



## GENERAL MULTIFAMILY LOAN CLOSING STANDARDS

The following describes the standards that MassHousing generally applies in closing its multifamily loans. These standards may not apply to every transaction, and staff is encouraged to consult with the departments indicated below regarding the applicability and satisfaction of these standards. Waivers of otherwise applicable standards may be approved by the relevant Division Director or the General Counsel.

Please note that the closing standards for insured HUD/FHA MAP program loans (including those made through a joint venture arrangement) are set forth in the HUD MAP Guide and will be supplemented by a supplemental set of MassHousing requirements for MAP Loans. Similarly, loans closed through a conduit structure will be governed by closing standards to be established for that program.

Capitalized terms are defined in the glossary attached as Attachment 1. Documents identified as located in the Online Developer Library are available on [www.masshousing.com/closingstandards](http://www.masshousing.com/closingstandards).

### 1. BORROWER AND BORROWER OWNERSHIP ENTITIES

*(Legal)*

- 1.1. **Single Purpose Entity.** Borrower must at all times be a sole-asset, single-purpose entity. Borrower's general partner, managing member, or manager, as applicable, may not have an interest in anything other than one or more MassHousing-financed developments.
- 1.2. **Organizational Documents.** Borrower shall provide executed copies of all Organizational Documents for Borrower and all Borrower Ownership Entities, as well as (i) certificates of legal existence and good standing issued by the Commonwealth of Massachusetts Secretary of State; and (ii) a certificate of tax good standing issued by the Commonwealth of Massachusetts Department of Revenue or a certification from the treasurer, chief financial officer or other party responsible for the tax filing of the entity, confirming the filing of returns and payment of taxes by such entity. Borrower's Organizational Documents shall include MassHousing's required terms and conditions related to the MassHousing Financing and shall be in form and substance acceptable to MassHousing (form riders available in the Online Developer Library).

### 2. LOAN DOCUMENTS

*(Legal)*

- 2.1. **General.** All documents, instruments, certificates and opinions required in connection with the Closing shall be in a form and substance acceptable to MassHousing.
- 2.2. **Loan Security.** Each Loan shall be evidenced by a promissory note payable to MassHousing and shall be secured by a mortgage to MassHousing, which shall constitute a valid lien upon the Development, with the priority specified by MassHousing, subject only to approved encumbrances. Borrower shall also provide such other security instruments required to perfect a valid lien on all chattels and personal property used in the construction and operation of the Development. Borrower shall also enter into a loan agreement (which shall address construction or repairs, as applicable) and other Loan documents appropriate to the Transaction. Each mortgage shall include provisions required by MassHousing with respect to the containment and

removal of hazardous waste and toxic substances found on the Development as may be required by applicable environmental regulations or laws, as well as obligations with respect to notice and the payment of environmental costs.

**2.3. Affordability.** Borrower and MassHousing shall also enter into the following recorded documents:

2.3.1. **Disposition Agreement.** A disposition agreement that provides for the preservation of affordability of the Development in accordance with the Enabling Act, i.e. at least 20% of the units at the Development shall be rented to persons or families earning not more than 80% of AMI at rents equal to 30% of such income limit. If any Loan is funded from Tax-Exempt Obligations, this requirement shall be satisfied by a recorded agreement reflecting the regulations under the Code applicable to the Tax-Exempt Obligations. (See Section 5.3, below).

2.3.2. **Regulatory Agreement.** A regulatory agreement, which shall include provisions relating to (i) compliance with a tenant selection plan approved by MassHousing; (ii) management of the Development after occupancy; (iii) procedures for the protection of low income tenants in the event of prepayment; (iv) original rental levels and procedures relating to changes in the amounts to be charged as rentals; and (v) limitations on distribution of dividends in compliance with the Enabling Act and such regulations and policies as MassHousing shall make and publish from time to time. With respect to clause (iii), the Regulatory Agreement shall provide that Borrowers shall comply with M.G.L. Chapter 40T if applicable and shall provide supplementary provisions for circumstances not covered by Chapter 40T.

### **3. THIRD-PARTY SUBORDINATE DEBT**

*(Legal)*

**3.1. Subordinate Loan Conditions.** MassHousing must approve any subordinate financing, including the terms and conditions thereof and the loan documents relating thereto. MassHousing's required subordinate loan conditions (see [Attachment 2](#); also available in the Online Developer Library), must be included within each subordinate mortgage and/or intercreditor agreement, as approved by MassHousing.

**3.2. Funding Coordination.** If the Transaction includes repairs, rehabilitation or construction and any portion of the costs of such work will be financed by financing from any other lender(s), the lender(s) providing such financing shall enter into an agreement with MassHousing that incorporates MassHousing's standard provisions for a coordinated approval of requisitions and change orders and the release of retainage and provides for the disposition of savings agreed to by the parties.

### **4. CONSTRUCTION AND REPAIR WORK**

*(Rental Underwriting)*

#### **4.1. General Requirements**

4.1.1. **Contractors.** The contractor(s) selected to perform, the construction schedule for, and the amount(s) to be applied for the payment of such work shall be subject to review and approval by MassHousing.

- 4.1.2. **Construction Documents.** Prior to the start of any construction, rehabilitation or repairs, Borrower shall submit for review and approval by MassHousing the following: (a) the final schedule of sources and uses and schedule of anticipated advances for the Development, (b) all permits and approvals, (c) the plans and specifications, (d) the trade item breakdowns, and (e) any documents pertaining to the abatement of hazardous materials.
- 4.1.3. **Loan Amount Adjustment.** Borrower shall submit a final operating budget for the Development acceptable to MassHousing that reflects the replacement reserve contributions for the Development based on the final scope of work. To the extent the resulting operating costs are inconsistent with those used in calculating the Loan amount(s) approved in the Board Vote, MassHousing's underwriting shall be adjusted and the Loan amount(s) may be reduced accordingly.
- 4.1.4. **504/ADA.**
- 4.1.4.1. Borrower shall, by the Closing Date, complete and submit MassHousing's 504/ADA Certification Checklist certifying that all applicable requirements of state and federal fair housing laws and all requirements governing access for persons with disabilities including, but not limited to, the Americans with Disabilities Act, Titles II and III, the Massachusetts Architectural Access Board Regulations and, where applicable, Section 504 of the Rehabilitation Act of 1973, have been met or will be met with the proceeds of the MassHousing Financing and/or other sources up to the limits of the law.
- 4.1.4.2. Borrower shall execute and deliver to MassHousing a letter of understanding under which Borrower commits to create or modify up to 5% of all units to meet applicable accessibility codes to the extent required by the Massachusetts Architectural Access Board Regulations, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. To the extent applicable, Borrower shall provide an updated Section 504/Accessibility Barriers Act Transition Plan.
- 4.1.5. **Energy Efficiency.** Borrower shall utilize Energy Star components (or components otherwise approved by MassHousing) for applicable scope and shall incorporate other available energy efficient and/or green and sustainable building materials into the scope of work to the maximum extent that is financially feasible.
- 4.1.6. **Relocation Plan & Budget.** If the Development is occupied while construction work is being undertaken, Borrower shall submit for MassHousing review and approval a relocation plan and budget.
- 4.1.7. **Commitments of Other Funds.** If any portion of the construction, repairs or any other development costs is to be financed by sources other than the MassHousing Financing, Borrower shall provide firm commitments for all such sources, and the closing(s) committing such funds for the Development shall occur on or before the Closing.

