

February 8, 2021



CITY OF PEABODY

2021 FEB -1 A 9:18

**City of Peabody
Zoning Board of Appeals**

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5792

FEBRUARY 8, 2020 ZBA AGENDA
LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT THERE WILL BE A SPECIAL REMOTE PARTICIPATION
MEETING OF THE ZONING BOARD OF APPEALS ON
MONDAY, FEBRUARY 8, 2020, AT 7:00 PM

Pursuant to Governor Baker's March 12, 2020 Order suspending certain provisions of the Open Meeting Law, G.L. c. 30A § 18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Peabody Zoning Board will be conducted via remote participation to the greatest extent possible. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public adequately access the proceedings in real time, via technological means. Individuals may participate remotely in the meeting via a participation platform called Zoom.

Members of the public and/or parties with a right and/or requirement to attend this meeting may access the remote participation through any one of the following ways:

- Enter this link into your web browser to join the meeting: <https://us02web.zoom.us/j/82277077234>
- Enter this link into your web browser to open the Zoom website: <https://zoom.us/join>. Enter the meeting/webinar ID# 822 7707 7234 as directed on the webpage and click "Join". Follow the on-screen instructions to join the meeting.
- Participants can dial a toll-free number: +1 312 626 6799 to join the meeting. When prompted, enter meeting/webinar ID# 822 7707 7234 and follow the instructions to join the meeting.

PLEASE FAMILIARIZE YOURSELF WITH THE MUTE/UNMUTE FUNCTION AS WELL AS THE RAISE HAND FEATURE ON THE ZOOM PLATFORM.

THE AGENDA FOR THIS MEETING AND THESE INSTRUCTIONS ARE POSTED ON THE CITY OF PEABODY WEBSITE. WWW.PEABODY-MA.GOV

PEABODY ACCESS TELEVISION WILL BE AIRING THIS MEETING LIVE ON CHANNEL 9, AS WELL AS STREAMING ON THEIR FACEBOOK AND/OR YOUTUBE PLATFORMS.

IF YOU WISH TO COMMENT ON OR REVIEW ANY PLANS OR DOCUMENTS RELATED TO ITEMS ON THIS AGENDA PLEASE CONTACT CARLA MCGRATH VIA PHONE, E-MAIL OR WRITTEN LETTER.

ZONING BOARD OF APPEALS
CARLA MCGRATH, CLERK
LOWELL STREET
PEABODY, MA 01960
carla.mcgrath@peabody-ma.gov
978-538-5792

SPECIAL MEETING

1. Continued application of **HDG King Street, LLC** c/o Attorney Jason Panos, for a Chapter 40B **Comprehensive Permit** as it applies to the premise known as **15 King St, Peabody, MA, Map 074, Lot 258**. Petitioner seeks to construct 133 units. The property is located in an **R2 Zoning District**.

CITY OF PEABODY
2021 FEB - 1 A 4 PM

BUSINESS MEETING:

CITY CLERK

We will be discussing traffic and stormwater

CORRESPONDENCE:

- Safe Harbor Claim 12.15.20 ✓
- Safe Harbor Response 12.16.20 ✓
- World Tech Memo 12.23.20 ✓
- Will Paulitz E-Mail 01.05.21 ✓
- Stormwater Management Plan 01.13.21 ✓
- Safe Harbor Decision 01.14.21 ✓
- Horsley Whitten Peer Review of Stormwater/Environmental Management Plan 01.22.21 ✓

REPORTS:



CITY OF PEABODY
2021 MAR 16 AM 8:55

FEBRUARY 8, 2021 SPECIAL ZBA MEETING MINUTES

A meeting of the Peabody Zoning Board of Appeals was virtually held on Monday, February 8, 2021 at 7:00 p.m. remotely via Zoom platform.

| MEMBERS PRESENT | MEMBERS ABSENT |
|--------------------------------------|-----------------------|
| | |
| Frances Bisazza-Gallugi, Chairperson | |
| Stephen Zolotas, Vice-Chairperson | |
| Julie Picardi | |
| Dan Sencabaugh | |
| Barry Osborne | |
| Keith Slattery | |
| Ed Colbert | |

(Ms. Gallugi read the opening statement made part of these minutes)

SPECIAL MEETING:

Continued application of **HDG King Street, LLC c/o Attorney Jason Panos**, for a **Chapter 40B Comprehensive Permit** as it applies to the premise known as **15 King St, Peabody, MA, Map 074, Lot 258**. Petitioner seeks to construct 133 units. The property is located in an **R2 Zoning District**.

Fran Gallugi: Tonight's meeting on 15 King St is a continued 40b application. The attorney for HDG King Street has requested a continuance.

Secretary read the request into the record

(Letter requesting continuance was made part of these minutes)

Stephen Zolotas: Motion to accept the continuation request and reschedule to March 22, 2021

Ed Colbert: Second

Fran Gallugi: All in favor – Any opposed (5,0)

Motion to continue the 15 King St application to March 22 has been approved

Stephen Zolotas: Motion to accept the following correspondence in regard to 15 King St Safe Harbor request

- Letter requesting safe harbor
- Attorney Panos' response
- State of Massachusetts Department of Housing and Community Development's decision which denied the Safe Harbor claim

(the correspondence were all made part of the meeting minutes)

Barry Osborne: Second

Fran Gallugi: All in favor – Any opposed (5,0)

The Motion to accept the correspondence is approved

Fran Gallugi: Next meetings are as follows....

February 22 – Regular Agenda and 27R Farm Ave. 40B continuance

March 15 – Regular ZBA

March 22 – 40 Oak St 40B continuance – 15 King St 40B continuance

Fran Gallugi: Feb 22nd packets will be mailed out this week. Check to see if you still have 27R Farm Ave. Please keep your King St packets. Additional correspondence for 15 King St. will be mailed out as we get closer to the March continuance date.

Motion to adjourn was made by Ed Colbert and seconded by Stephen Zolotas

THE CITY OF PEABODY ZONING BOARD OF APPEALS MEETS REMOTELY TONIGHT IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS, AND GOVERNOR BAKER'S MARCH 15, 2020 ORDER IMPOSING STRICT LIMITATIONS ON THE NUMBER OF PEOPLE THAT MAY GATHER IN ONE PLACE. THIS SPECIAL MEETING OF THE ZONING BOARD OF APPEALS WILL BE CONDUCTED VIA REMOTE PARTICIPATION TO THE GREATEST EXTENT POSSIBLE. NO IN-PERSON ATTENDANCE OF MEMBERS OF THE PUBLIC WILL BE PERMITTED, BUT EVERY EFFORT WILL BE MADE TO ENSURE THAT THE PUBLIC ADEQUATELY ACCESS THE PROCEEDINGS IN REAL TIME, VIA TECHNOLOGICAL MEANS. INDIVIDUALS MAY PARTICIPATE REMOTELY IN THE MEETING VIA A PARTICIPATION PLATFORM CALLED ZOOM.

Tonight's meeting on 15 King St is a continued 40b application. The attorney for HDG King Street has requested a continuance.

Secretary will read the request into the record

(Dan to read request) ✓

Motion to accept the continuation request and reschedule to March 22, 2021

Stephan

Second

Ed

All in favor – Any opposed

(510)

Motion to continue the 15 King St application to March 22 has been approved ✓

We need a motion to accept the following correspondence in regard to 15 King St Safe Harbor request

- Letter requesting safe harbor
- Attorney Panos' response
- State of Massachusetts Department of Housing and Community Development's decision which denied the Safe Harbor claim

Motion to accept correspondence

Stephan

Second

Barry (5100)

All in favor – Any opposed

The Motion to accept the correspondence is approved

Next meetings

February 22 – Regular Agenda and 27R Farm Ave. 40B continuance

March 15 – Regular ZBA

March 22 – 40 Oak St 40B continuance – 15 King St 40B continuance

Feb 22nd packets will be mailed out this week. Check to see if you still have 27R Farm Ave. Please keep your King St packets. Additional correspondence for 15 King St. will be mailed out as we get closer to the March continuance date.

Motion to adjourn

Ed Sommer

THE PANOS LAW GROUP

COUNSELORS AT LAW

JASON A. PANOS
JPANOS@PANOS-LAW.COM
T 978-406-9979
F 978-406-9979

February 5, 2021

DELIVERY BY EMAIL TO:
carla.mcgrath@peabody-ma.gov

Carla D. McGrath,
Zoning Board of Appeals Clerk
Peabody City Hall
24 Lowell Street
Peabody, MA 01960

Re: 15 King Street, HDG King Street LLC
Comprehensive Permit Application Request for Continuance

Dear Madam Clerk-

The above referenced matter is scheduled for continued special hearing scheduled for February 8, 2021. The Applicant, The HDG King Street LLC kindly requests further continuance to any time it is convenient for the Zoning Board of Appeals to conduct its special hearing on or after any day of the week beginning March 8, 2021. Please advise us of a suitable date when one becomes available.

We were fully prepared to provide the Board with responses to the Worldtech traffic/transportation/parking peer review and to give a full presentation on civil engineering aspects of the proposed development (stormwater, waste water and water connections) on March 8, 2021. As you know, the Department of Public Services transmitted additional comments beyond that received by the Applicant's development team by its 33 page Memorandum dated and transmitted on February 1, 2021 (which was signed on January 21, 2021). In any event, there is not enough time to adequately respond to these additional comments.

The project team continues to work diligently through peer review in response to that DPS Memorandum of February 1, 2021. During the time of the continuance, assuming timely cooperation of corresponding peer review contractors and DPS, we will complete our comments and reach out to them to address discrepancies (of which there are many), and narrow outstanding issues. In any event, I respectfully ask that the ZBA encourage DPS to issue comments on a more timely basis, in the future, and not withhold them for 10 days as they did in the instant case.

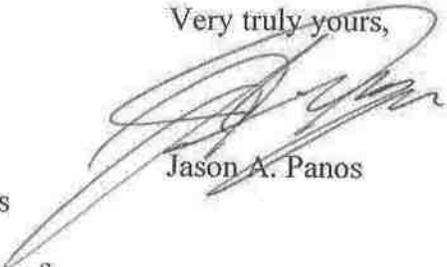
Also, please note, that with the 29 days consumed by the ZBA's "safe harbor" claim which was determined by the Department of Housing and Community Development by its letter of January 14, 2021, the time by which the ZBA must accordingly close its hearing on the

Peabody City Clerk
Comprehensive Permit Application
15 King St., Peabody, MA
February 5, 2021
Page 2 of 2

Applicant's Comprehensive Permit Application has been extended to June 30, 2021 (180 days from December 1, 2020 plus 29 days tolled by the "safe harbor" claim).

