

MEMORANDUM OF UNDERSTANDING RELATING TO 3% PRIORITY UNITS

This Memorandum of Understanding Relating to 3% Priority Units (this “MOU”) is being entered into as of November 1, 2019, effective as of September 1, 2020 (the “Effective Date”) by and among the **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY**, a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts established under Chapter 23G of Massachusetts General Laws (“MassDevelopment”), the **MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD**, a Massachusetts public instrumentality and body politic and corporate (“MHP”), the **COMMONWEALTH OF MASSACHUSETTS, acting by and through the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT** (“DHCD”), and the **MASSACHUSETTS HOUSING FINANCE AGENCY**, a body politic and corporate organized and operated under the provisions of Chapter 708 of the Acts of 1966 of the Commonwealth of Massachusetts, as amended (“MassHousing” and together with MassDevelopment, MHP and DHCD, the “Housing Parties”); and the following agencies of the Commonwealth of Massachusetts: the EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (“EOHHS”); the DEPARTMENT OF MENTAL HEALTH (“DMH”); the DEPARTMENT OF DEVELOPMENTAL SERVICES (“DDS”); the MASSACHUSETTS REHABILITATION COMMISSION (“MRC”), and the EXECUTIVE OFFICE OF ELDER AFFAIRS (“EOEA”). EOHHS, DMH, DDS, MRC and EOEA shall sometimes collectively be referred to herein as the “EOHHS Parties” and, collectively with the Housing Parties, the “Parties” and each, a “Party”.

This MOU amends and restates in its entirety that certain Memorandum of Understanding among the Executive Office of Health and Human Services and Department of Mental Health and Department of Mental Retardation and Housing Finance Agency on Set-Aside Units for Department of Mental Health and Department of Mental Retardation, dated as of 1990, and amended in December 1996, as clarified pursuant to Clarification of MHFA/DMH/DMR Set-Aside Agreement dated as of April 24, 1997 (as amended, the “Original MOU”). The Original MOU was entered into for the purpose of requiring owners of properties financed by MassHousing under specific programs to “set-aside” 3% of all low and moderate-income units so as to provide a priority for consumers referred by DMH and DDS (successor to the Department of Mental Retardation) (such units referred to herein as “Existing 3% Priority Units”). This restatement of the MOU is intended to expand both the entities that will require a priority for 3% (the “3% Priority”) of the low and moderate income units (referred to herein as the “3% Priority Units”) and the entities that may refer consumers to the 3% Priority Units, all as set forth herein, and to identify the developments and units included under this MOU.

RECITALS

- A. This MOU outlines the responsibilities of MassDevelopment, MHP, DHCD, MassHousing, EOHHS, DMH, DDS, MRC, and EOE, as applicable, with respect to the 3% Priority Units at multi-family developments of the Housing Parties as described below.
- B. The goal of this MOU is to foster the effective planning and arrangement of the provision of appropriate accommodations and supportive services as may be available and necessary to ensure successful integration of referred consumers into the Housing Parties' multi-family developments.
- C. This MOU supports the Commonwealth's Olmstead planning efforts to help people with disabilities and elders live in the least restrictive setting possible. Through this MOU, the Commonwealth is providing priority access for people with disabilities and elders to access community-based housing coupled with the services needed for them to be successful members of the community. This MOU represents an opportunity to create a unique interagency collaboration across the housing agencies of the Commonwealth and the agencies of EOHHS.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I 3% Priority

1.1 Existing Agreements. Certain multi-family borrowers that own developments in MassHousing's multi-family portfolio have written agreements that were executed as part of their loan closing transaction (the "Existing Agreements"). MassHousing agrees that these Existing Agreements will continue to create priority access to consumers referred by DMH and DDS (formerly known as the Department of Mental Retardation). The Existing Agreements apply to the Existing 3% Priority Units as specified in the Existing Agreements.

1.2 3% Priority Agreements. The Housing Parties agree, as of the Effective Date hereof, to require certain borrowers to execute agreements, in a form required by the Housing Parties ("3% Priority Agreements") for applicable developments as set forth in Section 2.1 hereof. The 3% Priority Agreements shall provide a priority for consumers referred by the EOHHS Parties for a least 3% (rounded up if .5 or over) of all subsidized units as shall be specified therein. The Housing Parties agree that, to the extent available and appropriate, owners of developments subject to 3% Priority Agreements will be encouraged to use HUD Section 811 project rental assistance (PRA). MassHousing agrees that it will permit borrowers of developments with an elderly restriction that are subject to Existing Agreements to participate in

the 3% Priority and to execute 3% Priority Agreements in connection therewith.; such 3% Priority Agreements will replace the Existing Agreements with respect to those developments.