- 4.1.8. **Wage Requirements.** Work on the Development shall be subject to the payment of State Prevailing Wages if required under the Enabling Act, the requirements of any other financing or subsidy program for the Development or applicable law, as determined by MassHousing. In such instances when the triggering requirement is related to MassHousing's financing, MassHousing shall provide a Schedule of Prevailing Wages, as issued by the Commissioner of Labor and Industries under the authority of M.G.L. c.149, §§26, 27, 27(b), 27(c) and 27(d), with an issuance date less than 120 days prior to the Closing Date, which shall be included in the construction contract. Such schedule shall apply to all work to be completed pursuant to such construction contract; provided, however, that if a federal wage schedule is required pursuant to federal regulations, the higher of the State Prevailing Wages or the federal wages for each trade must be paid under the construction contract. See Section 4.2.2 below.
- 4.1.9. **Cost Savings.** Upon completion of the Development, any cost savings from the original budget for the Development, including 100% of the unused soft cost contingency line items, may be applied, at the option of MassHousing, to reduce the balance of any subordinate Loan or to fund the replacement reserve for the Development. MassHousing shall coordinate the administration of cost savings with DHCD and/or other public subordinate lenders
- 4.1.10. **Coordinated Funding.** If any portion of the costs of the work will be financed by additional lenders, the lenders providing such financing shall enter into a funding agreement (or other intercreditor agreement) with MassHousing that incorporates MassHousing's standard provisions for a coordinated approval of requisitions and change orders and the release of retainage (available in the Online Developer Library) and provides for the disposition of savings agreed to by the parties.
- 4.2. MassHousing Construction and Construction/Permanent Financing.** If the MassHousing Financing is being advanced for Moderate Rehabilitation, Substantial Rehabilitation or New Construction, the following conditions apply:
- 4.2.1. **Scope of Work.** Closing is conditioned on MassHousing's approval of the final scope of work, the plans and specifications, the construction and construction contingency budget, the schedule of anticipated advances and the plan for timely completion of construction.
- 4.2.2. **Contracts.** The construction contract, architect's contract, and all other construction documents shall be in form and substance acceptable to MassHousing, and such contracts shall be assigned to MassHousing at closing. The construction contract shall include the terms required by MassHousing (form rider available in the Online Developer Library).
- 4.2.3. **Bonds.** Borrower shall provide a lien bond and payment and performance bonds in the amount of 100% of the construction contract price and in form and substance acceptable to MassHousing. In its discretion, MassHousing may instead accept a completion assurance agreement, secured by a cash escrow and/or LOC in an amount satisfactory to MassHousing.
- 4.2.4. **Completion Guaranty.** Borrower shall provide a completion guaranty in form and substance acceptable to MassHousing. A construction escrow of 6% of the MassHousing Financing may be accepted in lieu of such guaranty.

- 4.2.5. **Equal Opportunity.** Borrower and the General Contractor shall execute an Equal Opportunity/Affirmative Action Contract for Construction acceptable to MassHousing.
  - 4.2.6. **As-Builts.** Promptly upon completion of the repairs and/or improvements, Borrower will deliver to MassHousing the as-built plans and specifications for the Development (on CD-ROM with bookmarks, or such other format accepted by MassHousing).
  - 4.2.7. **Warranties.** Promptly upon completion of the repairs and/or improvements, Borrower shall deliver to MassHousing any warranties received by Borrower in conjunction with the repairs and/or improvements.
  - 4.2.8. **Prevailing Wages.** Payment of State Prevailing Wages is required under the Enabling Act for the construction of eleven (11) or more units. As described below, Substantial Rehabilitation and New Construction may require payment of Davis-Bacon Wages under the HUD Risk-Sharing Program. If both State Prevailing Wages and Davis-Bacon Wages apply, the higher wages shall be paid for each trade.
- 4.3. MassHousing Permanent Financing with Repairs.** The following conditions apply when MassHousing is providing permanent financing with a repairs escrow:
- 4.3.1. **Repairs Escrow.** A capital improvements escrow will be established at Closing in an amount approved by MassHousing, which shall be applied to pay the costs of immediate capital improvements identified in the CNA. If MassHousing so requires, the escrow amount shall include a contingency and a project management fee to ensure the timely and satisfactory completion of repairs in the respective amounts specified by MassHousing. Immediate repairs must be completed with twelve (12) months of closing.
  - 4.3.2. **Conduct of Repairs.** The contractor(s) selected to perform, the construction schedule for, and the amount(s) to be applied for the payment of such work shall all be subject to review and approval by MassHousing. Required contracts and other construction-related documents will depend on the scope and type of repairs.
  - 4.3.3. **Type A and Type B Repairs.** Please refer to Attachment 3 for a description of Type A and Type B escrow arrangements.
- 4.4. MassHousing Permanent (Take-Out) Financing with Third-Party Construction Lender.** If MassHousing is providing permanent, take-out financing for a Development, with construction financing provided by a Construction Lender, the following conditions shall apply:
- 4.4.1. **Construction Loan Documents.** Borrower shall deliver to MassHousing prior to Closing execution copies of each document, including any and all amendments and/or other modifications and exhibits and/or other attachments thereto, required by the Construction Lender.
  - 4.4.2. **Permanent Loan Agreement.** A Permanent Loan Agreement shall be entered into at the Closing of the third-party construction loan between Borrower, the Construction Lender and MassHousing, specifying the conditions to be met before MassHousing must close on the MassHousing Financing. One such condition shall be that MassHousing shall not be obligated to fund the Loan until the Development reaches a level of stabilized occupancy of at least ninety percent (90%) and a debt service coverage ratio of 1.10 for

ninety (90) days. If the Construction Lender so requires, the Permanent Loan Agreement may include a provision providing for Borrower's assignment of the Financing Commitment to the Construction Lender, on terms acceptable to MassHousing.

## **5. FEDERAL TAX CREDITS & TAX-EXEMPT OBLIGATIONS**

*(Rental Underwriting, Finance and Legal)*

### **5.1. General Requirements.** The following conditions apply with respect to Transactions funded by Federal Tax Credits, unless otherwise approved by MassHousing:

5.1.1. **Equity Raise.** Borrower shall secure Federal Tax Credits and the Federal Tax Credit equity raise in at least the amounts specified in the Board Commitment Proposal (or alternative equity or other sources of capital), or as otherwise approved by MassHousing.

5.1.2. **Closing Contribution.** Unless otherwise approved by MassHousing, a minimum of fifteen percent (15%) of the Federal Tax Credit equity raise shall be delivered at Closing and applied toward project uses approved by MassHousing.

5.1.3. **Funding Schedule.** Borrower shall submit for review and approval by MassHousing, the proposal for the total amount and proposed sources and uses of syndication proceeds and the timing of all Equity Investor Capital Contributions, as well as the proposed plan for funding of and disbursement controls on any required escrows. No additional Capital Contributions shall be made prior to completion of the construction or rehabilitation, unless MassHousing approves the conditions to such installment as not likely to disrupt or delay the funding process.

5.1.4. **Investor Credit Diligence.** Each Equity Investor or its controlling parent, member or affiliate must meet or exceed minimum investment grade ratings of "Baa" (Moody's) and/or "BBB" (Standard & Poor's). In addition, the Equity Investor or its controlling parent, member or affiliate must certify to MassHousing that the Equity Investor's obligations to make capital contributions to the Development shall not be adversely affected by the performance of any other real estate investments under common ownership with the Equity Investor.

5.1.5. **Tiered Investment Structures.** If the Equity Investor is owned, directly or indirectly, by a fund that makes other real estate investments, such entity shall certify to MassHousing that its obligations to make the Capital Contributions for the Development (either directly or indirectly) shall not be adversely affected by the performance of its other investments.

### **5.2. Bridge Financing.** If MassHousing is providing equity bridge financing, the following conditions apply.

5.2.1. **Pledges, Assignments & Default Remedies.** Unless otherwise approved by MassHousing, Borrower's general partner or managing member shall (a) pledge to MassHousing such capital contributions as are necessary to pay the MassHousing Bridge Loan upon completion of the Development and agree that MassHousing may receive such contributions directly from the Equity Investor; (b) assign its interests under Borrower's Organizational Documents to MassHousing in the event of a default under the MassHousing Loan Documents; (c) provide for MassHousing or its designee, in the

event of a default, to serve as a special limited partner or member under Borrower's Organizational Documents, including the right to receive scheduled capital contributions to complete the construction and oversee management of the Development pursuant to the terms and conditions of Borrower's Organizational Documents.

