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## DISPOSITION AND REGULATORY AGREEMENT FOR CAPEN COURT

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This Disposition and Regulatory Agreement ("Agreement") is entered into as of December 1, 2008 by and among the SOMERVILLE HOUSING AUTHORITY ("Authority"), a public body corporate and politic organized and operated under the provisions of Massachusetts General Laws Chapter 121B, as amended, CAPEN COURT, LLC, a Massachusetts limited liability company (the "Owner"), and the COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH ITS DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ("DHCD").

### RECITALS

- A. The Authority is the owner of a state-aided public housing development known as Capen Court, consisting of 64 rental housing units (the "Existing Development") located on the land described more particularly in Exhibit A (the "Site").
- B. The Authority has formed, is presently the sole member of, and intends to work together with the Owner in order to pursue the comprehensive redevelopment of the Existing Project in order to create ninety-five rental housing units on the Site (as more particularly defined below, the "Development").
- C. The Existing Development is subject to regulation by DHCD, and DHCD has agreed to provide funding to the Authority (which the Authority in turn has agreed to loan and/or invest in the Owner) to support the Development.
- D. The Authority and the Owner have requested DHCD's approval of the disposition of the Existing Development and certain related matters, and DHCD has agreed to grant such approval subject to the terms of this Agreement.
- E. The Owner has agreed to redevelop, operate and maintain 64 units in the Development in accordance with Public Housing Requirements, as specified below.

### AGREEMENT

In consideration of the foregoing recitals and underlying promises, which all parties agree to be good and valuable consideration, the parties agree as follows:

- 1 DEFINITIONS. As used in this Agreement, the following terms will have the following meanings:
  - 1.1 "Act" means Massachusetts General Laws Chapter 121B, as amended.
  - 1.2 "Additional Housing Requirements" shall mean the affordability and other regulatory requirements set forth in: (i) the Tax Credit Requirements; (ii) the Bond Requirements; (iii) the Section 8 Requirements, and (iv) that certain MassDocs Affordable Housing Restriction dated on or about the date hereof granted by the Owner to DHCD, and (v) that certain Affordable Housing

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Address: 1 Capen Court, Somerville, MA

and Chapter 40B and Tax Regulatory Agreement dated on or about the date hereof among the Owner, the Authority, the Massachusetts Housing Partnership Fund Board and Deutsche Bank, in each case only to the extent that and only for so long as each such requirement may apply to the Development or one or more of the units in the Development by its own terms.

- 1.3 "Additional Trigger" is defined in Section 5.1.2.
- 1.4 "Application" means the application submitted to DHCD by the Authority and the Owner relative to the Development pursuant to 760 C.M.R. 4.00.
- 1.5 "Authority" means the Somerville Housing Authority, together with its successors and assigns.
- 1.6 "Bond Requirements" means any and all requirements of Section 142 of the Internal Revenue Code, as amended from time to time, and any successor legislation, and any implementing regulations.
- 1.7 "Contract for Financial Assistance" means that certain contract between DHCD and the Authority dated as of August 12, 2004, as amended on or about the date hereof.
- 1.8 "Development" means the Site and the improvements to be constructed on the Site.
- 1.9 "DHCD" means the Commonwealth of Massachusetts Department of Housing and Community Development, and its successors and assigns.
- 1.10 "Event of Default" is defined in Section 8.1.
- 1.11 "Existing Development" means the state-aided public housing development presently located on the Site, consisting of 64 rental housing units, known as Capen Court.
- 1.12 "General Remedies" is defined in Section 5.2.
- 1.13 "HUD" means the United States Department of Housing and Urban Development.
- 1.14 "Initial Trigger" is defined in Section 5.1.1.
- 1.15 "Investor" means BCP/Capen Court, LLC, a Delaware limited liability company, and its successors and assigns.
- 1.16 "Lender" or "Lenders" means any institutional lender to the Owner that provides financing for the Development, and their respective successors and assigns. The phrase "institutional lender" means any savings bank, commercial bank, trust company, savings and loan association, insurance company, agency, instrumentality or authority of any federal, state, or local government, quasi-public entity, and any private or nonprofit entity that provides financing for affordable housing. The initial Lenders are identified more particularly in that certain Master Subordination Agreement dated on or about the date hereof.
- 1.17 "Loan Documents" means each of the documents entered into by the Owner in connection with a loan from a Lender.
- 1.18 "Low or Moderate Income Household" means a household with gross income at or less than 80% of median household income as most recently determined by HUD for a similarly sized household in Somerville, Massachusetts, as further defined in 760 C.M.R. 5.06.
- 1.19 "Minimum Income Levels" is defined in Section 5.3.1.

