



LENDER ADVISOR AGREEMENT

This Lender Advisor Agreement (this "Agreement"), is made and entered into as of the 15th day of October, 2009, among Construction Watchdogs, Inc., with an address at 300 Dartmouth Street, Carver, Massachusetts, 02111, (the "Advisor"), MHIC, LLC with an address at 70 Federal Street, Boston, Massachusetts 02110, (the "Construction Lender"), Massachusetts Housing Partnership Fund Board, with an address at 160 Federal Street, Boston, Massachusetts 02110 (the "Permanent Lender"), Massachusetts Housing Investment Corporation with an address at 70 Federal Street, Boston, Massachusetts 02110, Attention: Richard Becker, Director of Asset Management (the "Investor"), The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development (the "Agent"), acting on its own behalf and as agent for the following lenders: The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator Massachusetts Housing Finance Agency, the Community Economic Development Assistance Corporation, and the City of Springfield, Massachusetts, acting by and through its Office of Housing and Neighborhood Development (collectively with the Agent, the Permanent Lender, the Investor and the Construction Lender, the "Financing Parties"), and Franconia Apartments LLC with an address at c/o Springfield Housing Action Corporation, 31 East Street, Springfield, Massachusetts 02100 (the "Borrower").

BACKGROUND

- A. The Construction Lender has issued a commitment to provide construction and/or permanent financing for a project known as Franconia Apartments located at 365 Annum Street, Springfield, Massachusetts (the "Project");
- B. The Permanent Lender has committed to make a permanent first mortgage loan to the Borrower;
- C. The Investor has committed to make an equity investment in Borrower;
- D. The other Financing Parties have also issued commitments to provide construction and/or permanent financing for the Project;
- E. The Financing Parties are desirous of receiving a construction cost review and progress reports as to the status and quality of the construction by the Borrower, its contractors, agents and employees on the Project; and
- F. The Advisor offers cost review and construction observation services.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements as hereinafter set forth, it is mutually covenanted and agreed by and among the parties as follows:

1. Designated Representatives.

The Advisor agrees that _____ shall be the contact person for the Advisor, who will have primary responsibility for carrying out the obligations of the Advisor hereunder. The Advisor agrees to notify the Financing Parties of any proposed change in the contact person, it being agreed that any substitute contact person must be reasonably acceptable to the Financing Parties. If the Financing Parties determine that the designated contact person is not satisfactory, they will notify the Advisor and the Advisor shall designate an alternate contact person reasonably acceptable to the Financing Parties.

The Borrower shall designate in writing a person to act as the Borrower's representative with respect to the work to be performed under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define the Borrower's policies and decisions with respect to materials, equipment, elements and systems pertinent to the Advisor's performance of the Services hereunder.

The Construction Lender and the Agent shall each designate in writing a person to act as the primary contact for, respectively, the Construction Lender and the Agent with respect to the Advisor's performance of the Services hereunder.

2. Services.

The Advisor agrees to perform timely the following cost review, site visit and final certification services (the "Services"):

(a) Initial Project Review.

Prior to closing of the construction financing for the Project, the Advisor will perform a detailed construction cost review for the Project (an "Initial Project Review") which will include the scope of work, including the size of the Project, the unit size, unit mix and density of the Project, and the type of building, amenity package and parking spaces and will render an opinion regarding:

- (1) overall quality of the construction plans and specifications and an opinion as to whether the plans are sufficiently detailed for construction and conform to federal and state laws and codes applicable to the Project, including but not limited to building, health, fire, safety and handicapped access codes;
- (2) whether the level and quality of the construction/rehabilitation as detailed in the plans and specifications is adequate to maintain the use of the Project as affordable rental housing over the term of the Permanent Lender's loan;
- (3) the general adequacy of the proposed construction documents and the level of quality of the specified materials, equipment, building components and systems;
- (4) availability of sewer, water, electric, telephone and gas utilities to the Project as represented by the Borrower, the Project architect or the Project surveyor;
- (5) review of all permits provided by the Borrower;

- (6) general compliance of the plans and specifications with the recommendations set forth in the geotechnical and structural reports, if any; and
- (7) general adequacy of the construction contract in its entirety, including all qualifications, assumptions and exhibits.

Additionally, the Advisor will include with the analysis any additional comments or explanations that would reasonably be deemed relevant to the Initial Project Review.

