



DISBURSING AGENT AGREEMENT

This Disbursing Agent Agreement (the "Agreement") is dated as of October 15, 2009 and is entered into between COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE CORPORATION, having an address of One Center Plaza, Suite 350, Boston, Massachusetts 02108 ("Disbursing Agent") and THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT under the Affordable Housing Trust Fund Statute, MGL c.121D, by Massachusetts Housing Finance Agency, its Administrator, having an address of One Beacon Street, Boston, Massachusetts 02108 (the "Lender").

BACKGROUND

- A. Franconia Apartments LLC, a Massachusetts limited liability company having a mailing address of c/o Springfield Housing Action Corporation, 31 East Street, Springfield, Massachusetts 02100, (the "Borrower") holds or will acquire a leasehold interest in the land, with any improvements now or hereafter located thereon, known as 365 Annum Street located in Springfield, Suffolk County, Massachusetts (the "Property") and intends to construct a 36-unit rental housing development at the Property (the "Project");
- B. The Disbursing Agent is providing a loan to the Borrower in the original principal amount of \$1,440,000.00 (the "Disbursing Agent's Loan") and Lender is providing an AHT Program loan to the Borrower in the original principal amount of \$1,000,000.00 (the "Lender's Loan") pursuant to a joint loan to Borrower with certain other lenders to help finance the Project; and
- C. The parties hereto have engaged Anthony Casendino as the construction inspector (the "Inspector") to provide cost analysis and construction inspection services pursuant to an Inspection Agreement dated of even or near date herewith; and
- D. In order to facilitate the disbursement of the Lender's Loan to the Borrower, the Lender has requested and agreed that the Disbursing Agent shall act as disbursing agent with respect to the Lender's Loan.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the mutual promises herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Establishment of Account.

- (a) On the date of the initial funding of the Lender's Loan, the Lender shall deliver to the Disbursing Agent by wire transfer the entire principal amount of the Lender's Loan. The Disbursing Agent shall hold such funds in a disbursement account established for the purpose of disbursing the Lender's Loan proceeds (the "Account"). It is expressly agreed that the Disbursing Agent may co-mingle in such Account funds from the Lender's Loan for the Project and funds from any existing or future loan from the Lender for any other projects for which the Lender and CEDAC are lenders. The Account shall not be a so-called IOLTA account.
- (b) The Disbursing Agent will provide the Lender with monthly status reports on the Account activity, which shall include a summary of the project(s) funded, original balance, balance disbursed, and balance of funds remaining. At the request of the Lender, the Disbursing Agent agrees to provide additional information and reports regarding the use of the Lender's Loan proceeds and status of the Project, which shall be of a reasonable scope and not unduly burdensome to the Disbursing Agent.

2. Disbursements.

- (a) Subject to the terms and provisions of this Agreement, the Disbursing Agent shall from time to time make disbursements from the Account to or for the benefit of the Borrower (each, a "Disbursement"). The timing and amount of each Disbursement shall conform generally with an estimated disbursement schedule approved by the Disbursing Agent and the Lender attached hereto as Exhibit A (the "Disbursement Schedule"). The parties acknowledge and agree that such schedule may be revised from time to time by mutual consent of the Lender and the Disbursing Agent. Further, each Disbursement may vary from such schedule, both as to time and amount. All Disbursements are to be made at the principal office of the Disbursing Agent, or at such place as the Disbursing Agent may designate by written notice.
- (b) Each Disbursement shall be made on the basis of a requisition submitted by the Borrower to the Disbursing Agent on AIA form G702 and 703 or on the then-current AIA form provided for such purpose, or on a requisition form mutually acceptable to the Disbursing Agent and the Lender. Any requisition for non-construction-related items shall be certified by a duly-authorized officer or trustee of the Borrower (or, if the Borrower is a limited partnership, of the Borrower's general partner or, if the Borrower is a limited liability company, of the Borrower's manager), as applicable, as being an appropriate reimbursement or expenditure within the amounts, categories and specific line items reflected on the Disbursement Schedule.
- (c) With respect to requisitioned amounts for construction-related items, the Disbursing Agent shall not make any Disbursement until it has obtained the Inspector's (and, if applicable, the Lender's) approval. Promptly after the Inspector's and the Lender's approval of each requisition, the Disbursing Agent shall order or require the Borrower to arrange for a title rundown. The Disbursing Agent shall not make a Disbursement unless and until it has received confirmation from the attorney responsible for the title rundown that (i) there are no new matters of record since the last advance that would or could adversely affect the

security and/or priority of the Lender's Loan, and (ii) an endorsement to that effect shall be issued for the lender's policy insuring the Lender's Loan.