- 1.20 "Operating Reserve" means one or more reserve accounts maintained by or for the benefit of the Owner as required by any Lender or the Investor, exclusive of reserves for replacements or equivalent accounts intended to fund the Development's capital repair or replacement needs.
- 1.21 "Non-State Units" means the 31 dwelling units of the Development that are not State Units.
- 1.22 "Operating Subsidy" means operating funds provided to the Authority by DHCD pursuant to Section 32 of the Act and the Contract for Financial Assistance.
- 1.23 "Owner" means Capen Court, LLC, a Massachusetts limited liability company, and its successors and assigns.
- 1.24 "PBV Unit" means a Unit receiving project-based subsidy under 24 C.F.R. Part 983 or an equivalent successor program.
- 1.25 "Public Housing Requirements" means the Act and its implementing regulations in 760 C.M.R. Sections 4.00 et. seq., 5.00 et. seq., 6.00 et. seq., 8.00 et. seq., 27.00 et. seq. and 47.00 et. seq., and DHCD-issued notices, guidelines, handbooks and other official policies related to the Act or the regulations referenced herein.
- 1.26 "Returning Residents" means persons listed as the head of household at the Existing Development on the lease or the last continued occupancy form submitted to the Authority prior to September 1, 2007 that choose to return to the Development pursuant to the relocation plan (including the Capen Court Relocation Agreement dated December 12, 2007) previously approved by DHCD.
- 1.27 "Section 8 Requirements" means any and all requirements relating to the development and/or operation of a Section 8 Unit required by Section 8 of the United States Housing Act of 1937, as amended from time to time, and any successor legislation, and any implementing regulations and any Section 8 Housing Assistance Payment Contracts entered into by the Owner.
- 1.28 "Section 8 Unit" means a State Unit that is a PBV Unit or is occupied by a resident receiving Tenant-Based Section 8 Assistance.
- 1.29 "Section 42" means Section 42 of the Internal Revenue Code of 1986, as amended from time to time, and any successor legislation, and any implementing regulations.
- 1.30 "Site" means the real property on which the Development is located, as more particularly described in Exhibit A hereto.
- 1.31 "State Units" is defined in Section 3.1.
- 1.32 "Tax Credit Requirements" means any and all matters required by Section 42 or the agreement containing restrictive covenants which will be recorded against the Development in accordance with Section 42.
- 1.33 "Tenant-Based Section 8 Assistance" means tenant-based assistance provided pursuant to Section 8 of the United States Housing Act of 1937, or an equivalent successor program.

## 2 APPROVALS BY DHCD

- 2.1 Approvals Regarding State Units. DHCD has reviewed and approved the Application and related documentation and has determined that, relative to the State Units, the Development satisfies each

of the requirements of 760 C.M.R. 4.16, and in connection with that determination finds that: the Existing Project is in need of substantial rehabilitation; the costs of substantial rehabilitation cannot be wholly financed by DHCD; the Owner is a "controlled affiliate," as defined under 760 C.M.R. 4.02, and is adequately financed and properly constituted; the Authority has effective legal control of the Owner; the Authority has complied with the tenant participation requirements of 760 C.M.R. 6.09(3)(g); the financial plan for the State Units is sound and likely to be accomplished; the financial plan for the Non-State Units is sound and likely to be accomplished, and any lien or mortgage on the land of the housing project or other affordable housing is reasonably necessary and will be subordinate to the requirements set out in 760 C.M.R. 4.16(1)(a) as implemented by this Agreement.