(b) Site Visits.

The Advisor will visit the Project site monthly and view the construction work at the Project in connection with its review of each Requisition (as defined below), and will make such additional progress review of the construction work as may be requested by the Financing Parties and agreed to by the Advisor (each, a "Site Visit"). It is anticipated that regular physical Site Visits will occur on the frequency described above, unless the Financing Parties and the Advisor agree that more or less frequent Site Visits are appropriate.

(c) Site Visit Reports.

The Advisor will provide the Financing Parties with a written review after each Site Visit, in a form approved by the Financing Parties, as to the status of the construction at the time of the Site Visit and the workmanship and general adherence to plans and specifications of the Project, as they may appear and be observable at the time of the Site Visit (each, a "Periodic Report"). As part of each Periodic Report, the Advisor will also do the following:

- (1) Review the contractor's estimate of the percentage of overall completion of the Project in accordance with the construction cost breakdown, review the anticipated completion date(s), identify any foreseeable delays, review the contractor's estimate of the cost to complete and comment on the adequacy of the remaining budget;
- (2) assess whether the level of workmanship is above or below average. If the level of workmanship is below average, then the Advisor will comment on the deficiency and track the status of the deficiency in subsequent Periodic Reports;
- (3) take digital photographs of completed work and specific deficiencies;
- (4) estimate the quantity and assess the security of significant materials stored on site, and verify that the Contractor has provided evidence of insurance coverage for stored materials;
- (5) review each proposed change order and comment on the reasonableness of the associated costs and the need for and appropriateness of the proposed changes, and on the likely impact of the proposed change order on the Project budget and schedule;
- (6) review the retainage amount and comment on any inconsistencies with the retainage requirements specified in the construction contract;

(7) advise the Financing Parties of any matters related to the issuance of permits and approvals needed during construction that could affect the completion of the Project.

(d) Requisition Review.

Upon receipt by the Advisor of a request for payment from the contractor (each, a "Requisition", and together, the "Requisitions"), the Advisor will verify that such Requisition is in a form acceptable to the Financing Parties and is consistent with the estimated disbursement schedule attached as Exhibit A (as it may be revised from time to time by agreement of the Financing Parties), and that the following supporting documentation for such Requisition has been supplied: Requisition (AIA Form G702/703 or similar form(s) agreed to by the Borrower and the Financing Parties); monthly updated schedule; change order log (pending and approved); general contractor and subcontractor lien waivers). Upon completing such review, the Advisor will make a Site Visit to review the progress of the Project work to date and to review completion of all work covered by such Requisition.

In connection with each Site Visit and Requisition review undertaken in connection with a Requisition request, the Advisor will include as part of the Periodic Report a written recommendation to the Financing Parties as to whether the Advisor (1) confirms the Project architect's approval of the Requisition, (2) recommends disapproval of all or part of the Requisition (together with a summary of the reasons for such disapproval) or (3) needs additional information to make such recommendation (together with a summary of the additional information needed). The Advisor agrees to use reasonable efforts to complete the Site Visit and Requisition review and provide the Periodic Report with such recommendation to the Financing Parties within five (5) days after receipt of a Requisition. If the Advisor recommends disapproval or needs additional information, the Advisor shall promptly inform the Borrower and provide the Borrower with a copy of the summary described above. The Advisor will assist and advise the Financing Parties in any discussions with the Borrower to resolve the issues associated with such disapproval or inadequate supporting information.

It is expressly understood and agreed that the Advisor's review of a Requisition shall be deemed to constitute a certification by the Advisor to the Financing Parties that, to the best of his/her or its knowledge: (i) with respect to any construction-related item on the Requisition, the item represents sums due for work actually performed and/or materials actually delivered or installed; (ii) all observed work has been completed in a good and workmanlike manner and, if not, the Project architect has presented a plan for remediation of any deficient work; and (iii) the quality of observed Project work completed as of the time of the Advisor's Site Visit is generally in accordance with the construction contract and the plans and specifications for the Project previously delivered to the Advisor as amended by field changes.

If the Construction Lender or any Participating Lender advancing funds for a Requisition disapproves all or any portion of such Requisition, such Lender shall promptly notify the Borrower and the other Financing Parties of such disapproval (together with a summary of the reasons supporting such disapproval).