1.3 Referrals for 3% Priority Agreements. The Housing Parties agree that the 3% Priority Agreements shall, as of the Effective Date, prioritize access to 3% Priority Units to consumers referred by the EOHHS Parties in accordance with this MOU.

ARTICLE II Applicability of 3% Priority

2.1 Developments Requiring 3% Priority Units. 3% Priority Agreements shall be required for all rental developments funded or overseen by one or more of the Housing Parties, unless otherwise excluded under Section 2.2 herein, with (a) at least 17 affordable units restricted to households earning up to eighty percent (80%) area median income (AMI) and (b) a federal capital subsidy administered by one of the Housing Parties, a state capital subsidy, utilization of state or federal low-income housing tax credits or a project-based rental assistance contract. Units subsidized by the Community-Based Housing (CBH) or Facilities Consolidation Fund (FCF) programs or other similar programs or units already serving clients of the EOHHS Parties will be counted towards the requirement for 3% Priority Units. The receipt of a loan from a Housing Party, by itself, shall not be considered a state capital subsidy, unless the loan and the development meet the requirements set forth above, or if the source of the loan is tax-exempt bond funds or state capital dollars; funds of MassDevelopment, MHP or MassHousing from sources other than Commonwealth funds shall not be considered state capital dollars.

2.2 Developments/Units Excluded from Including 3% Priority Units. Certain developments and units excluded from having 3% Priority Units shall include the following: (a) all homeownership units, (b) all assisted living and/or skilled nursing units, (c) developments in the DMH/DDS Options for Independence Program or Elder Choice Program, (d) all units in group homes, (e) all developments for whom a Housing Party is the Section 8 contract administrator, but which the Housing Party did not finance, (f) all developments with 16 or fewer affordable units at 80% AMI or less, (g) units in a rental development restricted for occupancy by households with incomes above 80% of AMI and (h) “workforce units” as defined by the applicable Housing Party, provided that units affordable to households with incomes at or below 80% AMI in a workforce project will be subject to the 3% priority if they are supported by one of the following: a federal capital subsidy administered by a Housing Party, a state capital subsidy, utilization of low-income housing tax credits or a project-based rental assistance contract. Additionally, 40B developments, 40R developments, Local Initiative Program (LIP) comprehensive permit developments and Local Action Units (LAUs) that do not have federal or DHCD capital subsidies, do not utilize low-income housing tax credits or do not have project-based rental assistance shall be excluded from the 3% Priority.

2.3 Determination of Whether 3% Priority Applies. (a) Each of the Housing Parties shall decide, collectively, if appropriate, whether or not to require 3% Priority Agreements for

developments or units in any of their respective newly created housing programs. Such decisions shall be in the applicable Housing Party's sole and absolute discretion. However, to the extent that such Housing Party requires Borrowers to execute 3% Priority Agreements, the EOHHS Parties shall participate and comply with the terms of this MOU, unless otherwise determined pursuant to 2.3(b) hereof.

(b) The EOHHS Parties each separately reserve the right to determine whether they would like to participate with respect to developments or units in any newly created housing or subsidy program which is covered by this MOU. Each EOHHS Party shall be included in the 3% Priority relating to developments or units in any newly created housing or subsidy program unless a party hereto gives the applicable Housing Party or EOHHS Party written notice of its intention not to participate with respect to such newly created housing or subsidy programs.

Article III Operation of 3% Priority

3.1 Operation of 3% Priority. The parties hereto agree that the processes related to monitoring vacancies, outreach, and referrals for the 3% Priority Units are incorporated by reference in a separate document entitled "Interagency Agreement for the Operations of 3% Priority Units." Such document may be amended and updated as agreed upon by the 3%PPSC (as defined below) as set forth in Section 3.2(a).

3.2 Steering Committee. EOHHS, DMH, DDS, MRC, EOE, MHP, MassDevelopment, DHCD and MassHousing will each designate a representative for a steering committee that shall be known as the 3% Priority Program Steering Committee (the "3%PPSC"). Such entities acknowledge and agree that the 3%PPSC shall have the authority and responsibility for the following:

(a) The coordination of responsibilities pursuant to this MOU, including the periodic updating of the Interagency Agreement for the Operations of 3% Priority Units; and

(b) Any problem resolution relating to 3% Priority Units.