- 2.2 Approvals Regarding Non-State Units. DHCD has reviewed and approved the Application and related documentation and has determined that, relative to the Non-State Units, the Development satisfies each of the requirements of 760 C.M.R. 4.12, and in connection with that determination finds that: the portion of the Site that will contain the Non-State Units will be surplus to the needs of any existing state-aided housing project and to any planned state-aided housing project on the Site; the Non-State Units will be deed restricted to occupancy by low or moderate income households at affordable rents for a term of at least 40 years pursuant to the Additional Housing Requirements; adequate provision has been made pursuant to the Additional Housing Requirements so that the tenant share of rent for the Non-State Units will be no more than the amounts permitted pursuant to 760 C.M.R. 4.12(1)(c); the Non-State Units on the Site will have a similar purpose to the State Units; DHCD waives the requirement in 760 C.M.R. 4.12(1)(f) relative to subdividing land for the Non-State Units in light of the structure of the Development and the restrictions imposed on the Development by this Agreement; the Loan Documents require notice to DHCD and a reasonable opportunity for cure in the event of foreclosure for breach of the terms of the Loan Documents, and contain commercially reasonable protections against loss of affordability of the Non-State Units; DHCD has, in its capacity as one of the Lenders, approved the plans and description of the Development, its estimated construction costs and its financing and will ensure that proper standards of health, sanitation and safety are met by the Development; public construction and prevailing wage requirements, insofar as applicable, will be complied with in the construction of the Development; tenant selection procedures for the Non-State Units, being subject to approval by HUD and by the Lenders, will be fair and reasonable and will not contravene any applicable state or federal anti-discrimination laws or any state or federal fair housing laws.
- 2.3 Approval of Conveyance, Public Purposes. DHCD approves the conveyance of the Site by the Authority to the Owner pursuant to a long-term ground lease, provided that such ground lease is expressly subject to the terms of this Agreement. DHCD has determined that: (i) the Authority is an agency of the Commonwealth of Massachusetts or of a political subdivision thereof, and (ii) the Development will, if constructed and operated in accordance with this Agreement and the Additional Housing Requirements, be used exclusively for public purposes.
- 2.4 Approvals Regarding the Contract for Financial Assistance. DHCD authorizes the Authority to proceed with "Final Planning and Construction" pursuant to the Contract for Financial Assistance and extends the termination date relative to the advance of funds pursuant to the Contract for Financial Assistance to December 31, 2010. DHCD authorizes the Authority to use funds received pursuant to the Contract for Financial Assistance as a loan and/or equity contribution to the Owner for the purposes of paying costs associated with replacing the Existing Development with the Development. Compliance with the terms of this Agreement by the Owner and by the

Authority will be deemed to satisfy all obligations of the Authority pursuant to the Contract for Financial Assistance.

### **3 DESIGNATION AND OPERATION OF STATE UNITS.**

- 3.1 State Units Subject to Public Housing Requirements.** Owner will continuously operate 64 rental units in the Development (the "State Units") in accordance with Public Housing Requirements during the term of this Agreement. The State Units will be considered a "housing project" providing "chapter 667 elderly/handicapped housing" for purposes of complying with the Public Housing Requirements.
- 3.2 Distribution.** The State Units will "float" and not be at permanent locations in the Development, and to the extent feasible will be scattered throughout the Development. The Owner will maintain and operate the State Units without distinction from the Non-State Units, excepting such differences in admissions procedures, lease terms and other conditions as are mandated by Public Housing Requirements or intended by Owner and Authority to effectuate Public Housing Requirements and/or benefit the State Units. Owner may change the specific units designated as State Units at any time, but may not change the designation of a State Unit to a Non-State Unit except upon turnover. Without limiting the foregoing, if a Non-State Unit that is initially a PBV Unit ceases to be a PBV Unit the Owner may designate such unit as a State Unit provided that at such time it is occupied by a household that is, or at the time of initial admission was, a Low or Moderate Income Household. The Owner shall upon request from any person (including any resident of the Development or the local tenant organization for the Development) make available a list of the initially identified State Units and the date and address of any changes made thereafter.
- 3.3 Resident Incomes and Rent Limitations.**
- 3.3.1** Owner will make the State Units available to Low or Moderate Income Households in compliance with the Public Housing Requirements.
- 3.3.2** Owner will charge residents of the State Units that are not Returning Residents a rent that does not exceed:
- (a) for State Units that are not Section 8 Units, the percentage of monthly net household income specified in 760 C.M.R. 6.04(1)(a), with net household income of the tenant household determined in the manner specified in 760 C.M.R. 6.05; and
  - (b) for State Units that are Section 8 Units, the amount allowed as the tenant share of rent by the Section 8 Requirements (provided that for Section 8 Units that are not PBV Units, if no maximum tenant share is established by the Section 8 Requirements then the amount allowed as the tenant share for purposes of this clause shall be 30% of adjusted income, less any applicable utility allowance (with adjusted income and utility allowance calculated in accordance with Section 8 Requirements).
- 3.3.3** Owner will charge residents of the State Units that are Returning Residents a rent that does not exceed:
- (a) for State Units that are not Section 8 Units, the percentage of monthly net household income which is specified in 760 C.M.R. 6.04(1)(a), with net household income of the tenant household determined in the manner specified in 760 C.M.R. 6.05; and



- (b) for State Units that are Section 8 Units, the lesser of the amount specified in the preceding Section 3.3.3(a) or the amount allowed as the tenant share of rent by the Section 8 Requirements.

