

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**

5/23



### 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): <sup>1</sup>	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,

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

Massachusetts, having an address at Peabody City Hall, 24 Lowell Street, Peabody, Massachusetts 01960 (the "City").

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## BACKGROUND

- A. The Grantor holds or will acquire legal title to the Property and intends to rehabilitate and acquire a 284-unit rental housing development, consisting of three residential buildings and one management office, at the Property (the "Project").
- B. As a condition of the Loan, the Grantor has agreed that this Restriction be imposed upon the Property as a covenant running with the land and binding upon any successor to the Grantor, as owner thereof.

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## RESTRICTIONS

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

1. **Definitions.** Capitalized terms used herein are defined herein and in Exhibit D attached hereto.
2. **Use Restrictions.** The Property shall be reserved and used for the Permitted Uses and for no other purpose. The Restricted Units shall include at least 20 Studio Units, 195 one-bedroom Units and 20 two-bedroom Units. If during the Term the MRVP Contract is not renewed at the end of its term or is terminated or otherwise is no longer in full force and effect, the Holders will consider a request by the Grantor to modify the mix of Restricted Units by converting Extremely Low Income Units to Very Low Income Units or Low Income Units. A decision by the Holders on such a request shall take into consideration the financial viability of the Property and shall be made in the sole reasonable discretion of the Participating Lenders who have required such Extremely Low Income Units, as shown on Exhibit C. The Property also shall include at least fifteen (15) Units accessible to individuals with mobility impairments and at least four (4) additional Units accessible to individuals with sensory impairments. Each Unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation that are to be used on other than a transient basis. Each Unit shall meet the housing quality standards set forth in the regulations of HUD at 24 C.F.R. §982.401 or any successor thereto, the accessibility requirements at 24 C.F.R. Part 8 or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973), and, if applicable, the design and construction requirements of 24 C.F.R. §100.205 or any successor thereto (which implement the Fair Housing Act). The Restricted Units shall be of comparable quality to the other Units at the Property. The Restricted Units shall be dispersed evenly throughout the buildings comprising the Improvements. Throughout the term hereof, the Grantor shall maintain the Property and the Improvements in good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, rules and regulations of any governmental (or quasi-governmental) body with jurisdiction over matters concerning the condition of the Property.

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

**A. Moderate Income Units.** At least 35 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Moderate Income Families ("Moderate Income Units"). The monthly rent charged to a Family occupying a Moderate Income Unit shall be one-twelfth of thirty percent (30%) of eighty percent (80%) of the Bedroom Adjusted AMI, minus, if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Moderate Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder, must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.

**B. Low Income Units.** At least 165 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Low Income Families ("Low Income Units"). The monthly rent charged to a Family occupying such Low Income Unit shall not exceed an amount equal to (x) one-twelfth of thirty percent (30%) of sixty percent (60%) of the Bedroom Adjusted AMI, minus (y) if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds sixty percent (60%), but does not exceed eighty percent (80%) of the Family-size Adjusted AMI, shall continue to be treated as a Low Income Family and the foregoing maximum rent shall continue to apply to such Family. A Family who resides in a Restricted Unit, who qualified as a Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.

