

# **How to Drive a Closing**

## **Workshop Materials**

**May 9, 2017**

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Massachusetts Housing Partnership



# HOW TO DRIVE A CLOSING

## May 9, 2017

### PRESENTATIONS, HANDOUTS & DOCUMENTS

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### Handouts

One Stop Checklist.....	5
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Agenda.....	Front Pocket
Exercises.....	Front Pocket



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### What we will cover today by content

- This morning: Overview, what's happening & when, Typical pitfalls
- Post-Lunch: Key legal documents with Teresa Santalucia
- Afternoon: Tools of the Trade & Templates

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### Introductions

- Your name & organization
- Your experience in closings
- What you hope to learn
- Closing greatest fear

What happened to:  
"We're so happy to  
partner with you on  
this?"

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## Major themes



- Closings are Serious, Binding both Project and Organization
  - *sometimes as long as in perpetuity, which means forever...*
- Separate Business Issues & Legal Issues
- Always Be Closing
- Be the Cheese

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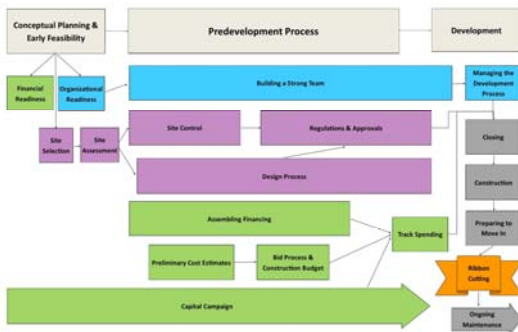
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There are multiple types of closing. Focus here: construction & equity, some others are:

### Acquisition of a property

- Typically involves previous owner & acquisition sources (CEDAC, LISC, local bank)
- After short/long due diligence

### Permanent/Term mortgage

- Usually at true end of development period and into operations (typical terms are three months breakeven, achieving DSC)
- Terms of the loan are set at construction closing to assure "take-out"

### Refinancing

- This could be a simple refinancing of one loan, to reduce debt by taking advantage of lower interest rates
- It also can be a piece of a larger redevelopment process

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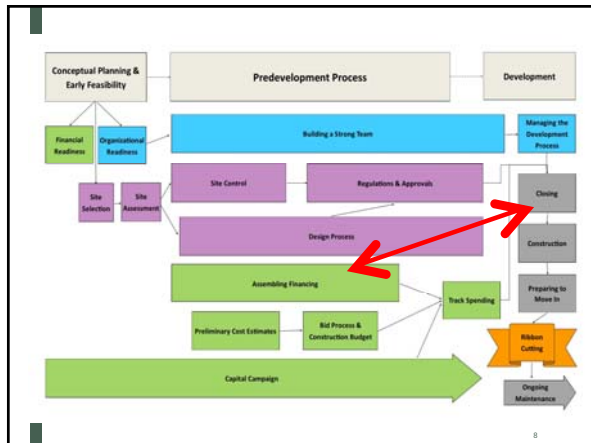
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## Today's focus: Construction Loan Closing

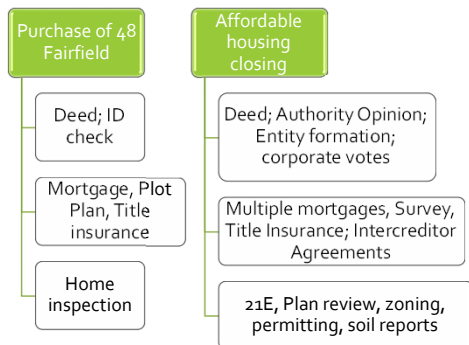
- For affordable projects, the most extensive closing
- Involves multiple parties, although some may take a back seat
- Everyone's kicking the tires on a car you may have been building for 2-3 years

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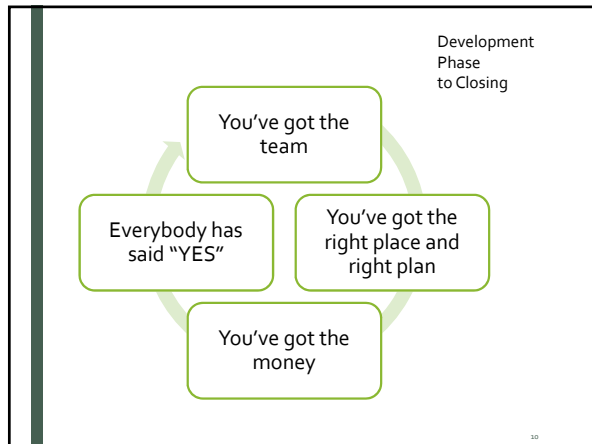


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It's kinda like buying your home, only much much more so...



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**"This place is OK"**



- You have (or will receive) clear title
- The current owner can sell to you
- There are no environmental conditions or you've mitigated risks or will eliminate them
- No one is encroaching on you
- You have all the access, easements, parking you need
- Property appraises as needed

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**Do you know where your parcel's been? A few words on title...**

- You may do some early due-diligence on title...anything even slightly dicey deserves an attorney's attention before acquisition.
- Title search or "run-down" tells you what restrictions, mortgages, easements, variances, etc. already exist with your parcel or building
- Survey shows conditions on the ground as well as places easements on the site

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## Feeling Entitled??

- Title Insurance Policy backs up your ownership by standing behind you and your lenders for any "defects in title"
  - *The loan policy "Exceptions from Coverage" lists issues, some of which the policy will affirmatively insure around and potentially some not. You may need to clear up latter for closing.*

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## "Your plan is OK"

- You have construction documents & inspector okays them
- You have a signed construction contract, subject to all the conditions your funders want and within budget
- Your plans meet all 3<sup>rd</sup> party requirements around building code, accessibility, etc.
- You are dealing with any environmental conditions to the satisfaction of your funders
- Your plans for marketing, tenant selection & lease-up are reasonable, meet all requirements of your funding, fit your market

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## "Your team is OK"

- Your team has capacity
- Your team is carrying the necessary insurance
- Your organization is carrying the necessary insurance
- Your organization's finances are adequate
- Your organization/team checks out for things like HUD previous participation



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HORRIBLE	OMG, I'M SO GLAD I HAVE...
In the middle of construction, a fire starts at a townhouse, destroying 50% of what's been constructed.	<ul style="list-style-type: none"> <li>Architect's Errors &amp; Omissions/Professional Liability Insurance</li> <li>Workers comp</li> <li>Builder's Risk</li> <li>Contractor's General Liability Insurance</li> <li>Owner General Liability</li> <li>Contractors General Liability Insurance</li> </ul>
The architect comes to the site and falls into the unfenced elevator pit, injuring her spine and missing several weeks of work.	
During an occupied rehab, a child injures herself in a service elevator left unlocked.	
A painter falls from an improperly constructed scaffold.	
Two months after lease-up, an awning collapses. No one is hurt but the city sidewalk and part of the building façade are destroyed.	

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**"You've got the money"**



- You have final, fully-approved commitments from all funding sources
- There are no conditions on the funding you haven't already or can't soon meet
- The sources match your needs for costs as well as timing(acquisition, predevelopment, construction, lease-up, fees, etc.)
- Your sources can agree on their order of priority, conditions and timing for release of their money



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**Everybody say "YES"**



- You have zoning approvals
- You have a building permit
- You have easements and licenses for temporary construction; parking agreements
- You have done all your other permitting
- You have approvals that go with your funding sources
  - Subsidy Layering
  - Mass Historic PNF
  - MEPA, NEPA, Local historic

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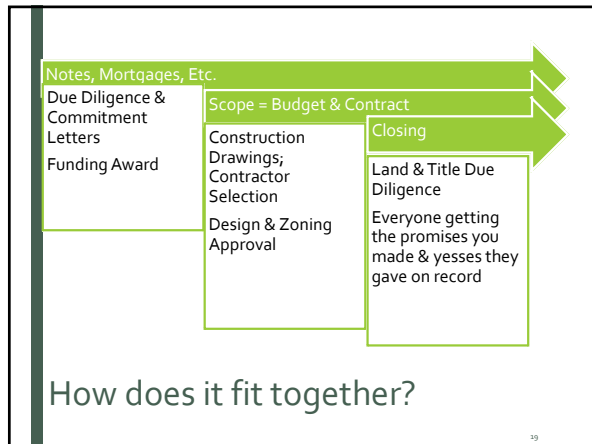
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- Check zoning and conditions against DD plans
  - Start Subordinate lender approval process
  - Architect contract
  - Produce list of additional approvals or issues caused by funding source commitments, issues surfaced by survey & title
  - Deal with relocation
  - Gear up lawyer; Work through any unusual structuring issues
  - Line up the dough to get to the finish line
- ABC...3 to 6 months ahead

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- Form entities, line up minority partners
  - Long lead-time approvals submitted (HUD enviro, subsidy layering)
  - Finalize TSP, Affirmative Fair Marketing Plan
  - Work out Lead Compliance Letters (rehab)
  - Start AHAP process (if there is Section 8)
- ABC...3 months ahead

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- Request pay-off letter from acquisition lenders
- First requisition set-up
- Request entity names for insurance, finalize requirements
- Final budget
- Get DHCD business meeting; Kick off calls
- Finalize GMP; finalize construction contract
- Apply for building permit

Always Be Closing...2 months ahead

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- Frequent conference calls
- Bonds, insurance binders from all parties (sponsors, owner entity, contractor, architect)
- Escrow agreement; settlement statement drafts
- Line up people for signatures & votes

Always Be Closing...one month to go

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## Role of Intelligrants

Getting financing summary in and right triggers business meeting

Updating the One Stop happens on Intelligrants, also must be shared with whomever needs to know updates (attorneys)

You have to figure out a way to keep Intelligrants and non-Intelligrants universes in sync

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### Common known knowns

- Subsidy Layering – If you're combining federal funds, you just have to do it, so go do it already
- HUD Environmental Review – ditto, with any "choice limiting activity"
- Mass Historic PNF sign-off
- Insurance requirements and Certifications
- Preservation Deals Only:
  - 40T notices & approval of 501(c)(3) relinquishing all assets

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*Start early on getting permission of existing financing sources, subordination agreements, payoff amounts and conditions.*

- *Especially with older financing, even finding who holds the mortgage and the person to give the approval may be hard.*

Dealing with some common willful unknown knowns

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*Conditions on approvals (especially zoning or historic) –*

- Re-read your approvals as you start to think about closing. Has anything changed that will need staff or board approval? Are there any conditions you have not met?

*Tenant relocation issues –*

- Plan ahead; budget with contingency
- Seek expertise

Dealing with some common unknown knowns

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- *Lead Paint Compliance Letters for rehabs*
- *Take out agreement for permanent financing*
- *Matching schedule with needed votes and signatures at your organization*
- *Finding a minority partner and getting its votes*

Dealing with some common unknown knowns

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## Tools of the Trade

- Project Schedule, Distribution list
- Project Summary
- The Closing Checklist

**MR. PERFECT**



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## Project Summaries

- Included in materials and an Excel and Word file can be emailed to you
- While not perfect, these cover the major areas
- For each, the DHCD Financing Summary may be substituted/inserted on some pages
  - *Particularly the summary of affordability restrictions is worth re-using*

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## Tools of the Trade

### Document Management Sites

- A god-send & huge improvement from the olden days, recommendations?
- Manage it yourself? & do the invites and updates vs. outside your organization
- Consider posting FAQs or explanations of items that may confuse readers (and left unresolved, just lead to endless and repetitive questions by email)

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## Connect the Dots

- Read all commitment letters and deal with any required submissions or follow-up; request needed extensions, otherwise explain how handling
- Description of findings in environmental reports, progression of reports and how it ties out to abatement plan and construction budget
- Narrative on sensitive topics like relocation, assumptions in operating budgets, tenant selection, etc.

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### *Look Smart! Closing Kick Off*

- Make sure all are invited to your document management site
- Introductions of teams & roles
- Distribute a project summary and schedule
- Distribute contact list (or at least everyone's email)
- Have a draft closing agenda and check off everything that's already distributed or progress on it

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Send (or even better POST) basic documents:

- *One Stop & Investor Projections*
- *Commitment Letters*
- *Survey & any title work*
- *Project summaries or at least list of parties*
- *List of any issues you know you have*
- *Affordability restrictions chart*

Gearing Up Your Attorney

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### Zen of The Closing Conference Call

- Probably costing you \$1000 per hour, minimum, make it worth the \$\$
- Send an agenda & updated checklist ahead of the call
- Use the time for topics that need everyone's attention & coordination; cancel if nothing new & send an update
- Otherwise, smaller groups used for problem solving & resolving may be outside the call
- NOT the place for discussing business issues or due-diligence questions

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### Some resources...

Steve Paul's annual LIHTC summary:

FAQ: Different types of land surveys - <http://www.ottedwyer.com/id2.html>

Novogradac website – Lots of information on typical affordable housing financing sources: [www.novogradac.com](http://www.novogradac.com)

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## Driving a Closing – Out of the Galaxy