### 3.4 Resident Selection and Assignment.

- 3.4.1 The Owner will be responsible for application intake, applicant interview and screening, verification procedures, determination of eligibility for admission and qualification for preference, record maintenance, waiting list maintenance, unit assignment and execution of leases, and all administrative functions in connection with the enforcement and termination of leases.
- 3.4.2 The Owner will maintain and select applicants from a site-based waiting list and in accordance with an affirmative fair housing marketing plan approved by DHCD. The Owner will admit Returning Residents to the Development on a first-priority basis, and will place such Returning Residents in State Units, in accordance with the relocation plan (including the Capen Court Relocation Agreement dated December 12, 2007) approved by DHCD.
- 3.4.3 To the extent that Public Housing Requirements may require the Authority to perform any administrative functions with regard to the State Units, the Authority delegates such responsibility to Owner, subject to re-delegation by the Owner to its management agent (which may be, but is not required to be, the Authority) but further subject at all times to the oversight and approval of the Authority and DHCD to the extent required pursuant to this Agreement.
- 3.5 Leases. Tenant leases executed with respect to State Units will be on forms proposed by Owner and approved by the Authority and DHCD and will comply with (a) Public Housing Requirements, including 760 C.M.R. 6.06, and (b) Additional Housing Requirements. DHCD and the Authority approve the use by the Owner of the form of lease used by the Authority for other state-aided public housing units in its portfolio, subject to such modifications or addenda as may be required in connection with the Additional Housing Requirements.
- 3.6 Future Changes in Public Housing Requirements. If any Public Housing Requirement currently applicable to this Agreement or the State Units is amended, modified or repealed after the date of this Agreement, the parties agree that, to the greatest extent permitted by law, nothing in this Agreement will be construed or interpreted to:
  - 3.6.1 apply any such amendment, modification or repeal in a manner more restrictive of the operation of the State Units than those requirements currently or initially applicable to the State Units; or
  - 3.6.2 prevent or diminish the full application to the State Units of any such amendment, modification or repeal that allows for increased flexibility or decreased restrictions relative to the operation of conventional or mixed-finance state-aided public housing units.

## 4 **OPERATING SUBSIDY**

- 4.1 No Operating Subsidy for Section 8 Units. In order to assure compliance with the Section 8 Requirements, no Operating Subsidy will be paid to the Owner relative to any State Unit that is also a Section 8 Unit.
- 4.2 Eligibility for Future Operating Subsidy.
  - 4.2.1 If any State Unit ceases to be a Section 8 Unit, DHCD will pay to the Authority, and the Authority

will pay to the Owner, the maximum amount of Operating Subsidy available for each such State Unit pursuant to then-applicable Public Housing Requirements.

- 4.2.2 Notwithstanding the foregoing, during the "compliance period" (as determined pursuant to Section 42) the Owner will not be required to accept payments of Operating Subsidy if, and only to the extent that, the Owner or the Investor reasonably concludes that doing so would cause a reduction in the "eligible basis" (as determined pursuant to Section 42) of the Development or would cause an impermissible level of "gross rent" (as determined pursuant to Section 42) for a State Unit.
- 4.2.3 If at any time the annual audit required by this Agreement shows that the sum of Operating Subsidy paid to the Owner and rental payments from the State Units exceeds the State Units pro-rata share of the Development's operating expenses (inclusive of debt service), the Owner, with the consent of the Investor, shall either repay such excess or credit such excess against Operating Subsidy payments otherwise due for the following year.

## 5 REMEDIES TRIGGERED BY THE END OF ASSISTANCE FOR PBV UNITS.

### 5.1 Triggers.

- 5.1.1 An "Initial Trigger" will occur if there are fewer than 64 PBV Units in the Development as a result of the termination or non-renewal of one or more Section 8 Housing Assistance Payment Contracts (regardless of whether any former PBV Unit is occupied by a resident receiving Tenant-Based Section 8 Assistance or other tenant-based rental assistance).

- 5.1.2 An "Additional Trigger" will occur if any of the following events occurs after the Initial Trigger:

- (a) the balance of the Operating Reserve is less than 3 months of the Owner's actual operating costs (including debt service costs) and Owner reasonably projects that the Development will operate at a deficit over a twelve-month period;
- (b) the Owner is experiencing and/or reasonably projects an operating deficit that will deplete the Operating Reserve within 12 months; or
- (c) any Lender delivers notice to the Owner (with a copy to the Authority and to DHCD) of a financial default under the Loan Documents.