- C. Extremely Low Income Units.** At least 35 of the Units of the types shown on Exhibit C attached hereto shall be leased exclusively to Extremely Low Income Families ("Extremely Low Income Units"). The monthly rent charged to a Family occupying an Extremely Low Income Unit shall be one-twelfth of thirty percent (30%) of thirty percent (30%) of the Bedroom Adjusted AMI, minus, if applicable, an allowance established by the Holders for any utilities and services (excluding telephone) to be paid by the occupying Family. A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds thirty percent (30%), but does not exceed fifty percent (50%) of the Family-size Adjusted AMI, shall continue to be treated as an Extremely Low Income Family but, from and after the expiration of the then-current term of such Family's lease, must pay as monthly rent the Over-Income Rent. A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds fifty percent (50%), but does not exceed eighty percent (80%), of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, be treated as a Low Income Family and must pay as monthly rent the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of sixty percent (60%) of the Bedroom Adjusted AMI (minus, if applicable, an allowance established by the Holders for any utilities and services [excluding telephone] to be paid by the occupying Family). A Family who resides in a Restricted Unit, who qualified as an Extremely Low Income Family at the time of such Family's initial occupancy at the Property and whose Household Income exceeds eighty percent (80%) of the Family-size Adjusted AMI, shall, from and after the expiration of the then-current term of such Family's lease, no longer be treated as an income-qualified Family and (i) until such time as the Property again has the required number of income-qualified Families at all income levels hereunder must pay as monthly rent the Over-income Rent and (ii) once the Property again has the required number of income-qualified Families at all income levels hereunder, such Family's Unit shall, from and after the expiration of the then-current term of such Family's lease, no longer be deemed a Restricted Unit hereunder.
- D. Applicable Lease Term, Change of Status.** References in the foregoing provisions of the "then-current term of such Family's lease" shall refer to the term of the lease or occupancy agreement in effect on the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income or, as applicable, the term of the lease or occupancy agreement in effect at the time the Property regains the required number of income-qualified Families. If, with the Holders' consent, the Grantor does not require that a lease be signed for a Restricted Unit (e.g., a property providing short-term transitional housing), the provisions set forth above shall apply, except that the applicable date on which a Family's income-qualified status and/or applicable rent restriction is modified shall be the first day of the month that is at least thirty (30) days following the date of the required delivery of the income certification that reflects (or that, if duly delivered, would have reflected) the applicable increase in such Family's income and the applicable date on which a Restricted Unit's status

is modified shall be the first day of the month that is at least thirty (30) days following the date on which the Property regains the required number of income-qualified Families.

**E. Federal or State Rental Subsidy.** If a Restricted Unit or the Family occupying such Unit receives federal or state rental subsidy, then the Family's contribution towards rent shall be the contribution allowable under the federal or state rental subsidy program and the maximum rent (i.e., tenant contribution plus rental subsidy) shall be the rent allowable under the federal or state rental subsidy program.

**F. Next Available Unit Rule.** If at any time fewer than the required number of Units are leased, rented or occupied by Extremely Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Extremely Low Income Families until the required number of Units occupied by Extremely Low Income Families is again obtained. Subject to the foregoing, if at any time fewer than the required number of Units are leased, rented or occupied by Low Income Families, the next available Units shall all be leased, rented or otherwise made available to Low Income Families until the required number of Units occupied by Low Income Families is again obtained. Subject to the foregoing, if at any time fewer than the required number of Units are leased, rented or occupied by Moderate Income Families, the next available Units shall all be leased, rented or otherwise made available to Moderate Income Families until the required number of Units occupied by Moderate Income Families is again obtained. The foregoing provisions shall be applied so as to maintain a mix of Restricted Units that is comparable in size, features and number of bedrooms to the originally designated Restricted Units (i.e., a Unit will not be considered an available Unit for purposes of this Paragraph if classification of such Unit as a Restricted Unit would cause the then current mix of Restricted Units to no longer be comparable to the original mix of Restricted Units described in Section 2 above and as shown on Exhibit C).

**4. Rent Schedule.** Except as is set forth in Sections 3.B., 3.C. and 3.E, projected initial monthly maximum rents including utilities for all Restricted Units shall be as set forth in Exhibit B attached hereto. If permitted maximum rents and utility allowances as reflected in the annual schedule of rents and utility allowances issued by DHCD increase prior to initial occupancy of the Project, the initial monthly maximum rents and utility allowances shall be as set forth in the latest schedule issued by DHCD. Notwithstanding the rent restrictions set forth in Section 3 above, the maximum monthly rent permitted to be charged for a Restricted Unit at any particular income level is not required to be lower than the maximum rent applicable at such income level pursuant to Exhibit B or such higher initial maximum rent applicable at such income level pursuant to the immediately preceding sentence, regardless of changes in fair market rents or in median income over time (subject only to the restrictions applicable in the event of any federal or state subsidy, as set forth in Section 3 above). Rents for Restricted Units shall not be increased above applicable maximums without all Holders' prior written approval of a specific request by the Grantor for a rent increase, except for increases implemented in accordance with an annual schedule of maximum rents and allowances issued by DHCD. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by the Grantor to all affected Residents and notwithstanding any provision in a lease or occupancy agreement to the contrary, in the event of any increase in the rent payable by

such Residents in connection with an increase in the income of such Residents, consistent with the terms hereof, the Residents shall have the right to terminate their lease or occupancy agreement by written notice to the Grantor delivered within such thirty-day period.

