CORRESPONDENCE
4/11/16

04/11/2016

CORRESPONDENCE

1	FEMA	Flood Plain Management
2	Robert LaTremouille	Letter regarding Veteran's Department
3	Planning Board	Expiration of Completion Date Brookside Estates
4	Town Planner	Woloski Park Update
5	MassHousing	Cranberry Village Apartments

#1

Federal Emergency Management Agency

Washington, D.C. 20472

March 29, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
Case No.: 15-01-2489P

The Honorable Allin Frawley
Chairman, Town of Middleborough
Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

Community Name: Town of Middleborough, MA
Community No.: 250275
FIRM Panel Affected: 25023C0442J,
25023C0461J,
25023C0434K

116

Dear Mr. Frawley:

In a Letter of Map Revision (LOMR) dated November 16, 2015, you were notified of proposed flood hazard determinations affecting the Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for the Town of Middleborough, Plymouth County, MA. These determinations were for Great Quittacas Pond - an area along the entire shoreline and east of State Highway 105/Bedford Street, north of North Avenue, south of Long Point Road and west of Marion Road; and Black Brook - from the confluence with Great Quittacas Pond to approximately 6,850 feet upstream of Neck Road. The 90-day appeal period that was initiated on November 26, 2015, when the Department of Homeland Security's Federal Emergency Management Agency (FEMA) published a notice of proposed Flood Hazard Determinations in *The Middleboro Gazette* has elapsed.

FEMA received no valid requests for changes to the modified flood hazard information. Therefore, the modified flood hazard information for your community that became effective on March 25, 2016, remains valid and revises the FIRM and FIS report that were in effect prior to that date.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65. The community number(s) and suffix code(s) are unaffected by this revision. The community number and appropriate suffix code as shown above will be used by the National Flood Insurance Program (NFIP) for all flood insurance policies and renewals issued for your community.

FEMA has developed criteria for floodplain management as required under the above-mentioned Acts of 1968 and 1973. To continue participation in the NFIP, your community must use the modified flood hazard information to carry out the floodplain management regulations for the NFIP. The modified flood hazard information will also be used to calculate the appropriate flood insurance premium rates for all new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

If you have any questions regarding the necessary floodplain management measures for your community or the NFIP in general, please contact the Mitigation Division Director, FEMA Region I, in Boston, Massachusetts either by telephone at (617) 832-4712, or in writing at 99 High Street, Boston, Massachusetts, 02110. If you have any questions regarding the LOMR, the proposed flood hazard determinations, or mapping issues in general, please call the FEMA Map Information eXchange, toll free, at (877) 336-2627 (877-FEMA MAP).

Sincerely,

Patrick "Rick" F. Sacbibit, P.E., Branch Chief
Engineering Services Branch
Federal Insurance and Mitigation Administration

cc: The Honorable Aaron Burke
Chairman, Town of Lakeville Board of Selectmen

The Honorable Richard D. Nunes
Chairman, Town of Rochester Board of Selectmen

Mr. Nathan Darling
Floodplain Administrator
Town of Lakeville

Mr. Robert Whalen
Floodplain Administrator
Town of Middleborough

Ms. Laurell J. Farinon
Floodplain Administrator
Town of Rochester

#2

Robert J. La Trémouille

387 Center Street, #D2R
Middleboro, Massachusetts 02346

Cell: 617-283-7649
E-Mail: boblat@yahoo.com

April 5, 2016

Board of Selectmen
Town of Middleborough

RE: Matter before you on April 11, 2016 concerning the Veterans' Service Officer.
Please deliver as part of the record of the April 11 meeting.

Dear Members:

I understand that Paul Provencher is retiring as Veterans' Service Officer and is trying to reorganize his office so that it can responsibly function after his departure.

I have been a client of Paul's since about October 2013.

I am writing to you because I had hoped to attend your meeting of April 11, but it is looking like I will have to work. My conflict is described below in a supplement to these comments.

Since I probably will not be able to be able to attend next Monday's meeting, I am giving you this letter to serve in my stead, and I regret the need to be absent.

I have strongly appreciated Paul's assistance, and I have been amazed at the workload he juggles.

Paul assisted me by getting me into the system and by assisting me to get housing under very severe circumstances. I was very close to homeless due to circumstances beyond my control. He has greatly assisted me in accessing resources available in Middleborough and in the VA system.

Paul is a multi-tasker supreme. His workload, I understand, has increased massively since he took over the position. The reality is that he very clearly needs assistance now. It is moderately reasonable to say that a replacement could not possibly handle his current workload.

What has happened has been, and I am interpreting my understanding of the position from what I am told and I have seen in practice, that his workload has steadily and massively increased. He has been able to function because he has seen the steady increases and lived with them through rather incredible multitasking.

He is juggling, juggling and juggling to an extent which would be impossible for somebody who has not lived with the increase. I can see how has lived with and worked things into place. He knows the town, and the VA, what is possible in both, plus he has worked around the massive increase in workload by that major juggling.

The clerical assistance, obviously, is needed now. I would find it very difficult to conceive how you will also find it possible to replace Paul without a competent clerk to take over part of the work Paul has been doing, plus to function as a corporate memory after he leaves.

He is doing a spectacular job.

Please assist him in passing along the function in a manner which will make it possible to hire an adequate replacement, and for his replacement to fill the function as well.

Thank you for your consideration.

Sincerely,

Robert J. La Tremouille

cc: Paul Provencher
Veterans' Service Officer
Town of Middleborough.

Supplement: Why I probably may not be able to attend.

I do not earn much, but it comes in what to me are big quantities with big value in frequently very compressed periods. I am working as a movie extra in on *The Discovery* in Newport, RI.

I have reason to believe that next Monday could be part of one such period. I worked April 4 on the movie. It was originally described as POSSIBLY working April 5, four days next week and three days the following week.

Today, the casting director, LDI Casting in Providence, specifically sought to determine if I will be available for April 11. Although not a commitment, that is a positive sign for work but not for making your meeting. A normal working day is 10 to 12 hours. Longer days are commonly possible, AND MUST BE ALLOWED FOR, up to 16 hours in a day With that kind of day possible, and with possibly working consecutive days, the availability of severely discounted hotel accommodations means it will be essential to take advantage of the cut rates. The work situation, with its common extremes, makes attending your meeting unlikely.

So far the project has involved work only on April 4. If I get the entire 8 days, that would total more than a quarter of my earnings during all of last year, and earning the equivalent half of last year's earnings would not be impossible. Plus I will have, once again, demonstrated to the casting director that I am capable of doing the work. These earnings would be reduced by the required calculations in my monthly Veteran's stipend. Although my hotel costs would not be recognized in the Veteran's stipend calculations, the earnings would also, of necessity, likely be reduced by the hotel expenses. Even with off season and special deal rates, this expenditure is the sort of thing I would not even consider except for the value to the work. Meals are provided by the movie company.

I have been steadily increasing earnings in a field in which dramatic incomes are not impossible. The field can pay well. Unfortunately, the pay is not as frequent as would be necessary for a decent real income, but I am building up my possibilities. Proving myself a skilled and reliable worker is of major value. A very big negative in the long run is the Massachusetts governor's antipathy to the movie tax break.

I started work at 6 am on April 4 in Newport. April 4 was a short day because of an outdoor shoot and severe weather. Future work on this assignment, if it happens, can be expected normally to involve 10 to 12 hours work per day with longer days needed to be allowed for. Hourly wages increase dramatically for the added hours. 6 am "call times" are common. On the other hand, my work on the entire project could simply and totally disappear.

Work next Monday would make participation in your meeting impossible. I need the money and the demonstration of my value to the movie and to the casting director. I am sorry.

#3

Town of Middleborough

Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

Telephone (508) 946-2425
Fax (508) 946-1991

March 29, 2016

Mr. John C. Manoog, Jr.
Fidelity Financial, Inc. (Funding Services Trust)
72 Pine Street
Hyannis MA 02601

Re: Brookside Estates – Completion Date Expiration Notification

Dear Mr. Manoog,

As you are aware the Planning Board extended the completion date for Brookside Estates to March 15, 2016, to provide you with the opportunity to provide the Board with a satisfactory remedial repair plan for the Brookside Estates road and drainage system and to develop a schedule for the project's remedial repairs and completion. The extension has now expired and the Board has not received any plans or a construction schedule from you and Brookside Estates is now in default.

Adam Carbone

Tracy Mazzelli

Middleborough Planning Board

Certified Mail # 7013 1710 0000 6698 5426

Cc: Atty. Daniel F. Murray
Middleborough Board of Selectmen
Robert Nunes, Town Manager

#4

From: Ruth Geoffroy
Sent: Tuesday, April 05, 2016 6:25 PM
To: Robert G. Nunes
Cc: 'Mike Labonte'; Colleen Lieb; Selectman Diane C. Stewart
Subject: RE: Woloski Park

Bob, I sent the Woloski Park First Quarter report to MEMA today and copied you this morning. The following is the update that I gave them with respect to where the project stands.