We appreciate, in advance, the Board's accommodation on this request and we look forward to working with it to complete this process in a manner which leaves no outstanding issues in contemplation of closing the Board's hearing on this matter. Please do not hesitate to contact me with any questions or comments.

Very truly yours,


Jason A. Panos



CC: Zoning Board of Appeals
Client
Curt Bellavance, Director of
Peabody Dept. of Planning and Comm. Dev.



City of Peabody Zoning Board of Appeals

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5792

December 15, 2020

Department of Housing and Community Development
Office of Sustainable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

RE: 15 King Street, Peabody, MA 01960
40(b) Application submitted by Hemisphere Development Corp.

To Whom It May Concern:

Kindly accept this correspondence from the undersigned Chairperson of the City of Peabody Zoning Board of Appeals (hereinafter "ZBA") in accordance with 760 CMR 56.03 and all other applicable statutes and regulations. Pursuant to said regulations, the ZBA makes claims of Safe Harbor in relation to the above-referenced applications. The ZBA voted to take this action at a meeting on December 7, 2020.

The City of Peabody firmly believes in the spirit of M.G.L. c. 40(b) and has taken extraordinary steps over the last two years to maintain our City's affordability. This correspondence outlines and describes the variety of measures we have taken as a community.

In January 2019, Peabody had 2,051 units of affordable housing out of 22,135 total units, according to the DHCD's Subsidized Housing Inventory ("SHI"). Accordingly, Peabody's number of 9.3% fell below the M.G.L. c. 40(b) 10% requirement.

In June 2019, Winn Companies purchased the Tannery I apartment complex located at Crowninshield Street in Peabody at a price of \$36,168,250.00. The complex contains 248 units of affordable housing for low income residents. The seller of the property, Crowninshield Management's 40-year agreement to maintain these units as affordable had expired in 2018 and the property was being advertised as a market rate development.

Mayor Ted Bettencourt, the City Council, and residents of the Tannery I apartment complex were gravely concerned about losing these affordable units. The overwhelming majority of Crowninshield residents fall below 50% of the Area Median Income. After several weeks of extraordinary collaboration, the City of Peabody, the Department of Housing and Community Development, and MassHousing entered into an agreement with Winn Corporation to purchase the site with a 40-year agreement to preserve the affordability of 248 units.

An integral part of this collaborative agreement was Peabody's inclusion of \$1.7 million taxpayer dollars of Community Preservation ("CPA") and Inclusionary Zoning ("IZ") funds in the purchase price. These funds represented 100% of CPA and IZ funds that had been earmarked for new affordable housing development. Despite some concern that the full outlay of these funds would hamper Peabody's efforts to meet our 10% goal, Mayor Ted Bettencourt, with the unanimous support of the Peabody City Council and the Community Preservation Committee, felt this action was necessary to protect existing residents of the Tannery I and preserve the 248 units for the next 40 years. Without this Agreement and Peabody's full commitment, our community would have lost 248 units of affordable housing and our housing stock would have decreased from 9.3% to 8.1%. This historic action clearly demonstrates Peabody's commitment to affordable housing.

In the Spring of 2019, the City of Peabody, through Mayor Ted Bettencourt, supported the friendly 40(b) application for Monastiero Group for 60 units of affordable housing at 55 Newbury Street. Following DHCD's approval, the Peabody Zoning Board of Appeals unanimously approved the application and development of the units commenced this year.

In the Spring of 2020, the City of Peabody, through Mayor Ted Bettencourt, supported a friendly 40(b) application of Michael Weiss for 116 units of affordable housing at 27R Farm Avenue. The DHCD approved the application this summer and the Peabody ZBA is set to vote on the application this month.

These important efforts have resulted in preserving 248 affordable units (in the example of Tannery I) and adding 176 affordable units, with the two above referenced friendly 40(b) projects totaling 426 units. This shared commitment to affordable housing increased our percentage from 8.1% to 10%.

Peabody is a Gateway City in the truest sense of the term for decades prior to being categorized as such by the State. Generations of immigrants have found Peabody to be a welcoming and affordable place which celebrates and embraces racial, ethnic, and economic diversity. This diversity is on display at annual events such as the International Festival, a celebration that draws tens of thousands of people to downtown Peabody every September.

We have identified and utilized significant funding sources for the protection and development of affordable housing. These include all remaining IZ funds and CPA funds. Peabody was an early adopter of the CPA, voting in favor in 2001.

Maintaining Peabody's affordability has been an on-going priority which has motivated Mayors and City Councils to adopt fiscal policies that have maintained Peabody's tax rate among the very lowest in Eastern Massachusetts.

Although large numbers of Peabody's housing units may not technically qualify toward the affordable housing inventory, by other reasonable and objective standards, the housing units are affordable and are evidenced by census data that has for years made Peabody eligible for Federal Community Development Block Grant funding. Peabody's low and moderate income residents are benefitting from the existence of these "small" affordable housing units, specifically with the following examples of city-sponsored and approved actions.

Peabody has 742 manufactured houses/mobile homes that are regulated and controlled by the Mayor-appointed Peabody Rent Control Board. The Rent Control Board requires the park property owners to accept rent below fair market value, thereby ensuring the residential units are affordable to tenants.

The Peabody City Council developed an ordinance authorizing residents to apply for a Family Accessory Living Area ("FALA's). Its primary objective was to allow families to build living areas for relatives to live in an affordable and independent environment. As of today, we have approved over 450 units of such affordable housing.

Peabody has also adopted an Inclusionary Ordinance (6.11), which requires that all residential development greater than 8 units include 15% affordable units.

Peabody is proud of these efforts and of our shared commitment to maintaining our community as a welcoming place for all.

15 King Street, Peabody/Hemisphere Development Group, LLC

On or about June 27, 2019, Hemisphere Development Group, LLC (hereinafter "Hemisphere") filed a Special Permit application with the Peabody City Clerk for consideration of the property located at 15 King Street, Peabody. The Peabody City Clerk in the normal course of business set the matter for consideration and hearing before the Peabody City Council at their regularly scheduled meeting on August 22, 2019. In accordance with Massachusetts statute and local ordinances, the Peabody City Clerk provided notice of the Special Permit hearing by advertising the notice and the date of the hearing.

On August 22, 2019, Hemisphere's Attorney, Athan Vontzalides asked for a continuance of the hearing until September 12, 2019, the next regularly schedule meeting. The Peabody City Council approved this request.

On September 12, 2019, Hemisphere, through Attorney Vontzalides, requested that the Peabody City Council permit Hemisphere to withdraw its Special Permit Application for 15 King Street. That request was unanimously approved by the City Council.

On or about December 30, 2019, Hemisphere filed an application with MHCD through M.G.L. c. 40(b) seeking a permit for the development of 133 units of affordable housing at 15 King Street. MassHousing approved Hemisphere's 40(b) application on APRIL 30, 2020.

The Peabody ZBA opened a public hearing on September 12, 2020 to hear Hemisphere's permit application. It is important to note that pursuant to Governor Baker's Emergency Order of March 12, 2020 and Chapter 53 of the Acts of 2020, various deadlines for action by municipal boards were tolled during the current public health emergency.

ZBA Claims of Safe Harbor

1. The ZBA's First Claim of Safe Harbor is contained in Housing Unit Minimum (10% of total housing units) - 760 CMR 56.03(1)

The City of Peabody has greater than 10% of its residential housing stock as affordable and, therefore, the ABA seeks safe harbor through 760 CMR 56.03 and all relevant regulations and statutes.

2. The ZBA's Second Claim of Safe Harbor as contained in the City of Peabody achieving substantial progress towards its M.G. > c. 40(6) requirements.

The City of Peabody is committed to maintaining and increasing its affordable housing stock.

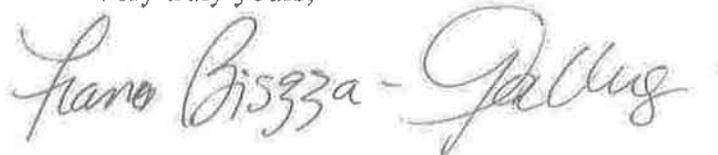
The City of Peabody has preserved and added over 420 units of affordable housing as outlined above and has increased our percentages from 8.1% to 10% over the past 18 months.

As such, the ZBA claims safe harbor pursuant to 760 CMR 56.03(1)(b) and (c)-(f) and all relevant regulations and statutes.

Given Peabody's enduring commitment to affordability and the extraordinary action taken 18 months to preserve and add to Peabody's Subsidized Housing Inventory, the ZBA maintains that there is sufficient grounds to claim safe harbor and respectfully requests that the MHCD grant safe harbor protection until after the 2020 Census provides an update to our current population numbers.

Thank you for your attention to this matter.

Very truly yours,



Frances Bisazza-Gallugi, Chairperson
Zoning Board of Appeals

THE PANOS LAW GROUP

COUNSELORS AT LAW

JASON A. PANOS
JPANOS@PANOS-LAW.COM
T 978-406-9979
F 978-406-9979

December 16, 2020

Sent by First Class Mail and E-Mail to:
phillip.demartino@state.ma.us

Mr. Phillip DeMartino
Senior Technical Assistance Planning Coordinator
Department of Housing & Community Development
100 Cambridge Street
Boston, MA 02114

Re: Comprehensive Permit Application of HDG King Street LLC
15 King Street, Peabody, MA
Notice of Opposition to Peabody Zoning Board of Appeals Claims pursuant to
760 CMR 56.03

Dear Mr. DeMartino:

This office represents HDG King Street LLC, (“HDG”) the applicant for a Comprehensive Permit under G.L. c. 40B, §§ 20-23 and 760 CMR 56.00 (collectively, the “Act”) currently being heard by the City of Peabody (the “City”) Zoning Board of Appeals (the “Board”). We are in receipt of the Board’s letter dated December 15, 2020 attempting to claim “safe harbor”, so called, on the basis set forth in 760 CMR 56.03(1). In short, the City’s claims through the Board conflates the ridiculous with the unserious because the claims have no coherent or rational basis in law or in fact and there is no remedy under the Act upon which the City can plausibly claim to deny further hearing of HDG’s Comprehensive Permit Application.