- 5.2.2. **Sponsor Guaranty.** Borrower shall provide a completion/performance guaranty from a Borrower Ownership Entity acceptable to MassHousing that parallels the completion/performance guaranty provided for the benefit of the Equity Investor.
- 5.2.3. **Capital Contributions.** The terms and conditions of all capital contributions needed to (a) acquire the Development and complete its construction or rehabilitation and (b) repay MassHousing's Bridge Loan ("Development Period Contributions") are subject to MassHousing's approval. MassHousing expects to approve conditions related to the completion of the construction or rehabilitation of the Development (including standard diligence requirements, such as insurance, title and reporting conditions).
- 5.2.3.1. **Financial Conditions.** Conditions related to Events of Bankruptcy of Borrower or any Borrower Ownership Entity are generally acceptable. However, conditions related to other changes in the financial status of Borrower, any Borrower Ownership Entity or other Borrower affiliate are generally not acceptable.
- 5.2.3.2. **Qualified Occupancy.** For occupied developments, unless otherwise required by MassHousing, conditions related to qualified occupancy are generally acceptable at any time following completion of construction. For Transactions involving new construction or substantial rehabilitation with relocation risk, qualified occupancy should not be required prior to twelve (12) months after completion of construction.
- 5.2.3.3. **Debt Service Coverage.** MassHousing must agree to the Equity Investor's target debt service coverage. For occupied developments, unless otherwise required by MassHousing, conditions related to debt service coverage are generally acceptable at any time following completion of construction. For Transactions involving new construction or substantial rehabilitation with relocation risk, debt service coverage should not be required prior to twelve (12) months after the projected completion of construction.
- 5.2.3.4. **Change in Law.** MassHousing will not object to conditions based on changes in law subsequent to Closing.
- 5.2.4. **Repurchase.** The Equity Investor may not exit the Transaction (through, e.g., withdrawal, rescission, or repurchase) until the earlier of the following: (i) all Development Period Capital Contributions have been paid, or (ii) the date that is twelve (12) months after the anticipated construction completion date accepted by MassHousing or, if later, the maturity date of the Bridge Loan. Exceptions to this general rule include the earlier occurrence of any of the following: (1) a lender forecloses on the Development, (2) the Borrower or any Borrower Ownership Entity experiences an Event of Bankruptcy, (3) a change in law negatively affecting the Equity Investor's investment or (4) the failure of the Development to reach qualified occupancy or the required debt

service coverage standard by twelve (12) months of the anticipated qualified occupancy date.

- 5.2.5. **Adjusters.** Absent special circumstances, MassHousing will not object to the imposition of negative adjusters.
- 5.2.6. **Developer Fee Payable.** Unless otherwise approved by MassHousing, approximately fifty percent (50%) of the payable developer fee shall be paid to the developer only after completion of construction and/or rehabilitation and repayment of MassHousing's bridge loan.

### **5.3. Federal 4% Low Income Housing Tax Credits & Tax-Exempt Obligations**

- 5.3.1. **Bond Issuance.** The Commitment is subject to MassHousing's ability to secure a favorable opinion from its bond counsel and a sufficient allocation of Tax-Exempt Volume Cap from the Commonwealth's Executive Office of Administration and Finance, and to market obligations in sufficient amounts and at feasible rates, to secure the necessary Tax-Exempt Obligations. The amount of Tax-Exempt Volume Cap allocated to fund the Tax-Exempt Obligations shall be at least the minimum amount necessary to ensure satisfaction of the 50% Test, based on calculations provided by Borrower, and to ensure that the Transaction is feasible, based on the actual interest rates at the time of the Closing and in accordance with MassHousing's underwriting. If necessary, the amount of the MassHousing Financing shall be adjusted to ensure compliance with the 50% Test.
- 5.3.2. **Residential Compliance Agreement.** Borrower and MassHousing shall enter and record a Residential Compliance Agreement, in form and substance acceptable to MassHousing, to ensure that the Development will be financed, used and operated in accordance with the Internal Revenue Code and the Enabling Act.
- 5.3.3. **Tax Certificate.** Borrower shall provide a tax certificate (and, where applicable, a supplement thereto) in form and substance satisfactory to MassHousing's bond counsel, evidencing its compliance with applicable tax requirements. The current approved form tax certificate and supplement are available upon request. The 95/5 Test and the 50% Test are exhibits to Borrower's tax certificate.
- 5.3.4. **Allocation of Tax-Exempt Proceeds.** Upon completion of any construction and/or rehabilitation work at the Development approved by MassHousing in connection with the MassHousing Financing, Borrower shall make such adjustments in the allocation of the proceeds of the Tax-Exempt Obligations as may be required to satisfy Section 142 of the Internal Revenue Code.
- 5.3.5. **Bond Indemnity Agreement.** MassHousing may, in its sole discretion, require that Borrower execute a bond indemnity and/or rate lock agreement to indemnify MassHousing against and guarantee Borrower's obligation for the costs of bond redemption and/or negative arbitrage. In connection therewith, Borrower shall provide a cash escrow and/or LOC (and/or, at MassHousing's discretion, a guarantee) in an aggregate amount up to four percent (4%) of the maximum principal amount of the MassHousing Financing.



5.3.6. **42(m) Letters.** Borrower shall provide evidence of DHCD's approval for the use of Federal 4% LIHTC, including evidence of receipt of any waivers deemed necessary by MassHousing in connection with the use of Tax-Exempt Obligations and/or the Federal 4% LIHTC.

5.3.7. **Tax Credit Documents.** Borrower shall execute a tax credit regulatory agreement and declaration of restrictive covenants, a tax credit release and indemnification agreement and/or any other instrument(s) required by DHCD in connection with the Federal 4% LIHTC. (*Legal*)

#### **5.4. Federal 9% Low Income Housing Tax Credits**

5.4.1. **DHCD Approvals.** Borrower shall provide evidence acceptable to MassHousing that all DHCD and Internal Revenue Code requirements pertaining to the Federal 9% LIHTC for the Development, including any carryover allocation requirements, have been satisfied.

5.4.2. **Tax Credit Documents.** Borrower shall execute a tax credit regulatory agreement and declaration of restrictive covenants and/or any other instrument(s) required by DHCD in connection with the Federal 9% LIHTC.

**5.5. Federal Historic Tax Credits.** Borrower shall provide evidence acceptable to MassHousing that (i) the Development is eligible for Federal Historic Tax Credits, in an amount approved by MassHousing, (ii) the National Park Service has reviewed and approved the final plans and specifications in the form submitted to MassHousing, and (iii) all National Park Service requirements pertaining to the Federal Historic Tax Credits that can be satisfied as of the Closing on the MassHousing Financing have been satisfied (i.e. the Part I and Part II have been received) and that appropriate provisions have been made to ensure that any remaining requirements that cannot be satisfied until after the Closing (i.e. the Part III) will be satisfied in due course.

### **6. STATE LOW INCOME HOUSING & HISTORIC TAX CREDITS**

**6.1. State LIHTC.** If State LIHTC are utilized for the Development, Borrower shall provide evidence acceptable to MassHousing that all DHCD requirements pertaining to the State LIHTC for the Development, in an amount approved by MassHousing, have been satisfied. In addition, Borrower shall execute a tax credit regulatory agreement and declaration of restrictive covenants and/or any other instrument(s) required by DHCD in connection with the State LIHTC.