- 5.1.3 Notice to Tenants. If the Owner believes that an Initial Trigger or an Additional Trigger has occurred or will occur within the next six months, then the Owner shall provide written notice to the Authority, all residents of the State Units, and the local tenant organization for the Development. Such notice shall include a statement that a trigger has occurred or will occur, a brief explanation of the event(s) leading to the trigger, and a statement that additional information and documentation is available upon request.

- 5.2 General Remedies. The Owner will implement the following "General Remedies" if the Initial Trigger occurs, and may implement them prior to the Initial Trigger if the Owner reasonably anticipates that the Initial Trigger will occur within 6 months:

- (a) Cost Cutting Plan. Owner will undertake in good faith, and in full consultation with the Authority, DHCD, the Investor and Lenders, to reduce the Development's operating expenses. All expenses will be open to examination and potential reduction; however, Owner will not be required to seek to reduce maintenance and other operating expenses

below a sustainable long-term level without also seeking to increase income in accordance with other elements of this Agreement, nor will Owner be required to act in a manner that would violate applicable Additional Housing Requirements or Loan Documents.

- (b) Refinance and Increase Subsidy. Owner will make good faith efforts to pursue opportunities to refinance the Development and to locate any available third party assistance in order to increase revenues of the Development. Owner will request, and the Authority and DHCD will each give good faith consideration to providing, additional capital assistance and/or rental assistance (in addition to the Operating Subsidy). Owner will not unreasonably refuse to accept additional assistance if offered by DHCD or the Authority. Any such actions by Owner will be pursued in consultation with, and will be subject to the consent of, the Investor and the Lenders and will also be subject to compliance with applicable provisions of the Additional Housing Requirements.
- (c) Other Discretionary Actions. Owner, the Authority and DHCD will each cooperate in good faith to take and/or approve such other actions as reasonably necessary and permitted by Public Housing Requirements in order to improve the financial operations and long-term viability of the Development. Any such actions by Owner will be pursued in consultation with, and will be subject to consent of, the Investor and the Lenders and will also be subject to compliance with applicable provisions of the Additional Housing Requirements. Such actions shall include making diligent attempts to rent State Units to those elderly/disabled families with tenant-based Section 8 or other rental subsidies.

### 5.3 Minimum Income Levels on Turnover.

- 5.3.1 If Owner certifies to DHCD and the Authority (with a copy to all tenants of the State Units of the Development) that it has pursued General Remedies for a reasonable period of time in the circumstances (which will not be required to exceed 90 days), Owner may establish "Minimum Income Levels" for households to be admitted to the State Units, upon turnover only, such that the revenues Owner reasonably projects to receive from each State Unit (inclusive of tenant payments and Operating Subsidy) will:
  - (a) following the Initial Trigger, support such State Unit's pro-rata share of the Development's operating expenses, exclusive of debt service; and
  - (b) following an Additional Trigger, support such State Unit's pro-rata share of the Development's operating expenses, inclusive of debt service.
- 5.3.2 Minimum Income Levels may take precedence over other priorities or preferences required by this Agreement or by applicable management, admissions or occupancy documents, without need for further approval of changes to such documents, but will in no event be higher than the maximum levels permitted by the Act or by Additional Housing Requirements.
- 5.3.3 If, after Minimum Income Levels are implemented, the Operating Subsidy Payment and any other resources received in support of the State Units are increased to a level such that in the aggregate the State Units that are not PBV Units support their pro-rata share of the Development's operating expenses (inclusive of debt service, if there has been an Additional Trigger) without regard to the income level of residents, the Owner will discontinue the use of Minimum Income Levels.



## 6 RELATION TO OTHER PROGRAMS

### 6.1 Section 8 Requirements.

- 6.1.1 For so long as any of the State Units are PBV Units, in the event of any conflict between the Section 8 Requirements and the Public Housing Requirements relative to such State Units the Section 8 Requirements will control.
- 6.1.2 For so long as any of the State Units are PBV Units, DHCD will defer to HUD in regulation and in enforcement activities relative to the Development and will not take any enforcement action pursuant to this Agreement that would, in HUD's reasonable judgment, interfere with the ability of the PBV Units to be operated in accordance with the Section 8 Requirements.
- 6.1.3 For so long as any State Unit is a Section 8 Unit, DHCD will not be required to provide, and will not provide, any Operating Subsidy in support of such State Units in accordance with Section 4.1.
- 6.2 Additional Housing Requirements. DHCD and the Authority will not disapprove any policy of Owner that is permitted under Public Housing Requirements and required for compliance with Additional Housing Requirements, nor will DHCD or the Authority impose upon Owner any policy or procedure with respect to the State Units that is not required by Public Housing Requirements and that would cause noncompliance with the Additional Housing Requirements.