### Organizational Structure and Deal Considerations

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 May 16, 2017

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**AGENDA**

1. Legal Structures
2. Deal Structure
3. Tools of the Trade
4. Transaction Components
5. Deal Triggers

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**LEGAL STRUCTURES**

<p><b>Limited Partnership</b></p> <ul style="list-style-type: none"> <li>▪ Partners (at least two)</li> <li>▪ General Partner</li> <li>▪ Limited/Special Partner</li> <li>▪ Initial Limited Partnership Agreement</li> <li>▪ Amended and Restated Limited Partnership Agreement</li> </ul>	<p><b>Limited Liability Company</b></p> <ul style="list-style-type: none"> <li>• Members (can have one – sole member)</li> <li>• Managing Member</li> <li>• Investor/Special Member</li> <li>• Initial Operating Agreement</li> <li>• Amended and Restated Operating Agreement</li> </ul>
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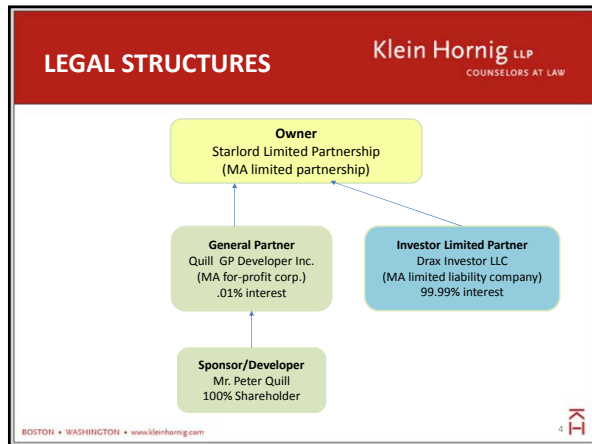
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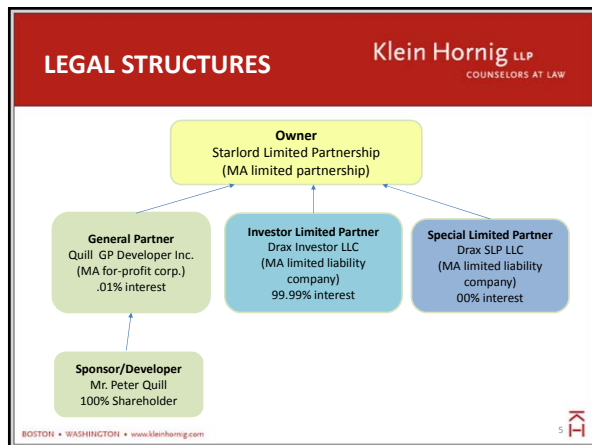
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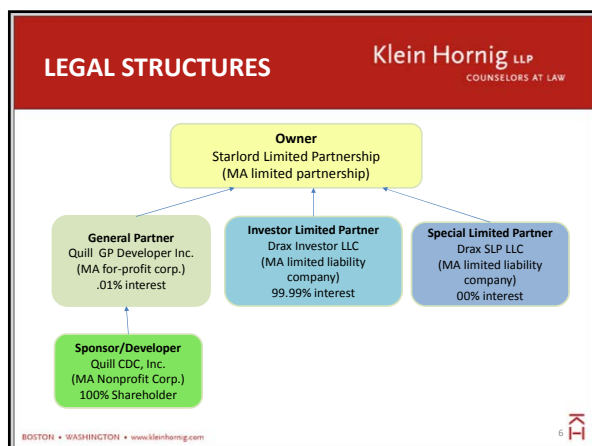
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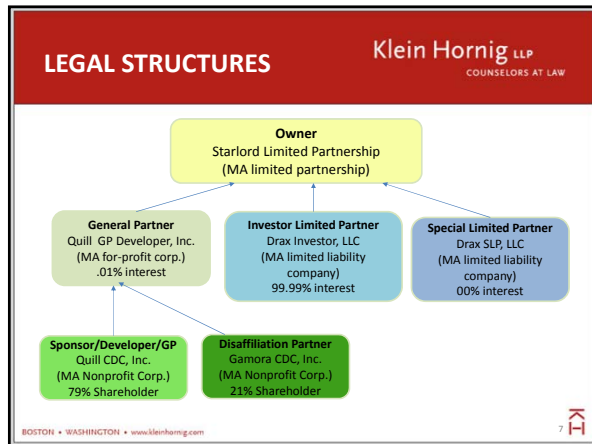
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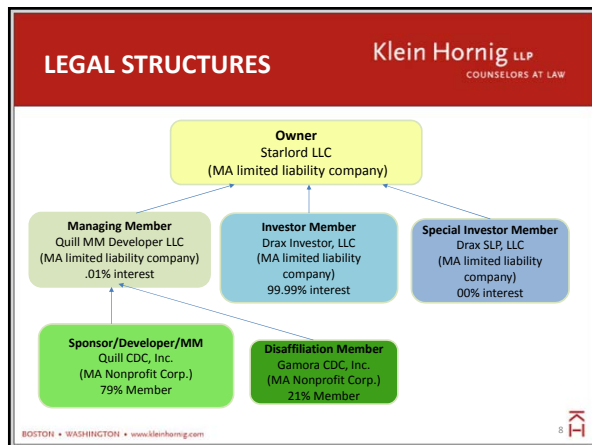
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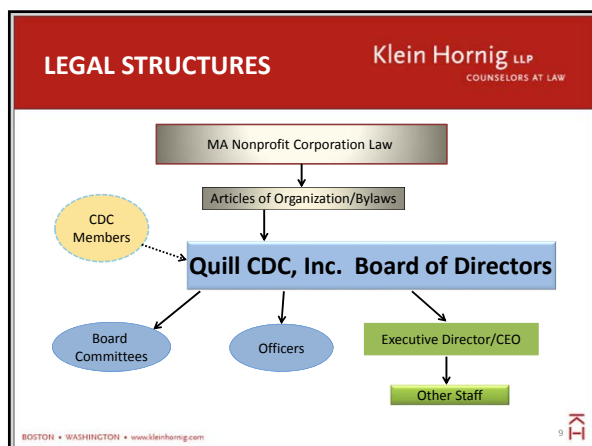
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**"A" DEAL STRUCTURE**
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**Equity**  
*Substantial tax consequences for non-compliance*



I Will Bathe The Starways In Your Blood...

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**"A" DEAL STRUCTURE**
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**Construction Lender**

- May be private bank or public agency
- First mortgage lien
- Short term – 18-24 months
- Construction loan may convert to permanent loan or may require repayment from proceeds of perm financing or capital contributions.

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**MassDocs/Subordinate Lenders**

- May include DHCD, MHP, MassHousing, CEDAC
- Separate Promissory Notes
- Shared Mortgage and Loan Agreement
- Subordinate debt to first Const/Perm Loan
- Intercreditor Agreement sets out rules
- Affordable Housing Restriction – income restrictions

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**Seller/Ground Lessor**

- May sell entire property
- May lease land and sell buildings – lease terms much convey the “benefits and burdens of ownership” (term of 99 years)
- Seller Financing – Seller Loan (Subordinate)
- Look for related party debt issues (79/21 disaffiliation)

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**Sponsor/Guarantor**

- Typically in Ownership structure as GP or MM
- May be property manager/developer
- Enters into Development Services Agreement
- Right of First Refusal – if 501(c)(3)
- Guaranties:
  - Construction completion
  - Tax credit recapture
  - Operating deficit guaranty

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**TOOLS OF THE TRADE**
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- 1. Project Summary**
  - General background/history
  - Ownership structure
  - Financing – investor/lenders/amounts
  - Property information
  - Living document
- 2. Contact list**
- 3. Closing Index – See Sample A**

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### 4. Conference Calls

- Use *ACTIVE* Agenda
- Expensive - make worth your money


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**TRANSACTION COMPONENTS**
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### Acquisition

- Background title run – who legally owns?
- Transfer of fee interest or ground lease.
- Purchase Price/Appraisal
- Assumption of pre-existing loans
- Site Control:
  - Purchase and Sale Agreement (P&S)
  - Option to Purchase
  - Careful of NEPA “choice limiting activities” issue

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### Construction/Design

- Construction Contract – AIA Document A101 and A201
- Architect’s Agreement (B101)
- Amendment to Construction Contract/Architect Agreement
- Scope of Work
- Prevailing Wage – Federal Davis Bacon wage requirements and State prevailing wage requirements
- Note who is signing contracts and whether they need to be assigned.
- Exhibits: Construction Schedule/List of Subcontractor/Schedule of Values

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**Equity**

- Investor vs Syndicator
- Letter of Intent (LOI)
  - Pricing per dollar of LIHTC
  - Pay-in schedule for Capital Contributions
  - Delivery of credit
  - Upward/Downward Adjusters
  - Cash Flow Distribution
  - Operating projections – deferred fee, operating reserve, replacement reserve
  - Investor annual management fee/Company Management Fee
  - Operating deficit guarantee/ Sponsor Guarantees
  - Capital Transaction Distributions (refinancing or sale)

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**Construction Financing**

- Is it construction / perm financing?
- Letter of Intent (LOI)
- Construction period usually 18-24 months
- Tax-Exempt Bonds/FHA Risk Sharing
- Loan Documents: Note, Mortgage, Loan Agreement
- Ancillary: Regulatory Agreement, Pledges, Assignments of Leases and Rents, etc.
- Terms:
  - Interest Rate (does it convert)
  - Prepayment – is it allowed?
  - Non-recourse provision
  - Construction Reserve/Letter of Credit
  - Limited dividend – limits funds from operation that can go to Owner
  - Requisitions and Disbursement process
  - Investor Standstill/Notice

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**Subordinate Funding Sources**

- Letter of Intent (LOI)
- Loan Documents: Note, Mortgage, Loan Agreement
- Ancillary: Regulatory Agreement, Pledges, Assignments of Leases and Rents, Intercreditor Agreement, etc.
- Terms:
  - Interest Rate
  - Prepayment – is it allowed?
  - Non-recourse provision
  - Construction Reserve/Letter of Credit
  - Limited dividend – limits funds from operation that can go to Owner
  - Investor and Senior Lender Standstill/Notice

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**Sponsor Loan**

- Grants vs Loans (grants bad, loans good, usually, sort of...)
- Subordinate debt
- Loan Documents: Note, Mortgage, Loan Agreement
- May or may not have interest until maturity.
- Careful structuring – or can have tax implications
- May lead to disaffiliation structure
- Holder will have Note that comes due in 40 + years.

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**Property Use Restrictions**

- Tax Credit Regulatory Agreement (DHCD)
- Residential Compliance Agreement (MassHousing)
- Regulatory Agreement (MassHousing)
- HAP contracts (HUD)
- Factors:
  - Term
  - Income requirements
  - Limited distributions
  - Reserve requirements
  - Renewal provisions

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Transaction Components
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**Property Use Restrictions**

**Affordable Housing Restriction**

- MassDocs form - <https://www.massdocs.com/>
- Includes important terms
  - affordability restrictions
  - term
  - resident selection
  - transfer provisions
  - income verification and reporting requirements
  - senior lender foreclosures

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**Deal Triggers**
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**I'm Gonna Need a Few Things...**

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**Deal Triggers**
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**How to Read Transaction Document**

- Review index – understand the structure of the document
- Review factual information (use your cheat sheet)
- Check the numbers (on final version confirm the numbers)
- Review key sections:
  - Borrower representations and warranties
  - Events of Default – do you have time to fix?
  - Conditions of advances – are they reasonable for this deal
  - Borrower covenants – can you make them
  - Guarantor representations – can you keep them

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**How to Read Transaction Document**

- When reading loan documents – keep in mind the allocation of risk between Borrower/Lender and GP/Investor
- Ask the following questions:
  1. Does the requirement impose responsibility/risk on Borrower/GP?
  2. In the context of this project – how could this pose a problem?
  3. Are the representations factually accurate (i.e. if you say there are no hazardous substances – are there any hazardous substances?)

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Lead the Team

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# STARLORD APARTMENTS

140 GALAXY AVENUE

MOTOWN, MA 02222

MassHousing Project No. 11-111

FHA Project No. – 000-000000

Closing Agenda

Target Closing Date: 06.10.17

Updated: \_\_\_\_\_

Financed by:

Groot Financing Agency Const/ Permanent Mortgage in the amount of \$50,500,000

Equity Contribution from Drax Investor LLC of \$20,600,500

Seller financing of \$10,200,300

Sponsor Energy Rebate loan in the amount of \$300,000

Document Control:

<b>OWNER</b>	Starlord Limited Partnership (Borrower)	<b>SP</b>	Quill Development, Inc. (Sponsor)
<b>GP</b>	Quill GP Developer LLC (General Partner)	<b>IN</b>	Drax Investor, LLC (Investor)
<b>KH</b>	Klein Hornig LLP (Borrower and Seller Counsel)	<b>SIP</b>	Drax SLP, LLC (Special Investor Partner)
<b>MM</b>	Quill CDC, Inc. (79% Managing Member of GP)	<b>GROOT</b>	Groot Financing Agency
<b>21% MGP</b>	Gamora CDC, Inc. (21% Member of GP)	<b>ROCKET</b>	Rocket Real Estate Inc. (Management Agent)
<b>Seller</b>	Quill Property Developer Inc.		

DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
<b>ORGANIZATION AND AUTHORITY</b>				
<b>1. Starlord Limited Partnership (Borrower)</b>				
1.1. Certificate of Limited Partnership	KH	314786	Certified copy 5.5.17	N/A
1.2. Certificate of Amendment	KH	379132	Certified copy 5.5.17	N/A
1.3. Initial Agreement of Limited Partnership	KH	314788	Done	<input type="checkbox"/> T. Kraglin <input type="checkbox"/> S. Narblik
1.4. General Partner's Certificate as to certificate of limited partnership and agreement of limited partnership	KH	404720	Ready to be executed	<input type="checkbox"/> K. Stakar

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
1.5. Certificate(s) of legal existence/good standing ( <b>R</b> )	KH	418863 418864	Dated 5.5.17	N/A
1.6. Searches in the federal District Court and State and local courts in the Massachusetts and UCC-1 search in the Massachusetts	KH	417697	Dated 5.5.17	N/A
1.7. Certificate as to Taxes	KH	404754	Ready to be executed	<input type="checkbox"/> D. Hasselhoff
1.8. Tax Identification Number	STARLORD		<b>xx-1234567</b>	N/A
<b>2. Quill GP LLC (General Partner of Borrower)</b>				
2.1. Certificate of Organization	KH	379131	Certified copy dated 5.5.17	N/A
2.2. Operating Agreement	KH	379247	Certified copy dated 5.5.17	N/A
2.3. Amended and Restated Operating Agreement	KH	401522	Ready for execution	<input type="checkbox"/> L. Ego <input type="checkbox"/> Gamora
2.4. Managing Member's Certificate as to certificate of limited partnership and partnership agreement	KH		See item 1.4	
2.5. Resolutions	KH	407577	Board approved 5.1.17	N/A
2.6. Certificate(s) of legal existence/good standing ( <b>R</b> )	KH	418865 418866	dated 5.5.17	N/A
2.7. Searches in the federal District Court and State and local courts in the Massachusetts and UCC1 search in the Massachusetts	KH	417696	dated 5.5.17	N/A

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
2.8. Certificate as to Taxes	KH	404756	Ready to be executed	<input type="checkbox"/> D. Hasselhoff
2.9. Tax Identification Number	STARLORD		<i>xx-1234567</i>	N/A
<b>3. Quill CDC, Inc. (79% Managing Member of General Partner)</b>				
3.1. Restated Articles of Organization	KH	281647		N/A
3.2. Bylaws	KH	148189		N/A
3.3. Clerk's Certificate	KH			
3.4. Recording Certificate (R)	KH	404762		<input type="checkbox"/> K. Stakar
3.5. Resolutions	KH	405734		N/A
3.6. Certificate(s) of legal existence/good standing (R)	KH	418867 418869		N/A
3.7. Searches in the federal District Court and State and local courts in the Massachusetts and UCC1 search in the Massachusetts	KH	417694		N/A
3.8. Certificate as to Taxes	KH	404757		<input type="checkbox"/> D. Hasselhoff
3.9. Tax Identification Number	STARLORD			N/A
<b>4. Gamora CDC, Inc. (21% member of Managing Member)</b>				
4.1. Certificate of Organization	KH	407423		N/A
4.2. Operating Agreement	KH	407424		<input type="checkbox"/> L. Ayesha
4.3. Resolutions	KH	409408		<input type="checkbox"/> P. Tullk
4.4. Certificate(s) of legal existence/good standing (R)	KH	418870 418871		N/A
4.5. Tax Identification Number	STARLORD			N/A

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
4.6. Searches in the federal District Court and State and local courts in the Massachusetts and UCC1 search in the Massachusetts	KH	417690		N/A
<b>5. Quill Property Developer Inc. (Seller)</b>				
5.1. Articles of Organization and Amendments	KH	168158		N/A
5.2. Bylaws	KH	253257		N/A
5.3. Clerk's Certificate	KH	404846		<input type="checkbox"/> L. Taserface
5.4. Resolutions	KH	405067		N/A
5.5. Recording Certificate (R)	KH	404869		<input type="checkbox"/> L. Taserface
5.6. Certificate(s) of legal existence/good standing (R)	KH	418872 418873		N/A
5.7. Searches in the federal District Court and State and local courts in the Massachusetts and UCC-1 search in the Massachusetts	KH	417693		N/A
5.8. Certificate as to Taxes	KH	404840		<input type="checkbox"/> P. Mantis
5.9. Tax Identification Number	STARLORD			N/A
<b>6. Quill Development, Inc. (Sponsor/Developer/Guarantor)</b>				
6.1. Articles of Organization and Amendment	KH	194256		N/A
6.2. Bylaws	KH	235255		N/A
6.3. Clerk's Certificate	KH	404865		<input type="checkbox"/> L. Taserface
6.4. Recording Certificate (R)	KH	404880		<input type="checkbox"/> L. Taserface