**6.2. State Historic Tax Credits.** If State Historic Tax Credits are utilized for the Development, Borrower shall provide evidence acceptable to MassHousing that (i) the Development is eligible for State Historic Tax Credits in the amount reflected in the Board Commitment Proposal, (ii) the Massachusetts Historical Commission has reviewed and approved the final plans and specifications in the form submitted to MassHousing, and (iii) all Massachusetts Historical Commission requirements pertaining to the State Historic Tax Credits that can be satisfied as of the Closing on the Financing have been satisfied and that appropriate provisions have been made to ensure that any remaining requirements that cannot be satisfied until after the Closing will be satisfied in due course.

**6.3. Transfer Documentation.** The documentations of the sale and investment of the State LIHTC and/or State Historic Tax Credits shall be subject to MassHousing's approval. In general,

MassHousing will not approve transfer documentation that allows for termination of the agreement by the purchaser prior to the maturity date of any MassHousing bridge financing.

- 6.4. Loan Documentation.** As the proceeds from the sale of State LIHTC and/or State Historic Credits are most commonly loaned to the Borrower, the subordinate lender and subordinate loan documents are subject to MassHousing's approval. Such subordinate loans must also meet all requirements normally imposed with respect to subordinate loans.

## **7. FINANCING AND SUBSIDY PROGRAMS**

*(Legal and Rental Management)*

### **7.1. HUD Financing and Subsidy Programs (General)**

7.1.1. **Subsidy Layering.** Any subsidy layering review required by HUD shall be completed to HUD's satisfaction by the Closing Date.

7.1.2. **Additional HUD Requirements.** If all or any portion of the MassHousing Financing is provided under a HUD financing program and/or the Development is supported by any HUD subsidy program(s), Borrower shall comply with all applicable requirements thereof.

### **7.2. HUD Risk-Sharing Program (including FFB Risk Sharing)**

7.2.1. **Firm Approval & Endorsement.** If the Financing Commitment reflects that the MassHousing Financing (or a Loan constituting a portion of the MassHousing Financing) is to be insured under any HUD Risk-Sharing program, (i) MassHousing must receive a firm approval letter from HUD confirming its agreement to insure the Loan through such insurance program, prior to the Closing Date; and (ii) the promissory note evidencing the insured Loan must be duly endorsed by HUD under the applicable HUD/FHA insurance program at Closing, or, if so approved by MassHousing, upon the conversion of such Loan to permanent status.

7.2.2. **MIP.** Borrower shall pay the annual mortgage insurance premium for the term of the insured Loan in the amount specified in the Financing Commitment.

7.2.3. **Davis-Bacon Wages.** Payment of Davis-Bacon Wages is required for Loans insured under the HUD Risk-Sharing Program under the following conditions:

7.2.3.1. Advances for the project are insured under the HUD Risk Sharing Program;

7.2.3.2. The project involves New Construction or Substantial Rehabilitation; and

7.2.3.3. The project will contain twelve (12) or more dwelling units.

### **7.3. HUD Section 8 Rental Subsidy**

7.3.1. **HAP Contract Terms.** The number of units covered and the rents established under the HAP Contract shall be not less than the underwriting assumptions for the Transaction. If any of the terms of the HAP Contract vary from the underwriting terms, the MassHousing loan may be reduced accordingly.

- 7.3.2. **HAP Contract Renewals.** If the Development has an effective HAP Contract at the Closing, the regulatory agreement shall provide that, for so long as approved Section 8 rent levels are sufficient to cover operating expenses (including debt service), Borrower shall commit to request renewals of the HAP Contract for the maximum allowed number of units and the longest available term.
- 7.3.3. **HAP Contract Transfers.** If the Transaction includes the transfer of the Development to Borrower, Borrower shall provide evidence of HUD's approval of the assignment and assumption of the existing HAP Contract from the seller to Borrower, which shall be effected concurrently with the closing on MassHousing's financing.
- 7.3.4. **HUD Use Restrictions.** Any use agreement required by HUD shall be subject to review and approval of MassHousing.

## **8. TITLE AND SURVEY**

*(Legal)*

### **8.1. General Requirements**

- 8.1.1. **Title Insurance.** Borrower shall obtain at its expense a lender's title insurance policy for each Loan comprising the MassHousing Financing, insuring the lien of the mortgage in the amount of the Loan secured thereby, issued by a title company acceptable to MassHousing and subject only to those exceptions to title as are approved by MassHousing. Each such title insurance policy shall be in form and substance acceptable to MassHousing. If the Loan to which the title insurance policy relates is insured under any HUD/HFA Risk-Sharing Program, such title insurance policy shall include HUD as an insured party, and shall be subject to HUD approval. More detailed instructions are available in the Online Developer Library.
- 8.1.2. **Survey.** By the Closing Date, Borrower shall submit to MassHousing (i) a survey of the Property, prepared in compliance with MassHousing's Survey Requirements and sufficient to delete the standard survey exception from the lender's title insurance policy; and (ii) a Surveyor's Report in the form required by MassHousing (available in the Online Developer Library).
- 8.1.3. **As-Built Survey.** If the Transaction includes a construction phase, Borrower shall, upon completion, submit to MassHousing an "as-built" survey of the Property, subject to MassHousing's Survey Requirements, locating all buildings, structures, encroachments, easements and similar matters. An updated Surveyor's Report shall also be provided at such time.

**8.2. Property Acquisition.** If the Development is being acquired by Borrower contemporaneously with the Closing, Borrower shall provide MassHousing with copies of all transfer documents for review and approval by MassHousing.

**8.3. Condominium.** If the Development is, or will be converted to, a condominium, Borrower shall provide the condominium deed of trust, master deed, condominium plans and any other related documents for review and approval by MassHousing, by the Closing Date, if the Development is a condominium at such time, or the forms thereof, if the Development is to be converted to a

condominium after such date, which documents (or forms) shall be in form and substance acceptable to MassHousing.

- 8.4. Commercial Leasing.** All commercial leases and related documents shall be in form and substance acceptable to MassHousing. At Closing, Borrower shall provide a current estoppel certificate for each existing commercial lease and all commercial leases must be subordinated to the MassHousing Financing. If the commercial income is required to support the MassHousing Financing, a commercial income guaranty shall be provided by a Borrower Ownership Entity acceptable to MassHousing.
- 8.5. Ground Lease or Master Lease.** Any ground lease or master lease structures affecting the Development must be reviewed and approved by MassHousing. If Borrower is a tenant under a ground or master lease, the landlord thereunder shall join the mortgage(s) securing the MassHousing Financing (or otherwise evidence its assent thereto in form and substance acceptable to MassHousing).

## **9. ENVIRONMENTAL**

*(Rental Underwriting)*

- 9.1.1. Overall Environmental Compliance.** The Development shall comply with all federal, state, and local environmental laws and the regulations and rules applicable thereunder. Borrower shall be obligated to provide MassHousing with evidence of such compliance upon MassHousing's request.
- 9.1.2. Environmental Reports.** MassHousing shall receive satisfactory written reports from acceptable, qualified professionals indicating, on the basis of soils and ground water tests, if deemed necessary by MassHousing, and other tests and inspections, (a) that the Property is in compliance with applicable federal and state environmental statutes and regulations relating to hazardous materials, including contaminated soils, asbestos, urea formaldehyde insulation, underground storage tanks, polychlorinated biphenyls (PCBs) or other environmental hazards; and (b) that the Property has not been used as a dump site for oil, hazardous materials, hazardous wastes, asbestos, polychlorinated biphenyls or toxic substances or otherwise used in such a manner which would cause the likelihood of incurring any liability under federal or state legal requirements regarding oil, hazardous materials, hazardous wastes or other toxic substances. In the event said reports do not indicate that the Property complies with (a) and (b) above, Borrower shall submit to MassHousing for approval, prior to the Closing, a remediation plan to be completed prior to the Closing on the MassHousing Financing (or conversion to) permanent financing. At the request of MassHousing, Borrower shall also submit to MassHousing evidence of environmental insurance, in form and substance acceptable to MassHousing.
- 9.1.3. Radon.** Borrower shall submit to MassHousing test results, acceptable to MassHousing's environmental officer, showing that radon levels in the units on the lowest living levels of the Development do not exceed EPA thresholds for exposure. Such test results may be provided post-construction for unoccupied Developments.
- 9.1.4. Lead-Based Paint.** For every building in the Development originally constructed prior to 1978, Borrower shall provide MassHousing with letter(s) of compliance conforming to the requirements of the Massachusetts Lead Paint Law prepared by an inspector duly licensed by the Commonwealth of Massachusetts, indicating that each and every dwelling