3.3 MassHousing as Point of Contact. MassHousing has agreed, for the period from the effective date hereof through March 1, 2023 (2.5 years) to act as the point of contact between management companies and the EOHHS Parties for all developments with 3% Priority Agreements to facilitate referrals for vacant units. On or before September 1, 2022 (6 months before end of period), the Parties shall evaluate the system to determine if there are more efficient or effective ways of administering the 3% Priority. As part of that analysis, MassHousing shall have the opportunity to determine the costs of its administration; thereafter, the Parties shall analyze and jointly determine how the costs of administering the 3% Priority should be allocated across the Parties.

3.4 Local Contacts. DMH, DDS, MRC and EOEА will each designate a single contact person in each area or region to handle problems locally, if available. If a local contact is not available, an agency contact will suffice.

3.5 Standards for 3% Priority Units. (a) This MOU concerns individuals referred by DMH, DDS, MRC, and EOEА for tenancy in 3% Priority Units who may need continuing or periodic services or assistance from the referring agency.

(b) DMH, DDS, MRC, and EOEА agree to offer their respective applicants/tenants of the 3% Priority Units services and supports as necessary to enable them to live with reasonable success in integrated housing and encourage them to accept such services and supports. Nothing in this MOU shall be considered to supersede existing obligations or place further obligations on the Housing Parties or any other party to this MOU relative to the units for which they have financial or regulatory responsibility. The primary day to day relationship is between the Owners/Management Agents and the tenant, with the case manager or designated service provider for each tenant available to facilitate this relationship, including providing assistance in problem resolution when necessary.

(c) Applicants referred by the EOHHS Entities will be expected to meet the same eligibility standards as other applicants for the available unit, with reasonable accommodations provided as negotiated, including but not limited to: income eligibility; the ability to pay rent, maintain the apartment and live reasonably with other tenants; and otherwise comply with lease provisions.

ARTICLE IV Miscellaneous

4.1 No Third-Party Beneficiary. This MOU is created for the benefit of MassDevelopment, MHP, DHCD, MassHousing, DMH, DDS, MRC, EOEА, and EOHHS. No third-party beneficiaries are created or intended to be created by this MOU.

4.2 Termination of 3% Priority. The Housing Parties reserve the right to suspend or terminate the participation of DMH, DDS, MRC, and EOEА, as applicable, with respect to an individual development if, in its determination, any of DMH, DDS, MRC, and EOEА has failed to meet its responsibilities under the terms of this MOU. Prior to termination of a party's participation with respect to a particular development, the applicable Housing Party shall give the applicable EOHHS Party written notification and a reasonable opportunity to cure.

4.3 Rights of Individuals. This MOU does not cover individuals who apply for or occupy the Housing Parties' units other than 3% Priority Units, by way of the property manager's standard tenant selection process. Nothing in this MOU shall be construed to affect the right of any individual to apply for and obtain a unit through said process.

4.4 Additional Agreements. Nothing contained herein will preclude Owners/Management Agents or any party hereto from entering into:

(a) Local agreements at each development outlining procedures, responsibilities, individual and systemic problem resolution plans, contact persons for that area or region, and mutually agreed upon procedures to monitor that all parties involved herein are abiding by applicable reasonable accommodation plans.

(b) Reasonable accommodation agreements, where reasonable accommodations are necessary, among the Owner/Management Agent, the tenant, and DMH/DDS/MRC/EOEA as appropriate. These agreements must be written and signed by all parties.

4.5 Notice. Any notice or other communication in connection with this MOU shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, addressed as follows:

If to MassDevelopment: Massachusetts Development Finance Agency
99 High Street
Boston, MA 02110
Attn: General Counsel

If to MHP: Massachusetts Housing Partnership Fund Board
160 Federal Street
Boston, MA 02110
Attn: General Counsel

If to DHCD: Commonwealth of Massachusetts, acting by
And through the Department of Housing And
Community Development
100 Cambridge Street
Boston, MA 02114
Attn: Chief Counsel

If to MassHousing: Massachusetts Housing Finance Agency
 One Beacon Street
 Boston, MA 02108
 Attention: General Counsel

If to EOHHS: Executive Office of Health and Human Services
 One Ashburton Place, 11th Floor, Boston, MA 02108
 Attention: General Counsel

If to DMH: Department of Mental Health
 Central Office
 25 Staniford Street
 Boston, MA 02114
 Attention: General Counsel

If to DDS: Department of Developmental Services
 Central Office
 500 Harrison Avenue
 Boston, MA 02118
 Attention: General Counsel

If to MRC: Massachusetts Rehabilitation Commission
 600 Washington Street
 Boston, MA 02111
 Attention: General Counsel

If to EOEA: Executive Office of Elder Affairs
 One Ashburton Place, Room 517
 Boston, MA 02108-1618
 Attention: General Counsel

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

A notice shall be deemed to have been given, delivered and received upon the earliest of the following: (i) if sent by certified or registered mail, upon the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

4.6 Counterparts. This MOU may be executed in one or more counterparts, each of which will be deemed to be an original copy, and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this MOU and its signature pages by email transmission shall constitute effective execution and delivery of this MOU. Signatures of the parties hereto transmitted by email shall be deemed to be their original signatures for all purposes.