## 7 FINANCIAL STATEMENTS, AUDIT AND INSPECTION RIGHTS.

- 7.1 Annual Audited Financial Statements. Not later than 120 days after the end of each Development Fiscal Year, Owner will deliver to the Authority a copy of the audited financial statements of Owner for such year prepared in accordance with accounting principles generally used for partnerships or limited liability companies operating housing developments subject to Tax Credit Requirements and accompanied by the report of independent certified public accountants. Upon request from DHCD, the Authority will deliver a copy of such reports to DHCD.
- 7.2 Maintenance of Records. It will remain the responsibility of the Authority to maintain sufficient records and to take necessary action to assure DHCD that all the Authority obligations to DHCD under Public Housing Requirements are fulfilled. Where Public Housing Requirements require the Authority to furnish reports, records, statements, certificates, documents or other information to DHCD, then upon notice or general instruction from the Authority, Owner will furnish such reports, records, statements certificates, documents or other information to the Authority and will provide all other information reasonably requested by the Authority, all reasonably in advance of the date such information is due to DHCD.
- 7.3 Audit. DHCD reserves the right to conduct annual inspections of the Development and inspections or audits of the books and records of the Owner and the Authority (including, without limitation, tenant files and leases) to ensure compliance with the terms of this Agreement.

## 8 DEFAULT AND REMEDIES.

- 8.1 Event of Default. An "Event of Default" under this Agreement will occur if the Owner or the Authority materially violates, breaches, or fails to comply with any provision of this Agreement.
- 8.2 Notice and Cure.

- 8.2.1 Upon a determination by DHCD that an Event of Default has occurred, DHCD will notify the Owner and the Authority in writing of: (i) the nature of the default; (ii) the actions required to be taken to cure the default, and (iii) the period of time within which the defaulting party must respond with a showing that all required actions have been taken, provided that such period of time will be no less than 30 days (or such additional periods of time as may be reasonable, provided that the defaulting party promptly commences the cure of such default within the initial cure period and diligently prosecutes the same to completion).
- 8.2.2 DHCD will transmit concurrently to HUD, the Investor and each Lender a copy of any notice of default by Owner or the Authority under this Agreement, and in the event that Owner or the Authority fails to cure any such default within the applicable time period, HUD, the Investor and any Lender will be given a reasonable period of additional time (not less than 90 days) to initiate a cure of Owner's or the Authority's default through (i) foreclosure pursuant to the Loan Documents, (ii) replacement of the managing member under the Owner's operating agreement, or (iii) otherwise, and will then have such reasonable period of time as may be required to diligently pursue and complete such cure. A cure of any Event of Default of the Owner or the Authority made or tendered by the Investor or any Lender shall be deemed to be a cure by the Owner or the Authority, as applicable, and such cure shall be accepted or rejected on the same basis as if made or tendered by the Owner or the Authority.
- 8.3 Remedies. If an Event of Default remains uncured after expiration of the period of time referenced above, DHCD, 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 Agreement or an injunction against any violation of this Agreement, or for such other relief as may be appropriate, since the injury arising from the default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain and may not be compensable by money alone.

## 9 MISCELLANEOUS.

- 9.1 Term of Agreement. The terms and provisions of this Agreement will remain in full force and effect in perpetuity.
- 9.2 Binding Effect; Third Party Beneficiaries. The covenants set forth in this Agreement will run with the land, and will be enforceable by DHCD and binding upon the Authority and the Owner and any successors and assigns to the fullest extent permitted by law. This Agreement is not intended to benefit any third party, and no third party will be entitled to rely on or enforce any term of this Agreement or any restrictions arising out of the existence of this Agreement, provided however that during the Development's fifteen (15) year "Compliance Period" as established under Section 42 any resident of the Development shall be deemed a third party beneficiary of this Agreement with a right to enforce its terms against the Owner and/or the Authority.
- 9.3 Decision Standards. In any approval, consent or other determination by any party required under any of this Agreement, the party will act reasonably, in good faith and in a timely manner, unless a different standard is explicitly stated.
- 9.4 Notices. All notices, requests, demands, approvals, or other communications given in connection with this Agreement will be in writing and will be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by recognized overnight delivery service such as Federal Express, addressed as follows:

If to DHCD, to:

Commonwealth of Massachusetts  
Department of Housing and Community  
Development  
100 Cambridge Street  
Boston, MA 02114  
Attn. Associate Director of Public Housing

And a copy to:

Commonwealth of Massachusetts  
Department of Housing and Community  
Development  
100 Cambridge Street  
Boston, MA 02114  
Attn. Chief Legal Counsel