**5. Resident Selection.**

**A. Nondiscrimination.** The Grantor shall not discriminate on the basis of race, religious creed, color, sex, age, marital status, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), gender identity, genetic information, veteran status, membership in the armed forces, ancestry, national origin, handicap, blindness, hearing impairment, or because a person possesses a trained guide dog as a consequence of blindness, hearing impairment or other handicap of such person 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 because of the status of the prospective tenant as a holder of such certificate, voucher.

**B. Selection Policies.** The Grantor shall adopt and submit to the Holders for approval resident selection policies and criteria for the Restricted Units that:

- (i) Are consistent with the purpose of providing housing for a Moderate Income Family, a Low Income Family or an Extremely Low Income Family, as defined below and required herein;
- (ii) Are reasonably related to eligibility of prospective tenants under the Programs and to the prospective tenants' ability to perform the obligations of the Grantor's form lease; and
- (iii) Provide for (x) the selection of Residents from a written waiting list in the chronological order of their application, insofar as practicable, and (y) the prompt written notification to any rejected applicant of the grounds for any rejection.

The Grantor shall also provide the Holders with an affirmative marketing plan acceptable to all Holders. The affirmative marketing plan must comply with all applicable statutes, regulations and executive orders, with all Holders' affirmative marketing requirements and with DHCD's directives reflecting the agreement between DHCD and HUD in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every respect and any changes thereto shall be subject to the prior written approval of the Holders. The Grantor shall list vacancies in Restricted Units in the MassAccess Housing Registry at <http://www.massaccesshousingregistry.org>.

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

- A.** Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Grantor in a lawsuit brought in connection with the lease.

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

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

**7. Transfer Restrictions.** The Grantor shall not sell, transfer, convey, rent (except for leases or occupancy agreements made in connection with the Permitted Uses that are substantially in the form approved by the Holders), encumber as security for financing, or in any other way exchange all or any portion of the Property nor shall the Grantor permit the sale, transfer or pledge of any direct or indirect interests in the Grantor, without the express written permission of the Holders, which consent shall not be unreasonably withheld or delayed with respect to any transfer to the Sponsor or any entity wholly owned and controlled by the Sponsor pursuant to the Right of First Refusal dated of even date herewith granted to the Sponsor by the Grantor, provided that at the time of exercise of such Right of First Refusal (i) no Event of Default, or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default, is then outstanding hereunder or under any of the Loans; (ii) the Sponsor or such other entity designated as transferee is an eligible borrower under all applicable Statutes, Regulations and Guidelines as

then in effect; (iii) the Sponsor or such other entity is in good standing with all Holders and in each Holder's reasonable discretion has sufficient financial capability and experience with affordable housing similar to the Property to perform the obligations of the Grantor; (iv) the Sponsor or such transferee agrees in writing to be bound by and perform all of the terms and conditions hereof; (v) such transfer is permitted by the holder of all loans secured by the Property and (vi) the Grantor gives to all Holders no less than thirty (30) days' prior written notice of any such proposed transfer. For purposes of the foregoing sentence, a withdrawal by the limited partner of Grantor shall be deemed to be a transfer of an Interest in the Grantor. Without limiting the generality of the foregoing, the Permitted Encumbrances are hereby approved by the Holders. Notwithstanding the foregoing: (i) the limited partner interest of Grantor held by Bank of America (the "Investor") may be transferred to an entity in which the Investor or an affiliate of the Investor is the general partner or managing member, provided that the Holders receive notice of such transfer and (ii) the Grantor's limited partner may remove and replace the general partner of the Grantor in accordance with the provisions of the Grantor's partnership agreement upon the consent of the Holders, which consent will not be unreasonably withheld, conditioned or delayed. In connection with any transfer requiring the consent of the Holders, the Grantor shall provide such information to the Holders as the Holders may reasonably request, shall pay a fee to DHCD in the amount of \$25,000 and shall pay all legal fees incurred by the Holders in connection with such transfer request.

