in a timely manner shall constitute an Event of Default hereunder.

(c) The base monitoring fee is \$150.00 per Affordable Housing Unit per year (the "Base Fee"). The annual invoice shall state the monitoring services fee calculated by multiplying the most recent Adjusted Base Fee, defined below, by the total number of Affordable Housing Units. The Base Fee shall be adjusted annually (commencing with the year following the Loan Closing Date), following publication of the CPI-U for the immediately preceding calendar year by the Bureau of Labor Statistics yielding, for each year, an "Adjusted Base Fee". The Lender shall furnish the Borrower annually with a Notice of Adjusted Base Fee (designated, by way of example: "Adjusted Base Fee: Year 2011"), beginning in the year following the Loan Closing Date. The initial adjustment to the Base Fee shall be calculated by multiplying the Base Fee by the lesser of (a) 110% or (b) $(1 + \text{CPI-U})$ for the immediately preceding calendar year. Adjustments to the Adjusted Base Fee for each subsequent year shall be made by multiplying the most recent Adjusted Base Fee (as set forth in the Lender's most recent Notice of Adjusted Base Fee) by the lesser of (a) 110% or (b) $(1 + \text{CPI-U})$ for the immediately preceding calendar year.

(d) If the Bureau of Labor Statistics should cease to publish such the CPI-U in its present form and calculated on the present basis, a comparable price index or a price index reflecting changes in the cost of living determined in a similar manner shall be chosen at the sole discretion of the Lender, with notice to

the Borrower. The level of the CPI-U or comparable price index as of any day relevant to the application of any part of this Section dealing with an "adjustment" shall be that published by the Bureau of Labor Statistics for the immediately preceding calendar year.

(e) The Borrower acknowledges that in performing its monitoring services hereunder the Lender is not acting as agent or fiduciary for the Municipality, and any waiver by the Lender of any requirement hereunder shall not be binding upon the Municipality and shall not be deemed a waiver of any obligation of the Borrower under the Comprehensive Permit.

(f) The Lender may, from time to time, and after notice to the Municipality, engage the service of a qualified third party monitoring agent for purposes of monitoring the Borrower's performance under this Agreement. If, within twenty (20) days of receipt of any such notice, the Municipality notifies Lender in writing that it believes that such proposed monitoring agent is not properly qualified, Lender shall, in good faith, make all reasonable efforts to address the Municipality's concerns. In the event a third party monitoring agent is engaged, such monitoring agent shall have authority to act in all matters relating to the Lender's obligations under this Agreement and shall apply and adhere to the standards and policies of DHCD relative to the administrative responsibilities of subsidizing agencies under the Act. Such monitoring agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

15. Enforcement.

(a) If the Lender provides written notice in accordance with Section 19 hereof of any default, violation or breach of any provision of this Agreement by the Borrower ("Default") and such Default is not cured to the satisfaction of the Lender within thirty (30) days after the giving of notice to the Borrower or such a longer period of time as is necessary to cure such Default so long as Borrower is diligently and continuously pursuing a cure ("Event of Default"), the Lender may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or for such other relief as may be appropriate, since the injury to the Lender arising from the default under any of the terms of this Agreement would be irreparable and the amount of damages cannot be ascertained and/or compensated by money alone; and the Lender may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement; or Lender may terminate this Agreement.

(b) In the event the Lender brings an action to enforce this Agreement and prevails in any such action, the Borrower shall pay all fees and expenses, including reasonable attorneys' fees and costs of the Lender (including court costs and the time of any in-house counsel of Lender charged at the same rate as comparable outside attorneys).

(c) The Borrower hereby grants to the Lender or its designee or agent the right to enter upon the Mortgaged Property at reasonable times and upon reasonable notice for the purpose of monitoring and enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

(d) No act or omission by the Lender other than a writing signed by it waiving a breach by the Borrower shall constitute a waiver thereof.