unit in such building of the Development is in compliance with applicable federal and state laws and local regulations concerning lead paint. Borrower shall also demonstrate compliance with federal lead paint laws and requirements. At the discretion of MassHousing's environmental officer and consistent with applicable federal and state laws and local regulations, documentation of compliance may not be required for dwelling units subject to certain occupancy restrictions. If abatement of lead paint hazards in the Development is necessary for compliance, Borrower shall submit to MassHousing for approval, prior to the construction loan closing, an abatement plan to be completed prior to (a) the issuance by MassHousing of its Certificate of Approval and Acceptance or (b) the Closing Date under the Permanent Loan Agreement. MassHousing's environmental officer may require abatement of lead paint hazards in developments to be primarily occupied by the elderly.

## **10. ADDITIONAL MASSACHUSETTS STATUTORY REQUIREMENTS**

*(Legal)*

- 10.1. Chapter 40T.** Borrower shall provide evidence satisfactory to MassHousing of its compliance with the provisions of MGL Chapter 40T and the regulations promulgated thereunder (760 CMR 64.00 et seq.).
- 10.2. Chapter 40B.** If the Development is regulated under Chapter 40B, the terms and conditions of the comprehensive permit shall be acceptable to MassHousing. If required by MassHousing, Borrower shall provide such legal opinions or other evidence that compliance with the terms and conditions of the comprehensive permit and tenant selection plan will not be in conflict with applicable federal and state fair housing laws.
- 10.3. MEPA.** Borrower shall provide evidence satisfactory to MassHousing of its compliance with the Massachusetts Environmental Policy Act and other state environmental laws and regulations, as described in Section 8 above and Section 11.2 below.

## **11. PROPERTY MANAGEMENT, OPERATIONS & INSURANCE**

*(Rental Management, Diversity & Inclusion, Finance and Legal)*

### **11.1. Property Management**

- 11.1.1. Management Agreement.** Borrower and the Management Company shall enter into and execute with MassHousing a management contract acceptable to MassHousing.
- 11.1.2. Equal Opportunity.** Borrower shall execute and deliver to MassHousing (i) an Affirmative Fair Marketing Plan acceptable to MassHousing and (ii) an Equal Opportunity/Affirmative Action Contract for Occupancy and Minority Business Development acceptable to MassHousing.
- 11.1.3. Tenant Selection Plan.** Borrower shall submit for MassHousing approval the proposed tenant selection criteria and, if applicable, the proposed tenant location plan indicating the location of low-income units and/or other documentation evidencing the Development's compliance with all applicable requirements regarding resident relocation.
- 11.1.4. DMH/DDS.** Borrower shall execute and deliver to MassHousing a letter of understanding under which Borrower sets aside or continues to set aside 3% of the subsidized units for

occupancy by applicants referred by the Mental Health or Developmental Services Department of the Commonwealth under the MassHousing/DMH/DDS Set-Aside Agreement.

- 11.1.5. **Past-Due Obligations.** Borrower shall agree, in writing, to notify MassHousing if any operating obligations of the Development are in excess of sixty (60) days past due. In such, Borrower shall either escrow with MassHousing the amount of all past due obligations, or immediately pay its obligations so that no obligation is more than thirty (30) days past due. Failure to comply with these requirements shall be a default under the mortgage.
- 11.1.6. **Replacement Reserve.** Borrower shall fund an initial deposit to the Development's replacement reserve in the amount specified in the Financing Commitment (or, if applicable, such other minimum amount approved by MassHousing based on the CNA and construction period scope of work and budget).
- 11.1.7. **Escrows.** Unless otherwise approved by MassHousing, all monthly payments for the escrows for insurance, real estate taxes, and mortgage insurance premium required to be deposited with MassHousing under the MassHousing Loan Documents shall commence the month following the Closing Date, except that, if the MassHousing Financing includes a construction loan or is described in a Permanent Loan Agreement, required monthly contributions to replacement reserves shall commence the month following completion of construction.
- 11.1.8. **Management Agent.** As of the Closing Date, the management agents for any and all MassHousing-financed developments owned by an affiliate of Borrower (including, for these purposes, any borrower owned, directly or indirectly by any Borrower Ownership Entity) shall be in good standing with MassHousing. Being in good standing includes, but is not limited to, the management agreement for each such development being in a form acceptable to MassHousing.
- 11.2. **Rent Phase-In Escrow/Delayed Rent Escrow.** If required, the establishment and operation of the rent phase-in escrow and the delayed rent escrow shall be in accordance with provisions in the Closing Documents, which shall provide that MassHousing will have the right to audit these escrows and the application of funds thereof.
- 11.3. **Operating Escrow**
- 11.3.1. **Amount.** Borrower shall deliver to MassHousing a cash escrow and/or an Operating LOC (or equivalent security approved by MassHousing in its discretion) (the "Operating Escrow") in an amount not to exceed six percent (6%) of the MassHousing Financing (excluding any Bridge Loan). It is anticipated that Transactions involving New Construction or Substantial Rehabilitation will require a 6% Operating Escrow, but that Transactions involving existing developments with more limited repairs may require a lesser Operating Escrow.
- 11.3.2. **Funding.** The Operating Escrow shall be payable (i) if any portion of the MassHousing Financing is to be advanced during any construction or rehabilitation phase, then upon achievement the benchmarks constituting completion of the required construction or rehabilitation required by MassHousing, as specified in the MassHousing Loan

Documents, or (ii) if the MassHousing Financing is for permanent financing only, by or on the Closing Date.

11.3.3. **Uses.** The Operating Escrow may be used either for repayment of the MassHousing Financing in the case of default or the funding of operating deficits. Any amount drawn from the Operating Reserve prior to achievement of break-even operations shall be replenished by Borrower within thirty (30) days of such draw. MassHousing, in its sole discretion, will determine the timing and purposes of any draw from the Operating Escrow.

11.3.4. **Releases.** Following two (2) consecutive years of positive cash flow, as evidenced by annual audited financial statements approved by MassHousing, and provided that no defects, deficits, or defaults have occurred and remain uncured, the Operating Escrow will be reduced by one-sixth (1/6) of the initial amount specified above. For each subsequent consecutive year of positive cash flow, the Operating Escrow may then be reduced by any additional one-sixth (1/6) of such initial amount. If the Development achieves a debt service coverage of 1.10 for two (2) consecutive years, the Operating Escrow may then be reduced by one-quarter (1/4) of such initial amount and thereafter, for each subsequent consecutive year the Development achieves a debt service coverage of 1.10, the Operating Escrow will be reduced by an additional one-quarter (1/4) of such initial amount. Reductions in the Operating Escrow will only be permitted in the event that the Development has had positive cash flow in the previous two (2) years.

#### **11.4. Insurance**

11.4.1. **General Insurance Requirements.** Borrower shall obtain and maintain insurance binders and/or certificates of insurance evidencing insurance coverage in compliance with MassHousing's Insurance Requirements, naming MassHousing as mortgagee under a standard mortgagee clause for all periods during which MassHousing is the holder of any loan on the Development. Such insurance must be written for a period of not less than twelve (12) months and shall state that no cancellation or modification thereof may be effected until at least sixty (60) days' written notice is provided to MassHousing. All such insurance must be in full force and effect prior to the Loan Closing Date.