**8. Term of Restrictions; Covenants to Run with Land.** The term of this Restriction shall be 43 years from the date hereof, provided that if the Project is not completed within 24 months after the date of this Restriction for any reason, any Holder shall have the right to extend the term hereof by recording in the Registry of Deeds a certificate of extension certifying the length of the delay in completing the Project, whereupon the term hereof shall automatically be extended by an amount of time equal to the length of such delay and provided further that the term hereof shall automatically be extended for the period of the extension of any of the Loans to which this Restriction relates. Notwithstanding any provision to the contrary herein or in any of the other Loan Documents, this Restriction shall remain in full force for the full term set forth herein including any extension, notwithstanding any prepayment of the Loan. The restrictions contained herein shall run with the land, shall bind the successors and assigns of the Grantor, and shall inure to the benefit of the Holders and their successors and assigns as permitted herein. Notwithstanding the foregoing, at the end of the term of affordability for a particular program, as set forth on Exhibit C, as it may have been extended, provided that all obligations under the loan provided by such Program have been satisfied in full at that time, as determined by the appropriate Holder, the Grantor may request that the Holders modify this Restriction to eliminate the requirements imposed by or otherwise relating to such Program set forth in this Restriction. The parties shall cooperate to prepare an appropriate amendment to this Restriction, which amendment shall be duly recorded with the Registry of Deeds by the Grantor at its cost and expense.

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

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

**11. Reporting Requirements.**

- A. DHCD Web-Based Report.** Annually, no later than September 30, Grantor shall submit to DHCD, via the web-based annual reporting system located at <https://hedhsgdevannualreport.azurewebsites.net>, or as otherwise instructed, an annual report consisting of all data required by DHCD regulations at 760 CMR 61.00 promulgated pursuant to Chapter 334 of the Acts of 2006 and all applicable DHCD directives, guidelines and forms as may be amended from time to time. The Grantor shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms.
- B. Annual Report.** Annually, no later than September 30, Grantor shall submit to each Holder an annual report consisting of the following:
- (i) Annual adjusted income of each Family occupying a Restricted Unit.
  - (ii) Monthly gross rents (rents plus utility allowances, if applicable) for all Restricted Units, such rents to be consistent with the schedule of maximum rents published annually by DHCD. The rent schedule shall include the maximum rents applicable to Restricted Units under Section 3 as well as the actual rents to be charged to over-income Families under Section 3.
  - (iii) The Grantor's certification, made to the best knowledge and belief of the officer or individual signing such certification, that:
    - (a) The Property continues to be used for the Permitted Uses.
    - (b) The Property continues to contain the required number of Low Income Units and Extremely Low Income Units and to comply with the rent and other restrictions applicable to such Restricted Units.
    - (c) Grantor has not transferred, pledged or encumbered any interest in the Property, except as specifically provided in, and in accordance and compliance with the terms of, this Restriction.
    - (d) Grantor has caused the Property to be maintained in a manner consistent with the Statutes, Regulations and Guidelines and no children under six years old reside in or occupy the Property within the meaning of the Lead Paint Law or, if such children do reside in or occupy the Property, that the Property is in compliance with the Lead Paint Law.
    - (e) The information submitted pursuant to this Paragraph B is true and accurate.