16. Successors and Assigns. This Agreement shall bind and the benefits shall inure to the Borrower and the Lender, and their respective successors and assigns for the Term of this Agreement. Upon a sale or other conveyance of the Mortgaged Property, the new owner shall assume and perform all of the

duties and obligations of the Borrower pursuant to this Agreement arising or accruing on or after the date of such sale or other conveyance. The prior owner shall have no obligation or liability under this Agreement by reason of any action, inaction or default which occurs on or after the date of the sale or other conveyance. Any successor owner must demonstrate that it is qualified to implement the Housing Development's affirmative fair housing marketing and resident selection plan in accordance with applicable DHCD guidance.

17. Amendment and Modification. This Agreement may not be modified or amended except in a writing signed by the Lender and the Borrower or by their respective successors and assigns. Notice of such amendment shall be sent to the Municipality, which may review the form for compliance with the Act and the Comprehensive Permit. If, within twenty (20) days of receipt of any such amendment, the Municipality notifies Lender in writing that it believes such amendment does not comply with the Act or the Comprehensive Permit, Lender shall, in good faith, make all reasonable efforts to address the Municipality's concerns.

18. Limitation on Liability and Indemnification.

(a) The Lender shall not be liable for any action taken or omitted under this Agreement so long as its actions do not constitute gross negligence or willful misconduct. Subject to the foregoing, the Borrower indemnifies and holds the Lender harmless of, from and against all damages, costs, claims and liabilities, including reasonable attorneys' fees and costs, asserted against the Lender arising from, relating to or in connection with this Agreement and/or the Mortgaged Property.

(b) Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by Borrower hereunder, the Lender will look solely to the Mortgaged Property for satisfaction of any judgment against Borrower and no officer, partner, manager, member, agent or employee of Borrower shall have any personal liability hereunder or for the performance of any obligation of Borrower hereunder. Nothing in this paragraph shall affect or derogate from Lender's rights against any guarantor or any other party who may have liability under the Loan Documents while the Loan is outstanding.

19. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be hand-delivered by a reputable delivery service or sent by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth on the first page of this Agreement or to such other place as the Lender or the Borrower from time to time designate in writing in accordance with this provision. A notice shall be deemed received on the date of delivery.

20. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or part hereof shall be determined to be invalid, illegal or unenforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision or part thereof has not been contained herein.

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

22. Recording. Borrower, at its cost and expense, shall cause this Agreement to be duly recorded or filed and rerecorded or refiled at the Registry and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by

law in order to establish, preserve and protect the ability of the Lender to enforce this Agreement. Borrower shall provide Lender with satisfactory evidence that there are no mortgages or other encumbrances senior to this Agreement.

23. Applicability. Notwithstanding anything to the contrary in this Agreement, Lender and Borrower agree that this Agreement shall be given effect and shall apply to the Mortgaged Property only if and to the extent that the Borrower or Borrower's successor in title constructs the Housing Development on the Mortgaged Property. Nothing in this Agreement shall require the construction of the Housing Development nor preclude the Borrower from using the Mortgaged Property for any other purpose.

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

BORROWER:
373 COMMONWEALTH RESIDENCE LLC

By: 

Name: RONALD SIMONS

Title: MANAGER

Hereunto Duly Authorized

LENDER:

MASSACHUSETTS HOUSING
PARTNERSHIP FUND BOARD

By: 

Name: DAVID HANIFAN

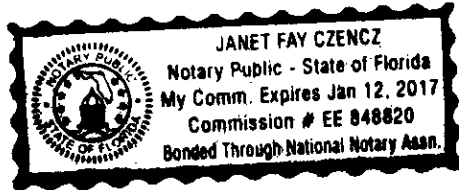
Title: Senior Loan Officer

Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Palm Beach, ss.State of Florida

On this 10 day of April, 2015, before me the undersigned notary public, personally appeared the above-named Ronald Simons, Manager of 373 Commonwealth Residence LLC, proved to me by satisfactory evidence of identification, consisting of: [circle one] (a driver's license) (a passport) (my personal knowledge) (other: _____), 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.