(e) Final Certification.

Promptly upon completion of construction of the Project, the Advisor will (1) make a final Site Visit, (2) certify to the Financing Parties that, to the best of his/her or its knowledge, all work and materials are in substantial compliance with the plans and specifications and that lien releases have been duly delivered (on the form attached hereto as Exhibit B) and (3) review the schedule of punch list items and recommend any changes or additions to such punch list schedule and an appropriate aggregate holdback amount for the final punch list items. The Advisor will identify any observed areas where construction does not conform to the final plans and specifications. The Advisor will coordinate the final Site Visit at construction completion with the Financing Parties.

3. Compensation.

The Borrower will pay the Advisor the sum of \$1,500 for the Initial Project Review. Said amount will be payable prior to the closing of the construction financing or from the initial disbursement of loan proceeds upon the closing of the construction financing. Whether or not the construction financing closes, the Borrower will pay all fees and expenses incurred for the Initial Project Review.

The Borrower will pay the Advisor the sum of \$500 for each Site Visit/Periodic Report. The fee for each Site Visit/Periodic Report may be advanced by the Construction Lender or by a Participating Lender whose loan proceeds are being disbursed for construction from the loan disbursement next following such Site Visit. If the fee for a Site Visit/Periodic Report is paid by a Lender who does not have available loan proceeds to advance, the Borrower shall reimburse such Lender for such amount upon the Lender's request.

There will be no separate fee for the final certification, such final certification being considered part of the final Site Visit.

4. Documentation Provided to Advisor

The Borrower has supplied (or will promptly supply when available) copies of the following to the Advisor:

- (a) complete site, structural, mechanical, electrical, heating/ventilating/air conditioning, life safety and architectural plans and specifications including all modifications and addenda;
- (b) report(s) of soil and foundation investigation, including engineer's recommendations concerning the foundation design, structural reports and environmental reports;
- (c) general contract and contracts for consultants retained by the Borrower for the construction period;
- (d) proposed disbursement schedule (attached hereto as Exhibit A);
- (e) contractor's cost breakdown;
- (f) letters or other documentation verifying the availability of needed utilities, water, sanitary sewers, gas, electricity and telephone;
- (g) building permits and other permits required for construction;

- (h) building code analysis prepared by a registered architect or engineer; and
- (i) evidence of zoning compliance or comprehensive permit.

The Borrower shall promptly supply to the Advisor and the Financing Parties from time to time during the term of this Agreement copies of any changes to the foregoing and copies of any of the foregoing not available on the date hereof.

5. Borrower's Cooperation.

The Borrower authorizes and permits the Advisor, through its duly authorized agents or employees, to come upon the Project site at such times as may be reasonably requested by the Advisor. The Borrower further agrees to cooperate with the Advisor in the performance by the Advisor of the Services. In addition to the documentation described above, the Borrower will make available to the Advisor any and all data, files, information, drawings, specifications, and access to employees of the Borrower as may be reasonably requested by the Advisor in connection with the performance of the Services.

6. Assignment/Delegation.

This Agreement may not be assigned by the Advisor without the prior written approval of the Financing Parties. The Services may not be subcontracted or delegated in whole or in part to any other person or entity without the prior written approval of the Financing Parties.

7. Termination.

The Construction Lender or the Agent may terminate this Agreement by written notice to the Advisor which notice shall specify an effective date of termination. The Advisor may terminate this Agreement by written notice to all Financing Parties, which notice shall specify an effective date of termination which shall not be sooner than 30 days after the date of such notice. Upon termination of this Agreement, the Advisor will return to the Financing Parties all documents and other materials which it has received from the Financing Parties and the Borrower in the course of providing the Services; the Advisor will promptly deliver to the Financing Parties all finished or unfinished documents, data, studies and reports, and all other property, prepared, purchased or otherwise obtained by the Advisor in the course of performing the Services; and the Advisor will promptly submit a final invoice for work performed up to the effective date of termination.