11.4.2. **Updated Requirements.** During the term of the MassHousing Financing, Borrower must comply with the MassHousing Insurance Requirements in effect as of the Loan Closing Date for the MassHousing Financing, and any modifications made by MassHousing from time to time to such Insurance Requirements of which MassHousing has given Borrower written notice. MassHousing's current Insurance Requirements are available in the Online Developer Library.

## **12. CLOSING DOCUMENTS AND CONDITIONS**

*(Legal)*

### **12.1. Closing Conditions**

12.1.1. **Certifications.** As of the Loan Closing Date (and, if applicable, as of the execution of any Permanent Loan Agreement), Borrower shall certify:

- 12.1.1.1. **One-Stop.** The information contained in the One-Stop Application is true, correct and complete in all material respects;
- 12.1.1.2. **No Default.** If any Borrower Ownership Entity is a borrower or a Principal or Controlling Entity of a borrower to whom MassHousing has made any loan other than the Loan, there is no default under such other loan that is continuing as of the date of such certification;
- 12.1.1.3. **Payables.** If the Development is fully or partially occupied on the Loan Closing Date, that there are no outstanding payables other than usual and customary expenses less than thirty (30) days past due (or, if Borrower is unable to make such certification, that there are no outstanding payables for which funds have not been escrowed with MassHousing); and
- 12.1.1.4. **Wellstone Notice.** If the Development is supported by any federal subsidy (including, without limitation, Section 8 and or Section 236), that the Development has complied with all applicable Wellstone notice requirements, with evidence of (i) delivery of any required Wellstone notice and confirmation that the Loan Closing Date is within the effective period thereof, or (ii) if applicable, other evidence of compliance (e.g., HUD Use Agreement).
- 12.1.2. **Other Funds.** All sources of funds other than the MassHousing Financing proceeds shall be committed or secured on terms satisfactory to MassHousing, excluding only (i) hold-backs required by subordinate financing under state, municipal or other public programs; (ii) if applicable, Capital Contributions from any Equity Investor subsequent to the Capital Contributions required at Closing; and (iii) deferred developer fee.
- 12.1.3. **Borrower's Equity.** In no event shall Borrower's equity in the development be less than ten percent (10%) of the total development cost, as determined by MassHousing (unless Borrower is a non-profit corporation, in which case the Loan(s) may be equal to 100% of the Development's value, as determined by MassHousing and permitted by the Enabling Act).
- 12.1.4. **Developer Fee.** Borrower shall obtain MassHousing's approval for calculation of developer fee and overhead including total amounts, amounts deferred or contributed, and amounts payable.
- 12.1.5. **Appraised Value.** Acquisition costs in excess of appraised value of the acquisition may not be financed by the Loan and will not be recognized in calculating Borrower's equity. The maximum permissible acquisition value will be limited to the lesser of (1) the "as is" appraised market value of the land and improvements, as evidenced by the appraisal; or (2) the purchase price of the land and improvements in the last arm's length transaction, if any, within the last three (3) years.
- 12.1.6. **Closing Reserves & Escrows.** Borrower shall deposit with MassHousing cash and or other security to fully fund all escrows and reserves required by MassHousing and any Equity Investor by the Closing (or, if MassHousing is entering into a Permanent Loan Agreement in advance of the closing on the MassHousing Financing, by any earlier date specified in the Permanent Loan Agreement).



12.1.7. **Other Assets.** Neither Borrower nor Borrower's managing member or general partner shall have an interest in anything other than a MassHousing-financed development. This limitation does not apply to other Borrower Ownership Entities.

**12.2. Seller Loan Documents.** If the acquisition involves seller financing, Borrower shall submit for review and approval by MassHousing its proposed terms and conditions of the seller note. As applicable, the seller note will be subordinate to the MassHousing Financing and in form and substance acceptable to MassHousing. Payments on the seller note may be made from the allowed 10% limited dividends distribution to Borrower, subject to the requirements of the Regulatory Agreement.

**12.3. Legal Opinions.** Borrower shall cause the following legal opinions to be delivered to MassHousing at Closing.

12.3.1. **Authority Opinion.** Opinion of Borrower's counsel, supported by appropriate certificates of votes and current certificates of incumbency, legal existence and good standing, tax good standing and, if applicable, qualification to do business, as to:

12.3.1.1. The legal existence (and, as applicable, its qualification to do business within the Commonwealth of Massachusetts) of Borrower and its Principals and Controlling Entities and, if applicable, any other Borrower Ownership Entities;

12.3.1.2. The due authority of Borrower and, as applicable, its Principals and Controlling Entities and any other Borrower Ownership Entities, to enter into the loan documents to which each is a party;

12.3.1.3. The enforceability of the loan documents and certifications executed by Borrower and, as applicable, its Principals and Controlling Entities and any other Borrower Ownership Entities and any other contracts for the Development executed by Borrower; and

12.3.1.4. Any and all pending or written threats of litigation before any court, administrative or governmental body, based on appropriate docket searches, involving Borrower, its Principals and Controlling Entities and any other Borrower Ownership Entities, the Development and/or financing for the Development; however, with the approval of MassHousing, Borrower may, in lieu of the litigation opinion as described in this subsection, provide docket searches of Borrower, its Principals and Controlling Entities, any other Borrower Ownership Entities, together with appropriate legal analysis and/or other documentation regarding any such pending or written threats of litigation, all in form acceptable to MassHousing.

12.3.2. **Zoning and Land Use Opinion.** Opinion of Borrower's counsel or other counsel acceptable to MassHousing that the Development conforms to and is in compliance with all applicable local planning and zoning requirements and, if applicable, identify any permits, approvals, conditions or other requirements that remain to be satisfied to achieve

such compliance (which shall be subject to MassHousing's approval, in its sole discretion). This opinion should address the following:

- 12.3.2.1. The pertinent subdivision, density, land use, dimensional, construction permitting and other applicable provisions of the planning and zoning requirements and computations used to satisfy such requirements and any other applicable requirements governing historic structures or districts;
- 12.3.2.2. The procedures and validity involved in the adoption of any zoning code changes, the issuance of any permits, approvals, conditions and/or variances that were or would need to be obtained in connection with or otherwise affect the Development;
- 12.3.2.3. Whether the Development is, or, if the Loan provides construction financing, whether upon completion of construction in accordance with the approved plans and specifications, the Development will be, in compliance with all requirements as described above and any applicable permits, approvals, conditions and/or variances;
- 12.3.2.4. Any pending zoning changes that may affect the Development; and
- 12.3.2.5. A copy of the zoning ordinance, a zoning map, and complete documentation of all zoning actions must also be submitted, if requested by MassHousing.

**12.3.3. Environmental Opinion.** Opinion of Borrower's counsel or other counsel acceptable to MassHousing as to compliance with all environmental laws, rules and regulations, including the National Environmental Policy Act, the Massachusetts Environmental Policy Act, the Massachusetts Clean Waters Act, the Massachusetts Water Resources Authority Act, Title 5 of the Massachusetts Environmental Code, and any other applicable sewer use and regulations and such other opinions of environmental compliance as may be deemed appropriate by MassHousing. If MassHousing is providing construction and permanent loan financing, or is providing permanent (take-out) financing but is entering into a Permanent Loan Agreement at construction closing, the opinion(s) relating to land use, permitting and environmental matters shall be updated at the Closing for the permanent financing.

**12.3.4. Additional Opinions.** If MassHousing determines that the proposed ownership structure of Borrower, any Borrower Ownership Entity, the Equity Investor, the upper tier and/or any interim tier entity providing funding for the Equity Investor, and/or any aspect of the proposed Development, Tax Credits and/or other financing presents unusual or atypical features, Borrower shall deliver to MassHousing a legal opinion, analysis and/or other documentation, as required by MassHousing addressing the concerns identified by MassHousing (including, by way of example but not limitation, confirmation of compliance with applicable provisions of the Internal Revenue Code and the availability of projected Federal Tax Credits in light thereof).