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
6.5. Resolutions	KH	405292		N/A
6.6. Certificate(s) of legal existence/good standing (R)	KH	418874 418875		N/A
6.7. Searches in the federal District Court and State and local courts in the Massachusetts and UCC1 search in the Massachusetts	KH	417692		N/A
6.8. Certificate as to Taxes	KH	404866		<input type="checkbox"/> P. Mantis
6.9. Tax Identification Number	STARLORD			N/A
<b>7. Rocket Real Estate Inc. (Management Agent)</b>				
7.1. Articles of Organization	ROCKET	148340		N/A
7.2. Bylaws	ROCKET	148898		N/A
7.3. Resolutions	KH	409752		N/A
7.4. Certificate(s) of legal existence/good standing (R)	KH	418876 418877		N/A
7.5. Searches in the federal District Court and State and local courts in the Massachusetts and UCC1 search in the Massachusetts	KH	417691		N/A
<b>8. Site Control and Title</b>				
8.1. Purchase Option Agreement	Seller	373994		<input checked="" type="checkbox"/> S. Narblik <input checked="" type="checkbox"/> T. Kraglin
8.2. Agreement to Extend Option	Seller	406117		<input checked="" type="checkbox"/> S. Narblik <input checked="" type="checkbox"/> T. Kraglin
8.3. Quitclaim Deed	KH	406281		<input type="checkbox"/> L. Ego

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
8.4. Warranty Bill of Sale, Assignment and Assumption Agreement	KH	406370		<input type="checkbox"/> L. Ego <input type="checkbox"/> L. Ego
8.5. MGL c. 40T Preliminary Exemption Letter	QUILL	405284		<input checked="" type="checkbox"/> P. Nebula
8.6. Title Requirements Letter/Commitment	Title Co.	407288		<input type="checkbox"/> Title Co.
10.7.1. Title Policy (Owner)	Title Co.	415318		<input type="checkbox"/> Title Co.
10.7.2. Title Policy (DRAX)	Title Co.	415319		<input type="checkbox"/> Title Co.
10.8. Title Endorsements	Title Co.			N/A
10.9. Mechanic's Lien Affidavit	Title Co.	416638		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
10.10. Non-Imputation Affidavit Ex A: Legal Description	Title Co.	416531		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
10.11. Owner's Sworn Statement	Title Co.	416634		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
10.12. Copies of Underlying Title Exceptions	Title Co.	407418		N/A
10.13. ALTA Survey with Surveyor's Certification	Surveyor	407404		<input type="checkbox"/> Surveyor
10.14. Municipal Lien Certificates (including water) (R)	STARLORD	418862		N/A
10.15. Appraisal	DRAX	411362		N/A
11. Construction, Permitting and Property Matters				

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
11.1. Project Budget 11.1.1. Sources and Uses 11.1.2. Schedule of Anticipated Advances	STARLORD	410554		N/A
11.2. Capital Needs Assessment	STARLORD	406528		N/A
11.3. List of Plans and Specifications	STARLORD			
11.4. Trade Items Breakdown (DRAX Form 2448)	STARLORD	417893		
11.5. Phase I Environmental Report	STARLORD	406130		N/A
11.6. Environmental Reliance Letters • DRAX	STARLORD	406959 407219		<input checked="" type="checkbox"/> McPhail
11.7. O&M Plans	STARLORD	N/A		N/A
11.8. Asbestos Pre-Abatement Summary Report	STARLORD	406529		N/A
11.9. Project Specs for Asbestos	STARLORD	406131		N/A
11.10. Asbestos Reliance Letter	STARLORD	417335		
11.11. Radon Reliance Letters • Wells Reliance Letter • DRAX Reliance Letter	STARLORD	417333 417334		
11.12. Radon Closeout Report	STARLORD	417216		
11.13. Architect's Contract	STARLORD	357104		<input checked="" type="checkbox"/> Starlord <input checked="" type="checkbox"/> Architect
11.14. Construction Contract	STARLORD	402269		<input checked="" type="checkbox"/> Starlord <input checked="" type="checkbox"/> Contractor
11.15. DRAX Rider to Construction Contract	DRAX	406513		

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
11.16. Site Works Cost Letter	WF	405281		<input checked="" type="checkbox"/> Contractor
11.17. Owner Insurance Certificates 11.17.1.Property Insurance (DRAX) 11.17.2.Liability (DRAX)	STARLORD	416290 416291		<input type="checkbox"/> Insurer
11.18. Evidence of Contractor's Risk Insurance & Liability Insurance	STARLORD	408190		<input type="checkbox"/> Insurer
11.19. Evidence of Architect's Risk Insurance & Liability Insurance	STARLORD	409251		<input type="checkbox"/> Insurer
11.20. Building Permit	STARLORD	414692		N/A
11.21. Evidence of Utility Service 11.21.1. Water 11.21.2. Sewer 11.21.3. Electric 11.21.4. Gas 11.21.5. Cable	STARLORD	406135		N/A
11.22. Payment and Performance Bond	STARLORD	405616		<input type="checkbox"/> Contractor <input type="checkbox"/> Surety
11.23. Multiple Obligee Rider	STARLORD	416720		<input type="checkbox"/> Contractor <input type="checkbox"/> Surety <input type="checkbox"/> L. Ego
11.24. Lien Bond (R)	STARLORD	405800		<input type="checkbox"/> Contractor <input type="checkbox"/> Surety <input type="checkbox"/> Notary
12. Developer Documents				
12.1. One Stop (electronic form)	STARLORD	410868		<input type="checkbox"/> L. Ego

# STARLORD APARTMENTS

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
12.2. HUD Risk-Sharing Firm Approval Letter	STARLORD	409763		<input type="checkbox"/> HUD <input type="checkbox"/> L. Ego
<b>FINANCING DOCUMENTS</b>				
<b>13. Bond Financing</b>				
13.1. Rate Lock Agreement	DRAX	409202	Executed	<input type="checkbox"/> STARLORD <input type="checkbox"/> DRAX
13.2. Tax Credit Election	DRAX	411732	Executed	<input type="checkbox"/> L. Ego <input type="checkbox"/> DRAX
13.3. Borrower's Tax Certificate Ex. A: Project Description Ex. B: Project Budget Ex. C: 95/5 Test Letter Ex. D: 50% Test Letter Ex. E: Consent to Use of Reports	DRAX/ STARLORD	415367	Executed	<input type="checkbox"/> L. Ego
13.4. Certificate as to Designation of Low-Income Units	DRAX	406510	Executed	<input type="checkbox"/> L. Ego
<b>14. Investor Limited Partner Equity Documents</b>				
14.1. Investor Letter of Intent	DRAX SLP	406224		<input type="checkbox"/> WF
14.2. Amended and Restated Agreement of Limited Partnership (w/ DRAX Rider)	DRAX SLP	412097		<input type="checkbox"/> L Ego <input type="checkbox"/>
14.3. Guaranty Agreement	DRAX SLP	412106		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
14.4. Incentive Management Fee Agreement	DRAX SLP	412103		<input type="checkbox"/> L. Ego

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
14.5. Asset Management Fee Agreement	DRAX SLP	412105		<input type="checkbox"/> L. Ego <input type="checkbox"/> J. Crampton
14.6. Development Fee Agreement	DRAX SLP	412104		<input type="checkbox"/> L. Ego
14.7. Security Agreement	DRAX SLP	412109		<input type="checkbox"/> L. Ego <input type="checkbox"/> J. Crampton
14.8. Purchase Option/Right of First Refusal	DRAX SLP	412108		<input type="checkbox"/> L. Ego <input type="checkbox"/> P. Thanos
14.9. Reimbursement and Assignment Agreement	DRAX SLP			<input type="checkbox"/> L. Ego
<b>15. Low Income Housing Tax Credit Documents</b>				
15.1. Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (R)	QUILL	412874		<input type="checkbox"/> L. Ego <input type="checkbox"/> QUILL <input type="checkbox"/> Notary
15.2. Tax Credit Release and Indemnification Agreement	QUILL	412875		<input type="checkbox"/> L. Ego <input type="checkbox"/> QUILL <input type="checkbox"/> DRAX
15.3. IRC 42(m) Letters: (a) MassHousing (b) QUILL	DRAX/ QUILL	418675 418706		<input type="checkbox"/> DRAX <input type="checkbox"/> QUILL
<b>16. GROOT Loan Documents</b>				
16.1. Groot Commitment Letter	GROOT	394154		<input type="checkbox"/> Groot
16.2. First Mortgage Note	Groot	409755		<input type="checkbox"/> L. Ego
16.3. First Mortgage, Security Agreement, Financing Statement (Fixture Filing) and Assignment of Leases and Rents (R)	GROOT	409761		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
16.4. Regulatory Agreement (R)	GROOT	409759		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
16.5. Residential Compliance Agreement (R)	GROOT	409762		<input type="checkbox"/> L. Ego <input type="checkbox"/> GROOT <input type="checkbox"/> Notary
16.6. Construction Loan Agreement	GROOT	409754		<input type="checkbox"/> L. Ego <input type="checkbox"/> DRAX
16.7. Supplemental Construction Loan Agreement	GROOT	409756		<input type="checkbox"/> L. Ego <input type="checkbox"/> GROOT
16.8. Construction Guaranty	GROOT	409760		<input type="checkbox"/> L. Ego
16.9. Development Fund Agreement	GROOT	409758		<input type="checkbox"/> L. Ego <input type="checkbox"/> GROOT
16.10. UCC-1 Financing Statements	GROOT			
16.11. MassDocs Architect's Certificate	GROOT	406509		<input type="checkbox"/> Architect
16.12. Assignment of Construction Contract	GROOT	406493		<input type="checkbox"/> L. Ego <input type="checkbox"/> Contractor
16.13. Intercreditor Agreement	GROOT	410415		<input type="checkbox"/> L. Ego <input type="checkbox"/> HUD <input type="checkbox"/> GROOT
<b>17. Seller Financing</b>				
17.1. Seller Note	KH	406454		<input type="checkbox"/> L. Ego
17.2. Seller Reserves Note	KH	407209		<input type="checkbox"/> L. Ego
17.3. Mortgage (R)	KH	406473		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary

**STARLORD APARTMENTS**

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
<b>18. Sponsor Energy Rebate Loan</b>				
18.1. Energy Rebate Note	KH	413028		<input type="checkbox"/> L. Ego
18.2. Energy Rebate Mortgage ( <b>R</b> )	KH	413209		<input type="checkbox"/> L. Ego <input type="checkbox"/> Notary
<b>19. Multi-Party Loan Documents</b>				
19.1. Agreement as to Subordinated Loans	DRAX	410416		<input type="checkbox"/> GROOT <input type="checkbox"/> HUD <input type="checkbox"/> L. Ego <input type="checkbox"/> Sponsor
<b>20. HUD Subsidy Documents/Approvals</b>				
20.1. Section 8 Existing HAP Contract	STARLORD	406133		Done
20.2. HAP Contract	STARLORD			
20.3. Assignment of HAP Contract	STARLORD			<input type="checkbox"/> L. Ego <input type="checkbox"/> HUD
<b>OTHER DOCUMENTS</b>				
<b>21. Legal Opinions</b>				
21.1. Authority Opinion	KH	404885		<input type="checkbox"/> KH
<b>22. Closing Documents</b>				
22.1. Settlement Statement / Wiring Instructions	STARLORD/ DRAX	416076		<input type="checkbox"/> STARLORD
22.2. Closing Requisition	STARLORD/ DRAX			N/A

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
24.3.1. GROOT Closing Escrow Letter Ex A: Title Specimen Ex B: Recording Order Ex C: Disbursement Schedule	DRAX			
24.3.2. DRAX Closing Escrow Letter	DRAX			
24.4. Recording Order	KH	408206		N/A
24.5. W-9 Form	STARLORD	410756		<input type="checkbox"/> L. Ego
<b>25. Management Documents</b>				
25.1. Operating Budget	STARLORD			
25.2. Relocation Plan	ROCKET			
25.3. Resident Services Plan	ROCKET			
25.4. Operations Certificate re Payables and Warranties/Guaranties	ROCKET			
25.5. Management Agreement	ROCKET	413513		<input type="checkbox"/> L. Ego <input type="checkbox"/> DRAX
25.6. DRAX Rider to Management Agreement	DRAX/ ROCKET	406515		<input type="checkbox"/> L. Ego <input type="checkbox"/> STARLORD Services <input type="checkbox"/> DRAX
25.7. Form of Occupancy Agreement	ROCKET			N/A
25.8. Letter Agreement re 3% DMH/DDS Set-Aside, 5% Accessibility	ROCKET / STARLORD	406514		<input type="checkbox"/> L. Ego
25.9. Affirmative Fair Housing Marketing Plan	ROCKET	406527		<input type="checkbox"/> L. Ego <input type="checkbox"/> DRAX
25.10. Tenant Selection Plan and Criteria	STARLORD/ ROCKET			

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DOCUMENT	CONTL	KH #	STATUS	SIGNATORIES
25.11. Section 504/ADA Transition Plan Certification Checklist	STARLORD	410755		<input type="checkbox"/> L. Ego
25.12. Certification re Language Access Plan	STARLORD	406516		<input type="checkbox"/> STARLORD

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## DISTRIBUTION LIST:

<b>BORROWER</b>	Starlord Limited Partnership 30 Milano Road Boston, MA 02110	P: 617-912-8406 pquill@Starlord.org
<b>PROJECT MANGER</b>	Peter Quill Quill Development Inc. 20 Milano Road Boston, MA 02110	P: 617-800-8000 pquill@Starlord.org
<b>Owner:</b>	Starlord Limited Partnership 30 Milano Road Boston, MA 02110	P: 617-800-8000 pquill@Starlord.org
<b>SPONSOR/ DEVELOPER/ GUARANTOR</b>	Quill Development Inc. 20 Milano Road Boston, MA 02110	pquill@Starlord.org
<b>COUNSEL FOR BORROWER</b>	Teresa Santalucia Klein Hornig LLP 101 Arch Street, Suite 1101 Boston, MA 02110	P: 617-224-0606 P: 617-224-0621 tsantalucia@kleinhornig.com
<b>TAX CREDIT INVESTOR</b>	Drax Investor, LLC 20 Guardian Road Boston, MA 02110	
<b>COUNSEL FOR TAX CREDIT INVESTOR</b>	Destroyer LLP 50 Guardian Road Boston, MA 02110	
<b>GROOT</b>	Groot Financing Agency 222 Beacon Street Boston, MA 02108	P: 617-222-2222 ttasurface@comcast.com
<b>GROOT COUNSEL</b>	Nelly Nebula Nebula LLP 333 Federal Street, 1st Floor Boston, MA 02110	nnebula@nebulalaw.com  P: 617-333-3333 Nnebula@nebulallp
<b>TITLE COMPANY</b>	Marvin Mantis Marvin, Marvin & Marvin P.C. 20 Tremont Street, Suite 999 Boston, MA 02108	P: 617-555-5555  mmantis@mantislaw.com

<https://www.massdocs.com/>

## Sample of Loan Closing Documents

Home	Funding Programs	Participating Communities	Resources
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### Loan closing sample documents

To see how MassDocs works, below are sample documents. All are in [Adobe Acrobat](#) format. To view assumptions used in preparing these documents, [click here](#).