If to the Authority, to:

Somerville Housing Authority  
30 Memorial Road  
Somerville, MA 02145  
Attn.: Executive Director

and a copy to:

Klein Hornig LLP  
145 Tremont Street  
Boston, MA 02111  
Attn: Daniel M. Rosen

If to Owner, to:

Capen Court, LLC  
c/o Somerville Housing Authority  
30 Memorial Road  
Somerville, MA 02145  
Attn.: Executive Director

and a copy to:

Klein Hornig LLP  
145 Tremont Street  
Boston, MA 02111  
Attn: Daniel M. Rosen

If to Investor, to:

BCP/Capen Court, LLC  
c/o Boston Capital Partners  
One Boston Place, Suite 2100  
Boston, MA 02108  
Attn: Capen Court Asset Management

and a copy to:

Holland & Knight LLP  
10 Saint James Avenue  
Boston, MA 02116  
Attn: Douglas W. Clapp, Esq.

If to Lenders, to:

For the initial Lenders, the addresses referenced in that certain Master Subordination Agreement recorded on or about the date hereof. For any subsequent Lenders, the addresses (if any) provided in writing by such Lender to each party to this Agreement.

If to HUD, to:

U.S. Department of Housing and Urban  
Development  
Office of Public Housing  
10 Causeway Street  
Boston, MA 02222

All such notices and other communications will be deemed given on the date of personal or local courier delivery, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and will be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iii) in the case of mailing, on the date specified in the return receipt.

- 9.5 Further Assurances. Each party will execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.
- 9.6 Governing Law. This Agreement will be governed by the laws of The Commonwealth of Massachusetts. Inasmuch as the restrictions contained in this Agreement have been imposed to satisfy requirements of DHCD, they 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, such that the restrictions contained in this Agreement will not be limited in duration by any rule or operation of law, but rather will run for the full term of this Agreement. DHCD assents to the creation of the restrictions set forth in this Agreement, and declares them to be in the public interest and approved pursuant to the provisions of Section 32 of Chapter 184 of the Massachusetts General Laws.
- 9.7 No Personal Liability. No officer, director, shareholder, partner, member, employee, agent or other person authorized to act for or on behalf of either party will be personally liable for any obligation, express or implied, under this Agreement.
- 9.8 Modification and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties and subject (to the extent applicable) to compliance with M.G.L. c. 184 Sec. 32 and (to the extent required to comply with Public Housing Requirements or Additional Housing Requirements) with tenant participation provisions of 760 CMR 6.09. The failure of either party to insist in any one or more cases upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy in this Agreement contained will not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver of any provision of this Agreement will be deemed to have been made unless set forth in writing and signed by the waiving party.
- 9.9 Total Agreement and Severability. This instrument embodies the whole agreement of the parties with respect to the matters set forth in this Agreement. There are no promises, terms, conditions, or obligations other than those contained in this Agreement, and this Agreement will supersede all

previous communications, representation, or agreements, either verbal or written, between the parties. No party will be bound by representations made by any other party to any third party concerning matters set forth or not set forth in this Agreement, unless and to the extent such representations are incorporated in this Agreement or in any document, policy or agreement adopted by the parties in connection with this Agreement. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion will be deemed severed from this Agreement and the remaining parts will continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

- 9.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed original, but all of which, together, will constitute one instrument.
- 9.11 Recording. Upon execution, a copy of this Agreement and any amendment of this Agreement shall be promptly recorded with the Middlesex County Registry of Deeds.

[SIGNATURES ON SEPARATE PAGE]



In witness whereof, the parties have duly executed this Agreement as a sealed instrument by their duly authorized signatories as of the date stated above.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF HOUSING AND COMMUNITY  
DEVELOPMENT

By: Deborah J. Goddard

Name: DEBORAH J. Goddard

Title: Chief Counsel

SOMERVILLE HOUSING AUTHORITY

By: J. Macaluso  
Joseph R. Macaluso, Executive Director

CAPEN COURT, LLC

By: Somerville Housing Authority, its managing  
member

By: J. Macaluso  
Joseph R. Macaluso, Executive Director

Commonwealth of Massachusetts

County of Suffolk

ss.

On this 11th day of November, 2008, before me, the undersigned notary public, personally appeared Deborah J. Goddard, the Chief Counsel of the Commonwealth of Massachusetts Department of Housing and Community Development, proved to me through satisfactory evidence of identification, which was personal knowledge of his/her identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Candace Simpson

Notary Public

My Commission Expires:

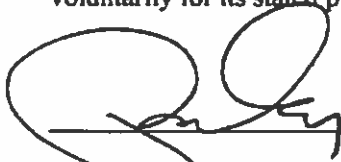
**My Commission  
Expires August 27, 2015**

Commonwealth of Massachusetts

SS.