Step 1 and Step 2 Applications made to CPC for Local Matching funds, with presentations at public meetings. Town Meeting Article placed for CPC funds, with Board of Selectmen vote to support said article. Title exam estimate received. Scope of work for Appraisals 85% complete and almost ready for MEMA review. Coordination with Building Commissioner and legal opinion rendered by Town Counsel on ability of property owners to rebuild existing non-conforming structures to clarify appraisal assumptions. Meetings with Health Department to discuss ability for non-inhabited structures to have septic systems and wells replaced in accordance with Title V or with variances to clarify appraisal assumptions. Meetings and conference calls between Town officials, TNC staff and DFW representative to manage project and responsibilities. Planning Director met with Town Treasurer and Town Accountant to structure accounts to be set up for management of TNC donated funds, CPC funds and MEMA reimbursements. TNC to issue new Letter of Commitment to allow their matching funds to be donated to Town up front.

Please note, until Town Meeting votes to contribute CPC funds to this project as the Town's matching funds, we are unable to proceed with any task that requires monetary expenditure, including appraisals. In the meantime we are getting prepared by putting out an RFP for appraisers to be ready to contract and start May 1, 2016.

I am attaching the report again which includes the project schedule.

Ruth

MEMA MITIGATION PROGRAM QUARTERLY REPORT

Contact Name: RUTH M. GEOFFROY Contact Email: rgffry@middleborough.com

Project Name: Woloski Park Acquisition

Applicant: Town of Middleborough Period: 1/1/16 to: 3/31/16

Project #	Summary of Overall Scope	Status Code[1]	Approved Completion Date	Actual Completion Date	Cost Code[2]
HMGP 1895-26	Woloski Park Acquisition	1	10-28-18		2
Tasks/Accomplishments From Work Schedule If more room is needed please attach another sheet to this document		Task Start Date	Task Duration (In Months)	Estimated Task End Date	Percent Complete
Submit Fema Contract		1/12/16	0	1/12/16	100%
Step 1 CPA Application		1/14/16	0.5	1/14/16	100%
Step 2 CPA Application		2/1/16	0.5	2/28/16	100%
DFG Spring Lands Committee Meeting		2/29/16	0.5	3/15/16	100%
Town Property Appraisals		5/1/16	2	7/1/16	0%
Title Examinations		5/1/16	3	8/1/16	0%
DFG Property Appraisals		5/1/16	2	6/30/16	0%
Spring Town Meeting re CPA Funds		4/25/16	0	4/25/16	0%
Negotiations with Landowners, Tenant Relocation, RE Contracts		9/1/16	8	4/1/17	0%
DFG Lands Committee project ranking for FY 18		9/15/16	0	9/15/16	0%
Fall Town Meeting to convey tax title land to DFG		10/1/16	0	10/1/16	0%
Phase I Assessments		3/1/17	3	6/1/17	0%
Permits		3/1/17	3	6/1/17	0%
Initiate Municipal Borrowing		5/1/17	1	5/31/17	0%
Municipal Property Acquisition Round 1		6/1/17	1	7/1/17	0%
Disconnect Utilities		6/1/17	1	7/1/17	0%
Demolition/Site Restoration		6/1/17	3	9/1/17	0%
Municipal Property Acquisition Round 2		10/1/17	1	11/1/17	0%
Disconnect Utilities		10/1/17	1	11/1/17	0%
Demolition/ Site Restoration		10/1/17	3	1/1/18	0%
Final Reporting/Reimbursements		1/1/18	3	4/1/18	0%
DFG Property Acquisition- Rounds 1 & 2		11/15/18	0	11/15/18	0%
		Total Percentage of Project Complete			3%

[1]Status Code: 1. On Schedule; 2. Suspended; 3. Delayed; 4. Cancelled; 5. Completed
[2]Cost Code: 1. Cost Unchanged; 2. Cost Overrun; 3. Cost Underrun

UPDATED – FY2013

*WE HAVE EXPENDED FUNDS DURING THIS FISCAL YEAR, THAT MEET OR EXCEED THE THRESHOLD(S) REQUIRED BY THE SINGLE AUDIT ACT OF 1996 AND WILL CONDUCT ALL REQUIRED AUDITS. Yes **No**

1. Please describe significant activities and developments that have occurred, which show performance during this quarter, including a comparison of actual accomplishments to the objectives established in the application.

Step 1 and Step 2 Applications made to CPC for Local Matching funds, with presentations at public meetings. Town Meeting Article placed for CPC funds, with Board of Selectmen vote to support said article. Title exam estimate received. Scope of work for Appraisals 85% complete and almost ready for MEMA review. Coordination with Building Commissioner and legal opinion rendered by Town Counsel on ability of property owners to rebuild existing non-conforming structures to clarify appraisal assumptions. Meetings with Health Department to discuss ability for non-inhabited structures to have septic systems and wells replaced in accordance with Title V or with variances to clarify appraisal assumptions. Meetings and conference calls between Town officials, TNC staff and DFW representative to manage project and responsibilities. Planning Director met with Town Treasurer and Town Accountant to structure accounts to be set up for management of TNC donated funds, CPC funds and MEMA reimbursements. TNC to issue new Letter of Commitment to allow their matching funds to be donated to Town up front.

2. Do you anticipate completion of work within the performance period? Yes No

If not, please describe any problems, delays or adverse conditions that will impair the ability to meet the stated objectives in the application.

Do you anticipate:

3. Cost underrun/overrun? Yes No
4. Request for change in Scope? Yes No
5. Request for extension of performance period? Yes No

If you answer yes to any of the above, please provide comments in the section below.
Should additional funds become available, this form will be used to track and evaluate if costs are eligible for consideration.
This form will also be used to evaluate any requests for change in scope, or performance period extension.

When to Town submitted the HMGP application using the online electronic application and BCA, the grant total generated by the program was $1,003,765 of which the awarded $752,824 is 75%. However, when adding up each lot's cost components shown on the 2011 application manually, it appears that that total grant amount to be requested should have been $1,016,808. Following grant application submission Dan Peterson, MEMA HMGP Coordinator, requested additional information from the Town with respect to the costs and scope of work to which the Town replied on December 15, 2011 reflecting further refinement of the budget, including but not limited to detailed breakdown of demolition, permits, utilities, tenant relocation and other related costs which resulted in a final project cost of $1,021,814. It appears that FEMA did not increase the application's total project cost as a result of the Town's December 2011 correspondence, nor was there awareness that the amounts shown in the HMGP Application did not match the total produced automatically through the BCA. Additionally, 5 years have gone by since submission of the HMGP Application and two houses have sold for significantly more than anticipated. As a result the Town is budgeting $1,075,000 in an attempt to purchase all Woloski Park properties from willing sellers, $71,235 over the FEMA project amount.

Instructions for MEMA Mitigation Program Quarterly Report

First Page

Top Section:

- Contact Name
- Contact e-mail
- Project Name
- City/Town
- Period covered by this report, ex. January 1, 2012 to March 30, 2012

Middle section:

- Project Number: ex. PDMC 01-01
- Summary of Overall Scope: ex: Upgrade 18" stormwater pipe to 24" pipe
- Status Code: 1 thru 5, explanation of codes at bottom of page
- Approved completion date: Period of Performance end date/ Contract end date
- Actual Completion date: Leave blank
- Cost Code: 1 thru 3, explanation of codes at bottom of page.
- Tacks/ Accomplishments: List all timeline items from approved Work Schedule included in executed state contract package. All tasks must be on every report.
- Task start date: Date work began on this task
- Task Duration: Length of time in months to do work
- Estimated task end date: Approximate date of this task being completed
- Percent Complete: As of this reporting period, how much of task is completed, should be cumulative

Bottom Section:

- Regarding Single Audit Act of 1996, Answer: Yes, or No

Second Page

1. Brief synopsis of work completed this quarter. Include comparison of objectives from application.
2. If you anticipate a delay in the work performance period, please describe.
3. If yes, please describe circumstances
4. If yes, please describe circumstances
5. If yes, please describe circumstances

[1]Status Code: 1. On Schedule; 2. Suspended; 3. Delayed; 4. Cancelled; 5. Completed
[2]Cost Code: 1. Cost Unchanged; 2. Cost Overrun; 3. Cost Underrun

#5

MASSHOUSING

Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1091
VP: 866.758.1435 | www.masshousing.com

March 29, 2016

Cranberry Village Apartments
Mashour Moukaddem
823 Newton Street
Chestnut Hill, MA 02467

Re: Cranberry Village Apartments
Final Approval
MassHousing ID No. 380

Dear Mr. Moukaddem:

This letter constitutes final approval under 760 CMR 56.04(7) ("Final Approval") of the project known as Cranberry Village Apartments (the "Final Project") following the issuance of a comprehensive permit pursuant to Massachusetts General Laws Chapter 40B, 760 CMR 56.00 and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (DHCD) (the "Guidelines") (collectively, the "Comprehensive Permit Rules").

On February 5, 2003, the Massachusetts Housing Finance Agency ("MassHousing" or "Subsidizing Agency"), issued a Project Eligibility Letter to JM Barges Corporation ("the Original Applicant") for the Original Project under its Housing Starts Program (the "Original Program").

In March of 2003, the Applicant filed an Application for a comprehensive permit from the Middleborough Zoning Board of Appeals (the "ZBA") to construct 250 townhouse units on approximately 34 acres of land (the "Original Project") located on West Grove Street (the "Site") in Middleborough, MA (the "Municipality"). A decision was issued by the ZBA in October, 2004 which was appealed by the Original Applicant to the Housing Appeals Committee (the "HAC"), Case No. 04-27. The parties entered into a settlement agreement following the filing of the appeal and a modified Comprehensive Permit for 216 condominium units (the "Amended Project") was issued by the ZBA on January 12, 2006 (the "Original Comprehensive Permit").