- C. **Confidentiality.** The Holders and the Grantor shall treat as confidential any of the foregoing information relating to a specific Resident or Unit in compliance with all applicable state and federal statutes and regulations, including M.G.L. c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but the Holders and the Grantor may release general statistical and other information about the Property, so long as the privacy rights and interests of the individual Residents are protected). The Holders and the Grantor shall not use any of the foregoing information in Paragraph A.(iii) for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause a Holder or Grantor to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).
- D. **Additional Reports.** Grantor shall prepare and submit to the Holders such additional reports as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.
- E. **Records.** The Grantor shall maintain as part of its records (i) copies of all leases of Restricted Units; (ii) all initial and annual income certifications by Residents of Restricted Units and (iii) such additional records as any Holder may deem necessary to ensure compliance with the requirements of this Restriction and of the Programs.
- F. **Additional Reporting Requirements.** Additional reporting requirements are stipulated in the Loan Agreement.
12. **No Demolition.** The Grantor shall not demolish any part of the Improvements or substantially subtract from any real or personal property included within the Property except in conjunction with renovation or rehabilitation of the Units or construction of a new project on the Property, in either case subject to the prior written consent of all Holders, which consent may be granted or withheld in a Holder's sole judgment.
13. **Casualty.** The Grantor represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Grantor (subject to the approval of the lender(s) providing financing) will use its best efforts to repair and restore the Units to substantially the same condition as existed prior to the event causing such damage or destruction, and the Grantor represents, warrants and agrees that the Units shall thereafter continue to operate in accordance with the terms of this Restriction.
14. **Inspection.** The Grantor hereby grants to each Holder and its duly authorized representatives the right to enter the Property (a) at reasonable times and in a reasonable manner for the purpose of inspecting the Property to determine compliance with this Restriction or any other agreement between the Grantor and such Holder and (b) after thirty (30) days' prior written notice, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Restriction. The notice referred to in clause (b) shall include a clear description of the course and approximate cost of the proposed cure.
15. **Enforcement.** Upon violation by the Grantor of any of the provisions of this Restriction that remains uncured for more than thirty (30) days after notice thereof from any Holder (or for such longer period not to exceed thirty (30) days as shall be reasonably required under the circumstances

to cure such violation, provided that the Grantor has commenced the cure of such violation within the initial thirty (30) day period and is thereafter diligently pursuing the cure to completion), any Holder, at its option (without liability to any party for failure to do so), may apply to any court, state or federal, for specific performance of this Restriction or an injunction against any violation of this Restriction, or for such other relief as may be appropriate, since the injury arising from the default under any of the terms of this Restriction would be irreparable and the amount of damage would be difficult to ascertain and may not be compensable by money alone. In each such default notice, the Holder giving such notice shall specify the violation in question and the actions such Holder believes are necessary and feasible to remedy such violation. No waiver by a Holder of any breach of this Restriction shall be deemed a waiver of such breach by any other Holder or a waiver of any other or subsequent breach. No act or omission by any Holder, other than a writing signed by it waiving a breach by the Grantor in accordance with the next Section hereof, shall constitute a waiver thereof. Any Holder shall be entitled to recover from the Grantor all of such Holder's reasonable costs of an action for enforcement of this Restriction, including reasonable attorneys' fees (including the time of any in-house counsel of a Holder charged at the same rate as comparable outside attorneys). By its acceptance of this Restriction, no Holder undertakes any liability or obligation relating to the condition of the Property. Without limiting any other rights or remedies available to a Holder, any transfer of all or any other portion of the Property in violation of the provisions hereof, in the absence of a certification from all Holders approving, or waiving any restrictions with respect to, the same, all as set forth above, shall, to the maximum extent permitted by law, be voidable by any Holder, by suit in equity to enforce the restrictions hereof.

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

**17. Senior Lender Foreclosure.**

- A.** Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given the Holders not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Property or to any purchaser of the



**AFFORDABLE HOUSING RESTRICTION**

Property from such mortgage holder, and such Property shall, subject to Paragraph B. below, thereafter be free from all such rights and restrictions. Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate only to the extent it is financially infeasible to maintain the level of affordability required by this Restriction or some lesser level of affordability (i.e., fewer Restricted Units or Restricted Units affordable to Families with higher Household Incomes than those required by this Restriction). The foregoing provision on financial infeasibility shall not apply at any time when Massachusetts Housing Finance Agency is the holder of the first mortgage on the Property. "Financially infeasible" shall mean (i) with respect to the operation of the Property, that the rent and other income from the Property is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Property and (ii) with respect to a sale of the Property, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Property, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums. Financial infeasibility shall be determined by the senior mortgage holder in its sole discretion after consultation with the Holders. The senior mortgage holder shall notify the Holders of the extent to which the rights and restrictions contained herein shall be terminated and the Grantor agrees to execute any documents required to modify this Restriction to conform to the senior mortgage holder's determination. The Grantor hereby irrevocably appoints any senior mortgage holder and each of the Holders, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Grantor should the Grantor fail or refuse to do so.