- (d) The Disbursing Agent may, in its sole discretion, require the written approval of the Lender for each Disbursement, but is under no obligation to do so unless the Lender has so directed the Disbursing Agent in writing. The making of any Disbursement or part thereof shall not be deemed an approval or acceptance by the Disbursing Agent of the work theretofore done, and the Disbursing Agent shall have no liability for any error, negligence or misconduct of the Inspector, unless the Disbursing Agent had actual knowledge of the same.
- (e) Except as provided below, no Disbursement shall be made if at the time of such Disbursement, the Disbursing Agent has actual knowledge (which may include written notice from the Lender) of (x) any default under the Lender's Loan or under any other loan made for the purpose of financing the Project that remains uncured after the lapse of any applicable notice, grace and/or cure period (each, an "Event of Default") or (y) the occurrence of any event and/or the continuing existence of any facts or circumstances which, with the giving of notice, the lapse of time or both would constitute an Event of Default under the Lender's Loan or under any other loan made for the purpose of financing the Project (each, an "Event"). The Lender shall have the right, but not the obligation, to allow a Disbursement from the Lender's Loan to be made notwithstanding any Event of Default or any Event, without affecting its rights and remedies vis-à-vis the Borrower with respect to the same. The Disbursing Agent shall not, however, make a Disbursement of proceeds from the Lender's Loan after its actual knowledge of an Event of Default or an Event, unless the Disbursing Agent is so instructed by the Lender.
- (f) In making Disbursements to the Borrower, the Disbursing Agent's only obligation shall be to make Disbursements in conformity with the terms of this Agreement and the Disbursing Agent shall not be under any obligation to make reference to, observe, verify, perform, follow or act in accordance with any of the terms, conditions, covenants or agreements contained in any document relating to the Lender's Loan. Notwithstanding the foregoing, the Disbursing Agent shall exercise the same level of care in fulfilling its duties hereunder as it would in administering the Disbursing Agent's Loan.

3. Exculpation of Disbursement Agent. Neither the Disbursing Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct. In connection with any action taken or omitted to be taken hereunder or in connection therewith, the Disbursing Agent shall not be responsible to the Borrower, the Lender or any other party for (i) any recitals, statements, terms, conditions, warranties or representations contained in any document relating to the Lender's Loan; (ii) the due execution, genuineness, validity, enforceability or effectiveness of any document relating to the Lender's Loan or (iii) the description or value of or title to the Project or any other collateral, or for the creditworthiness of the Borrower; and the Disbursing Agent shall be entitled to rely on any paper or document believed by it to be genuine and correct and to have been executed or delivered by the proper person or party.

4. Termination of Agency.

- (a) The Lender shall have the right to remove the Disbursing Agent as its agent at any time by giving at least five (5) business days' written notice thereof to the Disbursing Agent specifying the effective date of such removal. Said notice shall designate a successor agent to act as the disbursing agent with respect to the balance of the Lender's Loan proceeds, or otherwise designate the manner in which the balance of the Lender's Loan proceeds in the Account shall be distributed. Upon the effective date of such removal, the Disbursing Agent shall deliver all Lender's Loan proceeds then held by it hereunder to the successor disbursing agent or other designee specified by the Lender in said written notice, or, if no such successor is identified, to the Lender, whereupon this Agreement and all of the Disbursing Agent's obligations hereunder shall automatically cease and terminate and the Disbursing Agent shall automatically be released from any obligations or liability in connection therewith, except for its own gross negligence or willful misconduct.
- (b) The Disbursing Agent shall have the right to cease functioning as the Disbursing Agent at any time by giving at least twenty (20) business days' written notice thereof to the Lender specifying the effective date of such termination. Upon the effective date of such termination, the Disbursing Agent shall deliver all Lender's Loan proceeds then held by it hereunder to the Lender or to any successor disbursing agent or other designee specified by the Lender in a written notice delivered to the Disbursing Agent before the end of such twenty day period, whereupon this Agreement and all of the Disbursing Agent's obligations hereunder shall automatically cease and terminate and the Disbursing Agent shall automatically be released from any obligations or liability in connection therewith except for its own gross negligence or willful misconduct.

5. Notices. Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by recognized overnight courier, receipt confirmed or mailed by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Either party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, three (3) days after the day on which mailed or, if sent by overnight courier, on the day after delivered to such courier.

6. Fees. The Disbursing Agent agrees to act hereunder at no charge to the Lender. The Disbursing Agent may charge the Borrower a commercially reasonable fee for such services and its administrative costs in an amount mutually agreed upon by the Disbursing Agent and the Lender. The fee for the Disbursing Agent's services hereunder are set forth on Exhibit B attached hereto.

7. Interest Earnings. The Disbursing Agent shall account for all interest earnings on the funds on deposit in the Account while such funds are in Disbursing Agent's possession. All interest earned on funds while on deposit in the Account shall be paid to the Disbursing Agent to cover its administrative costs in connection with its obligations hereunder.

8. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto; shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts; and may be executed in any number of counterparts, all of which together shall constitute one and the same instrument..

9. Joinder. Borrower joins in this Agreement in order to consent to the foregoing provisions. Borrower acknowledges that it is not the intended beneficiary of any of the provisions of this Agreement. To the extent the provisions of this Agreement conflict with the provisions of any of the Lender's or the Disbursing Agent's respective loan documents, then, as between that lender and the Borrower, the provisions of the loan documents shall govern.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as an instrument under seal as of the date set forth above.

DISBURSING AGENT:

COMMUNITY ECONOMIC DEVELOPMENT ASSISTANCE
CORPORATION

By:

Name:

Title:

LENDER:

THE COMMONWEALTH OF MASSACHUSETTS, ACTING
BY AND THROUGH THE DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT UNDER THE
AFFORDABLE HOUSING TRUST FUND STATUTE, MGL
C.121D

By: MASSACHUSETTS HOUSING FINANCE AGENCY,
its Administrator

By:

Name:

Title:

FRANCONIA APARTMENTS LLC

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

By: _____

Elsie Borden

Its: President

EXHIBIT A: DISBURSEMENT SCHEDULE

EXHIBIT B: DISBURSING AGENT'S FEE

None.