The Original Comprehensive Permit was amended by the ZBA to convert the Amended Project of 216 condominium units to a rental project with a total of 234 units (the "Final Project"). The Amended Comprehensive Permit was appealed by abutters to Plymouth Superior Court. This appeal was ultimately dismissed with prejudice in July, 2008. The Amended Comprehensive Permit was recorded on March 1, 2011 and has been extended multiple times with a final expiration date of July 31, 2016.

Charles D. Baker, *Governor* | Michael J. Dirrane, *Chairman* | Timothy C. Sullivan, *Executive Director* | Thomas R. Gleason, *Executive Director Emeritus*
Karyn E. Polito, *Lt. Governor* | Ping Yin Chai, *Vice Chair* | Karen E. Kelleher, *Deputy Director*

Cranberry Village Apartments, LLC (the "Applicant") acquired all right title and interest in and to the Final Project via deed dated August 13, 2015 which was acknowledged by the ZBA by vote on September 10, 2015. The Applicant has applied to MassHousing for Final Approval of the Final Project through the New England Fund Program ("NEF" or the "Program"). The Applicant intends to construct the housing development in two phases, known as Cranberry Village Apartments. Phase I will consist of 72 units in three residential buildings, together with clubhouse, common areas, and related infrastructure. Phase II will consist of 162 units in seven buildings, together with common area and related infrastructure.

Pursuant to 760 CMR 56.05 (12)(B), we hereby confirm that Cranberry Village Apartments, LLC, meets the requirements of 760 CMR 56.04 (l)(a) and (b). In accordance with the Comprehensive Permit Rules, prior to the issuance of any municipal permits for the Final Project, the Applicant must present Final Approval from the entity that issued the Determination of Project Eligibility. Accordingly, this letter constitutes Final Approval by MassHousing as Subsidizing Agency of the Final Project.

Phase I of the Final Project is the subject of this Final Approval Letter. According to information presented by the Applicant Phase I will receive construction financing under the NEF Program through Cambridge Savings Bank, a FHLB Member Bank. Pursuant to the Comprehensive Permit and the Comprehensive Permit Rules, Phase I will contain 72 units of rental housing, of which 18 will be available for rental to persons or families earning not greater than eighty percent (80%) of the area median income ("Income Requirement") for a term of thirty (30) years ("Term Requirement"), and annual distributions to the Developer, its successors and assigns, shall be limited to no more than 10 percent of equity in the Final Project ("Limited Dividend Requirement").

In connection with our determination herein, we have reviewed (i) the Site Approval (prior to the issuance of which an on-site inspection was performed), (ii) the Comprehensive Permit, (iii) the revised, preliminary plans on which the Comprehensive Permit was based (the "Plans"), (iv) the form of regulatory agreement (the "Regulatory Agreement") and any separate use restriction (the "Use Restriction") to be recorded with the land records in the registry district in which the Municipality is located, (v) the Affirmative Fair Housing Marketing Plan *(AFHMP)* – including Resident Selection and Lottery Procedures, (vi) an updated initial pro forma for the Final Project (the "Updated Pro Forma"), (vii) the terms of the financing to be used for Phase I of the Final Project, including provisions for monitoring of the Final Project during construction (the "Financing"), (viii) if not set forth on the Plans, a unit locator plan showing the preliminary location of the income-restricted units (the "Unit Locator Plan"), and (ix) other pertinent information presented by the Applicant and others.

As a result of our review, we have made the findings required by 760 CMR 56.04(7)(a), as informed by 56.04(1) and (4). In addition, the affordable units, if located in general conformance with the Unit Locator Plan or the Plans, will be reasonably interspersed with the market rate units.

Further, as required by 760 CMR 56.04(7)(b) and (c), this Final Approval (i) confirms that the executed Regulatory and Use Agreement [Rental] (a copy of which is annexed hereto as Exhibit A), as the proposed Use Restriction, is in a form consistent with the Comprehensive Permit Rules; and (ii) verifies, as required by 760 CMR 56.04(7)(c), that the cost examination requirements have been acknowledged and that a commitment has been made by the Applicant to comply with the cost examination requirements defined in 760 CMR 56.04(8), as evidenced by the Developer's executed Acknowledgement of Obligations. (a copy of which is annexed hereto as Exhibit B), and (iii) verifies that adequate financial surety, as defined in the Comprehensive Permit Rules, has been secured and is sufficient to ensure completion of the cost examination, as defined in the Guidelines, as evidenced by the Surety Escrow Agreement between the Applicant and MassHousing dated October 9, 2015 and held by MassHousing under the Comprehensive Permit Rules or as lender.

We note that the Comprehensive Permit as issued contains a local preference condition as. See requirements outlined in Section III (D) of the Guidelines. Such conditions are subject to the requirements of applicable state and federal fair housing laws. To the extent such conditions conflict with said laws, the provisions of the fair housing laws must govern.

Submission of an examined cost certification will be required upon completion of the development in order to determine that developer fees and profits do not exceed the Maximum Allowable Developer Fee and Overhead limits determined by DHCD and available in the "Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities." Cost certification will also determine, through a separate calculation, the initial "Owner's Equity," which may be revised from time to time pursuant to the terms of the Regulatory and Use Agreement, and annual dividend distribution limitation, ("Limited Dividend"), which is based on 10% of Owner's Equity commencing upon the development's initial occupancy. The determination of Owner's Equity and Limited Dividend are subject to adjustment as determined by DHCD pursuant to the Guidelines and/or by MassHousing in accordance with its regulations or other published procedures.

In accordance with the provisions of the Site Approval letter, the Developer must adhere to the Land Value Policy described in the Guidelines. The "As-Is Value" land acquisition cost, for cost certification purposes, has been established at $3,440,000, based on the appraisal prepared for MassHousing by Bucklin Appraisal Company as of March 18, 2016 subject to adjustments as provided in the Guidelines. Please note that while MassHousing has reviewed the Updated Pro Forma and determined that it appears reasonable and consistent with the Comprehensive Permit Rules, this Final Approval is not an approval of the Updated Pro Forma's individual line items and all line items other than land acquisition cost will need to be properly supported when the Final Project's cost certification is submitted.

Please note that this Final Approval does not constitute site plan or building design approval. Furthermore, please note that we have not reviewed nor approved the Plans for compliance with federal, state or local codes or other laws pertaining to construction since such approvals are within the jurisdiction of the local building official and zoning enforcement officer. Similarly, we are relying on the local building official and zoning enforcement officer to ensure that the

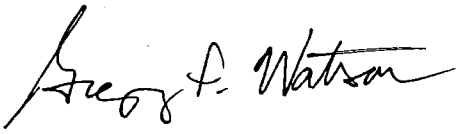
final plans and specifications comply with the Comprehensive Permit prior to issuing a building permit. We view issuance of the building permit as evidence of such compliance.

This Final Approval for Phase I is contingent upon recording and delivery of the Regulatory and Use Agreement executed on behalf of Cranberry Village Apartments, LLC and dated as of March 18, 2016 in the form prescribed by MassHousing, in its role as Subsidizing Agency, and, for NEF financing, an executed Phase I construction monitoring certification and Phase I NEF lender certification from the construction lender in the forms prescribed by MassHousing. Upon obtaining financing for Phase II of the Final Project, promptly deliver the executed loan commitment from a NEF Lender, a Phase II construction monitoring certification, and a Phase II NEF lender certification to MassHousing.

Final Approval for Phase I will be effective for a period of the earlier of (a) six months following the date of this letter, or (b) the earliest expiration date of either the construction loan commitments submitted as part of the Final Approval application. Should the Applicant not apply for building permits for the Final Project within this period or should MassHousing not extend the effective period of this letter in writing, the letter shall be considered to have expired and no longer be in effect. In addition, we are requiring that MassHousing be notified at the time of the issuance of the building permits for the Final Project.

If you have any questions concerning this letter, please contact Jessica Malcolm, at (617) 854-1201.

Sincerely,



Gregory P. Watson
Manager, Comprehensive Permit Programs

Attachments:
Exhibit A: Regulatory and Use Agreement [Rental]
Exhibit B: Developer's Acknowledgement of Obligations and Surety

cc: Chrystal Kornegay, Undersecretary, DHCD
Robert G. Nunes, Town Manager, Middleborough
Allin Frawley, Chairman, Middleborough Board of Selectmen
Tammy Mendes, Senior Clerk, Middleborough Zoning Board of Appeals

REGULATORY AND USE AGREEMENT

[Rental]

For Comprehensive Permit Projects in Which Funding is Provided By Other Than a State Agency

This Regulatory and Use Agreement (this "Agreement") is made as of this 29 day of March, 2016, by and between the Massachusetts Housing Finance Agency acting as Subsidizing Agency (the "Subsidizing Agency"), as defined under the provisions of 760 CMR 56.02, on behalf of the Department of Housing and Community Development ("DHCD"), and Cranberry Village Apartments LLC, a Massachusetts limited liability company having a mailing address at 823 Newton Street, Chestnut Hill, MA 02467 and its successors and assigns (the "Developer").