Janet Czencz
Notary Public:
My Commission Expires: 1/12/2017
SEAL

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 7th day of April, 2015, before me the undersigned notary public, personally appeared the above-named David Hanifen, Senior Loan Officer of the Massachusetts Housing Partnership Fund Board, proved to me by satisfactory evidence of identification, consisting of: [circle one] (a driver's license) (a passport) (my personal knowledge) (other: _____), 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.

Patricia M. Josselyn
Notary Public:
My Commission Expires: July 29, 2016
SEAL

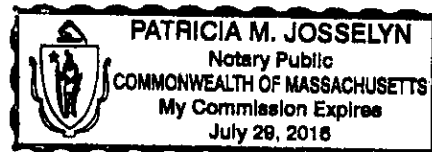


EXHIBIT A**(Mortgaged Property Description)**

Three (3) certain parcels of land with the buildings thereon, situated in Wayland, Middlesex County, Massachusetts, bounded and described as follows:

PARCEL #1

A certain parcel of land situated in said Wayland and designated as "Area = 1 Acre -4- 35,748 + I – S.F." on a plan entitled "Plan of Land in Wayland, Mass. To Be Purchased By Louis L. Nathanson, February 5, 1960, Schofield Brothers, Prof. Civil Engrs." which plan is recorded with Middlesex South District Registry of Deeds in Book 9787, Page 381, and more particularly bounded and described as follows:

NORTHERLY – by Commonwealth Road, 190 feet;

EASTERLY – by land marked "JOHN S. & MARY HOVEN" as shown on said plan by two courses measuring respectively 202.17 feet and 290.10 feet, a portion of which is Parcel 3 herein described;

SOUTHERLY – by land marked "ROGER L. & PATRICIA T. HEWSON" as shown on said plan, 189.66 feet;

WESTERLY – by land marked "GEORGE F. JONES ET OX" 187.75 feet (being Parcel 2 herein described);

NORTHERLY – by said land of Jones as shown on said plan, 42 feet;

WESTERLY -- by land of said Jones as shown on said plan, 199.93 feet.

PARCEL #2

A certain parcel of land in Wayland, Middlesex County, Massachusetts being shown as Lot B on a "Plan of Land in Wayland, Mass., July 12, 1972, Schofield Brothers, Inc., Registered Land Surveyors, Property of George F. Jones et ux" which plan is recorded with said Deeds in Book 12280, Page 361 and more particularly bounded and described as follows:

NORTHERLY – by Lot A as shown on said plan, 45 feet; WESTERLY – by said Lot A, 45 feet;

NORTHERLY – again by said Lot A, 87.10 feet;

WESTERLY – by land of Lazerow, as shown on said plan, 63.69 feet;

SOUTHERLY – by land of Kelley as shown on said plan, 171.71 feet;

EASTERLY – by land marked “Kathryn Barton Nursing Home, Inc.” (being Parcel 1 herein described), 187.75 feet.

Containing according to said plan, 16,698 square feet, more or less.

PARCEL 3

A certain parcel of land situated in Wayland, Middlesex County, Massachusetts, situated off the southerly side of Commonwealth Road, containing 10,153 square feet, and being shown as Lot 1A on plan entitled “Plot Plan of Land in Wayland, Mass.” dated November 22, 1967, by William F. Drake & Associates, which plan is recorded with said Deeds in Book 11454, Page 219, said lot 1A being bounded and more particularly described according to said plan as follows:

WESTERLY – by lot marked “Kathryn Barton Nursing Home” as shown on said plan (being Parcel 1 herein described), 290.10 feet;

EASTERLY – by land formerly of Hoven, 298.42 feet; and SOUTHERLY – by land now or formerly of Hoven, 70 feet;

Being the same premises conveyed to Ruth E. Houde and Lawrence Houde, Trustees of K.B. Nominee Trust under a Declaration of Trust dated January 12, 1983 by deed recorded with Middlesex South Registry of Deeds at Book 14858, Page 372.

*For borrower's title to all parcels see
deed in Bk 64643 p. 561*