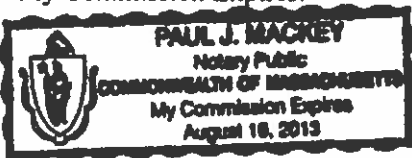
County of MIDDLESEX

On this 10<sup>TH</sup> day of DECEMBER, 2008, before me, the undersigned notary public, personally appeared Joseph R. Macaluso, the Executive Director of the Somerville Housing Authority, proved to me through satisfactory evidence of identification, which was personal knowledge of his identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public

My Commission Expires:

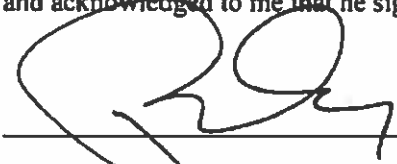


Commonwealth of Massachusetts

SS.

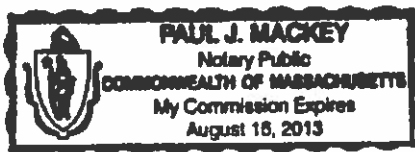
County of MIDDLESEX

On this 16<sup>TH</sup> day of DECEMBER, 2008, before me, the undersigned notary public, personally appeared Joseph R. Macaluso, the Executive Director of the Somerville Housing Authority, as managing member of Capen Court, LLC, proved to me through satisfactory evidence of identification, which was personal knowledge of his identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public

My Commission Expires:



**EXHIBIT A**

**1 CAPEN COURT  
SOMERVILLE, MASSACHUSETTS**

That certain parcel of land with the improvements thereon situated in Somerville, Middlesex County, Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a stone bound set in the boundary line between land of the Commonwealth of Massachusetts and land now or formerly of Anthony W. DiCecca, which point is one hundred ninety six and 08/100 feet distant south  $53^{\circ} 15' 38''$  east measuring along said intersection of said boundary line with the southeasterly side line of Mystic Valley Parkway as shown on a plan hereinafter mentioned.

Thence the line runs south  $53^{\circ} 15' 38''$  east by said land of Anthony W. DiCecca twenty five and 00/100 (25.00) feet to a stone bound;

Thence north  $36^{\circ} 44' 22''$  east by said land of Anthony W. DiCecca, one hundred seventy six and 22/100 (176.22) feet to a stone bound at land now or formerly of Mary E. Norton;

Thence south  $56^{\circ} 18' 11''$  east by land of Mary E. Norton, land now or formerly of Henrietta H. Berry, et als, land now or formerly of Michael Galvin et al, land now or formerly of Margaret E. Gurvin, et al, land now or formerly of Timothy J. Keohane et al, land now or formerly of Robert D. Orchard, et al and land of the Commonwealth of Massachusetts, two hundred seventy seven and 90/100 (277.90) feet to a point at land now or formerly of Edward F. Murphy, et al;

Thence south  $33^{\circ} 31' 00''$  west by said land of Edward F. Murphy, et al land now or formerly of Katherine Johnson, et al, land now or formerly of Harry N. Anderson, et al, land now or formerly of William S. Chamberlin three hundred two and 36/100 (302.36) feet to a stone bound set in the end of Capen Street;

Thence northwesterly  $53^{\circ} 50' 15''$  east two hundred eighty eight and 61/100 (288.61) feet to a point;

Thence westerly  $74^{\circ} 24' 42''$  east fifty and 59/100 (50.59) feet to a point;

Thence the line runs north  $36^{\circ} 44' 22''$  east one hundred fifty three and 85/100 (153.85) feet to the point of beginning.

Containing eighty eight thousand one hundred forty two (88,142) square feet more or less and being shown on a plan entitled "Plan of Land in Somerville, Massachusetts, dated June 3, 1957, Walter J. Manning, Commissioner of Public Works" and recorded as Plan 258 of 1958.

Together with the benefit of rights and easements set forth in Grant by Conwell Capen Limited Partnership to Somerville Housing Authority dated October 3, 2007 and recorded in Book 50188, Page 547.

Together with the benefit of rights and easements set forth in Deed of Access and Utility Easement and Agreement of Easement Holders by the Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance in favor of Conwell Capen Limited Partnership and Somerville Housing Authority dated December 5, 2008 and recorded in Book 5011, Page 354.