8. Compliance.

The Advisor shall be responsible for any violation(s) of any federal, state or local laws, ordinances, rules, regulations or orders committed in the performance of this Agreement. The Advisor also certifies that, to the extent applicable, it is in compliance or shall comply with: (1) all federal and state tax laws; (2) all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies pursuant to M.G.L. c. 151A, sec. 19A (employment security) and M.G.L. 152 (worker's compensation); and (3) the provisions of Section 7 of Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991 (child care assistance offered by employers having fifty or more full time employees), and 102 CMR 12.00 (minimum standards for child care). As evidenced by the signature of the Advisor's authorized representative below, the Advisor certifies under the pains and penalties of perjury, (x) the Advisor is current in the payment of all taxes due to The

Commonwealth of Massachusetts as required by M.G.L. c. 62C, sec. 49A; and (y) pursuant to Executive Order 481, that the Advisor shall not knowingly use undocumented workers in connection with the performance of this Agreement ; that pursuant to federal requirements, Advisor shall verify the immigration status of all workers assigned to this Agreement without engaging in unlawful discrimination and that the Advisor shall not knowingly or recklessly alter, falsify or accept altered or falsified documents from any such worker(s). The Advisor understands and agrees that breach of any of these terms during the period of this Agreement may be regarded as a material breach, subjecting the Advisor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination .

9. Indemnification.

The Advisor shall indemnify, defend and hold harmless the Financing Parties, including their officers, agents and employees, from and against any and all claims, liabilities, losses, damages, costs and expenses to the extent caused or arising out of the breach of the terms hereof by Advisor or the negligent acts or reckless conduct of the Advisor, its officers, employees, agents or representatives in the performance of the Services. The Advisor's review of Project documentation pursuant hereto shall not result in any responsibility of the Advisor for compliance of the Project with laws, regulations or codes, all of which shall be the sole responsibility of the Project architect, the contractor and/or the Borrower.

10. Independent Contractor.

The parties intend and agree that the Advisor is an independent contractor and not an employee or agent of the Financing Parties. Subject to the terms and conditions of this Agreement, the Advisor alone will control the manner and means by which the Services are provided.

11. Miscellaneous.

- (a) Nothing contained in this Agreement shall be deemed or construed to modify or amend the terms and conditions of the loan documents evidencing and securing the loans from the Financing Parties to the Borrower in connection with the Project, including, without limitation, all conditions precedent to an advance of loan proceeds to the Borrower.
- (b) No delay or omission by a Lender in exercising any right or remedy under this Agreement or any of such Lender's loan documents shall be deemed to operate as a waiver of such right or remedy or any other right or remedy available hereunder or thereunder or at law. No waiver by a Lender of any default shall constitute a waiver of any other default or of the same default on a future occasion.
- (c) Any notice required or permitted to be given under this Agreement will be deemed to have been given if made in writing and sent by recognized overnight courier service, delivered by hand or sent certified mail, postage prepaid, to the relevant party at its address set forth above, and shall be deemed given one day after deposit with a recognized overnight courier service, upon receipt if delivered by hand and three days after being mailed.

- (d) This Agreement contains the entire agreement of the parties. No amendment of this Agreement and no waiver of any provision hereof shall be effective unless in writing and duly executed by the parties affected thereby. If any portion of this Agreement is found to be unenforceable, the remaining portions of this Agreement will continue to be enforced to the fullest extent permitted by law. Time is of the essence of this Agreement.
- (e) This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Financing Parties and the permitted successors and assigns (if any) of the Advisor and the Borrower, and shall be governed by the laws of The Commonwealth of Massachusetts. This Agreement may be executed in any number of counterparts.
- (f) The Advisor, the Borrower and the Financing Parties acknowledge that additional lenders or investors supplying financing for the Project (the "Additional Financing Parties") may desire to avail themselves of the services of the Advisor with respect to the Project and the Advisor agrees to extend reliance on the Advisor's work product hereunder to such Additional Financing Parties, provided that each such Additional Financing Party executes a joinder to this Agreement in the form attached hereto as Exhibit C. The Advisor shall not be required to deliver copies of its work product to any party who has not executed this Agreement or a joinder hereto.
- (g) All services provided by the Advisor are to be performed to best of the Advisor's professional experience and knowledge, based on Site Visits, review of Project documentation to the extent made available and the representations of development team members. The Advisor shall have no responsibility or authority to direct the contractor, the Borrower or their consultants relative to matters concerning the owner/contractor agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement under seal as of the date first set forth above.

ADVISOR:
CONSTRUCTION WATCHDOGS, INC.