RECITALS

WHEREAS, the Developer intends to construct a housing development in two phases, known as Cranberry Village Apartments, Phase I consisting of 72 units in three residential buildings, together with clubhouse, common areas, and related infrastructure, and Phase II consisting of 162 units in six buildings, together with common area and related infrastructure, all on a 34.40 acre site located at West Grove Street, in the Town of Middleborough, Massachusetts (the "Municipality"), more particularly described in Exhibit A attached hereto and made a part hereof (the "Development"); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (as may be amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the "Act") and pursuant thereto has issued its Comprehensive Permit Guidelines (as may be amended from time to time, the "Guidelines" and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules");

WHEREAS, the Phase I Development is being financed with a loan of approximately $8,500,000 by Cambridge Savings Bank a Federal Home Loan Bank of Boston ("FHLBB") member bank (the "NEF Lender"), a non-governmental entity for which the Massachusetts Housing Finance Agency acts as Subsidizing Agency pursuant to the Comprehensive Permit Rules; and

WHEREAS, the Massachusetts Housing Finance Agency will serve as Subsidizing Agency on behalf of DHCD pursuant to the Comprehensive Permit Rules and in accordance with the terms and provisions hereof; and

WHEREAS, the Developer has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with the Act,

which permit is recorded at the Plymouth County Registry of Deeds ("Registry") in Book 32297, Pages 138, as amended by amendment recorded in Book 39709, Page 140, as extended by the terms of this Agreement; and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Phase I Development is to consist of a total of 72 rental units, of which a minimum of 25 percent (18 units) shall be Affordable Units, and Phase II Development is to consist of a total of 162 rental units of which a minimum of 25 percent (41 units) shall be Affordable Units (the "Affordable Units") will be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and

WHEREAS, the parties intend that this Agreement shall serve as a "Use Restriction" as defined in and required by Section 56.05(13) of the Regulations; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and.

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subsidizing Agency and the Developer hereby agree as follows:

DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Act shall have the meaning given such term in the Recitals hereof.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by the Subsidizing Agency, with such changes thereto that may be approved by the Subsidizing Agency, as further set forth in Section 3.

Affordable Units shall have the meaning set forth in the Recitals above.

Allowable Development Costs shall have the meaning given such term in Section 21 hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor

regulations).

Area shall mean the Brockton Metropolitan Statistical Area (MSA) as designated by the Department of Housing and Urban Development ("HUD").

Area Median Income ("AMI") shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Audited Annual Limited Dividend Financial Report shall mean an annual report to be submitted by the Developer on a form prescribed by the Subsiding Agency, pursuant to Section 12(b) hereof.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan.

Cost Certification shall have the meaning given such term in Section 21 hereof.

Cost Method shall have the meaning given such term in Section 7(d) hereof.

Developer Parties shall have the meaning given such term in Section 7(a) hereof.

Developer's Equity shall be determined in the manner set forth in Section 7(d) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues: All rental income, receipts and other revenue derived from the operation of the Development other than revenues derived from any sales, financing, or other capital transaction, and not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer.

Distribution Payments shall have the meaning given such term in Section 7(a) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement or the Mortgage existing after the expiration of any applicable notice and cure periods.

Excess Development Revenues shall have the meaning given such term in Section 12(e) hereof

Excess Equity: Surplus Cash in excess of the permitted Limited Dividend Distribution, as calculated in accordance with the Audited Annual Limited Dividend Financial Report described in Section 12 hereof.

Excess Equity Account: An interest-bearing account maintained by the Lender (or if the Loan is paid off, with the Subsidizing Agency) for the benefit of the Development during the Term hereof containing Development Revenues which exceed the Limited Dividend Distribution in a given year or years.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Fiscal Year: The fiscal year of the Developer ending December.

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development.

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

Lender shall mean the Construction Lender and/or the Permanent Lender.

Limited Dividend Distribution: The aggregate annual distributions permitted to be made to the Developer from Development Revenues as calculated pursuant to the Audited Annual Limited Dividend Financial Report.

Limited Dividend Term shall have the meaning set forth in Section 23(b) hereof.

Loan shall mean the Construction Loan and/or the Permanent Loan.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit or any applicable Housing Subsidy Program.

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns.

Permanent Loan shall mean the Permanent Loan made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof in compliance with any specific terms of the Comprehensive Permit or any Housing Subsidy Program applicable to the Development.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender securing the Permanent Loan, or any replacement thereof.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Internal Revenue Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

Resident Selection Plan shall mean the Resident Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by the Subsidizing Agency, with such changes thereto which may be approved by the Subsidizing Agency.

Substantial Completion shall have the meaning given such term in Section 20 hereof.

Surety shall have the meaning given such term in Section 22 hereof.

Surplus Cash shall have the meaning given such term in Section 7(c) hereof.

Term shall have the meaning set forth in Section 23 hereof.

Total Development Costs ("TDC") shall have the meaning set forth in Section 7(h) hereof.

Value Method shall have the meaning given such term in Section 7(d) hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Subsidizing Agency and the Municipality (the "Plans and Specifications"), which are consistent with the minimum design and construction standards of the Subsidizing Agency applicable to comprehensive permit projects in accordance with the Comprehensive Permit Guidelines, in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit, and in accordance with the information describing the Development presented by the Developer to the Subsidizing Agency in its application for Final Approval. The Development must fully comply with the State

Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Subsidizing Agency shall monitor compliance with the construction obligations set forth in this section in such manner as the Subsidizing Agency may deem reasonably necessary. In furtherance thereof, the Developer shall provide to the Subsidizing Agency, prior to commencement of construction, a certification from the Construction Lender concerning construction monitoring in a form acceptable to the Subsidizing Agency. If the information provided to the Subsidizing Agency is not acceptable to the Subsidizing Agency, or if at any time after acceptance the NEF Lender's construction monitor fails to provide adequate construction oversight in accordance with the requirements of the NEF Lender's certification, the Subsidizing Agency may require that the Developer fund the cost of a construction monitor retained by the Subsidizing Agency.

USE RESTRICTION/RENTALS AND RENTS

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. In fulfilling the foregoing requirement, the Developer will accept referrals of tenants from the Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Resident Selection Plan. The foregoing provisions shall not relieve the Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, the Subsidizing Agency shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including but not limited to tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI (or such other higher percentage of AMI established by DHCD for Comprehensive Permit Projects In Which Funding Is Provided By Other Than a State Agency), adjusted for household size, assuming that an Affordable Unit that does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) For purposes of satisfying the requirement that the Affordable Units shall be occupied by Low or Moderate Income Tenants hereunder, no Low or Moderate Income Tenant

shall be denied continued occupancy because, after admission, the Low Moderate Income Tenant's Annual Income exceeds eighty percent (80%) of Area Median Income. No Low or Moderate Income Tenant shall continue to be counted as a Low or Moderate Income Tenant as of any date upon which such tenant's Annual Income exceeds one hundred forty percent (140%) of the level at which a tenant may be qualified as a Low or Moderate Income Tenant provided, however, that the Developer shall not be in default regarding the requirements of this Agreement to maintain occupancy of the Affordable Units by Low or Moderate Income Tenants if the Developer rents the next available unit to Low or Moderate Income Tenants as needed to achieve compliance with such requirements (thereupon, as rented to a Low or Moderate Income Tenant, such unit or units shall be deemed an Affordable Unit hereunder).

(d) If, after initial occupancy, the income of a tenant in an Affordable Housing Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant. In the event that a Low or Moderate-Income Tenant's Annual Income increases and, as a result of such increase, exceeds one hundred forty percent (140%) of Area Median Income, the Developer may charge the formerly Low or Moderate-Income Tenant a market rate for the dwelling unit.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. The Developer shall annually submit to the Subsidizing Agency a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that the Subsidizing Agency shall review such schedule with respect to the maximum rents for all the Affordable Units based on the size and required extent of affordability of each affordable Unit, and shall not take into account the actual incomes of individual tenants in any given Affordable Unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without the Subsidizing Agency's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants.

(f) The Developer shall obtain income certifications satisfactory in form and manner to the Subsidizing Agency at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to the Subsidizing Agency upon request.

(g) Prior to initial lease-up, the Developer shall submit an Affirmative Fair Housing Marketing and Resident Selection Plan (also known as an "AFHMP") for the Subsidizing Agency's approval. At a minimum the AFHMP shall meet the requirements of the Guidelines, as the same may be amended from time to time. The AFHMP, upon approval by the Subsidizing Agency, shall become a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement.

(h) The AFHMP_shall designate entities to implement the plan that are qualified to perform their duties. The Subsidizing Agency may require that another entity be found if the Subsidizing Agency finds that the entity designated by the Developer is not qualified. Moreover, the Subsidizing Agency may require the removal of an entity responsible for a duty under the AFHMP if that entity does not meet its obligations under the AFHMP.

(i) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as the Subsidizing Agency shall require.

TENANT SELECTION AND OCCUPANCY

4. The Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Affirmative Fair Housing Marketing and Resident Selection Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and any applicable Housing Subsidy Program, and shall contain clauses, among others, wherein each resident of such Affordable Unit:

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

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from the Developer or the Subsidizing Agency; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

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

EXPIRATION OF RESTRICTIONS - TENANT PROTECTIONS

6. (a) If, upon the expiration of the Term hereof, the affordability requirements under the Comprehensive Permit shall expire, the Developer shall deliver a written notice to all Low or Moderate or Income Tenants of such expiration (the "Expiration Notice") at the same time that it shall provide such notice to the Subsidizing Agency. The Expiration Notice shall inform all Low or Moderate or Income Tenants of the tenant protections described in this Section 6.