**12.3.5. PILOTs.** If required by MassHousing, if the Development is subject to a Payment in Lieu of Taxes (PILOT) pursuant to Massachusetts General Laws c.121A, Borrower shall

provide an opinion of Borrower's counsel or other counsel acceptable to MassHousing as to compliance with all applicable requirements thereunder.

## Attachment 1: Glossary of Defined Terms

**50% Test** – the analysis by a certified public accountant acceptable to MassHousing confirming that that over 50% of the aggregate basis of the Development is (or, as applicable, is projected to be) funded with proceeds of Tax-Exempt Obligations, as determined in accordance with applicable provisions of the Internal Revenue Code.

**95/5 Test** – the analysis by a certified public accountant acceptable to MassHousing confirming that that at least 95% of Tax-Exempt Obligation proceeds has been (or, as applicable, is projected to be) expended for qualified costs, as determined in accordance with applicable provisions of the Internal Revenue Code.

**Board Commitment Proposal** – the summary of the proposed financing submitted to MassHousing’s Board in connection with its vote(s) authorizing the MassHousing Financing.

**Board Vote** – the vote(s) approved by MassHousing’s Board authorizing the MassHousing Financing, including any applicable Special Condition(s).

**Borrower Ownership Entities** –Borrower, Borrower’s general partner(s) or manager(s) and/or managing member(s) [and, to the extent applicable, direct or indirect controlling entities or principals thereof]. These terms shall be interpreted consistently with the concepts of “Controlling Entity” and “Qualified Principal” under MassHousing’s policy regarding transfers of ownership:

**Controlling Interest:** An Ownership Interest, contractual right or other interest with respect to an Entity which confers upon its holder the authority or right, directly or indirectly, to manage or otherwise direct any material part of or all of the business or financial affairs and policies of the Entity and/or any material part of or all of the day-to-day or long-term operation of the Mortgaged Property.

**Controlling Entity:** An Entity which has a Controlling Interest in a Borrower, either directly or through one or more Intermediaries. Without limitation of the foregoing, (i) a general partner of a Borrower which is a partnership and a manager of a Borrower which is a limited liability company shall each constitute a Controlling Entity of such a Borrower; (ii) a management agent acting under a management contract with a Borrower shall not be deemed, solely by virtue of its activities thereunder, a Controlling Entity with respect to such Borrower; (iii) an Entity which has contractual rights to direct or control business solely upon the happening of certain events shall not be deemed a Controlling Entity until such time as it elects to exercise such contingent management rights and (iv) an Entity, such as a limited partner or non-managing member, which merely has consent or approval rights with respect to certain actions undertaken or to be undertaken by a Controlling Entity shall not itself be deemed to be a Controlling Entity as a result of the possession or exercise of such rights. A limited partner of a limited partnership or non-managing member of a limited liability company will not be deemed a Controlling Entity of such limited partnership or limited liability company unless, in addition to the exercise of its consent or approval rights, it “participates in the control of the business” of such limited partnership or limited liability company as such phrase is construed for purposes of Section 19 of the Uniform Limited Partnership Act (M.G.L. Chapter 109).

**Qualified Principal:** A natural person who, at the time of the initial financing transaction between the Borrower and MassHousing involving the Mortgaged Property, either (i) owned, directly or indirectly, at least 30% of the Ownership Interests in the

Borrower or (ii) executed a written guaranty in favor of MassHousing guaranteeing the Borrower's obligations in connection with such financing.

Borrower's Principals and Controlling Entities are identified in the One-Stop Application submitted to MassHousing in connection with the MassHousing Financing.

**Bridge Loan** – a loan made by MassHousing for a period less than fifteen (15) years, which is generally expected to be repaid from a capital source.

**Capital Contributions** – the installments of equity contributed to Borrower by its Equity Investor upon satisfaction of certain conditions set forth in Borrower's Organizational Documents.

**Closing** – the execution and delivery of all documents evidencing and/or securing the MassHousing Financing and such other documents as are required by MassHousing, Borrower and any other Transaction parties to be executed and delivered contemporaneously therewith.

**Closing Date** – the date on which the Closing occurs.

**CNA** – the capital needs assessment for the Development commissioned by MassHousing, in the final form approved by MassHousing.

**Construction Lender** – the lender other than MassHousing providing construction financing for the Development

**General Contractor** – the construction firm identified as the General Contractor in the Financing Commitment or as otherwise approved by MassHousing

**Davis-Bacon Wages** – the wages prevailing in the locality in which work is performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the United States Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5).

**Development** – the residential rental development to be financed by the MassHousing Financing

**DHCD** – the Commonwealth of Massachusetts Department of Housing and Community Development

**Enabling Act** – Chapter 708 of the Acts of 1966, as amended

**Equity Investor** – Borrower's tax credit investor partner or member

**Event of Bankruptcy** - filing of a petition in bankruptcy by, or any acquiescence in or failure to discharge within sixty (60) days any petition in bankruptcy brought against, Borrower or any Borrower Ownership Entities; or the appointment of a receiver or trustee of the property of, the execution of an assignment for the benefit of the creditors of, or the entry of a judgment of insolvency by any court of competent jurisdiction against Borrower or any Borrower Ownership Entity.

**Federal 4% LIHTC** – the federal low-income housing tax credits available to subsidize 30% of the low-income cost units in a qualifying low-income housing project, as more fully set forth in and authorized under the Internal Revenue Code.

**Federal 9% LIHTC** – the federal low-income housing tax credits available to subsidize 70% of the low-income cost units in a qualifying low-income housing project, as more fully set forth in and authorized under the Internal Revenue Code; these credits are allocated by DHCD in accordance with the Commonwealth’s Qualified Allocation Plan.

**Federal Historic Tax Credits** – federal historic tax credits authorized under the Internal Revenue Code.

**Federal Tax Credits** – the Federal 4% LIHTC or Federal 9% LIHTC and/or the Federal Historic Tax Credits, as applicable.

**Financing Commitment** – the commitment letter issued by MassHousing for the MassHousing Financing, including, without limitation, any and all amendments and/or other modifications thereto.

**HAP Contract** – the Housing Assistance Payment contract in effect for the Development.

**HUD** – the United States Department of Housing and Urban Development.

**HUD/FHA MAP Program** – the program under which HUD processes loan applications for FHA multifamily mortgage insurance, which generally involve the refinance, purchase, new construction, or rehabilitation of multifamily properties.

**HUD Risk-Sharing Program** – the program under the provisions of Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707) and the regulations with respect thereto under which full FHA mortgage insurance is provided to affordable housing loans, with participating housing finance agencies elect to share from 10% to 90% percent of the loss on a loan with HUD.

**Internal Revenue Code** – the Internal Revenue Code of 1986, as amended.

**Loan** – a loan comprising all or part of the MassHousing Financing.

**LOC** – an irrevocable letter of credit issued by an entity with a credit rating acceptable to MassHousing, in form and substance acceptable to MassHousing.

**Management Company** – the management company approved by MassHousing for the Development

**MassHousing Financing** – the aggregate financing to be provided by MassHousing for the Development under the Board Vote.

**MassHousing’s Insurance Requirements** – the insurance requirements for the Development as determined by MassHousing, available in the Online Developer Library.

**MassHousing Loan Documents** – the note(s), mortgage(s), regulatory agreement and other loan documents, including any amendment(s) and/or other modifications thereto, evidencing and securing the MassHousing Financing, or any constituent Loan thereof.

**Moderate Rehabilitation** – work at the Development not amounting to “substantial rehabilitation” for purposes of the HUD Risk-Sharing Program and for which MassHousing is advancing its Loan proceeds based on the progress of the rehabilitation.