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

made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such mortgage holder to the Holders in accordance herewith, provided that such mortgage holder shall give the prompt notice of any such claim and shall not object to intervention by the Holders in any proceeding relating thereto. The Holders shall share any such excess pro rata in proportion to the respective amounts of principal and interest (if any) then outstanding on their portions of the Loan and the liability of a Holder under the foregoing indemnity shall be limited to the amount of such excess received by it. To the extent the Grantor possesses any interest in any amount which would otherwise be payable to the Holders under this Paragraph, to the full extent permissible by law, the Grantor hereby assigns its interest in such amount to said mortgage holder for payment to the Holders.

**18. Notices.** Except for any notice required under applicable law to be given in a different manner, any notice, request or other communication which any party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses first set forth above, or to such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by any of the foregoing methods shall be deemed given upon documented receipt or refusal. The Holders shall use reasonable efforts to send courtesy copies of all notices sent to the Grantor to the Grantor's investor at the address set forth below, provided that any failure to send such a courtesy copy shall not affect the validity of any notice: Bank of America, N.A., 225 Franklin Street, 2<sup>nd</sup> Floor, Boston, MA. 02110, Attention: Daniel E. Devin, Asset Manager for the Tannery.

**19. Successors and Assigns; No Third-Party Beneficiaries.** This Restriction shall be binding upon the Grantor and its successors and assigns, and shall burden the Property as specified herein. This Restriction shall also be binding upon the Holders, and shall inure to the benefit of their successors and assigns, provided that a Holder shall not voluntarily assign its rights hereunder unless: (a) such Holder believes in good faith that it is no longer reasonably capable of performing its duties hereunder, and (b) such assignment shall be to a governmental body or an entity of a similar character and purposes to such Holder which is reasonably capable of performing such duties hereunder. Notwithstanding the delegation of authority by DHCD to MHP for MHP to act as a Holder hereunder, DHCD shall also be a Holder hereunder and may act at any time in its own name to pursue any rights and remedies of a Holder hereunder; provided that as to the Grantor or any third party, any recorded instrument granting any approval or consent or otherwise affecting the Property under the CIPF Program is duly executed by either MHP or DHCD, shall be binding on the other for all purposes.

**20. Severability; Construction.** All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Restriction invalid, unenforceable or not entitled to be recorded, registered or filed under applicable law. If any provision or part hereof shall be affected by such holding, the validity of other provisions of this

Restriction and of the balance of any provision held to be invalid, illegal or unenforceable, in part only, shall in no way be affected thereby, and this Restriction shall be construed as if such invalid, illegal, or unenforceable provision or part hereof had not been contained herein. In the event of any actual or potential inconsistency between the terms of this Restriction and any of the Statutes and/or the Regulations, such terms shall be interpreted, to the extent reasonably possible, so as to reconcile any such inconsistencies. If such provisions cannot reasonably be reconciled, the provisions of the Statutes, the Regulations and this Restriction, in the foregoing order of priority, shall control.

**21. 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.

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

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

**24. 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.

**25. 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.

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

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

Executed under seal as of the date set forth above.

**TANNERY LIMITED PARTNERSHIP**

By: TANNERY GP LLC, its General Partner

By: WDP Manager Corp., its manager

By: *GJW*

*Gilbert J. Winn*

Its: *President*

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

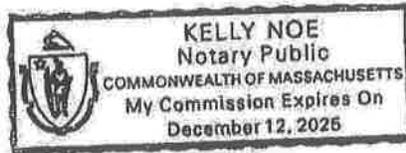
COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss:

On this 12 day of June, 2019, before me, the undersigned notary public, personally appeared Gilbert J. Winn, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as President of WDP manager of Tannery GP LLC, for its stated purpose as the voluntary act of Tannery Limited Partnership. manager

Kelley Noe  
Notary Public

My commission expires:



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**EXHIBIT A : PROPERTY DESCRIPTION**

The land located in Peabody, Essex County, Massachusetts with the buildings thereon, more particularly described 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 2VMI as shown on an ANR Plan entitled "Subdivision Plan of Land located in Peabody, Mass" prepared by Eastern Land Survey Associates, Inc., Christopher R. Mello dated February 28, 2019 and approved April 18, 2019 and recorded with the Essex South District Registry of Deeds in Plan Book 471, as Plan 52.