4.7 Term. The term of this MOU shall be for an initial period of five (5) years from the date hereof (the “Initial Term”). The Initial Term shall be automatically renewed in successive five (5) year increments unless earlier terminated as provided herein and the Initial Term plus any and all renewal terms shall constitute the entire term of this MOU.

4.8 Termination. (a) With respect to the EOHHS Parties, any EOHHS Party may terminate or suspend its participation in this MOU by giving written notice to all of the other Parties in accordance with Section 4.5 hereof not less than thirty (30) days from the effective date of such termination. Notwithstanding any termination with respect to an EOHHS Party, this MOU shall remain in full force and effect with respect to the remaining parties and referrals shall continue with respect to the remaining EOHHS Parties.

(b) With respect to the Housing Parties, a Housing Party may only terminate its participation in this MOU by (1) first obtaining the prior written approval of DHCD, to be given at DHCD’s sole and absolute discretion, of such termination and (ii) second, by subsequently giving written notice, including evidence of the consent of DHCD, to all of the other Parties in accordance with Section 4.5 hereof not less than thirty (30) days from the effective date of such termination.

Notwithstanding any termination with respect to a Housing Party, this MOU shall remain in full force and effect with respect to the remaining parties; provided, however, that once one of the Housing Parties terminates its participation with DHCD consent, any of the remaining Housing Parties may also terminate its participation without the need to obtain DHCD consent, but with the requirement to send thirty (30) days written notice as provided herein.

Upon termination of the participation of any of the Housing Parties, the 3% Priority Agreements executed by borrowers with such Housing Party shall terminate.

(c) Upon any termination in full of this MOU, any then-existing 3% Priority Agreements shall terminate simultaneously; provided that any tenant living in a 3% Priority unit shall be allowed to remain in such unit, regardless of termination of the 3% Priority, so long as all requirements of tenancy are met.

4.9 EOHHS as a Party. EOHHS, through its agencies, is a party to this MOU and is responsible for strategic oversight and policy development.

(Signature Page of DMH to 3% Priority MOU)

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

DMH:

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH

By: 
Name: Joan Mikula
Title: Commissioner

(Signature Page of DDS to 3% Priority MOU)

DDS:

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF DEVELOPMENTAL SERVICES

By: Jane Ryder
Name: Jane Ryder
Title: Commissioner

(Signature Page of EOE to 3% Priority MOU)

EOEA:

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ELDER AFFAIRS

By: _____

Name: Elizabeth Chen

Title: Secretary



(Signature Page of EOHHS to 3% Priority MOU)

EOHHS:

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES

By: Marylou Sudders

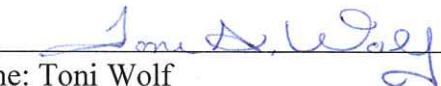
Name: Marylou Sudders

Title: Secretary

(Signature Page of MRC to 3% Priority MOU)

MRC:

MASSACHUSETTS REHABILITATION
COMMISSION

By: 
Name: Toni Wolf
Title: Commissioner

(Signature Page of MassDevelopment to 3% Priority MOU)

MassDevelopment:

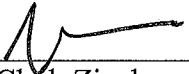
MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

By: 
Name: Lauren A. Liss
Title: President and CEO

(Signature Page of MHP to 3% Priority MOU)

MHP:

MASSACHUSETTS HOUSING PARTNERSHIP
FUND BOARD

By:  _____
Name: Clark Ziegler
Title: Executive Director

(Signature Page of DHCD to 3% Priority MOU)

DHCD:

THE COMMONWEALTH OF MASSACHUSETTS,
ACTING BY AND THROUGH THE DEPARTMENT
OF HOUSING AND COMMUNITY DEVELOPMENT

By: 
Name: Janelle Chan
Title: Underscretary

(Signature Page of MassHousing to 3% Priority MOU)

MassHousing:

MASSACHUSETTS HOUSING FINANCE AGENCY

By: 
Name: Chrystal Kornegay
Title: Executive Director