By:

Name:

Title:

CONSTRUCTION LENDER:
MHIC, LLC

By:

Name:

Title:

PERMANENT LENDER:
MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD

By:

Name:

Title:

INVESTOR:
MASSACHUSETTS HOUSING INVESTMENT CORPORATION

By:

Name:

Title:

AGENT:

THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the Department of Housing and Community Development

By:

Name:

Title:

BORROWER:

FRANCONIA APARTMENTS LLC

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

By: _____

Elsie Borden

Its: President

ADVISOR INFORMATION

Advisor's Tel. No. _____

Advisor's Tax ID No. _____

Advisor is a socially or economically disadvantaged business: ____

Advisor is a minority business enterprise: ____

Advisor is a women's business enterprise: ____

Advisor is SOMWBA certified: ____

EXHIBIT A: DISBURSEMENT SCHEDULE

EXHIBIT B: ADVISOR'S FINAL CERTIFICATE

TO: MHIC, LLC; The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development; The Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator, the Massachusetts Housing Finance Agency; Community Economic Development Assistance Corporation; the City of Springfield, Massachusetts, acting by and through its Office of Housing and Neighborhood Development; Massachusetts Housing Partnership Fund Board; and Massachusetts Housing Investment Corporation (collectively, the "Financing Parties")

FROM: Construction Watchdogs, Inc. (the "Advisor")

RE: Franconia Apartments, 365 Annum Street, Springfield, Massachusetts (the "Project")

Franconia Apartments LLC (the "Owner")

The undersigned, acting as consulting Advisor to the Financing Parties for the above-referenced Project, in order to induce the Financing Parties to advance funds for the purpose of funding construction, taking out the construction loan and/or funding a permanent loan for the Project, does hereby certify to the best of his/her or its knowledge that:

- A. We have reviewed the plans and specifications for the Project (the "Plans and Specifications") in the form approved by you, as presently amended. A list of the Plans and Specifications is attached hereto as Exhibit 1. The Project is complete and all work has been done in accordance with the Plans and Specifications and in a good workmanlike manner.
- B. All closeout submittals required by the Plans and Specifications (including documentation of lead paint and asbestos abatement, if applicable, including any required certifications from the abatement contractor, engineer's affidavits as to adequacy of utilities and as-built record drawings) have been submitted by the contractor.
- C. To the knowledge of the undersigned, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any permits, liens, certificates or agreements for or relating to the Project.
- D. The level of construction/rehabilitation as detailed in the Plans and Specifications, if properly maintained during occupancy, is adequate to maintain the use of the Project as affordable rental housing over 15 years.

The foregoing Certificate is given to induce you to advance funds for construction, to take out the construction loan and/or for funding of a permanent loan for the Project, and it is intended that you shall rely upon this Certificate in making any such advances. This Certificate is rendered

based on an examination of the Project, the Plans and Specifications and all other matters which we deem relevant.

Executed as a sealed instrument of Massachusetts law this _____ day of _____, 20__.

ADVISOR:
CONSTRUCTION WATCHDOGS, INC.

By:

Name:

Title:

EXHIBIT 1 List of Plans and Specifications

EXHIBIT C: JOINDER TO LENDER ADVISOR AGREEMENT

<Additional financing party name> (the "Additional Financing Party") joins in the execution of the Lender Advisor Agreement dated October 15, 2009 among Construction Watchdogs, Inc., MHIC, LLC, The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, Massachusetts Housing Partnership Fund Board and _____ (the "Lender Advisor Agreement") for the purpose of establishing itself thereunder as a Financing Party. Pursuant to Section 14(f) of the Lender Advisor Agreement, the Additional Financing Party hereby agrees to become a party to the Lender Advisor Agreement for the purposes of receiving the services of the Advisor thereunder and to perform all the obligations of a Financing Party thereunder. Notices to the Additional Financing Party under the Lender Advisor Agreement should be sent as set forth below.

IN WITNESS WHEREOF, the Additional Financing Party has caused this Joinder to be executed under seal, by an official thereunto duly authorized, as of the ____ day of _____, 200__.

<ADDITIONAL FINANCING PARTY NAME>

By: _____
Name:
Title:

Notices should be sent to:

<Additional financing party name TE>
<Additional financing party street TE>
<Additional financing party csz CO>