Lot 2VMI contains 146,652 $\pm$  SF or 3.367 $\pm$  according to said plan.

Parcel 3:

Lot 3A and Lot 3B on Plan entitled "Subdivision of Land Located in Peabody, Mass., Prepared by Eastern Land Survey Associates, Inc., dated May 12, 2008, which plan is recorded with Essex South District Registry of Deeds in Plan Book 418 as Plan 13.

Lot 3A contains 33,406  $\pm$  square feet according to said plan.

Lot 3B contains 37,044  $\pm$  square feet according to said plan.

Parcel 3 has the right rights to use the 20' Way as reserved in Deed from Boston and Maine Corporation to Paul Gallagher & Company, Inc, dated December 30, 1955, recorded in Book 4240, page 36.

Parcel 4:

Lot A containing 36,660 square feet as shown on a certain plan entitled "Subdivision 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 July 23, 2003", which plan is recorded at the Essex South District Registry of Deeds in Plan Book 371 as Plan 1.

Parcel 5:

Parcel C-1 containing 1,985± square feet 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 May 12, 2008", which plan is recorded at the Essex South District Registry of Deeds in Plan Book 418 as Plan 13.

Parcel 6:

Parcel C-2B containing 11,974± square feet 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 May 12, 2008", which plan is recorded at the Essex South District Registry of Deeds in Plan Book 418 as Plan 13.

**EXHIBIT B : PROJECTED INITIAL RENT SCHEDULE**

(Rents assume that the Grantor pays all utilities. An allowance for any utilities paid by tenants must be deducted from these rents. Utility allowances are available from the local housing authority.)

UNIT TYPE	EXTREMELY LOW INCOME	INCOME LEVEL				MODERATE INCOME	HIGH MODERATE INCOME
		VERY LOW INCOME	LOW INCOME	Moderate Income	High Moderate Income		
SR0	\$622.00	\$1,037.00	\$1,245.00	\$1,561.00	\$2,282.00		
STUDI OS	\$622.00	\$1,037.00	\$1,245.00	\$1,561.00	\$2,282.00		
1-BR	\$666.00	\$1,111.00	\$1,333.00	\$1,673.00	\$2,444.00		
2-BR	\$800.00	\$1,333.00	\$1,600.00	\$2,007.00	\$2,934.00		
3-BR	\$924.00	\$1,540.00	\$1,848.00	\$2,319.00	\$3,389.00		
4-BR	\$1,031.00	\$1,718.00	\$2,062.00	\$2,587.00	\$3,781.00		

**EXHIBIT C: INITIAL AFFORDABILITY MATRIX**

NUMBER/SIZE OF UNITS REQUIRED BY	TERM	INCOME CATEGORY					EXTREMELY LOW INCOME (30% AMI)
		HIGH MODERATE INCOME (100% AMI)	MODERATE INCOME (80% AMI)	LOW INCOME (60% AMI)	VERY LOW INCOME (50% AMI)		
CIPE	43 years	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 3 Studio 30 1-BR 2 2-BR 3-BR 4-BR	SRO 12 Studio 137 1-BR 16 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 5 Studio 28 1-BR 2 2-BR 3-BR 4-BR
Affordable Housing/Inclusionary Zoning	43 years	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 3 Studio 30 1-BR 2 2-BR 3-BR 4-BR	SRO 12 Studio 137 1-BR 16 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 5 Studio 28 1-BR 2 2-BR 3-BR 4-BR
PEABODY CPA	43 years	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 3 Studio 30 1-BR 2 2-BR 3-BR 4-BR	SRO 12 Studio 137 1-BR 16 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO Studio 1-BR 2-BR 3-BR 4-BR	SRO 5 Studio 28 1-BR 2 2-BR 3-BR 4-BR
COMPOSITE		SRO STUDIO 1-BR 2-BR 3-BR 4-BR	SRO 3 STUDIO 30 1-BR 2 2-BR 3-BR 4-BR	SRO 12 STUDIO 137 1-BR 16 2-BR 3-BR 4-BR	SRO STUDIO 1-BR 2-BR 3-BR 4-BR	SRO STUDIO 1-BR 2-BR 3-BR 4-BR	SRO 5 STUDIO 28 1-BR 2 2-BR 3-BR 4-BR

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## EXHIBIT D: ADDITIONAL DEFINITIONS

Following are additional definitions used in this Affordable Housing Restriction:

"Area" shall mean Boston-Cambridge-Quincy, MA-NH HMFA.