The Board’s claim of Safe Harbor must fail because:

1. The Board failed to comply with the requirements of 760 CMR 56.03(8), namely:
 - a. The Board did not claim safe harbor within fifteen (15) days of opening the its hearing on October 5, 2020; and
 - b. The Board failed to provide any factual basis for its position nor did it provide any documents or evidence to support its claim; and
2. The Board failed to assert any legal basis consistent with 760 CMR 56.03(1)(a) – (e), being consistency with local needs on the grounds that any *Statutory Minima* have been satisfied or that any of the other requirements referenced therein have been met. Namely:

a. As of the time of HDG's Application filing on May 13, 2020, the City had 9.51% of its 2010 Census Year Round Housing Units designated as SHI eligible and which is not in excess of the 10% mandated under the Act; and

b. In the twelve (12) months prior to HDG's Application filing, from May 13, 2019 through May 13, 2020 the City produced sixty (60), new SHI Eligible Housing Units, far short of the four hundred forty three (443) it needed to assert consistency with local needs on the basis of 760 CMR 56.03(5), "Recent Progress Toward Housing Unit Minimum".

At a hearing duly called by the Board on December 7, 2020 on HDG's application, I gave detailed testimony to that effect. In light of my testimony, I leave it to the Department of Housing and Community Development (the "Department") to determine, with the other factors presented in this response letter, whether the Board's claims are brought in good faith. Any further pursuit of this matter may lead to a ripened civil rights complaint by the Applicant and others. The analysis in support of HDG's conclusions is more fully set forth below.

I. **Background:**

1. **Pre-Application filing (May 13, 2019 – May 13, 2020):**

According to the Department's Chapter 40B Subsidized Housing Inventory ("SHI"), the City had 22,135 units of "Census 2010 Year Round Housing Units" and 2,046 Total SHI Units or 9.24% during the twelve (12) month period (May 13, 2019 – May 13, 2020) prior to HDG's filing of its Comprehensive Permit Application on May 13, 2020 (the "Application"). The City never challenged or offered any testimony or evidence rebutting the Department's SHI determination. During this time, the "Tannery I" apartments comprised of 284 SHI eligible housing units, which were built in or around 1973, were subject to an "Equivalent Affordability Restriction" granted to the Department on July 3, 2017 and terminating on June 22, 2023 (See attached Exhibit A). On or about June 17, 2019, the "Tannery 1" property was sold resulting in a new 43 year "Affordable Housing Restriction" dated June 17, 2019 to the Department, Massachusetts Housing Partnership and the City which expires in 2062 (See attached Exhibit B). The 284 Tannery 1 Units were never subtracted from the City's SHI and the affordable housing restrictions did not expire or lapse during the twelve (12) month period prior to filing the Application. One type of short term restriction (the Equivalent Affordability Restriction) was replaced with another longer term restriction (the Affordable Housing Restriction).

By the Board's Decision on "Application for a Comprehensive Permit by JAM 3, LLC, an apartment development, filed with the City Clerk on September 17, 2019, sixty (60) dwelling units were added to the City's SHI. This is the so called "friendly 40(b) application for the Monastiero Group" referred to in the Board's December 15, 2020 letter (p.2). These units were SHI eligible during the twelve (12) month period prior to filing the Application.

On or about February 4, 2020, The Residences at Farm Avenue LLC filed a Comprehensive Permit Application with the City for 116 apartment units. This is the "friendly

40(b) application of Michael Weiss" referred to in the Board's December 15, 2020 letter (p.2). As indicated in the Board's letter, it is set to vote on that application and has not yet closed its hearing on the matter. These units *were not* SHI eligible during the twelve (12) month period prior to filing the Application, nor are they currently eligible pursuant to 760 CMR 56.03(2)(b)(1), as the hearing remains pending before the Board. During the twelve (12) month period prior to filing HDG's Application, the City created sixty (60) SHI eligible units resulting in an increase to the City's SHI to 2,104 SHI Units or 9.51% of its 22,135, 2010 Year Housing Units designated as counted.

During this period, on or around June 27, 2019, as indicated in the Board's letter, Hemisphere Development Group LLC, a separate and distinct entity from the Applicant, was in the process of pursuing a Special Permit to construct 110 age restricted, condominium units 15% of which were to be designated as "Affordable" under the City's Inclusionary Zoning Ordinance. Those units would have been SHI Eligible. Hemisphere did, in fact, withdraw that Special Permit petition.

Also, the City's Housing Production Plan expired in 2019. A new version was submitted to the Peabody City Council for adoption in August, 2019. To date, the 2019 Housing Production Plan has not been adopted by the City nor has it been submitted to the Department for approval.

2. The HDG Application, Board Hearing and the Covid-19 Pandemic:

As referenced above, the HDG Application was filed with the Board on May 13, 2020. It proposes 133 homeownership units under the MassHousing Ownership/New England Fund program. At the time of filing the Application, the City's SHI remained below 10% at 9.24% (with the sixty (60) units added as SHI Eligible Housing Units, the SHI percentage increases slightly to 9.51%) as indicated above. Once again, the City never challenged or offered any testimony or evidence rebutting the Department's SHI determination.

The Application was filed during the state of emergency declared on March 12, 2020 resulting from the Covid-19 pandemic. In response, the Massachusetts Legislature enacted temporary changes to various statutes, among other things, tolling periods by which various permitting granting authorities, such as the Board, must act on permits, applications, licenses and other matters before it. These changes are contained in Chapter 53 of the Acts of 2020 (April 2, 2020). Among, the timelines tolled were those affecting the time in which the Board had to commence its hearing on the Application. (See Chapter 53 of the Acts of 2020, § 17(b)(ii)) Additionally, on or about August 6, 2020, the Department adopted revisions to 760 CMR 56.00 in response to the Covid-19 pandemic. On November 12, 2020, the Massachusetts Legislature amended the emergency legislation by enactment of Chapter 201 Modifications to Section 17 of Chapter 53 of 2020 which, among other things, ended the tolling periods addressed therein, as of December 1, 2020.

Accordingly, the Board lawfully and duly opened its hearing on the Application on October 5, 2020, nearly five (5) months after the Application was filed, when presentation by HDG's development team was made in over 2.5 hours of testimony. The Board's hearing on the

Application was continued to November 9, 2020 when, among other things, public comment was given and preliminary, administrative matters regarding peer review were resolved. At this hearing, the issue of “safe harbor” was raised, for the first time, by a City Councilor offering testimony before the Board. The Board’s Massachusetts Housing Partnership consultant, Ezra Haber Glenn, commented that the time to assert any safe harbor claims had likely passed. I concurred and offered testimony in that regard. The matter on the Application was continued to December 7, 2020 when the Applicant’s presentation on traffic and parking impacts were given.

Prior to the Applicant’s traffic presentation, Mayor Edward A. Bettencourt, Jr. implored the Board to consider, once again, claiming “safe harbor” seeking to bar further hearing on the Application on an almost identical basis as that presented in the Board’s December 15, 2020 letter to the Department. As referenced above, I was offered the opportunity and gave extensive testimony addressing why I felt the Board’s claim: 1) was not timely made; 2) was not protected by the Legislature’s enactment of Chapter 201 Modifications to Section 17 of Chapter 53 of 2020; and 3) lacked any factual basis and merit under the applicable provisions of 760 CMR 56.03(1).

The Board subsequently voted to assert a “safe harbor” claim. Subsequent to this vote, at the same hearing, the Board heard the Applicant’s traffic presentation and then continued the public hearing to February 8, 2020. We are working, cooperatively, with the Board, the City and the Board’s peer review consultants in preparation for that continued hearing.

II. Analysis:

1. Board’s Claim of “Safe Harbor” under 760 CMR 56.03 is Not Timely:

760 CMR 56.03(8)(a) states:

“If a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. *Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs...*”(emphasis added).

The Board opened its hearing on the Application on October 5, 2020. To effectively claim consistency with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1), being the so called “safe harbor” provisions, it needed to do so by October 20, 2020, being 15 days after it opened its hearing on the Application. It failed to do so.

To punctuate the point, in the Department’s amended 760 CMR 56.03(8)(a) effective on August 6, 2020, the following language was added:

“All written notices, including copies and supporting documentation, must be submitted electronically pursuant to guidance issued by the Department during the COVID-19 State of Emergency *to ensure timely receipt by the deadlines herein.*” (emphasis added)

This regulatory language is mirrored in the Department’s guideline entitled “Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8) and Extended Deadline for DHCD Decisions During COVID-19 State of Emergency” which states, in pertinent part:

“These emergency amendments require that, during the State of Emergency, notice of “safe harbor” assertions by Zoning Boards of Appeals (“Boards”) and responsive challenges by Comprehensive Permit applicants (“Applicants) pursuant to 760 CMR 56.03(8)(a), including supporting documentation and required copies to DHCD and parties, must be submitted electronically to ensure timely receipt by the regulatory deadlines set forth in 760 CMR 56.03(8)(1).” (emphasis added by the Department)

The only change referenced in the Department’s amended version of 760 CMR 56.03(8)(a) and its guidelines is to the manner in which “safe harbor” is claimed. In fact, the Department makes it clear, that the manner of filing changed to ensure timeliness in accordance with the regulatory deadlines set forth in 760 CMR 56.03(8).

Without citing it directly, the City through its Board seems to rely on the Legislature’s enactment of Chapter 201 Modifications to Section 17 of Chapter 53 of 2020 effective as of November 12, 2020 to argue it had until December 15, 2020 to claim “safe harbor”. We disagree.

The relevant provision is cited in the modified Chapter 53 of 2020, Section 17(b)(iv) which states, in relevant part:

“when a statute, ordinance, bylaw, rule or regulation provides that a permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within a specified time period, the time within which the permit granting authority must act shall be deemed tolled from March 10, 2020 to December 1, 2020...” (emphasis added)

We interpret this provision to apply solely to constructive decisions wherein a permit granting authority such as the Board acting pursuant to the Act, fails to act on a properly filed application, such as the Application, within a period of time defined in a statute, ordinance, bylaw, rule or regulation the result of which is the constructive and automatic approval or denial of the Application. For example, had the Board failed to open its hearing on the Application by December 1, 2020, the Applicant would have a strong case that its Application was subject to constructive approval. Assertion of “safe harbor” under 760 CMR 56.03(1) is not that. Failure on the part of a board to assert a claim of safe harbor does not result in the constructive grant, approval, or denial of a comprehensive permit application. The Board’s failure to act in claiming “safe harbor” is simply tantamount to a waiver of its rights to assert a “safe harbor” claim, which does not, in any way, result *in an approval, denial or otherwise.*

2. The Board Failed to Provide any Evidence in Support of its “Safe Harbor” Claim:

760 CMR 56.03(8)(a) requires:

“... Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, *the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation.*” (emphasis added)

The Board only provides its December 15, 2020 letter as the grounds it believes a denial of the Application or the imposition of conditions or requirements (or delay until the Department concludes its 2020 census adjustments to the SHI) are made would be consistent with local needs and as the factual basis for its position in support of its position without including any supportive documentation. We believe that simply because the Board states they have a valid claim for “safe harbor” does not make it so.