(b) For a period of one year after the date of expiration ("Year 1") (the date of expiration is hereinafter referred to as the "Expiration Date"), the Developer may not increase the rentals payable by any Low or Moderate-Income Tenant on the Expiration Date (a "Protected Low or Moderate-Income Tenant"), except for rental increases which would have been permitted by the terms and provisions of the applicable Housing Subsidy Program if such Expiration Date had not occurred.

(c) For a period of two years after Year 1 ("CPI Index Period"), the rentals for units occupied by Protected Low or Moderate Income Tenants may not be increased more than once annually by the greater of: (i) the consumer price index (applicable to the area in which the Development is located) times the rental rate in effect as of the Expiration Date; or (ii) such higher amount as the Subsidizing Agency shall approve. In no event may the Developer increase rentals for such Affordable Units in excess of any limitations contained in a Housing Subsidy Program which remains in effect after the Expiration Date.

(d) For three (3) years after the CPI Index Period (the "Transition Period"), the Developer shall provide Relocation Assistance, as defined herein, for any Protected Low or Moderate-Income Tenant who voluntarily terminates his or her lease during the Transition Period as a result of rental increases. For the purposes hereof, the term "Relocation Assistance" shall mean reasonable assistance in locating a comparable affordable unit, including the payment of any broker's fees and the payment of reasonable moving expenses within a thirty (30) mile radius of the Development.

(e) Upon expiration, the Developer agrees to continue to use the form of occupancy agreement for all Protected Low or Moderate-Income Tenants until the expiration of the periods described in (b) and (c), above. Thereafter, the Developer may require that all Protected Low or Moderate-Income Tenants enter into the lease form used for tenants in the market-rental units or a lease substantially in the form published by the National Apartment Association, provided that any new occupancy agreement shall provide the Protected Low or Moderate-Income Tenants with the benefits of subsection (d), above.

(f) The provisions of this Section 6 shall survive the termination of any other provisions of this Agreement as a result of expiration until the expiration of the periods described in subsections (b), (c), and (d), above.

(g) Protected Low or Moderate-Income Tenants shall have a right to enforce the protections provided them in this Section 6.

LIMITED DIVIDENDS; USE OF DEVELOPMENT REVENUES

7. (a) The Developer covenants and agrees that no Distribution Payments may be made to the Developer other than Limited Dividend Distributions. Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein. Limited Dividend Distributions may be made: (i) on a quarterly basis within the Developer's Fiscal Year; (ii) only once all currently payable amounts as identified in subsection (i) below are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after (x) submission by the Developer of the Audited Annual Limited Dividend Financial Report pursuant to Paragraph 12(b) below and (y) acceptance by the Subsidizing Agency of said report. Except with the prior written authorization of the Subsidizing Agency, Limited Dividend Distributions cannot be derived or made from borrowed funds or from the sale of capital assets.

For the purposes hereof, the term "Distribution Payments" shall mean all amounts paid from Development Revenues (herein called "Development Revenues") which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the "Developer Parties") as profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and who provide such services on an arms-length basis.

(b) No Limited Dividend Distributions may be made when: (i) a default or an Event of Default has occurred and is continuing under this Agreement; (ii) there has been failure to comply with the Subsidizing Agency's notice of any reasonable requirement for adequate (as determined by the Subsidizing Agency using its reasonable discretion) maintenance of the Development in order to continue to provide decent, good quality and safe affordable housing; or (iii) prior to the expiration of the Term hereof, there is outstanding against all or any part of the Development any lien or security interest other than a lien securing the Loan or a lien expressly permitted by the Subsidizing Agency or Lender.

(c) Subject to the provisions set forth above, Limited Dividend Distributions may only be made to the Developer from Surplus Cash, provided that no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Developer's Equity.

"Surplus Cash", which is a balance sheet calculation, represents the long-term accumulation of working capital from the Development's revenues that is available at the end of any quarter in a given Fiscal Year to make: (i) Limited Dividend Distributions; (ii) deposits into the Excess Equity Account; and (iii), if necessary, a distribution to the Municipality for the purpose of developing and/or preserving Affordable Housing. The calculation of Surplus Cash is more fully detailed in Part A of the current "M.G.L. Ch. 40B RENTAL DEVELOPMENTS / Instructions for Use of Calculation Tool for Computation of Excess Equity and Limited

and which currently is the form to be used in the preparation of the Audited Annual Limited Dividend Financial Report.

(d) For the purposes hereof the initial amount of "Developer's Equity" shall be $12,227,063, subject to adjustment as provided herein. The initial amount of "Developer's Equity" is established at the time of Final Approval based on the Developer's projection pursuant to the Cost Method as defined below. This initial amount shall be adjusted and verified at the time of Cost Certification with respect to the construction of the Development in accordance with the "Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities" (as it may be amended, revised or replaced) as the greater of the amounts determined by (a) the "Cost Method" or (b) the "Value Method." For purposes hereof the term "Cost Method" is defined as (i) actual cash contributed by the Developer to the Development, including tax credit equity (if applicable) plus (ii) the deferred portion of the maximum allowable developer fee determined in accordance with DHCD policy, provided that any payment of such deferred fee from project cash flow is treated as a Distribution Payment in accordance with Section 7 hereof, plus (iii) the appraised "as-is" market value of the land that exceeds the actual purchase price paid by the Developer for said land, if any, or less (iv) the actual purchase price paid by the Developer for said land that exceeds the appraised "as is" market value of the land, if any. For purposes hereof the term "Value Method" is defined as (i) the as-complete and stabilized appraised market value of the Development, as determined by an independent appraisal commissioned by the Subsidizing Agency in accordance with this Section 7(d), less (ii) the sum of secured debt on the Development plus public equity, whether structured as a grant or loan, as determined by the Subsidizing Agency.

Thereafter, Developer's Equity may be adjusted not more than once in any five year period with the first five - year period commencing with the first Fiscal Year of the Development. Any adjustments shall be made only upon the written request of the Developer. Unless the Developer is otherwise directed by the Subsidizing Agency, the initial appraised market value and any adjustment thereto shall be based upon an appraisal commissioned by (and naming as a client) the Subsidizing Agency and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, the Subsidizing Agency. The appraiser shall submit a Self-Contained Appraisal Report to the Subsidizing Agency in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The costs of such appraisal shall be borne by the Developer. Such appraisal shall use assumptions subject to the reasonable approval of the Subsidizing Agency.

Upon completion of an appraisal as provided above, the Developer's Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer's Equity shall be the Developer's Equity the date of such appraisal is accepted by the Subsidizing Agency.

(e) In the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, such excess shall be deposited and administered in accordance

pursuant to Section 7(c) above, such excess shall be deposited and administered in accordance with Section 7(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a) through (c) above, and pursuant to the Subsidizing Agency's Limited Dividend Policy, be distributed by the Lender (or the Subsidizing Agency, as applicable) to the Developer in amounts equal to the difference between the amount by which Limited Dividend Distributions actually made in any prior Fiscal Year were less than the amount permitted to be distributed under Section 7(c) hereof for such Fiscal Year. In the event that Surplus Cash is insufficient to allow the Developer to take its Limited Dividend Distribution as permitted herein and there are funds in the Excess Equity Account, Lender (or the Subsidizing Agency, as applicable) may distribute to the Developer an amount equal to the unpaid portion of the permitted Limited Dividend Distribution for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account.

Notwithstanding the foregoing, in the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, the amount of any such excess may be applied to pay, with simple interest, the amount by which Limited Dividend Distributions made in any of the preceding Fiscal Years were less than the amount permitted to be paid under Section 7(c) hereof for such Fiscal Years, subject to the provisions of subsections (a) through (c) above.

(f) Any amounts available for a Limited Dividend Distribution which may not be distributed in any year pursuant to the provisions of Section 7(c) above ("Excess Equity"), shall be deposited in the Excess Equity Account with the Lender (or if the Loan is paid off, with the Subsidizing Agency). No distributions may be made to the Developer from the Excess Equity Account except those permitted pursuant to Section 7(e) and (f) hereof. Upon the occurrence of an Event of Default under this Agreement or the Mortgage, the Lender (or the Subsidizing Agency, as applicable) may apply any amounts in the Excess Equity Account to the payment of all or any portion of the debt secured by the Mortgage.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity Account by the Lender (or the Subsidizing Agency, if there is no lender) during the Term hereof and applied for any purpose described in Section 7(i) hereof or for any purpose (i) that provides a direct and material benefit to Low or Moderate Tenants; (ii) that reduces rent charged to Low or Moderate Tenants; (iii) that extends the affordability of the Development; or (iv) that provides relocation and transitional assistance to Low or Moderate Tenants as described in Section 6 hereof.