#### LOAN DOCUMENTS

- Affordable Housing Restriction
- Loan Agreement
- Mortgage, Security Agreement and Conditional Assignment of Leases & Rents
- Promissory Note - Affordable Housing Trust Fund
- Promissory Note - CBH
- Promissory Note - DHCD HOME
- Promissory Note - HIF
- Promissory Note - Springfield HOME

#### ANCILLARY DOCUMENTS

- Architect's Certificate
- Closing Agenda
- Closing Escrow Letter
- Davis-Bacon Wage Certification
- Disbursing Agent Agreement
- Ground Lessor Estoppel and Agreement
- Lender Advisor Agreement
- Master Subordination Agreement
- Site Assessment Reliance Letter

#### TAX CREDIT DOCUMENTS

- TCAP Written Agreement
- Tax Credit Exchange Written Agreement
- Tax Credit Regulatory Agreement (4% credits)
- Tax Credit Regulatory Agreement (9% credits and state credits)
- Tax Credit Release and Indemnification Agreement

### About MassDocs

MassDocs makes affordable housing development more efficient by providing a common set of loan documents for projects using a variety of state and local funds. For more information, email [massdocs](mailto:massdocs).

If you have been involved with a MassDocs closing and have suggestions on how to make it more efficient, email [massdocs](mailto:massdocs).

### Attorney login

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### Participating public agencies:



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617-330-9955 [www.mhp.net](http://www.mhp.net)



## AFFORDABLE HOUSING RESTRICTION

**DATE: As of October 15, 2009**

GRANTOR:	Franconia Apartments LLC
PROPERTY NAME:	Franconia Apartments
TOTAL NUMBER OF UNITS:	36
TOTAL NUMBER OF RESTRICTED UNITS: <sup>1</sup>	36
NUMBER OF HIGH MODERATE INCOME UNITS (110% AMI): <sup>2</sup>	0
NUMBER OF MODERATE INCOME UNITS (80% AMI):	0
NUMBER OF LOW INCOME UNITS (60% AMI):	22
NUMBER OF VERY LOW INCOME UNITS (50% AMI):	2
NUMBER OF EXTREMELY LOW INCOME UNITS (30% AMI):	12
NUMBER OF HOME ASSISTED UNITS:	20
PROPERTY ADDRESS:	365 Annum Street Springfield, Massachusetts

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AFFORDABILITY TERM: 30 years and 10 months (subject to extension for any extension of the construction period and/or extension of one or more of the Loans to which this Restriction relates, as set forth below)

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<sup>1</sup> In order to satisfy the affordability requirements of the MHP first mortgage loan at least twenty percent (20%) of the total Units shall be Very Low Income Units, forty percent (40%) of the total Units shall be Low Income Units or fifty percent (50%) of the total Units shall be Moderate Income Units.

<sup>2</sup> Numbers in parentheses are the percentage of median income for the Area (AMI, as defined below), adjusted for family size, as determined from time to time by HUD (as defined below) pursuant to Section 8 of the United States Housing Act, as amended.

This Affordable Housing Restriction (this "Restriction") is granted by the undersigned Grantor, a Massachusetts limited liability company having a mailing address of c/o Springfield Housing Action Corporation, 31 East Street, Springfield, Massachusetts 02100, for the benefit of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development having a mailing address of 100 Cambridge Street, Suite 300, Boston, Massachusetts 02114-2524 ("DHCD"); The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by the Massachusetts Housing Finance Agency ("MHFA"), as Administrator, having an address at One Beacon Street, Boston, Massachusetts 02108 ("AHT"); Community Economic Development Assistance Corporation, a body politic and corporate, duly organized and existing in accordance with Chapter 40H of the Massachusetts General Laws with an office at One Center Plaza, Suite 350, Boston, Massachusetts 02108 ("CEDAC"); and the City of Springfield, Massachusetts, acting by and through its Office of Housing and Neighborhood Development, having an address at 1600 East Columbus Avenue, Springfield, Massachusetts 01103 (the "City").

The Massachusetts Housing Partnership Fund Board, a Massachusetts public instrumentality and body politic and corporate, having a mailing address of 160 Federal Street, Boston, Massachusetts 02110 ("MHP") is, or is anticipated to be, the first mortgage lender for the Project (as defined below). Upon the closing of the MHP First Mortgage Loan for the Project, MHP, together with its successors and assigns, shall be deemed a Holder of this Restriction and the senior lender hereunder. The Grantor acknowledges that, notwithstanding the order of recording, this Restriction is senior to the MHP First Mortgage Loan, subject to the provisions of Section 19 below.

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## **BACKGROUND**

- A. The Grantor holds or will acquire a leasehold interest in the Property and intends to construct a 36-unit rental housing development, consisting of one residential building, at the Property (the "Project").
- B. As a condition of the Loan, the Grantor has agreed that this Restriction be imposed upon the Property as a covenant running with the land and binding upon any successor to the Grantor, as owner thereof.

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## **RESTRICTIONS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby covenants as follows:

- 1. Definitions.** Capitalized terms used herein are defined herein and in Exhibit D attached hereto.
- 2. Use Restrictions.** The Property shall be reserved and used for the Permitted Uses and for no other purpose. The Restricted Units shall include at least 5 one-bedroom Units, 24 two-bedroom Units and 7 three-bedroom Units. Twenty of the Restricted Units shall be deemed to be

assisted under the HOME Program ("HOME Assisted Units"). Such HOME Assisted Units may also constitute Restricted Units with respect to other programs hereunder. The Property also shall include at least two (2) Units accessible to individuals with mobility impairments and at least one (1) additional Unit accessible to individuals with sensory impairments. Each Unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis. Each Unit shall meet the housing quality standards set forth in the regulations of HUD at 24 C.F.R. §982.401 or any successor thereto, the accessibility requirements at 24 C.F.R. Part 8 or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973) and, if applicable, the design and construction requirements of 24 C.F.R. §100.205 or any successor thereto (which implement the Fair Housing Act). Throughout the term hereof, the Grantor shall maintain the Property and the Improvements in good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, rules and regulations of any governmental (or quasi-governmental) body with jurisdiction over matters concerning the condition of the Property.

**3. Occupancy Restrictions.** The following restrictions shall apply during the period commencing with the first date on which any Units are occupied and continuing for the balance of the Affordability Term, subject always to any applicable rent restrictions of the federal low-income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended, and any provision herein that conflicts with the requirements of the federal low-income housing tax credit program shall be suspended so long as the restrictions under the federal low income housing tax credit program are in effect.

**A. Low Income Units.** At least 22 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Low Income Families ("Low Income Units"). The monthly rent charged to a Family occupying a Low Income Unit shall not exceed the lesser of Fair Market Rent or an amount equal to (x) one-twelfth of thirty percent (30%) of sixty percent (60%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds sixty percent (60%), but does not exceed eighty percent (80%) of the Family-size Adjusted AMI, shall continue to be treated as a Low Income Family and the foregoing maximum rent shall continue to apply to such Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and must pay as monthly rent the Over-income Rent.

**B. Very Low Income Units.** At least 2 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Very Low Income Families ("Very Low Income Units"). The monthly rent charged to a Family occupying a Very Low Income Unit shall not exceed the lesser of Fair Market Rent or (x) one-twelfth of thirty percent (30%) of fifty percent (50%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by

the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Very Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds fifty percent (50%), but does not exceed eighty percent (80%), of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, be treated as a Low Income Family, and must pay as monthly rent the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of sixty percent (60%) of the Bedroom Adjusted AMI (minus, if applicable, an allowance established by the Holders for any utilities and services [excluding telephone] to be paid by the occupying Family) or (z) the comparable market rent for the Family's Unit. A Family who resides in a Restricted Unit, who qualified as a Very Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and must pay as monthly rent the Over-income Rent.

- C. Extremely Low Income Units.** At least 12 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Extremely Low Income Families ("Extremely Low Income Units"). The monthly rent charged to a Family occupying an Extremely Low Income Unit shall not exceed the lesser of Fair Market Rent or (x) one-twelfth of thirty percent (30%) of thirty percent (30%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family, provided that, with respect to a PCE who qualifies as an Extremely Low Income Family and whose Household Income is not more than fifteen percent (15%) of the Family-size Adjusted AMI, the PCE shall not be required to pay as a contribution towards rent more than (x) one-twelfth of thirty five percent (35%) of fifteen percent (15%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds thirty percent (30%), but does not exceed fifty percent (50%) of the Family-size Adjusted AMI, shall continue to be treated as an Extremely Low Income Family but, from and after the expiration of the then-current term of such Family's lease, must pay as monthly rent the Over-income Rent. A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds fifty percent (50%), but does not exceed eighty percent (80%), of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, be treated as a Low Income Family and must pay as monthly rent the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of sixty percent

(60%) of the Bedroom Adjusted AMI (minus, if applicable, an allowance established by the Holders for any utilities and services [excluding telephone] to be paid by the occupying Family) or (z) the comparable market rent for the Family's Unit. A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and must pay as monthly rent the Over-income Rent.

- D. MHP First Mortgage Affordability Requirements.** In order to satisfy the affordability requirements of the MHP First Mortgage Loan at least twenty percent (20%) of the total Units shall be Very Low Income Units, forty percent (40%) of the total Units shall be Low Income Units or fifty percent (50%) of the total Units shall be Moderate Income Units.
- E. Applicable Lease Term, Change of Status.** References in the foregoing provisions of the "then-current term of such Family's lease" shall refer to the term of the lease or occupancy agreement in effect on the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income. If, with the Holders' consent, the Grantor does not require that a lease be signed for a Restricted Unit (e.g., a property providing short-term transitional housing), the provisions set forth above shall apply, except that the applicable date on which a Family's income-qualified status and/or applicable rent restriction is modified shall be the first day of the month that is at least thirty (30) days following the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income.
- F. Federal or State Rental Subsidy.** Except with respect to HOME Assisted Units, if a Restricted Unit or the Family occupying such Unit receives federal or state rental subsidy, then the Family's contribution towards rent shall be the contribution allowable under the federal or state rental subsidy program and the maximum rent (i.e., tenant contribution plus rental subsidy) shall be the rent allowable under the federal or state rental subsidy program. In the case of HOME Assisted Units, if a Restricted Unit receives federal or state project-based rental subsidy and the occupying Family qualifies as a Very Low Income Family and pays as a contribution towards rent not more than thirty percent (30%) of one-twelfth of the Family's Household Income, then the maximum rent (i.e., tenant contribution plus rental subsidy) shall be the rent allowable under the federal or state rental subsidy program.
- G. Next Available Unit Rule.** If at any time fewer than the required number of Units are leased, rented or occupied by Extremely Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Extremely Low Income Families until the required number of Units occupied by Extremely Low Income Families is again obtained. Subject to the foregoing, if at any time fewer than the required number of Units are leased, rented or occupied by Very Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Very Low Income Families until the required number of Units occupied by Very Low Income Families is again obtained.

Subject to the foregoing, available Units shall be leased, rented or otherwise made available to Low Income Families. The foregoing provisions shall be applied so as to maintain a mix of Restricted Units that is comparable in size, features and number of bedrooms to the originally designated Restricted Units (i.e., a Unit will not be considered an available Unit for purposes of this Paragraph if classification of such Unit as a Restricted Unit would cause the then current mix of Restricted Units to no longer be comparable to the original mix of Restricted Units described in Section 2 above and as shown on Exhibit C).

**H. CBH Rents.** Notwithstanding the foregoing, a PCE occupying a Restricted Unit shall not be required to pay as a contribution towards rent more than (x) one-twelfth of thirty-five percent (35%) of the greater of (i) the PCE's Household Income as recertified annually and (ii) fifteen percent (15%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the PCE.

**I. Persons Certified Eligible.** If at any time fewer than five (5) Units at the Property are leased, rented or occupied by PCEs, then the Grantor shall immediately notify EOHHS of the shortfall in PCEs at the Property (a "CBH Unit Shortfall"). At any time when there is a CBH Unit Shortfall at the Property, the Grantor shall notify EOHHS of each vacancy of a Restricted Unit at the Property, including the vacancy that gave rise to the CBH Unit Shortfall (a "Vacancy Notice") and each such Unit shall be made available for leasing to a PCE until the required number of Units occupied by PCEs is again obtained. Upon receipt of a Vacancy Notice, EOHHS shall refer to the Grantor a PCE for whom the Unit is appropriate, taking into account the number of bedrooms and the accessibility or adaptability of such Unit. Grantor shall not refuse to accept a PCE as a tenant on the grounds that such PCE's income is inadequate. If EOHHS does not refer a PCE within 60 days after receipt of a Vacancy Notice, the Unit that was the subject of the Vacancy Notice may be re-rented by the Grantor to an income-qualified Family who is not a PCE. If at any time either (x) EOHHS is no longer able or willing to refer PCEs to the Property because of a change in CBH program needs with respect to the Property, (y) EOHHS fails to refer a PCE to the Grantor in response to two Vacancy Notices within a one-year period or (z) a CBH Unit Shortfall exists at the Property for a one-year period, the Grantor will promptly notify CEDAC. In such event, the Grantor and CEDAC will meet and consult in good faith with EOHHS to address such situation and, if appropriate, to identify an appropriate eligible population acceptable to CEDAC for such Units, consistent with the then applicable CBH Regulations and CBH Guidelines.

**4. Rent Schedule.** Projected initial monthly maximum rents and monthly allowances for utilities and services for all Restricted Units shall be as set forth in Exhibit B attached hereto. Notwithstanding the rent restrictions set forth in Section 3 above, the maximum monthly rent permitted to be charged for a Restricted Unit at any particular income level is not required to be lower than the maximum rent applicable at such income level pursuant to Exhibit B, regardless of changes in fair market rents or in median income over time (subject only to the restrictions applicable in the event of any federal or state subsidy, as set forth in Section 3 above). Rents for Restricted Units shall not be increased above applicable maximums without all Holders' prior

written approval of a specific request by the Grantor for a rent increase, except for increases implemented in accordance with an annual schedule of maximum rents and allowances issued by DHCD. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by the Grantor to all affected Residents and notwithstanding any provision in a lease or occupancy agreement to the contrary, in the event of any increase in the rent payable by such Residents in connection with an increase in the income of such Residents, consistent with the terms hereof, the Residents shall have the right to terminate their lease or occupancy agreement by written notice to the Grantor delivered within such thirty-day period.

## **5. Resident Selection.**

- A. Nondiscrimination.** The Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the Units or in connection with the employment or application for employment of persons for the operation and management of the Units. The Grantor shall not discriminate against, or refuse to lease, rent or otherwise make available the Units to, a holder of a certificate or voucher under the Federal Rental Certificate Program or the Federal Rental Voucher Program or a holder of a comparable document evidencing participation in a HOME Program tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME Program tenant-based assistance document.
- B. Selection Policies.** The Grantor shall adopt and submit to the Holders for approval resident selection policies and criteria for the Restricted Units that:
  - (i) Are consistent with the purpose of providing housing for a Low Income Family, a Very Low Income Family or an Extremely Low Income Family, as defined below and required herein;
  - (ii) Are reasonably related to eligibility of prospective tenants under the Programs and to the prospective tenants' ability to perform the obligations of the Grantor's form lease;
  - (iii) Give reasonable consideration to the housing needs of Families that would have preference under Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.); and
  - (iv) Provide for (x) the selection of Residents from a written waiting list in the chronological order of their application, insofar as practicable, and (y) the prompt written notification to any rejected applicant of the grounds for any rejection.