For reasons more fully set forth below, the Board has utterly failed to support, at law or in fact that: 1) the City’s SHI Eligible Housing Units¹ exceed 10% of its total housing units pursuant to the Act; and 2) that it meets the criteria required of it to claim, under 760 CMR 56.03(5), “Recent Progress Toward Housing Unit Minimum”.

3. The City’s SHI Eligible Housing Units Do Not Exceed 10% of Its Total Housing Units Under the Act:

At the time of filing the Application the City’s SHI indicated the City had 22,135 units of “Census 2010 Year Round Housing Units” and 2,046 Total SHI Units or 9.24%. Pursuant to 760 CMR 56.03(3) a presumption is made that the Department’s latest SHI contains an accurate count of SHI eligible housing units and total housing units. Assuming the Board’s “safe harbor” claim was timely filed, which we believe it was not, the Board may rebut this presumption through the review process prescribed in 760 CMR 53.08, applicable here, by introducing evidence applying the standards of eligibility for the SHI set forth in 760 CMR 56.03(2). The SHI is not limited to housing units developed through issuance of a Comprehensive Permit; it may also include, as was the case with the Tannery I Units, for example, SHI Eligible Housing units developed under M.G.L. chs. 40A, c. 40R, and other statutes, regulations, and programs, so

¹ Under 760 CMR 56.02, SHI Eligible Housing – means, solely for the purposes of 760 CMR 56.03:

1. (a) any unit of Low or Moderate Income Housing;
2. (b) such other housing units in a Project as may be so defined under the Department's guidelines; and
3. (c) any other housing unit as may be allowed under the Department’s guidelines, provided that such housing unit is subject to a Use Restriction and Affirmative Fair Marketing Plan, and regardless of whether or not such unit received a Subsidy.

long as such units are subject to a Use Restriction and an Affirmative Fair Marketing Plan, and they satisfy the requirements of guidelines issued by the Department. (*See* 760 CMR 56.03(2)(a))

760 CMR 56.03(2)(b) provides, in relevant part:

“ Units shall be eligible to be counted on the SHI at the earliest of the following:

1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:
 - a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or
 - b. on the date when the last appeal by the Board is fully resolved;
2. When the building permit for the unit is issued;
3. When the occupancy permit for the unit is issued; or
4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)

The Board has not provided any evidence consistent with the requirements of 760 CMR 56.03(2)(b) that its SHI exceeds 10% of its total housing units. As indicated above, the 284 Tannery 1 units were already counted in the SHI (and have been so counted since the 1970's). The sixty (60) units for the Jam 3, LLC/Monastiero Group were eligible to be added, which would increase the number of units on the SHI to 2,104 units, or 9.51%.² The 116 units associated with The Residences at Farm Avenue were not (and still are not) eligible for counting on the City's SHI at the time the Application was filed, because no comprehensive permit for that project had been issued. Accordingly, the City's SHI at the time the Application was filed was 9.51%, still well below the 10% “safe harbor” threshold.

4. The Board Has Failed to Provide Any Evidence at Law or In Fact to Claim Recent Progress Toward Housing Unit Minimum:

The Board claims, in its December 15, 2020, it is entitled to a claim of “safe harbor” allowing it to deny a Comprehensive Permit under the Application as consistent with local needs because it has achieved “substantial progress towards its M.G.L. c. 40(6) [sic] requirements”. While not citing to any specific provision in 760 CMR 56.03 in asserting this claim, we assume the Board means that it is entitled to claim under 760 CMR 56.03(1)(c) where a municipality has *made recent progress* toward the Statutory Minima in accordance with 760 CMR 56.03(5), “Recent Progress Toward Housing Unit Minimum”.

760 CMR 56.03(5), “Recent Progress Toward Housing Unit Minimum” provides:

² Note, minor adjustments were made to the City's SHI as a result of expiration of restrictions.

“Recent progress toward a municipality’s Statutory Minima shall mean that *the number of SHI Eligible Housing units that have been created within the municipality during the 12 months prior to the date of the Comprehensive Permit application*, evidenced by being inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant’s initial submission to the Board, *is equal to or greater than 2% of the municipality’s total housing units*, as determined in accordance with 760 CMR 56.03(3)(a).” (*emphasis added*)

The twelve (12) month period prior to filing the Application is the period between May 13, 2019 and May 13, 2020. During that period, the City needed to produce 443 units of SHI Eligible Housing units (2% of 22,135 units of “Census 2010 Year Round Housing Units”). It did not.

In attempting to assert this claim, the Board counts “248” [sic] units (meaning and intending to count 285 units toward recent progress) which were already counted in the City’s SHI. Recall, these units are the Tannery I units which were created and restricted on or around 1973. These units were subject to an “Equivalent Affordability Restriction” granted to the Department on July 3, 2017 and terminating on June 22, 2023. On or about June 17, 2019, the “Tannery I” property was sold resulting in a new 43 year “Affordable Housing Restriction” dated June 17, 2019 to the Department, Massachusetts Housing Partnership and the City which expires in 2062 simply replacing that which was granted to the Department in 2017. These 284 units, however, never subtracted from the City’s SHI during the applicable twelve (12) month period prior to the filing of the Application and therefore they cannot be counted toward the “Recent Progress” provisions of 760 CMR 56.03(5).

Even if these units briefly came off of the City’s SHI, they are not units contemplated in the “Recent Progress” provisions of 760 CMR 56.03(5) “...by being inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant’s initial submission to the Board...” These units were simply preserved as restricted and not created anew as the “Recent Progress” provisions contemplate. Notwithstanding, the City’s efforts in preserving the affordability of these units is to be applauded. Preservation, however, is simply that; it does not add or subtract SHI Eligible Housing Units, it maintains the status quo.

The Board also attempts to count the 116 units subject to the ongoing hearing regarding The Residences at Farm Avenue. These units are not SHI Eligible Housing Units and were not created during the twelve (12) month period prior to HDG’s Application filing for the simple reason that the Board’s hearing is ongoing. As indicated above, consistency with local needs under 760 CMR 53.03(1), is determined at the beginning of the Comprehensive Permit process while determination of SHI Eligible Housing Units is determined at the very end of that process upon hearing termination. The Residences at Farm Avenue permit hearing before the Board has not terminated, and no Comprehensive Permit has, accordingly, been filed with the Peabody City Clerk as required under the provisions of 760 CMR 56.03(2)(b).

The Board, however, can rightfully count the sixty (60) units created by the “friendly 40(b) application for the Monastiero Group” referred to in the Board’s December 15, 2020 letter (p.2) because these units became SHI Eligible Housing Units on the date the Board’s decision was filed with the Peabody City Clerk on September 17, 2019. The units became SHI Eligible Housing Units during the twelve (12) month period prior to HDG’s Application filing with the Board. Accordingly, the most the Board can claim toward “Recent Progress” are these sixty (60) units, far short of the 443 SHI Eligible Housing Units needed.

Note, even if the 284 Tannery I units are countable toward “Recent Progress” and added to the sixty (60) Monastiero Group units, they total 344 units. This is still far short of the 443 SHI Eligible Housing Units needed to assert “safe harbor” under the provisions of 760 CMR 56.03(5), “Recent Progress Toward Housing Unit Minimum”.³

5. The Board has Asserted No Other Claims under 760 CMR 56.03(1):

The Board has failed with provide any facts or evidence regarding claiming under any of the other provisions of 760 CMR 56.03(1) but as an abundance of caution, we feel compelled to address this. Oddly, the Board presents facts regarding the Hemisphere Special Permit application before the Peabody City Council but did not allege that it was a “Related Application” under 760 CMR 56.03(7). In the interest of putting to rest any speculation or argument in this regard, the Application is not a “Related Application” to that Special Permit Application because it included a proposal of more than 10% of SHI eligible housing under the City’s Inclusionary Zoning Ordinance requiring a set aside of 15% as “Affordable”, SHI Eligible Housing Units.

Additionally, the Board has not asserted or provided any facts or evidence to support any other claims pursuant to 760 CMR 53.06(3)(b), “General Land Area Minimum”. No claim has been asserted pursuant to 760 CMR 56.03(4), “Housing Production Plans”, because none are in effect in the City. It has, also, not asserted any claim under 760 CMR 56.03(6), “Review of Large Projects” because the Application proposes 133 housing units, less than half of what is required for a “Large Project” thereunder.

III. Conclusion and Prayer:

We respectfully request that the Department find:

1. The Board failed to comply with the requirements of 760 CMR 56.03(8), namely:
 - a. The Board did not claim safe harbor within fifteen (15) days of opening the its hearing on October 5, 2020; and

³ We do not address the Board’s reference to the “742 manufactured houses/mobile homes that are regulated and controlled by the Mayor-appointed Rent Control Board” or the 450 units of “FALA’s”. These are not income qualified units nor are they subject to any affordability restrictions or regulatory agreements. For this and other reasons, they are not considered, by the Board’s admission, SHI Eligible Housing Units.

b. The Board failed to provide any factual basis for its position nor did it provide any documents or evidence to support its claim; and

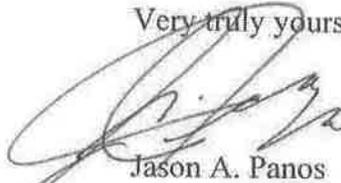
2. The Board failed to assert any legal basis consistent with 760 CMR 56.03(1)(a) – (e), being consistency with local needs on the grounds that any *Statutory Minima* have been satisfied or that any of the other requirements referenced therein have been met. Namely:

a. As of the time of HDG's Application filing on May 13, 2020, the City's 2010 Census Year Round Housing Units designated as SHI Eligible was not in excess of 10%; and

b. In the twelve (12) months prior to HDG's Application filing, from May 13, 2019 through May 13, 2020 the City produced sixty (60), new SHI eligible units, far short of the four hundred forty three (443) it needed to assert consistency with local needs on the basis of 760 CMR 56.03(5), "Recent Progress Toward Housing Unit Minimum".