To the extent that the Term of this Agreement extends beyond satisfaction in full of the debt secured by the Mortgage, the Subsidizing Agency may, in its sole discretion, during the remaining Term, make amounts available from the Excess Equity Account to: (a) pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date, and/or (b) provide relocation and transitional assistance to tenants of Affordable Units.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity Account during the Term hereof and applied for the following purposes: (i) payment of or

adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by the Developer to be sufficient to meet anticipated capital needs of the Development which may be held by Lender or a lending institution reasonably acceptable to the Subsidizing Agency and which reserves shall be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of the Developer for Development expenses, provided that the Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the Subsidizing Agency) and shall have supplied the applicable Lender (or the Subsidizing Agency) with such evidence as the applicable Lender (or the Subsidizing Agency, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to the Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by the Subsidizing Agency) that the expenditure is necessary to address the Development's physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii) and (iv) above by the Developer shall be subject to the prior written approval of the Subsidizing Agency, which approval shall not be unreasonably withheld or delayed; it being agreed by the Subsidizing Agency that if the Developer can demonstrate that its proposed operating expenditures and reserves are substantially consistent with those made for comparable developments within the Commonwealth of Massachusetts, the Subsidizing Agency shall approve such request. Further, in no event shall such review or approval be required by the Subsidizing Agency to the extent any such capital expenditures or reserves are mandated by Lender.

In any event, cash available for distribution in any year in excess of 20% of Developer's Equity, subject to payment of a Limited Dividend Distribution pursuant to Section 7(c) hereof, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by the Subsidizing Agency as provided herein, or as otherwise directed by DHCD. Upon the expiration of the Limited Dividend Term (as defined in Section 23(b) hereof), any balance remaining in the Excess Equity Account shall (i) be contributed by the Developer to the replacement reserve held for the Development, if such contribution is deemed by the Subsidizing Agency (in its reasonable discretion) to be necessary, (ii) be distributed to the Subsidizing Agency for the purpose of developing and/or preserving affordable housing, or (iii) be distributed as otherwise directed by DHCD.

(g) All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Developer under the Mortgage and this Agreement and the Developer hereby pledges and grants to the Lender (or the Subsidizing Agency, as applicable) a continuing security interest in said funds. Furthermore, the Developer recognizes and agrees that (i) possession of said funds by the Lender (or the Subsidizing Agency, as applicable) constitutes a bona fide pledge of said funds to the Lender (or the Subsidizing Agency, as applicable) for security purposes, (ii) to the extent required by applicable law, this Agreement, in combination,

as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Developer further acknowledges and agrees that, notwithstanding any nomenclature or title given to the Excess Equity Account by the bank or other financial institution at which the Excess Equity Account is held, or the fact that the Developer's tax identification number is used with respect to the Excess Equity Account, the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by the Lender (or the Subsidizing Agency, as applicable) directing the disposition of funds in the Excess Equity Account, without further consent of the Developer; and the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall have the exclusive right to withdraw funds from the Excess Equity Account.

(h) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall, be limited to no more than ten percent (10%) of Total Development Costs, net of (i) such fees and profits, and (ii) any working capital or reserves intended for operation of the Development and approved by the Subsidizing Agency. Such limited payment of fees and profits shall not include fees or profits paid to any other party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development. The Developer shall comply with the requirements of Section 21 below regarding Cost Certification. In accordance with the requirements of 760 CMR 56.04(8)(e), in the event that the Subsidizing Agency determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 21 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the Municipality within fifteen (15) business days of notice and demand given by the Subsidizing Agency as provided herein.

For the purposes hereof, the term "Total Development Costs" shall mean the total of all costs associated with acquisition, construction (including construction contingency), and general development (such as architectural, engineering, legal, and financing fees, insurance, real estate taxes and loan interest) for the Development. Total Development Costs include (i) developer overhead and developer fees, and (ii) any capitalized reserves intended for operation of the Development and approved by the Subsidizing Agency as being specifically excluded from the calculation of fees and profits payable from capital sources for the initial development of the Development.

(i) The Developer shall apply Development Revenues in the following order of priority: (x) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Loan; and (y) payment of or adequate reserve for all reasonable and necessary expenses of the Development as identified below. With respect to the application of Development Revenues as described above, the Developer agrees as follows:

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

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

(iii) Without the Subsidizing Agency's prior written consent, the Developer may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except in connection with the Construction Loan, the Permanent Loan and any refinancing thereof and as expressly permitted herein.

(j) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

MANAGEMENT OF THE DEVELOPMENT

8. The Developer shall maintain the Development in good physical condition in accordance with the Subsidizing Agency's requirements and standards and the requirements and standards of the Mortgage and any applicable Housing Subsidy Program. The Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, the Subsidizing Agency shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, the Subsidizing Agency has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS

9. Prior to Substantial Completion, the following actions, without limitation, shall be subject to the Subsidizing Agency's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed):

(a) any change, substitution or withdrawal of any general partner, manager, or agent of the Developer; or

(b) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

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

(c) the sale, conveyance, transfer, ground lease, or exchange of the Developer's interest in the Development or any part of the Development.

Prior to any transfer of ownership of the Development or any portion thereof or a Beneficial Interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

10. After substantial completion, Developer shall provide the Subsidizing Agency with thirty (30) days' prior written notice, of any sale, conveyance, transfer, ground lease or exchange of the Developer's interest in the Development or any part of the Development, but no consent shall be required. As in Section 9 above, prior to any transfer of ownership of the Development or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

BOOKS AND RECORDS

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of the Developer which is unrelated to the Development, and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD and/or the Subsidizing Agency from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Subsidizing Agency or DHCD. Failure to keep such books and accounts and/or make them available to the Subsidizing Agency or DHCD will be an Event of Default hereunder.

ANNUAL FINANCIAL REPORT

12. (a) Within ninety (90) days following the end of each Fiscal Year of the Development, the Developer shall furnish the Subsidizing Agency with a complete annual financial report for the Development based upon an examination of the books and records of the

Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of the Subsidizing Agency which include: (i) financial statements submitted in a format acceptable to the Subsidizing Agency; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 7 above. A duly authorized agent of the Developer must approve such submission in writing. The provisions of this paragraph may be waived or by the Subsidizing Agency.

(b) In addition to the financial information required to be furnished by the Developer to the Subsidizing Agency pursuant to Section 12(a) above, the Developer shall furnish to the Subsidizing Agency, within ninety (90) days of the end of its Fiscal Year, an Audited Annual Limited Dividend Financial Report (including a certificate from the independent certified public accountant (the "CPA") who prepared the Developer's audited financial statements) in the form then required by the Subsidizing Agency. The Subsidizing Agency's agreement to waive or modify the requirement of an Audited Annual Limited Dividend Financial Report for a given Fiscal Year shall not be deemed to constitute a waiver or modification of the requirement of an Audited Annual Limited Dividend Financial Report for any subsequent Fiscal Year. Should the Developer fail in any given year to comply with its obligations under this subparagraph, the Developer acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of any Limited Dividend Distributions to which it might otherwise be entitled for such Fiscal Year pursuant to Sections 7(c) and/or 7(e) above.

(c) Such Audited Annual Limited Dividend Financial Report shall be accompanied by a Certificate of Developer (in the form as then reasonably required by the Subsidizing Agency) certifying to the Developer's best knowledge and belief, under the pains and penalties of perjury, as to matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who prepared the Audited Annual Limited Dividend Financial Report, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Audited Annual Limited Dividend Financial Report, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Audited Annual Limited Dividend Financial Report and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Audited Annual Limited Dividend Financial Report and believes that such determination is an appropriate representation of the Development.

(d) The Subsidizing Agency shall have sixty (60) days after the delivery of the Audited Annual Limited Dividend Financial Report to accept it, to make its objections in writing to the Developer and the Developer's CPA, or to request from the Developer and/or CPA additional information regarding it. If the Subsidizing Agency does not object to the Audited Annual Limited Dividend Financial Report or request additional information with respect to it, the Audited Annual Limited Dividend Financial Report shall have been deemed accepted by the Subsidizing Agency. If the Subsidizing Agency shall request additional information, then the Developer shall provide the Subsidizing Agency with such additional information as promptly as

possible and the Subsidizing Agency shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Audited Annual Limited Dividend Financial Report. If no such objections are made within such thirty day (30) period, the Audited Annual Limited Dividend Financial Report shall be deemed accepted by the Subsidizing Agency.

To the extent that the Subsidizing Agency shall raise any objections to such Audited Annual Limited Dividend Financial Report as provided above, then the Developer and the Subsidizing Agency shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then the Subsidizing Agency may enforce the provisions under this Section 12 by the exercise of any remedies it may have under this Agreement.

(e) If upon the acceptance of an Audited Annual Limited Dividend Financial Report as provided above, such Audited Annual Limited Dividend Financial Report shall show that the aggregate Distribution Payments to the Developer during the applicable Fiscal Year exceed the allowable Limited Dividend Distribution for the Developer, then upon thirty (30) days written notice from the Subsidizing Agency, the Developer shall cause such excess to be deposited in the Excess Equity Account from sources other than Development Revenues to the extent not otherwise required by the Lender to remain with the Development.