The Grantor shall also provide the Holders with an affirmative marketing plan acceptable to all Holders. The affirmative marketing plan must comply with all applicable statutes, regulations and executive orders, with all Holders' affirmative marketing requirements and with DHCD's directives reflecting the agreement between DHCD and HUD in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every respect and any changes thereto shall be subject to

the prior written approval of the Holders. The Grantor shall list vacancies in Restricted Units in the MassAccess Housing Registry at <http://www.massaccesshousingregistry.org>.

**6. Lease Form.** The Grantor shall not include in any lease for a Restricted Unit any of the following provisions:

- A.** Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Grantor in a lawsuit brought in connection with the lease.
- B.** Agreement by the tenant that the Grantor may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the Unit after the tenant has moved out of the Unit. The Grantor may dispose of such personal property in accordance with state law.
- C.** Agreement by the tenant not to hold the Grantor or the Grantor's agents legally responsible for any action or failure to act, whether intentional or negligent.
- D.** Agreement of the tenant that the Grantor may institute a lawsuit without notice to the tenant.
- E.** Agreement by the tenant that the Grantor may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- F.** Agreement by the tenant to waive any right to a trial by jury.
- G.** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- H.** Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Grantor against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases for Restricted Units shall be consistent with the requirements set forth herein, shall be on a form reasonably approved by the Holders, shall be for terms of not less than one (1) year (unless a shorter term is specified by mutual agreement between the Resident and the Grantor, subject to the Holders' program requirements) and shall require tenants to provide information required for the Grantor to meet its reporting requirements hereunder. The Grantor may not terminate the tenancy or refuse to renew the lease of an occupant of a Restricted Unit except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; (iii) for completion of the tenancy period for transitional housing; or (iv) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by the Grantor's service on the tenant of a written notice specifying the grounds for the action.

**7. Transfer Restrictions.** The Grantor shall not sell, transfer, convey, rent (except for leases or occupancy agreements made in connection with the Permitted Uses that are substantially in the form approved by the Holders), encumber as security for financing, or in any

other way exchange all or any portion of the Property nor shall the Grantor permit the sale, transfer or pledge of any direct or indirect interests in the Grantor, without the express written permission of the Holders, which consent shall not be unreasonably withheld or delayed with respect to any transfer to Springfield Housing Action Corporation (the "Sponsor") or any entity wholly owned and controlled by the Sponsor pursuant to the Right of First Refusal dated of even date herewith granted to the Sponsor by the Grantor, provided that at the time of exercise of such Right of First Refusal (i) no Event of Default, or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default, is then outstanding hereunder or under any of the Loans; (ii) the Sponsor or such other entity designated as transferee is an eligible borrower under all applicable Statutes, Regulations and Guidelines as then in effect; (iii) the Sponsor or such other entity is in good standing with all Holders and in each Holder's reasonable discretion has sufficient financial capability and experience with affordable housing similar to the Property to perform the obligations of the Grantor; (iv) the Sponsor or such transferee agrees in writing to be bound by and perform all of the terms and conditions hereof; (v) such transfer is permitted by the holder of all loans secured by the Property and (vi) the Grantor gives to all Holders no less than thirty (30) days' prior written notice of any such proposed transfer. Without limiting the generality of the foregoing, the Permitted Encumbrances are hereby approved by the Holders. Any sale, transfer or other disposition (each, a "transfer") of all or any part of the Property shall further be subject to the Purchase Option and First Refusal Right, as described below, and to such further terms and conditions with respect thereto as may be set forth in the HIF Statute, the HIF Regulations, the HIF Guidelines, the CBH Statute, the CBH Regulations, and the CBH Guidelines. Upon request by the Grantor, DHCD shall sign a certificate, in form and substance reasonably acceptable to DHCD, stating whether, as of a specified date, any Purchase Option or First Refusal Right in favor of DHCD remains in effect, or has been exercised, terminated, waived or assigned, and otherwise conforming with the certification requirements described below. No transfer of all or any part of the Property to any party other than DHCD or its assignee shall be consummated unless and until (i) the period for the exercise of all Purchase Options and/or First Refusal Rights, as applicable, shall have expired without DHCD's exercise of rights thereunder or (ii) DHCD shall have unconditionally waived its rights thereunder in writing. Notwithstanding the foregoing: (i) the investor member interest of Grantor held by Massachusetts Housing Investment Corporation (the "Investor") may be transferred to an entity in which the Investor or an affiliate of the Investor is the majority owner, provided that the Holders receive notice of such transfer and (ii) the Grantor's investor member may remove and replace the manager of the Grantor in accordance with the provisions of the Grantor's operating agreement upon the consent of the Holders, which consent will not be unreasonably withheld, conditioned or delayed.

## **8. CBH/HIF Purchase Option.**

- A.** Upon the expiration of the Affordability Term (as defined in Section 10 below), DHCD shall have the right to purchase the Grantor's interest in the Property from the Grantor, at a price equal to the then-current appraised value of the Property, less the total outstanding balance, at the time of such purchase, of all principal, interest and any other charges payable under the CBH Loan and HIF Loan, and any and all other outstanding obligations of the Grantor with respect thereto (the "Purchase Option"), by delivering written notice to

the Grantor of its election to exercise the Purchase Option by or before the date that is one hundred twenty (120) days after the expiration of the Affordability Term (the "Option Exercise Deadline"). If DHCD shall have failed to deliver such written notice of its election to exercise the Purchase Option to the Grantor by the Option Exercise Deadline, DHCD shall be deemed to have unconditionally waived the Purchase Option, and the Purchase Option shall automatically terminate, and shall have no further force or effect.

- B.** DHCD shall have the right at any time to assign its rights under this Purchase Option to a qualified developer selected by DHCD in accordance with the CBH Statute and CBH Regulations and the HIF Statute and HIF Regulations, and effective as of any such assignment, all rights and obligations of DHCD with respect to such Purchase Option shall automatically be deemed to apply to such assignee, and all references to "DHCD" in this Section shall automatically be deemed to refer to such assignee (except to the extent a provision explicitly provides otherwise). So long as the Grantor is not in default under the CBH Loan, HIF Loan or hereunder, Springfield Housing Action Corporation (the "Sponsor") shall have the right to match the best offer received by DHCD from a qualified developer to become DHCD's assignee.
- C.** Promptly upon request by DHCD at any time or from time to time, either before the Option Exercise Deadline or after DHCD's exercise of the Purchase Option, the Grantor shall provide DHCD with a copy of, or otherwise make available for DHCD's review at a mutually convenient time and location, any and all material owned by or readily available to the Grantor that an unrelated third-party potential buyer would reasonably request in connection with its due diligence for the acquisition of the Property, including, by way of example but not of limitation, deeds, title insurance policies, appraisals, studies, reports, and other materials relating to the Property and/or any encumbrance(s) subject to which the Property is to be conveyed, or otherwise reasonably necessary or appropriate for DHCD to review in connection with its exercise of the Purchase Option.
- D.** The appraised value of the Property shall be determined at DHCD's request by the method specified in the CBH Statute and HIF Statute (as may be more fully described in the CBH Regulations and HIF Regulations) and in accordance with DHCD policies, and the costs of the appraisers shall be shared equally by DHCD and the Grantor (unless the CBH Regulations or HIF Regulations provide otherwise). Notwithstanding anything to the contrary contained in this Restriction, the Grantor shall not be required to use its own funds to repay any debt secured by the Property in the event the appraised value of the Property is less than the aggregate of all permitted debt secured by the Property.
- E.** The closing for the sale of the Property to DHCD shall take place in accordance with applicable provisions of the CBH Regulations or HIF Regulations, by or before the date that is one hundred twenty (120) days after the Option Exercise Deadline (i.e., on or before the date that is two hundred forty (240) days after the expiration of the Affordability Term), by the close of the business day, at the Registry of Deeds; provided, however, that if DHCD reasonably determines additional time is necessary to effect the closing due to delays of the Grantor in providing DHCD with the due diligence material described above or any other failure by the Grantor fully to cooperate with preparations for the sale, the

closing date may be extended to a date reasonably determined by DHCD as necessary to redress the delays caused by the Grantor, which shall be specified in a written notice from DHCD setting forth the reasons for such extension, delivered to the Grantor by or before the date originally scheduled for the closing. The parties may also mutually agree to extend the date of the closing by written instrument.

- F.** The transfer to DHCD pursuant to the Purchase Option shall be subject to such other requirements as may be more fully described in the CBH Regulations or HIF Regulations consistent with the CBH Statute and HIF Statute. Adjustments in the purchase price for recording fees, deed stamps and other charges shall be made, and any other issues associated with the transfer shall be resolved, in accordance with standard conveyancing practice in The Commonwealth of Massachusetts. If either party so desires, the parties shall enter into a purchase and sale agreement memorializing the terms of the sale, consistent with the terms hereof and of the CBH Statute and HIF Statute; provided, however, that the Purchase Option shall be binding regardless of whether the parties execute a purchase and sale agreement. Notwithstanding any other provision hereof to the contrary, if, after delivering notice of its intention to exercise the Purchase Option, DHCD determines, in its sole discretion, that it is not in the best interests of DHCD to effect the purchase, DHCD may terminate the Purchase Option at any time, upon written notice to the Grantor recorded with the Registry of Deeds; provided, however, that such termination right shall apply to DHCD only and not to any assignee.
- G.** Concurrently with its acquisition of the Property, DHCD shall cause to be recorded with the Registry of Deeds an affordable housing restriction, in compliance with the CBH Statute, HIF Statute and any other applicable statutory requirements for the same (and, in the case of an assignee, in form acceptable to DHCD, in its discretion), which shall require that the Property shall be used only for the purposes of preserving or providing affordable housing thereon, which housing shall remain affordable for a period of not less than fifty (50) years.

**9. CBH/HIF First Refusal Right.**

- A.** If the Grantor intends at any time or from time to time prior to DHCD's exercise (or unconditional waiver) of the Purchase Option, as described above, to transfer all or any part of its interest in the Property, and the Grantor receives a bona fide offer for such transfer that the Grantor desires to accept (each, an "Offer"), the Grantor shall promptly deliver to DHCD written notice of the same (which shall not be deemed to have been duly delivered to DHCD unless it contains a copy of clause C. below), together with a copy of such Offer (the "Offer Notice"). The Grantor shall provide DHCD with such reasonable evidence as DHCD may require to satisfy DHCD as to the bona fide nature of the Offer. For purposes of this Section, a purchase by the Sponsor shall not be considered an Offer that triggers DHCD's First Refusal Right. A transfer of a member interest in the Grantor shall not be considered an Offer that triggers the Local Agency or DHCD First Refusal Right so long as (x) such member interest is not all or substantially all of the member interests in the Grantor and (y) such transfer does not take place within one year of a transfer of a manager interest in the Grantor or of a controlling interest in a manager of the Grantor.

- B.** DHCD shall have the right to purchase the Grantor's interest in the Property (or the portion(s) thereof to which the Offer relates), at the same price and on the same terms set forth in such Offer (the "First Refusal Right"), by delivering to the Grantor and recording with the Registry of Deeds written notice of its election to exercise such First Refusal Right, in accordance with the terms set forth below (the "Exercise Notice"), by or before the date that is one hundred twenty (120) days after DHCD's receipt of such Offer Notice (such 120-day period, the "First Refusal Period"). If DHCD does not intend to exercise the First Refusal Right, DHCD may, but shall have no obligation to, notify the Grantor in writing that the First Refusal Right will not be exercised (a "Waiver Notice").
- C.** If, by the expiration of the First Refusal Period with respect to an Offer, DHCD shall have failed to deliver to the Grantor an Exercise Notice or a Waiver Notice, DHCD shall be deemed to have waived its First Refusal Right with respect to such Offer, subject to any revived First Refusal Right with respect to a modified Offer, as described below. However, DHCD shall retain a First Refusal Right for subsequent Offers and the Purchase Option as described above, notwithstanding any prior actual or deemed waiver of the First Refusal Right, or any intervening transfer of the Property or any portion(s) thereof. The First Refusal Right shall automatically expire upon the waiver, expiration or exercise of the Purchase Option.
- D.** If any of the terms of an Offer shall be revised from the terms reflected in the Offer Notice in such a manner as to be materially more favorable to the buyer or if a closing pursuant to the Offer has not occurred on or before the date six months after the date of the Offer Notice but the Grantor desires to continue pursuing a sale pursuant to such Offer, the Grantor shall promptly deliver to DHCD an Offer Notice with respect to such revised or continued Offer (which shall not be deemed to have been duly delivered to DHCD unless it contains a copy of clause C. above), and DHCD shall have a new First Refusal Right with respect to such modified or continued Offer. The First Refusal Period for such new First Refusal Right shall run for a period of one hundred twenty (120) days from the date of DHCD's receipt of the Offer Notice with respect to such revised or continued Offer.
- E.** DHCD shall have the right at any time to assign its rights under the First Refusal Right to a qualified developer selected by DHCD in accordance with the CBH Statute and CBH Regulations and the HIF Statute and HIF Regulations and, effective as of any such assignment, the rights and obligations of DHCD with respect to such First Refusal Right shall automatically be deemed to apply to such assignee, and all references to "DHCD" in this Section shall automatically be deemed to refer to such assignee (except to the extent a provision explicitly provides otherwise). DHCD shall provide written notice of any such assignment to the Grantor.
- F.** In accordance with the provisions of the CBH Statute and HIF Statute:
  - (i) An Offer Notice containing the required language as described above shall be deemed to have been duly delivered if sent by regular and certified mail, return receipt requested (or by such other method as may be authorized under the CBH Statute and CBH Regulations and the HIF Statute and HIF Regulations), addressed to DHCD (or to any assignee of DHCD, if DHCD has previously given the Grantor notice of such

- assignment, including the name and notice address of such assignee, in accordance with the notice provisions set forth herein) in the care of the keeper of records for DHCD, which for purposes hereof shall be deemed to be the General or Chief Counsel of DHCD (or in care of the keeper of records for such assignee of DHCD, as applicable).
- (ii) The Exercise Notice or Waiver Notice shall be duly signed by a designated representative of DHCD or of the assignee of DHCD, as the case may be, and (x) mailed to the Grantor by certified mail (or such other method as may be authorized under the CBH Statute or HIF Statute) at the notice address set forth in the Offer Notice and (y) recorded with the Registry of Deeds by the expiration of the First Refusal Period. If DHCD shall have assigned the First Refusal Right to a qualified developer prior to delivery of the Exercise Notice, the Exercise Notice shall include the name and address of such assignee and the terms and conditions of such assignment.
  - (iii) An affidavit acknowledged by a notary public that DHCD or its designated representative has mailed an Exercise Notice or a Waiver Notice (the "Affidavit") shall conclusively establish the manner and time of the giving of such notice. Any Affidavit may be recorded with the Registry of Deeds by either party. Each Affidavit shall have attached to it a copy of the Offer Notice to which it relates.
  - (iv) Each Offer Notice, Exercise Notice and Waiver Notice shall contain the name of the record owner of the Property and a description of the premises to be transferred, in form adequate to identify the same.
- G.** The closing for the sale of the Property (or, if applicable, the part thereof that is the subject of the Offer) to DHCD shall take place in accordance with applicable provisions of the CBH Regulations and HIF Regulations, by or before the date that is one hundred twenty (120) days after the expiration of the First Refusal Period (i.e., on or before the date that is two hundred forty (240) days after DHCD's receipt of the relevant Offer Notice), by the close of the business day, at the Registry of Deeds (such date, the "Closing Deadline"); provided, however, that if DHCD reasonably determines additional time is necessary to effect the closing, due to delays of the Grantor in providing DHCD with the due diligence material described below or any other failure by the Grantor fully to cooperate with preparations for the sale, the Closing Deadline may be extended to a date reasonably determined by DHCD as necessary to redress the delays caused by the Grantor, which shall be specified in a written notice from DHCD setting forth the reasons for such extension, delivered to the Grantor and recorded with the Registry of Deeds, by or before the date originally scheduled for the closing. The parties may also mutually agree to extend the Closing Deadline, by written instrument; provided, however, that in such event, the parties shall execute an instrument reflecting such extension, which shall be recorded with the Registry of Deeds by or before the date originally scheduled for the closing.
- H.** Concurrently with the delivery of the Offer Notice, the Grantor shall provide DHCD with a copy of, or otherwise make available for DHCD's review at a mutually convenient time and location, all material relating to the Property (or the part thereof that is the subject of the

Offer) and/or the proposed sale, transfer, or other disposition thereof that has been made available to the party making the Offer, and shall thereafter promptly make available to DHCD any additional material made available to such party. Promptly upon any request therefor by DHCD, the Grantor shall provide DHCD with a copy of, or otherwise make available for DHCD's review at a mutually convenient time and location, any and all other material owned by or readily available to the Grantor that an unrelated third-party buyer would reasonably request in connection with its due diligence for an acquisition of such Property, including, by way of example but not of limitation, deeds, title insurance policies, appraisals, studies, reports, or other materials relating to such Property and/or any encumbrance(s) subject to which the Property is to be conveyed, or otherwise reasonably necessary or appropriate for DHCD to review in connection with its exercise of the First Refusal Right.