Please do not hesitate to contact me with any questions or comments on this matter. We look forward to the Department's response. Thank you for your time in this matter.

Very truly yours,



Jason A. Panos



Phillip DeMartino

CC: Al Chow, HDG King Street LLC (email)
Frances Gallugi, Chair., Peabody Zoning Board of Appeals (email and First Class Mail)
Mayor Edward A. Bettencourt, Jr. (email)
Paul Haverty, Esq. (email)

EXHIBIT A

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AD-8

EQUIVALENT AFFORDABILITY RESTRICTION

DATE: As of July 3, 2017

GRANTOR: Crowninshield Apartments Associates

PROPERTY NAME: Tannery I Apartments

TOTAL NUMBER OF UNITS: 284 TOTAL NUMBER OF RESTRICTED UNITS: 233

NUMBER OF UNITS RESTRICTED TO LOW INCOME (> 60% AMI, ≤80% AMI): 0

NUMBER OF UNITS RESTRICTED TO MODERATE INCOME (APPROXIMATELY > 30% AMI, ≤60% AMI): 233

NUMBER OF UNITS RESTRICTED TO EXTREMELY LOW INCOME (≤30% AMI): 0

PROPERTY ADDRESS: 18 Crowninshield Street, Peabody, Massachusetts 01960



SO. ESSEX #248 Bk: 36680 Pg: 316
04/30/2018 11:03 RSTR Pg 1/20

TERM Restriction will terminate on June 22, 2023

This Affordable Housing Restriction (this "Restriction") is granted by the undersigned Grantor, a Massachusetts limited partnership, having a mailing address of c/o Crowninshield Management, Corp., 18 Crowninshield Street, Peabody, MA 01960, for the benefit of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development having a mailing address of 100 Cambridge Street, Suite 300, Boston, Massachusetts 02114-2524 ("DHCD").

BACKGROUND

- A. The Grantor holds legal title to the Property which includes a 284-unit rental housing development (the "Project").
- B. Pursuant to Massachusetts General Laws Chapter 40T (the "Act"), the Grantor has agreed that this Restriction be imposed upon the Property as an "equivalent affordability restriction" as that term is defined in the applicable regulations at 760 CMR 64.00 (the "Regulations"), and shall be a covenant running with the land and binding upon any successor to the Grantor, as owner thereof.

RESTRICTIONS

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

v

1. Definitions. Capitalized terms used herein are defined herein and in Exhibit C attached hereto.

2. Use Restrictions. The Project shall be reserved and used for the Permitted Uses and for no other purpose.

3. Occupancy Restrictions. The following restrictions shall apply during the term of this Restriction.

13A Qualified Units. 233 of the Units shall be leased to 13A Qualified Tenants ("13A Qualified Units"). The tenants' portions of monthly rent as of **July 1, 2017** for the 13A Qualified Units are set forth in Exhibit B, Current Schedule Rents annexed hereto and incorporated herein. Until **June 22, 2019**, the tenant's portion of rents may only be increased to the extent that rent increases would be permitted if the Project were still subject to Section 13A of Chapter 708 of the Acts of 1966 ("Section 13A") and must follow the procedures for determining the amount of the increase, as required by Section 13A. In addition, for three (3) years beginning on **June 22, 2019**, the tenant's portion of rent for those tenants who are "protected low-income tenants" as defined in the Act on **June 22, 2019** may not be increased more than once annually by the amount permitted under M.G.L. c. 40T, § 7, ("Section 7") as further detailed in such Regulations and guidance as may be issued by from time to time by DHCD to effectuate the purposes and implementation of such Section 7.

4. Nondiscrimination. The Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the Units or in connection with the employment or application for employment of persons for the operation and management of the Units. The Grantor shall not discriminate against, or refuse to lease, rent or otherwise make available the Units to, a holder of a certificate or voucher under the Federal Rental Certificate Program or the Federal Rental Voucher Program or a holder of a comparable document evidencing participation in a HOME Program tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME Program tenant-based assistance document.

5. Term of Restrictions; Covenants to Run with Land. The term of this Restriction shall be until **June 22, 2023** as further described herein. The restrictions contained herein shall run with the land, shall bind the successors and assigns of the Grantor, and shall inure to the benefit of the Holder and its successors and assigns as permitted herein. The parties agree that the provisions of the Act, Chapter 40T, Section 7, as further detailed in such Regulations and guidance as may be issued by from time to time by DHCD to effectuate the purposes and implementation of such Section 7, setting forth a 3-year period of limitations on rent increases on protected low-income tenants as defined in the Act and the Regulations, shall commence on **June 22, 2019** and expire **June 22, 2022**. The parties further agree that the provisions of the Act, Chapter 40T, Section 10, as further detailed in such Regulations and guidance as may be

issued from time to time by DHCD to effectuate the purposes and implementation of such Section 10, setting forth a 4-year period after the termination of affordability restrictions as extended by this Restriction during which DHCD's rights of first offer and first refusal pursuant to M.G.L. c. 40T, §§ 3-4, shall apply to the Property, shall expire **June 22, 2023**. Upon the expiration of the term hereof, this Restriction shall automatically be without further force and effect except as specifically provided in the Restriction.

6. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Property or a portion thereof during the term of this Restriction shall expressly provide that such conveyance is subject to this Restriction and must be (a) approved as an exempt sale pursuant to M.G.L. c. 40T, § 6, and 760 CMR 64.07, or (b) subject to offer for sale to DHCD pursuant to M.G.L. c. 40T, §§ 3-4, and 760 CMR 64.04-06, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Restriction.

7. Income Verification. The Grantor represents, warrants and covenants that through **June 22, 2019** the determination of whether a Tenant occupying a Restricted Unit meets the income requirements set forth herein shall be made by the Grantor at the time of leasing of a Restricted Unit and thereafter at least annually on the basis of the current income of such Tenant. In initially verifying a Tenant's income, the Grantor shall examine the source documents evidencing annual income (e.g., wage statements, interest statements, unemployment compensation statements) for the Tenant. Within thirty (30) days of **June 22, 2019**, and annually thereafter until the expiration of this Restriction, Grantor shall provide to Holder a list of all "Protected low-income tenants" as defined in G.L. c. 40T, § 1, the basis for such classification, the amount of rent paid as of **June 21, 2019** by each protected low-income tenant, the amount of rent paid on each annual anniversary of that date, the amount of subsidized rent paid on behalf of each protected low-income tenant as of each such date, the basis for calculating the rent of each protected low-income tenant as of each such date, the rent to be paid by each protected low-income tenant for the following 12 months pursuant to G.L. c. 40T, § 7, and confirmation that this information has been provided to each protected-low income tenant. The agreement to report under this Section shall survive this Restriction until the Grantor complies with the requirements of this Section.

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

documentation and access to relevant records in the possession or control of the Grantor in order for the Holder to verify the Grantor's compliance with the terms of this Restriction.

9. Enforcement. Upon violation by the Grantor of any of the provisions of this Restriction that remains uncured for more than thirty (30) days after notice thereof from the Holder (or for such longer period as shall be reasonably required under the circumstances to cure such violation, provided that the Grantor has commenced the cure of such violation within the initial thirty (30) day period and is thereafter diligently pursuing the cure to completion), the Holder, at its option (without liability to any party for failure to do so), may apply to any court, state or federal, for specific performance of this Restriction or an Injunction against any violation of this Restriction, or for such other relief as may be appropriate, since the injury arising from the default under any of the terms of this Restriction would be irreparable and the amount of damage would be difficult to ascertain and may not be compensable by money alone. In each such default notice, the Holder shall specify the violation in question and the actions the Holder believes are necessary and feasible to remedy such violation. No waiver by the Holder of any breach of this Restriction shall be deemed a waiver of any other or subsequent breach. No act or omission by the Holder shall constitute a waiver thereof. The Holder shall be entitled to recover from the Grantor all of the Holder's reasonable costs of an action for enforcement of this Restriction, including reasonable attorneys' fees (including the time of any in-house counsel of a Holder charged at the same rate as comparable outside attorneys) provided that the Holder prevails in the action for enforcement. By its acceptance of this Restriction, no Holder undertakes any liability or obligation relating to the condition of the Property.

10. Notices. Any notice, request or other communication that any party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized national overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed, in the case of the Grantor, to the Grantor's address set forth above and, in the case of the Holder, to the address of such Holder as set forth above. Copies of any notice to Grantor shall be given to: Paul E. Bouton, Esq., Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110.

Any party may change its notice address by furnishing in writing to all other parties hereto a notice of such new notice address. A notice sent by certified or registered mail shall be deemed given upon receipt; a notice sent by overnight courier shall be deemed given one day after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt.

- (a) Plain English notice of the substantive provisions of this Restriction that affect each tenant, as approved by the Holder, shall be provided to all tenants protected by the Restriction and residing at the Property as of the effective date of the Restriction within thirty (30) days of the date of the final effective signature to such Restriction and to all new tenants protected by the Restriction

who move into the Property during the term of the Restriction upon such tenant's signing of a lease for a unit at the Property, or move-in to a unit at the Property, whichever is sooner. The Holder may require different notices for each tenant if tenants protected by the Restriction are affected differently by the Restriction before **June 22, 2019**. The notices to tenants required by this paragraph shall include a summary of the method of calculation of the tenant's portion of the rent until **June 22, 2019**, and the fact that the tenant might have further rent protections after that date pursuant to M.G.L. c. 40T, § 7.

- (b) Plain English notice equivalent to a 1-year Notice of Intent to Complete Termination under G.L. c. 40T, § 2 (b) and 760 CMR 64.03 (1) (b), as approved by the Holder, shall be provided to all parties entitled to receive such 1-year Notice of Intent to Complete Termination. Such notice shall be delivered between **December 19, 2017 and June 22, 2018**.
- (c) Plain English notice, as approved by the Holder, shall be provided to all tenants protected by the Restriction and residing at the Property as of **December 22, 2018** of the anticipated effect of M.G.L. c. 40T, § 7, on each tenant as of **June 22, 2019**. The Holder may require different notices for each tenant if tenants protected by the Restriction are affected differently by M.G.L. c. 40T, § 7.

The Grantor shall provide to the Holder upon request evidence of the Grantor's compliance with the provisions of this Section.