If such Audited Annual Limited Dividend Financial Report as accepted shall show that there are Development Revenues which are in excess of the Allowable Limited Dividend Distribution which the Developer has not distributed ("Excess Development Revenues"), such amounts shall be applied as provided in Section 7(e) above within thirty (30) days after the acceptance of the Audited Annual Limited Dividend Financial Report as set forth in subsection (d) above.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of the Subsidizing Agency, the Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development. The Developer covenants and agrees to secure and maintain on file for inspection and copying by the Subsidizing Agency such information, reports and certifications as the Subsidizing Agency may reasonably require in writing in order to insure that the restrictions contained herein are being complied with. The Developer further covenants and agrees to submit to the Subsidizing Agency annually, or more frequently if required in writing by the Subsidizing Agency, reports detailing such facts as the Subsidizing Agency reasonably determines are sufficient to establish compliance with the restrictions contained hereunder, copies of leases for all Affordable Units, and a certification by the Developer that, to the best of its knowledge, the restrictions contained herein are being complied with. The Developer further covenants and agrees promptly to notify the Subsidizing Agency if the Developer discovers noncompliance with any restrictions hereunder.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted by the Comprehensive Permit, as it may be amended pursuant to the Comprehensive Permit Rules, the Developer shall not change the type or number of Affordable Units without prior written approval of the Subsidizing Agency and an amendment to this Agreement. Except to the extent permitted by applicable zoning requirements then in effect, the Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit.

NO DISCRIMINATION

15. (a) There shall be no discrimination upon the basis of race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance recipiency or any other basis prohibited by law in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the construction, operation and management of the Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance recipiency or any other basis prohibited by law, and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provisions shall be a proper basis for the Subsidizing Agency to take any corrective action it may deem necessary including, without limitation, referral to DHCD for enforcement.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement is not cured to the satisfaction of the Subsidizing Agency within thirty (30) days after the giving of notice to the Developer as provided herein, then at the Subsidizing Agency's option, and without further notice, the Subsidizing Agency may either terminate this Agreement, or the Subsidizing Agency may apply to any state or federal court for specific performance of this Agreement, or the Subsidizing Agency may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. No party other than the Subsidizing Agency or its designee shall have the right to enforce the Developer's compliance with the requirements of this Agreement. The thirty (30) day cure period set forth in this paragraph shall be extended for such period of time as may be necessary to cure a default so long as the Developer is diligently prosecuting such a cure.

(b) If the Subsidizing Agency elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD rules and regulations then in effect.

(c) In the event the Subsidizing Agency or its designee brings an action to enforce this Agreement, unless the Developer prevails in such action the Developer shall pay all fees and expenses (including legal fees) of the Subsidizing Agency and/or its designee. In such event, the Subsidizing Agency and/or its designee shall be entitled to seek recovery of its respective fees and expenses incurred in enforcing this Agreement against the Developer and to assert a lien on the Development, junior to the lien securing the Loan, to secure payment by the Developer of such fees and expenses. The Subsidizing Agency and its designee may perfect a lien on the Development by recording/filing in the Registry one or more certificates setting forth the amount of the costs and expenses due and owing.

(d) The Developer hereby grants to the Subsidizing Agency or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement, or of taking all actions with respect to the Development which the Subsidizing Agency may determine to be necessary or appropriate to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. The Subsidizing Agency intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay the Subsidizing Agency fees as partial compensation for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to the Subsidizing Agency a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security agreement with respect thereto.

18. The Subsidizing Agency shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. The Subsidizing Agency shall notify the Developer and the Municipality in the event the Subsidizing Agency engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by the Subsidizing Agency, payable within thirty (30) days of the end of each Fiscal Year of the Developer during the Term of this Agreement, but not in excess of the amounts as shown on Appendix B hereto and any fees payable under Section 17 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as the Subsidizing Agency under this Agreement, and shall act on behalf of the Subsidizing Agency hereunder, to the extent that the Subsidizing Agency delegates its rights and duties by written agreement with the Monitoring Agent. The Monitoring Agent shall apply and adhere to the applicable standards, guidance and policies of DHCD relating to the administrative

responsibilities of subsidizing agencies where available, and otherwise shall apply and adhere to the standards and practices of the Subsidizing Agency where applicable.

CONSTRUCTION AND FINAL COST CERTIFICATION

19. The Developer shall provide to the Subsidizing Agency evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications. Upon Substantial Completion, the Developer shall provide the Subsidizing Agency with a certificate of the architect for the Development in the form of a "Certificate of Substantial Completion" (AIA Form G704) or such other form of completion certificate acceptable to the Subsidizing Agency.

As used herein, the term "Substantial Completion" shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

20. Within ninety (90) days after Substantial Completion, the Developer shall provide the Subsidizing Agency with its Cost Certification for the Development. The Subsidizing Agency may allow additional time for submission of the Cost Certification if significant issues are determined to exist which prevent the timely submission of the Cost Certification, and may in certain circumstances (such as a halt in construction for a significant period of time) require submission of an interim Cost Certification within ninety (90) days of written notice to the Developer.

For the purposes hereof the term "Cost Certification" shall mean the Developer's documentation which will enable determination by the Subsidizing Agency of the aggregate amount of all Allowable Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date, all in the format provided in the Subsidizing Agency's Cost Examination Program, which Cost Certification must be examined (the "Cost Examination") in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner's certificate, executed by the Developer under pains and penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. "Allowable Development Costs" shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

21. In order to ensure that the Developer shall complete the Cost Certification as and when required by Section 21 hereof and, if applicable, pay any Excess Distributions to the Municipality, the Developer has provided the Subsidizing Agency with adequate financial surety (the "Surety") provided through a letter of credit, bond or cash payment in the amounts and in accordance with the Comprehensive Permit Rules and in a form approved by the Subsidizing Agency. If the Subsidizing Agency shall determine that the Developer has failed in its obligation to provide Cost Certification as and when described above or to pay over to the Municipality any

Excess Distributions, the Subsidizing Agency may draw on such Surety in order to pay the costs of completing Cost Certification and/or paying such Excess Distribution amounts due plus reasonable attorneys fees and collections costs.

TERM

23. (a) This Agreement shall bind, and the benefits shall inure to, respectively, the Developer and its successors and assigns, and the Subsidizing Agency and its successors and assigns, until the date which is thirty (30) years from the date hereof (the "Term"). Upon expiration of the Term, this Agreement and the rights and obligations of the Subsidizing Agency hereunder shall automatically terminate without the need of either party executing any additional document. The rights and obligations of the Developer and of the Subsidizing Agency under this Agreement shall continue for the Term, regardless of whether the loan from the NEF Lender is still outstanding. Prior to the expiration of the Term, the Developer shall enter into a use agreement with the Municipality, or as otherwise required by the Comprehensive Permit Rules, ensuring that the Development will comply with the continued affordability requirements applicable to the Development.

(b) Notwithstanding subsection (a) above, the provisions of Section 7 herein shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and the Subsidizing Agency and its successors and assigns, and the Municipality and its successors and assigns, until the date which is the latter of (i) the expiration of the term of the Loan or (ii) fifteen (15) years from the date of Substantial Completion (the "Limited Dividend Term").

INDEMNIFICATION/LIMITATION ON LIABILITY

25. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Subsidizing Agency and any Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Subsidizing Agency or the Monitoring Agent by reason of its relationship to the Development under this Agreement and not involving the Subsidizing Agency or the Monitoring Agent acting in bad faith or with gross negligence.

26. The Subsidizing Agency shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

27. Notwithstanding anything in this Agreement to the contrary, no affiliate and no partner, manager, or member of the Developer or affiliate and no officer, director, shareholder, trustee, member, manager, agent, or employee of the Developer or affiliate or of any partner, manager, or member thereof shall have any personal liability for the payment of any sum of money that is, or may become, payable by the Developer under or pursuant to this Agreement or for the performance of any obligation by the Developer arising pursuant to this Agreement, and the Subsidizing Agency shall look only to the Developer's interest in the Development for such payment or performance.

Nothing herein shall preclude the Subsidizing Agency from asserting such claims as it may have at law or in equity against the Developer for any loss or damage the Subsidizing Agency actually suffers as a result of any of the following:

(i) a willful breach of the provisions limiting payments or distributions to partners, members, managers, or affiliates as set forth in this Agreement; or

(ii) intentional fraud committed Developer; or

(iii) a willful breach of a Developer warranty contained in this Agreement or a false representation of a material fact which was known to be false when made; or

(iv) a false representation knowingly made that the individual signing this Agreement on behalf of the Developer has legal capacity and is authorized to sign this Agreement on behalf of the entity on whose behalf such individual has signed.

Nothing contained in the provisions of this Section 26 or elsewhere shall limit: (i) the right of the Subsidizing Agency to obtain injunctive relief or to pursue equitable remedies under this Agreement, excluding only any injunctive relief ordering payment of obligations by any person or entity for which personal liability does not otherwise exist; or (ii) the liability of any attorney, law firm, architect, accountant or other professional who or which renders or provides any written opinion or certificate to the Subsidizing Agency in connection with the Development even though such person or entity may be an agent or employee of the Developer or of any partner, manager, or member thereof.

CASUALTY

28. Subject to the rights of the Lender, the Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by the Developer then the Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS, COVENANTS AND WARRANTIES

29. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a Massachusetts limited liability company duly organized under, and is qualified to transact business under, the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

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

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other documents executed in connection with the loan from the NEF Lender, or other encumbrances permitted by the Subsidizing Agency).

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

MISCELLANEOUS CONTRACT PROVISIONS

30. This Agreement may not be modified or amended except with the written consent of the Subsidizing Agency or its successors and assigns and Developer or its successors and assigns.