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

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

"CIPF Program" shall mean the Capital Improvement and Preservation Fund loan program, established for the purpose of facilitating the preservation of affordable housing, under which DHCD contracts to make funds available through MHP and other financial intermediaries, for such financial intermediaries to loan to sponsors of affordable housing for Low Income and Very Low Income Families, subject to and in accordance with the provisions of the CIPF Statute.

"CIPF Regulations" shall mean the regulations relating to the CIPF Program promulgated by DHCD at 760 Code of Massachusetts Regulations, Section 18.00 et. seq., as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CIPF Statute" shall mean Chapter 257 of the Acts of 1998 (budget line item 7004-9980) and continued by Chapter 244 of the Acts of 2002 (budget line item 7004-7015), as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CPA Guidelines" shall mean the ordinance of the Peabody accepting the provisions of Sections 3 through 7 of the CPA Statute, together with any guidelines issued by the City and the Peabody Community Preservation Committee regarding the CPA Program, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CPA Program" shall mean the Community Preservation Fund loan program established by the City under the CPA Statute under which the City makes loans available to sponsors of certain types of affordable housing and for other purposes authorized by the CPA Statute.

"CPA Statute" shall mean Chapter 44B of the Massachusetts General Laws, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"CPA Regulations" shall mean the informational Guidance Release 01-207 (September 2001), Informational Guidance Release 00-209 (December 2000) and any other bulletins, opinions, guidance or regulations relating to the CPA Statute issued or promulgated by the Commissioner of Revenue of The Commonwealth of Massachusetts, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

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

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

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

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

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

**"Guidelines"** shall mean the CIPF Guidelines and the CPA Guidelines.

**"High Moderate Income Family"** shall mean a Family whose Household Income is less than or equal to one-hundred percent (100%) of the Family-size Adjusted AMI.

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

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

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

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

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

**"Loan Documents"** shall mean collectively, the documents evidencing and securing the Loan.

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

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

"Over-income Rent" shall mean, for a particular over-income Family, a monthly rent equal to the lesser of (x) the maximum amount payable by the Family under the laws of the municipality in which the Property is located or of The Commonwealth of Massachusetts, (y) one-twelfth of thirty percent (30%) of the Family's Household Income as recertified annually or (z) the comparable market rent for the Family's Unit, but in no event lower than the rent such Family was paying prior to becoming an over-income Family.

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

"Permitted Uses" shall mean use of the Improvements for the number of rental Units indicated on the first page hereof, including the number of Restricted Units indicated on the first page hereof. Such Permitted Uses shall include activities and/or services of a nature to benefit the Residents of the Restricted Units.

"Programs" shall mean the CIPF Program and the CPA Program.

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

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

"Regulations" shall mean the CIPF Regulations.

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

"Restricted Unit" shall mean a Unit required by the terms hereof to be rented to a Moderate Income Family, a Low Income Family or an Extremely Low Income Family.

"Sponsor" shall mean WinnDevelopment Company L.P.

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

"Statutes" shall mean the CIPF Statute and the CPA Statute.

"Studio Unit" shall mean a single-room (zero bedroom) Unit that contains a complete kitchen and bathroom.

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

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



## 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 statues 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.

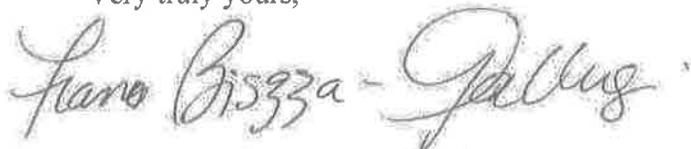
The City of Peabody has preserved and added over 420 units of affordable housing as outlined above and has increased our percentages from 8.1% to 10% over the past 18 months.

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