11. Successors and Assigns. This Restriction shall be binding upon the Grantor and its successors and assigns, and shall burden the Property during the term as specified herein. This Restriction shall also be binding upon the Holder, and shall inure to the benefit of their successors and assigns, provided that a Holder shall not voluntarily assign its rights hereunder unless (a) such Holder believes in good faith that it is no longer reasonably capable of performing its duties hereunder, (b) such assignment shall be to a governmental body or an entity of a similar character and purposes to such Holder which is reasonably capable of performing such duties hereunder, and (c) Grantor has been given notice of the assignment.

12. Severability; Construction. All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Restriction invalid, unenforceable or not entitled to be recorded, registered or filed under applicable law. If any provision or part hereof shall be affected by such holding, the validity of other provisions of this Restriction and of the balance of any provision held to be invalid, illegal or unenforceable, in part only, shall in no way be affected thereby, and this Restriction shall be construed as if such invalid, illegal, or unenforceable provision or part hereof had not been contained herein. In the event of any actual or potential inconsistency

between the terms of this Restriction and any of the Statute and/or the Regulations, such terms shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the Statute, the Regulations and this Restriction, in the foregoing order of priority, shall control.

13. Governing Law. This Restriction shall be governed by the laws of The Commonwealth of Massachusetts. Inasmuch as the restrictions contained herein have been imposed upon the Property in part to satisfy requirements of various governmental bodies referred to herein, including, without limitation, DHCD, the restrictions contained herein are intended to be construed as a restriction held by a governmental body with the benefit of Section 26 of Chapter 184 of the Massachusetts General Laws as existing as of the date hereof, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law, but rather shall run for the full term thereof.

14. Recording. The Grantor, at its cost and expense, shall cause this Restriction and any amendment hereto to be duly recorded with the Registry of Deeds (and if necessary or appropriate, re-recorded), shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, shall provide to the Holder within 5 days of recording a copy of the Restriction or any amendment with any endorsed recording information and a copy of the receipt of recording, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Holder and its successors and assigns to enforce this Restriction.

15. Counterparts. This Restriction may be executed in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one instrument. In making proof of this Restriction, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Restriction is sought.

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

17. Amendment; Waiver. This Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the Holder and the Grantor.

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

[Signatures contained on next page]

Executed under seal as of the date set forth above.

Crowninshield Apartments Associates

By: Crowninshield Tannery I, INC. its general partner

By: Deborah Collier-Comins
Name: Deborah Collier-Comins
Title: PRESIDENT

COMMONWEALTH OF MASSACHUSETTS

ESSEX County, ss.

On this 3RD day of JULY, 2017, before me, the undersigned notary public, personally appeared DEBORAH COLLIER-COMINS, PRES. of CROWNINSHIELD TANNERY I, INC. general partner of Crowninshield Apartments Associates, evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Michael F. Callahan
Notary Public: MICHAEL F. CALLAHAN
My commission expires: MAY 24, 2024

- EXHIBIT A Property Description
- EXHIBIT B Schedule Rents
- EXHIBIT C Additional Definitions

EXHIBIT A : PROPERTY DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land located in Peabody, Essex County, Massachusetts with the buildings thereon shown as four (4) parcels of land as follows:

Parcel 1:

Parcel 1 containing .350 acres as shown on a plan entitled, "Plan of Land in Peabody, Mass., LBC Development Corp., Scale: 1"=40', Dated: December 14, 1973, Prepared by Carter & Towers Engineering Corp", which Plan is recorded at the Essex South District Registry of Deeds in Plan Book 128 as Plan 69.

Parcel 2:

Lot 2A containing 3.293 acres as shown on a plan entitled, "Subdivision Plan of Land Located in Peabody, Mass., Prepared by Eastern Land Survey Associates, Inc., Christopher R. Mello, PLS, 104 Lowell Street, Peabody, MA 01960, Scale: 1"=40', dated September 17, 2003", which Plan is recorded at the Essex South District Registry of Deeds in Plan Book 381 as Plan 84.

Parcel 3:

Parcel 3 containing 1.628 acres of land as shown on a plan entitled, "Plan of Land in Peabody, Mass., LBC Development Corp., Scale: 1"=40', Dated: December 14, 1973, Prepared by Carter & Towers Engineering Corp", which Plan is recorded at the Essex South District Registry of Deeds in Plan Book 128 as Plan 69.

Parcel 4:

Lot 2A-1 containing 7,694 square feet as shown on a plan entitled, "Subdivision Plan of Land Prepared by Eastern Land Survey Associates, Inc., Christopher R. Mello, PLS, 104 Lowell St., Peabody, MA 01960, Scale 1"=40', Dated: June 17, 2004, Prepared for Peabody Crossing LLC", which Plan is recorded at the Essex South District Registry of Deeds in Plan Book 379 as Plan 13.

Easement Parcel:

That certain parcel of land shown as Lot A containing 36,660 square feet as shown on a certain plan entitled, "Subdivision Plan of Land, Peabody, Mass., Prepared by Eastern Land Survey Associates, Inc., Christopher R. Mello, PLS, 104 Lowell St., Peabody, MA 01960, Scale: 1"=40', July 23, 2003", which plan is recorded at the Essex South District Registry of Deeds in Plan Book 371 as Plan 1

8-A

Parcels 1, 2, 3, and 4 referenced hereinbefore have the benefit of the easement conveyed by Grant of Easement from Berry Street LLC to Crowninshield Apartment Associates, dated November 10, 2004 and recorded with said Deeds on November 18, 2004 in Book 23645, Page 15.

For title reference, see Deeds recorded at the Essex South District Registry of Deeds in Book 6037, Page 638.

28 8-13

Tannery I Apartments
Equivalent Affordability Restriction
July 3, 2017
Page 9

EXHIBIT B: CURRENT SCHEDULE RENTS

Tannery I Apartments
Rent Roll
July 1, 2017

| Unit | Lease Type | Tenant Rent | MRVP | Vacancy | Br Size | Gross Amt | |
|------|------------|-------------|------|---------|---------|-----------|-------------|
| I101 | 1 | 113 | 1211 | 0 | 2 | 1,324 | |
| I102 | 1 | 450 | 654 | 0 | 1 | 1,104 | |
| I103 | 4 | 319 | 0 | 0 | 2 | 1,270 | |
| I104 | 4 | 138 | 0 | 0 | 2 | 1,270 | |
| I105 | 2 | 981 | 0 | 0 | 2 | 981 | |
| I106 | 3 | 900 | 0 | 0 | 1 | 900 | Lease Type |
| I107 | 4 | 988 | 0 | 0 | 1 | 988 | 1- MRVP |
| I108 | 3 | 1270 | 0 | 0 | 2 | 1,270 | 2-13A |
| I109 | 3 | 1039 | 0 | 0 | 1 | 1,039 | 3-Market |
| I110 | 2 | 981 | 0 | 0 | 2 | 981 | 4-Section 8 |
| I111 | 3 | 1270 | 0 | 0 | 2 | 1,270 | |
| I112 | 3 | 1203 | 0 | 0 | 2 | 1,203 | |
| I113 | 3 | 1203 | 0 | 0 | 2 | 1,203 | |
| I114 | 3 | 1203 | 0 | 0 | 2 | 1,203 | |
| I115 | 2 | 981 | 0 | 0 | 2 | 981 | |
| I116 | 2 | 981 | 0 | 0 | 2 | 981 | |
| I117 | 3 | 1039 | 0 | 0 | 1 | 1,039 | |
| I118 | 3 | 1203 | 0 | 0 | 2 | 1,203 | |
| I201 | 2 | 1059 | 0 | 0 | 1 | 1059 | |
| I202 | 1 | 358 | 672 | 0 | 0 | 1,030 | |
| I203 | 2 | 998 | 0 | 0 | 2 | 981 | |
| I204 | 2 | 1039 | 0 | 0 | 1 | 825 | |
| I205 | 1 | 301 | 803 | 0 | 1 | 1,104 | |
| I206 | 2 | 0 | 0 | 1059 | 1 | 1059 | |
| I207 | 3 | 0 | 0 | 0 | 1 | 940 | |
| I208 | 2 | 825 | 0 | 0 | 1 | 825 | |
| I209 | 2 | 912 | 0 | 0 | 1 | 825 | |
| I210 | 1 | 302 | 802 | 0 | 1 | 1,104 | |
| I211 | 3 | 992 | 0 | 0 | 1 | 992 | |
| I212 | 4 | 453 | 0 | 0 | 1 | 1,059 | |
| I213 | 2 | 1059 | 0 | 0 | 1 | 1059 | |
| I214 | 2 | 825 | 0 | 0 | 1 | 825 | |
| I215 | 1 | 327 | 777 | 0 | 1 | 1,104 | |
| I216 | 2 | 981 | 0 | 0 | 2 | 981 | |
| I217 | 2 | 825 | 0 | 0 | 1 | 825 | |
| I301 | 4 | 249 | 0 | 0 | 1 | 1,059 | |
| I302 | 1 | 348 | 243 | 0 | 0 | 1,104 | |
| I303 | 2 | 981 | 0 | 0 | 2 | 981 | |
| I304 | 2 | 825 | 0 | 0 | 1 | 825 | |
| I305 | 1 | 312 | 792 | 0 | 1 | 1,104 | |