- I. The transfer to DHCD pursuant to the First Refusal Right shall be subject to such other requirements as may be more fully described in the CBH Regulations or HIF Regulations consistent with the CBH Statute and HIF Statute. Adjustments in the purchase price for recording fees, deed excise stamp taxes and other charges shall be made, and any other issues associated with the transfer shall be resolved, in accordance with standard conveyancing practice in The Commonwealth of Massachusetts. If either party so desires, the parties shall enter into a purchase and sale agreement memorializing the terms of the sale, consistent with the terms hereof and of the CBH Statute and HIF Statute; provided, however, that the First Refusal Right shall be binding regardless of whether the parties execute a purchase and sale agreement. Notwithstanding any other provision hereof to the contrary, if, after delivering notice of its intention to exercise the First Refusal Right, DHCD determines, in its sole discretion, that it is not in the best interests of DHCD to effect the purchase, DHCD may terminate the First Refusal Right at any time, upon written notice delivered to the Grantor and recorded with the Registry of Deeds; provided, however, that such termination right shall apply to DHCD only, and not to any assignee. If DHCD exercises such termination right or if either DHCD or its assignee (other than the Sponsor) fails to perform hereunder on or before the Closing Deadline through no fault of the Grantor, then the First Refusal Right shall lapse and be of no further force or effect.
- J. Concurrently with its acquisition of the Property, DHCD shall cause to be recorded with the Registry of Deeds an affordable housing restriction, in compliance with the CBH Statute, HIF Statute and any other applicable statutory requirements for the same (and, in the case of an assignee, in form acceptable to DHCD, in its discretion), which shall require that such Property shall be used only for the purposes of preserving or providing affordable housing thereon, which housing shall remain affordable for a period of not less than fifty (50) years.

**10. Term of Restrictions; Covenants to Run with Land.** The term of this Restriction shall be the sum of the Affordability Term plus the Option Term. The "Affordability Term" shall be 30 years and 10 months from the date hereof, provided that if the Project is not completed within 10 months after the date of this Restriction for any reason, any Holder shall have the right to extend the Affordability Term by recording in the Registry of Deeds a certificate of extension certifying

the length of the delay in completing the Project, whereupon the Affordability Term shall automatically be extended by an amount of time equal to the length of such delay and provided further that the term hereof shall automatically be extended for the period of the extension of any of the Loans to which this Restriction relates. The "Option Term" shall be the period from the expiration of the Affordability Term through the Option Exercise Deadline (as defined in Section 8 above) plus any additional period necessary for the consummation of a purchase of the Property under either the Purchase Option or the First Refusal Right, if applicable, under Section 8 or 9 above. Notwithstanding the foregoing, this Restriction shall not expire until the recording in the Registry of Deeds of a written determination by the Secretary of EOHHS, that there is no longer a need to maintain and use the Property as CBH Community-Based Housing. Notwithstanding any provision to the contrary herein or in any of the other Loan Documents, this Restriction shall remain in full force for the full term set forth herein including any extension, notwithstanding any prepayment of the Loan. The restrictions contained herein shall run with the land, shall bind the successors and assigns of the Grantor, and shall inure to the benefit of the Holders and their successors and assigns as permitted herein. Notwithstanding the foregoing, upon satisfaction in full at the originally stated maturity date, as it may have been extended, of all obligations under a particular Loan, as determined by the appropriate Holder, the Grantor may request that the Holders modify this Restriction to eliminate the requirements imposed by or otherwise relating to such Loan set forth in this Restriction. The parties shall cooperate to prepare an appropriate amendment to this Restriction, which amendment shall be duly recorded with the Registry of Deeds by the Grantor at its cost and expense.

**11. Subsequent Conveyances.** Each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Restriction, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Restriction.

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

**13. Reporting Requirements.**

**A. Annual Report.** Annually, no later than September 30, Grantor shall submit to DHCD, via the web-based annual reporting system located at <https://app2.ocd.state.ma.us/hsgdevannualreport>, or as otherwise instructed, an annual report consisting of the following in a form approved by DHCD and containing such supporting documentation as DHCD shall reasonably require:

(i) Annual adjusted income of each Family occupying a Restricted Unit.

- (ii) Monthly gross rents (rents plus utility allowances, if applicable) for all Restricted Units, such rents to be consistent with the schedule of maximum rents published annually by DHCD. The rent schedule shall include the maximum rents applicable to Restricted Units under Section 3 as well as the actual rents to be charged to over-income Families under Section 3.
  - (iii) Data required by DHCD regulations at 760 CMR 61.00 promulgated pursuant to Chapter 334 of the Acts of 2006 and all applicable DHCD directives, guidelines and forms as may be amended from time to time. The Grantor shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms.
  - (iv) Rental assistance data on all existing Residents of Restricted Units.
  - (v) The Grantor's certification, made to the best knowledge and belief of the officer or individual signing such certification, that:
    - (a) The Property continues to be used for the Permitted Uses.
    - (b) The Property continues to contain the required number of Low Income Units, Very Low Income Units and Extremely Low Income Units and to comply with the rent and other restrictions applicable to such Restricted Units. Each Resident of a Restricted Unit has been certified as a PCE.
    - (c) Grantor has not transferred, pledged or encumbered any interest in the Property, except as specifically provided in, and in accordance and compliance with the terms of, this Restriction.
    - (d) Grantor has caused the Property to be maintained in a manner consistent with the Statutes, Regulations and Guidelines and no children under six years old reside in or occupy the Property within the meaning of the Lead Paint Law or, if such children do reside in or occupy the Property, that the Property is in compliance with the Lead Paint Law.
    - (e) The information submitted pursuant to this Paragraph A. is true and accurate
- B. Confidentiality.** The Holders and the Grantor shall treat as confidential any of the foregoing information relating to a specific Resident or Unit in compliance with all applicable state and federal statutes and regulations, including M.G.L. c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but the Holders and the Grantor may release general statistical and other information about the Property, so long as the privacy rights and interests of the individual Residents are protected). The Holders and the Grantor shall not use any of the foregoing information in Paragraph A.(iii) for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause a Holder or Grantor to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

- C. Additional Reports.** Grantor shall prepare and submit to the Holders such additional reports as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.
- D. Records.** The Grantor shall maintain as part of its records (i) copies of all leases of Restricted Units; (ii) all initial and annual income certifications by Residents of Restricted Units and (iii) such additional records as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.
- E. Additional Reporting Requirements.** Additional reporting requirements are stipulated in the Loan Agreement.

**14. No Demolition.** The Grantor shall not demolish any part of the Improvements or substantially subtract from any real or personal property included within the Property except in conjunction with renovation or rehabilitation of the Units or construction of a new project on the Property, in either case subject to the prior written consent of all Holders, which consent may be granted or withheld in a Holder's sole judgment.

**15. Casualty.** The Grantor represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Grantor (subject to the approval of the lender(s) providing financing) will use its best efforts to repair and restore the Units to substantially the same condition as existed prior to the event causing such damage or destruction, and the Grantor represents, warrants and agrees that the Units shall thereafter continue to operate in accordance with the terms of this Restriction.

**16. Inspection.** The Grantor hereby grants to each Holder and its duly authorized representatives the right to enter the Property (a) at reasonable times and in a reasonable manner for the purpose of inspecting the Property to determine compliance with this Restriction or any other agreement between the Grantor and such Holder and (b) after thirty (30) days' prior written notice, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Restriction. The notice referred to in clause (b) shall include a clear description of the course and approximate cost of the proposed cure.

**17. Enforcement.** Upon violation by the Grantor of any of the provisions of this Restriction that remains uncured for more than thirty (30) days after notice thereof from any Holder (or for such longer period not to exceed thirty (30) days as shall be reasonably required under the circumstances to cure such violation, provided that the Grantor has commenced the cure of such violation within the initial thirty (30) day period and is thereafter diligently pursuing the cure to completion), any Holder, at its option (without liability to any party for failure to do so), may apply to any court, state or federal, for specific performance of this Restriction or an injunction against any violation of this Restriction, or for such other relief as may be appropriate, since the injury arising from the default under any of the terms of this Restriction would be irreparable and the amount of damage would be difficult to ascertain and may not be compensable by money alone. In each such default notice, the Holder giving such notice shall specify the violation in question and the actions such Holder believes are necessary and feasible to remedy such violation. No waiver by a Holder of any breach of this Restriction shall be deemed a waiver of such breach by any other Holder or a waiver of any other or subsequent breach. No act or

omission by any Holder, other than a writing signed by it waiving a breach by the Grantor in accordance with the next Section hereof, shall constitute a waiver thereof. Any Holder shall be entitled to recover from the Grantor all of such Holder's reasonable costs of an action for enforcement of this Restriction, including reasonable attorneys' fees (including the time of any in-house counsel of a Holder charged at the same rate as comparable outside attorneys). By its acceptance of this Restriction, no Holder undertakes any liability or obligation relating to the condition of the Property. Without limiting any other rights or remedies available to a Holder, any transfer of all or any other portion of the Property in violation of the provisions hereof, in the absence of a certification from all Holders approving, or waiving any restrictions with respect to, the same, all as set forth above, shall, to the maximum extent permitted by law, be voidable by any Holder, by suit in equity to enforce the restrictions hereof.

**18. Compliance Certification.** Upon written request therefor, a Holder shall provide a statement in form acceptable for recording certifying that the Grantor is in full compliance with the provisions hereof as relate to that Holder, provided such Holder believes that the Grantor is so in compliance. Upon receipt of a written request therefor, if a Holder shall believe that the Grantor is not so in compliance, such Holder shall provide such a recordable certification specifying in detail the section or sections hereof with which such Holder believes the Grantor not to be in compliance. Any third party dealing with the Grantor may rely for all purposes on the truth and completeness of such a certification of a Holder.

**19. Senior Lender Foreclosure.**

- A.** Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given the Holders not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action and the Secretary of EOHHS has failed within such sixty (60) days to locate a purchaser for the Property who is capable of operating the Property for the Permitted Uses subject to the provisions of this Restriction and who is reasonably acceptable to such mortgage holder, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Property or to any purchaser of the Property from such mortgage holder, and such Property shall, subject to Paragraph B. below, thereafter be free from all such rights and restrictions. The recording in the Registry of Deeds of a sworn affidavit by the foreclosing mortgagee certifying as to the failure of the Secretary of EOHHS to meet the foregoing deadline may be relied upon by any third party, provided that the foreclosure deed is recorded not more than six (6) months after the receipt by the Secretary of EOHHS of the foreclosure notice. Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate

only to the extent it is financially infeasible to maintain the level of affordability required by this Restriction or some lesser level of affordability (i.e., fewer Restricted Units or Restricted Units affordable to Families with higher Household Incomes than those required by this Restriction). "Financially infeasible" shall mean (i) with respect to the operation of the Property, that the rent and other income from the Property is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Property and (ii) with respect to a sale of the Property, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Property, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. Financial infeasibility shall be determined by the senior mortgage holder in its reasonable discretion after consultation with the Holders. The senior mortgage holder shall notify the Holders of the extent to which the rights and restrictions contained herein shall be terminated and the Grantor agrees to execute any documents required to modify this Restriction to conform to the senior mortgage holder's determination. The Grantor hereby irrevocably appoints any senior mortgage holder and each of the Holders, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Grantor should the Grantor fail or refuse to do so.

- B.** The rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in lieu of foreclosure by (i) the Grantor, (ii) any person with a direct or indirect financial interest in the Grantor, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Property is subsequently acquired by a Related Party during the period in which this Restriction would have remained in effect but for the provisions of this Section, this Restriction shall be revived and shall apply to the Property as though it had never lapsed.
- C.** In the event such mortgage holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Property plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the Holders in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Holders pursuant to this Section in connection with such proceeding, provided that in the event that such excess shall be so paid to the Holders by such mortgage holder, the Holders shall thereafter indemnify such mortgage holder against loss or damage to such mortgage holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such mortgage holder to the Holders in accordance herewith, provided that such mortgage holder shall give the prompt notice of any such claim and shall not object to intervention by the Holders in any proceeding relating

thereto. The Holders shall share any such excess pro rata in proportion to the respective amounts of principal and interest (if any) then outstanding on their portions of the Loan and the liability of a Holder under the foregoing indemnity shall be limited to the amount of such excess received by it. To the extent the Grantor possesses any interest in any amount which would otherwise be payable to the Holders under this Paragraph, to the full extent permissible by law, the Grantor hereby assigns its interest in such amount to said mortgage holder for payment to the Holders.

- D.** This Restriction is senior to the MHP first mortgage loan, as the same may be amended, modified or restated. MHP may terminate, modify or subordinate this Restriction in accordance with and subject to the requirements set forth in Paragraphs A. through C. above. The Grantor agrees to execute any documents required so to terminate, modify or subordinate this Restriction. The Grantor understands and agrees that, in the event of foreclosure of the MHP first mortgage loan and the exercise by MHP of the Power of Sale therein, the Property will be sold subject to the restrictions imposed hereby, unless MHP exercises its rights to terminate, modify or subordinate this Restriction prior to such sale. The Grantor hereby irrevocably appoints MHP, or any agent designated by MHP, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Grantor should the Grantor fail or refuse to do so.

**20. Notices.** Any notice, request or other communication which any party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized national overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed, in the case of the Grantor, to the Grantor's address set forth above and, in the case of one or more Holders, to the address(es) of such Holder(s) as set forth above. Any party may change its notice address by furnishing in writing to all other parties hereto a notice of such new notice address. A notice sent by certified or registered mail shall be deemed given three days after mailing; a notice sent by overnight courier shall be deemed given one day after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt. The Holders shall use reasonable efforts to send courtesy copies of all notices sent to the Grantor to the Grantor's investor at the address set forth below, provided that any failure to send such a courtesy copy shall not affect the validity of any notice: Massachusetts Housing Investment Corporation, 70 Federal Street, Boston, Massachusetts 02110, Attention: Richard Becker, Director of Asset Management.