31. The Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

32. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

33. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

34. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

35. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Subsidizing Agency, the Municipality and the Developer set forth herein to create

and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

NOTICES

36. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

Cranberry Village Apartments LLC
823 Newton Street
Chestnut Hill, MA 02467
Attn: Mashhour Moukaddem

with copies by regular mail or such hand delivery
or facsimile transmission to:

Mark A. Kablack, Esq.
M.A. Kablack & Associates, P.C.
176 East Main Street, Suite 3
Westborough, MA 01581
Fax: 508-366-1089

If to the Subsidizing Agency:

Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108
Attention: Director of Comprehensive Permit Programs
Fax: 617-854-1029

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

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted

means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

RECORDING

37. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to the Subsidizing Agency and the Monitoring Agent, if any, evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

38. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

CONFLICT; PRIORITY OF AGREEMENT

39. This Agreement is senior to the Mortgage and to any other mortgage encumbering the Development. Furthermore, the Developer understands and agrees that, in the event of foreclosure of the Mortgage and the exercise by the Lender of the power of sale therein, the Development will be sold subject to the restrictions imposed hereby. The Developer acknowledges that any discharge or termination of this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Developer to comply with the provisions thereof.

In the event of any conflict or inconsistency (including without limitation more restrictive terms) between the terms of the Comprehensive Permit, any other document relating to the Development and the terms of this Agreement, the terms of this Agreement shall control.

The Subsidizing Agency has consistently stated that any conditions in the Comprehensive Permit that address the Subsidizing Agency's core programmatic matters (including the Subsidizing Agency's regulatory documents and review of compliance with the limited dividend requirements), rather than traditional matters of local concern (including public health, safety, land use, and construction), are outside the authority of the Zoning Board of Appeals and therefore have no binding force on the Developer, Subsidizing Agency, or any other entity. This position has been confirmed by the Massachusetts Supreme Judicial Court. Amesbury v. Housing Appeals Committee, 457 Mass 748 (2010). Specifically, conditions including "requirements that went to matters such as, inter alia, project funding, regulatory documents, financial documents, and the timing of sale of affordable units in relation to market rate units,"

are ultra vires of a Zoning Board of Appeals' authority under G.L. c. 40B § 21. Amesbury v. Housing Appeals Comm., 457 Mass 748, 758 (2010).

Therefore, the following portions of the Town of Middleborough's Comprehensive Permit have no binding force:

a. **Condition C(1)(b) to the extent that it purports to regulate project funding and financial documents.**

b. **Condition C(2) to the extent that it purports to regulate the Regulatory Agreement, the Limited Dividend Requirement and/or the Affordability Monitoring Services Agreement.**

c. **Condition E(6) to the extent that it purports to govern the Regulatory Agreement.**

d. **Condition I(3) to the extent it purports to regulate the implementation of local preference.**

e. **Conditions I(4), I(5), and I(6) to the extent these conditions purport to govern the selection of a lottery agent, the procedures for selecting Eligible Purchasers and the payments for the costs of selling and monitoring Affordable Units.**

f. **Condition I(7) which purports to regulate the distribution of Affordable Units.**

g. **Condition I(8) to the extent it purports to govern the affordable housing restriction.**

h. **Condition J to the extent it purports to govern the Regulatory Agreement, the limitation on dividends and profits, and the cost examination process.**

i. **Condition M to the extent that it purports to govern the exterior and interior finishes of the affordable units.**

[Remainder of page intentionally left blank.]

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

DEVELOPER:
CRANBERRY VILLAGE APARTMENTS LLC
BY: MAS INVESTMENT LLC, MANAGER

By: _____
Mashhour Moukaddem, Manager

MASSACHUSETTS HOUSING FINANCE AGENCY, as Subsidizing Agency as aforesaid

By: _____
Gregory P. Watson, AICP, Manager,
Comprehensive Permit Programs

Attachments:

Exhibit A – Legal Description
Appendix A – Rent Schedule
Appendix B – Subsidizing Agency Fees

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk March 29, 2016

Then personally appeared before me, the undersigned notary public, the above-named Gregory P. Watson the Manager of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency, as Subsidizing Agency as aforesaid, proved to me through satisfactory identification which was my own personal knowledge of identity of the signatory to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the Director of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency.

Before me,

Notary Public
My Commission Expires: April 10, 2020

JESSICA LYNN MALCOLM
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
April 10, 2020

COMMONWEALTH OF MASSACHUSETTS

Worcester County

January 26, 2016

Then personally appeared before me Mashhour Moukaddem, as Manager of MAS Investment LLC, Manager of Cranberry Village Apartments LLC, proved to me through satisfactory evidence of identification, which was to my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free act and deed, in such capacity, before me

MARK A. KABLACK
MY COMM. EXPIRES MARCH 6, 2020
NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS

Notary Public
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land in Middleborough, Plymouth County Massachusetts on the southerly side of West Grove Street shown as Lot-1 on a plan of land entitled "SUBDIVISION PLAN OF LAND ON WEST GROVE STREET IN MIDDLEBOROUGH MASSACHUSETTS" dated June 19, 2002, prepared by Outback Engineering, Inc. and recorded with the Plymouth Registry of Deed as plan #209 of 2003, Plan Book 46, Page 707. Lot-1 contains 34.40 acres of land.

APPENDIX A
RENT SCHEDULE (INITIAL)
[Sample/Model]

	Low-Income / Rental Assisted At or Below ____ % of AMI Rental Assisted *[Delete Columns if N/A]*			Low/Moderate-Income[1] Rent Set at 30% of 80% AMI Qualify with Incomes at or Below 80% of AMI			Market Rate Unrestricted		
Number of Bedrooms	1 BR	2 BR	3 BR	1 BR	2 BR	3 BR	1 BR	2 BR	3 BR
Number of Units				14	35	10	40	105	30
Net SF/Unit				720	1,074	1,777	720	1,074	1,777
Elev. (E) / Non-Elev. (N)				N	N	N	N	N	N
Applicable Base/Gross Rent:	$-,---	$-,---	$-,---	$1,234	$1,481	$1,711	$1,320	$1,550	$1,650
Per: Brockton MSA									
Utility Allowance**	$---	$---	$---	$141	$210	$286	N/A	N/A	N/A
Tenant Rent*	**30% of adjusted gross income**			**$1,093**	**$1,271**	**$1,425**	**$1,320**	**$1,550**	**$1,650**

* Tenant Rents are net of utility allowances. The total of tenant rent and utility allowance may not exceed the Applicable Base/Gross Rent.

Utility Allowances are based on the attached schedule or matrix prepared by the South Shore Housing Authority* and dated 12/1/14, as the same may be amended from time to time. The dollar amount listed assumes the following utilities are to be paid by the tenant: [*list all that apply or "All utilities included in rent."*]

Gas Heat for the Multifamily Housing Type;
Gas Water Heating; Electric Cooking Fuel; and Electricity
And Water/Sewer

The following utilities are to be paid by the owner/landlord and included in the rent: [*list all that apply or "none"*]

None

*** South Shore Housing provides water/sewer allowance and all allowances are per South Shore Housing.

[1] Maximum NEF Ch. 40B affordable unit Rent Limits are calculated based on 30% of the 80% of the Area Median Income (AMI) Limit as derived from income limits published annually by HUD. Changes to the published income limits will result in changes to the rent limits. Unless subsidized under another housing subsidy program, the 80% of AMI Limit also is the standard used to qualify for occupancy at NEF Ch. 40B affordable housing developments.

APPENDIX B

FEES PAYABLE TO SUBSIDIZING AGENCY

- **Masshousing NEF Rental Regulatory Agreement Affordability and Limited Dividend Monitoring Fees**
    - Initial Fee Due upon Execution of the Regulatory Agreement by MassHousing
        - $7,500
    - Annual Fee Payable at the time of Initial Occupancy and Annually thereafter
        - $200 per affordable unit per year

Form Revised: 5/15/2012

DEVELOPER'S
ACKNOWLEDGMENT OF OBLIGATIONS
(as required by 760 CMR 56.04(7)(c))
[Rental]

For Comprehensive Permit Projects in Which Funding is Provided Through Other than a State Entity

Cost Examination
and
Limitation on Profits and Distribution Requirements

The undersigned, Cranberry Village Apartments LLC ("Developer"), in accordance with requirements for Final Approval of Comprehensive Permits found at 760 CMR 56.04(7), hereby acknowledges its commitment and obligation to comply with requirements for cost examination under pains and penalties of perjury, and limitations on profits and distributions, all as found at 760 CMR 56.04(8) and as more particularly set forth in Sections 7 and 21 of a Regulatory Agreement dated as of October 7, 2015 by and between Developer and the Massachusetts Housing Finance Agency acting as Subsidizing Agency as defined under the provisions of 760 CMR 56.02 (the "Subsidizing Agency").

The undersigned Developer further acknowledges that it has provided financial surety, in the form of a Cash Escrow (insert "bond", "cash escrow and surety escrow agreement" or "letter of credit") with the agreement that it may be called upon or used in the event that the Developer fails either to (i) complete and submit the examined Cost Certification as required by 760 CMR 56.04(8) and Section 21 of the Regulatory Agreement, or (ii) pay over to the Subsidizing Agency or the Municipality any funds in excess of the limitations on profits and distributions from capital sources as required by 760 CMR 56.04(8), and as set forth in Section 7(h) of the Regulatory Agreement.

Executed as a sealed instrument this 7th day of October, 2015.

[DEVELOPER]

Cranberry Village apartments LLC

By: MAS Investments LLC, Manager

By: Mashhour Moukaddem, Manager