***New Construction*** – work at the Development creating new residential rental housing units, which may include construction of ancillary commercial space. The adaptive reuse of an existing building not formerly occupied as housing constitutes New Construction.

***One-Stop Application*** – the application of Borrower in the form of the One-Stop Application document promulgated by MHIC or by DHCD, including any supplement(s) and/or amendment(s) thereto, as approved by MassHousing.

***Operating LOC*** – the LOC required for permanent financing.

***Organizational Documents*** – all organizational documents pursuant to which an entity is organized, including any and all amendments, restatements or other modifications thereto, currently in effect, and, where the context so provides, all certificates filed with the Secretary of State for the Commonwealth of Massachusetts (and, if a foreign entity, those filed with the Secretary of State for its state of organization), including any and all amendments, restatements or other modifications thereto, currently in effect

***Permanent Loan Agreement*** – where proceeds of the MassHousing Financing will be applied to repay a Construction Loan and provide permanent financing for the Development, the agreement made by MassHousing, the Construction Lender and Borrower, providing for Construction Lender financing for construction and/or rehabilitation, and the terms for closing on the MassHousing Financing.

***Property*** – the real property upon which the Development is located.

***Special Conditions*** – the Special Condition(s), if any, incorporated as part of the Board Vote (which are also set forth in the Financing Commitment).

***State Historic Tax Credits*** – the state historic tax credits authorized under the laws of the Commonwealth.

***State LIHTC*** – the state low-income housing tax credits authorized under the laws of the Commonwealth.

***State Prevailing Wages*** – the applicable wages established by the Massachusetts Executive Office of Labor and Workforce Development, Department of Labor Standards

***Substantial Rehabilitation*** – work at the Development constituting “substantial rehabilitation” for purposes of the HUD Risk-Sharing Program and for which MassHousing is advancing its Loan proceeds based on the progress of the rehabilitation.

***Survey Requirements*** – MassHousing’s requirements for the ALTA survey of the Property, available in the Online Developer Library.

***Tax Credits*** – the Federal 4% LIHTC, Federal 9% LIHTC, State LIHTC, Federal Historic Tax Credits and/or State Historic Tax Credits, as applicable.

***Tax-Exempt Obligations*** – tax-exempt bonds or notes issued by MassHousing subject to the provisions of Section 146 of the Internal Revenue Code.

***Tax-Exempt Volume Cap*** – amount of tax-exempt private activity bonds that can be issued annually by MassHousing

***Transaction*** – the MassHousing Financing, plus any other debt and equity financing, for the acquisition, construction, rehabilitation and/or permanent financing of the Development



## Attachment 2: Required Terms and Conditions for Third-Party Subordinate Mortgages

1. This mortgage is subordinate to the first mortgage lien of the Massachusetts Housing Finance Agency (“MassHousing”), its successors and assigns, in all respects, and *[Subordinate Mortgagee]* expressly waives its right to commence lien enforcement or foreclosure proceedings without the prior written consent of MassHousing so long as either the MassHousing mortgage or any bond, note or other source from which the mortgage loan of MassHousing was funded is still outstanding;
2. MassHousing and Borrower may amend the MassHousing mortgage without the approval of *[Subordinate Mortgagee]* so long as the principal balance does not exceed the original principal amount and the interest rate is not increased; however, the consent of *[Subordinate Mortgagee]* shall be required for any amendment which could materially adversely affect the security interest of *[Subordinate Mortgagee]*, which consent shall not be unreasonably withheld;
3. All rights (including assignment of leases and rents and rights with respect to insurance proceeds and condemnation awards) given to *[Subordinate Mortgagee]* shall be subordinate to MassHousing's rights and MassHousing's mortgage;
4. The subordinate mortgage is subject and subordinate to any and all advances made, and expenses incurred, with interest thereon, as permitted by MassHousing's mortgage;
5. *[Subordinate Mortgagee]* shall be bound by any determination by MassHousing to release insurance proceeds and condemnation awards for restoration;
6. *[Subordinate Mortgagee]* must follow the lead of MassHousing in giving non-disturbance agreements to tenants;
7. *[Subordinate Mortgagee]* may not acquire, by subrogation or subordination (for example, by payment of real estate taxes) or otherwise, any lien, estate, right or other interest in the project that is, or may be, prior in right to that of MassHousing.
8. *[Subordinate Mortgagee]* shall give MassHousing written notice of any default by [Borrower].
9. If *[Subordinate Mortgagee]* brings a foreclosure proceeding, no action shall be taken that would terminate any of the leases without the prior written consent of MassHousing.
10. If MassHousing forecloses, all rents, issues and profits from the development shall first go to MassHousing.
11. The purchaser of the project at a foreclosure sale shall be subject to the approval of MassHousing, which shall not be unreasonably withheld.
12. Any such approved purchaser shall be required by *[Subordinate Mortgagee]* as a condition of sale to assume Borrower's obligations under the MassHousing mortgage.

The foregoing provisions shall inure to the benefit of MassHousing, (and, if applicable, the Secretary of Housing and Urban Development, as insurer of the Loan), and the following, as successors and assigns of MassHousing: (i) any trustee of the financing source issued to fund the mortgage loan secured by the MassHousing mortgage or any debt which refinances such financing source; (ii) any successor agency or instrumentality of The Commonwealth of Massachusetts that succeeds to the functions of MassHousing; and (iii) any state, federal or other public or quasi-public agencies dedicated to the creation, preservation and maintenance of affordable housing for low or moderate income residents of the Commonwealth of Massachusetts; however, no provision hereof shall be construed to confer any rights upon Borrower, whether as third party beneficiary or otherwise.

### Attachment 3: Type A and Type B Escrows

- 1) For existing property rehabilitation transactions with scope less than \$40,500 per unit, involving less than two full building systems.
- 2) Property occupancy not less than 93% over past 12 months.

In order for a Treasury HUDIHFA Risk Share execution to be used in the funding of the project, borrower will work with MassHousing to submit application materials and documentation required to obtain a Firm Approval Letter and endorsement of the Note from HUD.

Based on a MassHousing commissioned capital needs assessment (CNA), loan proceeds will be utilized to ensure that immediate repairs are completed within the first year. Based on the scope of work identified in the CNA, multiple escrows may be established at closing. A brief description of the two general types of escrows and incentives follow:

**Escrow A:** This escrow is for improvements that will be completed by a licensed professional who will produce a set of plans and specifications to conduct the work and an executed construction contract for the work. Payment of Type A Escrows will be processed for payment by the MassHousing Design and Construction Department. Upon completion of the work, a 2448 form shall be submitted to MassHousing. This form will be signed by the licensed professional, the contractor and the owner and will be presented for payment to the MassHousing Design and Construction department. A MassHousing Field Representative shall be assigned to the project to determine that the work being presented for payment is complete. Please see attached policy for additional details.

**Escrow B:** In contrast to Escrow A, Escrow B is for repairs that can be procured by obtaining competitive bids or completed by the property's management company. Payment for Type B Escrows will be processed for payment by MassHousing's Rental Management department. Upon completion of the work, the owner/management company shall submit a request to the property's MassHousing Rental Management analyst. Upon approval in accordance with existing MassHousing Replacement Reserve protocols, payment will be made. In no event shall the request exceed the contracted amount unless an approved modification to the bid has been previously authorized by MassHousing. Please see attached policy for additional details.

**Incentives:** Before loan closing, it is preferable that the Owner secure firm bids for the scope of work, be they Type A or Type B. However, where this is not possible, a 20% contingency shall be included in the soft cost budget to offset potential cost increases. Upon satisfactory completion of the work any remaining contingency shall be returned to the Owner.

A Project Management Fee equal to 5% of the total Type B escrow amount will be included in the soft cost budget. This fee is payable to the management company for the administration and oversight of the completion of the scheduled repairs in the first year. This fee will not be included in the soft cost budget for Type A escrow work.