| | | | | | | |
|------|---|------|------|------|---|-------|
| I306 | 2 | 825 | 0 | 0 | 1 | 825 |
| I307 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| I308 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| I309 | 4 | 398 | 0 | 0 | 1 | 1,059 |
| I310 | 1 | 368 | 736 | 0 | 1 | 1,104 |
| I311 | 2 | 970 | 0 | 0 | 1 | 825 |
| I312 | 2 | 825 | 0 | 0 | 1 | 825 |
| I313 | 1 | 403 | 701 | 0 | 1 | 1,104 |
| I314 | 2 | 825 | 0 | 0 | 1 | 825 |
| I315 | 2 | 1059 | 0 | 0 | 1 | 825 |
| I316 | 1 | 659 | 665 | 0 | 2 | 1,324 |
| I317 | 1 | 361 | 743 | 0 | 1 | 1,104 |
| I401 | 2 | 0 | 0 | 808 | 0 | 808 |
| I402 | 2 | 808 | 0 | 0 | 0 | 706 |
| I403 | 1 | 790 | 534 | 0 | 2 | 1,324 |
| I404 | 2 | 825 | 0 | 0 | 1 | 825 |
| I405 | 2 | 825 | 0 | 0 | 1 | 825 |
| I406 | 1 | 0 | 1104 | 0 | 1 | 1,104 |
| I407 | 2 | 891 | 0 | 0 | 1 | 825 |
| I408 | 1 | 317 | 787 | 0 | 1 | 1,104 |
| I409 | 1 | 321 | 709 | 0 | 1 | 1,030 |
| I410 | 1 | 365 | 739 | 0 | 1 | 1,104 |
| I411 | 4 | 701 | 0 | 0 | 1 | 1,059 |
| I412 | 2 | 825 | 0 | 0 | 1 | 825 |
| I413 | 4 | 332 | 0 | 0 | 1 | 1,059 |
| I414 | 4 | 340 | 0 | 0 | 1 | 1,059 |
| I415 | 2 | 1059 | 0 | 0 | 1 | 825 |
| I416 | 1 | 1123 | 0 | 0 | 2 | 1,123 |
| I417 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| I501 | 2 | 1059 | 0 | 0 | 1 | 825 |
| I502 | 1 | 396 | 634 | 0 | 0 | 1,030 |
| I503 | 1 | 1061 | 0 | 0 | 2 | 1,061 |
| I504 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| I505 | 1 | 299 | 805 | 0 | 1 | 1,104 |
| I506 | 2 | 1059 | 0 | 0 | 1 | 1,059 |
| I507 | 2 | 913 | 0 | 0 | 1 | 825 |
| I508 | 2 | 0 | 0 | 1059 | 1 | 1059 |
| I509 | 1 | 371 | 733 | 0 | 1 | 1,104 |
| I510 | 2 | 1046 | 0 | 0 | 1 | 825 |
| I511 | 2 | 825 | 0 | 0 | 1 | 825 |
| I512 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| I513 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| I514 | 2 | 825 | 0 | 0 | 1 | 825 |
| I515 | 1 | 559 | 545 | 0 | 1 | 1,104 |

| | | | | | | |
|------|---|------|------|---|---|-------|
| I516 | 2 | 981 | 0 | 0 | 2 | 981 |
| I517 | 2 | 825 | 0 | 0 | 1 | 825 |
| I601 | 1 | 287 | 817 | 0 | 1 | 1,104 |
| I602 | 1 | 0 | 1030 | 0 | 0 | 1,030 |
| I603 | 2 | 1270 | 0 | 0 | 2 | 981 |
| I604 | 2 | 825 | 0 | 0 | 1 | 825 |
| I605 | 1 | 508 | 596 | 0 | 1 | 1,104 |
| I606 | 2 | 825 | 0 | 0 | 1 | 825 |
| I607 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| I608 | 4 | 244 | 0 | 0 | 1 | 1,059 |
| I609 | 2 | 1056 | 0 | 0 | 1 | 825 |
| I610 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| I611 | 2 | 946 | 0 | 0 | 1 | 825 |
| I612 | 2 | 825 | 0 | 0 | 1 | 825 |
| I613 | 2 | 825 | 0 | 0 | 1 | 825 |
| I614 | 2 | 839 | 0 | 0 | 1 | 825 |
| I615 | 1 | 1090 | 14 | 0 | 1 | 1,104 |
| I616 | 2 | 981 | 0 | 0 | 2 | 981 |
| I617 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| N101 | 2 | 1037 | 0 | 0 | 3 | 1,037 |
| N102 | 2 | 863 | 0 | 0 | 1 | 825 |
| N103 | 1 | 249 | 781 | 0 | 0 | 1,030 |
| N104 | 2 | 825 | 0 | 0 | 1 | 825 |
| N105 | 2 | 825 | 0 | 0 | 1 | 825 |
| N106 | 2 | 1203 | 0 | 0 | 2 | 981 |
| N201 | 2 | 1039 | 0 | 0 | 1 | 825 |
| N202 | 1 | 302 | 802 | 0 | 1 | 1,104 |
| N203 | 2 | 825 | 0 | 0 | 1 | 825 |
| N204 | 2 | 825 | 0 | 0 | 1 | 825 |
| N205 | 4 | 311 | 0 | 0 | 0 | 808 |
| N206 | 1 | 330 | 774 | 0 | 1 | 1,104 |
| N207 | 2 | 1059 | 0 | 0 | 1 | 825 |
| N301 | 2 | 981 | 0 | 0 | 2 | 981 |
| N302 | 1 | 919 | 185 | 0 | 1 | 1,104 |
| N303 | 2 | 1059 | 0 | 0 | 1 | 825 |
| N304 | 4 | 138 | 0 | 0 | 1 | 1,059 |
| N305 | 2 | 808 | 0 | 0 | 0 | 706 |
| N306 | 4 | 250 | 0 | 0 | 1 | 1,059 |
| N307 | 2 | 825 | 0 | 0 | 1 | 825 |
| N401 | 3 | 1203 | 0 | 0 | 2 | 1,203 |
| N402 | 4 | 398 | 0 | 0 | 1 | 1,059 |
| N403 | 1 | 330 | 774 | 0 | 1 | 1,104 |
| N404 | 2 | 932 | 0 | 0 | 1 | 825 |
| N405 | 1 | 393 | 637 | 0 | 0 | 1,030 |

| | | | | | | |
|------|---|------|------|---|---|-------|
| N406 | 2 | 825 | 0 | 0 | 1 | 825 |
| N407 | 1 | 335 | 769 | 0 | 1 | 1,104 |
| V101 | 4 | 217 | 0 | 0 | 1 | 1,059 |
| V102 | 1 | 454 | 650 | 0 | 1 | 1,104 |
| V103 | 2 | 825 | 0 | 0 | 1 | 825 |
| V104 | 4 | 281 | 0 | 0 | 1 | 1,059 |
| V105 | 2 | 825 | 0 | 0 | 1 | 825 |
| V106 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V107 | 2 | 825 | 0 | 0 | 1 | 825 |
| V108 | 2 | 888 | 0 | 0 | 1 | 825 |
| V109 | 1 | 279 | 825 | 0 | 1 | 1,104 |
| V110 | 2 | 944 | 0 | 0 | 1 | 825 |
| V111 | 1 | 330 | 774 | 0 | 1 | 1,104 |
| V112 | 1 | 535 | 569 | 0 | 1 | 1,104 |
| V114 | 1 | 0 | 1104 | 0 | 1 | 1,104 |
| V115 | 2 | 1059 | 0 | 0 | 1 | 825 |
| V116 | 2 | 1039 | 0 | 0 | 1 | 825 |
| V117 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V118 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V119 | 1 | 278 | 752 | 0 | 0 | 1,030 |
| V120 | 4 | 728 | 0 | 0 | 1 | 988 |
| V121 | 1 | 328 | 776 | 0 | 1 | 1,104 |
| V122 | 2 | 825 | 0 | 0 | 1 | 825 |
| V123 | 1 | 422 | 682 | 0 | 1 | 1,104 |
| V201 | 2 | 706 | 0 | 0 | 0 | 706 |
| V202 | 2 | 825 | 0 | 0 | 1 | 825 |
| V203 | 1 | 386 | 718 | 0 | 1 | 1,104 |
| V204 | 1 | 330 | 774 | 0 | 1 | 1,104 |
| V205 | 2 | 825 | 0 | 0 | 1 | 825 |
| V206 | 2 | 1059 | 0 | 0 | 1 | 825 |
| V207 | 2 | 1039 | 0 | 0 | 1 | 825 |
| V208 | 2 | 825 | 0 | 0 | 1 | 825 |
| V209 | 2 | 825 | 0 | 0 | 1 | 825 |
| V210 | 4 | 334 | 0 | 0 | 1 | 1,059 |
| V211 | 4 | 249 | 0 | 0 | 1 | 1,059 |
| V212 | 2 | 1036 | 0 | 0 | 1 | 825 |
| V213 | 2 | 825 | 0 | 0 | 1 | 825 |
| V214 | 2 | 825 | 0 | 0 | 1 | 825 |
| V215 | 2 | 825 | 0 | 0 | 1 | 825 |
| V216 | 4 | 327 | 0 | 0 | 1 | 1,059 |
| V217 | 1 | 336 | 768 | 0 | 1 | 1,104 |
| V218 | 2 | 825 | 0 | 0 | 1 | 825 |
| V219 | 4 | 414 | 0 | 0 | 1 | 1,059 |
| V220 | 2 | 706 | 0 | 0 | 0 | 706 |

| | | | | | | |
|------|---|------|-----|------|---|-------|
| V221 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V222 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V223 | 2 | 825 | 0 | 0 | 1 | 825 |
| V224 | 2 | 825 | 0 | 0 | 1 | 825 |
| V301 | 1 | 327 | 703 | 0 | 0 | 1,030 |
| V302 | 2 | 1047 | 0 | 0 | 1 | 825 |
| V303 | 2 | 825 | 0 | 0 | 1 | 825 |
| V304 | 2 | 825 | 0 | 0 | 1 | 825 |
| V305 | 2 | 902 | 0 | 0 | 1 | 825 |
| V306 | 2 | 825 | 0 | 0 | 1 | 825 |
| V307 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V308 | 2 | 825 | 0 | 0 | 1 | 825 |
| V309 | 2 | 825 | 0 | 0 | 1 | 825 |
| V310 | 2 | 825 | 0 | 0 | 1 | 825 |
| V311 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V312 | 2 | 825 | 0 | 0 | 1 | 825 |
| V313 | 2 | 885 | 0 | 0 | 1 | 825 |
| V314 | 2 | 899 | 0 | 0 | 1 | 825 |
| V315 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V316 | 1 | 323 | 781 | 0 | 1 | 1,104 |
| V317 | 2 | 1059 | 0 | 0 | 1 | 825 |
| V318 | 4 | 354 | 634 | 0 | 1 | 988 |
| V319 | 4 | 368 | 0 | 0 | 1 | 965 |
| V320 | 2 | 732 | 0 | 0 | 0 | 706 |
| V321 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V322 | 4 | 255 | 0 | 0 | 1 | 1,059 |
| V323 | 2 | 825 | 0 | 0 | 1 | 825 |
| V324 | 2 | 825 | 0 | 0 | 1 | 825 |
| V401 | 1 | 335 | 695 | 0 | 0 | 1,030 |
| V402 | 4 | 241 | 0 | 0 | 1 | 1,059 |
| V403 | 1 | 437 | 667 | 0 | 1 | 1,104 |
| V404 | 1 | 495 | 609 | 0 | 1 | 1,104 |
| V405 | 1 | 302 | 802 | 0 | 1 | 1,104 |
| V406 | 2 | 0 | 0 | 1059 | 1 | 1059 |
| V407 | 2 | 825 | 0 | 0 | 1 | 825 |
| V408 | 2 | 925 | 0 | 0 | 1 | 825 |
| V409 | 2 | 825 | 0 | 0 | 1 | 825 |
| V410 | 1 | 249 | 855 | 0 | 1 | 1,104 |
| V411 | 4 | 222 | 0 | 0 | 1 | 1,059 |
| V412 | 2 | 1059 | 0 | 0 | 1 | 825 |
| V413 | 2 | 825 | 0 | 0 | 1 | 825 |
| V414 | 2 | 825 | 0 | 0 | 1 | 825 |
| V415 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V416 | 1 | 298 | 806 | 0 | 1 | 1,104 |