**21. Successors and Assigns; No Third-Party Beneficiaries.** This Restriction shall be binding upon the Grantor and its successors and assigns, and shall burden the Property as specified herein. This Restriction shall also be binding upon the Holders, and shall inure to the benefit of their successors and assigns, provided that a Holder shall not voluntarily assign its rights hereunder unless (a) such Holder believes in good faith that it is no longer reasonably capable of performing its duties hereunder, and (b) such assignment shall be to a governmental body or an entity of a similar character and purposes to such Holder which is reasonably capable of

performing such duties hereunder (except that DHCD's rights with respect to the Purchase Option and First Refusal Right are assignable, as set forth herein).

**22. Severability; Construction.** 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 Restriction invalid, unenforceable or not entitled to be recorded, registered or filed under applicable law. If any provision or part hereof shall be affected by such holding, the validity of other provisions of this Restriction and of the balance of any provision held to be invalid, illegal or unenforceable, in part only, shall in no way be affected thereby, and this Restriction shall be construed as if such invalid, illegal, or unenforceable provision or part hereof had not been contained herein. In the event of any actual or potential inconsistency between the terms of this Restriction and any of the Statutes and/or the Regulations, such terms shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the Statutes, the Regulations and this Restriction, in the foregoing order of priority, shall control.

**23. Governing Law.** This Restriction shall be governed by the laws of The Commonwealth of Massachusetts. Inasmuch as the restrictions contained herein have been imposed upon the Property in part to satisfy requirements of various governmental bodies referred to herein, including, without limitation, DHCD, the restrictions contained herein are intended to be construed as a restriction held by a governmental body with the benefit of Section 26 of Chapter 184 of the Massachusetts General Laws as existing as of the date hereof, 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 thereof.

**24. Recording.** The Grantor, at its cost and expense, shall cause this Restriction and any amendment hereto to be duly recorded with the Registry of Deeds (and if necessary or appropriate, re-recorded), 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 Holders and their successors and assigns to enforce this Restriction.

**25. Further Assurances.** Each Holder is authorized to record or file any notices or instruments appropriate to assuring the enforceability of this Restriction; and the Grantor on behalf of itself and its successors and assigns appoints each Holder its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agrees to execute any such instruments upon request. The benefits of this Restriction shall be in gross and shall be assignable by any Holder. The Grantor and the Holders intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

**26. Counterparts.** This Restriction may be executed in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one

instrument. In making proof of this Restriction, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Restriction is sought.

**27. Incorporation of Exhibits and Riders.** Any and all exhibits and riders attached hereto or otherwise referenced herein are hereby incorporated by reference, the same as if each were fully set forth herein.

**28. Amendment; Waiver.** This Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of all Holders.

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

Executed under seal as of the date set forth above.

FRANCONIA APARTMENTS LLC

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

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

Elsie Borden

Its: President

EXHIBIT A	Property Description
EXHIBIT B	Projected Initial Rent Schedule
EXHIBIT C	Initial Affordability Matrix
EXHIBIT D	Additional Definitions

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this 15th day of October, 2009, before me, the undersigned notary public, personally appeared Elsie Borden, the President of Franconia Apartments MM, Inc., proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

## **EXHIBIT A : PROPERTY DESCRIPTION**

## **EXHIBIT B : PROJECTED INITIAL RENT SCHEDULE**

(Rents include utility allowance)

<b>UNIT TYPE</b>	<b>INCOME LEVEL</b>				
	<b>EXTREMELY LOW INCOME</b>	<b>VERY LOW INCOME</b>	<b>LOW INCOME</b>	<b>MODERATE INCOME</b>	<b>HIGH MODERATE INCOME</b>
SRO	\$305.00	\$508.00	\$610.00	\$814.00	\$1,119.00
STUDIOS	\$407.00	\$678.00	\$814.00	\$1,086.00	\$1,493.00
1-BR	\$436.00	\$727.00	\$873.00	\$1,164.00	\$1,600.00
2-BR	\$523.00	\$872.00	\$1,047.00	\$1,397.00	\$1,919.00
3-BR	\$605.00	\$1,008.00	\$1,210.00	\$1,614.00	\$2,219.00
4-BR	\$676.00	\$1,125.00	\$1,350.00	\$1,801.00	\$2,475.00

**EXHIBIT C : INITIAL AFFORDABILITY MATRIX** -- NOTE THAT IN ORDER TO SATISFY THE AFFORDABILITY REQUIREMENTS OF THE MHP FIRST MORTGAGE LOAN AT LEAST TWENTY PERCENT (20%) OF THE TOTAL UNITS SHALL BE VERY LOW INCOME UNITS, FORTY PERCENT (40%) OF THE TOTAL UNITS SHALL BE LOW INCOME UNITS OR FIFTY PERCENT (50%) OF THE TOTAL UNITS SHALL BE MODERATE INCOME UNITS.

NUMBER/SIZE OF UNITS REQUIRED BY	INCOME CATEGORY				
	HIGH MODERATE INCOME	MODERATE INCOME	LOW INCOME	VERY LOW INCOME	EXTREMELY LOW INCOME
AHT	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO 2 1-BR 18 2-BR 4 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO 3 1-BR 6 2-BR 3 3-BR ____ 4-BR
CBH	____ SRO ____ STUDIO 3 1-BR 2 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR
HIF	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO 3 1-BR 5 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR 3 2-BR 5 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR
HOME	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR 15 2-BR 1 3-BR ____ 4-BR	____ SRO ____ STUDIO 1 1-BR 3 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR
SPRINGFIELD HOME	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO 2 1-BR 18 2-BR 4 3-BR ____ 4-BR	____ SRO ____ STUDIO ____ 1-BR ____ 2-BR ____ 3-BR ____ 4-BR	____ SRO ____ STUDIO 3 1-BR 6 2-BR 3 3-BR ____ 4-BR
<b>COMPOSITE</b>	____ SRO ____ STUDIO	____ SRO ____ STUDIO	____ SRO ____ STUDIO	____ SRO ____ STUDIO	____ SRO ____ STUDIO



**AFFORDABLE HOUSING RESTRICTION**

	<input type="text"/> 1-BR <input type="text"/> 2-BR <input type="text"/> 3-BR <input type="text"/> 4-BR	<input type="text"/> 1-BR <input type="text"/> 2-BR <input type="text"/> 3-BR <input type="text"/> 4-BR	<input type="text"/> 2 1-BR <input type="text"/> 18 2-BR <input type="text"/> 2 3-BR <input type="text"/> 4-BR	<input type="text"/> 1-BR <input type="text"/> 2-BR <input type="text"/> 2 3-BR <input type="text"/> 4-BR	<input type="text"/> 3 1-BR <input type="text"/> 6 2-BR <input type="text"/> 3 3-BR <input type="text"/> 4-BR
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## **EXHIBIT D : ADDITIONAL DEFINITIONS**

Following are additional definitions used in this Affordable Housing Restriction:

"AHT Guidelines" shall mean the guidelines issued by DHCD regarding the AHT Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"AHT Program" shall mean the Affordable Housing Trust Fund loan program established under the AHT Statute under which AHT makes loans available to sponsors of affordable housing for Low Income and Extremely Low Income Families.

"AHT Statute" shall mean the Massachusetts Affordable Trust Fund Statute, M.G.L. c.121D.

"Alternative Form of Housing" shall mean housing that involves an unusual or specialized level of management or social services, an innovative financing or ownership structure or other innovative features, including, without limitation, any of the various types of housing defined and described in 760 CMR 23.02 of the HIF Regulations (as defined below) or as otherwise described in the HIF Statute.

"Area" shall mean Springfield, MA HMFA.

"Bedroom Adjusted AMI" applicable to a Unit shall mean the median income for the Area, with adjustments for the number of bedrooms in such Unit, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended. For purposes of adjustments for the number of bedrooms in a Unit, a Unit that does not have a separate bedroom is assumed to be occupied by one individual and a Unit with one or more separate bedrooms is deemed assumed to be occupied by 1.5 individuals for each bedroom (with the total number of individuals rounded up).

"CBH Community-Based Housing" shall mean housing reserved for PCEs that is: (a) integrated housing (a non-institutional Residential Housing Development (as defined in the CBH Regulations), or housing units therein, either on a single site or multiple sites, in which no more than one-third of the housing units are reserved for PCEs and which complies with any additional requirements specified in the CBH Guidelines as approved by DHCD); or (b) any other non-institutional Residential Housing Development, or one or more housing units therein, that is reserved for PCEs, as approved by DHCD.

"CBH Guidelines" shall mean the guidelines issued by DHCD regarding the CBH Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CBH Regulations" shall mean the regulations relating to the CBH Program promulgated by DHCD at 760 Code of Massachusetts Regulations, Section 60.00 et. seq., as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CBH Program" shall mean the Community-Based Housing Fund Program, established for the purpose of facilitating the creation of community-based housing, under which DHCD contracts to make funds available through CEDAC and other financial intermediaries, for such financial intermediaries to loan to sponsors of community-based housing for PCEs, subject to and in accordance with the provisions of the CBH Statute.

"CBH Statute" shall mean Chapter 290 of the Acts of 2004 (budget line item 4000-8201), as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"EOHHS" shall mean the Executive Office of Health and Human Services of the Commonwealth of Massachusetts (or any successor thereto or designee thereof).

"Extremely Low Income Family" shall mean a Family whose Household Income is less than or equal to thirty percent (30%) of the Family-size Adjusted AMI.

"Fair Market Rent" shall mean the fair market rent in the Area for a comparably-sized dwelling as established by HUD under regulations promulgated at 24 C.F.R. §888.11 (or successor regulations), minus a monthly allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family.

"Family" shall have the meaning set forth in 24 C.F.R. §5.403 (or any successor regulation). Notwithstanding the foregoing, a household comprised of a full-time student or students shall not qualify as a Family except as permitted under the federal low-income housing tax credit program pursuant to Section 42(i)(3)(D) of the Internal Revenue Code of 1986, as amended.

"Family-size Adjusted AMI" shall mean the median income for the Area, adjusted for family size, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended.

"Grantor" shall mean the Grantor named on the first page hereof or any successor or assign thereof permitted under Section 8 of this Restriction, including any party holding ownership interests in or with respect to the Property.

"Guidelines" shall mean the AHT Guidelines, the CBH Guidelines, the HIF Guidelines and the HOME Guidelines.

"HIF Guidelines" shall mean the guidelines issued by DHCD regarding the HIF Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"HIF Program" shall mean the phase of the Housing Innovations Fund loan program established under the HIF Statute for the purpose of facilitating the creation and retention of alternative forms of housing, under which DHCD contracts to make funds available through CEDAC and other financial intermediaries, for such financial intermediaries to loan to sponsors of Alternative Forms of Housing for Low Income Families, subject to and in accordance with the provisions of the HIF Statute.

"HIF Regulations" shall mean the regulations relating to the HIF Program promulgated by DHCD at 760 Code of Massachusetts Regulations, Section 23.00 et seq., as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"HIF Statute" shall mean Section 5 of Chapter 244 of the Acts of 2002 (budget line item 7004-7013), as continued by Chapter 290 of the Acts of 2004 (budget line item 7004-7013).

"High Moderate Income Family" shall mean a Family whose Household Income is less than or equal to one-hundred-ten percent (110%) of the Family-size Adjusted AMI.

"Holder" shall mean each of DHCD, AHT, CEDAC, and the City, or, as applicable, each successor or assign of the foregoing and "Holders" shall mean all of the foregoing parties, collectively.

"HOME Guidelines" shall mean the guidelines issued by DHCD regarding the HOME Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"HOME Program" shall mean the federal HOME Investment Partnerships Program under which DHCD and the City make loans available to sponsors of certain types of affordable housing.

"HOME Regulations" shall mean 24 C.F.R. Part 92.

"Household Income" shall mean a Family's adjusted annual income determined in the manner set forth in 24 C.F.R. §5.609 (or any successor regulations).

"HUD" shall mean the United States Department of Housing and Urban Development.

"Improvements" shall mean the building or buildings on the Property presently containing, or after completion of the planned construction to contain, the number of Units indicated on the first page hereof, and all other authorized buildings, structures and improvements located on the Property from time to time, all equipment and fixtures therein, and any authorized repair, improvement, reconstruction, restoration, renovation, or replacement of a capital nature thereto or otherwise on the Property.

"Loan" shall mean collectively, the loans for the Project being provided to the Grantor under the Programs.

"Low Income Family" shall mean a Family whose Household Income is less than or equal to sixty percent (60%) of the Family-size Adjusted AMI.

"Moderate Income Family" shall mean a Family whose Household Income is less than or equal to eighty percent (80%) of the Family-size Adjusted AMI.

"Over-income Rent" shall mean, for a particular over-income Family, a monthly rent equal to the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of the Family's Household Income as recertified annually or (z) the comparable market rent for the Family's Unit.

"PCE" or "Person Certified Eligible" shall mean a Moderate Income Family with disabilities who is institutionalized or at risk of being institutionalized, but who is not eligible for housing developed pursuant to the so-called FCF program, authorized by Chapter 290 of the Acts of 2004 (budget line item 4000 8201) as amended from time to time, and who has been certified as an eligible PCE by EOHHS (or its designee) in accordance with the procedure described in the CBH Guidelines.

"Permitted Encumbrances" shall mean those encumbrances on the Property identified in the mortgage granted to the Holders of even or near date herewith.

"Permitted Uses" shall mean use of the Improvements for the number of rental Units indicated on the first page hereof comprising an Alternative Form of Housing, consistent with the HIF Statute, HIF Regulations and HIF Guidelines, including the number of Restricted Units indicated on the first page hereof of which at least 5 Units (containing a total of not less than seven bedrooms) shall be

reserved for PCEs and shall qualify as CBH Community-Based Housing consistent with the CBH Statute, CBH Regulations and CBH Guidelines. Such Permitted Uses shall include activities and/or services of a nature to benefit the Residents of the Restricted Units and/or to benefit the use of the Improvements as an Alternative Form of Housing and/or to benefit use of the Improvements as CBH Community-Based Housing.

"Programs" shall mean the AHT Program, the CBH Program, the HIF Program and the HOME Program.

"Property" shall mean that certain parcel or parcels of land located at the Property Address indicated on the first page hereof and more particularly described in Exhibit A attached hereto, together with all Improvements thereon.

"Registry of Deeds" shall mean the Hampden Registry of Deeds.

"Regulations" shall mean the CBH Regulations, the HIF Regulations and the HOME Regulations.

"Residents" shall mean the lawful occupants of the Units.

"Restricted Unit" shall mean a Unit required by the terms hereof to be rented to a Low Income Family, a Very Low Income Family or an Extremely Low Income Family or a Unit required by the terms hereof to be reserved as CBH Community-Based Housing.

"Sponsor" shall mean Springfield Housing Action Corporation.

"SRO Unit" shall mean a single-room (zero bedroom) Unit intended for occupancy by a single eligible Resident and that contains neither food preparation nor sanitary facilities.

"Statutes" shall mean the AHT Statute, the CBH Statute and the HIF Statute.

"Studio Unit" shall mean a single-room (zero bedroom) Unit intended for occupancy by a single eligible Resident that contains food preparation and/or sanitary facilities.

"Unit" shall mean any residential unit located on the Property.

"Very Low Income Family" shall mean a Family whose Household Income is less than or equal to fifty percent (50%) of the Family-size Adjusted AMI.

<b>One Stop Exhibit</b>	<b>Related Items at Closing</b>
Exhibit 1. Site Information:	Exhibit A, Legal Description
Exhibit 2. Environmental Information:	21E, Environmental Certificate, Environmental Opinion
Exhibit 3. Evidence of Zoning	Zoning Opinion, Environmental Opinion
Exhibit 4. Evidence of Site Control	Deed, Title, Survey, Title Insurance
Exhibit 5. Evidence of Local Support	NA
Exhibit 6. Market Information; Acquisition Value	Market Study, Appraisal by lenders
Exhibit 7. Marketing Plan	Tenant Selection Plan, Management Plan
Exhibit 8. Affirmative Fair Marketing Plan	TSP, Management Plan
Exhibit 9. Equal Opportunity Questionnaire	NA
Exhibit 10. Sales Prices and Affordability	Homeownership projects, Deed restrictions
Exhibit 11. Construction Period Sources-Uses	Construction loan, Loan Agreement
Exhibit 12. Tax-Exempt Project Information	NA
Exhibit 13. Relocation Plan	Due Diligence
Exhibit 14. Special Needs Service Plan	Due Diligence
Exhibit 15. Required Tax Credit Certifications	NA
Exhibit 16. Preliminary Plans and Specifications	Final Construction Documents, Construction Contract, Architect's Certificate
Exhibit 16A. Accessibility Information	Architect's Certificate
Exhibit 17. Commitment Drawings	See #16, building permit
Exhibit 18. Soil and/or Structural Report	NA
Exhibit 19. Energy Budget	NA
Exhibit 20. Construction Financing	Construction loan, Loan Agreement
Exhibit 21. Permanent Financing	Rate Lock, Loan commitment
Exhibit 22. Equity Financing Commitment	Operating Agreement, Tax Opinion
Exhibit 23. Other Funding Commitments	Other loan agreement, Affordable Housing Restriction,
Exhibit 24. Rental Subsidies	AHAP
Exhibit 25. Developer Profile	Guarantees
Exhibit 26. Mortgagor's Other Real Estate	Due Diligence
Exhibit 27. Architect's Resume	NA
Exhibit 28. Management Agent Profile	Management Plan
Exhibit 29. General Contractor's Profile	GC Financials, Bonds, Insurance
Exhibit 30. Developer Financial Statement and Credit Release	Guarantees
Exhibit 31. Mortgagor Personal Financial Statement	Guarantees
Exhibit 32. Individual Financial Profile	NA
Exhibit 33. General Contractor's Financial Capacity	Bonds, Insurance

## Driving the Closing – Additional Information on Common Pitfalls

There are many ways in which a Sponsor can be proactive and can facilitate a closing. Among them is identifying and giving early attention to long lead time items that are within the Sponsor's control and that, if neglected, cause problems and delays.

Here are a few of the usual culprits.

1. **Loan from State Agency or Quasi Public Agency: Mass Historic Project Notification Filing**

If the project is or will be funded by a state or quasi public entity (whether it is new construction, rehab, historic rehab and just a refinance) the Massachusetts Historical Commission must be notified. Signing a commitment letter triggers this process. Typically the state agency will take the lead in filing the notification letter; however the borrower needs to cooperate by supplying the loan officer with sufficient detail to describe the project and in the case of adaptive reuse or renovations to older structures, sufficient detail about the nature and scope of the renovations in order to for MHC to make a determination of "no adverse affect". The Project Notification Letter should be filed with MHC well in advance of the permanent loan closing (even prior to the construction/renovation loan closing, if possible).

2. **Project-Based Rental Assistance - Housing Assistance Payments Contracts or MRVP Contracts**

If this is a condition of the Loan(s), the sponsor must be diligent about getting HUD or the administering agency (BRA, MBHP) to issue the contract or obtain renewals of expiring contracts as well as to sign the Assignment of HAP contract to the Lender. Often the form of Assignment is a matter of negotiation between the Lender and the administering agency. Accordingly, the sponsor is advised to obtain the lender's preferred form of assignment and to circulate it to the administering agency to facilitate early resolution of any drafting issues.

3. **New Construction/Substantial Rehab with separate Construction/Permanent Lenders. Take Out Agreement**

The sponsor should determine what the construction lender will require as a condition of the construction loan. Does it require a "take-out" agreement or merely a commitment letter from the permanent lender(s)? If a take-out agreement is required, the Sponsor should get the permanent lender and its attorney involved early in the construction closing process to agree upon the forms of title insurance, opinions and other borrower due diligence.

- a. Master Subordination Agreement – where there is a combined construction and MassDocs loan, the Master Subordination Agreement should contemplate that the permanent lender will take the position of the Senior (construction) lender once the permanent loan is made. If the borrower is locking the rate with the permanent lender, the permanent lender will likely know about the construction closing and

review and approve the MSA. However, if there is no forward rate lock, and no Take Out Agreement, the Sponsor should get the permanent lender involved in the MassDocs closing at least to the extent of the MSA, so that it need not be amended later at the time the permanent loan is closed.

b. See item no. 1 above (Mass Historic).

c. See item no. 8b., below (Architect's certificates).

4. **Existing projects-refinancing, renovation-Consents of Subordinate Lenders**

Where there is existing subordinate debt that will be re-subordinated and/or modified and extended prior to or in connection with the permanent loan: if the project involves the refinancing of senior debt that might possibly include increased senior debt for renovations or capital improvements, the sponsor should identify the subordinate lenders early on; inform them in detail of the planned refinancing/renovation and make a request for any concessions that may be necessary (extension of maturity date to be coterminous with that of new senior loan) in addition to obtaining their consent to subordinate to the new debt.

5. **Existing projects-refinancing, renovation-Letters of Lead Paint Compliance**

Existing projects- (refinancing, renovation). In projects constructed prior to 1978 there is a presumption that lead paint is present in units and common areas. Unless there was a gut rehab with the issuance of certificates of occupancy, the lender will require current (or recent) letters of lead paint compliance for all of the units and the common areas. If the compliance letters are several years old, or are incomplete, additional testing and/or certification will likely be required by the lender. Accordingly the Sponsor should assemble all available pertinent information (records of renovation, certificates of occupancy, letters of lead paint compliance, test reports, etc.) and should identify potential gaps information and determine what will be required by the Lender in the way of re-testing and/or supplementation.

## PROPERTY AND OWNER INFORMATION

<b>Project Name</b> (Your Project Name Here)								
		<b>Use</b>	<b>Units</b>	<b>BLDG 1</b>	<b>BLDG 2</b>	<b>BLDG 3</b>	<b>BLDG 4</b>	<b>BLDG 5</b>
<b>Project Information</b>		Studio						
Street Address:		1BR						
City:		2BR						
County:		3BR						
Development Type		4BR						
Ownership Status:		5BR						
Purchase Date		Parking						
		Laundry						
		Other:						
<b>Ownership Information</b>	<b>Entity Name</b>	<div style="font-size: 2em; font-weight: bold;">X</div>						
Sponsor								
Joint Venture Partner								
LLC/LP Entity Name								
Managing Member or General Partner								
Investor Partner/Limited Partner								
Special Member/Minority Partner								
Date of Entity Formation								
Owner EIN								
GP/Managing Member EIN								
Sponsor EIN								
Construction Description								
Land Use Restrictions (40B, Conservation, Other)								
Zoning & Permitting								
Environmental, Remediation								
Site/Unusual Features; Easements								
Ongoing Leasing Requirements & Preferences	(See also chart of DHCD Affordability)							

## SUMMARY OF LOANS AND SUBSIDIES

**(Your Project Name Here)**

LOAN & SUBSIDY SOURCES

### Construction Loan

Lender Name	Loan Amt		Interest
Total	\$ -		

### Permanent Sources - Hard & Soft debt

Hard Debt: Lenders	Loan Amt	Position	Interest	Term (yrs.)	DSC	Payment, if any
Total Hard Debt	\$ -					
Soft Sources						
Deferred Fee (loan)						
Total Soft Debt	\$ -					
<b>Total Sources</b>	\$ -					

### Operating Subsidies

	Agency	Studio	1BR	2BR	3BR	4BR
Section 8						
Other						

## EQUITY INVESTMENT SUMMARY

(Your Project Name Here)

<b>Equity Investment #1</b>			
Type of Credit			
Investor Name:			
<b>Tax Credit Information</b>			
Tax Credit Allocation amount			
Credit Year			
Equity Purchase Price			
Total Equity:			
Pay-in schedule	<b>Amount</b>	<b>%</b>	<b>Milestone</b>
First Cap Contribution			
Second Cap Contribution			
Third			
Fourth			
Fifth/final			
<b>Adjusters (Describe each)</b>			
Timing adjuster			
Amount of credit			
Cap on upward			
Total Deferred Fee			
Total Paid Fee			
Total Fee	\$ -		

<b>Equity Investment #2</b>			
Type of Credit			
Investor Name:			
<b>Tax Credit Information</b>			
Tax Credit Allocation amount			
Credit Year			
Equity Purchase Price			
Total Equity:			
Pay-in schedule	<b>Amount</b>	<b>%</b>	<b>Milestone</b>
First Cap Contribution			
Second Cap Contribution			
Third			
Fourth			
Fifth/final			
<b>Adjusters (Describe each)</b>			
Timing adjuster			
Amount of credit			
Cap on upward			
Total Deferred Fee			
Total Paid Fee			
Total Fee	\$ -		

## SUMMARY OF LENDER AND INVESTOR REQUIREMENTS

(Your Project Name Here)		
<b>Summary of Lender &amp; Investor Requirements</b>		
<b>Guaranties to sponsors (include amt. and conditions to release):</b>		
	Amount	Conditions / Comments
Operating Deficit		
Completion		
<b>Reserves (include amt. and conditions to release) and Other Lender Requirements:</b>		
	Amount	Conditions
Operating		
Replacement		
Section 8		
Lease-up		
Services		
Other		
DSC Requirements		
Developer Fee Release		
Right of first refusal		
Lender call on cash flow		
Notes / Other		
<b>Sponsor Financial Stake (amount and conditions):</b>		
Asset management fee		
Deferred developer fee		
Incentive management fee		
Right to cash flow		
Other		

Ever Glade was originally envisioned as a three-phase condo townhouse development on a large site in Woody City, Massachusetts. Santimello Properties is the developer. The first phase is complete and about 90% of units have sold. The second phase is about  $\frac{3}{4}$  through construction; however, it is proceeding slowly. About two years ago, the developer felt the local market for townhouses would be exhausted by only two phases and turned over the land for the third phase to the lender, Woody City Bank.

The third-phase site is primarily undeveloped but for a 1940s-era Art Deco building, currently home to Chazen's Auto, a car repair business that has operated there on a month-to-month lease for years.

## Driving a Closing: EXERCISES

You are a relatively new project manager at Woody City Housing. Your predecessor, Martin, started a project, called Thurston Homes in honor of a now-deceased Board member and community advocate. The vision was to tear down the garage and build a 35-unit affordable housing rental development. Martin negotiated an option with the bank for the land and submitted a second One-Stop for funding to DHCD right before he left your organization. Martin gave you only a few files on the project.

You were just notified that you have received the following funding: Low Income Housing Tax Credits, HOME funds and HIF funds. These funds plus local HOME funding you were already awarded and a permanent loan from MHP ought to be just enough financing for the project if you defer most of the developer fee. You have a very good offer letter from an equity investor, but aren't sure they knew about the HIF funds.

The Executive Director of your organization just dropped by your office to celebrate the news on the funding awards. After enjoying several Girl Scout cookies with you, she asks when you think you might close. She also mentions that the organization is running very low on cash and unless your project closes by year-end, pays your nonprofit back for the predevelopment funds it advanced and pays some fee, she will need to lay off staff. She also worries your board won't let her advance more funding for predevelopment.

Your option expires in a month, and you'll need \$10,000 to extend it every three months until closing.

You have a Comprehensive Permit. You were supposed to share a transformer with Phase 2 as well as some parking in order to meet the Comprehensive Permit requirements. You don't think anyone reached final agreement with Santimello. You have recently heard Santimello is charging for parking spaces at Phase 2.

Your architect has made some progress on drawings but has not finalized 100% DD. You have a contractor pricing them for free and you are close to budget if the job is not prevailing wage.

***INSTRUCTIONS: List 5-10 things you know you need to do to get from now to closing. If you have time, place them in the following categories: 1. First priority and 2. Important but can wait.***

***INSTRUCTIONS/Second set-MONKEY WRENCHES: Congratulations Thurston Homes is now cruising toward a closing!! For your team's Monkey Wrench, please describe how significant this is, how you might address this bump in the road and which team members (e.g. contractor, attorney) you would contact for help. You should also think about whether, in hindsight, there are any steps that might have been taken to avoid this surprise.***



**Monkey Wrench #1**

The Chazens come to a meeting with your relocation coordinator with a manila file marked "Lease." Inside is a 5- year lease signed with Santimello's brother Casey dated just four years ago. The family says they can't find a replacement location as quickly as they thought and want to stay through the end of the lease. Ultimately, you are using the land on which their building sits for a landscaped walking area, a few parking spaces and storage sheds; however, the construction plan was to use the area for staging. Knocking down the garage was supposed to happen during the first three weeks after construction started.



**Monkey Wrench #2**

One of your sources for closing was a \$225,000 loan from your city's HOME funds. The City expected this to come out of last year's funding, but got behind in allocations. They have awarded you \$200,000 but the remaining \$25,000 now can't be awarded until late next year, after you hope to close. The City also says it is starting a new policy of taking 50% of cash flow for repayment of its loan in full on loans over \$200,000. The City wants to be in first position for cash flow.



**Monkey Wrench #3**

During due diligence, one of your funders notices that your Comprehensive Permit states as a condition, "Woodlook, a sustainable decking material, will be used for the 45 front and rear decks on the units. " During value engineering, a different material was substituted for the front decks, and the rear decks were eliminated entirely. There are now fewer than 35 decks and none is intended to be made of Woodlook. The savings allowed you to increase insulation substantially.



#### **Monkey Wrench #4**

In preparation for getting title insurance, your attorney did a title search on the parcel. There is a mortgage of record for a loan to Santimello held by your town. You had been told that had been paid off by proceeds from the sale of Phase 1. There is also what seems to be a mechanics lien filed by Prosaic, a contractor which did some work on landscaping your parcel. When you call your contact at Woody City Bank, he says he'll look into things. He also asks whether you heard about Woody City Bank being acquired by GreatBig Bank in two months and adds he'll send new contact information once he knows where he will be located. He thinks it may be Ohio.



# HOW TO DRIVE A CLOSING

## May 9, 2017

### Agenda

- 8:45- 9:00     **Registration**
- 9:00 – 9:45     **Overview and Introductions**
- 9:45 – 10:30   **Driving a Closing- Part 1**  
*Jennifer Gilbert, VIVA Consulting*
- 10:30 – 10:45   **Break**
- 10:45 – 12:15   **Driving a Closing- Part 2**  
*Jennifer Gilbert*
- 12:15 – 1:00    **Lunch**
- 1:00 – 3:00     **Driving a Closing- Out of the Galaxy**  
*Teresa Santalucia, Klein Hornig LLP*
- 3:00 – 4:00     **Final Session and Wrap up**