| | | | | | | |
|------|---|------|-----|------|---|-------|
| V417 | 2 | 825 | 0 | 0 | 1 | 825 |
| V418 | 2 | 825 | 0 | 0 | 1 | 825 |
| V419 | 2 | 825 | 0 | 0 | 0 | 825 |
| V420 | 2 | 0 | 0 | 808 | 1 | 808 |
| V421 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V422 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V423 | 1 | 237 | 867 | 0 | 1 | 1,104 |
| V424 | 2 | 948 | 0 | 0 | 1 | 825 |
| V501 | 2 | 981 | 0 | 0 | 2 | 981 |
| V502 | 3 | 1203 | 0 | 0 | 2 | 1,203 |
| V503 | 2 | 825 | 0 | 0 | 1 | 825 |
| V504 | 2 | 825 | 0 | 0 | 1 | 825 |
| V505 | 2 | 825 | 0 | 0 | 1 | 825 |
| V506 | 2 | 1012 | 0 | 0 | 2 | 981 |
| V507 | 2 | 825 | 0 | 0 | 1 | 825 |
| V508 | 2 | 825 | 0 | 0 | 1 | 825 |
| V509 | 2 | 825 | 0 | 0 | 1 | 825 |
| V510 | 2 | 825 | 0 | 0 | 1 | 825 |
| V511 | 2 | 0 | 0 | 1059 | 1 | 1059 |
| V512 | 2 | 825 | 0 | 0 | 1 | 825 |
| V513 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V514 | 2 | 885 | 0 | 0 | 1 | 825 |
| V515 | 2 | 825 | 0 | 0 | 1 | 825 |
| V516 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V517 | 2 | 825 | 0 | 0 | 1 | 825 |
| V518 | 2 | 825 | 0 | 0 | 1 | 825 |
| V519 | 2 | 832 | 0 | 0 | 1 | 825 |
| V520 | 2 | 828 | 0 | 0 | 1 | 825 |
| V521 | 2 | 825 | 0 | 0 | 1 | 825 |
| V522 | 2 | 828 | 0 | 0 | 1 | 825 |
| V523 | 2 | 825 | 0 | 0 | 1 | 825 |
| V524 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V525 | 2 | 825 | 0 | 0 | 1 | 825 |
| V526 | 2 | 825 | 0 | 0 | 1 | 825 |
| V527 | 2 | 855 | 0 | 0 | 1 | 825 |
| V528 | 1 | 207 | 897 | 0 | 1 | 1,104 |
| V529 | 2 | 825 | 0 | 0 | 1 | 825 |
| V530 | 2 | 825 | 0 | 0 | 1 | 825 |
| V531 | 2 | 886 | 0 | 0 | 1 | 825 |
| V532 | 2 | 825 | 0 | 0 | 1 | 825 |
| V533 | 2 | 1203 | 0 | 0 | 2 | 981 |
| V534 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V535 | 2 | 825 | 0 | 0 | 1 | 825 |
| V536 | 2 | 825 | 0 | 0 | 1 | 825 |

| | | | | | | |
|------|---|------|------|---|---|-------|
| V601 | 2 | 808 | 0 | 0 | 0 | 706 |
| V602 | 1 | 336 | 768 | 0 | 1 | 1,104 |
| V603 | 1 | 336 | 768 | 0 | 1 | 1,104 |
| V604 | 2 | 825 | 0 | 0 | 1 | 825 |
| V605 | 1 | 314 | 790 | 0 | 1 | 1,104 |
| V606 | 4 | 862 | 0 | 0 | 1 | 1,059 |
| V607 | 2 | 825 | 0 | 0 | 1 | 825 |
| V608 | 2 | 825 | 0 | 0 | 1 | 825 |
| V609 | 2 | 825 | 0 | 0 | 1 | 825 |
| V610 | 2 | 1059 | 0 | 0 | 1 | 1059 |
| V611 | 2 | 825 | 0 | 0 | 1 | 825 |
| V612 | 2 | 845 | 0 | 0 | 1 | 825 |
| V613 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| V614 | 2 | 825 | 0 | 0 | 1 | 825 |
| V615 | 2 | 825 | 0 | 0 | 1 | 825 |
| V616 | 1 | 60 | 1044 | 0 | 1 | 1,104 |
| V617 | 4 | 254 | 0 | 0 | 1 | 1,059 |
| V618 | 2 | 825 | 0 | 0 | 1 | 825 |
| V619 | 3 | 1039 | 0 | 0 | 1 | 1,039 |
| V620 | 2 | 706 | 0 | 0 | 0 | 706 |
| V621 | 2 | 825 | 0 | 0 | 1 | 825 |
| V622 | 2 | 825 | 0 | 0 | 1 | 825 |
| V623 | 1 | 457 | 647 | 0 | 1 | 1,104 |
| V624 | 2 | 884 | 0 | 0 | 1 | 825 |

EXHIBIT C: ADDITIONAL DEFINITIONS

Following are additional definitions used in this Affordable Housing Restriction:

"13A Qualified Tenant" shall mean a Tenant whose Household Income is less than or equal to the income limit specified in the 13A contract covering the Property at the date of this Restriction.

"Area" for purposes of Area Median Income ("**AMI**") shall mean Boston-Cambridge-Quincy, MA-NH, which is the HUD Metropolitan Fair Market Rent/Income Limits Area ("**HFMA**") covering the Property.

"Area" for purposes of calculating Consumer Price Index shall mean United States Bureau of Labor Statistics Boston-Brockton-Nashua Consolidated Metropolitan Statistical Area.

"Area Median Income" or "**AMI**" shall mean the median income for the Area of the Property, adjusted for family size, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as amended.

"Bedroom Adjusted AMI" applicable to a Unit shall mean the median income for the Area, with adjustments for the number of bedrooms in such Unit, as determined from time to time by HUD pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, as amended. For purposes of adjustments for the number of bedrooms in a Unit, a Unit that does not have a separate bedroom is assumed to be occupied by one individual and a Unit with one or more separate bedrooms is deemed assumed to be occupied by 1.5 individuals for each bedroom (with the total number of individuals rounded up).

"Consumer Price Index" or "**CPI**" shall mean the Consumer Price Index for All Urban Consumers ("**CPI-U**"), percentage change from twelve months ago, not seasonally adjusted, most recently released by the United States Bureau of Labor Statistics, as calculated for the Area of the Property.

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

"Grantor" shall mean the Grantor named on the first page hereof or any successor or assign thereof permitted under this Restriction.

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

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

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

"Improvements" shall mean the building or buildings on the Property presently containing, or after completion of the planned construction to contain, the number of Units indicated

on the first page hereof, and all other authorized buildings, structures and improvements located on the Property from time to time, all equipment and fixtures therein, and any authorized repair, improvement, reconstruction, restoration, renovation, or replacement of a capital nature thereto or otherwise on the Property.

"Low Income Tenant" shall mean a Tenant whose Household Income is less than or equal to eighty percent (80%) of the AMI.

"Permitted Uses" shall mean use of the Improvements for the number of rental Units indicated on the first page hereof, including the number of Restricted Units indicated on the first page hereof.

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

"Registry of Deeds" shall mean the Essex County Registry of Deeds.

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

"Restricted Unit" shall mean a Unit required by the terms hereof to be rented to a Low Income Tenant.

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

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

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

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

All terms that are not specifically defined in this Exhibit C or in the text of this Restriction shall be defined as in Massachusetts General Laws Chapter 40T, Section 1, the Code of Massachusetts Regulations, Title 760, Chapter 64, Section 64.02 (1), and in guidance in regard to interpretation and implementation of such statute and regulation formally issued by DHCD and posted on its website.

EXHIBIT B

23

SO. ESSEX #251 Bk:37595 Pg:198
06/18/2019 11:59 GRNT Pg 1/23



AFFORDABLE HOUSING RESTRICTION

DATE: As of June 17, 2019

| | |
|---|---|
| GRANTOR: | Tannery Limited Partnership |
| PROPERTY NAME: | The Tannery |
| TOTAL NUMBER OF UNITS: | 284 |
| TOTAL NUMBER OF RESTRICTED UNITS: | 235 |
| NUMBER OF HIGH MODERATE INCOME UNITS (100% AMI): ¹ | 0 |
| NUMBER OF MODERATE INCOME UNITS (80% AMI): | 35 |
| NUMBER OF LOW INCOME UNITS (60% AMI): | 165 |
| NUMBER OF VERY LOW INCOME UNITS (50% AMI): | 0 |
| NUMBER OF EXTREMELY LOW INCOME UNITS (30% AMI): | 35 |
| PROPERTY ADDRESS: | 18 Crowninshield Street Peabody, Massachusetts |
| TERM: | 43 years (subject to extension for any extension of the construction period and/or extension of one or more of the Loans to which this Restriction relates, as set forth below) |

This Affordable Housing Restriction (this "Restriction") is granted by the undersigned Grantor, a Massachusetts limited partnership having a mailing address of 6 Faneuil Hall Marketplace, Boston, Massachusetts 02109, for the benefit of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development having a mailing address of 100 Cambridge Street, Suite 300, Boston, Massachusetts 02114-2524 ("DHCD"); Massachusetts Housing Partnership Fund Board, a Massachusetts public instrumentality and body politic and corporate, with an office at 160 Federal Street, 2nd Floor, Boston, Massachusetts 02110 ("MHP"); and the City of Peabody,

¹Numbers in parentheses are the percentage of median income for the Area (AMI, as defined below), adjusted for family size, as determined from time to time by HUD (as defined below) pursuant to Section 8 of the United States Housing Act, as amended.

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